The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday May 10, 2023. The following Board Members were present: Chairman John F. Ribble III; Vice Chairman James R. Hart; Thomas W. Smith III; Rebeccah Ballo (arrived at 9:06 AM); Donte Tanner (arrived at 9:06 AM); Roderick Maribojoc; Daniel Aminoff; and Karen L. Day.

Chairman Ribble called the meeting to order at 9:04 a.m. He asked if there were any Board Matters to bring before the Board.

Vice Chairman Hart noted that on Sunday night at the Fairfax Federation, former Vice Chairman Paul Hammack was presented with a clock in recognition for being selected as Citizen of the Year.

Vice Chairman Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding litigation in Re: February 2, 2022 decision of the Board of Zoning Appeals of Fairfax County, Virginia and Washington Gas Light Company versus Christine Chen Zinner Consolidated Cases numbers CL 2022-2942 and CL 2022-3061 in the Circuit Court of Fairfax County and consultation with legal counsel and/or briefings by staff members and consultants regarding BZA by-laws and BZA hiring of counsel pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Ms. Day seconded the motion, which carried by a vote of 7-0.

The meeting recessed at 9:07 a.m. and reconvened at 9:36 a.m.

Vice Chairman Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. Ms. Day seconded the motion, which carried by a vote of 7-0.

Vice Chairman Hart moved that the Board authorize Ms. Day to send the two letters discussed in the closed session. Mr. Tanner seconded the motion, which carried by a vote of 7-0.

Chairman Ribble called the first scheduled case.

~ ~ ~ May 10, 2023, Scheduled case of:

Bill H. Waller, SP-2022-MV-00107

Chairman Ribble noted that application SP-2022-MV-00107 had been administratively moved to May 17, 2023.

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~ ~ ~ May 10, 2023, Scheduled case of:

Kyu H. Chong, SP-2021-HM-00118 (Concurrent with VC 2021-HM-00020) to permit an increase in fence height in the front yard adjacent to Higdon Dr. and a reduction in yard (setback) requirements based on errors in building location to permit an accessory storage structure (shed) to remain 2.2 ft. from the rear lot line and 2.8 ft. from the north side lot line. Located at 1645 Irvin St., Vienna, 22182 on approx. 26,116 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((10)) 49.

Kyu H. Chong, VC 2021-HM-00020 (Concurrent with SP-2021-HM-00118) to permit an accessory structure (tree/play house) in the front yard adjacent to Higdon Dr. on a lot less than 36,000 sq. ft. in area. Located at 1645 Irvin St., Vienna, 22182 on approx. 26,116 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-4 ((10)) 49.

Chairman Ribble noted that applications SP-2021-HM-00118 and VC 2021-HM-00020 had been indefinitely deferred.

~ ~ ~ May 10, 2023, Scheduled case of:

Vine United Methodist Church, A 2022-PR-016 (Admin moved from 3/8/2023)

Chairman Ribble noted that appeal application A 2022-PR-016 had been administratively moved to June 28, 2023.

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~~ ~ May 10, 2023, Scheduled case of:

Bogle Telegraph Road Associates L.P., A 2019-LE-021 Appl. under Sect. 18-301 of the Zoning Ordinance. Appeal of a determination that the appellant has allowed 9 sea containers to be located on the property, including one located in the minimum required front yard, without site plan approval; has allowed the construction of a 600 square foot office structure without building permits or site plan approval; has allowed the conversion of 1800 square feet of an accessory structure (lumber shed) to an office/warehouse without building permits or site plan approval; and has allowed the construction of a 400 square foot roof overhang without building permits, all in violation of Zoning Ordinance provisions. Located at 6404 Telegraph Road, Alexandria, VA 22310, on approx. 67,954 sq. ft. of land zoned C-8, in Lee District Tax Map 82-3 ((4)) 2B. (.Admin. moved from 3/4/2020 at appl. req, and 6/3/2020 due to meeting cancellation for incorrect ads.) (Deferred from 7/8/2020 at staff's req.) (Continued from 10/28/2020, 4/7/2021, 6/30/2021, 10/27/21, 6/8/2022, 9/28/2022, and 1/11/2023).

