

ZBA Minutes – March 14, 2019
ZONING BOARD OF APPEALS
TOWN OF RIVERHEAD
SUFFOLK COUNTY
RIVERHEAD, NEW YORK
(631) 727-3200

These minutes are a summary of the March 14, 2019 Town of Riverhead Zoning Board of Appeals meeting held at the Town of Riverhead Town Hall, Riverhead, NY.

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| PRESENT: | ABSENT: |
| Frank Seabrook | Dawn Thomas, Counsel |
| Leroy Barnes | |
| Otto Wittmeier | |
| Fred McLaughlin | |

EXTENSION

1) Chairman McLaughlin announced the extension of Appeal No. 2017-010.

Appeal No. 2017-010 – Timothy Murphy – West Main Street, Riverhead – SCTM No. 600-119-2-8 – RFC Zoning – for variances to and/or relief from the provisions of Chapter 301 Section 165 where the proposed building lot coverage is 9.5% of the lot area where the maximum is 8%, the proposed floor area ratio is .18 of the lot area where the maximum permitted is .15, the proposed front yard setback is 59.5 feet where the minimum required is 100 feet, the proposed side yard setbacks are 10 feet and 13.3 feet where the minimum required is 30 feet, the proposed combined side yard is 23.3 feet where the minimum required is 60 feet, and the proposed rear yard setback is 95 feet where the minimum required is 100 feet. (By letter dated March 1, 2019 and received March 7, 2019, request for second extension, *thus expiring March 9, 2020.*)

A motion was made by Mr. Barnes and seconded by Ms. Worthington the appeal be extended to March 9, 2020. The motion carried by a roll call vote of all members present:

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| Mr. Barnes | AYE |
| Ms. Worthington | AYE |
| Mr. Seabrook | AYE |
| Mr. Wittmeier | AYE |
| Mr. McLaughlin | AYE |

ADJOURNED

1) Chairman McLaughlin announced the adjournment of Appeal No. 2019-001.

Appeal No. 2019-001 – Robert and Kathleen Glass – 120 Louise Court, Riverhead – SCTM No. 600-17-1-8.3 – RA40 Zoning - for variances and/or relief from Chapter 301 Section 9 A(1)(a) where the proposed pool, trellis & cabana are located in front yard which is not permitted. ADJOURNING to March 28, 2019

A motion was made by Mr. Barnes and seconded by Ms. Worthington that the appeal be adjourned to March 28, 2019. The motion carried by a roll call vote of all members present:

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| Mr. Barnes | AYE |
| Ms. Worthington | AYE |
| Mr. Seabrook | AYE |
| Mr. Wittmeier | AYE |
| Mr. McLaughlin | AYE |

PUBLIC HEARINGS

1) Appeal No. 2018-054 – Joseph Calabrese – 28 Beach Road, Laurel – SCTM No. 600-71-2-16 – RB40 Zoning - for variances and/or relief from Chapter 301 Section 15 A(1)(c) where attached outdoor shower is 5.67 feet from the property line and minimum required is 10 feet; Section 222 E where proposed rear yard setback is 37.83 feet and minimum required is 40 feet; and where proposed additions increase gross floor area within the required rear yard, representing an increase in degree of nonconformity of a preexisting dwelling with is not permitted.

Mike A. Kimack, P.O. Box 1047, Southold was sworn in by Mr. McLaughlin. Mr. Kimack stated that the applicant unfortunately could not be here tonight. Let me go back to the last meeting we had; at that particular time we were working under the September 27, 2018 letter from the building department that listed (6) variances at the time. To simplify it, not to drag it out any more I had an opportunity to meet with Brad Hammond, the Chief Building Inspector, to see if we can't simplify the proposal and we were able to do that by removing the 5 x 7 shed by adjusting the pool and essentially, of the (6) that were there, the first four have been taken out. Which was 301- 15A, 301-15A, the shed. The proposed pool setback was adjusted which was 301-22E and then 301-22 E the proposed deck setback was taken out. What remains is the one that was just written off. There are requests for (3) variances. One is a proposed rear yard setback of 37.83 to the proposed addition to the house which is in the same footprint as the existing deck now sits. The back of the house starting from one side to the other does extend back into the forty foot setback, and this is the deepest corner. The other is the 301-22E which is the degree of non-conformity on the preexisting. That had been in the original request, the last two. And the only addition to this was that my client would like to be able to maintain the shower, so that was added. That makes the (3) variances as we presently said. So, we went from (3) down to (2) and then added (1)...I'm sorry...(6) back to (2) we added (1) we're back to (3), so it has simplified it a lot. A lot happened by taking out that 5 x 7 shed in the back. Also, what that accomplished was one of the questions was, were we over the coverage? And that shed just put it over the coverage so my client accepted the fact that it would be more prudent to just remove the shed to get under the 30% coverage factor, which he was willing to do. That's it. Are there any questions of me?

