

**TOWN OF CLINTON
ZONING BOARD OF APPEALS MEETING
FINAL MINUTES
April 28, 2022**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Norma Dolan

Russel Tompkins
Arthur Weiland

Arlene Campbell, Secretary

MEMBERS ABSENT

Ron Mustello

ALSO PRESENT

Eliot Werner, Liaison Officer

Chairman Malcarne called the meeting to order at 7:37 pm.

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves.

Chairman Malcarne asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

Curcio Area Variance – property owned by Anthony and Lisa Curcio located at 30 Old Bulls Head Road, **Tax Grid No. 6469-00-726522.**

The applicants request the following area variances in order to construct a 36' x 40' Pole Barn on a 6.9-acre lot in the AR5 Zoning District.

Sec. 250 Attachment 2 – Front Yard setback reduction from 100' to 50'

Sec. 250-22 (A-4) – Increase the number of structures from 3 to 4

Sec. 250-22 (A-3) to allow the accessory structure to be closer to the fronting street than the principal building.

Mr. and Mrs. Curcio appeared for this application. Mr. Curcio explained that he wants to install a 36' x 40' pole barn to store equipment like lawn mower, wood splitter, etc. They also want to store their RV to get it off the driveway and out of sight when people drive by.

Mr. Curcio explained why they need a variance. The original proposed site is rocky and ledge. He indicated that they are asking a 50' variance to have some

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wiggle room and away from the rock. He described the layout of his parcel i.e. corner lot.

Chairman Malcarne asked for questions and comments from the board.

Ms. Dolan read the Planning Board's recommendation dated April 5, 2022 which is positive.

Mr. Weiland stated that Mrs. Curcio also needs to sign the application as the other property owner. Ms. Curcio then signed the application.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

Mr. Calogero read the letter from Virginia Woods, 40 Old Bulls Head Road supporting the Curcio's project.

Hearing no comment from the public, Mr. Tompkins motioned to close the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

The board discussed the application.

Mr. Weiland stated that the Planning Board's recommendation states that there are four accessory structures. He commented that he counted six accessory structures. He expressed his concern about the number of accessory structures on this property.

The board had a lengthy discussion about the number of structures on the property and the definition of "structures" per Sec. 250-105 of the zoning law.

Mr. Tompkins stated that there is a section in the code that a certain square footage of the structure is not counted as an accessory structure.

Sec. 250-22 B-1 of the Town of Clinton Zoning Law states that "One accessory structure 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 provided....."

Sec. 250-22- B-2 states "Such a structure shall not be included in the total permitted by Subsection **A(4)** above."

Mr. Tompkins commented that one of the structure is 120 square feet. The chicken coop is less than 120 square feet. It seems that there's an error on the

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Planning Board's recommendation. They are counting the proposed barn as the 4th structure. He commented that it seems that the proposed barn will be the 5th structure.

Mr. Curcio stated that there is a playhouse across the chicken coop. He commented that he is not sure about the exact measurement of the playhouse.

Ms. Campbell commented that the Planning Board didn't count the playhouse as one of the structures.

Mr. Weiland stated that the size of the playhouse is 96 square feet and the chicken coop is 70 square feet per the site plan submitted.

Mr. Canham stated that both the playhouse and the chicken coop structures are small enough not to be counted as structures.

The board had a discussion about "chicken coop". Mr. Weiland and Ms. Dolan felt that chicken coop is too small to be counted as a structure. This is also movable.

Mr. Weiland asked the board to address "Corner Lot". He stated that Corner Lots have two front roads. They normally treat the front yard as the one where the front door faces. He commented that this side yard is away from the front of the house. He doesn't agree with the interpretation of the code. This is a lot with a rounded edge with a door faces with one front of the roads.

Mr. Tompkins indicated the definition of Corner lot as stated below.

Sec. 250-105 of the Zoning Law defines LOT, CORNER as "A lot abutting upon two or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than 135°. The point of intersection of the street right-of-way is the "corner.""

