

# City of Westfield

## ZONING BOARD OF APPEALS

Martin Newman, Chair  
Richard Sullivan III, Member  
Gary Bacchiocchi, Member  
Sofia Williams, Alternate

May 25, 2016

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The meeting was called to order by Chairman Newman @ 7:00 p.m. Room 315, Municipal Building, 59 Court Street, Westfield, MA.

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- Members present
- Members absent

Staff

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| <input checked="" type="checkbox"/> Martin Newman, Chair         | <input checked="" type="checkbox"/> Jay Vinskey, Principal Planner |
| <input checked="" type="checkbox"/> Richard Sullivan III, Member | <input checked="" type="checkbox"/> Christine Fedora, Clerk        |
| <input checked="" type="checkbox"/> Gary Bacchiocchi, Member     |  |
| <input checked="" type="checkbox"/> Sofia Williams, Alternate    |  |

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1. *Call to order:* Chairman Newman called the meeting of the Zoning Board of Appeals to order at 7:00 P.M. in Room 315, Municipal Building, 59 Court Street. Westfield MA. Members introduced themselves.
  2. *Public Participation:* Chairman Newman asked if there was anyone in the room who would like to address the Board regarding items not on the agenda. None presented.
  3. *Public Hearing:* Chairman Newman read the notice into the record for:  
PAGLIARO & SONS DEVLEOPMENT, LLC who seeks variance relief from lot area requirements (Sec. 3-50.5(1) by reference) to allow for construction of a two-family dwelling. Subject property is 17 North West Road and zoned Business A.
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Chairman Newman asked if there was anyone who would like to speak in favor? Prior to letting the petitioner speak Chairman Newman added the Board would try to vote tonight if possible.

The applicant John Pagilaro presented his application to the Board he purchased the land 6 or 7 years ago. The majority of land has frontage on Russell Road he subdivided it to 6 building lots. He showed duplexes that are already there, as well as single family homes noting there is a mechanics garage to the left of the property. The lot has a history of being used as a dumping ground he has cleaned it up multiple times and felt the duplexes would increase the value of the neighborhood and it would be bordering 2 existing duplexes.

Newman noted this is a variance and inquired how the hardship situation is being addressed? Vinskey informed him a 2 family is not considered to be a multi-family; he noted it's stated in the definitions, he proceeded to read the allowed uses into the record noting the Zoning Ordinance references other sections of the zoning ordinance.

Discussion regarding R.A. requirements, Vinskey read the R.A. requirements into the record.

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### Section 3-50.5 -Area and Density Regulations

1. Lot Area, Frontage and Width: The Minimum Lot Area per dwelling unit will be determined as follows:

Use	Minimum Lot Area (square feet)	Frontage/Width (feet)
<u>Each Dwelling Unit</u>		
- Private water/private septic system	40,000	125
- Public water/private septic system	30,000	125
- Public water/public sewer	20,000	125
Other uses (unless otherwise stated in another Article/Section)	40,000	125

(3/6/03)

A single family would be allowed, what kind of a hardship is it if you're not able to build a single family? The applicant replied he wouldn't be able to find someone who would want to buy a single family homes next to a car shop.

In favor?

Against.

Steve Andras 71 Northwest Road

He informed the Board he took photos of the lot and felt it's not big enough, most of the frontages have 100 feet, he also noted the culvert in the front of the lot has water in it, on the side of the lot there is a 50 foot drop to wetlands the rest of the area is rural residential. Newman noted it's zoned Business A.

Vinsky noted it's surrounded by R.R. Chairman Newman noted it's a steep hill on the next lot. Mr. Andras noted the rear duplex filled with conservation land and has been cleared. Chairman Newman noted this Board is not qualified to deal with those issues.

Lou Lafrenier

Owns the auto shop next door and informed them there are vehicles buried under that lot, school busses, cars, a lot of vehicles.

Lockhart ~ 33 North West road

Nice neighborhood and used to be nicer before it was developed. The area is surrounded by water year round. Property has culvert, surrounded by water not suitable for duplex don't know how put all cars on the road.

Peter Shraft 37 North West Road

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There are single family houses there and felt duplexes don't fit, the area is too small for duplexes and there is no parking.

David Pratz Barbara Praatz

He's lived there for over 10 years, bought the house because he wanted to get away from multi and dual family neighborhoods. He further explained he's done research and it's unfortunate that multi housing has more crime adding when he lived on Sacket Street his apartment was broken in.

Chairman Newman added no one gets to be the last person in their neighborhood, some concerns are legitimate, will one duplex ruin neighborhood? No. The Board has a legal obligation to find out effect on neighborhood, same time realize nobody wants anything new in there neighborhood. The Board has to take everything into consideration; no one wants anything new, he's probably not going to be last one. Mr. Pratz asked where end? Chairman Newman noted the Board is under a legal obligation, drainage not ZBA issue the board trusts other departments for those issues.

Newman driveway might be an issue, neighborhood isn't pure, no one would allow a mechanic garage there now, but it's there.

Newman anything new?

In favor?

Mr. Pagliaro noted a lot of neighbors have culverts along the front of their property, brooks, water issue, he felt the garage has more of a negative impact compared to duplexes, he noted the duplexes will be high end rent.

Alternate Williams asked if they would own and maintain the duplexes? He informed her they may sell the property. Vinskey noted the irony in this is they could put a restaurant or bar in by right.

Alternate Williams asked if they would have to go to the Planning Board for site plan approval? No. Vinskey noted they would have to comply with wetlands laws.

Member Sullivan MOTIONED, seconded by Associate Williams to close the hearing. All in favor.

Chairman Newman stated the public hearing is closed so there will be no more public input.

Associate Williams stated she visited the site before the meeting and saw the concerns of the residents, she further discussed the ordinance requirement of 60,000, and her main concern was the size, noting the other concerns could be addressed.

