

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
August 24, 2017**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Norma Dolan

Arthur Weiland

**MEMBERS ABSENT**

Frank Kealty  
Macy Sherow III

**ALSO PRESENT**

Eliot Werner, Acting Secretary

Chairman Malcarne called the meeting to order at 7:30 pm.

Chairman Malcarne asked the acting secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Mr. Werner responded positively.

Chairman Malcarne noted that the meeting was being recorded for record keeping purposes.

**VARIANCE APPLICATIONS:**

**Devita Area Variance** – property owned by Anthony and Kathleen Devita located 2 Lakeview Drive, **Tax Grid No. 6469-10-356656**

The applicants are requesting an area variance to Sec. 250 Attachment 2 (Area and Bulk Regulations) of the Town of Clinton Zoning Regulations for a rear yard setback reduction from 75 feet to 18.6 feet in order to build a screened porch.

Mr. and Mrs. Devita appeared for their application. Mr. Devita explained that he wants to construct a screened in porch on the side of his house. He opined that this proposal will not impact the lake. The DEC has already signed off on this proposal.

Mr. Calogero read the Planning Board's recommendation dated August 15, 2017. There were no letters received from the neighboring property owners.

Chairman Malcarne asked for questions and comments from the board.

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Mr. Calogero expressed his comment. This is a nonconforming property. The house is already in the setback. The proposed screened porch will only bring the main dwelling additional two feet into the setback. He commented that it doesn't seem an egregious intrusion as shown on the paperwork.

Mr. Calogero indicated the discrepancy between the building permit application and the Planning Board's recommendation. The building permit application stated 250-square-foot Porch while the Planning Board's recommendation indicated 237 square feet.

Mr. Devita responded that they used the ballpark number of 250 square feet when they fill out the building permit application.

Mr. Calogero questioned the sketch plan that was submitted by the applicant. The sketch plan indicates a dimension of 19' x 15'. Mr. Devita noted that he originally drew the sketch and they came up with less than what is shown on the sketch.

Mr. Calogero suggested adding the square footage of the proposed sunscreen room to the resolution to avoid future problem.

The board reviewed and discussed the application. Mr. Weiland questioned the lot coverage. He remarked that this variance is not indicated on the variance application. Mr. Calogero responded that the variance to the lot coverage is part of the Planning Board's recommendation.

The board had a lengthy discussion about the variance to the lot coverage. The Planning Board recommendation indicates 237 square feet sunporch. The Zoning Board of Appeals came up with 273 square feet size.

Mr. Canham stated that Item no. 3 of the Planning Board recommendation states that the proposed structure will increase the lot coverage from 1248 to 1485 square feet which means that the proposed structure is 237 square feet.

After a very lengthy discussion, the board agreed that the lot coverage will increase from 7% to 9.24%.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 5-0.

Hearing none, the board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Calogero, All Aye, Motion carried, 5-0.

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The board passed a resolution, to wit:

Mr. Calogero moved that the Town of Clinton Zoning Board of Appeals grant the area I motion that the Town of Clinton Zoning Board of Appeals grant the area variances requested by Anthony and Kathleen Devita from Section 250, Attachment B, Schedule of Area and Bulk Regulations, of the Town of Clinton Zoning Law to allow construction of a 273 square foot porch attached to the existing structure on a .37 acre site located at 2 Lake View Rd., Tax Grid No. 132400-6469-10-356656-0000 in the C Zoning District in the Town of Clinton.

***FACTORS:***

1. The applicants have requested two area variances necessary to allow the construction of a 273 square foot sun porch.
2. The parcel is a pre-existing, non-conforming .37 acre lot. The west, east and south setbacks would not change. The north yard setback would decrease from 75 feet to 18.6 feet. ( This non-conforming setback is presently about 20.5 feet)Therefore a variance is required reducing the setback on the north side of the existing structure by 56.4 feet for purposes of constructing the porch.
3. In addition, the proposed structure will increase the lot coverage from approximately 1248 square feet, to approximately 1521 square feet. The maximum lot coverage permitted on this parcel under Section 250 Attachment 2, District Schedule of Area and Bulk Regulations is 7% of the parcel acreage). Therefore, a second variance is required permitting additional lot coverage in the amount of 273 square feet, increasing the lot coverage from 7% to approximately 9.4%.
4. The Town of Clinton Planning Board has made a positive recommendation conditional on the DEC granting all required permits prior to construction.
5. The property is in the Ridge line, Scenic and Historic Protection Overlay district.
6. An area variance does not require an Ag Data Statement.
7. There are no known outstanding zoning violations on the property per the Zoning Enforcement Officer.
8. The property is in a CEA district.
9. It is noted that an area variance is a Type II action under SEQRA and requires no further action.
10. The proposed variances, though substantial, will not have an adverse effect on the physical or environmental conditions in the neighborhood. Many of the lots in this area are pre-existing, substandard lots. The new construction is screened from the nearest neighbor by a substantial fence.
11. . The benefit sought by the applicants cannot be achieved by any other method.
12. The alleged difficulty is self created.
13. The application fee has been paid.

**Conditions:** All additional fees will be paid.

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Seconded by Mr. Canham.

**Discussion.** Mr. Calogero noted that the language of the Planning Board's recommendation states that the existing structure is already intruding 3 feet into a nonconforming sideyard.

Mr. Calogero commented that anything you do on this area will necessitate variances due to the size of the lot. He opined that he doesn't think that the proposed addition will be visible at all angles except from the lakeside. The only neighboring property that will be mostly affected by the proposed addition is screened by a large fence.

Mr. Weiland underscored that the house is already 22 ½ feet into the setback. Mr. Calogero noted that this comment is already on the draft resolution.

Mr. Canham commented that given the angle of the house, this is effectively a rear yard setback. It makes sense to go 3 feet into a well protected area much more than going into the sideyard.

Mr. Weiland noted that this is a corner lot. Mr. Devita agreed. Bartles Landing is a Private Road.

Mr. Weiland discussed the no storage setback to the applicant.

All Aye, Motion carried 5-0.

**Koch and Werner Area Variance** – property owned by Eliot Werner and Cynthia Koch located at 31 Willow Lane, **Tax Grid No. 6567-00-027794.**

The applicants are requesting an area variance to Sec. 250 Attachment 2 of the Town of Clinton Zoning Regulations for a sideyard setback reduction from 50 feet to 36.5 feet to allow construction of a garage on a 5-acre site in the AR5 Zoning District.

Warren Temple Smith, Engineer and Cynthia Koch appeared for this application. Mr. Smith explained that the Werners's house was pre-existing and nonconforming property. The house was built too close to the road. After years of using the barn across the street as a garage and given the location of the house and the driveway, the Werners finally decided to build a two-car garage which is in the sideyard setback.

Mr. Smith explained why the proposed site is the most feasible location to build a garage. He also noted that this will not impact any of the neighboring properties.

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Mr. Smith stated that this action will also trigger a Freshwater Wetlands and Water Law Permit due to the water creek nearby. He indicated the Water Law Permit granted by the Planning Board contingent of the variance approval.

Mr. Canham read the Planning Board's recommendation which is positive. He also read the Planning Board's resolution about the Freshwater Wetland and Water Law Permit that was granted conditionally. There were no letters received from any of the neighboring property owners.

Chairman Malcarne asked for questions and comments from the board.

Mr. Canham expressed his comments based on his site visit. The applicants did a very nice job in minimizing the impact of the proposed structure to the neighboring properties. He concurred that the proposed structure will not be visible from any neighbors. There is no other location to install a garage. He commented that the design and the placement of this garage makes perfect sense for him.

Mr. Weiland questioned the 2<sup>nd</sup> variance on the variance application. Mr. Smith responded that they originally requested two variances thinking that they also need a variance for the number of structures. He stated that Ms. Campbell noted that the 8' x 10' shed does not need a building permit and doesn't count as one of the structures. It is within the threshold. Mr. Smith added that this shed is also not on a foundation.

Mr. Canham concurred with the applicant as per Section 250.22 A-4. The board reviewed the zoning about accessory structures and agreed that the small shed (8' x 10') does not count as an accessory structure.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Calogero, all Aye, Motion carried, 5-0.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Ms. Dolan, all Aye motion carried, 5-0.

Mr. Weiland raised the issue about the small shed as an accessory structure. He thinks that the threshold is 50 square feet. Mr. Canham stated that he cannot find in the zoning regulation about the "50 square feet" as the size limit of the structure.

**Sec. 250-22 B-6 states that "One accessory building with a maximum floor area of 120 square feet may be installed or constructed and utilized without the issuance of a building permit or certificate of occupancy. Such structures are not included in the total allowed in Subsection A94) above."**

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After a very lengthy discussion about the above concern, the board agreed that the 80-square-foot size shed is not counted as a structure.

The board passed a resolution, to wit:

Mr. Canham moved that the Town of Clinton Zoning Board of Appeals grant the area variance requested by **Cynthia Koch and Eliot Werner** to Section 250-29 Attachment 2 of the Town of Clinton Zoning Regulations to reduce the sideyard setback from 50 feet to 36.5 to allow construction of a garage and attached breezeway on a 5 acre site in the AR5 Zoning District and located at 31 Willow Lane, **Tax Grid. No. 6567-00-027794**.

***FACTORS:***

1. The applicants request a reduction in the sideyard setback to allow construction of a 2-car garage connected to their residence via a breezeway. Given the configuration of the property and the location of the dwelling, there is no other feasible location for a garage near their house.
2. The proposed location for the garage is within the 100 foot buffer of a DEC-regulated wetland (SP-56) and therefore construction requires a permit issued by the town Planning Board under Town of Clinton Water Law. A conditional wetlands permit has been issued, subject to the condition that the required sideyard setback variance is granted.
3. There will be no adverse effect of the variance on the character and environmental conditions within the neighborhood. Adjacent homes are distant enough that the garage will have little visual impact on neighboring properties.
4. The requested area variance is substantial, and the alleged difficulty is self-created.
5. An area variance is a Type II action under SEQRA and requires no further action.

***CONDITIONS:***

That all fess have been paid.

Seconded by Mr. Weiland.

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**Discussion.** Mr. Calogero stated that the construction of the garage is in compliance with the section of the law and the rest of the property remains open which is the goal of the Town Comprehensive Master Plan.

All Aye, Motion carried 5-0.

**Mahoney Area Variance – 27 Shadblow Lane, Tax Grid No. 6469-00-906258 .**

The applicants are requesting an area variance to Sec. 250-29 B-6 of the Town of Clinton Zoning Regulations to increase the allowed total habitable space of the accessory dwelling in order to build a guest house with a total floor space of 3,187 square feet. This is a 25 acre parcel in the AR5 Zone District.

Jim Crisp, Architect and the Mahoneys all appeared for this application. Mr. Crisp explained that they are proposing to build a carriage house on a 25-acre property. He presented and explained the floor plans of the proposed building. The goal is to build a carriage house that will match the character of the main dwelling.

Chairman Malcarne asked for questions and comments from the board.

Ms. Dolan commented that there are a lot of inconsistencies on this property that need to be straightened out. The Assessor's card indicates two kitchens, five bedrooms, etc. The 2008 renovation is not in the Assessor's record. She commented these inconsistencies are mostly updating the changes with the Town.

Ms. Dolan stated that the Planning Board minutes indicated that the square footage of the habitable space will be determined. She commented that she hasn't seen that number yet. Due to all the inconsistencies in the figures, Ms. Dolan stated that they need to calculate the habitable space.

The board had a lengthy discussion about the definition of habitable space. Mr. Crisp stated that the Planning Board also had a debate about this section in the code.