Mr. Barnes asked, have you spoken to the neighbor, the architect that's a little concerned about your variance request? Have you communicated with each other? Mr. Kimack answered, we have not. What I had done, just to let you know, is the last time Mr. Buck submitted a letter, three page letter, I met with the architect, and we sat down. We went through that, and I addressed it in my February 8th letter to the board point by point and hopefully it was able to give you reasonable and accurate responses to it.

Mr. Barnes stated, I know we received an email today, but quite frankly I started to read it and then I was distracted at home. So, he just wanted to go over the things he was concerned about, he felt it was an illegal use of the property, the short term transient rentals? Mr. Kimack stated, that has been brought up and discussed at the last two previous meetings, and I believe my client has indicated that he would be willing to, he understands the situation; he understands what he did. He understands that he rented less than the required period of time. He was not aware, and he'd be willing to accept whatever restrictions and conditions you would put upon the variance. Mr. Barnes responded, well, I mean when you grant the variance, you assume they will follow the code, so I don't think we have to say anything in the actual granting of the variance. Mr. Kimack stated, he's aware, I mean you've made your position quite clear. Mr. Barnes added, but also, for the public's information, I did make a personal inspection with you, and I did not see any signs of an apartment upstairs over the garage. Mr. Kimack answered, nor any kitchen. Mr. Barnes replied, right. So, that being said, I don't have any problems at this point. Mr. McLaughlin asked, anyone else on the board? Anyone in the audience have anything to say? We have a reading. Mr. Barnes interjected, we have Mr. Buck. Mr. McLaughlin corrected, excuse me, Mr. Buck; I apologize. And have you been sworn in before, Mr. Buck, last time? Mr. Buck answered, previous times. Mr. McLaughlin stated, just state your name and address.

Gerald Buck, 12 Beach Rd, stated, I hope that you all received the letter that I wrote today, and I'm happy to say that it looks like most of the issues were addressed in terms of what the Zoning Board looks for and bases their

variances on. There a million questions, of course, left that Brad will have to deal with the architect, but I fully realize after talking with Brad and with Carissa that this is not the purview of the Zoning Board, so that's understood. I think the simplest thing to do would be to just read this letter to have it part of the record. (Mr. Buck then read his March 14th letter for the record.)

Mr. McLaughlin stated, thank you, Mr. Buck. Mr. Buck stated, I think the process has yielded certainly drawings and a document that serves everyone a bit better. Thank you. Mr. McLaughlin stated, good to hear, and thank you very much. Is there anyone else to be heard? (There were no further comments.) Let's have a reading.

A motion was made by Mr. Barnes and seconded by Ms. Worthington that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

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| Mr. Seabrook | AYE |
| Mr. Wittmeier | AYE |
| Ms. Worthington | AYE |
| Mr. Barnes | AYE |
| Mr. McLaughlin | AYE |

Mr. McLaughlin stated, the appeal has been granted and in approximately 2 weeks all the paperwork should be done and you can continue on with the project. We would like to thank everyone for being here and working it out. Nice to see. Thanks very much, everyone.

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2018-054

APPLICANT/PROPERTY OWNER: Joseph Calabrese, 284 President St, Brooklyn, NY 11231

RELIEF SOUGHT: for variances to and/or relief from Chapter 301 Section 15 A(1)(c) where attached outdoor shower is 5.67 feet from the property line and minimum required is 10 feet; Section 222 E where proposed rear yard setback is 37.83 feet and minimum required is 40 feet; and where proposed additions increase gross floor area within the required rear yard, representing an increase in degree of nonconformity of a preexisting dwelling which is not permitted.

LOCATION: 28 Beach Road, Laurel

SCTM#: 600-71-2-16

ZONING DISTRICT: Residence B-40 (RB40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 12,573 sq. ft. or 0.29 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet.

DATE OF HEARING: 11/08/18, 1/10/19, 3/14/19

INSPECTION DATES: 11/3/18, 11/5/18, 11/6/18

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. A denial letter was sent from the Building Department on September 27, 2018 and an application was made to the Zoning Board of Appeals on October 22, 2018.
2. Updated site plan received on January 9, 2019; denial from Building Department updated on January 9, 2019 to reflect removal of pool variance.
3. Revised plans received on February 7, 2019; after review, it was determined maximum lot coverage must be corrected. Final revision of plans received on February 21, 2019 correcting lot coverage and removing one shed; updated denial issued, correcting lot coverage and demonstrating removal of one existing shed.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. One-story dwelling with front deck
 - ii. Two frame sheds
 - iii. Detached garage (cabana building)
 - iv. Outdoor shower
5. Property received a Letter of PreExisting Use on October 31, 1995, vesting zoning as Residence C.

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. At a public hearing held on November 8, 2018, the following testimony was offered:
 - a. Gerald Buck, owner of 12 Beach Road, was present to question the application. He believes the records show a Certificate of Occupancy around 2007 for an altered garage with storage above. No mention of the deck or a way to get a car in, but it was given a C/O with the caveat that there would be no insulation and no sheetrock and minimum electric.
 - b. Then, it was sold to the Calabrese family, and as he submitted in his letters, there was an immediate problem with transient rental. The garage has a kitchen and a bathroom.
 - c. Mr. Wittmeier asked if the building had ever been rented to which Mr. Calabrese said it had not, not once. Mr. Barnes asked if it was on BRB to which Mr. Calabrese said it was not. Mr. McLaughlin asked about the property as a whole; had it ever been rented? Mr. Calabrese answered that it had. Mr. Barnes asked about the main house; he wanted clarification that the front house had been rented but not the back building. Mr. Calabrese confirmed that was correct. The back structure has never been rented. Mr. Barnes asked if he had the house listed on BRB to which Mr. Calabrese replied yes.

- d. Mr. Barnes asked if Mr. Calabrese is going to live there or if this is going to be a rental. Mr. Calabrese stated, this is their summer home. Mr. Barnes asked when he rents it to which Mr. Calabrese responded they rent it when they can't go.
 - e. Mr. Barnes asked if he had rental permits to which Mr. Calabrese answered that he pays taxes on the rentals and they submit all of their income to the county; his wife takes care of it. Ms. Thomas asked if that was hotel tax to which Mr. Calabrese was not certain. Ms. Thomas stated that the minimum rental period in the Town of Riverhead is 30 days; you cannot rent for any less than that. Mr. Barnes and Mr. McLaughlin reiterated that you cannot rent it out for a week or a weekend.
2. The board determined they would conduct a site visit to inspect the inside of the garage/cabana. Mr. Barnes inspected the site, with the applicant and owner, on December 12, 2018 and verified there was no existing kitchen in the structure.
 3. At a public hearing held on January 10, 2019, the following testimony was offered:
 - a. Ms. Thomas stated, Mr. Calabrese, we received...the board received a letter dated January 9, 2019 from Gerald Buck regarding the application, and just indicating, amongst a lot of other things, that the house has been rented on BRBO on kind of a regular basis, for vacation rentals. I was wondering if you could elaborate on that, or if you would like to respond to that because I think, as we discussed the last time, you were made aware that the Town of Riverhead rules don't permit rentals less than thirty days and require a permit, and I think you indicated that you hadn't been aware of that. Mr. Calabrese stated, that is correct.
 - b. Ms. Thomas later asked, so, would you object to the board conditioning your approval on the preclusion of that type of rental, you know without a permit? It would basically say that you agree to comply with the Town Code which is thirty day rentals and requires a permit. Mr. Calabrese said yes, I do agree.
 4. At a public hearing held on March 14, 2019, the following testimony was offered:
 - a. Gerald Buck addressed the board and read a letter he submitted 3/14/19 via email. His correspondence stated that he had no objection to the variance with the provision that Mr. Calabrese abides by the rental code.
 5. The variance sought would not produce an impact on adjacent properties or the neighborhood as most adjacent properties are similar in size and design; the proposed addition and deck will not negatively impact the neighborhood.
 6. The requested variance is not substantial because the proposed addition has a modest intrusion into the permitted setbacks. Existing shed and shower are in place and have had no negative impacts.
 7. The benefit sought by the applicant cannot be achieved by some alternative means because the rear yard portion of the property represents the only feasible location for the deck as accessed from the dwelling. The addition replaces a deck and is to renovate and expand the kitchen and living areas.
 8. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the proposed addition is to be constructed to NYS code with little impact outside of required setbacks.
 9. The alleged difficulty that the property owner is experiencing was self-created as the proposed addition increases the nonconformity; however, that fact does not prohibit this board from granting the relief sought.

