



TOWN OF ROCKLAND

Planning Board

Town Hall
242 Union Street
Rockland, Massachusetts 02370

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TOWN CLERK, ROCKLAND,
AUG 26 2020 PM 3:03

TOWN OF ROCKLAND PLANNING BOARD Decision of Hearing

APPLICANT: JAMES RADAR, CHEBOYGAN PROPERTIES, LLC

HEARING DATE (S): July 28, 2020 & August 25, 2020

BOARD MEMBERS PRESENT AT THE **JULY 28, 2020** HEARING(S): Michael Corbett, Chairman; John Lucas and Randy Hoblitzelle (*absent Charles Williams & Jared Valanzola*).

BOARD MEMBERS PRESENT AT THE **AUGUST 25, 2020** HEARING(S): Michael Corbett, Chairman; Charles Williams; John Lucas; and Jared Valanzola (*absent Randy Hoblitzelle*).

SUBJECT: Site & Design Review James Radar, Cheboygan Properties (Map 4 Lot 11)

LOCATION: 1015 Hingham Street

You are hereby notified that after careful consideration of your application the Rockland Planning Board voted:

() to deny the application

(XX) to approve the application for Site & Design Plan subject to the conditions hereto annexed.

FILING DATE OF DECISION: 8/26/2020

DECISION: On **August 25, 2020** the Board voted 4-0 in favor - to approve the Site & Design Plan for the *Building* with the following Planning Board conditions: (*also see attached ZBA Decision*).

I. Waiver Requests Approved:

1. The proposed drain pipe is specified to be high-density polyethylene (HDPE). Use of HDPE pipe requires a waiver from R&R §III.C.2.e.1.
2. As noted above, there is a subsurface infiltration system proposed. Use of subsurface infiltration systems require a waiver from R&R §III.C.2.f.1.

II. General Conditions (PENDING):

1. Get replies from Water/Sewer & Fire Department.
2. Confirmation with Highway on Granite Curbing.
3. Send proof of easement agreement.
4. Check with the ZBA see if they need you to go back.
5. Send updates to Planning Board and replies from Water/Sewer/Fire Department & Highway.

III. General Conditions:

1. The Applicant will submit a construction schedule and attend a preconstruction meeting with the Chairman of the Planning Board; Town of Rockland's designated engineer, and with its construction managers. Notice of the meeting shall be given to the Conservation Chairman and Building Commissioner.
2. The Applicant is required to provide the Chairman of the Planning Board and the Town of Rockland's designated engineer a minimum of 48 hours of notice prior to the beginning of construction.
3. A Dig Safe number and date of work will be supplied to the Chairman of the Planning Board prior to the beginning of construction. Information may be sent electronically.
4. That any modification of the plans cited above which modification is substantially different from the plan presented at the public meeting, shall be submitted to the Planning Board to be reviewed and accepted by the Board prior to any construction commencing.
5. That prior to an Occupancy Permit being issued by the Building Department, an "As Built" plan prepared by a Registered Civil Engineer shall be submitted to the Planning Board for its approval; such plan shall bear the following certification: "I certify that this project has been constructed in conformance with the approved plan and that any changes from said plan have been previously approved by the Rockland Planning Board."
6. If necessary, during construction the Applicant is required to control erosion. Silt sacs shall be installed in all catch basins in the area of construction. The silt sac shall be cleaned as necessary. All disturbed areas must be stabilized prior to November 30 during construction to prevent erosion during the winter months.
7. The Applicant is required to begin construction within two (2) years from the time of the Site Plan approval. The Applicant will have to return to the Planning Board for any time extensions after the two years.
8. The Applicant is required to keep all roadways free and clear of debris at the discretion of the Rockland Highway Superintendent during construction.
9. All Road Opening requirements are at the discretion of the Rockland Highway Superintendent.

