TOWN OF MILO, NEW YORK

Zoning Board of Appeals
137 Main Street – Town Hall
Penn Yan, New York 14527
Phone: (315) 531-8042
Fax: (315) 536-9760
Email: codeofficer@townofmilo.com
Website: www.townofmilo.com

Meeting Minutes
Meeting Date: April 23, 2024

1) **Call to order.**
   a) The Chairperson of the Zoning Board of Appeals called to order the meeting of the Zoning Board of Appeals at 6:00 PM in the conference room, which is located at 137 Main Street – Town Hall, Penn Yan, New York.

2) **Pledge of Allegiance.**
   a) The Chairperson of the Zoning Board of Appeals led all present in the pledge of allegiance to the United States of America.

3) **Attendance.**
   a) Board members. The following board members were present at this meeting:
      i. Phil Riehl
      ii. Terry Jensen
      iii. Ben Sward
      iv. Don Will
      v. Andy Siwak

      A quorum was present to hold this meeting.

   b) Town staff. The following town staff was present at this meeting:
      i. Anthony Validzic

   c) Public:
      i. David Dahlberg
      ii. Bill Laffin
      iii. Mary-Ellen Laffin

4) **Open Meetings' Law.**
   a) The Chairperson of the Zoning Board of Appeals read the Open Meeting's Law statement to the board members and the public. There were no requests from the public to obtain copies of said statement at this meeting.

5) **Comments from Town staff, chairperson, or other board members.**
   a) The Secretary read the Public Hearing Protocol.

b) The Secretary provided a PowerPoint presentation to clarify the application for a Special Use Permit and Area Variances for a bed and breakfast dwelling proposed at 308 Route 54-East Lake Road. The Secretary explained this application, the existing use and proposed use at this lot, as well as applicable regulations.

6) Applications under review.

a) Application ZBA-04-23-2024A: An application for two (2) Area Variance submitted by David and Lori Dahlberg requesting the following area variance(s) to allow a bed and breakfast dwelling at 308 Route 54-East Lake Road (Tax Map ID No.: 73.63-1-4): (1) Allow a minimum lot area of 0.6 acres; and (2) allow parking spaces at the front yard. This lot is located within the Lakefront Residential zoning district.

i. The Chairperson shall ask the applicant to address the board and provide a summary of the proposed application, if necessary. David Dahlberg addressed this board and stated the following:
- His wife, Lori Dahlberg, was raised in Penn Yan; and
- They moved back to Penn Yan to help take care of his wife's mother; and
- They purchased 308 Route 54-East Lake Road in 2003 and started to rent in 2005; and
- They rented their entire single unit dwelling from May 1st until the end of November; and
- They will make this lot their permanent residency (domicile); and
- He explained the type of transient lodgers who rented their dwelling and the friendships they created with them; and
- He explained how they enjoy spending time with their lodgers; and
- He explained the floor plan of the bed and breakfast dwelling and the regulations they are required to comply with. He also expressed his bafflement that renting an entire single unit dwelling had no/little regulations but his desire to rent only two bedrooms in his owner-occupied dwelling unit had significant regulations; and
- He explained the voluntary restrictions they will enforce as it pertains to occupant load; and
- He explained that their sign is an existing one and only states "whispering waters". They have no intentions of having language installed on this sign stating it is a bed and breakfast dwelling; and
- He explained how their proposed use would be less of an impact/hazard to the community than their existing use, which was renting their entire dwelling.

ii. The members of this board reviewed the application and supporting documents. The Chairperson of the Zoning Board of Appeals asked if the members of this board had any questions to be addressed. No member asked a question to the applicant.

iii. The Chairperson of the Zoning Board of Appeals opened the Public Hearing at 6:25 PM and invited the public to speak to the board pertaining to this application. The following public comments were received:

- Bill Laffin of 310 Route 54-East Lake Road questioned the building permit and transparency of the Town as it pertains to this project.

No other comment from the public was received at this meeting. The Chairperson closed this Public Hearing at 6:26 PM.

iv. The members discussed the comment(s) received at the public hearing. The Secretary explained the actions of the Town during this project. Also, Don Will asked questions to clarify the application and actions of the Town.

v. The Chairperson of the Zoning Board of Appeals asked for a motion to approve Resolution No.: ZBA_2024-003 / SEQR as written. Member Ben Sward made a motion to approve said resolution. Such motion was seconded by Andy Siwak. The members voted and the results were:
- Phil Riehl – Aye

- Terry Jensen – Aye
- Ben Sward – Aye
- Don Will – Aye
- Andy Siwak – Aye

A majority approval of the Zoning Board of Appeals was achieved, and the resolution was adopted.

vi. The Chairperson of the Zoning Board of Appeals asked for a motion to approve Resolution No.: ZBA_2024-004 / Final Determination as written. Member Terry Jensen made a motion to approve said resolution. Such motion was seconded by Andy Siwak. The members voted and the results were:
- Phil Riehl – Aye
- Terry Jensen – Aye
- Ben Sward – Aye
- Don Will – Aye
- Andy Siwak – Aye

A majority approval of the Zoning Board of Appeals was achieved, and the resolution was adopted.

This completes the activity the Board shall execute for this application.

7) Other Business.

a) Training: A Primer on Area Variances in NY by Noelle Wolfson, which was published in The Municipal Lawyer in the Winter/Spring 2017 issue. https://www.wmpf.org/wp-content/uploads/2017/05/WMPF-LUTI-2017-A-Primer-on-Area-Variances-in-New-York.pdf.

8) Adjournment.

a) The Chairperson of the Zoning Board of Appeals asked for a motion to adjourn the meeting at 6:35 PM. A motion was made by Member Terry Jensen and seconded by Member Andy Siwak. The members voted and the results were:
- Phil Riehl – (No vote – Left the meeting before adjournment)
- Terry Jensen – Aye
- Ben Sward – Aye
- Don Will – Aye
- Andy Siwak – Aye

A majority approval of the Zoning Board of Appeals was achieved, and the meeting was adjourned.

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RESOLUTION NO.: ZBA_2024-003
APPLICATION NO.: ZBA-04-23-2024A
State Environmental Quality Review
Statement of Findings – Negative Declaration

At a regular meeting of the Zoning Board of Appeals (ZBA) of the Town of Milo, Yates County, New York, held at Town of Milo Town Office, 137 Main Street, Penn Yan, New York on **April 23, 2024**, at 6:00 p.m. there were:

MEMBERS PRESENT:

- Phil Riehl
- Terry Jensen
- Ben Sward
- Don Will
- Andy Siwak

MEMBERS ABSENT:

- P. Earle Gleason
- Jared Webster

Member Ben Sward offered the following Resolution and moved its adoption:

WHEREAS, the Zoning Board of Appeals received an **application for Area Variances submitted by David and Lori Dahlberg requesting the following area variance(s) to allow a bed and breakfast dwelling at 308 Route 54-East Lake Road (Tax Map ID No.: 73.63-1-4): (1) Allow a minimum lot area of 0.6 acres; and (2) allow parking spaces at the front yard. This lot is located within the Lakefront Residential zoning district;** and

WHEREAS, the Zoning Board of Appeals received a letter with supporting documentation from the Code Enforcement Officer of the Town of Milo explaining this application, his/her/their compliance review as well as his/her/their determinations and/or opinions; and

WHEREAS, pursuant to New York State General Municipal Law Article B, §239m, the Secretary of the Zoning Board of Appeals had submitted said Application to Yates County Zoning Board of Appeals and it received a determination as **"no significant county-wide or inter-municipal impact" on March 28, 2024**; and

WHEREAS, pursuant to the applicable sections of the Zoning Law of the Town of Milo, a Special Use Permit with conditions was granted/issued by the Planning Board on **April 9, 2024** to allow a bed and breakfast dwelling to operate at this lot of record; and

WHEREAS, the Code Enforcement Officer provided a PowerPoint presentation on **April 23, 2024** at a regularly scheduled meeting of such Board to clarify this application, the existing use and proposed use at this lot, as well as applicable regulations; and

WHEREAS, pursuant to State law and the Code of the Town of Milo, the Secretary of the Zoning Board of Appeals advertised the Notice of Public Hearing at least once in a newspaper of general circulation in the Town of Milo at least five days before the scheduled date of such Public Hearing; and

WHEREAS, pursuant to State law and the Code of the Town of Milo, the Secretary of the Zoning Board of Appeals has mailed a Notice of Public Hearings to all property owners within a five hundred (500) feet radius of the property(ies) subject of this Application at least five days before the scheduled date of such Public Hearing; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed Action is an Unlisted Action requiring SEQRA review; and

WHEREAS, the Applicant has submitted an environmental assessment form (EAF) in order to perform a New York State Environmental Quality Review (SEQR) of the proposed Unlisted Action, which said review is an Uncoordinated Review; and

WHEREAS, 6 NYCRR §617.6(b)(4) states that for an Uncoordinated Review of an Unlisted Action, each involved agency may proceed as if it were the only involved agency when making its determination of significance before acting on the matter before it; and

WHEREAS, 6 NYCRR §617.6(b)(1) states that when a single agency is involved, that agency will be the lead agency when it proposes to undertake, fund or approve a Type 1 or Unlisted action that does not involve another agency; and

WHEREAS, the Code Enforcement Officer of the Town of Milo utilized NYSDEC's environmental resource mapper and the proposed action does not appear to have an impact on an environmental resource; and

WHEREAS, the Code Enforcement Officer of the Town of Milo utilized FEMA's Flood Insurance Rate Map (FIRM) and its Seneca Watershed Study. This officer also reviewed the submitted construction documents. The proposed action appears to be compliant with the Flood Damage Prevention Law of the Town of Milo as well as flood resistant construction requirements prescribed in the NYS Uniform Fire Prevention and Building Code; and

WHEREAS, the Code Enforcement Officer of the Town of Milo reviewed the Zoning Law of the Town of Milo. This officer determined the following:

- The proposed action is located in the Lakefront Residential zoning district and

- The single unit dwelling at this lot of record has been used as a rental unit (a.k.a., short term rental) and such use is registered with the County Department of Finance. Please understand that NYSDOS, Division of Building Standards and Codes determined that a "dwelling can be rented, leased, let, or hired out to be occupied regardless of the duration of the tenancy. The same applies, by definition, to one- and two-family dwellings and townhouses" as prescribed in its technical bulletin TB-1001-RCNYS, dated October 31, 2017; and

- A bed and breakfast dwelling is a special use within that zoning district. The owner applied for and obtained a Special Use Permit from the Planning Board of the Town of Milo on April 9, 2024; and

- A bed and breakfast dwelling is a residential use since it is defined and regulated by the Residential Code of NYS but also defined by the Zoning Law of the Town of Milo as a "residential use"; and

- The Code Enforcement Officer consulted with NYSDOS, Division of Building Standards and Codes and this dwelling / bed and breakfast dwelling is permitted to have more than one kitchen. Furthermore, this state department/division informed this officer that the proposed design did not create more than one dwelling unit; and

- The Code Enforcement Officer consulted with the Town Attorney and this officer's review of this application and supporting documents. The Town Attorney agreed that the proposed use is a bed and breakfast dwelling as defined by the Zoning Law of the Town of Milo and the Residential Code of NYS. This attorney also agreed with the Code Enforcement Officer's opinion that a bed and breakfast dwelling is less of a hazard/impact to the community than a short-term rental, which the former was conducted at this lot per the records of Yates County. This is due to the owner being present within the dwelling (i.e., owner's permanent residency is required within a bed and breakfast dwelling) when it is being rented and can take immediate action to resolve any issues. Lastly, it was agreed that the NYS Uniform Fire Prevention and Building Code has regulations pertaining to a bed and breakfast dwelling, but it is silent (except for property maintenance, which is applicable to all lands and structures) on short-term rentals. Therefore, a bed and breakfast dwelling is safer for the occupants but also restricted by the number of bedrooms and transient lodgers, which helps to maintain the residential character of the neighborhood (Note. A bed and breakfast dwelling is a residential use as defined by the Zoning Law of the Town as well as being regulated by the Residential Code of NYS.); and

- The Code Enforcement Officer discussed the applicable requirements for a bed and breakfast dwelling as prescribed in the Zoning Law as well as the 2020 Residential Code of NYS with the owner. The owner understands and agrees to comply with these requirements; and

    - For example, one of the requirements is that the owner must have his/her/their permanent residency (i.e., domicile[1]) within this dwelling. This owner is permanently moving to this dwelling once it is completed (Note. The owner is temporarily residing within the Village of Penn Yan since this dwelling is being constructed at this time.); and

    - Another requirement is that the owner shall provide a morning meal. This morning meal may be but is not limited to bagels, fruit, muffins, pastries, yogurt, etc. (Note. This morning meal is not required to be a "cooked breakfast"[2] per the Code Enforcement Officer's discussions with NYSDOS, Division of Building Standards and Codes.); and

    - Another requirement is that a bed and breakfast dwelling cannot be occupied by more than ten (10) transient lodgers nor contain more than five (5) bedrooms for such lodgers; and

- The owner is applying for two (2) area variances based on a review with the Code Enforcement Officer of the applicable zoning standards for a bed and breakfast dwelling. The area variances are as follows:

    - These standards require the parking spaces to be located within the side and rear yards. The existing parking spaces at this lot of record are in the front yard of this lot. Furthermore, there is not enough area/land at the side yards to allow parking spaces and the rear yard is not accessible to motor vehicles. Lastly, the owners understand and agree to plant a 4 feet high minimum landscape buffer to screen the front yard parking spaces from their southern neighbors; and

[1] A *domicile* is (1) the place you intend to have as your permanent home, (2) where your permanent home is located, and (3) the place you intend to return to after being away (as on vacation, business assignments, educational leave, or military assignment). (https://www.tax.ny.gov/pit/file/pit_definitions.htm)

[2] A *cooked breakfast* is defined by Merriam-Webster dictionary as a "breakfast that includes cooked foods such as eggs and meats."

