

**ZONING BOARD OF APPEALS  
TOWN OF LEWISBORO  
MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, June 26, 2013 at 7:30 p.m., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518

Board Members:	Present:	Carolyn Mandelker, Acting Chairwoman Thomas Casper Robin Price, Jr. Jason Krellenstein
	Absent:	Geoffrey Egginton

Also Present: Aimee Hodges, ZBA Secretary  
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The Meeting was called to order at 7:30 P.M. Ms. Mandelker introduced the members of the Board and noted the emergency exits. She announced that the next ZBA meeting will be Wednesday, July 31<sup>st</sup> with a site walk scheduled for Saturday, July 27, 2013.

I. Review and adoption of the Minutes of May 22, 2013

Ms. Mandelker moved to approve the minutes of the May 22nd. The motion was seconded by Mr. Krellenstein; in favor: Mr. Price, Mr. Krellenstein and Mr. Casper. Abstain: Ms. Mandelker. Absent: Chairman Egginton

II. DECISIONS (Tentative)  
Cal. No. 10-13-BZ Waccascape LLC

Mr. Price noted that when the applicants last appeared before the Board there had been a discussion relative to the withdrawal of the plans that had been presented. There was some indication that the applicant would revise the plans prior to returning to the Board.

**THE PUBLIC HEARING IS HELD OPEN**

**III. PUBLIC HEARINGS**

**Cal. NO. 13-13-BZ**

Application of Michael DeCandia, 174 North Salem Road, Katonah, New York 10536 (Owner of Record: Malcolm Frank & Tara Owen, 9 Jonah's Lane, Katonah, New York 10536)[Property Address: 53 Cove Road, South Salem, New York 10590] for a [1] variance of Article III § 220-9D (2) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of an increase in non-conformity other than use due to the proposed two-story addition and deck that will be closer to the front line (15.2' proposed where 25' is required), both side lot lines (proposed 10.5' & 11.9' where 12' is required) and closer to the street center line (proposed 26' where 50' is required) in a R-1/4A, Residential District.

The property is located on the north side of (#53) Cove Road, designated on the Tax Maps of the Town of Lewisboro as Sheet 33A, Block 11366, Lot 8, in an R-1/4A, One Quarter Acre Residential District.

Malcolm Frank was present with the project architect, Michael DeCandia.  
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Mr. DeCandia displayed a photograph of the existing house and Sheet SP-1.0. He briefly reviewed the proposal. In response to the concerns expressed by the Board, the height of the addition had been reduced by 2 ½ feet (previously proposed at 27', now proposed at 24.6'). Mr. DeCandia displayed and reviewed Sheets A-2.0 depicting the elevations as proposed February 27, 2013 and as proposed June 7, 2013.

Mr. Casper noted that during two different hearings there had been a lot of general conversation with regard to the increasing size of houses.

Mr. Krellenstein noted that although he was not thrilled with the application, the applicant reduced the height making the mass less evident. The height had not been as much of a concern to him as the mass of the addition. He noted that the variances being sought are for 1½ feet and 3/10<sup>th</sup> of a foot from the side lot lines. Although in his view the proposed house is massive, the variances being sought are not so egregious that he could not support it, especially with the changes that have been made. In response to Mr. DeCandia's position that the structure would remain the same with the exception of the roof being raised, Mr. Krellenstein believed that when the project is completed, that it would not look anything at all as it does now.

Mr. DeCandia noted that there were no objections to this application on the record.

There were no further comments.

Ms. Mandelker moved to approve the application as amended for the following reasons:

- There will be no undesirable change to the character of the neighborhood.
- There is no practical alternative.
- The addition is relatively unsubstantial.
- The difficulty is not self-created.
- There is no major adverse effect to the physical or environmental conditions of the neighborhood.

The motion was seconded by Mr. Krellenstein; To Approve: Krellenstein, Price, and Casper; Abstain: Mandelker; Absent Egginton.

Ms. Mandelker reminded the applicant that the approval is effective for a period of one year.

**THE APPLICATION IS APPROVED AS AMENDED.**

### **CAL. NO. 06-13-BZ**

Application of Judith Gerst, 22 Deerfield Lane, Katonah, New York 10536 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the "As Built" breezeway that is closer to the rear lot line (existing 5' where 30' is required) in an R-½, One Half Acre Residential District.

The property is located on the south side of Deerfield Lane, designated on the Tax Map as Sheet 9C, Block 10793, Lots 68-75, in an R-½, One Half Acre Residential District.

### **Cal. NO. 17-13-BZ**

Application of Judith Gerst, 22 Deerfield Lane, Katonah, New York 10536 for a [1] variance of Article III § 220-9D(2) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of an increase in non-conformity other than use due to the "As-Built" conversion of an existing carport to garage that is closer to the rear lot line (existing 5' where 30' is required) in an R-1/2A, One Half Acre Residential District.

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The property is located on the south side of (#22) Deerfield Lane, and designated on the Tax Maps of the Town of Lewisboro as Sheet 9C Block 10793, Lots 68-75, One Half Acre Residential District.

Judith Gerst was present with Jeffrey Kane, Esq.

It was noted that application Cal.No.16-13-BZ and Cal. No. 17-13-BZ are being considered together.

Mr. Kane displayed the property survey. It was his belief that when this matter was previously discussed that some issues had been raised with the visuals and that it was the hope that the Board would visit the property again. It was his understanding that the schedule of the Board did not make this possible. He advised that they had arranged to have some markings done with respect to the location of a fence on the property of Rinaldo that had been installed by a previous property owner.

In response to Mr. Casper's observation that the height of the breezeway appeared to be short, Mr. Kane advised that the breezeway is an extension of the roof line over the door.

Mr. Krellenstein advised that he took a dim view of as-builts. There are however circumstances in this case that are not present in other cases. The carport was constructed with a variance; the homeowner has now enclosed it. He advised that he did not view this as egregious as the breezeway and could support a vote that would allow the carport as is undisturbed while not approving the breezeway.

Mr. Casper advised that he would prefer seeing some real plans rather than going back out to the property noting that he would like some input from the Building Inspector with respect to the height of the breezeway.

Mr. Kane requested the Board consider another site visit at which time they might provide some constructive recommendations. Plans could then be prepared and maybe the breezeway could be approved.

Ms. Mandelker advised that she preferred to consider the applications separately as she did not have a problem with enclosing the carport. When visiting the property previously, the breezeway appeared large and there were not proper plans. If the vote occurred this evening, she would be inclined to deny it.

The Board granted counsel's request to keep both public hearings open and to visit the site again on July 27<sup>th</sup>.

In response to a question of Mr. Price, Ms. Gerst advised that she had a building permit and a certificate of occupancy for the carport, but was not aware that she needed anything to enclose it. She further advised that the contractor, who built the breezeway, questioned whether a variance would be needed. She advised that she did not know and he started to build it.

There were no further comments.

**THE PUBLIC HEARING IS HELD OPEN.**

**Cal. NO. 20-13-SP**

Application of Robin J. Price, Jr. [owners of record: Robin J. Price, Jr. and Vernona S. Price], 12 Elmwood Road, South Salem, NY 10590 for a renewal of a Special Permit pursuant to Article V, Section 220-38 of the Zoning Ordinance to allow the storage of Contractor's Equipment.

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The property is located on the west side of Elmwood Road, designated on the Tax Map as Sheet 43, Block 10302, Lot 30, in an R-2A, Two-Acre Residential District.

Mr. Price recused himself, stepped down from the podium and represented himself in this matter.

There were no objections to the public hearing notice as it appeared in the Lewisboro Ledger.

Mr. Price requested the renewal of the special permit and advised that there were no changes to anything on the premises. The equipment listed is fitting as allowed in the ordinance.

Mr. Casper reviewed the equipment listed on the application.

There were no comments or questions.

Mr. Krellenstein moved that the application for a special permit be granted as it meets the criteria. The motion was seconded by Mr. Casper; To Approve: Krellenstein, Casper, and Mandelker; Abstain: Price; Absent: Egginton.

Ms. Mandelker advised that a special permit, unlike a variance is legislated by the Town Board, not by the Zoning Board of Appeals. If it meets the criteria, the Special Permit is issued for two years.

**CASE CLOSED.**

**CAL. NO. 22-13-SP**

Application of Gossett Brothers Nursery, Ltd., Route 35, South Salem, NY 10590 [Owner of record: Thomas Gossett, 1202 Route 35, South Salem, NY 10590] for the renewal of a Special Permit pursuant to Article V, Section 220-32B (2)(f) to operate a non-conforming nursery business.

The property is located on the north side of Old Post Road (Route 35), designated on the Tax Map as Sheet 31, Block 10805, Lot 46, in an R-2A, Two-Acre Residential District.

Thomas Gossett was present.

There were no objections to the notice of public hearing as it appeared in the Lewisboro Ledger.

Mr. Gossett advised that there have been no changes to the operations since last approved two years ago.

Mr. Krellenstein moved that the application for a special use permit be granted as it meets the criteria. The motion was seconded by Mr. Casper; To Approve: Krellenstein, Casper, Price and Mandelker; Absent: Egginton.

Ms. Mandelker advised that since this application meets all the criteria for a special permit, it is approved for two years.

**CASE CLOSED.**

**Cal. NO. 18-13-BZ**

Application of Enzo Allegretti, 7 Lois Lane, Katonah, New York 10536, [owners of record: Enzo V. Allegretti & Antoinette L. Allegretti Trustees] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the expansion of an existing porch landing to extend width of existing porch

roof closer to the front property line (44.5' where 50' is required) in a R-2A, Residential District.

The property is located on the east side of (#7) Lois Lane, and designated on the Tax Maps of the Town of Lewisboro as Sheet 9, Block 10798, Lot 50 in an R-2A, Two Acre Residential District.

Regina Allegretti Davenport, daughter of the applicant was present.

There were no objections to the notice of public hearing as it appeared in the Lewisboro Ledger.

Ms. Allegretti Davenport displayed the property survey and reviewed the application to extend the porch under the existing roof overhang.

Mr. Krellenstein noted that the Board walked the site and noted that the property was lovely and from what they could tell from the plans the expansion made sense. There did not appear to be any impact to the neighbors and would probably improve the property. The requested variance is minor in context to the size of the property.

Ms. Mandelker agreed; it was very clear what was being proposed and made sense.

There were no further comments.

Ms. Mandelker moved to approve the application as presented for the following reasons:

- There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
- There is no practical alternative to the requested variance.
- The requested variance is not substantial.
- There will be no adverse effect or impact to the physical or environmental conditions of the neighborhood or district.
- The difficult is not self-created.

The motion was seconded by Mr. Casper: To Approve: Krellenstein, Price, Casper, and Mandelker.  
Absent: Egginton.

Ms. Mandelker advised that the variance is approved for a period of one year.

**CASE CLOSED.**

**Cal. NO. 19-13-BZ/SP**

Application of Scott Harris, 48 Cross Pond Road, Pound Ridge, New York, 10576 for a variance of [1] a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of an As-Built accessory apartment in an existing accessory structure;[2] Article IV, § 220-23D(11) of the Zoning Ordinance in the matter of an existing accessory structure to exceed 600 square feet (total floor area 1440 square feet proposed) in an R-2A, Two Acre Residential District;

The property is located on the north side of Cross Pond Road, designated on the Tax Map as Sheet 41, Block 10264, Lot 9, in an R-2A, Two-Acre Residential District.

Scott Harris was present.

There were no objections to the public hearing notice as it appeared in the Lewisboro Ledger.

Mr. Harris advised that he received the letters of objection from the neighbors this evening. He advised that he resides on the property and that he also spends time at his girlfriend's residence in Brooklyn and travels over the holidays. The Cross Pond Road address is his legal address. He noted that many of the complaints were with respect to cars and activity at the property over the winter. He stressed that this as-built structure is as it was when he purchased the property ten years ago and advised that he was unaware that it was not rentable space. He rented the apartment for ten years without any problems until this last year when he rented to a local young man. Ultimately, this tenant moved out. Mr. Harris advised that there had not been any issues since the notice of violation had been served. The apartment has been empty since the tenant moved out.

Mr. Harris reviewed the as-built floor plans for the main house and garage apartment. He noted that he has a tenant renting a room in the main house. He clarified that there is a two car garage attached to the residence as well as a detached two car garage. The accessory apartment is located on the second story of the detached garage. When this detached garage was built in the 1960's, the second story was classified as storage. Mr. Harris advised that a previous owner converted this space into an apartment. He indicated that he has been made aware that there is no certificate of occupancy for this use.

Mr. Harris advised that he removed a wall between two bedrooms in the main house creating one large master bedroom. As a result, there is no change to the bedroom count.

Mr. Casper advised that this Board could not approve an application if there is any illegality. It would appear that there had been construction without a permit and would like to know the Building Inspector's view of the entire structure. The submitted plans were not clear to the Board.

Mr. Krellenstein advised that he was troubled with the fact there is a tenant in the main house and that there has also been a tenant in the apartment. He further advised that the plans were not clear to him. In addition, the Board has received comments of concern from the neighbors.

Mr. Harris advised that the Building Inspector is aware that he is renting a room in the main residence; this was not an issue so long as there was not an additional kitchen facility. The issue was the apartment and the reason for the violation. Mr. Harris advised that the Building Inspector had not entered either structure.

Barry Kassel, 46 Cross Pond Road, stated that he had some differences with what had been represented. He had called Mr. Harris several times on different matters and he was unable to reach him. He found it hard to believe that this is his primary residence. Judging by the number of cars that are parked on the road, he believed that there is more than one tenant. At times it appears that there are several people sleeping in the main house. He advised that a tenant who lived in the apartment had difficulty reaching Mr. Harris after Hurricane Sandy. The cars parked on Cross Pond Road have created a safety hazard.

Mr. Harris maintained that the excessive number of cars being parked on the road was related to the tenant who has since vacated the premises. In response to a question of Mr. Krellenstein, Mr. Harris advised that the square footage of the apartment is approximately 700 s.f. He was advised that the Building Inspector took into account the total square footage for the building.

Peter Afif, 51 Cross Pond Road advised that he lives directly across the street from the applicant. He advised that this is a quiet street with tight bends. He advised that he was almost in an accident with one of the tenants. The tenant advised that Mr. Harris would not allow him to park in the driveway. Mr. Afif

objected to the some of the activities that had been occurring on the property. He expressed concern with the possibility of a second apartment. He advised that because he was concerned with the activity on the property, he had tried a number of times to reach Mr. Harris and knocked on the door. He noted a number of mattresses lined up on the floor.

In response to Ms. Mandelker's inquiry as to whether the neighbors noted more activity before or after the "bad" tenant, Lynn Kassel advised that she had moved in a year ago in June and that they observed transient people moving in and out the entire time. She further noted that she saw people coming and going even when the previous tenant (Bonnie) was living in the apartment. Mrs. Kassel noted that during Hurricane Sandy that this tenant was trapped by a tree and was unable to reach Mr. Harris.

Richard Rinaldi, 57 Cross Pond Road advised that this structure has already had ramifications, changing the character to this neighborhood due to cars parked on the road and dogs. He advised that this is a single-family neighborhood; they are not looking for renters and multi-family residences.

Mr. Afif advised that he had contacted the Westchester County Department of Health who advised that it is a requirement (LL7-2007) that the well be tested before the apartment is rented. There is no record on file that this has been done. He advised that the tenant Bonnie had come to their house several times for water because she was unable to use her water. He advised that he had a response from the Health Department dated June 19, 2013 advising that they had approved the plans with respect to the septic system because one of the bedrooms had been removed from the main house. Therefore, the bedroom count remained the same.

Ms. Mandelker read into the record the June 18, 2013 letter of objection signed by Dr. B. Kassel, J. Oliva, R. Peter Afif, B. Mayer, J. Zline, R. Rinaldi, and W. Stein. Ms. Mandelker read into the record the June 20, 2013 letter of objection from Jacqueline F. Oliva.

The Board requested that the Building Inspector inspect the entire property. The Board agreed to visit the property again Saturday, July 27<sup>th</sup>.

**THE PUBLIC HEARING IS HELD OPEN.**

**CAL. NO. 21-13-BZ**

Application of Michael Fuller Sirignano, Esq., 892 Route 35, Cross River, NY, 10581, [Owner of Record: Connie Plaehn, 14 Gilbert Street, South Salem, New York 10590] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter the installation of an air condition condenser unit that will be closer to the side lot line (5' where 12' is required) in an R-¼A, One Quarter-Acre Residential District.

The property is located on the east side of Gilbert Street, designated on the Tax Map as Sheet 36F, Block 10806, Lot 29, in an R-¼A, One Quarter-Acre Residential District.

Connie Plaehn was present with Michael Sirignano, Esq.

There were no objections to the notice of public hearing as published in the Lewisboro Ledger.

Mr. Sirignano advised that Ms. Plaehn purchased the subject property in June 2010. He submitted a photograph of the rear of the house as it existed at the time of purchase. He advised that Ms. Plaehn and her son had been very involved in the design. After three years, the project is nearing completion and must be complete by October to maintain its LEED platinum certification. Part of the design is a high efficiency air conditioning system; this system was a part of the plans that had been reviewed and

approved by the Building Department. The pad for the condenser unit was also shown on the plans that were approved. Mr. Sirignano noted that this Board had heard other applications for this project, the first being in 2010 prior to the commencement of construction. Variances were sought and received for the increase in non-conformity and side yard setbacks related to the stairs on the rear deck. Mr. Sirignano reviewed the findings of the Board when approving these variances, specifically noting that the Board found that there would be no undesirable change in the character of the nearby property; the variance was deemed to be relatively unsubstantial with respect to the non-conformity and the side yard setback. He further noted that the Board found that the self-created difficulty was mitigated because the house was legally non-conforming. He maintained that the pad was less invasive in the side yard setback than the existing foundation of this legally non-conforming structure.

Mr. Sirignano advised that the second application before this Board occurred in 2012. He advised that he had read the minutes and knows the Board's concerns, dissatisfaction and frustration. He believed that this application was poorly presented by Ms. Plaehn's builder. The variances sought increasing the non-conformity for an air conditioning condenser unit and generator were denied. He characterized this application as different as they are not asking for a generator and they are not proposing to increase the non-conformity, they are staying within the existing non-conformity.

Ms. Plaehn addressed the Board and expressed her regrets as to how the applications had been handled in the past. She apologized to the Board and to the adjacent property owners for the actions of her builder. She advised that it is her intent to live in the house noting that she intends to put her current house on the market in the fall. She advised that this will be the first platinum LEEDS residence in Westchester County and confirmed that it must be completed by October to maintain that status. The house was to have been completed a year ago but work was not completed due to financial and personal issues. She assured the Board and the neighbors present that she will be a good neighbor and will be responsive to any future concerns.

It is Mr. Sirignano's belief that the requested variance would not alter the character of the neighborhood. The area is already screened by evergreens and Ms. Plaehn is prepared to add wood fencing to block the unit and to buffer the noise. He advised that this is the highest energy efficient and quietest unit available at 72 decibels which equates to a hairdryer. The alternative is to install individual window units; this would kill the LEEDS platinum goal as well as be unsightly and would create more noise. There is no practical alternative to the requested variance; the house is entirely within the setbacks and the only place to put it without requiring a variance is in the middle of the back yard. He advised that the duct work, electrical and cooling lines have all been installed at a cost of \$25,700; the walls and ceilings have been sheetrocked. The cost to remove these items is at a cost of \$3500. It is Mr. Sirignano's belief that the requested variance is not substantial given that this Board had granted greater variances for the rear steps. He advised that this is a high efficiency system and is more desirable than having window units and would not have an adverse effect or impact the physical or environmental conditions of the neighborhood. Discussing whether or not the difficulty is self-created, Mr. Sirignano stated that the builder had created this difficulty in part, but he saw the unit on the plans that had been approved by the Building Department and did not realize that he would be required to obtain a variance prior to the 2012 request. Mr. Sirignano believed that this project would enhance the values of the neighboring properties in the community. He further did not believe that this high efficiency unit would disturb anyone's enjoyment of their property.

Ms. Mandelker questioned whether the unit could be hooked up so they could come by to hear what the unit sounds like.

Mr. Sirignano had thought that the Board did not consider the noise the issue. He indicated that he would be willing to have the unit connected.

Mr. Krellenstein believed that he had previously indicated that noise was an issue and that it was also his belief that a fellow Board member had indicated that noise would affect one of the criteria, which is the character of the neighborhood. He advised that if he was present for the 2010 application, he would not have approved it because he felt that it was too far and egregious. He further advised that there is a difference to be drawn between a variance granted for something inert (retaining wall), and something that makes noise. He appreciated that the unit is quiet; the practical reality is that he would not want a hairdryer three feet from his property line going three to four hours a day. Although counsel's point is well taken with respect to the unit being shown on the plan that was approved by the Building Department, he advised that he had an issue with this application. He noted that he had read the minutes, felt that the application was confusing that he could not tell what was being proposed and did not trust the applicant's agent. He maintained that he would have a hard time supporting this application as he does not feel that an air conditioning unit three feet off the property line is appropriate.

Susan Hamilton, 14 Lake Shore Drive and daughter of Nancy Law an immediate neighbor, advised that the minutes of the previous meeting indicated that the air conditioning condenser and generator were not part of the original ZBA application for the building permit. She questioned why they were not on the plans if they were such an integral part of the house and why they were not included on the permits. She questioned why there are no alternative locations.

Mr. Sirignano advised that the minutes from the previous application indicated that the Board objected to generator, not the air conditioning condenser and as a result, denied the application in its entirety. Given, the unique facts of the case, he believed that there is justification for the variance now being sought for the condenser.

Ms. Mandelker noted that she looked at the application from a different perspective, and took into consideration the very large side yard of the adjacent neighbor, Mrs. Law. Although the proposed condenser is five feet from the property line, there is a very large side yard separating the two houses. She further advised that she looked for alternative locations in the back and front of the property, and came to the determination that the sound would still carry. She believed that there would not be a material difference unless it was located on the other side, which did not seem to be a practical alternative as she saw it. The other consideration is to understand the amount of sound, noting that she herself has several individual units, which are noisy. As this is a contentious application, she would like to hear the unit to be able to make a judgment. Assuming this unit is approved in the proposed location, she questioned whether it was a possible to install heavy screening on the neighbor's property. This would not only screen the unit visually, but may also help reduce the noise.

Nancy Law, 16 Gilbert Street advised that her house was the first house on Truesdale Lake. She has spent her whole life there and it had always been a little piece of paradise until this project. She cannot see why after all these years, that she has to suffer because someone has decided they want something bigger and better on a little tiny piece of property without giving any thought at all as to how it might impact the neighbors.

Mr. Casper sympathized with Mrs. Law's position, and assured her that this Board tried to be equitable and did their best to work with the rules. He believed that whether or not the condenser being requested is approved, the code may permit the applicant to install individual units. He suggested that maybe the Board could have the option of listening to a few window units as well as the condenser.

Mr. Sirignano advised that the applicant is prepared to incur the cost of any additional plantings that Mrs. Law may wish on her property to screen the unit.

Mr. Price noted that Mrs. Law had indicated earlier that the applicant had pushed the envelope from day one. It was his recollection that the ZBA had reduced the rear steps on the house on the first plan. The built-in barbecue and generator were denied. The only remaining piece is the requested air conditioning condenser unit which does not intrude into the setback any further than the house does now, which is the original footprint from 1930. With the proposed screening, she may hear the condenser, but will not see it.

Ms. Plaehn advised that although the house looks larger, it is actually smaller than the original structure.

Mr. Sirignano advised that the outdoor spa was also denied.

A site visit was scheduled for Saturday, July 27<sup>th</sup>. This will be the first site visit of the morning; the Board would be at the site between 8:45 and 9:00 A.M. The condenser unit would be turned on during the site visit for all to hear.

**THE PUBLIC HEARING IS OPEN.**

#### IV. NEW BUSINESS & CORRESPONDENCE

Mr. Casper moved to adjourn the meeting at 9:15 P.M. The motion was seconded by Mr. Krellenstein; In favor: Mr. Krellenstein, Mr. Price, Mr. Casper and Mrs. Mandelker; Absent: Chairman Egginton.

Respectfully submitted,

Aimee M. Hodges  
Secretary, Zoning Board of Appeals