10. The Applicant shall comply with any and all permits required by the Town of Rockland relating to construction of this project.
11. The Town's representative from Planning Board or its successor, including the Town's designated engineer shall be permitted to access the property for the purposes of reviewing the work and progress of the work during construction.
12. During construction the Applicant shall schedule inspections of the drainage system with the Planning Board's consulting engineer. Inspections shall include the following:
 - A. Bottom of all excavated areas for drainage structures.
 - B. After all drainage pipe installation and before backfill
 - C. Top of fill replacement area
13. The Applicant will have the town engineer inspect all drainage basins, and landscaping during and upon completion of work.
14. The applicant will be responsible for engineer cost incurred for the preconstruction meeting, drainage inspections, scheduled inspections, final inspection and As-built review.
15. A signed plan and Rockland Planning Board Certificate of Action is to be on-site during construction.
16. Approval of the Planning Board Site Plan does NOT constitute approval of any other Rockland Board or Commissions. Approval does not include any town department that will require additional review or permitting.

ANY PERSON AGGRIEVED BY THIS DECISION MAY APPEAL TO THE SUPERIOR COURT DEPARTMENT FOR PLYMOUTH COUNTY BY BRINGING ACTION WITHIN TWENTY (20) DAYS AFTER DECISION HAS BEEN FILED IN THE OFFICE OF THE TOWN CLERK.



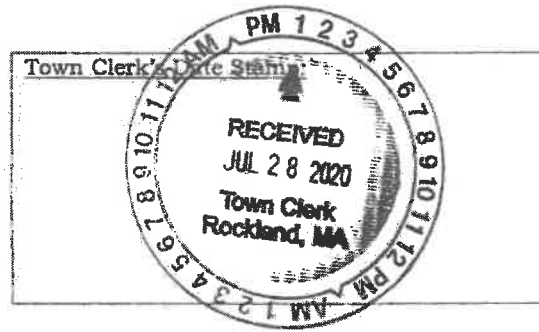
Michael Corbett, Chairman

DATED: 8/26/2020

This Space is For Registry of Deeds Only:

ROCKLAND ZONING BOARD OF APPEALS
242 UNION STREET
ROCKLAND, MASSACHUSETTS 02370
E-mail: zoning@rockland-ma.gov

Phone: (781) 871-1874 extension 1195



CASE NO.: 2020-01
Applicant: Cheboygan Properties, LLC
Property Address: 1015 Hingham Street
(Zoom Hearing)

Notice is hereby given that a Public Hearing will be held on at 7:30 P.M. on April 21, 2020 and continued to May 19, 2020 and June 16, 2020 in the Lawrence J. Chaffee Hearing Room, (Lower Level), 242 Union Street, Rockland, MA on the petition submitted by Cheboygan Properties, LLC, 80 Washington Street, Suite J40, Norwell, MA 02061 to allow the construction of a 5,008 s.f. single story retail building with 22 parking spaces on the site located at 1015 Hingham Street, Rockland, MA 02370. The Applicant is seeking a Special Permit as per §415-89 - special permits, §415-16.c.15 - uses requiring a Special Permit, §415-89.1 - zoning variances and §415-22 - building and lot regulations. The owner of the property is 1099 Hingham Street Realty Trust, c/o Jumbo Capital Management LLC TR, 1900 Crown Colony Drive, Suite 405, Quincy, MA 02169. The site is in an H-1 zone and is further identified as Lot #11 on the Rockland Assessor's Map #4. A copy of this application is on file in the Town Clerk's office and is available for inspection during regular office hours.

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Applicant: Cheboygan Properties, LLC

Property Address: 1015 Hingham Street

Hearing Date(s): April 21, 2020, May 19, 2020 and June 16, 2020

Meeting held on April 21, 2020 via zoom: (Special Permit and Variance Request)

ATTENDANCE: Board Members: Chairman Robert C. Rosa III, Vice-Chairman Gregory Tansey, Timothy Haynes, David Saucier and Charles Heshion. Associate Member: Robert Baker.

Also present was Land Use Counsel Robert W. Galvin and Building Commissioner/Zoning Enforcement Officer Thomas Ruble.

Attorney Galvin stated that Mr. Saucier has a business relationship with the Applicant and that Mr. Saucier recuses himself from this hearing.

MEMBERS VOTING: Robert C. Rosa, Gregory Tansey, Timothy Haynes, Charles Heshion and Robert Baker.

DISCUSSION: The Chairman stated that Applicant is seeking a Special Permit and Variance to allow construction of 5,008 square foot single story retail building with 22 parking spaces on site located at 1015 Hingham Street, Rockland, MA.

The Chairman stated that for those who do not know, Mr. Stan Cleaves has decided to step down from the Board – he will be a loss to the Zoning Board and wishes he could have said thank you to him.

Mr. Don Bracken introduced himself and puts his plans that he has back on the screen and zooms in to show the location of the store – just before you get to set of lights on Commerce Road – vacant lot surrounded by existing commercial properties. Mr. Bracken testified that the property is just over 5,000 square feet; parking summary – 1 space per 300 square feet requires 17-21 spaces in total – they have 22 spaces – wetlands causing issue with 10 foot buffer; they meet all parking requirements for dimensions- rest of spaces meet setbacks; building facing street on the side there will be parking spaces then in the back. Mr. Bracken testified that they will provide reinforced turf with a gate – signage for emergency access only. Mr. Bracken testified that they are focusing on variances requested – side lot line which is a 30 foot buffer – they are proposing a 15 foot buffer; the rear lot line needs 30 feet – they are requesting 27.5 feet. Mr. Bracken testified that in the application they put in a pretty lengthy variance request as a whole – these requests do not affect the zoning district. Mr. Bracken testified that if you look at other lots, no other lot in the area is similar. Mr. Bracken testified that the other item he wants to point out is the sections where requesting variances is 5% of the building in its entirety. Mr. Bracken testified that the flood zone goes through the rear portion of the lot. Mr. Bracken testified that in summary, the surrounding lots

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in zoning district are larger, other lots not as restrictive – they feel that their request solely affects this parcel and not others.

The Chairman asked the Board members if they have any questions.

Mr. Tansey testified that on the south lot line – it does not seem to have the 10 foot buffer between the pavement. Mr. Bracken testified that there is a buffer but Mr. Tansey is correct, it does not appear to have 10 feet in that area. Mr. Tansey

testified that he suggests that the Applicant submit a variance for relief from that 10 foot buffer as well.

Mr. Haynes asked the Applicant about snow removal as he could not find anything in the By-law, but typically not letting it be off pavement – appears per plans all snow removal is on soil and not on the pavement.

The Chairman stated, yes Tim is right – to stay consistent, it always has been required to be on a paved surface.

Mr. Haynes replied, ok, so it is not on this site plan are we going to talk about the use/special permit at this point – his big questions is he does not see if for a use requirement.

The Chairman stated it says under the I-2 that everything under H-1 is under I-2.

Mr. Haynes asked the Chairman, so are you saying that a use that is permitted in I-2 is applicable in H-1?

The Chairman points out where the use requiring a special permit is such as supermarket and/or other general retail stores under 415-16.C.15 (page 33) in old red book and page 28 in new book.

Mr. Haynes replied, so we are saying it is not allowed as a special use in H-1 because it is allowed in I-2 – it is ok for H-1?

The Chairman stated after reading the By-law that is how he interprets that.

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Applicant: Cheboygan Properties, LLC

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Attorney Galvin stated that he has not been asked this question before about this district and is looking at it now – he feels that Rob has a reasonable interpretation of it.

Mr. Haynes testified and stated after reading it as these uses in I-2.

Attorney Galvin stated he feels it does apply, but not the uses – the uses would require a Special Permit; in this district there are 5 uses by right- then Special Permit. Attorney Galvin stated that he wants more detail on the proposed use from the Applicant.

The Chairman stated to the Applicant, when you say general retail what are you looking to get in there.

Mr. Rader testified that right now, they do not have a use for the building; his expectation is that it is going to be a typical retail use but to define if it is a coffee shop/clothing store/ shoe store, they cannot as they do not have anyone lined up to go into the building yet – his vision is once they build it they will come.

Attorney Galvin stated that coffee shops are an allowed use. Attorney Galvin stated that he feels that the Applicant would be allowed to engage in any tenant to occupy for what is allowed by right and the Board can certainly approve the building and subject it to the use regulations of the district.

The Chairman asked for clarification of the H01 zone only – uses that are applicant not the I-2.

Attorney Galvin stated that he feels the dimensional regulations/other regulations apply – the language does not expand the permissible usage. Attorney Galvin stated to the Chairman that he feels the Board could approve the building if inclined to do so and the Applicant can come in once a tenant comes in and apply for a Special Permit.