Mr. Canham stated that he stopped calculating the habitable square footage of the dwellings since 1,000 square feet is the more restrictive number. 35% of the habitable space is much larger than 1,000 square feet. If the floor space of the proposed structure is 1,000 square feet or under, then it wouldn't need a variance. It seems that the variance is from 1,000 to 3,187 square feet.

Chairman Malcarne stated that they might still need to calculate the square footage to make sure that the 1,000 square feet is less restrictive.

The board had a lengthy discussion about the issue.

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Mr. Canham said that it doesn't seem that the addition of the 3- bay garage will exceed the number of the structures. He feels that the addition of the proposed accessory dwelling (32' x 68') will not make the number of accessory structures over the limit. It seems economical to say that the challenge here is that the footprint of the proposed building falls exceeds the 1,000 square feet floor space limit and the entire building becomes a unit (accessory dwelling).

Ms. Dolan stated that the Planning Board indicates that the size of this property allows any consideration to this application. She also indicated the implication to any future subdivision.

Chairman Malcarne agreed. Typically, the size of the property is taken into consideration when somebody wants to have an accessory dwelling. You need double the acreage to have an accessory dwelling unit.

Ms. Dolan read the Planning Board's recommendation which is positive. She noted that the ZBA doesn't have to necessarily follow the Planning Board's recommendation. The board makes their own decision.

Ms. Dolan asked about the intention for the proposed cottage. Ms. Crisp said that it will be for family use or servants.

Ms. Dolan stated that the Planning Board's recommendation indicates that this property is not in the Ag District. She amended that this property is in an Ag District.

Mr. Canham stated that first paragraph of the Planning Board's recommendation stated an increase in the allowed habitable space instead of floor space. Mr. Calogero said that the Planning Board recommended an increase in the floor space from 1,000 to 1,552 square feet.

Mr. Weiland asked, 'What's the square footage of the floor space?' Mr. Crisp responded that the total floor space is 3,187 square feet.

Mr. Canham commented that it seems that the proposed building is trying to meet two purposes. If the proposal is just to install a three bay garage without the living space then this application will not need a variance. It seems that the variance is from 1,000 to 3,187 square feet. It also falls under the 1,000-square-foot floor space threshold.

Mr. Weiland concurred with Mr. Canham. There is no need to calculate the habitable space, the floor space of the accessory dwelling is much less. Mr. Weiland opined that this will not be an issue if there is no dwelling use in that building.

Chairman Malcarne stated that the rationale behind this is about the large parcel of 25 acres. He said that the variance will be 2,187 (3,187 – 1,000) square feet with the logic



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that (1) This is a 25 acre parcel and (2) If they built the structure without the living space then variance won't be necessary.

Mr. Canham echoed the Chairman. The variance is to increase the floor space from 1,000 to 3,187 square feet but the reality is the dwelling space is only 1,487 square feet. The variance is not as extreme as it may seem.

Ms. Dolan underscored that an important ingredient of this application is to stay intact with 25 acres as also indicated in the Planning Board's resolution.

Mr. Weiland asked if 10-acre minimum is more appropriate since the minimum acreage in this area is 5 acres. (This question did not get an answer.)

Richard Whitten of 40 Shadblow Lane questioned the size of the proposed dwelling. He asked, "Is this going to be a Bed and Breakfast?"

Ms. Mahoney stated that they just bought this property and moved here from Michigan. They are building this dwelling to house her 87 years old mother-in-law. She wants to live near them but wants to have her own space. Ms. Mahoney underscored they have no intentions nor plans to have a Bed and Breakfast. She is a very private person and she strongly opposed the idea of a B & B. She stated that if things change then she will make this dwelling a workshop or family use for her children when they retire.

Mr. Werner stated that Bed and Breakfast requires a Special Permit approval. Neighbors will get notified about the public hearing and they will be able to voice out their concerns.

Mr. Whitten remarked that an 87 years old person doesn't have much time left in this world. He commented about the early discussion that there will be servants here to live.

Mr. Crisp explained that he meant that the cottage can be used for a caretaker who will take care of the property owners when they get old.

Mr. Canham cited an instance about his second home in Rhode Island. They rent it out occasionally since they cannot live there full time. He understands that the dwelling will be there for hundred years. It will be hard to control what happens with the property in the future. He stated that one of the goals of our zoning is to maintain the character of the neighborhood. On the other hand, he doesn't think that one of the intentions of the code is to discriminate against renters. He asked Mr. Whitten how would he feel if there's a tenant in there.

Mr. Whitten responded that there was a tenant in the right wing of the house from the previous owner. He indicated few issues with that tenant. This tenant destroyed the house. Mr. Whitten said that he hates to see this kind of tenant again.

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Chairman Malcarne commented that the tenants will most likely be screened if the house is well maintained or high end, or the property owners will be hesitant to rent the building out. The rental fee will also be high.

Mr. Whitten agreed. The property owners have property rights to rent the property out but noted that he also likes to live in a peaceful environment.

Chairman Malcarne concurred. This is the reason why everybody chose to live here. Ms. Mahoney echoed that this is exactly the reason why they moved up here. It is very private and quiet. They don't want strangers to live near them.

Mr. Weiland indicated his concern about Air BnB which is becoming epidemic everywhere. He asked Mr. Calogero if the Zoning Committee is addressing this issue.

Mr. Calogero gave an update about the ongoing zoning revision. The use of property as Air BnB is becoming more popular nowadays. This helps the property owner pay their mortgage, extra income, etc. This is also creating issues in the neighborhood. Unfortunately, Air BnB is not addressed in our current code. Other Towns are also facing the same issues. He expressed his understanding about Mr. Whitten's concern but noted that it is hard to predict the future. The Zoning Committee has been working on the zoning revision but it seems impossible to stay ahead with what's going on around the Town. There's always something!

Claire Whitten, 40 Shadblow Lane stated that she doesn't have a problem with this application but asked if this dwelling will be visible from the road. She remarked, "This is a huge building!"

Mr. Crisp responded that you might be able to see some part of the building from the road but not the whole building. He pointed out on the map the proposed location and orientation of the building which is set into the hill. They will be digging the hill to locate the garage.

Mr. Canham stated that he visited the property and analyzed the visibility of the proposed dwelling. You will see the gable of the building but not the rest of the structure nor the garage. Mr. Crisp added that the proposed garage will also match the main dwelling.

Chairman Malcarne asked the applicant about the possibility of subdivision. Ms. Mahoney responded that they haven't discussed this matter yet but noted that they also don't have any plans of subdividing and selling the property. She restated that they love the privacy and the character of this property. Most likely, they will pass down this property to their children.

The board discussed the concern about future subdivision. Ms. Dolan remarked that there is a notation on the Planning Board's resolution that the requested variance is significant and the fitting is substantial acreage.

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Mr. Canham commented that subdividing the property might even decrease the value of the land. He opined that the appeal of the property is the house and the acreage. You seldom see this much house sitting on less acreage. Mr. Crisp agreed. As an Architect, he stated the worst thing you do is to put this house on a 5 acre lot. It will be a big loss. He noted that he is not a realtor but he thinks that putting this house on a smaller acreage will be a tough to sell.

The board had a lengthy discussion about the concern. Chairman Malcarne stated that subdivision is a Planning Board purview. He recapped the major concerns of this application (lot size and floor space).

Mr. Canham feels that the realistic number is 1,437 square feet floor space so that it is not as dramatic as it may seem. He suggested phrasing the verbiage of the resolution as “In reality, the floor space square footage of this accessory dwelling is only 1,437.” Mr. Weiland agreed with Mr. Canham.

Mr. Calogero remarked that this is still 50% of the main house. He doesn't think that this is insignificant.

Mr. Canham commented that the 1,000 square feet floor space per the zoning code is tight. He felt that 1,500 square feet is the good number for an accessory dwelling.

Mr. Calogero stated that the minimum size of the accessory dwelling per our zoning code is 400 square feet so 1,000 square feet is almost three times the minimum. Mr. Canham stated that 1,500 square feet is his modern standard in this age.

Ms. Dolan reiterated her concern about the two dwellings on the property in relation to substantial acreage. Mr. Weiland asked Ms. Dolan if 12.5 (half of 25) acres is considered substantial in this case. Ms. Dolan responded that she doesn't have a problem with 15 acres.

Chairman Malcarne said that the key here is to have 10 acres that allows them to have the accessory dwelling on the property. He noted that the applicant is not proposing a 3,500 square feet living space on this property.

Mr. Calogero expressed no concerns since subdivision is not the overall intention of the property owner.

Ms. Whitten stated that her house is 2,300 square feet. The proposed dwelling is across the street and on top of the driveway. She remarked, “This is big!”

Hearing no more comments from the public, the board agreed to close the public hearing.

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Chairman Malcarne motioned to close the public hearing, seconded by Mr. Weiland, All Aye, Motion carried, 5-0.

After a very long discussion and all the reviews were made, the board passed a resolution, to wit:

Ms. Dolan motioned to approve the area variance to Section 250-29 B6 of the Town of Clinton Zoning Regulations to **Deborah & Michael Mahoney**, Parcel Number 132400-6469-00-906258, 27 Shadblow Lane which is a 25 acre parcel located in the AR5 Zoning District in the Town of Clinton. The variance is to permit the construction of a 3,187 sq. ft. accessory structure. The proposed new building is sited behind the main house, slightly to the right and into an existing hill. It includes a 3 bay garage, first floor laundry/storage area, two decks, and second story accessory dwelling space of 1,437 sq. ft. of floor space where 1,000 sq. ft. of floor space is allowed.

***FACTORS: -***

1. An Undesirable change would not occur in the character of the neighborhood or be a detriment to nearby properties.
2. The benefit sought by the applicant can be achieved by an alternative method but this request seems appropriate and reasonable.
3. The requested variance is very substantial.
4. The alleged difficulty was self-created
5. An area variance is considered a type II action under SEQRA and requires no further action.
6. The property is in the Ridgeline, Scenic and Historic Protection Overlay District.
7. The property contains a Federal Wetland
9. The site is on a designated Scenic or Historic Road.
10. There are not any known outstanding zoning violations.
11. The property is not in a CEA district.

**CONDITIONS**

1. The parcel will contain two dwelling units and should be maintained at a minimum size of 15 acres.
2. Exterior lighting must be downward
3. All fees have been paid.

Seconded by Mr. Canham.

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**Discussion.**

Mr. Weiland asked about the language of the legal ad. He wants to know whether the application was advertised correctly. After reviewing the verbiage of the legal ad, the board agreed that the language is sufficed.

Mr. Weiland commented on item #2 of the resolution. The benefit sought by the applicant can be achieved instead of “cannot be achieved” by alternative method.

Ms. Dolan stated that the Assessor’s card should be corrected. She suggested that the property owner contacts the Assessor’s office to correct the details of this property.

Mr. Weiland stated that the exterior lighting should face downward.

Mr. Canham stated that the property contains wetlands instead of “Not in the wetlands”.

Mr. Weiland commented that there are two dwelling units instead of two buildings since there might have future green house.

The board discussed the condition about the minimum acreage where the dwellings are. Chairman Malcarne asked the property owner if she has a concern about the said restriction. Ms. Mahoney responded, “No”. She stated that she doesn’t have any plans of subdivision. They want privacy. This is the reason why they bought this property.

Mr. Calogero suggested putting the size of the proposed accessory dwelling in the resolution (1,552 square feet over the allowed 1,000 square feet). Mr. Canham said that there is a question whether 1,552 square feet is habitable or floor space. He stated that he really doesn’t know where the 1,552 square feet came from. (Note that 1,552 square feet is the square footage per PB recommendation). Mr. Crisp stated that he thinks that the 1,552 square feet includes the laundry room.

All Aye, Motion carried 5-0.

**APPROVAL OF MINUTES:**

No minutes were approved.

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**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 10:20 pm, seconded by Mr. Sherow, All Aye Motion carried, 5-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk