



## OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

### Zoning Board of Appeals Minutes of February 18, 2021 Meeting Virtual Meeting via Zoom

Members present: Andrea Rogers, Llewellyn Rogers (Acting Chair), Doug Pease, Peter Yoars, Jonathan Holter, Grace Guck, and ZBA Administrator Robert Culbert

Others in Attendance: Chris Alley, Frank Angella, Barbara Baskin, Ron and MaryEllen Boretti, Peter Breese, Lisa Christie, Sharon Cooke, Lucy Crosbie, Sarah Crosbie, Holly Crosbie-Foote, Harriet Dewey, Joan Hughes, Amy and Chris Kotsopoulos, Bill LePage, Jean Loud, Alex Loud-English, Bruce MacNelly, Maura McGroarty, Susan Montero, Nate Morgan, Kathy O'Connor, Dan Parker, Lis Peterman, Darran Reubens, Jan Smith, Anna Schonberg, Sarah Smith, Margaret White, Caroline Sawyer, Carlos, Corey, DiLo, Laurie A's iPad, Robert mac, and Frank A.

Chairman Rogers opened the meeting at 6:00 pm. ***(which = 10:30 in recording)***

**Minutes** of the January 21, 2021 Zoom meeting were approved as presented on a motion by Lou Rogers, seconded by Doug Pease, and voted unanimously by Andrea Rogers, Lou Rogers, Peter Yoars, Grace Guck, Doug Pease, and Jonathan Holter.

**Next Meeting Date:** Thursday, March 18, 2021 at 6:00 pm

**New Business:** Administrator Robert Culbert has not had a chance to work on updating the forms for applying to the ZBA.

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#### **RE: Kriegstein Project**

Henry J. Kriegstein, Joan B. Kriegstein, Kriegstein Realty Trust  
20 Hubbard Lane, **Map 22 Parcel 11.1**

On Thursday, February 18, 2021 at 6:05PM, Chairman Andrea Rogers opened a duly posted and continued public hearing on the application of Map 22 Parcel 11.1 seeking:

***A Variance and Special Permit with Zoning Bylaws 4.1.3, 9.1.A or any action related thereto, to allow the construction of a nonconforming addition to a single family dwelling located on a lot in Residential Zone 3 and Coastal District.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present. Administrator Robert Culbert read an emailed note from Martin "Skip" Tomassian, representing the applicant, requesting that the hearing be continued for another month, until the ZBA holds an in-person hearing.



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Lou Rogers moved and Peter Yoars seconded a motion to continue the hearing to February 18, 2021, time to be determined. All (Andrea Rogers, Lou Rogers, Jonathan Holter, Doug Pease, and Peter Yoars) voted in favor, so the motion passed unanimously.

Chair Andrea Rogers asked Lou Rogers to be the Acting Chair for this meeting.

### **RE: Ashley Appeal**

Glenda Manley Ashley

5 Canonicus Ave., **Map 10 Parcel 153**

On Thursday, February 18, 2021 at 6:07 pm, Acting Chair Lou Rogers opened a duly posted and continued public hearing on the application of Map 10 Parcel 153 seeking:

***A Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the demolition and replacement of existing two-story single family dwelling on an undersized lot in Residential Zone 2.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

Andrea Rogers read a letter from Maura McGroarty, stating that she was concerned about the size of the structure relative to the size of the lot. She also points out that the footprint of the house has increased, so the house is even closer to the neighbors to the east. Other than the letter, Ms. McGroarty asks whether the architect would be able to presnet pictures showing what this proposed house will look like compared to the neighboring houses.

Bruce MacNelly reports that this project has finally been reviewed and passed by both the Cottage City Historic District and the Copeland District. The changes they made concerned trim details and exterior siding, and things like that.

In response to neighbors concerns about parking on the street, he has moved the parking to behind the house, accessible from the 15 foot way. The septic leaching field has been redesigned so it will be safe for cars to park there. The yard is only 17.5 feet deep there, so cars will park on an angle.

We are increasing the footprint of the house by 21 inches which will maintain the same internal area and allow for the insulation in the walls required by the current building codes (which is not in the present house). This means that the setback from the eastern boundary will be reduced by 21 inches. The code also means that the height of the house



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will increase by 32 inches, which occurs at the ridge of the house, which is half-way back rather than in the front. The new maximum height will be 24 feet 8 inches.

In response to a question from Lou Rogers, the front steps will not encroach onto the road layout as it currently does.

In response to a question from Doug Pease, Bruce MacNelly stated that the other Boards are not requiring that any of the existing house be saved, but rather that the features be replicated in the new house.

The Oak Bluffs Historic District historic district that has jurisdiction has deferred to the Cottage City and Copeland Districts, so they will allow a complete demolition since the other two have approved the project.

Lou Rogers comments that you are really overburdening this property. The proposed footprint is larger than the current footprint, which decreases the setback on the east side of the house, making it difficult to get through with a lawn mower should the neighbor decide to put up a fence. Also, the backyard has been eliminated as it has become parking. Removing the existing carport as proposed does not change the house's setback from the eastern property boundary.

Doug Pease is not thrilled about adding the two feet to the eastern side of the house, and does not have a concern about the effects of increasing the thickness of the walls to meet current code. Bruce MacNelly added that no abutters objected to the increased size, but Lou Rogers disputed that.

In the public comment period, Maura McGroarty commented that people with resources can always push the envelope in a way that others cannot, and thereby get benefits like reduced setbacks.

Lou Rogers closed the public comment period.

Jonathan Holter sees this project as an improvement because of the reduced nonconformity.

Andrea Rogers is disappointed that the house is getting larger; reducing the setbacks makes it difficult for fire engines and other safety equipment to move around.

Peter Yoars believes this project is an improvement despite the increase in size.

Lou Rogers finds that the property is

- is in Residential Zone 2
- non-conforming because the lot size is 3,920 sq. ft. while the R-2 requirement is 20,000 sq. ft.



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- non-conforming because the road frontage is 46.22 ft. while the R-2 requirement is 115 ft.
- non-conforming because the existing setbacks are 0/4.8 & 8.2/17.6 ft., and the proposed setbacks are 0.9/4.8 and 6.6/17.6 ft., while the R-2 requirements are 25/20/20 ft. (front/side/rear).
- conforming because the roof height is 22ft., and will increase to 24.67ft., while the R-2 maximum is 32 ft.
- The existing front steps encroach on the road layout by 1.5ft., and the existing carport encroaches on the neighboring property by 0.7ft.
- The Conservation commission has approved this project with conditions,
- The Board of Health has approved the plans for the new septic system, and
- the Cottage City Historic District, Copeland District, and the Oak Bluffs Historic Commission have all approved this project.

Doug Pease moves that we approve this project as submitted with the condition that the applicant provides us with the written decisions of the Town Boards that have reviewed this project. The ZBA finds that the alterations to the house and property are not substantially more detrimental to the neighborhood than the existing non-conforming use, the neighboring houses have similar setbacks, the encroachments onto adjacent properties will be removed, and that abutters approved this project. Andrea Rogers seconded the motion.

Four members (Andrea Rogers, Doug Pease, Peter Yoars, and Jonathan Holter) voted in favor of the motion and one (Lou Rogers) voted no. The motion carries (4-1).

### **RE: SAM, LLC Appeal**

Carolyn Sawyer

22 Eastville Ave., **Map 7 Parcel 124**

On Thursday, February 18, 2021 at 7:00PM, Acting Chair Lou Rogers opened a duly posted and continued public hearing on the application of Carolyn Sawyer, Map 7 Parcel 124 seeking:

***a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the conversion of a garage into a screened porch attached to an existing one-story single family dwelling in Residential Zone 1.***

A quorum consisting of Andrea Rogers, Acting Chair Lou Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.



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Dan Parker, representing the applicant, briefly described the history of this project. The Building Inspector told him that he needs to have the ZBA approval before he will act on this proposal.

Lou Rogers asked if Dan Parker had the architectural drawings of the guest apartment. The new drawings show the interior space is approximately 590 sq. ft., but the size of the second floor loft is not specified. These drawings need to include the size of the second floor space. Dan Parker says he can get that information added to the plans and get it to us within the week.

Acting Chair Lou Rogers opened the meeting to public comments. Chris Alley calculated the dimensions from the plans and says that both floors add up to exactly 750sq. ft. Owner Caroline Sawyer voiced her appreciation for the ZBA's willingness to avoid delaying the project by voting on this plan before the final drawings have been submitted. There were no other public comments.

Jonathan Holter wanted to confirm that all other requirements – setbacks and the 5 year residency – have been met. They have.

Andrea Rogers finds that:

- the existing 15,038 square foot lot is Residential Zone 1 is conforming as it is larger than the required 10,000 sq. ft.,
- the existing residence is only non-conforming with its rear setback of 14 feet (20ft. required), and
- the proposed guesthouse meets all the setback requirements.

Doug Pease moved to approve the proposal as presented with the additional condition that the guest house living space is 750sq. ft. or less, and that updated plans confirming this must be submitted. This proposal is not more detrimental to the neighborhood because it falls within our ZBA guidelines and does not encroach on any of the setback requirements. Andrea Rogers seconded the motion.

All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).

### **RE: Kotsopoulos Appeal**

Chris and Amy Kotsopoulos

15 Chestnut Avenue, **Map 8 Parcel 164.1**

On Thursday, February 18, 2021 at 7:17 pm, Acting Chair Lou Rogers opened a duly posted public hearing on the application of Map 8 Parcel 164.1 seeking:



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*a Variance from the Oak Bluffs Zoning Bylaws, or any action related thereto,  
to allow the addition of a covered porch to a pre-existing conforming dwelling,  
on an undersized lot in Residential Zone 1.*

A quorum consisting of Andrea Rogers, Acting Chairman Lou Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

Chris Kotsopoulos says that the purpose of this application is to add an eight foot wide porch onto the front of the house.

Lou Rogers points out that the existing house meets all the Zoning setbacks, but adding the porch would reduce the front setback to 14 feet, less than the required 20 feet. To change from conforming to non-conforming requires a variance, which is very difficult to get. There are only three reasons to give out a variance: topography, soil conditions, and/or hardship. And none of those conditions are present here.

Doug Pease adds that if there already were an exterior wall there, then it would be possible to get permission to convert it into a porch, but creating a non-conformity is not possible.

Chris Kotsopoulos asks if it would be possible to locate their porch to the right, so long as it does not encroach on any of the 20 foot setbacks.

The ZBA agrees that that would be possible but a new set of architectural plans showing the relocated porch would be required. If everything is outside of the 20 foot setbacks, you might not even need to come back before the ZBA next month. Lou Rogers also points out that a patio is not considered a structure (unless it has a roof over it), and so it could be located within the setbacks.

For public comments, Andrea Rogers read two letters. One from neighbors Gary and Daphne Delisle, who have no issues with the project and believe it would add to the aesthetic appeal of the house. Abutters Bill and Peggy McGrath also support the proposed porch.

Peter Yoars made a motion to continue the hearing to the March 18 meeting, which was seconded by Doug Pease.

All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).



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### **RE: O'Connor Appeal**

Kathleen and Michael O'Connor

30 Sea Glen Road, **Map 38 Parcel 2**

On Thursday, February 18, 2021 at 7:30 pm, Acting Chair Lou Rogers opened a duly posted public hearing on the application of Map 38 Parcel 2 seeking:

*a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the expansion of the existing living room, kitchen, and bedroom on the first floor of a pre-existing and non-conforming dwelling, on an undersized lot in Residential Zone 3.*

A quorum consisting of Andrea Rogers, Acting Chairman Lou Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

Darran Reubens is representing the O'Connors. Their small house is approximately 1,100 square feet, with only 600 square feet on the first floor. To make the house more liveable for their family, they want to expand the living room, kitchen and a bedroom, expanding the house in all directions.

The property is fairly flat between the road and the house, but away from the road the elevation decreases by about 10 or 11 feet, so you can't do any sort of construction in that direction. Most of the addition is on the road side of the house.

Andrea Rogers asks if there are better plans that show the setbacks from the property boundaries. The map we have shows setbacks for the proposed house but not for the existing house. Lou Rogers points out that both are needed so the ZBA can see how much more non-confirming the proposed house will be. Doug Pease adds that without knowing the rear setback, it looks like that may be the only way the addition can go, even though it might be impractical.

Peter Breese points out that many other houses along the road are non-conforming, and are even closer to the road than this one. He also points out that there is room for additional screening so the proposed house will be even less visible. And the distance to the road is much greater than the distance to the front edge of the lot, giving the house a much larger apparent setback than it actually has. He feels that the proposed house is very much in character with the neighborhood.

For public comments, Chris Alley points out that this lot, and most of Sea Glen, is really an R1 lot that happens to be zoned R3. There is not a conforming lot in the entire subdivision.



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Ronald Boretti, 32 Sea Glen Road, bought his property in 1986, and since then buildings have been encroaching on all sides. He is not necessarily opposed to expanding the kitchen, but wants to make sure that the building does not keep expanding incrementally. He recalls that the sun porch and the rear deck were recently expanded. He is also concerned that the current landscaping is kind of bleak. Darren Reubens responds that the landscaping will mean that the new house will not be seen from the road, and that the addition is less conspicuous because it is only for the first floor. And the driveway will be peastone with a cobblestone edge, so it will be more defined than the dirt driveway is now.

Doug Pease points out that the Boretti's concerns might also be reduced once the revised plans have been submitted; the plans as submitted may not get approved because it greatly increases the non-conformity of the lot.

Peter Breese asks for a continuance so they can come back next month with revised plans reflecting the concerns outlined in this meeting.

Doug Pease made a motion to continue the hearing to the March 18 meeting. The motion was seconded by Jonathan Holter.

All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).

**2:14:57**

### **RE: Prospect Girls, LLC Appeal**

The Lodge Family Trust

14 Temihegan Avenue, **Map 4 Parcel 162**

On Thursday, February 18, 2021 at 8:04 pm, Acting Chair Lou Rogers opened a duly posted public hearing on the application of Map 4 Parcel 162 seeking:

*a Special Permit within Zoning By-Laws 4.4.4 and 3.4.2, and 9.1.A or any action related thereto, to allow the alteration and addition to a pre-existing and non-conforming dwelling, the construction of a detached garage with a detached bedroom, and the construction of a cabana and swimming pool on a lot located in the inland zone of the Coastal District in Residential Zone 1, with the owner having occupied the residence for less than five years.*



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A quorum consisting of Andrea Rogers, Acting Chairman Lou Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

Chris Alley and Nate Morgan are presenting this application, and Margaret White is one of the applicants.

Chris Alley points out that they are seeking a Special Permit to alter a pre-existing non-conforming structure (Zoning Section 3.5.5) and to add a detached bedroom (Zoning Section 4.4.4) on a property that the Applicant has not yet purchased (Zoning Section 3.4.2(2)).

Maggie White says this proposal is for an historic renovation that will remain a residential single family house, as it has been since 1906 when first built.

Chris Alley points out that the lot is conforming in size and road frontage, and that the proposed construction meets all the setback requirements. He depicts the Coastal District boundary as the 10 foot contour, showing that all proposed alterations are outside of the Coastal District. The construction is also outside of the Floodplain Overlay District, which is determined by the reach of the 100 year flood.

Lou Rogers and Andrea Rogers disagree with the boundaries of the Coastal District as presented; the Town's Zoning map shows that much of the proposed construction will be within the Inland Zone of the Coastal District. Chris Alley responds that District boundaries are defined in the text of the bylaws, and not the map. They have filed with the Conservation Commission, which has not yet acted on the application, but that board's jurisdiction relates to wetlands and not the Coastal District. Lou Rogers does not want to make a decision until this issue has been resolved.

Chris Alley breaks this application down into five elements.

The first is the septic system upgrade. There currently are two cesspools that are probably sitting in the groundwater, so the property is going to need a new septic system with a leaching field up close to Temihegan Avenue. The septic system is designed for the eight bedrooms that the Board of Health determined were currently in the house.

Another element of this application is for the pool and the cabana, which is before the Conservation Commission. It meets all the setbacks and so a Special Permit is not required.

The first of three architectural elements is the west side of the house, on the left as viewed from the street. The first floor and the lower roof will be pushed out 8 feet but will not create a non-conformity with the setback requirements.



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The second architectural element is that the building is too tall and does not meet the height limit. The ridge of this house is about 4.1 feet above the 32 foot height limit (average grade is 14.8 feet and ridgeline height is 50.9 feet). The proposed dormers and windows in that high part of the house will not increase the height of the house.

The third and last architectural element is the garage, exercise room, and a detached bedroom in the second story. The Zoning bylaws require a five year residency, and the applicant does not own the property but has the property under agreement. It was originally planned that the second floor of the house would be extended to connect to the garage, but that would require fill to be brought in within the Conservation Commission's jurisdiction, and that plan would also greatly increase the size of the building as viewed from the road. The solution was to eliminate the second story connector, detaching the bedroom from the house and then requiring a Special Permit.

Nate Morgan is the architect for this project. The document he presented shows that the property is listed under the Massachusetts Cultural Resource Information System, and there are two photos of the historic house, which has not been modified since the 1950s. The additions they propose are intended to look like they were part of the original building.

Nate Morgan showed the proposed floor plans detailing the three architectural elements discussed by Chris Alley: the first floor addition, the attic bedroom suite, and the garage/exercise room/detached bedroom. It was shown that the attic bedroom suite will not increase the height of the house. While the construction of dormers in the attic will increase the volume of the attic, it will not increase the height non-conformity.

Responding to a question from Lou Rogers, Maggie White stated that this is a spec build, that they would like to do an historic renovation and then sell it as a single family residence.

Responding to Andrea Roger's concern that the applicant does not own the property, Chris Alley suggests that 90% of the permits they get are not for the owners. Andrea Rogers responded that in the past, Town Council has told the ZBA that they cannot issue a Special Permit for relief from the five year waiting period for a guest apartment unless the applicant owns the property.

Doug Pease made a motion to continue the hearing to next month. Peter Yoars seconded the motion. The applicants agreed to this, and the public comments will be heard in the next hearing. All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).



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### **RE: Winston's Kitchen Appeal**

Winston and Lisa Christie

1 East Chop Drive, **Map 8 Parcel 137**

On Thursday, February 18, 2021 at 8:40 pm, Acting Chair Lou Rogers opened a duly posted public hearing on the application of Map 8 Parcel 137 seeking:

***A Variance or Special Permit within Zoning Bylaws 2.3.1.5, 3.5.5, or any action related thereto, to allow a business change from a tackle shop to a take-out sandwich shop in Residential Zone 2.***

A quorum consisting of Andrea Rogers, Acting Chairman Lou Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

The ZBA confirmed that this is a request for a Special Permit under Zoning Bylaw 3.5.5 to allow this proposed business change.

Lisa and Winston Christie are renting the 850 square foot space and are proposing to establish a year-round take-out sandwich shop. They are not changing the footprint of the building, but will be changing the interior space for their take-out business. They have been in the restaurant business for 20-25 years, and have permits from the Board of Health and the Wastewater Department. They have yet to go before the Board of Selectmen.

Jonathan Holter asks if there are any issues with having a business on the waterfront that is not water-related. The Board does not think so.

Jean Loud comments that the parking lot there is known as "chaos crossing" as it is extremely dangerous. Clayton Sears, the property owner, is an excellent neighbor; a couple of years ago he made sure that the air conditioners located outside the building were safe, that children could not get hurt by sticking their fingers into it. However, the parking lot is a catastrophe and death waiting to happen. There is a cut in the sidewalk that leads from the boardwalk right into the parking lot. There are lots of families and children living between East Chop Landing and Our Market that are trying to get to the Boardwalk by the harbor. If the Town could move the granite cut closer to the proposed sandwich shop, and if Clayton Sears could move his cement posts 25 inches further from the Our Market building, families could walk in front of Our Market like they used to be able to do, rather than through the middle of the parking lot. To avoid the regular fender-benders, the parking lot also needs a defined entrance and exit shown by arrows on the pavement, and it needs to have painted parking lines to define the parking places. She



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also comments that she is in favor of the sandwich shop, but feels that the ZBA could help make the parking lot safer since it will attract more people into the area.

Alex Loud-English also supports the sandwich shop, but has concerns about the safety of the parking lot as described in her letter. She points out that pedestrians need to be between the parked cars and the building rather than in the middle of the parking lot.

Clayton Sears agrees that the curb cut could easily be moved to right by the icehouse, so people could walk in front of Our Market.

Doug Pease and Lou Rogers made the following findings: The lot is conforming because the 22,677 sq. ft. lot exceeds the required 20,000 sq. ft. in Residential Zone 2, the pre-existing building is non-conforming because it is immediately adjacent to the harbor and does not meet the side setbacks of 20 feet from the property boundary, the footprint of the building is not changing, and Zoning Bylaw 3.5.5 is the appropriate bylaw to change the business use from a tackle shop to a take-out sandwich shop.

A motion was made by Doug Pease to approve the proposal to change the business from a tackle shop to a take-out sandwich shop. This change benefits the neighborhood because there is no place to get a sandwich along this part of the harborfront, the footprint of the existing building will not change, and the building is already used for a business. Furthermore, the neighbors support the sandwich shop. This proposal will not more detrimental to the neighborhood if the Town and the property owner address the existing safety issues concerning vehicular and pedestrian access through the parking lot.

The following conditions were added: The applicant will send the ZBA letters from the Board of Health and the Wastewater Department approving this project, the footprint of the existing building will not change, and that the Town and the property owner work together to resolve the safety issues concerning vehicular and pedestrian access through the parking lot. The motion was seconded by Lou Rogers.

All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).

Peter Yoars moved to adjourn the meeting, and the motion was seconded by Doug Pease. All voted in favor, so the meeting was adjourned at 8:57PM.

*Respectfully Submitted,*  
*Robert Culbert*  
*ZBA Administrator*

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Approved March 18, 2021