The Chairman stated is he find with that.

Mr. Haynes needed to clarify that it is not possible for them to grant the special permit if the uses are not permissible.

The Chairman replied, correct, that seems to be the answer.

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Mr. Bracken testified that was not their interpretation, they felt it could be allowed by Special Permit; he will need to consult with the Applicant to see if he wishes to withdraw the Special Permit.

Attorney Galvin stated that they can deny without prejudice for the Special Permit for retail use so the Applicant can come back as a later time.

Mr. Rader replied, he is ok with that.

Mr. Heshion testified that the questions on the snow storage and topography flowing into the wetlands, all have been answered; but regarding the dumpsters – would he consider berming that area since they are near the wetlands. Mr. Bracken testified that with regards to snow storage – we will have to submit to conservation commission but they are happy to designate areas on pavement – can address that on a site plan – there is a curve at the dumpster and all the run-off has to go through the drainage systems – none of that goes through the wetlands.

Mr. Baker asked the Applicant where is the stormwater run-off going to. Mr. Bracken testified after looking at the plan – roof run off goes into subsurface leaching area – draining into catch basis that go into wet swale – some flow allowed to go into the wetland in the southeast Mr. Baker testified that he wants to know if they are tying into the wetlands on Hingham Street as the building on here is designed to have clean groundwater because a 21E was done across the street. Mr. Bracken testified that he was not aware – before the property is purchased another 21 E could be conducted.

Mr. Rader testified that they had Green Environmental do evaluation of the property and goes back in the records the plan for filtering the water to treat the ground water has been signed off by the state – has been 15 years and they feel the issue has been adequately dealt with.

Mr. Baker referred to the emergency entrance/exit – is that going to have breakaway gate if the Fire Department needs to get there – could because he feels that if traffic backs up they will cut through the parking lot to get to the Highway. Mr. Bracken testified that they feel it is good for the Town to keep that open and have another means of opening in that traffic area. Mr. Baker asked the Applicant if they have permission from the owners of the property to allow that to happen. Mr. Bracken testified that he has ownership interest in that building and represents them.

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Applicant: Cheboygan Properties, LLC

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The Chairman asked the Applicant if there will be a formal easement deed/plan drafted up; sheets 3 of 4 substantial grading/drainage/construction over the property line - would need to have sort of an easement there for future purposes.

Mr. Bracken testified that there will be a formal easement drafted that will give them access rights and perpetuity.

The Chairman asked the Applicant if there is any reason why they cannot shrink the building to make it fit and meet the setbacks. Mr. Bracken testified that they have done several schemes that it would be un-rentable and given the only two people impacted, the Applicant to the rear and seller who is selling land to the east, neither one are opposing the variance request.

The Chairman asked Mr. Ruble if he has any questions.

Mr. Ruble testified that pretty much everything has been answered - traffic study ok - on site plan the Fire Department or Pat Brennan seen this are they ok with this/he would like a letter from both Pat and Fire Department to give it a blessing.

Mr. Bracken testified that Pat will be reviewing this, but have not submitted it to the Fire Department, but will do so.

Attorney Galvin stated he has nothing further to add.

The Chairman opened the public hearing to the public. No one is here.

Mr. Baker testified that he has one more item - no salt area in parking lot - it is in a zone b and would be restricted to not use any salt - would like a sign at entrances no salt area.

Mr. Bracken testified that he would like to ask for a continuance to modify the Application to remove the special permit request and amend site plans.

Attorney Galvin stated that the new variance would need to be advertised and combined with the continuance on same night.

The Board discussed May 19th continuance at 7:30 P.M.

The Chairman asked Mr. Bracken if he could submit plans via pdf.

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Applicant: Cheboygan Properties, LLC

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The Chairman asked the Board if they had any other issues.

MOTION: Mr. Heshion made a motion to continue the hearing. Mr. Baker seconded the motion. The vote of the Board was unanimous (5-0).

Roll Call Vote: Mr. Tansey – yes, Mr. Rosa – yes, Mr. Haynes – yes, Mr. Heshion – yes and Mr. Baker – yes.

Attorney Galvin stated that he would need the new application filed with the Town by the end of this week for it to be advertised properly.

Meeting held on May 19, 2020 via Zoom:

ATTENDANCE: Board Members: Chairman Robert C. Rosa III, Timothy Haynes, and Charles Heshion. Associate Member: Robert Baker. **ABSENT:** Gregory Tansey. David Saucier (conflict with hearing)

Also present was Land Use Counsel Anthony Riley of Galvin and Galvin and Building Commissioner/Zoning Enforcement Officer Thomas Ruble.

MEMBERS VOTING: Robert C. Rosa, Timothy Haynes, Charles Heshion and Robert Baker.

DISCUSSION: The Chairman read the continuance notice. The Chairman stated that the Board did not receive paperwork in a timely fashion for advertising an amended application with revised plans for this hearing date, therefore the Board has to vote to continue the hearing until June 16, 2020 for proper advertising.

MOTION: Mr. Baker made a motion to continue the hearing to June 16, 2020 at 7:30 P.M. Mr. Heshion seconded the motion. The vote of the Board was unanimous (4-0).

Roll Call Vote: Mr. Rosa – yes, Mr. Haynes – yes, Mr. Heshion – yes and Mr. Baker – yes.

Attorney Riley stated that the previous public hearing can be withdrawn; the Board needs to see the easement agreement by drafting a copy and making up a list of all email lists.

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MOTION: Mr. Baker made a motion to adjourn the meeting. Mr. Heshion seconded the meeting. The vote was unanimous (4-0).

Roll Call Vote: Mr. Rosa – yes, Mr. Haynes – yes, Mr. Heshion – yes and Mr. Baker – yes.

Meeting held on June 16, 2020 via Zoom: (Variance Request – amended application)

The Rockland Zoning Board of Appeals hereby gives notice, in accordance with Mass. Gen. L. c.40A §11 that a virtual (remote) Public Hearing will be held at 7:30 P.M. on June 16, 2020 on the amended petition submitted by Cheboygan Properties, LLC, 80 Washington Street, Suite J40, Norwell, MA 02061 to allow the construction of a 5,008 s.f. single story retail building with 22 parking spaces on the site located at 1015 Hingham Street, Rockland, MA 02370. The Applicant is seeking a dimensional variances per §415-89.1 - zoning variances; §415-22 - building and lot regulations and §415-22 A.2.d - parking area setbacks. The owner of the property is 1099 Hingham Street Realty Trust, c/o Jumbo Capital Management LLC TR, 1900 Crown Colony Drive, Suite 405, Quincy, MA 02169. The site is in an H-1 zone and is further identified as Lot #11 on the Rockland Assessor's Map #4.

A copy of the amended petition is available upon request electronically from the Town Clerk 781-871-1874 ext. 1 or Zoning Board of Appeals 781-871-1874 ext. 1195 and persons interested in this petition can also submit written comments or questions to: Zoning Board of Appeals, 242 Union Street, Rockland, MA 02370 or email the Zoning Board: zoning@rockland-ma.gov.

ATTENDANCE: Board Members: Chairman Robert C. Rosa III, Vice-Chairman Gregory Tansey, Timothy Haynes, and Charles Heshion. Associate Member: Robert Baker. **ABSENT:** David Saucier (conflict with hearing)

Also present was Land Use Counsel Anthony Riley of Galvin and Galvin and Building Commissioner/Zoning Enforcement Officer Thomas Ruble.

Other attendees via zoom: James Rader and Don Bracken.

DISCUSSION: The Chairman of the Zoning Board read the posted continuance notice.

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Applicant: Cheboygan Properties, LLC

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The Chairman let the members know that Dave Saucier gave his resignation to the Board.

The Chairman asked Attorney Riley if they have to close the previous meeting as it was left open but they brought in an amended petition. Attorney Riley stated it is ok to continue as is. The Chairman stated that the amended application is no longer a special permit and Applicant is only asking for variances and nothing else is to be discussed except the variances.

Mr. Bracken testified by letting the Board know about the amendment - 10 foot setback; did revised plans; application says 22 parking spaces and plans have been

revised to reflect 23 spaces. Mr. Bracken pulled out the plan to remind everyone exactly where they are looking for variances. Side yard variance - 30 feet to 15 feet; 30 feet to 27 feet - shows area that requires relief from setback for two parking areas.