Member Sullivan's concerns when the Board tends to grant variances the requirements are closer than what is being proposed in this case, he felt this is a big derogation, he also mentioned how it's zoned Business A in a predominantly rural residential area as well as the fact its located next to an auto shop, he felt what it boils down to is they need 60,000 s.f. and they have 38,000 he felt that was too much of a leap.

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Member Bacchiocchi went to the site and saw the duplex; he didn't feel a variance should be granted for something that significant.

Chairman Newman stated you run into weird situations you have to look at the legal elements all have to be shown to the board, noting a variance is difficult to get. Chairman Newman the Board couldn't say it's going to be a detriment because he didn't think one more duplex makes a huge difference. He also noted a single family home could go there. A duplex is an investment property. He felt this application fails on the hardship argument, noting a single family could go there with no problem; he didn't think the Board should go this far out of zoning ordinance. When off by 40% need good reason he felt it's not enough hardship to warrant a variance, the fact it's not the easiest buildable lot can't be used as a hardship.

Member Bacchiocchi MOTIONED to vote on the application.

Member Bacchiocchi asked if there was anyone in favor?

Zero (0) in favor.

Member Bacchiocchi asked if there was anyone in opposition?

All in favor.

The Board reviewed the reasons for denial (1) Derogation from the ordinance in that the surrounding area is residential other than the duplexes on Route 20, (2) The Board did not see a hardship here as a single family could be built without a variance. (3) Russell Road has multiple BA zoning without variances. Williams's main concern is the size, the variances approved prior were closer to 60,000 that are required, and she felt this is substantially different.

Vinskey informed the Board the Business A requirement is different in that it's silent for single and duplex families the interpretations are left up to the building inspector. Vinskey stated the ordinance is unclear. While it is business zoned the area is surrounded by Rural Residential District which does not allow for construction of two family dwellings.

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5. Board petitioner to amend the ordinance, including the compensation and procedural matters of Section 1 -30 (Board of Appeals)

Vinskey provided Board members with various possible amendments to the Zoning Ordinance which he felt would be beneficial. He proceeded to review briefly the items he would like to revise.

Among the matters Vinskey brought up was the stipend issue, the stipend the Board has been received has been stopped in the Zoning Ordinance it currently states the Zoning Board of Appeals shall serve without compensation. One of the changes is to:

A. *Delete Section 1-30 (Board of Appeals) which currently reads:*

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### ARTICLE I Section 1-30

#### BOARD OF APPEALS

**Section 1-30.1 – Composition, Terms and General Authority.** A zoning Board of Appeals also known hereafter as the “Permit Granting Authority” and, where special permits are applied for as specified by this ordinance, as the “Special Permit Granting Authority” is hereby established to consist of three (3) members to be appointed by the mayor and confirmed by the City Council and to serve without compensation.

All members of the Board of Appeals shall be residents of the city. The appointments first made shall be for the term of one (1), two (2), and three (3) years respectively, so that the term of one member shall expire each year. All subsequent appointments shall be for the term of three (3) years.

First and second alternate members shall also be appointed, in the same manner as the appointment of regular members, each for a two- (2) year term, to serve in the case where a regular member is absent or is a party in interest.

Vacancies shall be filled for unexpired terms in the same manner as in the case of regular appointments.

Any members may be removed for causes by the mayor with the approval of a majority of the members of the city council upon written charges and after a public hearing.

The Board of Appeals shall organize yearly, choosing a chairman and a secretary.

The Board of Appeals shall act on all matters within its jurisdiction under this ordinance in the manner prescribed in Sections 10 and 11 of Chapter 40 A of the General Laws, as amended and subject always to the rule that it will give due consideration to promoting the public health, safety, convenience and welfare, encouraging the most appropriate use of land, and conserving property value, that it shall permit no building use, injurious, noxious, offensive or detrimental to a neighborhood, and that it shall prescribe appropriate conditions and safeguards in each case.

#### **Section 1-30.2 – Specific Duties.**

1. To hear and decide applications for special permits upon which the Board is empowered to act under this ordinance or by law.
2. To hear and decide petitioners for variances, where it finds:
  - a. That owing to circumstances relating to soil conditions, shape or topography of land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise, to the petitioner.
  - b. That desirable relief may be granted without substantial detriment to the public good.
  - c. That granting such relief would not nullify nor substantially derogate from the intent or purpose of such ordinance or by law.

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**Section 1-30.3 – Procedure for Application.** Such appeals shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Superintendent of Buildings shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

**Section 1-30.4 - Public Hearings.** The Board of Appeals shall require notice be given by publication in a newspaper of general circulation in the city once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the hearing, and by posting such notices in a conspicuous place in City Hall.

Notices shall be sent by mail, postage prepaid, to the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within three hundred (300) feet of the property line as they appear on the most recent applicable tax list including those in another city or town, the Planning Board and Planning Boards of all abutting cities and towns. Such notices shall be prepared, published, posted and mailed by the City Clerk.

**Section 1-30.5 – Consultation.** In the case of any appeal, application or petitioner, the Board of Appeals shall consult with the Planning Board to discuss the matter, preferably before the date of the Public Hearing or in any event before final action is taken by the Board of Appeals.

Upon receipt of a copy of said appeal, application or petition, the Planning Board shall submit its recommendations to the Zoning Board of Appeals and to the applicant within the time as designated by Chapter 40A of the General Laws.

The Board of Appeals shall also consult with any other city agency or board, as it may consider necessary for recommendation regarding petition review.

Said city agency or board shall forward its recommendation to the Zoning Board of Appeals and to the applicant within the time as designated by Chapter 40A of the General Laws.

**Section 1-30.6 – Other Procedural Requirements.** The Board of Appeals shall conform to all procedural requirements of Chapter 40A of the General Laws of the Commonwealth of Massachusetts regarding the general conduct of its business and the timely processing, hearing, decision rendering and filing of all petitions and applications for special permits, variances and appeals within its jurisdiction as required by this ordinance.

### **Section 1-30.7 – Decisions – Notice- Appeal**

1. The decision of the Board of Appeals shall be made within seventy-five (75) days after the filing of an appeal application or petition EXCEPT in regard to a special permit when such decision shall be made within ninety (90) days.

A concurring vote of the three members of the Board shall be required to grant a variance, or appeal. A detailed record of its proceedings, indicating the vote of each member, the reason for its decision, and official actions shall be filed within fourteen (14) days in the office of the City Clerk and shall be a public record.

Failure of the Board to act within the allowed time shall be deemed to be an approval of the appeal, application, or petition. No variance or special permit or any extension, modification, or renewal thereof, will take effect until a copy of the decision bearing the certification of the City Clerk that twenty (20) days have elapsed, and that no appeal has been filed, or denied, is recorded in the Registry of Deeds.

2. Notice of the decision shall be issued to the owner and to the applicant.

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3. Each notice of a decision shall specify that appeals from the order or decision may be made to the Superior Court, Land Court, or the Hampden County Housing Court, and by filing a copy of the complaint with the City Clerk within twenty (20) days of the filing order or decision with the City Clerk.

**Section 1-30.8 – Rescission of Vote.** The concurring vote of all the members of the Board shall be necessary to reverse any order or decision of the Superintendent of Buildings, or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Ordinance, or to effect any variance in the application of any such Ordinance.

**Section 1-30.9 – Condition.** The Board of Appeals may impose condition, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

1. No special permit or variance shall be granted on any lot or land not given a number by the City of Westfield; nor to any building thereon not conspicuously bearing said number so as to be seen from the street nor on any way not owned or accepted by the city that does not have a sign so identifying said way be a sign comparable in height and size as to street sign requirements of the City of Westfield.

### **Section 1-30.10 – Time Limits.**

1. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance they shall lapse, and may be reestablished only after notice and a new hearing.
2. As provided for in Section 6 of Chapter 40A of the General Laws, construction or operations under a special permit issued by the zoning board of appeals shall conform to any subsequent amendment of this ordinance unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
  - I. As provided for in Section 9 of Chapter 40A of the General Laws, a special permit granted by the zoning board of appeals shall lapse with a time period specified by the zoning board of appeals, such time period however not to exceed more than two (2) years and including such time required to pursue or await the determination of an appeal pursuant to Section 17 of the General Laws from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

*and replace with a new Section 1-30 to read as follows:*

## **ARTICLE I** **Section 1-30**

### **BOARD OF APPEALS**

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**Section 1-30.1 – Composition, Terms and General Authority.** A Zoning Board of Appeals is hereby established to consist of 3 members to be appointed by the Mayor and confirmed by the City Council.

All members of the Board of Appeals shall be residents of the city. Appointments shall be for the term of 3 years, and arranged such that no more than one term may expire in any one year. First and second alternate members shall also be appointed, in the same manner as the appointment of regular members, each for a 2 year term, to serve in the case where a regular member is absent or unable to act. The Board of Appeals shall organize yearly, choosing a chair. Vacancies shall be filled for unexpired terms in the same manner as in the case of regular appointments. Any member may be removed for causes by the Mayor with the approval of a majority of the members of the City Council upon written charges and after a public hearing.

The Board of Appeals shall act on all matters within its jurisdiction under this ordinance in the manner prescribed in Sections 10 and 11 of Chapter 40A of the General Laws, as amended and subject always to the rule that it will give due consideration to promoting the public health, safety, convenience and welfare, encouraging the most appropriate use of land, and conserving property value, that it shall permit no building use, injurious, noxious, offensive or detrimental to a neighborhood, and that it shall prescribe appropriate conditions and safeguards in each case.

**Section 1-30.2 – Specific Duties.** The Board of Appeals shall, after conducting a public hearing, decide upon:

1. Appeals of administration actions taken under this ordinance
2. Applications for special permits, where designated by this ordinance as the Special Permit Granting Authority
3. Petitions for variances from the requirements established by this ordinance, which may be granted only in those cases where it is proved that:
  - a. Owing to circumstances relating to soil conditions, shape or topography of land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise, to the petitioner;
  - b. Desirable relief may be granted without substantial detriment to the public good; and
  - c. Granting such relief would not nullify nor substantially derogate from the intent or purpose of such ordinance.

**Section 1-30.3 – Procedure for Application.** Application shall be made in the manner established by the Board. In the case of an appeal, such application shall be filed with the City Clerk within 30 days of the date of the subject written order or decision. The Superintendent of Building, or other administrative official being appealed, shall also be notified and shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

**Section 1-30.4 - Public Hearing Notice.** The Board of Appeals shall require notice of the public hearing be given by publication in a newspaper of general circulation in the city once in each of two successive weeks, the first publication to be not less than 14 days before the hearing, and by the City Clerk's posting of such notices.

Notices shall also be sent by mail, postage prepaid, to the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within three 300 feet of the property line as they appear on the most recent applicable tax list including those in another city or town, the Planning Board and Planning Boards of all abutting cities and towns. The foregoing shall be considered the parties in interest.

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**Section 1-30.5 – Consultation.** The Board of Appeals shall consult with the Planning Board or any other city agency or board when it considers such necessary for a proper review of the matter before it. Said city agency or board shall forward its recommendation to the Zoning Board of Appeals and to the applicant within 35 days, with inaction by such agency or board deemed to constitute no exception taken to the matter.

**Section 1-30.6 – Other Procedural Requirements.** The Board of Appeals shall otherwise conform to all procedural requirements of Chapter 40A of the General Laws of the Commonwealth of Massachusetts and this ordinance regarding the general conduct of its business and the timely processing, hearing, decision rendering and filing of all special permits, variances and appeals, and matters within its jurisdiction.