Mr. Tompkins commented that based on this definition, this lot is a corner lot. It's part of the street because it's a corner.

The board had a lengthy discussion about the number of structures.

Ms. Campbell indicated the definition of "structure" per Sec. 250-105 as stated below.

STRUCTURE - A static construction, or assembly, or materials, the use or occupancy of which requires a fixed location on the ground or attachment to an object having such a fixed location. Structures shall include, but are not limited to, buildings, stalls, booths, sheds, storage bins, swimming pools, tennis courts,

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gasoline pumps, billboards, and mobile dwellings. Structures shall not include common utility poles and related items thereon, nor walls, fences, or signs. See also "accessory structure."

The chicken coop on this property does not have a fixed location. It was also notable that chicken coop and playhouse are not included in the definition of the structures (see above definition).

Mr. Canham stated that the applicants just bought this property with the existing structures. It's a well maintained property and he doesn't feel that this is a major request. Based on the definition of the structure, Mr. Canham felt that this chicken coop does not count as a structure. The chicken coop fits well in the definition of structure. It is not on a fixed location. He doesn't want to encourage people of putting structures on the skid and maybe this definition needs to be addressed in our zoning revision but right now the way the code is written -- Structure requires a fixed location.

The board discussed a case in the past about an applicant who requested an increase in the number of garage to three garages. This is not a substantial request.

Mr. Tompkins agreed. The number of structures from 3 to 4 is not significant.

Ms. Dolan noted that everything that the board do is apropos to the property and not with the property owners.

Chairman Malcarne counted the structures on the property. He said that there is a barn, 2 sheds and the proposed pole barn. Given the definition of the structure that requires fixed location, the chicken coop and the playhouse do not count as a structure.

After a very lengthy discussion, the board agreed that the number of accessory structures will increase from 3 to 4.

After all the deliberations were made, the board passed a resolution.

Ms. Dolan motioned that the Town of Clinton Zoning Board of Appeals approves the following area variances for the 6.19 acre property in the AR5A zoning district owned by Anthony and Lisa LaDuca-Curcio and located at 30 Old Bulls Head Rd **tax grid number 132400-6469-00-726522-00001**

(1) The applicant wishes to construct a 40' x 40' Pole Barn with an open lean-to within the 100 foot front yard setback. The location was made necessary by a rock outcropping in the originally planned location. As a result, the applicant is

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seeking a variance from Section 250 Attachment 2 with a front yard setback reduction from 100' to 50'.

(2) In addition, a variance is required to Section 250-22 A. (3) to allow the accessory structure to be closer to the fronting street than the principal building.

(3) In addition, the said Pole Barn is the 4th accessory structure on the property where 3 are allowed and requires an area variance to Section 250-22 A (4). Two removable structures, the 96 sq ft shed/playhouse and 70 sq ft chicken coop were excluded from the accessory structure count.

1. An undesirable change will not be brought about in the neighborhood. There will be no adverse effect in the character of the neighborhood or be a detriment to nearby properties.
2. The Planning Board gave a positive recommendation April 7, 2022.
3. The benefit requested by the applicants cannot be achieved by some other feasible method besides granting the variances.
4. The requested variances are substantial.
5. The alleged hardship was self-created.
6. A residential area variance is a type II action under SEQRA and requires no further action.
7. The site is not in an Ag District and residential area variances do not require an Ag Data Statement.
8. The site is not in a Ridgeline, Scenic or Historic Protection Overlay District.
9. The site does not contain a NYSDEC wetland and is not in a Critical Environmental Area.
10. Per the Zoning Enforcement Officer, no there are no known violations on the property.
11. All fees have been paid

Conditions:

- All Fees to be paid

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- Any exterior lighting shall be downward facing.
- No storage on exterior of pole barn within the setback including hanging items

Seconded by Mr. Tompkins.

Discussion. Mr. Weiland suggested adding “No storage in the exterior setback including hanging items or otherwise”. The board agreed.