The Chairman opened the meeting to the ZBA members for discussion.

Mr. Baker asked if we got a copy of the easement agreement. Mr. Bracken testified that right now it's a proposed easement and not under full agreement yet.

Mr. Tansey testified that he has no questions regarding the easement or variance.

Mr. Heshion testified that he only has a question on the easement and not the variance.

Mr. Haynes testified he has no questions.

The Chairman asked the Applicant regarding the easement - the egress that goes over the property line - is that only used for emergency or 24 hour access through there. Mr. Bracken testified that he is looking for 24 hour access and have hired a traffic consultant.

Mr. Heshion asked Mr. Bracken who has the ownership with the easement. Mr. Bracken replied, yes, Jim Rader the Applicant does.

The Chairman asked the Applicant what the bump out on the back of the building is proposed to be. Mr. Bracken testified that will be used for storage and utility

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Applicant: Cheboygan Properties, LLC

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rooms. The Chairman asked the Applicant if they could slide that bump out to get the 30 feet. Mr. Bracken replied, yes, but they are as tight as they can be in order to be able to construct the building as it is; justification to the variance is that the wetland is related to topography – pinched area.

The Chairman asked Mr. Ruble if he had any questions. Mr. Ruble testified that he has no issues until he sees the drawings.

The Chairman asked Attorney Riley if he had any questions. Attorney Riley replied, no.

The Chairman opens the meeting to the general public. There was no attendance from the public.

The Chairman asked the Board if they had any further questions.

The Chairman read the decision process.

Mr. Baker made a motion to close the public hearing. Mr. Heshion seconded the motion. Roll Call Vote: Mr. Rosa – yes, Mr. Tansey – yes, Mr. Haynes – yes, Mr. Heshion – yes and Mr. Baker – yes.

The Chairman stated that the open portion of the meeting is closed.

DELIBERATION:

Mr. Heshion testified that as far as the variance, he feels it is a unique lot and does not see a problem with it.

Mr. Baker testified that they did a good job keeping it out of the wetlands.

VOTE ON DECISION: Mr. Tansey made a motion to grant the variance with the following conditions. Mr. Heshion seconded the motion. The vote of the Board was unanimous (5-0). Roll Call Vote: Mr. Rosa – yes, Mr. Tansey – yes, Mr. Haynes – yes, Mr. Heshion – yes and Mr. Baker – yes.

CONDITIONS:

1). Upon completion of construction site an As-Built will be required;

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Applicant: Cheboygan Properties, LLC

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2). Agreement of Easement Draft Copy upon approval of Planning Board and Conservation and upon Certificate of Occupancy the Applicant shall provide a recorded copy of easement agreement to the Building Commissioner and Zoning Board of Appeals;

3). Finalized plan is to be submitted to the Zoning Board once the Applicant has been before the Planning Board and Conservation Commission for approval – finalized design plan in agreement for all boards;

4). A copy of this decision shall be filed with the Registry of Deeds and proof of recording shall be given to the Building Department.

REASONS FOR DECISION:

Upon motion duly made and seconded, the Board found that the applicant is seeking variances for relief from parking lot setbacks at the rear of the lot as well as a 2.4' variance for the rear building setback.

The Board found that the lot shape and topography are unique to this parcel.

The Board found that the location of the structure on the lot, width of the lot and the setback from the street is a condition that specifically effects the lot and does not effect the zoning district as a whole.

The Board found that the variance would not derogate from the intent or purpose of the Zoning By-law or be detrimental to the public good and would be in harmony with the surrounding neighborhood.

THIS DECISION, ALONG WITH THE CERTIFICATION FROM THE TOWN CLERK, THAT NO APPEAL HAS BEEN FILED, MUST BE RECORDED WITH THE PLYMOUTH COUNTY REGISTRY OF DEEDS PRIOR TO OBTAINING A BUILDING PERMIT FROM THE BUILDING DEPARTMENT AND PROOF OF RECORDING MUST BE FILED WITH THE BUILDING COMMISSIONER.

NOTE:

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.

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Applicant: Cheboygan Properties, LLC

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- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

Robert C. Rosa III
Chairman

A handwritten signature in black ink, appearing to read "Robert C. Rosa III", written over a faint horizontal line.