- These standards require that a bed and breakfast dwelling to be located on a lot that has a minimum of 2 acres. This lot is a pre-existing nonconforming lot that has a lot area of 0.6 acres per the records of the Assessor of the Town of Milo However, Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district. However, any development on said lot shall comply with the applicable provisions of this chapter", which is the reason the owners understand and agree to obtain an area variance for lot area (Note. The owners do not own any contiguous[3] lots to add/merge lands into this lot of record to make it conforming to this requirement.); and

- The Code Enforcement Officer reviewed the Short Environmental Assessment and the information contained therein appears to be correct; and

- Route 54-East Lake Road is a NYS highway and NYSDOT is the authority having jurisdiction. Per the site plan, no changes to the access point at/upon Route 54-East Lake Road are proposed by the owner; and

- Other owners within this community obtained a Special Use Permit to operate a bed and breakfast dwelling such as 280 Route 54-East Lake Road; and

- Other owners within this community operate rental units (e.g., short term rentals) in accordance with the registration records of the Yates County Department of Finance; and

WHEREAS, pursuant to the Code of the Town of Milo, the Zoning Board of Appeals conducted a Public Hearing on **April 23, 2024** at a regularly scheduled meeting of such Board and listened carefully to the verbal and written expression of the Public – their facts, information, positions, opinions about said Application; and

WHEREAS, the Zoning Board of Appeals has independently considered the information written within the submitted EAF and has considered the criteria contained in 6 NYCRR §617.7(c) to determine if the proposed Action will have a significant impact on the environment; and

WHEREAS, on **April 23, 2024**, the Zoning Board of Appeals has reviewed the Owner's "Statement of Hardship," balanced the benefit to be realized by the Owner against the potential detriment to the health, safety and general welfare of the neighborhood or community in accordance with Town Law of the State of New York, and determined the following:

1. No undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of this variance for the following reasons:

    a. The owner is proposing a bed and breakfast dwelling at this lot. Let the record reflect that the single unit dwelling at this lot of record has been used as a rental unit (a.k.a., short term rental) since 2006 and such use is registered with the County Department of Finance. (Note. The owners rented his/her/their entire dwelling unit.) Please understand that NYSDOS, Division of Building Standards and Codes determined that a "dwelling can be rented, leased, let, or hired out to be occupied regardless of the duration of the tenancy. The same applies, by definition, to one- and two-family dwellings and townhouses" as prescribed in its technical bulletin TB-1001-RCNYS, dated October 31, 2017; and

[3] Pursuant to Section 350-8 of the Zoning Law of the Town of Milo, contiguous is defined as "next to, abutting, or touching and having a boundary or portion thereof, that is coterminous."

b. A bed and breakfast dwelling is a special use within that zoning district. The owner applied for and obtained a Special Use Permit from the Planning Board of the Town of Milo on April 9, 2024; and

c. A bed and breakfast dwelling is a residential use since it is defined and regulated by the Residential Code of NYS but also defined by the Zoning Law of the Town of Milo as a "residential use"; and

d. The Code Enforcement Officer consulted with NYSDOS, Division of Building Standards and Codes and this dwelling / bed and breakfast dwelling is permitted to have more than one kitchen. Furthermore, this state department/division informed this officer that the proposed design did not create more than one dwelling unit; and

e. The Code Enforcement Officer consulted with the Town Attorney and this officer's review of this application and supporting documents. The Town Attorney agreed that the proposed use is a bed and breakfast dwelling as defined by the Zoning Law of the Town of Milo and the Residential Code of NYS. This attorney also agreed with the Code Enforcement Officer's opinion that a bed and breakfast dwelling is less of a hazard/impact to the community than a short-term rental, which the former was conducted at this lot per the records of Yates County. This is due to the owner being present within the dwelling (i.e., owner's permanent residency is required within a bed and breakfast dwelling) when it is being rented and can take immediate action to resolve any issues. Lastly, it was agreed that the NYS Uniform Fire Prevention and Building Code has regulations pertaining to a bed and breakfast dwelling, but it is silent (except for property maintenance, which is applicable to all lands and structures) on short-term rentals. Therefore, a bed and breakfast dwelling is safer for the occupants but also restricted by the number of bedrooms and transient lodgers, which helps to maintain the residential character of the neighborhood (Note. A bed and breakfast dwelling is a residential use as defined by the Zoning Law of the Town as well as being regulated by the Residential Code of NYS.); and

f. The Code Enforcement Officer discussed the applicable requirements for a bed and breakfast dwelling as prescribed in the Zoning Law as well as the 2020 Residential Code of NYS with the owner. The owner understands and agrees to comply with these requirements; and

    i. For example, one of the requirements is that the owner must have his/her/their permanent residency (i.e., domicile[4]) within this dwelling. This owner is permanently moving to this dwelling once it is completed (Note. The owner is temporarily residing within the Village of Penn Yan since this dwelling is being constructed at this time.); and

    ii. Another requirement is that the owner shall provide a morning meal. This morning meal may be but is not limited to bagels, fruit, muffins, pastries, yogurt, etc. (Note. This morning meal is not required to be a "cooked breakfast"[5] per the Code Enforcement Officer's discussions with NYSDOS, Division of Building Standards and Codes.); and

    iii. Another requirement is that a bed and breakfast dwelling cannot be occupied by more than ten (10) transient lodgers nor contain more than five (5) bedrooms for such lodgers; and

[4] A *domicile* is (1) the place you intend to have as your permanent home, (2) where your permanent home is located, and (3) the place you intend to return to after being away (as on vacation, business assignments, educational leave, or military assignment). (https://www.tax.ny.gov/pit/file/pit_definitions.htm)

[5] A *cooked breakfast* is defined by Merriam-Webster dictionary as a "breakfast that includes cooked foods such as eggs and meats."

g. The parking for the single unit dwelling is currently located in the front yard at this lot of record. It is not possible to have the parking at the side and/or rear yards at this lot of record due to the topography of the lands and the side yard is only ten (10) feet per the submitted site plan that is signed and sealed by Christopher Todd, Registered Architect. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

h. This lot is a pre-existing, nonconforming lot since it has a lot width less than one hundred (100) feet, which is required for lots located within the Lakefront Residential zoning district. (Note. The lot width is 71.42 feet per the tax maps provided by Yates County.) Also, no adjacent vacant lands are available for purchase to increase the area of this lot; and

2. The proposed action cannot be achieved by some method, feasible to the Applicant to pursue, other than obtaining Area Variance(s) due to the following reasons:

a. The existing parking is located within the front yard and the side yards (north and south) are only ten (10) feet. It is not feasible to install parking or a driveway at these side yards since they are too narrow but also due to the topography of the lands. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

b. This lot is a pre-existing, nonconforming lot since it has a lot width less than one hundred (100) feet, which is required for lots located within the Lakefront Residential zoning district. (Note. The lot width is 71.42 feet per the tax maps provided by Yates County.) Also, no adjacent vacant lands are available for purchase to increase the area of this lot; and

3. The requested Area Variance(s) are substantial due to the following reasons:

a. The standards for a bed and breakfast dwelling prescribed within the Zoning Law of the Town of Milo require a minimum lot area of 2 acres. This lot is a pre-existing nonconforming lot that has a lot area of 0.6 acres per the records of the Assessor of the Town of Milo. However, Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district. However, any development on said lot shall comply with the applicable provisions of this chapter", which is the reason the owners understand and agree to obtain an area variance for lot area (Note. The owners do not own any contiguous[6] lots to add/merge lands into this lot of record to make it conforming to this requirement.); and

b. The proposed action will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district based since the proposed work will comply with applicable laws such as but not limited to the Flood Damage Prevention Law of the Town, NYS Uniform Fire Prevention and Building Code as well as the Energy Conservation Construction Code of NYS. Furthermore, the owners rented his/her/their entire dwelling at this lot of record since 2006. As explained herein, operating a bed and breakfast dwelling is less of a hazard/impact to the community than renting an entire dwelling.

c. Pursuant to "A Primer on Area Variances in New York, "Zoning Boards of Appeals and Courts appear unsure of how to apply this factor. While most boards and courts will view a large numerical deviation from a municipal zoning ordinance as "substantial", the weight they will give that finding is heavily dependent on,

[6] Pursuant to Section 350-8 of the Zoning Law of the Town of Milo, contiguous is defined as "next to, abutting, or touching and having a boundary or portion thereof, that is coterminous."

and cannot be separated from, the impact that deviation will have on the community[7]. Thus, courts have upheld the grant of substantial variances[8] because of a lack of associated impacts.

4. The proposed Action is not self-created due to the following reasons:

    a. 308 Route 54-East Lake Road is a nonconforming lot of record since it does not have the minimum required lot width of one hundred (100) feet as required by Section 350-18 (E)(1)(b) of the Zoning Law of the Town of Milo. Also, the owners purchased this lot in 2003 and he/she/they have not performed a lot line adjustment or subdivision that would have changed its lot lines. However, let the record reflect that Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district."

    b. As stated herein, the owners rented his/her/their entire dwelling at this lot of record since 2006. As explained herein, operating a bed and breakfast dwelling is less of a hazard/impact to the community than renting an entire dwelling.

    c. As stated herein, the existing parking for the single unit dwelling is currently located in the front yard at this lot of record. It is not possible to have the parking at the side and/or rear yards at this lot of record due to the topography of the lands and the side yard is only ten (10) feet per the submitted site plan that is signed and sealed by Christopher Todd, Registered Architect. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals hereby determines that **an application for Area Variances submitted by David and Lori Dahlberg requesting the following area variance(s) to allow a bed and breakfast dwelling at 308 Route 54-East Lake Road (Tax Map ID No.: 73.63-1-4): (1) Allow a minimum lot area of 0.6 acres; and (2) allow parking spaces at the front yard. This lot is located within the Lakefront Residential zoning district,** will not have a significant adverse impact on the environment. The Chairperson of this board is hereby authorized to sign Parts 2 and 3 of NYSDEC's short environmental assessment form declaring that this action will not result in any significant adverse environmental impacts; and

BE IT FURTHER RESOLVED, that this determination is based upon the following findings, facts and conclusions:

1. All parties involved in this application fully understand and agree to obtain all necessary local, state and federal approvals prior to the start of operation of said use; and

[7] Lodge Hotel, Inc. v. Town of Erwin Zoning Bd. of Appeals, supra ("Looking at the variance request in such a vacuum is not an adequate indicator of the substantiality of Petitioner's application. Substantiality cannot be judged in the abstract; rather, the totality of relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one. Aydelott v. Town of Bedford Zoning Board of Appeals, 6/25/03 N.Y.L.J. 21 (col.4) (Supreme Court, Westchester Co., 2003). When reviewing the application in the context of the overall impact it would have on the neighborhood, it is clear that the variance request is not substantial, especially when considering that the structure will have the outside appearance of a two-story building. Aydelott v. Town of Bedford Zoning Board of Appeals, 6/25/03, N.Y.L.J. 21 (col.4); Cortland LLC v. Zoning Board of Appeals, Village of Roslyn Estates, 8/13/03 N.Y.L.J. 24 (col.1) (Supreme Court, Nassau Co., 2003)")

[8] Wambold v. Vil. of Southampton Zoning Bd. of Appeals, 140 A.D.3d 891, 893, 32 N.Y.S.3d 628, 630 (2d Dep' 2016)("While we agree with the petitioner that the proposed variance was substantial, there was no evidence that the granting of the variance would have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community."); Marina's Edge Owner's Corp., 129 A.D.3d at 843, 11 N.Y.S.3d at 843; Borrok v. Town of Southampton, 130 A.D.3d 1024, 1025, 14 N.Y.S.3d 471, 473 (2d Dep't 2015); Goodman v. City of Long Beach, 128 A.D.3d 1064, 1065, 10 N.Y.S.3d 302, 304 (2d Dep't 2015); Friends of Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner, 56 A.D.3d 883, 886, 867 N.Y.S.2d 238, 241 (3d Dep't 2008).

2. All parties involved in this application fully understand and agree to comply with the Special Use Permit and its associated conditions that was granted/issued by the Planning Board on April 9, 2024 to allow a bed and breakfast dwelling at this lot of record; and

3. All parties involved in this application fully understand and agree that any modifications to the existing driveway that abuts Route 54-East Lake Road shall be approved by the New York State Department of Transportation (NYSDOT); and

4. All parties involved in this application fully understand and agree to abide by any easements and/or right-of-way agreements and that no obstruction is permitted within said easements and/or right-of-way; and

5. All parties involved in this application fully understand and agree to secure a Building Permit from the Code Enforcement Officer of the Town of Milo prior to changing the use of the single unit dwelling to a Bed and Breakfast Dwelling; and

6. The proposed Action does not exceed any Type 1 threshold in 6 NYCRR, §617.4; and

7. The proposed Action will not receive a Coordinated Review as provided for Unlisted Actions in 6 NYCRR, §617.6; and

8. The proposed Action will not have a significant adverse effect on existing air quality, surface or ground water quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems; and

9. The proposed Action will not have a significant adverse effect on the aesthetic, agricultural, archeological, historic, or other natural or cultural resources; and

10. The proposed Action will not create a hazard to human health; and

11. The proposed Action will not have a significant adverse effect on the community or neighborhood character; and

12. The proposed Action will not have a significant adverse effect on vegetation or fauna, fish, shellfish or wildlife species, significant habitats or threatened or endangered species; and

13. The proposed Action will not have a significant adverse effect on the community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources; and

14. The proposed Action will not have a significant adverse effect on the growth, subsequent development, or related activities likely to be indicted by the proposed Action; and

15. The proposed Action will not have a significant adverse effect on long term, short term, cumulative, or other effects not indentified above; and

16. The proposed Action will not have a significant adverse effect on other impacts such as but not limited to changes of use of either quantity or type of energy; and

17. The proposed Action will abide with Section 140-36, Operational Performance Standards, of the Zoning Law of the Town of Milo that requires all uses to comply with the following:

a. Air pollution. Any use which causes or tends to cause the release of air contaminants into the atmosphere shall comply with applicable laws, rules and regulations governing such release.