Mr. Weiland remarked that the garage doesn’t seem to have a certificate of occupancy. Mr. Calogero responded that there is C of O for the 24’ x 24’ storage building. He thinks that this is the c of o for the garage. Mr. Canham stated that he has a garage that he is using it for storage.

Ms. Dolan asked if the “lean-to” is included in the calculation of the square footage of the barn. The board agreed that the size of the proposed barn is 50’ x 40’ with the lean-to.

Mr. Weiland asked to include screening to the condition. Ms. Campbell noted that the proposed site is already screened. Mr. Curcio presented a photo of the proposed site showing screening trees. This will not be visible from the road.

All aye except for Mr. Weiland who voted Nay.

Motion carried, except 5-1.

MTS Realty LLC Area Variance - on property located at 505 Hollow Road, **Tax Grid No. 6366-00-284983**. The property is in the AR3 Zoning District.

The applicant requests the following area variances to Sec. 250.84 and Sec. 250 Attachment 2 (Area Bulk and Regulations) in order to put an addition and increase the number of bedrooms from two to six and to build an inground pool.

- Front Yard setback reduction from 100’ to 17’ – Front Porch
- Rear Yard setback reduction from 75’ to 68’ – Covered Patio
- Side Yard Setback reduction from 50’ to 47’6” – Covered Patio
- Lot coverage from 7% to 10.4% - Addition
- Rear Yard setback reduction from 75’ to 46’08” – Pool
- Side yard setback reduction from 50’ to 24’63” – Pool
- Lot coverage from 7% to 19% - with the pool (may not be built till later)

Matthew Pecora, architect appeared on behalf of the property owner. He explained that they are asking to construct an addition to an existing

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nonconforming building on a .50 acre nonconforming lot in the AR3 Zoning District.

Mr. Canham read the Planning Board's recommendation that is positive. He indicated the number of issues related to this application.

One letter was received from the neighboring property owners. Dennis and Glen Biery, 534 Hollow Road expressing strong concern about a potential use of Short Term Rental on this property.

Mr. Canham noted key points on this application. He stated that based on Sec. 250-84-A (Nonconforming Building), there is a limit on how much you can expand a nonconforming building (50% limit of aggregate building area). There's also a maximum building coverage for the lot of 7% per Sec. 250 Attachment 2 (Area Bulk and Regulations).

Mr. Canham stated that the definition of "aggregate building area" in the zoning law expressly excludes uncovered porches area. He stated that this application requires a variance to Sec. 250-84 A. This is a 68% increase based on his original calculation of 1,436 square feet (not counting the pool area and deck), versus the applicant's number of 1,533.8 square feet.

Ms. Dolan asked Mr. Canham if breezeway is included with his calculation. Mr. Canham responded, "Yes". Breezeway is covered.

Mr. Canham discussed the building coverage per Sec. 250 Attachment 2 of Area Bulk and Regulations. Per his reading of the law, the pool and the deck area should be included in the calculation of the building coverage. He indicated that he came up with 11.7% building coverage (without a pool) and 17.7% (with the pool). This was well over the 7% limit. He was wondering why this variance was not included in the Planning Board's recommendation. He believes that this application requires these additional two area variances.

Sec. 250-105 of the Zoning Law defines Building Coverage as the total of areas taken on a horizontal plane at the main grade level of all principal and accessory structures located on the lot.

Mr. Tompkins stated that the narrative statement submitted by the applicant includes a statement of an addition that will exceed the square footage of the nonconforming building to more than 50%. He commented that this addressed Mr. Canham's concern.

Ms. Campbell asked the applicant when are they planning to install the pool. (It was noted that application indicates installation of a pool in the future.) She noted

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that variances expire after a year. The board stated that the applicant can request an extension of the variance.

Mr. Canham stated that there's a lot of significant issues with this request. He asked the applicant if he prefers the board to open the public hearing before doing the discussion.

The board agreed to open the public hearing to get comments from the public. Mr. Canham motioned to open the public hearing, seconded by Mr. Weiland, all Aye, Motion carried, 6-0.