The participants in the hearing were as follows:

- Cathy Belgin, Deputy Zoning Administrator for Appeals, Zoning Administration Division
- William P. Lawson, Jr, Agent for the Appellant

Vice Chairman Hart recused himself from the hearing.

Mr. Lawson provided a status update on the case. All the zoning violations had been corrected, but there was an outstanding building permit issue. The appellant was trying to resolve the issue and could not get the final zoning approval until the building permit issues were resolved. Staff supported the request for a continuance.

Mr. Aminoff moved to continue A 2019-LE-021 to September 20, 2023, at 9:00 a.m. Mr. Tanner seconded the motion, which was carried by a vote of 7-0. Vice Chairman Hart recused himself from the hearing. Mr. Smith voted in his capacity as the alternate board member.

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~ ~ ~ May 10, 2023, Scheduled case of:

Nabaraj Parajuli and Gayatra Parajuli, SP-2022-MA-00097 to permit a reduction in minimum yard (setback) requirements based on errors in building location to allow an addition 20.1 ft. from the rear lot line, accessory structure (playhouse) 4.6 ft. from the rear lot line, and an accessory storage structure (shed) 5.2 ft. from the northeast side lot line to remain. Located at 3116 Cofer Rd., Falls Church, 22042 on approx. 10,097 sq. ft. of land zoned R-3. Mason District. Tax Map 50-4 ((20)) 243.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Philip Isaiah, Staff Coordinator
- Nabaraj Parajuli, Applicant

After the hearing where testimony was presented by Mr. Isaiah, Mr. Krasner, and Mr. Parajuli, with no testimony from the public, Mr. Aminoff moved to continue SP-2022-MA-00097 to June 7, 2023, at 9:00 a.m. in order for staff to consult with the Zoning Administrator's office concerning a letter submitted to their office by the applicant and any possible response. Mr. Tanner seconded the motion, which carried by a vote of 7-0.

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~ ~ ~ May 10, 2023, Scheduled case of:

Joy A. Wilder and Andrew H. Wilder, SPA 2018-LE-016 to amend SP 2018-LE-016 previously approved for a home child care facility to allow modifications to development conditions. Located at 5908 Bond Ct., Alexandria, 22315 on approx. 8,738 sq. ft. of land zoned R-3 (Cluster). Franconia District. Tax Map 100-2 ((2)) 558.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Philip Isaiah, Staff Coordinator
- Joy A. Wilder and Andrew H. Wilder, Applicants

After the hearing where testimony was presented by Mr. Isaiah, Mr. Krasner, and Ms. Wilder, with no testimony from the public, Mr. Tanner moved to approve SPA 2018-LE-016 for the reasons stated in the Resolution. Mr. Aminoff seconded the motion, which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Joy A. Wilder and Andrew H. Wilder, SPA 2018-LE-016 to amend SP 2018-LE-016 previously approved for a home child care facility to allow modifications to development conditions. Located at 5908 Bond Ct., Alexandria, 22315 on approx. 8,738 sq. ft. of land zoned R-3 (Cluster). Franconia District. Tax Map 100-2 ((2)) 558. Mr. Tanner moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 2023; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicants are the owners of the land.
- 2. The present zoning is R-3 (Cluster).
- 3. The area of the lot is 8,738 square feet.
- 4. The applicant has read, understands, and concurs with the proposed development conditions as modified.

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 4102.1.F(2) and the standards for this use as contained in the Zoning Ordinance.

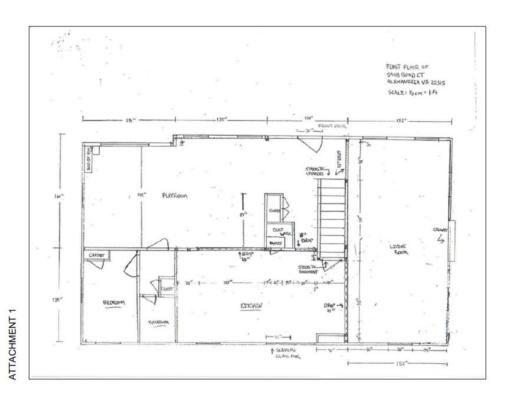
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

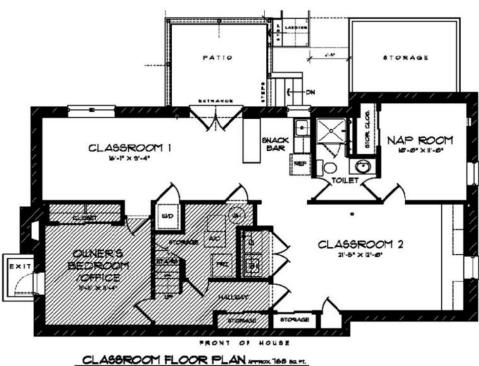
1. This approval is granted to the applicants, Joy A. Wilder and Andrew H. Wilder, only, and is not transferable without further action of the Board, and is for the location indicated on the application,

- 5908 Bond Court, and is not transferable to other land.
- 2. This special permit is granted only for the home child care use indicated on the plat entitled, "Plat, Showing Improvements on Lot 558, Section Seven of a Plat of Correction, Hayfield Farm," prepared by Dominion Surveys, dated October 5, 2022, as qualified by these development conditions.
- 3. A copy of this Special Permit must be made available to all departments of the County of Fairfax during the hours of operation of the home day care facility.
- 4. The hours of operation of the home day care facility are limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
- 5. Excluding the applicant's own children, the maximum number of children on site at any one time is limited to twelve (12).
- 6. A maximum of two (2) nonresident employees, whether paid or not for their services, may be involved in the home day care facility, limited to the hours of 6:45 a.m. to 6:15 p.m. The day care facility must be operated in accordance with the Virginia Department of Social Services staffing requirements of 22 VAC 40-111-570.
- 7. No signage is permitted associated with the home day care facility.
- 8. All drop-off and pick-up activities must occur in the applicant's driveway.
- 9. Any portions of the dwelling associated with the home day care facility that are used as a children's sleeping or rest area must be located in a room with an operable exterior window, door or similar device that provides for a means of escape and access for rescue in the event of an emergency. Such emergency escape and rescue openings must be of the dimension and size specified by the Virginia Uniform Statewide Building Code.
- 10. The approval of the use is contingent upon maintenance of a state-issued family day home license that permits the number and ages of children being cared for at the home day care facility.
- 11. The day care facility must be operated in accordance with Chapter 30 of the County Code, entitled "Minimum Private School and Child Care Facility Standards".
- 12. The home day care facility must operate only in the rooms identified in the applicant's statement of justification and provided on the floorplan submitted with this application, which include rooms identified as the "playroom," "kitchen," "living room," and "bathroom" on the first floor and/or "classroom 1", "classroom 2", "snack bar", "toilet", and " nap room" on the basement level (Attachment 1). The applicant may utilize any combination of the space on first floor and basement levels, so long as the gross floor area devoted to the home day care use measures at least 768 square feet.
- 13. The applicant is responsible for identifying and complying with the terms of all legally binding easements, covenants, conditions, liens, judgments, encroachments or other encumbrances to title affecting the subject property, shown or not shown, on the approved special permit/variance plat as may be determined by a court of competent jurisdiction. Approval of this application does not abrogate, vacate, interfere with, or invalidate such claims.
- 14. Pursuant to Sect. 8100.4.D(6) of the Zoning Ordinance, this special permit will take effect upon a vote of approval by the Board of Zoning Appeals.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Aminoff seconded the motion, which carried by a vote of 7-0.





~ ~ ~ May 10, 2023, Scheduled case of:

Piyush J. Goel, SP-2022-MV-00009 to permit an increase in fence or wall height in a front yard. Located at 2511 Brentwood Pl., Alexandria, 22306 on approx. 25,866 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-1 ((7)) (5) 505.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Kevin McMahan, Staff Coordinator
- · Piyush J. Goel, Applicant
- · Keith Martin, Applicant's Agent

After the hearing where testimony was presented by Mr. McMahan, Mr. Krasner, Mr. Goel, and Mr. Martin, with no testimony from the public, Mr. Hart moved to approve SP-2022-MV-00009 for the reasons stated in the Resolution. Mr. Tanner seconded the motion, which carried by a vote of 5-2. Ms. Day and Ms. Ballo voted against the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Piyush J. Goel, SP-2022-MV-00009 to permit an increase in fence or wall height in a front yard. Located at 2511 Brentwood Pl., Alexandria, 22306 on approx. 25,866 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-1 ((7)) (5) 505. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 2023; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the co-owner of the land.
- 2. The present zoning is R-2.
- 3. The area of the lot is 25,866 square feet.
- 4. There is a staff recommendation of denial. However, the Board has reached a different conclusion regarding the applicable standards in Section 4102.1F(2). Under Subsection 3c, the BZA has the flexibility to determine that a fence up to 6 feet in a front yard is appropriate.
- 5. This is a close call. This is a house with two front yards, where the lot is heavily impacted by a stream which is running in a concrete channel on the other side of the lot.
- 6. There is a swimming pool in the backyard, which is also a front yard because it is a corner lot with a double front yard. Many times, the BZA has allowed a fence to go higher in the area around a pool.
- 7. There is a very slight topography issue.
- 8. Because this is a masonry wall instead of a wooden fence, it would be difficult or awkward to step it down in a way that would not look strange. Currently, it looks okay, and there is not any significant negative impact on the neighbors.
- 9. There is a slight safety concern because of the cut through traffic on the street.
- The plat appears to show an encroachment, but it is not dimensioned, and that would be for VDOT to determine.
- 11. There are a number of letters supporting the fence.
- 12. The applicant has read, understands, and concurs with the proposed development conditions as modified.

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 4102.1.F(2) and the standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit is approved to permit the existing wall greater than four feet in height in the front yard adjacent to Frances Drive to remain as shown on the plat, entitled "Special Permit Plat, Lot 505, Block 5, Hybla Valley Farms," prepared by Larry N. Scartz, Land Surveyor dated August 10, 2021 and revised on July 18, 2022.
- 2. Within 90 days of a request by VDOT, the applicant must relocate the section of wall and/or the masonry blocks adjacent to Frances Drive out of the VDOT right-of-way.
- 3. The subject wall must be maintained in good condition at all times.
- 4. The applicant must obtain all required trade permits and pass final building inspections for the existing accessory storage structure, labeled as "Frame Shed" on the Special Permit Plat and the utilities installed in the "Frame Shed", within 120 days of approval of this special permit.
- 5. On or before September 30, 2023, the applicant must apply for and diligently pursue approval of a Resource Protection Area (RPA) Exception for all structures located within the RPA including the shed (labeled as "Frame Shed" on the Special Permit Plat), the decking around the swimming pool, and the planter boxes/walls, as determined by the Land Development Services. Alternatively, the applicant can demolish or relocate the shed, pool decking, and planter boxes/walls outside the RPA, subject to a Water Quality Impact Assessment (WQIA) pursuant to Article 4 of the Chesapeake Bay Preservation Ordinance (CBPO).
- 6. The applicant is responsible for identifying and complying with the terms of all legally binding easements, covenants, conditions, liens, judgments, encroachments or other encumbrances to title affecting the subject property, shown or not shown, on the approved special permit/variance plat as may be determined by a court of competent jurisdiction. Approval of this application does not abrogate, vacate, interfere with, or invalidate such claims.
- 7. Pursuant to Sect. 8100.4.D(6)(a) of the Zoning Ordinance, this special permit will take effect upon a vote of approval by the Board of Zoning Appeals.

This approval, contingent upon the above-noted conditions, does not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Tanner seconded the motion, which carried by a vote of 5-2. Ms. Day and Ms. Ballo voted against the motion.

~ ~ ~ May 10, 2023, Scheduled case of:

Tushar Bhardwaj, VC 2021-BR-00010 to permit construction of a single-family dwelling 19.7 ft. from the front lot line adjacent to Ox Road and 19.7 ft. from the side lot line. Located at 4700 Ox Road, Fairfax, 22030 on approx. 11,400 sq. ft. of land zoned R-1 and WS. Braddock District. Tax Map 68-1 ((3)) 1. (Admin move from 12/8/2021, 2/9/2022, 3/23/2022, 5/4/2022, 6/15/2022, and 9/14/2022) (Admin move from 10/26/2022, and 2/22/2023, and 3/1/2023)

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Sunny Yang, Staff Coordinator
- Hugh Whitehead, Forest Conservation (FCON)
- Tushar Bhardwaj, Applicant
- Kannan Annamalai, Applicant's Agent

After the hearing where testimony was presented by Ms. Yang, Mr. Krasner, Mr. Bhardwaj, and Mr. Annamalai with no testimony from the public, Ms. Day moved to approve VC 2021-BR-00010 for the reasons stated in the Resolution. Ms. Ballo seconded the motion, which carried by a vote of 7-0.

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

Tushar Bhardwaj, VC 2021-BR-00010 to permit construction of a single-family dwelling 19.7 ft. from the front lot line adjacent to Ox Road and 19.7 ft. from the side lot line. Located at 4700 Ox Road, Fairfax, 22030 on approx. 11,400 sq. ft. of land zoned R-1 and WS. Braddock District. Tax Map 68-1 ((3)) 1. Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 2023; and

WHEREAS, the Board has made the following findings of fact:

- 1. The applicant is the owner of the land.
- 2. The present zoning is R-1.
- 3. The area of the lot is 11,400 square feet.
- 4. There is a favorable staff report, which addresses the issues of ingress/egress for a driveway via a shared entrance on Lot 2, and the issues with the water runoff and stormwater management due to building on a currently vacant lot. These issues were all addressed in the development conditions.
- 5. This application satisfies the requirements for a variance approval.
- 6. Due to the VDOT taking of a substantial portion of the lot, it is significantly undersized.
- 7. The applicant has read, understands, and concurs with the proposed development conditions.

WHEREAS, the Board has made the following findings of fact and law:

1) That the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property, 2) the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance, OR 3) the granting of the variance would alleviate a hardship by granting a reasonable modification to property or improvements requested by a person with a disability,

AND

- 1. That the property interest in the subject property for which the variance is being requested was acquired in good faith, and the applicant did not create any hardship for which relief is sought.
- 2. That the variance would not result in a substantial detriment to adjacent property or nearby properties in the proximity of that geographical area.
- 3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
- 4. That the granting of the variance would not result in an unpermitted use or a change in the zoning classification.
- 5. That the relief or remedy sought by the variance application is not available through a special exception or special permit.
- 6. That the variance would conform with the purposes of the Zoning Ordinance and not be contrary to the public interest.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. These conditions must be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A copy of the recorded conditions must be provided to the Zoning Permit Review Branch, Department of Planning and Development.
- 2. This variance is approved for the location of the single-family dwelling as shown on the variance plat entitled, "Variance Plat Lot 1, Sec 3, Braddox Subdivision" by Ram L. Pradhan of Inova Engineering Consultants, Inc., dated February 6, 2023, and revised May 6, 2023, as submitted with this application, and is not transferable to other land.
- 3. The design of the dwelling must be generally consistent with the architectural elevations depicted in Attachment 1 to these Development Conditions.
- 4. Prior to approval of the infill lot grading plan for the subject property, the applicant must record among the land records of Fairfax County an ingress-egress easement and turnaround easement over portions of adjacent Lot 2 consistent with those shown on the variance plat. The terms of the easement must clearly specify maintenance responsibility and scope of use.
- 5. The applicant is responsible for identifying and complying with the terms of all legally binding easements, covenants, conditions, liens, judgments, encroachments or other encumbrances to title affecting the subject property, shown or not shown, on the approved special permit/variance plat as may be determined by a court of competent jurisdiction. Approval of this application does not abrogate, vacate, interfere with, or invalidate such claims.
- 6. Pursuant to Sect. 8100.6.B(5) of the Zoning Ordinance, this variance will automatically expire, without notice, thirty (30) months after the date of approval unless construction of the new dwelling has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

This approval, contingent upon the above-noted conditions, does not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Ms. Ballo seconded the motion, which carried by a vote of 7-0.









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As there was no other business to come before the Board, the meeting was adjourned at 11:38 a.m.

Minutes by: Mary Padrutt

Approved on: September 27, 2023