The motion was made by Mr. Barnes and seconded by Ms. Worthington, that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: AYE

**This determination X was ___ was not
therefore duly adopted**

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

2) Appeal No. 2019-006 – Leszek Fabiszewski – 821 Northville Turnpike, Riverhead – SCTM #600-109-1-6.1 – RA40 Zoning - for variances and/or relief from Chapter 301 Section 222 E where roofed-over porch addition increases gross floor area within a required front yard setback of a preexisting non-conforming dwelling, representing an increase in degree of nonconformity which is not permitted.
Mr. McLaughlin, starting pitcher in both games tonight?

Michael Kimack stated, you know you've got me on two occasions tonight. Mike A. Kimack, P.O. Box 1047, Southold was sworn in by Mr. McLaughlin. Mr. Kimack stated, I'm representing Mr. Fabiszewski who is also present in the audience tonight. Mr. McLaughlin responded, well you have the floor. Mr. Kimack continued, he is requesting a variance for a deck that is within the front yard setback. If you've had a chance to visit the site, primarily, it is in a fairly isolated place, not very visible from the road and where the door to the deck basically encompasses, it puts a roof over it for convenience and comfort and elevates it.

One thing that is not shown on the drawing is the fact that there was an original deck that was on the road side eight foot by the length of the building that had already been approved part of the original building, and my client took that down so, in effect if you look at the drawing, it's basically on the long side of the house that faces the main road. There was an eight foot deck there that was removed. So, in a sense the new deck...it removed, it would have put it about 17 feet away at that particular point, so the new deck was moved to the side where the main door was, to provide, obviously, access to the ingress/egress but also one place to be able to have a place where you can congregate and have some outdoor recreation with a covered porch over it. And that's pretty much it. It has received CAC approval with the proviso that there be a set of drywells put in for that which is amenable. Mr. Barnes asked, and there's a structure to be demolished there? Mr. Kimack replied, the one that's in front of? Mr. Wittmeier clarified, the old garage, the barn. Mr. Barnes added, there's a barn there that's kind of, I saw on the plans, it said to be demolished. I know it has nothing to do with us. Mr. Kimack answered, what happened was that my client built the new one behind it and then was stopped by the Building Department; he has done nothing else, but it would be taken down, that one in front of it so, and you're right, it's not part of the plan. Mr. Barnes asked, and you applied to legalize that structure? Mr. Kimack replied, when I applied to the CAC, I applied for both of those because I applied for both the porch and also for the building, so the CAC reflected both of these. There was no sense in doing two separate applications, and they looked at both and recommended approval with the proviso that there be storm water management for both structures. Mr. Barnes stated, it looks actually very nice, did a good job. Mr. McLaughlin added, yes, definitely. Mr. Wittmeier noted, very good, big improvement. Mr. Barnes concluded, I like it. Mr. Kimack replied to the board, I mean is there any questions of me and my client on the matter? Mr. McLaughlin answered, I think we're all pretty satisfied; anybody have anything? Mr. McLaughlin asked, is there anyone in the audience to be heard? No objections? (No comments.) Mr. Kimack asked, do any of the students want to stand up and have a shot at it? (referring to Jim De Lucca's architectural students attending the meeting). Mr. McLaughlin laughed, not yet, they're working on it. Mr. Kimack added, they'll have their moment of fame, their 15 minutes of fame.

Mr. Wittmeier stated, I actually go back to this property back when I was a kid which was a long time ago, back in '55 and '56. Mr. Kimack stated, that's when I was a kid, so don't say it. One of our relatives had some horses, and he had two horses; there appeared to have been a pasture, although a lot of this stuff is wetlands, close to Northville Turnpike on the north side, and I remember we were trying to, I don't know, get these horses and we drove them into the wetlands; they almost went up to their neck in muck, and it took us a long time to get those horses out of there. I thought we were going to lose them, but I was about 15 or 16 years old but I'll never forget that. Mr. Kimack added, there are certain things in life that never leave you as a memory and that happened to be one of them, correct? Mr. Wittmeier noted, but we saved them. Mr. McLaughlin joked, they eventually wound up as one of the meals at the Modern Snack Bar, they snuck them in; it was a special. Okay, let's have a reading.