b. Electromagnetic radiation and/or interference. No use shall cause or tend to cause electromagnetic radiation and/or interference in such quantities as to violate the accepted levels as established by the FCC, NYS Department of Labor, Division of Safety and Health, or OSHA.

c. Glare and heat. Any use producing intense glare or heat shall be conducted in such a manner so that the glare or heat shall be completely imperceptible from any point along a lot line.

d. Liquid or solid wastes. Any use that causes or tends to cause the discharge or other release of liquid or solid waste shall comply with applicable laws, rules and regulations governing such discharge or release.

e. Noise. No use that causes or tends to cause noise in such quantities as to violate the accepted levels as established by the NYS Department of Labor, Division of Safety and Health or OSHA.

f. Odorous matter. Any use that causes or tends to cause the discharge or other release of odorous matter shall comply with applicable laws, rules and regulations governing such discharge or release.

g. Radiation.

   i. Any use shall comply with the regulations of the U.S. Atomic Energy Commission set out in Chapter 1 of Title 10 of the CFR which apply to byproduct material, source material and special nuclear material, as those terms are defined in section 11(e), (z), and (aa) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e), (z), and (aa)).

   ii. No use shall cause radiation emissions that are in violation of the Radiation Control for Health and Safety Act of 1968 (PL 90-602), as amended, or the implementing regulations of the NYSDOH established pursuant thereto.

h. Vibration. Any use that causes or tends to cause ground vibration, which is perceptible without instruments, in such quantities as to produce a public nuisance or hazard beyond the lot occupied by the use shall not be permitted.

18. All parties involved in this application fully understand and agree that any approval of this application does not deem acceptance of any improvement (e.g., roads, sanitary sewer system, storm sewer system and water system) by the Town of Milo; and

19. Pursuant to Section 350-191, Validity, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree to the following:

    a. Where any work that was authorized by an area variance has not commenced within one year of the date of such variance's issuance, such variance shall become null and void and all rights thereunder shall terminate.

       Exemption(s):

       i. The Code Enforcement Officer is authorized to grant, in writing, one or more extensions of time, for periods not more than one year each. The extension shall be requested in writing by the owner and justifiable cause demonstrated.

b. Any land or structure authorized to be established or built pursuant to an area variance shall be deemed lawful at the zoning district in which it is located and shall not be considered an unlawful lot of record or structure.

20. Pursuant to Section 350-192, Conditions imposed upon an area variance, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that the designated approval authority may include in an area variance such terms and conditions as he, she or they deem necessary or appropriate to ensure safety or to further the purposes and intent of this chapter; and

21. Pursuant to Section 350-193, Expiration, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that an area variance shall not expire unless the scope of the work proposed in the application is not operated or completed within one calendar year from the date of issuance. The Code Enforcement Officer is authorized to grant, in writing, one or more extensions of time, for periods not more than one calendar year each. The extension shall be requested by the owner and justifiable cause demonstrated; and

22. Pursuant to Section 350-194, Transferable, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that an area variance is transferable due to the fact that such variance "runs with the land" since it applies to a lot of record and/or structure, which such lot of record and/or structure is not contingent on ownership.

23. Pursuant to Section 350-195, Revocation, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that the designated approval authority is authorized to revoke an area variance issued under the provisions of this article when it is found, by inspection or otherwise, that there has been a false statement or misrepresentation as to the material facts in the application or documents on which such variance was based, including, but not limited to, any one of the following:

    a. The area variance is used for a lot of record and/or structure other than that for which it was issued.

    b. The area variance is used for a lot of record and/or structure other than that listed in such variance.

    c. Conditions and/or limitations set forth in the area variance have been violated or not satisfied.

    d. There have been any false statements or misrepresentations as to the material fact in the application for an area variance or any attached documents.

    e. The owner failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this chapter within the time provided therein.

    f. The area variance was issued in error or in violation of this chapter.

24. In the event that it is necessary for the Town of Milo to take legal action to enforce the conditions stated hereinabove, the Owner shall be responsible for all legal expenses and other costs incurred by the Town of Milo in such proceedings to enforce the conditions stated hereinabove.

Seconded by Member Andy Siwak and duly put to a vote as follows:

AYES:

- Phil Riehl
- Terry Jensen

- Ben Sward
- Don Will
- Andy Siwak

NAYES:
(none)

ABSTENTIONS:
(none)

This Resolution was thereupon adopted and has taken effect immediately.

TOWN OF MILO, NEW YORK

Zoning Board of Appeals
137 Main Street
Penn Yan, New York 14527
Phone: (315) 531-8042
Fax: (315) 536-9760
Email: codeofficer@townofmilo.com
Website: www.townofmilo.com

RESOLUTION NO.: ZBA_2024-004
APPLICATION NO.: ZBA-04-23-2024A
State Environmental Quality Review
Statement of Findings – Negative Declaration

At a regular meeting of the Zoning Board of Appeals (ZBA) of the Town of Milo, Yates County, New York, held at Town of Milo Town Office, 137 Main Street, Penn Yan, New York on **April 23, 2024**, at 6:00 p.m. there were:

MEMBERS PRESENT:

- Phil Riehl
- Terry Jensen
- Ben Sward
- Don Will
- Andy Siwak

MEMBERS ABSENT:

- P. Earle Gleason
- Jared Webster

Member Terry Jensen offered the following Resolution and moved its adoption:

WHEREAS, the Zoning Board of Appeals received an **application for Area Variances submitted by David and Lori Dahlberg requesting the following area variance(s) to allow a bed and breakfast dwelling at 308 Route 54-East Lake Road (Tax Map ID No.: 73.63-1-4): (1) Allow a minimum lot area of 0.6 acres; and (2) allow parking spaces at the front yard. This lot is located within the Lakefront Residential zoning district;** and

WHEREAS, the Zoning Board of Appeals received a letter with supporting documentation from the Code Enforcement Officer of the Town of Milo explaining this application, his/her/their compliance review as well as his/her/their determinations and/or opinions; and

WHEREAS, pursuant to New York State General Municipal Law Article B, §239m, the Secretary of the Zoning Board of Appeals had submitted said Application to Yates County Zoning Board of Appeals and it received a determination as **"no significant county-wide or inter-municipal impact" on March 28, 2024**; and

WHEREAS, pursuant to the applicable sections of the Zoning Law of the Town of Milo, a Special Use Permit with conditions was granted/issued by the Planning Board on **April 9, 2024** to allow a bed and breakfast dwelling to operate at this lot of record; and

WHEREAS, the Code Enforcement Officer provided a PowerPoint presentation on **April 23, 2024** at a regularly scheduled meeting of such Board to clarify this application, the existing use and proposed use at this lot, as well as applicable regulations; and

WHEREAS, pursuant to State law and the Code of the Town of Milo, the Secretary of the Zoning Board of Appeals advertised the Notice of Public Hearing at least once in a newspaper of general circulation in the Town of Milo at least five days before the scheduled date of such Public Hearing; and

WHEREAS, pursuant to State law and the Code of the Town of Milo, the Secretary of the Zoning Board of Appeals has mailed a Notice of Public Hearings to all property owners within a five hundred (500) feet radius of the property(ies) subject of this Application at least five days before the scheduled date of such Public Hearing; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed Action is an Unlisted Action requiring SEQRA review; and

WHEREAS, pursuant to 6 NYCRR §617.6, the Planning Board designated itself as lead agency for SEQRA review and conducted an Uncoordinated Review on April 9, 2024; and

WHEREAS, pursuant to the criteria contained in 6 NYCRR §617.7(c), the Zoning Board of Appeals determined on April 23, 2024 that the proposed Action would not have a significant adverse impact on the environment and issued a negative declaration; and

WHEREAS, the Code Enforcement Officer of the Town of Milo utilized NYSDEC's environmental resource mapper and the proposed action does not appear to have an impact on an environmental resource; and

WHEREAS, the Code Enforcement Officer of the Town of Milo utilized FEMA's Flood Insurance Rate Map (FIRM) and its Seneca Watershed Study. This officer also reviewed the submitted construction documents. The proposed action appears to be compliant with the Flood Damage Prevention Law of the Town of Milo as well as flood resistant construction requirements prescribed in the NYS Uniform Fire Prevention and Building Code; and

WHEREAS, the Code Enforcement Officer of the Town of Milo reviewed the Zoning Law of the Town of Milo. This officer determined the following:

- The proposed action is located in the Lakefront Residential zoning district and

- The single unit dwelling at this lot of record has been used as a rental unit (a.k.a., short term rental) and such use is registered with the County Department of Finance. Please understand that NYSDOS, Division of Building Standards and Codes determined that a "dwelling can be rented, leased, let, or hired out to be occupied regardless of the duration of the tenancy. The same applies, by definition, to one- and two-family dwellings and townhouses" as prescribed in its technical bulletin TB-1001-RCNYS, dated October 31, 2017; and

- A bed and breakfast dwelling is a special use within that zoning district. The owner applied for and obtained a Special Use Permit from the Planning Board of the Town of Milo on April 9, 2024; and

- A bed and breakfast dwelling is a residential use since it is defined and regulated by the Residential Code of NYS but also defined by the Zoning Law of the Town of Milo as a "residential use"; and

- The Code Enforcement Officer consulted with NYSDOS, Division of Building Standards and Codes and this dwelling / bed and breakfast dwelling is permitted to have more than one kitchen. Furthermore, this state department/division informed this officer that the proposed design did not create more than one dwelling unit; and

- The Code Enforcement Officer consulted with the Town Attorney and this officer's review of this application and supporting documents. The Town Attorney agreed that the proposed use is a bed and breakfast dwelling as defined by the Zoning Law of the Town of Milo and the Residential Code of NYS. This attorney also agreed with the Code Enforcement Officer's opinion that a bed and breakfast dwelling is less of a hazard/impact to the community than a short-term rental, which the former was conducted at this lot per the records of Yates County. This is due to the owner being present within the dwelling (i.e., owner's permanent residency is required within a bed and breakfast dwelling) when it is being rented and can take immediate action to resolve any issues. Lastly, it was agreed that the NYS Uniform Fire Prevention and Building Code has regulations pertaining to a bed and breakfast dwelling, but it is silent (except for property maintenance, which is applicable to all lands and structures) on short-term rentals. Therefore, a bed and breakfast dwelling is safer for the occupants but also restricted by the number of bedrooms and transient lodgers, which helps to maintain the residential character of the neighborhood (Note. A bed and breakfast dwelling is a residential use as defined by the Zoning Law of the Town as well as being regulated by the Residential Code of NYS.); and

- The Code Enforcement Officer discussed the applicable requirements for a bed and breakfast dwelling as prescribed in the Zoning Law as well as the 2020 Residential Code of NYS with the owner. The owner understands and agrees to comply with these requirements; and

    - For example, one of the requirements is that the owner must have his/her/their permanent residency (i.e., domicile[9]) within this dwelling. This owner is permanently moving to this dwelling once it is completed (Note. The owner is temporarily residing within the Village of Penn Yan since this dwelling is being constructed at this time.); and

    - Another requirement is that the owner shall provide a morning meal. This morning meal may be but is not limited to bagels, fruit, muffins, pastries, yogurt, etc. (Note. This morning meal is not required to be a "cooked breakfast"[10] per the Code Enforcement Officer's discussions with NYSDOS, Division of Building Standards and Codes.); and

    - Another requirement is that a bed and breakfast dwelling cannot be occupied by more than ten (10) transient lodgers nor contain more than five (5) bedrooms for such lodgers; and

- The owner is applying for two (2) area variances based on a review with the Code Enforcement Officer of the applicable zoning standards for a bed and breakfast dwelling. The area variances are as follows:

    - These standards require the parking spaces to be located within the side and rear yards. The existing parking spaces at this lot of record are in the front yard of this lot. Furthermore, there is not enough area/land at the side yards to allow parking spaces and the rear yard is not accessible to motor vehicles. Lastly, the owners understand and agree to plant a 4 feet high minimum landscape buffer to screen the front yard parking spaces from their southern neighbors; and

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[9] A *domicile* is (1) the place you intend to have as your permanent home, (2) where your permanent home is located, and (3) the place you intend to return to after being away (as on vacation, business assignments, educational leave, or military assignment). (https://www.tax.ny.gov/pit/file/pit_definitions.htm)

[10] A *cooked breakfast* is defined by Merriam-Webster dictionary as a "breakfast that includes cooked foods such as eggs and meats."

- These standards require that a bed and breakfast dwelling to be located on a lot that has a minimum of 2 acres. This lot is a pre-existing nonconforming lot that has a lot area of 0.6 acres per the records of the Assessor of the Town of Milo However, Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district. However, any development on said lot shall comply with the applicable provisions of this chapter", which is the reason the owners understand and agree to obtain an area variance for lot area (Note. The owners do not own any contiguous[11] lots to add/merge lands into this lot of record to make it conforming to this requirement.); and

- The Code Enforcement Officer reviewed the Short Environmental Assessment and the information contained therein appears to be correct; and

- Route 54-East Lake Road is a NYS highway and NYSDOT is the authority having jurisdiction. Per the site plan, no changes to the access point at/upon Route 54-East Lake Road are proposed by the owner; and

- Other owners within this community obtained a Special Use Permit to operate a bed and breakfast dwelling such as 280 Route 54-East Lake Road; and

- Other owners within this community operate rental units (e.g., short term rentals) in accordance with the registration records of the Yates County Department of Finance; and

WHEREAS, pursuant to the Code of the Town of Milo, the Zoning Board of Appeals conducted a Public Hearing on **April 23, 2024** at a regularly scheduled meeting of such Board and listened carefully to the verbal and written expression of the Public – their facts, information, positions, opinions about said Application; and

WHEREAS, on **April 23, 2024**, the Zoning Board of Appeals has reviewed the Owner's "Statement of Hardship," balanced the benefit to be realized by the Owner against the potential detriment to the health, safety and general welfare of the neighborhood or community in accordance with Town Law of the State of New York, and determined the following:

1. No undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of this variance for the following reasons:

    a. The owner is proposing a bed and breakfast dwelling at this lot. Let the record reflect that the single unit dwelling at this lot of record has been used as a rental unit (a.k.a., short term rental) since 2006 and such use is registered with the County Department of Finance. (Note. The owners rented his/her/their entire dwelling unit.) Please understand that NYSDOS, Division of Building Standards and Codes determined that a "dwelling can be rented, leased, let, or hired out to be occupied regardless of the duration of the tenancy. The same applies, by definition, to one- and two-family dwellings and townhouses" as prescribed in its technical bulletin TB-1001-RCNYS, dated October 31, 2017; and

    b. A bed and breakfast dwelling is a special use within that zoning district. The owner applied for and obtained a Special Use Permit from the Planning Board of the Town of Milo on April 9, 2024; and

    c. A bed and breakfast dwelling is a residential use since it is defined and regulated by the Residential Code of NYS but also defined by the Zoning Law of the Town of Milo as a "residential use"; and

[11] Pursuant to Section 350-8 of the Zoning Law of the Town of Milo, contiguous is defined as "next to, abutting, or touching and having a boundary or portion thereof, that is coterminous."

d. The Code Enforcement Officer consulted with NYSDOS, Division of Building Standards and Codes and this dwelling / bed and breakfast dwelling is permitted to have more than one kitchen. Furthermore, this state department/division informed this officer that the proposed design did not create more than one dwelling unit; and

e. The Code Enforcement Officer consulted with the Town Attorney and this officer's review of this application and supporting documents. The Town Attorney agreed that the proposed use is a bed and breakfast dwelling as defined by the Zoning Law of the Town of Milo and the Residential Code of NYS. This attorney also agreed with the Code Enforcement Officer's opinion that a bed and breakfast dwelling is less of a hazard/impact to the community than a short-term rental, which the former was conducted at this lot per the records of Yates County. This is due to the owner being present within the dwelling (i.e., owner's permanent residency is required within a bed and breakfast dwelling) when it is being rented and can take immediate action to resolve any issues. Lastly, it was agreed that the NYS Uniform Fire Prevention and Building Code has regulations pertaining to a bed and breakfast dwelling, but it is silent (except for property maintenance, which is applicable to all lands and structures) on short-term rentals. Therefore, a bed and breakfast dwelling is safer for the occupants but also restricted by the number of bedrooms and transient lodgers, which helps to maintain the residential character of the neighborhood (Note. A bed and breakfast dwelling is a residential use as defined by the Zoning Law of the Town as well as being regulated by the Residential Code of NYS.); and

f. The Code Enforcement Officer discussed the applicable requirements for a bed and breakfast dwelling as prescribed in the Zoning Law as well as the 2020 Residential Code of NYS with the owner. The owner understands and agrees to comply with these requirements; and

    i. For example, one of the requirements is that the owner must have his/her/their permanent residency (i.e., domicile[12]) within this dwelling. This owner is permanently moving to this dwelling once it is completed (Note. The owner is temporarily residing within the Village of Penn Yan since this dwelling is being constructed at this time.); and

    ii. Another requirement is that the owner shall provide a morning meal. This morning meal may be but is not limited to bagels, fruit, muffins, pastries, yogurt, etc. (Note. This morning meal is not required to be a "cooked breakfast"[13] per the Code Enforcement Officer's discussions with NYSDOS, Division of Building Standards and Codes.); and

    iii. Another requirement is that a bed and breakfast dwelling cannot be occupied by more than ten (10) transient lodgers nor contain more than five (5) bedrooms for such lodgers; and

g. The parking for the single unit dwelling is currently located in the front yard at this lot of record. It is not possible to have the parking at the side and/or rear yards at this lot of record due to the topography of the lands and the side yard is only ten (10) feet per the submitted site plan that is signed and sealed by Christopher Todd, Registered Architect. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

[12] A *domicile* is (1) the place you intend to have as your permanent home, (2) where your permanent home is located, and (3) the place you intend to return to after being away (as on vacation, business assignments, educational leave, or military assignment). (https://www.tax.ny.gov/pit/file/pit_definitions.htm)

[13] A *cooked breakfast* is defined by Merriam-Webster dictionary as a "breakfast that includes cooked foods such as eggs and meats."

h. This lot is a pre-existing, nonconforming lot since it has a lot width less than one hundred (100) feet, which is required for lots located within the Lakefront Residential zoning district. (Note. The lot width is 71.42 feet per the tax maps provided by Yates County.) Also, no adjacent vacant lands are available for purchase to increase the area of this lot; and

2. The proposed action cannot be achieved by some method, feasible to the Applicant to pursue, other than obtaining Area Variance(s) due to the following reasons:

    a. The existing parking is located within the front yard and the side yards (north and south) are only ten (10) feet. It is not feasible to install parking or a driveway at these side yards since they are too narrow but also due to the topography of the lands. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

    b. This lot is a pre-existing, nonconforming lot since it has a lot width less than one hundred (100) feet, which is required for lots located within the Lakefront Residential zoning district. (Note. The lot width is 71.42 feet per the tax maps provided by Yates County.) Also, no adjacent vacant lands are available for purchase to increase the area of this lot; and

3. The requested Area Variance(s) are substantial due to the following reasons:

    a. The standards for a bed and breakfast dwelling prescribed within the Zoning Law of the Town of Milo require a minimum lot area of 2 acres. This lot is a pre-existing nonconforming lot that has a lot area of 0.6 acres per the records of the Assessor of the Town of Milo. However, Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district. However, any development on said lot shall comply with the applicable provisions of this chapter", which is the reason the owners understand and agree to obtain an area variance for lot area (Note. The owners do not own any contiguous[14] lots to add/merge lands into this lot of record to make it conforming to this requirement.); and

    b. The proposed action will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district based since the proposed work will comply with applicable laws such as but not limited to the Flood Damage Prevention Law of the Town, NYS Uniform Fire Prevention and Building Code as well as the Energy Conservation Construction Code of NYS. Furthermore, the owners rented his/her/their entire dwelling at this lot of record since 2006. As explained herein, operating a bed and breakfast dwelling is less of a hazard/impact to the community than renting an entire dwelling.

    c. Pursuant to "A Primer on Area Variances in New York, "Zoning Boards of Appeals and Courts appear unsure of how to apply this factor. While most boards and courts will view a large numerical deviation from a municipal zoning ordinance as "substantial", the weight they will give that finding is heavily dependent on,

[14] Pursuant to Section 350-8 of the Zoning Law of the Town of Milo, contiguous is defined as "next to, abutting, or touching and having a boundary or portion thereof, that is coterminous."

and cannot be separated from, the impact that deviation will have on the community[15]. Thus, courts have upheld the grant of substantial variances[16] because of a lack of associated impacts.

4. The proposed Action is not self-created due to the following reasons:

    a. 308 Route 54-East Lake Road is a nonconforming lot of record since it does not have the minimum required lot width of one hundred (100) feet as required by Section 350-18 (E)(1)(b) of the Zoning Law of the Town of Milo. Also, the owners purchased this lot in 2003 and he/she/they have not performed a lot line adjustment or subdivision that would have changed its lot lines. However, let the record reflect that Section 350-35 (D)(2) of the Zoning Law of the Town of Milo states, "any nonconforming lot of record may still be developed by any use which is a permitted principal use or special use within its applicable zoning district."

    b. As stated herein, the owners rented his/her/their entire dwelling at this lot of record since 2006. As explained herein, operating a bed and breakfast dwelling is less of a hazard/impact to the community than renting an entire dwelling.

    c. As stated herein, the existing parking for the single unit dwelling is currently located in the front yard at this lot of record. It is not possible to have the parking at the side and/or rear yards at this lot of record due to the topography of the lands and the side yard is only ten (10) feet per the submitted site plan that is signed and sealed by Christopher Todd, Registered Architect. Also, no adjacent vacant lands are available for purchase to increase the size of the side yards to allow for parking and/or a driveway; and

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals hereby determines that **an application for Area Variances submitted by David and Lori Dahlberg requesting the following area variance(s) to allow a bed and breakfast dwelling at 308 Route 54-East Lake Road (Tax Map ID No.: 73.63-1-4): (1) Allow a minimum lot area of 0.6 acres; and (2) allow parking spaces at the front yard. This lot is located within the Lakefront Residential zoning district,** will not have a significant adverse impact on the environment. The Chairperson of this board is hereby authorized to sign Parts 2 and 3 of NYSDEC's short environmental assessment form declaring that this action will not result in any significant adverse environmental impacts; and

BE IT FURTHER RESOLVED, that this determination is based upon the following findings, facts and conclusions:

1. All parties involved in this application fully understand and agree to obtain all necessary local, state and federal approvals prior to the start of operation of said use; and

[15] Lodge Hotel, Inc. v. Town of Erwin Zoning Bd. of Appeals, supra ("Looking at the variance request in such a vacuum is not an adequate indicator of the substantiality of Petitioner's application. Substantiality cannot be judged in the abstract; rather, the totality of relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one. Aydelott v. Town of Bedford Zoning Board of Appeals, 6/25/03 N.Y.L.J. 21 (col.4) (Supreme Court, Westchester Co., 2003). When reviewing the application in the context of the overall impact it would have on the neighborhood, it is clear that the variance request is not substantial, especially when considering that the structure will have the outside appearance of a two-story building. Aydelott v. Town of Bedford Zoning Board of Appeals, 6/25/03, N.Y.L.J. 21 (col.4); Cortland LLC v. Zoning Board of Appeals, Village of Roslyn Estates, 8/13/03 N.Y.L.J. 24 (col.1) (Supreme Court, Nassau Co., 2003)")

[16] Wambold v. Vil. of Southampton Zoning Bd. of Appeals, 140 A.D.3d 891, 893, 32 N.Y.S.3d 628, 630 (2d Dep' 2016)("While we agree with the petitioner that the proposed variance was substantial, there was no evidence that the granting of the variance would have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community."); Marina's Edge Owner's Corp., 129 A.D.3d at 843, 11 N.Y.S.3d at 843; Borrok v. Town of Southampton, 130 A.D.3d 1024, 1025, 14 N.Y.S.3d 471, 473 (2d Dep't 2015); Goodman v. City of Long Beach, 128 A.D.3d 1064, 1065, 10 N.Y.S.3d 302, 304 (2d Dep't 2015); Friends of Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner, 56 A.D.3d 883, 886, 867 N.Y.S.2d 238, 241 (3d Dep't 2008).

2. All parties involved in this application fully understand and agree to comply with the Special Use Permit and its associated conditions that was granted/issued by the Planning Board on April 9, 2024 to allow a bed and breakfast dwelling at this lot of record; and

3. All parties involved in this application fully understand and agree that any modifications to the existing driveway that abuts Route 54-East Lake Road shall be approved by the New York State Department of Transportation (NYSDOT); and

4. All parties involved in this application fully understand and agree to abide by any easements and/or right-of-way agreements and that no obstruction is permitted within said easements and/or right-of-way; and

5. All parties involved in this application fully understand and agree to secure a Building Permit from the Code Enforcement Officer of the Town of Milo prior to changing the use of the single unit dwelling to a Bed and Breakfast Dwelling; and

6. All parties involved in this application fully understand and agree that any approval of this application does not deem acceptance of any improvement (e.g., roads, sanitary sewer system, storm sewer system and water system) by the Town of Milo; and

7. Pursuant to Section 350-191, Validity, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree to the following:

    a. Where any work that was authorized by an area variance has not commenced within one year of the date of such variance's issuance, such variance shall become null and void and all rights thereunder shall terminate.

        Exemption(s):

        i. The Code Enforcement Officer is authorized to grant, in writing, one or more extensions of time, for periods not more than one year each. The extension shall be requested in writing by the owner and justifiable cause demonstrated.

    b. Any land or structure authorized to be established or built pursuant to an area variance shall be deemed lawful at the zoning district in which it is located and shall not be considered an unlawful lot of record or structure.

8. Pursuant to Section 350-192, Conditions imposed upon an area variance, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that the designated approval authority may include in an area variance such terms and conditions as he, she or they deem necessary or appropriate to ensure safety or to further the purposes and intent of this chapter; and

9. Pursuant to Section 350-193, Expiration, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that an area variance shall not expire unless the scope of the work proposed in the application is not operated or completed within one calendar year from the date of issuance. The Code Enforcement Officer is authorized to grant, in writing, one or more extensions of time, for periods not more than one calendar year each. The extension shall be requested by the owner and justifiable cause demonstrated; and

10. Pursuant to Section 350-194, Transferable, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that an area variance is transferable due to the fact that such variance "runs with the land" since it applies to a lot of record and/or structure, which such lot of record and/or structure is not contingent on

ownership.

11. Pursuant to Section 350-195, Revocation, of the Zoning Law of the Town of Milo, all parties involved in this application fully understand and agree that the designated approval authority is authorized to revoke an area variance issued under the provisions of this article when it is found, by inspection or otherwise, that there has been a false statement or misrepresentation as to the material facts in the application or documents on which such variance was based, including, but not limited to, any one of the following:

    a. The area variance is used for a lot of record and/or structure other than that for which it was issued.

    b. The area variance is used for a lot of record and/or structure other than that listed in such variance.

    c. Conditions and/or limitations set forth in the area variance have been violated or not satisfied.

    d. There have been any false statements or misrepresentations as to the material fact in the application for an area variance or any attached documents.

    e. The owner failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this chapter within the time provided therein.

    f. The area variance was issued in error or in violation of this chapter.

12. In the event that it is necessary for the Town of Milo to take legal action to enforce the conditions stated hereinabove, the Owner shall be responsible for all legal expenses and other costs incurred by the Town of Milo in such proceedings to enforce the conditions stated hereinabove.

Seconded by **Member Andy Siwak** and duly put to a vote as follows:

AYES:

- Phil Riehl
- Terry Jensen
- Ben Sward
- Don Will
- Andy Siwak

NAYES:

(none)

ABSTENTIONS:

(none)

This Resolution was thereupon adopted and has taken effect immediately.