**Section 1-30.7 – Decision, Notice & Appeal.** The decision upon a variance, special permit or appeal shall be made within one hundred 100 days after the filing of such application with the City Clerk and the Board. Such time for action may be extended by written agreement between the applicant and Board. Failure of the Board to act within the allowed time shall be deemed to be an approval of the applicant's request, and thus subject to the constructive grant provisions of Chapter 40A of the General Laws.

Notice of the decision shall be issued to the owner and to the applicant and parties in interest, and shall specify that appeals from the Board's order or decision may be made to the Superior Court, Land Court, or the Hampden County Housing Court, within 20 days of the filing of the order or decision with the City Clerk. A copy of any such court complaint shall also be filed with the City Clerk within the 20 days.

**Section 1-30.8 – Vote & Effect** The concurring vote of all 3 members of the Board shall be necessary to reverse any order or decision of the Superintendent of Building or administrative official, or to approve any Special Permit, or to grant any variance in matters pertaining to this ordinance. A detailed record of the Board's proceedings, indicating the vote of each member, the reason for its decision, and official actions shall be filed within 14 days in the office of the City Clerk and shall be a public record.

No variance or special permit or any extension, modification, or renewal thereof, will take effect until a copy of the decision bearing the certification of the City Clerk that 20 days have elapsed, and that no appeal has been filed, unless it has been denied, is recorded in the Registry of Deeds.

**Section 1-30.9 – Conditions.** The Board of Appeals may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

**Section 1-30.10 – Time Limits.** If the rights authorized by a variance are not exercised within one year of the date of grant of such variance they shall lapse, and may be reestablished only after notice and a new hearing. The Board may grant an extension of up to 6 months, if requested before such expiration, as provided for in Section 10 of Chapter 40A of the General Laws. The duration of any special permit shall be as described in Section 1-50.

**B. Add a new Section 1-40.6 (Zone Change Procedure) to read as follows:**

**Section 1-40.6 – Applicability to Issued Permits.** Once notice of a zone change has been given, construction or operations authorized under an issued special permit, site plan approval or a building permit, shall conform to any subsequent amendment of this ordinance unless the use or construction is commenced within a period of not more

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than 6 months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

**C. Delete Sections 1-50.3 (Special Permits) which currently reads:**

**Section 1-50.3 – Duration.** A special permit granted by the special permit granting authority shall lapse if a substantial use thereof has not commenced within two years, or in the case of construction, if construction has not begun. Exception may be made for good cause by the special permit granting authority

*and replace with a new Section 1-50.3 to read as follows:*

**Section 1-50.3 –Appeal & Duration.** Any person aggrieved by a special permit decision may file a timely appeal pursuant to Chapter 40A, Section 17 of the General Laws. A special permit granted under this ordinance shall lapse if a substantial use thereof has not commenced within 2 years, or in the case of construction, if construction has not begun, excluding such time required to pursue or await a determination of any said appeal from the grant thereof. Exception may be made for good cause by the special permit granting authority.

*and delete Section (1-50.7(6)) (Special Permits) which currently reads:*

No special permit shall be granted on any way not owned by or accepted by the City unless said way shall be property identified by a sign erected at each entrance and exit of the same height and size as other street signs of the City; nor for any lot thereon unless said lot has received a city number and the building or buildings thereon visibly display said number in a conspicuous manner readable from the street.

*and replace with a new Section (1-50.7(6)) to read as follows:*

Requirement that, on any way not owned by or accepted by the City, said way be properly identified by a sign erected at each entrance and exit of the same height and size as other street signs of the City; or on any lot on such way that the building or buildings thereon visibly display their City-issued number(s) in a conspicuous manner readable from the street.

**D. From Section 2-20.1 (Definition of other terms), delete the following terms, as they currently read:**

**Lot Layout.** In addition to the minimum lot area, depth, width and frontage requirements, lots shall be laid out in such a manner that a square, with the sides equal to the minimum frontage requirement for the zoning district in which it is located, can be placed within the lot with at least one point of the square lying on the front lot line with no portion of the square extending beyond the boundaries of the lot.

**Lot Depth:** The mean horizontal distance, measured perpendicular (at right angles) to the front lot line, between the front lot line and the rear of the lot. Said distance shall be measured from a portion of the front lot line that equals the minimum lot frontage and no (principal) structure may be placed on a portion of the lot that has a depth less than the minimum lot depth required.

**Setback:** The minimum distance from a lot line to a building placed thereon, or feature thereof as is required in a particular situation by this Ordinance. Said Setback shall be measured at the closest distance to the lot line. At no

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point shall any structure on the lot be any closer to any street line, whether said street line directly abuts the lot or not, than the minimum front yard setback requirement for that Zoning District

- a. Front: Setback required from all front lot lines and from all street lines.
- b. Rear: Setback required from a rear line.
- c. Side: Setback required from a side line.

**Yards.** All yards shall be exclusive of overhanging eaves, gutter, and cornices (of less than three (3) feet in length on main building and twelve (12) inches on accessory buildings) and steps. Parking spaces and drives shall be permitted in yards except where specifically prohibited or regulated.

- a. Front: The minimum required open, unoccupied space, within and extending the full width of a lot, between the street line(s) and the parts of a building nearest to such street line(s). A public utility transformer and accessory apparatus is allowed in the front yard with the property owner's permission.
- b. Rear: The minimum required yard area, the full width of the lot, between the rear wall of the building throughout its height and the rear line of the lot. In the case of a triangular lot, with only one side fronting on a street, the rear yard shall be the yard area between the rear wall of the building and a line half-way between it and the point of intersection of the side line of the lot.
- c. Side: The minimum required open yard area within the lot between a side lot line, not a street line, and the parts of the building nearest to such side lot line. Such a side yard must extend through for the required width from the street line or the front yard to the rear yard or its equivalent or to another street.

*and replace with new definitions to read as follows:*

**Lot Layout.** In addition to the minimum lot area, width and frontage requirements, lots shall be laid out in such a manner that a square, with the sides equal to 80% of the minimum frontage requirement for the lot, can be placed within the lot with at least one point of the square lying on the front lot line with no portion of the square extending beyond the boundaries of the lot.

**Setback.** The horizontal distance from a lot line to the closest part of a building, or other feature so regulated.

**Yard.** That area of a lot unoccupied by principal buildings, generally expressed as a minimum requirement, which extends parallel along the lot line and into the lot for the specified setback distance.

- a. **Front Yard:** formed by the setback from a street line(s). At no point shall any building on the lot be any closer to any street line, whether said street line directly abuts the lot or not, than the minimum front yard setback requirement for that zoning district.
- b. **Rear Yard:** formed by the setback from the rear lot line (not a street line). In the case of a triangular lot, with only one side fronting on a street, the rear yard shall be the yard area between the rear of the building and a line half-way between it and the point of intersection of the side line of the lot.
- c. **Side Yard:** formed by the setback from a side lot line (not a street line)

Subject to other requirements of this ordinance, yards may contain overhanging eaves, gutters, and cornices (of less than 3 feet in length on a principal building) and exterior steps, handicapped ramps, permissible signs, fences, accessory buildings, public utility apparatus, poles, landscape elements, parking spaces and drives.

**E. Delete Sections 3-40.5(1) and (3) (Rural Residential District) which currently read:**

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### Section 3-40.5 – Area and Density Regulations.

1. **Lot Area, Frontage and Width.** The Minimum Lot Area, Frontage and Width per dwelling unit will be determined as follows:

Use	Minimum Lot Area (square feet)	Frontage/Width (feet)
Each Dwelling Unit		
- Private water/private septic system	60,000	150
- Public water/private septic system	40,000	150
- Public water/public sewer	30,000	150
Other uses (unless otherwise stated in another Article/Section)	60,000 square feet	150

3. **Yards.** No part of any building except the outside steps shall be nearer to any street line than the corresponding parts of the nearest building but no further than six hundred (600) feet away on either side thereof facing on the same street. In no case shall this set back distance exceed fifty (50) feet.
- a. **Front yard.** Where the alignment of a building is not controlled by the preceding paragraph, no part of any building except the outside steps shall extend within forty (40) feet of the street line of any street. At least seventy five (75) percent of the required front yard shall be planted in grass or otherwise landscaped and no parking shall be allowed within this landscaped area.
- b. **Side yards.** Two yards, neither less than twenty (20) feet. In the case of a corner lot, there shall be not less than fifty (50) feet between the building and the side street line.
- c. **Rear yard.** One yard not less than fifty (50) feet.

*and replace with new Sections 3-40.5(1) and (3) to read as follows:*

### Section 3-40.5 – Area and Density Regulations.

1. **Lot Area, Frontage and Width:** Minimum requirements are determined as follows, with not more than one single family dwelling permitted per lot.

Use	Lot Area (square feet)	Frontage/Width (feet)
Residential, having	per dwelling unit	per dwelling structure
- both private water & private septic system	60,000	150
- public water or public sewer (not both)	40,000	150
- both public water & public sanitary sewer	30,000	150
Non-Residential /Other (unless otherwise stated in another Section)	60,000	150

Note: Lot shape is also regulated by the Lot Layout provisions of Section 2-20.1

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Richard Sullivan III, Member  
Gary Bacchicocchi, Member  
Sofia Williams, Alternate

### 3. Yards /Setbacks

- a. Front yard (minimum). The lesser of 40 feet or the front yard setback of a corresponding part of the nearest comparable building on either side thereof, but within 600 feet, which faces on the same street; not to be less than 15 feet.

A landscape area shall be provided (consisting of natural vegetation, lawn, or otherwise landscaped) which occupies least 75% percent of the required front yard. Motor vehicle parking within the front yard area shall not be permitted within the landscape area and shall be limited to driveways.

- b. Side yard. 20 feet minimum. In the case of a corner lot, the front yard setback shall also apply to the side street lot line.
- c. Rear yard. 50 feet minimum.

### F. *Delete Sections 3-50.5(1) and (3) (Residence A District) which currently read:*

#### Section 3-50.5 – Area and Density Regulations.

1. Lot Area, Frontage and Width: The Minimum Lot Area per dwelling unit will be determined as follows:

Use	Minimum Lot Area (square feet)	Frontage/Width (feet)
<u>Each Dwelling Unit</u>		
- Private water/private septic system	40,000	125
- Public water/private septic system	30,000	125
- Public water/public sewer	20,000	125
Other uses	40,000	125

(unless otherwise stated in another Article/Section)

3. Yards No part of any building except the outside steps shall be nearer to any street line than the corresponding parts of the nearest buildings on either side thereof but no further than four hundred (400) feet away facing on the same street. In no case shall this setback exceed thirty-five (35) feet.

- a. Front yard When the alignment of a building is not controlled by the preceding paragraph no part of any building except the outside steps shall extend within thirty-five (35) feet of any street. At least seventy-five (75) percent of the required front yard shall be planted with grass or otherwise landscaped and no parking shall be allowed within this landscaped area.
- b. Side yard. Two yards, neither less than fifteen (15) feet. In the case of a corner lot, there shall be not less than thirty-five (35) feet between the building and the side street line.
- c. Rear yard. One yard not less than thirty (30) feet.

*and replace with new Sections 3-50.5(1) and (3) to read as follows:*

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Gary Bacchiocchi, Member  
Sofia Williams, Alternate

### Section 3-50.5 -Area and Density Regulations

1. Lot Area, Frontage and Width: Minimum requirements are determined as follows, with not more than one single family dwelling permitted per lot.

Use	Lot Area (square feet)	Frontage/Width (feet)
Residential, having:	per dwelling unit	per dwelling structure
- both private water & private septic system	40,000	125
- public water or public sewer (not both)	30,000	125
- both public water & public sanitary sewer	20,000	125
Non-Residential /Other (unless otherwise stated in another Section)	40,000	125

Note: Lot shape is also regulated by the Lot Layout provisions of Section 2-20.1

3. Yards /Setbacks

- a. Front yard (minimum). The lesser of 35 feet or the front yard setback of a corresponding part of the nearest comparable building on either side thereof, but within 400 feet, which faces on the same street.

A landscape area shall be provided (consisting of natural vegetation, lawn, or otherwise landscaped) which occupies least 75% percent of the required front yard. Motor vehicle parking within the front yard area shall not be permitted within the landscape area and shall be limited to driveways.

- b. Side yard. 15 feet minimum. In the case of a corner lot, the front yard setback shall also apply to the side street lot line.
- c. Rear yard. 30 feet minimum.

G. *Delete Sections 3-60.5(1) and (3) (Residence B District) which currently read:*

### Section 3-60.5 - Area and Density Regulations

1. Lot Area, Frontage and Width: The Minimum Lot Area, Frontage and Width will be determined as follows\*:

Use	Minimum Lot Area* (square feet)	Frontage/Width* (feet)
1 <sup>st</sup> Dwelling Unit	10,000	100
Each additional dwelling unit	5,000	100
Other uses (unless otherwise stated in another Article/Section)	10,000	100

\*These Minimum Lot Area, Frontage and Width requirements assume that both public water and public sewer are available and utilized. Should public water and/or public sewer not be available, than the applicable Minimum Lot Area, Frontage and Width requirements of Residence-A shall apply.

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3. Yards No part of any building except the outside steps shall be nearer to any street line than the corresponding part of the nearest building on either side thereof facing on the same street. In no case shall this setback distance exceed thirty (30) feet.
  - a. Front Yard Where the alignment of a building is not controlled by the preceding paragraph, no part of any building except the outside steps shall extend within thirty (30) feet of the street line of any street. At least seventy-five (75) percent of the required front yard shall be planted in grass or otherwise landscaped and no parking shall be allowed within this landscaped area.
  - b. Side yard Two (2) yards neither less than fifteen (15) feet. In the case of a corner lot, there shall be not less than fifteen (15) feet between the building and the side street line.
  - c. Rear yard One yard not less than thirty (30) feet.

and replace with new Sections 3-60.5(1) and (3) to read as follows:

### Section 3-60.5 - Area and Density Regulations

#### 1. Lot Area, Frontage and Width:

Use	Lot Area, with both public water and public sanitary sewer <sup>1</sup> (minimum square feet)	Frontage/Width (min. feet)
Single Family	10,000	100
Two Family	15,000	100
Conversion to Multi Family for each dwelling unit	10,000 plus 5,000	100
Other uses (unless otherwise stated in another Article/Section)	10,000	100

<sup>1</sup> if public water and/or public sewer is not available or utilized, minimum lot area shall be increased by 15,000 square feet or per lot or per dwelling unit, whichever is greater.

Note: Lot shape is also regulated by the Lot Layout provisions of Section 2-20.1

#### 3. Yards / Setbacks

- a. Front yard (minimum). The lesser of 30 feet or the front yard setback of a corresponding part of the nearest comparable building on either side thereof which faces on the same street.  
  
A landscape area shall be provided (consisting of natural vegetation, lawn, or otherwise landscaped) which occupies least 75% percent of the required front yard. Motor vehicle parking within the front yard area shall not be permitted within the landscape area and shall be limited to driveways.
- b. Side yard. 15 feet minimum. In the case of a corner lot, the front yard setback shall also apply to the side street lot line.
- c. Rear yard 30 feet minimum.

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H. Delete Sections 3-70.5(1) and (3) (Residence C District) which currently read:

### Section 3-70.5 -Area and Density Regulations

1. Lot Area, Frontage and Width\*: The Minimum Lot Area, Frontage and Width will be determined as follows:

Use	Minimum Lot Area* (square feet)	Frontage/Width* (feet)
Single Family	10,000	75
Two Family	15,000	100
Multi-Family	10,000 plus	80
- for each dwelling unit		
- 1 bedroom	1,500	100
- 2 or more bedrooms	2,000	100
- elderly units	1,000	80
Other Uses (unless otherwise stated in another Article/Section)	10,000	100

\*These Minimum Lot Area, Frontage and Width requirements assume that both public water and public sewer are available and utilized. Should public water and/or public sewer not be available, than the applicable Minimum Lot Area, Frontage and Width requirements of Residence-A shall apply.

3. Yards No part of any building except the outside steps or handicap ramps shall be nearer to any street line than the corresponding parts of the nearest building on either side thereof facing on the same street. In no case shall this set back distance exceed twenty-five (25) feet.
- Front yard Where the alignment of a building is not controlled by the preceding paragraph no part of any building except the outside steps shall extend within thirty (30) feet of the street line of any street. At least seventy-five (75) percent of the required front yard shall be planted in grass or otherwise landscaped and no parking shall be allowed within this landscaped area.
  - Side yard Two (2) yards neither less than fifteen (15) feet. In the case of a corner lot, there shall be not less than twenty-five (25) feet between the building and the side street line.
  - Rear yard One yard not less than thirty (30) feet.
  - Distance between buildings There shall be a distance of at least twenty-five (25) feet between multiple family buildings on the same lot.

and replace with new Sections 3-70.5(1) and (3) to read as follows:

### Section 3-70.5 -Area and Density Regulations

1. Lot Area, Frontage and Width

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Use	Lot Area, with both public water and public sanitary sewer <sup>1</sup> (minimum square feet)	Frontage/Width (min. feet)
Single Family	10,000	75
Two Family	15,000	100
Multi-Family <sup>2</sup>	10,000 plus	80
for each dwelling unit:		
- 1 bedroom	1,500	
- 2 or more bedrooms	2,000	
- elderly units	1,000	
Other Uses (unless otherwise stated in another Article/Section)	10,000	100

<sup>1</sup> if public water and/or public sewer is not available or utilized, minimum lot area shall be increased by 15,000 square feet or per lot or per dwelling unit, whichever is greater.

<sup>2</sup> three or more dwelling units on the same lot, even if occurring in single family and/or two-family structures, shall be considered a multifamily dwelling use.

Note: Lot shape is also regulated by the Lot Layout provisions of Section 2-20.1

### 3. Yards /Setbacks

- a. Front yard (minimum). The lesser of 25 feet or the front yard setback of a corresponding part of the nearest comparable building on either side thereof which faces on the same street.

A landscape area shall be provided (consisting of natural vegetation, lawn, or otherwise landscaped) which occupies least 75% percent of the required front yard. Motor vehicle parking within the front yard area shall not be permitted within the landscape area and shall be limited to driveways.

- b. Side yard. 15 feet minimum. In the case of a corner lot, the front yard setback shall also apply to the side street lot line.
- c. Rear yard. 30 feet minimum.
- d. There shall be a minimum distance of 25 feet between dwelling buildings located on the same lot.

**I. To Section 3-110.5 (Business A District), replace the words “Multi-Family Dwellings” with the words “Residential Uses” in the section title, and add the following text:**

Every building used exclusively as a single or two-family dwelling shall comply with the dimensional regulations prescribed for Residence C Districts (Section 3-70.5-6). For multifamily dwellings, the following regulations shall apply:

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J. *Delete Section 4-30 (Accessory Buildings) in its entirety, which currently reads:*

### ARTICLE IV

#### Section 4-30

#### Accessory Uses and Accessory Buildings

##### Section 4-30.1 – Accessory Buildings

- a. An accessory building which is detached and which has a foundation and is not part of the main building may be built in the rear or side yard area, provided that not more than twenty-five (25) percent of the required rear yard is occupied by accessory buildings and provided that total permitted lot coverage allowances are not exceeded. An accessory building shall not be located nearer than ten (10) feet to the principal building. The minimum front yard setback for detached accessory buildings shall be the same as that required for a principal structure in that district. The minimum side and rear yard setback for detached accessory buildings shall be a least equal to that of the structure's height, but do not have to exceed the minimum permitted setbacks for principal structures.

Accessory buildings attached to the principal building shall be considered an integral part of the principal building and as such shall be subject to side and rear yard requirements applicable to the principal building. (9/18/03)

- b. Subject to the foregoing except for the requirement of a foundation, one may also erect an accessory shed or sheds. An accessory shed is defined as a slight structure built for storage of personal property, other than automobiles or trucks, without a foundation. Structures for storage of automobiles or trucks are subject to the requirements of Article IV Section 4-30-(2) were applicable. One may have an accessory shed or sheds provided that any shed in excess of 150 square feet has a foundation or has an adequate tie down system to prevent uplift, no more than 25% of rear yard area is occupied by shed or sheds and the height of the shed or sheds does not exceed the height of 12 feet. (9/18/03)

**Section 4-30.2 – Garaging.** Garage or storage space for private automobiles is an accessory use in a residence district. Off-Street automobile storage shall be provided in the amount of three (3) spaces with each single family dwelling, and two (2) spaces per family in a two family unit, two and two tenths (2.2) spaces per unit in a Residence C zoned multi-family dwelling and two and a half (2.5) spaces per unit in a garden apartment complex.

- a. Rural Residential and Residence A District. Private garage for up to three (3) automobiles not nearer than five (5) feet to any side or rear lot line, except as provided in paragraph 1 above, nor nearer to the front street line than the prescribed minimum setback distance of the respective districts. No automobiles shall be permitted in the seventy-five percent (75%) front yard area to be grassed or otherwise landscaped.
- b. Residence B, Residence C, and Residence C-1 Districts. The same regulations as above, except that for multifamily or group dwellings, individuals garages for each family accommodate on the lot may be provided either as an integral part of the building or in an accessory building. Such a garage or group of garages must not be located nearer than ten (10) feet to any side or rear lot line. This provision shall in no case be interpreted as permitting the erection of community garages except on a lot occupied by a group dwelling.

**Section 4-30.3** No garage building may be used as a dwelling except that living quarters may be provided on the second floor of a private garage attached to a dwelling.

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**Section 4-30.4** An accessory building shall not exceed twenty-five (25) feet in height above the ground level, except such accessory building as may be used for barns and poultry houses in the Agricultural Areas. (9/18/03)

**Section 4-30.5** Accessory uses of property and accessory buildings necessary in connection with scientific research or scientific development or related production, whether or not on the same parcel as activities permitted as a matter or right may be allowed by special permit issued by the Planning Board providing that this board finds that the proposed accessory use does not substantially derogate from the public.

and replace with a new Section 4-30 to read as follows:

### ARTICLE IV Section 4-30

#### Accessory Uses and Accessory Buildings

**4-30.1 - General Requirements.** A building or use accessory to an allowed principal use shall be permitted in any district, provided such structure or use is subordinate, incident and customarily associated with the said principal use, and is not otherwise regulated by this ordinance. Such accessory buildings may include any structure intended and used for supporting or sheltering any use or occupancy legally occurring on the lot, including detached garages, sheds, barns, decks, gazebos and ground-mounted solar panels. Accessory buildings shall:

- a. if detached, not be closer than 10 feet to a principal building;
- b. shall count toward and shall not cause to be exceeded, the maximum lot coverage for the district, nor occupy more than 25% of the rear yard area;
- c. have a permanent foundation or an adequate tie-down system to prevent displacement;
- d. not exceed 25 feet in height above the ground level, except for such accessory buildings used for barns or structures related to agricultural uses;
- e. not be a trailer, whether resting on its wheels, jacks or other stabilization system, except where permitted on a temporary basis; and
- f. not contain a dwelling unit, except for one seasonal unit for a caretaker on a lot used for commercial farming purposes or where elsewhere allowed by this ordinance.

#### 4-30.2 - Yard/Setback Requirements

- a. Minimum front yard setback for all accessory buildings shall be the same as that of a principal building or the setback of the lot's existing principal building, whichever is less.
- b. Detached accessory buildings not exceeding 200 square feet in area and 12 feet in height, as measured from the ground to the highest point of the roof line, may be located within the side and/or rear yards, provided such structures are not closer than 6 feet to any lot line.
- c. An accessory building exceeding the footprint of the lot's principal structure shall comply with the standard yard requirements of the district.
- d. All other accessory structures, including any buildings or building components attached to the principal building, shall comply with the standard yard requirements of the district, except as follows:

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- i. A detached accessory structure may be located within the side and/or rear yards provided no point on the structure is located closer to the lot line than a distance equal to the height above ground of such point or 6 feet, whichever is greater.
  - ii. Residential decks attached to the principal building, not having a roof and not higher than 4 feet above ground (decking level) may extend up to 8 feet into the rear yard.
- e. All requirements stated herein shall be exclusive of roof overhangs and appurtenances extending less than 12 inches.
  - f. The Board of Appeals may issue a dimensional special permit for reduction in the side or rear yard setback requirements.
- K. Delete Section 4-40 (Conversion of Dwelling) in its entirety, which currently reads:**

### ARTICLE IV Section 4-40

#### Conversion of Dwelling to Two-Family or Multiple-Family Use

**Section 4-40.** The Board of Appeals may authorize, by special permit, the conversion of a dwelling to a two-family or multi-family dwelling, subject to the zoning district regulations and the following conditions:

1. Each dwelling unit shall be provided with a separate access not passing through the living area of any other dwelling unit.
2. No structural alteration or extension of the building exterior shall be made except as may be necessary for reasons of safety.
3. The Board of Appeals may prescribe such further conditions with respect to the conversion and use of buildings of property as it seems appropriate, such as but not restricted to a requirement to provide adequate on-site parking as required in Article VII, Section 7-10.
4. The converted building must comply with the Building Code.

- L. Add a new Section 4-110, to read as follows:**

### ARTICLE IV Section 4-110

#### Stormwater Management

A Special Permit or Site Plan Approval granted pursuant to this ordinance may concurrently include a Stormwater Management Permit (where required by Chapter 16, Article II, Division 4 of the Code of Ordinances), or any waivers relative thereto, and the incorporation of any associated findings and conditions. In such case, the requirements and provisions of the Special Permit or Site Plan Approval shall govern.

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**M. Delete Sections 6-10.4 and 6-10.5 (Site Plan Approval) which currently read:**

**Section 6-10.4 – Hearing, Notice and Decision.** The Site Plan Approval Process shall be the same as that required for a Special Permit. (Section 1-50.2)

**Section 6-10.5 – Duration.** A Site Plan Approval granted by the Planning Board shall lapse if a building permit has not been issued for the approved use within one year of the date of approval. Extensions to this requirement must be requested of the Planning Board prior to the expiration of the one year. Not more than one sixty (60) day extension may be granted for the same project.

**and replace with new Sections 6-10.4 and 6-10.5, to read as follows:**

**Section 6-10.4 – Hearing, Notice, Decision & Appeal.** The Site Plan Approval process shall be the same as that required for a Special Permit (Section 1-50.2-3), except that a Site Plan Approval may be granted upon a majority vote of the quorum present. Where a Site Plan Approval is sought concurrently with a Special Permit, the requirements and provisions of a Special Permit shall govern.

**Section 6-10.5 – Duration.** A Site Plan Approval shall lapse if a building permit has not been issued for the subject use, or if no building permit is required, if site construction relative to the plan has not substantially progressed, within 2 years of the date of approval. Exception may be made for good cause by the Planning Board.

**N. To Section 7-10.1 (Off-Street Parking), add the following to the first sentence:**

, provided that fractions of one-half or more shall be increased to the nearest whole unit, and fractions under one-half may be decreased to the nearest whole unit.

**and delete Sections 7-10-2 (1) (a) and (b), which currently read:**

- a. Rural Residence and Residence A – Three (3) spaces per dwelling units. (Agricultural District Deleted 03/06/03)  
Residence B – Two (2) spaces per dwelling unit.  
Residence C – Two and two tenths (2.2) spaces per dwelling unit.  
Residence C-1 – Two and one-half (2.5) spaces per dwelling unit.  
In the case of (Agricultural District Deleted 03/06/03) Residence A and Residence B zones a driveway shall constitute a parking space or spaces.
- b. In the case of any multi-family dwelling specifically designed for the elderly, or *shared elderly housing* the minimum off-street parking requirement shall be one (1) space for each four-(4) dwelling units. This provision shall apply to all districts.

**and replace with new Sections 7-10-2 1 (a) and (b), to read as follows:**

- a. Single and Two Family Dwellings  
(for such uses, garage and/or driveway parking may satisfy this requirement)  
Rural Residential and Residence A districts: 3 spaces per dwelling unit.  
Residence C-1 district: 3 spaces for a single family, 5 spaces for a two-family

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### Residence B, Residence C, and all other districts: 2 spaces per dwelling unit

- b. Multifamily uses shall have 2 spaces per dwelling unit, unless the district specifies a different factor. In the case of multi-family dwellings specifically designed for the elderly, or shared elderly housing the minimum off-street parking requirement shall be 1 space for each 4 dwelling units, regardless of the district in which it is located.

After a brief discussion of the items suggested for amendment Member Sullivan MOTIONED, seconded by Williams to petition the City Council for the aforementioned zoning amendments. All in favor.

If a petition comes in the Board will meet on Wednesday, June 1, 2016.

If a hearing is required the next meeting will be July 6, 2016.

Sullivan MOTIONED, seconded by Williams to adjourn at 8:45.

All in favor.

APPROVED