A motion was made by Ms. Worthington and seconded by Mr. Seabrook that the appeal be granted as sought. The motion carried by a roll call vote of all members present:

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| Mr. Barnes | AYE |
| Ms. Worthington | AYE |
| Mr. Wittmeier | AYE |
| Mr. Seabrook | AYE |
| Mr. McLaughlin | AYE |

Mr. McLaughlin stated that the appeal has been granted and again, you know the process. Mr. Kimack stated, I don't have a third try so I'm done. Mr. McLaughlin replied, thank you very much; everything was concise, everything was great. Mr. Seabrook stated, students, you all owe Mr. DeLuca a slice of pizza.

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2019-006

APPLICANT/PROPERTY OWNER: Leszek Fabiszewski, 61 Sylvan Ave, Flanders, NY 11901

RELIEF SOUGHT: for variances to and/or relief from Chapter 301 Section 222 E where roofed-over porch addition increases gross floor area within a required front yard setback of a preexisting non-conforming dwelling, representing an increase in degree of nonconformity which is not permitted.

LOCATION: 821 Northville Turnpike, Riverhead

SCTM#: 600-109-1-6.1

ZONING DISTRICT: Residence A-40 (RA40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 184,013 sf or 4.22 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 feet; maximum impervious surface is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet.

DATE OF HEARING: March 14, 2019

INSPECTION DATES: March 9, 10, 11, & 13, 2019

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and determines that this review falls under Type II 617.5 c(12) and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered. Based upon the foregoing, the Zoning Board of Appeals takes the following action:

HISTORY/PROPERTY FACTS

1. A denial letter was sent from the Building Department on December 19, 2019 and an application was made to the Zoning Board of Appeals on January 29, 2019.
2. Property received CAC approval (February 2019) for removal of existing detached garage and construction of new garage and deck.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. One story frame dwelling
 - ii. Detached garage (to be removed)
 - iii. Wood deck

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the property is isolated, a significant distance from the closest neighborhood dwellings, and it is screened from the Kmart Development to the west.
2. The requested variance is not substantial because the porch is 35 feet from the front property line while the setback for existing dwelling is 24 feet.
3. The benefit sought by the applicant cannot be achieved by some alternative means because the location represents the only feasible area, given the position of the dwelling on the property and ingress/egress location.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as it is situated as an attachment to the dwelling in a location that will not impact or adversely affect the environment, given its distance from wetland areas.
5. The alleged difficulty that the property owner is experiencing was self-created as this application considered legalization of existing roofed-over porch; however, that fact does not prohibit this board from granting the relief sought.

The motion was made by Ms. Worthington and seconded by Mr. Seabrook, that the aforementioned determination be approved:

THE VOTE

MR. SEABROOK: AYE MR. BARNES: AYE
MRS. WORTHINGTON: AYE MR. WITTMEIER: AYE

MR. MCLAUGHLIN: AYE
This determination AYE was was not
therefore duly adopted

Based upon the foregoing, the following area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

Minutes of February 28, 2019 – A motion was made by Mr. Wittmeier and seconded by Mr. Seabrook that the minutes be adopted. The motion was approved by a roll call vote of all members present:

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| Mr. Barnes | AYE |
| Mr. Seabrook | AYE |
| Ms. Worthington | AYE |
| Mr. Wittmeier | AYE |
| Mr. McLaughlin | AYE |

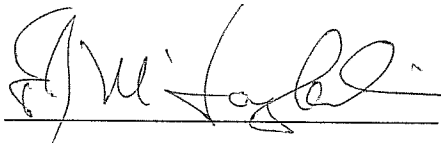
NEXT MEETING DATE – March 28, 2019 at 6:30 PM

A motion to close the meeting was made by Mr. Barnes and seconded by Ms. Worthington. The meeting was closed by a roll call vote of all members present:

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| Mr. Barnes | AYE |
| Mr. Seabrook | AYE |
| Ms. Worthington | AYE |
| Mr. Wittmeier | AYE |
| Mr. McLaughlin | AYE |

Approved and Dated: March 28, 2019

Very truly yours,



Fred McLaughlin, Chairman
ZONING BOARD OF APPEALS