Chairman Malcarne solicited questions and comments from the public.

John Ennis, 518-532 Hollow Road said he lives across this property. He expressed his concern about the proposal. This is a substantial request. He echoed the Biery's concern. The Milea owns the winery nearby. He hopes that this is not an extension of the commercial property. He asked how long will the construction last and how is he getting impacted from this proposal. He indicated his concern about the construction noise and the impact to his property with regards to water run off/drainage. He noted that his property got overburdened by wetlands when a culvert was put in on the road years ago.

Mr. Pecora addressed Mr. Ennis's concern. Given the inventory shortage and delay in materials, Mr. Pecora stated that a project of 3 to 4 months could take 6 months or so. Most of the noise will be coming from framing. He gave an estimated timeline of the construction. The pool will involve excavating noise. With regards to drainage, Mr. Pecora stated that they will be draining all the water onsite. They can also put a drywell on the property if required. They will also update the septic system on the property so they will be doing soil test and percolation test.

Ms. Campbell noted that there is also a regulation about hours of operation so the construction will not be permitted at night for instance.

Mr. Canham indicated the large property behind this property. He commented that if you don't know the property lines, you will think that the property behind is part of this lot. Also looking or standing on the side of the property, it's hard to tell whether you're on the neighbor's property or on this property. He commented that adding a pool and going to almost 18% building coverage is exceptionally large. If this was a larger lot (conforming lot), the applicant will not be here except for the covered porch that will only need a variance. He's concerned about going almost 18% of the building coverage. He noted that the board's responsibility is to bring a nonconforming building to conforming and find ways to eliminate the need of a variance. He asked Mr. Pecora if the Milea owns the 47 acre property behind this property.

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Mr. Pecora responded, "No, Mr. Milea doesn't own the parcel in the back."

Mr. Weiland responded that the parcel at the back is under the ownership of Milo BD LLC. This property is used to be owned by the Fenster. Mr. Canham agreed but the deed doesn't indicate the names of the owners of the LLC.

Mr. Tompkins stated that the two larger parcels around this parcel have nothing to do with the small lot. They are under different owners.

Mr. Canham commented that if the small lot and the larger parcels at the back are owned by the same property owners, a simple lot line adjustment can go a long way and bring a nonconforming lot into compliance.

Ms. Dolan echoed Mr. Canham comments. The fact that these lots are owned by different property owners, Ms. Dolan stated that this does not preclude Mr. Milea from buying a portion of the adjoining parcel to bring this lot into compliance. The surrounding property does not have to be owned by the Mileas. That attempt will prove that no other alternative method can be achieved in granting this variance regardless of who owns the parcel. Mr. Canham concurred with Ms. Dolan.

Mr. Tompkins expressed several concerns. It's a very small property. He expressed concerns about the proposal of 6 bedrooms in reference to the septic approval. It seems premature to get the variance and they might not even get the approval for a 6 bedroom house from the county. Chairman Malcarne commented that they can always reduce the number of bedrooms.

Mr. Pecora responded that they are fully aware that they need to get the septic approval from the Department of Health before they can do anything. They didn't want to pay to have a septic design system if the variance will not be approved.

Mr. Tompkins raised his concern about the driveway. The driveway shows on the map is not on the same parcel as the house. He expressed his comment per his site visit. He had a tough time pulling out of there. There should be a driveway that is approved by the county. This road is curve and has bad sight distance. He asked, "How are you going to have the driveway approve if this driveway belongs to the neighbor unless they buy this portion of the land from the adjoining neighbor?"

Chairman Malcarne asked if there is right of way. Mr. Pecora responded that he doesn't believe there is a right of way. He doesn't know if they can arrange for an easement or something.

Mr. Tompkins indicated his concern about the proposed addition. They are connecting the original house to a new 104-square feet structure with a

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breezeway.. Mr. Tompkins stated that for him an addition is you're going from one room to another. He feels that this is a separate building. It's an accessory structure. It's not part of the house and it's just tied in by a breezeway.

The board discussed "breezeway".

Mr. Weiland cited an application in the past where in the applicant proposed to install a garage next to the house and connected by a breezeway. The board viewed the garage as part of the house.

Chairman Malcarne commented that it depends whether the breezeway is enclosed or heated. Mr. Pecora noted that the breezeway will be enclosed and heated. He added that they are doing the addition via breezeway because they didn't want to take the chance with the 200 years old frame of the house, otherwise, they would have come off from the existing house.

Mr. Tompkins stated that if there is a kitchen in the addition then it becomes an accessory dwelling.

The board discussed the proposed floor plan.

Mr. Tompkins stated that the house currently has two bedrooms and proposed to have four. The addition is proposed to have 2 bedrooms making this a 6 bedroom house. There will be two bathrooms in the addition.

Mr. Thomas discussed the requested variances per the application. It seems that the applicant is seeking a pool that might not be installed until in the future. The building coverage with the pool per Mr. Canham calculation is 18%. He also feels that the addition will need a variance to Sec. 250-84 since this will be more than 50% of the original house.

§ 250-84-A Alterations permitted to nonconforming buildings states that "A building which is nonconforming under the previous zoning ordinance and nonconforming under this chapter shall be permitted to expand to an amount not exceeding 50% of the aggregate building area as it existed on the effective date of the 1974 Zoning Ordinance, established as October 2, 1974".

Mr. Calogero expressed his comments. The requested variances that were before the board in the past when it comes to nonconforming buildings or nonconforming lots are normally minimal like setbacks and building coverage given the size of the lots. He was taken by the magnitude of the percentages of the variances request in this case. He doesn't remember any case like this request for the board to consider. The board needs to review this application very

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carefully since there are many properties like this in the town. It's very significant. He echoed Mr. Canham and Mr. Tompkins' concerns. He would really like to know about the access to this property. How much reduction in the property after a driveway is put in? The parking area needs to be expanded for a 6-bedroom house. The application states that the intent is to house family and friends. Mr. Calogero asked, "Is there anyone who is going to live there?"

Mr. Calogero stated that if no one will live there, he feels that this encroaches the requirements of the Short Term Rentals' regulations that the town recently adopted. Even if this will not be a short term rental, he feels that this will still impact the neighborhood character, the noise and the traffic. He opined that there are unanswered questions that need to be addressed or come to an agreement before they can move forward with this application.

Mr. Tompkins discussed Sec. 250.84 that states "as long as it meets the other requirements of the zoning code. He said that there are all these issues on this property such as the building coverage, the setbacks, lot coverage. He's not sure how binding this section. It seems that you can give 50% as long as the rest of the requirements are met.

§ 250-84 (A) Alterations permitted to nonconforming buildings states that A building which is nonconforming under the previous zoning ordinance and nonconforming under this chapter shall be permitted to expand to an amount not exceeding 50% of the aggregate building area as it existed on the effective date of the 1974 Zoning Ordinance, established as October 2, 1974, except that no nonconforming building shall be permitted to violate any other provisions of this chapter relative to the district in which it is located.

Mr. Canham said that he read this section to mean that they cannot give the expansion without also granting the variances to Area Bulk and Regulations to bring everything into compliance.

Mr. Tompkins opined that the driveway is the most concerning issue on this proposal. There is no legal access. What if the neighbor prevents them from accessing that driveway?

Chairman Malcarne commented that becomes a right of way question.

Mr. Canham found the pool particularly more problematic given the size of the lot. Having a pool on a property that is not full time residence is a safety issue.

The board had a very lengthy discussion about all the issues.

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Mr. Canham stated that without the pool, the actual additions to the building do not create a significant increase in the lot coverage. He felt that the most problematic variance is the building coverage for the lot.

The board discussed the calculations of the building and lot coverage. The proposed addition is 726 square feet, plus 1,070 aggregate area + 1.533.8 gives 69.7% increase in the building coverage. Lot coverage comes up to 12% without a pool and 18% with a pool.

Chairman Malcarne recapped the comments from the board. The building coverage is above 50%, increase in lot coverage, the pool concern, the driveway access and the use of the property.

Chairman Malcarne asked the applicant about how important is the use of the pool. He expressed familiarity with the road and opined that a pool is just a bridge too far given the size of the lot and all the proposition. The rest of the board concurred. The pool is concerning.

Mr. Calogero commented that cutting a new driveway in here could be another challenged given the sight distance. He indicated his experience dealing with the county when he bought his house.

Mr. Weiland expressed concerns for the future owners of this property.

Ms. Dolan felt that there is a lot of show stopper here.

The board agreed to have a five minute break then resumed the session at 9:40 pm.

Mr. Canham who is assigned to this application expressed his comments. He finds the building addition sensible and a significant increase given the size of the lot. He indicated his concerns about the number of bedrooms. There are questions, "Can you get a septic in there?" Can you get a driveway in there? The driveway and the septic are not the board's purview. The applicant does not want to go through the process of the septic and driveway approval until they get the variance.

Mr. Canham indicated that one of the factors in granting a variance is about "Are there any reasonable mean or method in achieving the variance?" He asked the applicant if it is possible for the property owner to approach the adjoining property owner to buy some acreage to address the issues. This will also give them a room for a placement of a pool. There is no setback on this property. It's highly constraint.

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Mr. Weiland added that this will also give them more space to add outbuildings and a garage on the property.

Mr. Calogero echoed the above comments and added that there is also a safety issue.

Mr. Canham stated that the board can proceed with the motion and vote not unless Mr. Pecora wants to try asking Mr. Milea first about the other option.

Chairman Malcarne suggested that the applicant considers all the discussions and recommendations at this meeting and discuss the option with the property owner. He can explain to Mr. Milea the board's concerns and the applicant can come back how they want to proceed.

Mr. Pecora said that he can only explain and suggest to the property owner to buy some acreage from the adjoining neighbor. It is still up to Mr. Milea how he will proceed. He asked the board how to alleviate the concern. Does the board wants to eliminate the pool? Can the size of the pool be diminished to alleviate the building coverage issue?

Mr. Canham responded that the size of the pool and the deck is 1,300 square feet right now. This is 30% more than the building addition. It's almost as big as the original size of the structure. He commented that 16 x 32 pool is not an extravagant pool but with the deck --- it is a big increase. He commented that the total impact of this proposal is concerning to him.

Chairman Malcarne responded to Mr. Pecora's question on how to alleviate the concerns. He said that the applicant can request an addition that is no more than 50% and no pool. He asked, "What if they can't get approval for a septic design for 6 bedrooms?" What if they can't get a driveway access? There are still show stoppers. There is also an alternative method in achieving the variance.

Mr. Calogero echoed the above comments. This will alleviate the issues. They can also add storage building if they get more acreage. Right now, there is no room for anything.

Mr. Tompkins concurred with the chairman. Asking multitude of things on a very small lot complicates things. He agreed that the applicant should talk to the property owner.

The panel had an exhausting discussion about the proposal. Chairman Malcarne asked the applicant how he wants to proceed. The board is ready to vote if he wants a decision now.

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Mr. Pecora responded that he will discuss the concerns with Mr. Milea and talk to him about acquiring some acreages from the neighboring property.

Chairman Malcarne suggested modifying the proposal to reduce the building coverage to 50%. He also asked Mr. Pecora to get a letter from MTS Realty authorizing Mr. Milea regarding this application.

Mr. Canham added that the concern about the Short Term Rental can also be added as a contingency to the variance.

Public hearing remains open.

No action was taken.

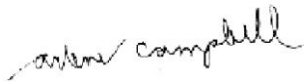
APPROVAL OF MINUTES:

Chairman Malcarne motioned to accept the minutes of March 24, 2022, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Mr. Canham motioned to adjourn the meeting at 10:10 pm, seconded by Mr. Weiland, All Aye Motion carried, 6-0.

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary