TOWN OF FALMOUTH
ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540
508-495-7460 – FAX 508-495-7463

Zoning Board of Appeals
Attn: Board Members
59 Town Hall Square
Falmouth, MA 02540

March 5, 2020

RE: Minutes for Public Hearings and Open Meeting held on February 20, 2020 at 6:30 PM in the Selectmen’s Meeting Room – Town Hall Square

Dear Board Members:
The attached minutes as referenced above are respectfully submitted for the Board’s approval and to be filed with the Town Clerk:

083-19 BMFB, LLC – 876 East Falmouth Hwy., East Falmouth
094-19 Hanney, 13 Ironwood Lane, North Falmouth
092-19 Andrade, 8 Anders Lane, East Falmouth
096-19 March, 94 Nantucket Avenue, Falmouth
091-19 Reppucci, 24 Prospect Street, Falmouth
091-19 Cumberland Farms, 8 Old Meeting House Road and 400 East Falmouth Highway, East Falmouth

Terrence Hurrie, Chairman of Board of Appeals

Date Minutes filed with Town Clerk: ____________________________

Respectfully submitted
Ashley DeMello, Office Assistant
Noreen Stockman, Zoning Administrator

TOWN CLERK

RECEIVED
MAR 5, 2020 AM 11:38
Executive Session – review and discuss pending litigation at Housing Appeals Committee Meawad v ZBA 0 & 213 North Falmouth Hwy., North Falmouth

Dugan made a motion to enter into Executive Session. Van Keuren seconded the motion. Motion carried 5-0.

Roll call: Terrence Hurrie- Aye, Robert Dugan – Aye, Edward Van Keuren – Aye, James Morse – Aye, Mary Barry – Aye

Dugan made a motion to exit Executive Session and go back in to Public Session. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.

Roll Call: Roll call: Terrence Hurrie- Aye, Robert Dugan – Aye, Edward Van Keuren – Aye, James Morse – Aye, Mary Barry – Aye
Public Comment - None

Dugan made a motion to take Open Meeting item #2 out of order. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.

**#090-17 Helmis Circle LLC, Helmis Circle, Falmouth**

Ilana Quirk with Freeman Law Group, attorney for Helmis Circle – This Decision was issued by the Board in 2017, and has been within appeals court. We have come to an agreement with the appellants, with some minor modifications. What’s proposed is that 3 of the lots will be moved 30 – 40’ closer to the roadway. There will be no additional bedrooms, nor changes in heights or number of units. The court remanded this back to the Board, so the Board could render a decision as to whether the change constitutes a substantial or insubstantial change. We believe that this would be an insubstantial change.

Dugan made a motion that the modifications made to previously approved plans are insubstantial, and to grant the change, as shown on the amended plans. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
#083-19 BMFB Falmouth, LLC, 876 East Falmouth Hwy., East Falmouth – requesting a special permit to construct an accessory structure (raw bar) in the front yard, more than 50’ from front property line.

Dugan noted there was a request submitted by Attorney Klauer to withdraw the application without prejudice.

Dugan made a motion to allow application #083-19 to be withdrawn without prejudice. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
#072-19 Mullen, 410 Surf Drive, Falmouth – requesting a modification of special permit #106-91 to allow an elevated bath house on existing pilings

Dugan noted there was a request to continue application #072-19 to March 5, 2020, submitted to the file from Attorney Klauer.

Dugan made a motion to continue application #072-19 to March 5, 2020. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
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Zoning Board of Appeals
Selectmen’s Meeting Room – Town Hall
Minutes of February 20, 2020 at 6:30 PM
Hurrie, Dugan, Van Keuren, Barry, Morse
Zoning Administrator: Noreen Stockman
Absent: Foreman, Potamis

#094-19 Hanney, 13 Ironwood Lane, North Falmouth – requesting a special permit to construct a screened porch; exceeding 20% lot coverage by structures

Voting Members: Hurrie, Dugan, Van Keuren

Dugan read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Health – No issues with project
Fire – no comment
Planning – no comment
Water – not applicable
Assessors – no comment

Marybeth Wadman, representative, reported that the Applicants had a deck planed for the back of the house, and decided to add a roof and screens, making it a screened porch. In doing so, this put them slightly above 20% lot coverage by structures, which is why they needed a special permit from the Board.

Correspondence – none

Board Discussion –

Dugan – Same roof line, and will there be gutters for the new roof area?

Wadman – The roof line will be consistent to the house, and I’m not sure if there are drywells proposed.

Public Comment – none

Dugan made a motion to close the hearing. Van Keuren seconded the motion. Motion carried 5-0.

Dugan made a motion to grant application #094-19. Van Keuren seconded the motion. Motion carried 5-0.

Findings:

1) Lot coverage 20.7% minimal increase
2) Increase utilization of the space
3) No comments from Engineering
4) Screened porch only

Conditions:
1) Per plans
2) Meets the criteria of 240-69 E, 240-216
3) Addition of drywells for new roof; no runoff should go to public roadways
4) Space not to be year round space

All in favor.
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#092-19 Andrade, 8 Anders Lane, East Falmouth – special permit to allow 3rd garage bay

Dugan read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Assessors – no comment

Fire – no comment

Planning – no comment

Water – not applicable

Conservation – not within jurisdiction

Engineering – standard comments; recommendation to add drywells, comply with section 99-1’ Affixing of legible numbers required; time limit for compliance

Health – Garage footprint shown to be 11’ from the SAS, exceeding the 10’ setback to a slab foundation in Title 5

Correspondence – none

Kevin Klauer, attorney for applicants – The applicants are looking to construct a three car garage which puts them just over the 900 s/f threshold. The property comprises 45,949 s/f, located with the AGA zoning district. The proposed garage will be 931 s/f. They are in the process of building a new home. They would like the 3rd car bay because the owner’s oldest daughter will be getting her license soon. This project meets the criteria of 240-216.

Board Discussion – none

Public Comment – none

Findings:

1) 4 bedrooms
2) No additional square footage to home; garage only
3) Extra utilization for family
4) Comply with Board of Health comments

Conditions:

1) Per plans
2) Comply with Engineering comments regarding drywells; section 99-1 post address
3) Meets the criteria of 240-38 G. and 240-216

Morse made a motion to close the hearing. Van Keuren seconded the motion. Motion carried 5-0.
Morse made a motion to grant application #094-19. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
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Zoning Board of Appeals  
Selectmen’s Meeting Room – Town Hall  
Minutes of February 20, 2020 at 6:30 PM  
Hurrie, Dugan, Van Keuren, Barry, Morse  
Zoning Administrator: Noreen Stockman  
Absent: Foreman, Potamis

#096-19 David March 94 Nantucket Avenue, Falmouth – requesting a special permit to renovate existing dwelling and construct a 2nd floor addition

Dugan read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Health – no issues with the Health Department. Property on sewer and there is no increase in bedroom count (3) based on the plans I have been provided.

Planning – no comment

Fire – no comment

Water – not applicable

Assessors – no comment

Engineering – standard comments, recommendation

Conservation – project has been approved, if any changes to project applicant must re-apply to Conservation; comply with section 99-1

Correspondence – none

Appearing before the Board was Patrick Roche, of Holmes and McGrath. He reported that the Premises is located in Falmouth Heights, and the Applicants would like to construct a 2nd floor addition to the existing dwelling. The property is pre-existing, nonconforming to the front yard setback, sited 7’ from the house to the front property line. The existing dwelling will be renovated, and a second floor will be constructed. They would like an open floor plan, and be able to relocate the bedrooms to the new second floor. The lot coverage by structures is 26.3% and will be reduced to 25.3%. The total coverage will be 36.2%. The existing building height is 12.8’; the proposed height will be 30.5’. The dwelling is served by sewer and water. This project was recently approved by ConCom.

Board Discussion

Barry – On my site visit, I noticed that there is a house beyond this property. When you construct this as planned, what will that do to the view of the water from that house?

Roche - From the bulk calculations that were done, it’s our opinion that there would be no impact on views or vistas, and would be compatible with other surrounding properties. The scope of the work is consistent with what has been approved in that neighborhood.

Barry – How did you arrive at that conclusion that it would not block the views?

Roche – When I went out to the site, it appeared that the 2nd floor deck of the house behind would be where they would get their view from.
Barry – If you are proposing a house that is 30'5" tall, isn’t that going to impact their views?

Roche – I don’t know.

Barry – It appears that their views and vista would be blocked by the addition of the 2nd floor.

Roche – The project is compatible with what has been approved in this neighborhood; many of the homes have added a second story.

Dugan – Is this being raised to meet flood plain regulations where you’re going over 30’?

Roche – It’s in the flood plain, but they aren’t altering the floor space. The mean elevation that exists is 8 feet.

Morse – Is there a cinder block and slab or is there a basement?

Roche – Cinder block and crawl space.

Hurrie – The existing structure can support a 2nd floor?

Roche - They are going to take out portions of the block crawl space, and support it with concrete piers.

Hurrie – The shed on the property will be removed?

Roche – Yes.

Hurrie – This doesn’t trigger FEMA regulations, does it, in terms of lifting the house?

Roche – It’s in an A zone. If we were in the Velocity zone, we would be required to elevate the structure.

Hurrie – How many bedrooms exist?

Roche – 3, there is no increase in bedroom count, no increase in flow; they would be moving them to the 2nd floor.

Hurrie – Engineering had comments about materials being stored on site, and not blocking off Grand Ave.? Can that happen?

Roche – We will contact the developers to let them know.

Hurrie – Can you get a letter from a structural engineer?

Roche – I’m not sure if the architect has even talked to one, I would have to find out.

Dugan – My concern is that we have had project like this in the past and because the existing house couldn’t structurally support the 2nd floor and the house had to be razed.

Barry – What’s the square footage of lot?
Roche - 3,042 sq ft.

Dugan - I wouldn't feel comfortable voting on this, without a letter from the structural engineer.

Barry - I have concerns with the view being blocked from the neighbors behind.

Roche – We can supplement with some more information.

Dugan made a motion to continue the hearing to March 19, 2020. Barry seconded the motion. Motion carried 5-0.

All in favor.
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#090-19 Reppucci – 24 Prospect Street, Falmouth - requesting a special permit to construct addition to 2nd floor, allow habitable space on 2nd floor of detached garage, with new deck/stairway

Van Keuren read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Voting members: Hurrie, Van Keuren (Acting Clerk), Barry, Morse

Member Dugan recused himself, and left the hearing.

Planning – No comment

Health – No issues – existing 2 family dwelling. Proposed plan showing 3 bedrooms. Property has a previous Board of Health decision limiting the property to 3 bedrooms. The landing pad at the base of the stairs is fine, as I don’t see need to require a setback to the existing septic system; allowed 3 total bedrooms. Plans show 1 bedroom in each of the two apartments and the third is above the garage. Cased opening for office is important, as without that, it would be the 4th bedroom.

Assessors – Assessors request an inspection prior to completion

Fire – no comment

Water – not applicable

ConCom – Outside jurisdiction

Engineering – standard comments

Correspondence - none

Paul Repucci – My wife and I bought this property at the end of last year. It was built in 1930. We would like to renovate this house and move down here permanently. This property was given a special permit by this Board in April 1996, to allow a 2-family unit. The two-family dwelling comprises 1,428s/f. The 1st floor unit is 900s/f, and the 2nd floor unit is 528 s/f. There is a total of 3 bedrooms and 2 baths. There is also a detached garage with a 2nd story above. I’ve heard that the previous owners used the space above the garage as an apartment, until they were able to get a permit for a legal 2-family.

The dwelling is badly in need of repairs on the inside. There is no second means of egress for the existing 2nd story unit of the dwelling, which is a concern of ours. The previous owner was supposed to install a second legal form of egress, which he never did. We are proposing an addition of 15’ x 16’ above the 1st floor which will be a family room for the second floor unit, and provide a second egress.

In order to maintain lot coverage, we are removing a large deck existing on the garage. In its place, there will be a small deck and new stairs put in. The detached garage is 14 x 22 with a 2nd floor. We are just looking to utilize the space above the garage for a home office/exercise room, with a bathroom. I spoke
with Scott McGann who told me that if this Board was to grant this permit, he would classify the room above the garage as a bedroom, which is why a bedroom on the 1st floor will be removed.

**Board Discussion**

Morse – Is the driveway shared?

Reppucci – Yes, with #26.

Morse – Has there been an engineer that has stated the 1st floor can hold the new addition?

Reppucci - He didn’t indicate that there was any issue.

Morse- The space above the garage will be treated as a bedroom by the Board of Health?

Reppucci – For Title 5 purposes, McGann said he would consider it a bedroom. Where I am removing an existing bedroom in the house, he said he wouldn’t have a problem.

Morse – Your intention is to use it as a home office/exercise room?

Reppucci – My wife is a lawyer and would like to be able to work here.

Morse – My concern is when I see a ¼ bath, there can be a creep over time. Would you be agreeable to reducing it to a ½ bath?

Reppucci – Sure.

Barry - What is the square footage of the lot?

Reppucci – I don’t have the exact square footage, I think it’s about 4,700 s/f

Barry- Is the property sewered?

Reppucci – No, I have a septic, it’s in the back yard.

Barry – Where is the opening for the garage so cars could pull in?

Reppucci – The garage won’t be used to house cars. Because of the driveway, it’s hard to get cars in there.

Barry – Where do the cars get parked?

Reppucci – There’s parking in the street and parking in the shared driveway.

Barry – I read through the ‘96 appeal, and it said the bathroom had to come out of the 2nd floor of the garage?

Reppucci – They did come out, there are disconnected.
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Absent: Foreman, Potamis

Barry - I thought it mentioned that there was no home occupation, and prohibited boarders.

Reppucci – We are not looking for a home occupation; it will be home office space.

Morse – What is the first floor of the garage being used for if it's not for cars?

Reppucci – Storage.

Barry – The distance is 2.5' from the lot line on the left side.

Morse – I have concerns if the foundation can structurally support the addition, and regarding the space over the garage, given the history, and the concerns of the neighbors. I would be inclined to vote no. Maybe he could come back with something else.

Van Keuren - I would be concerned about the foundation. We could condition the use of the garage, and that it can’t be used as an apartment.

Barry – I have concerns, given the past decision that allowed 2 separate dwellings. It’s a small lot, it has parking issues, and it specifically mentions no habitable space above the garage. I would vote no.

Hurrie – What if the applicant were to eliminate the space and the bathroom above the garage?

Barry – It may work for me.

Morse - I think everything needs to be removed as the initial permit stated.

Hurrie – If the garage remains as storage space, I think the Board would lean to a yes vote, and we would be looking for a certified letter from a structural engineer. We would need a letter by the next hearing.

Barry –I would suggest you look at the previous decisions as it states storage only. That would be the way the Board would like to keep it.

Public Comment

Janice Goodell, 20 Prospect Street – What will happen to the 2 apartments when the owner is not there? Parking cars is a disaster in the street. If there are additional cars, they will be in front of my driveway. Having 6 kids will be a lot more cars. The bathroom in the garage was illegal, and was told it had to be removed. This additional upstairs will eliminate any privacy that I have.

Hurrie – Where do you live?

Goodell - His house site 3’ from our property line.

Jim McHardy, 48 Prospect Street - I can echo the concerns that Janice Goodell has. Without safe parking on Prospect Street I’m wondering where we can find parking to help Reppucci.
Todd Davis, 55 Countinghouse Way – I am here on behalf of my mother-in-law. She feels that granting a permit for an office will lead to a bedroom, and then another apartment. This area is not zoned for a business, and she has concerns that the office will become a business. There was a mention from the last permit that no boarders would be allowed. The permit also said both units will be in the dwelling. She is opposed to the application and any other use. We would prefer that the new addition not be there, because it overlooks our property. The use of the room will infringe on our privacy, and it’s in conflict with the previous decision that was issued by this Board. We don’t want the detached garage to become an apartment; it would be very simple to convert this.

Kevin Walsh – 26 Prospect Street – We are the other ½ of the driveway. We support that someone wants to improve this house, but we share a lot of concerns with the other neighbors. That room above the garage can be easily converted to an apartment, and parking would be an issue again. They are small lots and small houses; it would greatly impact our use.

Resident from 55 Counting House Way – I’m against the garage use for anything other than that. It was a nightmare when the garage space was being rented out. I don’t see any reason to change what the Board has voted. The misuse of the property caused us a great deal of stress. I don’t feel comfortable having a bathroom up there at all.

Reppucci – The previous special permit was in ’96 and my children are full grown. They come to visit occasionally; they’re not going to be there all at once. I’m a professional, and my wife is a lawyer; we have no intentions of making the space above the garage a business. I’m fine with a ½ bath, we aren’t looking to flip it, and plan to live on the 1st floor of the house.

Morse made a motion to continue the hearing to March 19, 2020. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
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Zoning Board of Appeals
Selectmen’s Meeting Room – Town Hall
Minutes of February 20, 2020 at 6:30 PM
Hurrie, Dugan, Van Keuren, Barry, Morse
Zoning Administrator: Noreen Stockman
Absent: Foreman, Potamis

#091-19 Cumberland Farms, 8 Old Meeting House Road and 400 East Falmouth Highway, East Falmouth – requesting a special permit to remove buildings on both properties, and rebuild motor vehicle service station and convenience store

Hurrie stated he submitted a disclosure form, recused himself, and left the hearing.

Voting Members: Dugan (Acting Chair), Van Keuren (Acting Clerk), Barry, Morse

Van Keuren read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Engineering – 3 pages of comments
Conservation – Outside jurisdiction
Planning – Applicant filed application with the Planning Board for parking in the front yard; scheduled for 1/14/20
Health – No issues, the health department will have to review the septic design and installation
Fire – No comment
Assessors – No comment

Douglas Troyer, Attorney for applicants – Cumberland Farms is seeking a special permit. There is an existing gas station and convenience store on the property, and the plan includes purchasing 8 Old Meetinghouse Road, which currently houses an oil company. The existing lot coverage is at 16.7%, and will be reduced to 13.7%. There are previous special permits on this property, and we would be seeking some modifications to those permits. Currently, the site is comprised of 1.1 acres on East Falmouth Highway in a B2 zoning district, with residential zoning to the rear, and commercial uses to the south and west. The business to the rear was an oil company, containing 2 buildings. The property at 400 East Falmouth Highway has a convenience store and gas pumps under a canopy structure. In 1995 the Board granted a permit to allow the convenience store. Cumberland Farms has been looking at dated sites, and have been trying to bring a new prototype into the market. About 3 years ago the Cumberland’s location in Teaticket was updated. In order to make these changes, we purchased the back property, where we are currently under a purchase and sales agreement. We are looking to raze all structures on both sites, and construct a new building of 4,038sf, and continue gasoline sales. Currently there are 4 pumps, and after going through the Planning Board, we reduced the pumps down to 3, to alleviate any concerns about traffic. Upgrading of underground storage tank - 2 x 25,000 gallon tanks. I have filed for the tanks with the Fire Department and Board of Selectmen. Bollards will be installed at parking spaces, landscaping will be enhanced, along with screening to the above properties. We are going back to the Planning Board for a modification of new spaces for our free standing signs. We are in the process of a cleanup of the operation on the oil company’s site. The new building will be a colonial style building. Boards and abutters seem to be happy with this style. The size of the canopy has been reduced from the
rendering submitted, as we have reduced the pumps from 4 to 3. We have taken a lot of landscaping consideration into this plan. We have provided a traffic study and stormwater management. They would like to maintain the multi-use they have. In the most recent decision of 2001, Condition # 6, we would like to have that condition removed. The canopy lights focus down. There was a time-related condition in the 2011 permit; we would ask that the time period be 12 pm-6 am as they are looking to run a 24-hour store. Because of the size of the new store, and the amount of storage they have, we are able to cut back on the number of deliveries. There’s also a condition on retail delivery we would like to modify.

**Board Discussion –**

Dugan – In our By-law, section 240-108(1)C., we have been looking at this a lot for a loading zone so the truck can back up and pull out without blocking a roadway/traffic.

John, project civil Engineer – There’s a screened dumpster area to the north side and the concrete pad in front serves as the unloading area; there are no parking spaces in front of that. I think it is about 25’.

Dugan – How would you back in and how would you get out?

John, project civil engineer - Pull up straight, and back into the delivery area.

Dugan - One of the issues is to avoid trucks blocking the roadway, so they are able to pull in to the parking lot, and then back into this loading zone. I want to make sure this space is accommodated.

Van Keuren – Indication of oil/fuel spill on the property?

Troyer – We did a full 21E and it was fully vetted. It’s my understanding that we have done a full clean-up of the oil business site. There was definitely some cleanup needed. We own the front property and have a P&S for 8 Old Meeting House Road.

Troyer – We provided documentation of 21E to the Planning Board.

Barry – Were there underground tanks there?

Troyer – Whatever was there has now been removed, and there has been a full cleanup.

Barry – I would ask that you submit that report to us.

Dugan – Delivery Time?

Troyer – 24 hour operation and requesting deliveries between 6 pm and 6 am, which would give us an additional 6 hours. We would be willing to avoid peak times, if possible. Our traffic study would support
those times. We are also able to cut back on the deliveries, where these stores have much more storage space.

Dugan – Are there any of the engineering comments you haven’t complied with?

Troyer – no, we have addressed them all.

Dugan – Construction schedule time?

Troyer – About 4 months from start to finish.

Van Keuren – Do you have a time that you are looking to start?

Troyer – We would like to get in before the summer, if we could, and this project was approved, we would probably be fast-tracked.

Mareen Schleveck, McMahon and Associates – The deliveries are up in the back. We showed how a truck with a boat, and a motor home, can turn around on this site. We look at 3 components: we assess the existing conditions, then we project the future conditions, and then we look at the operations of the site. We collected traffic counts in May from 8-11 a.m. and 4-6 p.m. We found the peak hours to be 8:00 – 9:00 AM and 3:15 – 4:15 PM. A speed study showed 36 mph northbound, and 34 mph southbound, on average. We also look at the crash history over a 7 year period: 2014-2016 was identified as a high crash location. After the improvements were made to the intersection, crashes went down. The proposed site would have 112 trips in the morning and 92 trips in the afternoon. A lot of that traffic is already on that road, and not specifically to this site: known as “pass-by” traffic. The site is a low generator in terms of new traffic. The site has 2 driveways on Rt 28; you can circulate the traffic internally through the pumps, and there is adequate site distance.

Barry – You aren’t showing the fuel truck circulation going towards Town.

Schleveck – We did a series of ins and outs in all directions. We provided this because it was the most complicated plan.

Public Comment – none

Dugan made a motion to continue to March 19th, 2020. Van Keuren seconded the motion. Motion carried 5-0.

All in favor.
Zoning Board of Appeals
Selectmen’s Meeting Room – Town Hall
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Open Meeting:

1) Vote Minutes of January 23, 2020 – Dugan made a motion to approve minutes of 1/23/20. Van Keuren seconded the motion. Motion carried 5-0. All in favor.

2) 090-17 Helmis Circle LLC, Helmis Circle, Falmouth (7 lots of Alma and Worcester Court) – request of insubstantial change for minor modifications to previously approved plans – * item was taken out of order*

3) Board Discussion –
   Dugan – We need to finalize our issues with peer review on the 40 B projects

4) Board Updates –
   Morse – Just a reminder that I will be absent for the 3/5 meeting

5) Future Agenda Items – Next Meeting will be March 5, 2020 at 6:30PM

Meeting adjourned 9:45 p.m.

Respectfully submitted,

Ashley DeMello, Office Assistant

Zoning Board of Appeals