



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
OCTOBER 24, 2007**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, October 24, 2007 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:04 p.m. by Chairperson Carol Kuhnke.

ROLL CALL

Members Present: (7) W. Carman R. Eamus, D. Gregorka,
R. Suarez, C. Kuhnke, K. Loomis and D. Tope
(arrived at 6:15 p.m.)

Members Absent: (2) C. Carver and C. Briere

Staff Present: (3) M. Kowalski, M. Lloyd and B. Acquaviva

A – APPROVAL OF AGENDA

A-1 The Agenda was approved as presented without objection.

B - APPROVAL OF MINUTES

B-1 Approval of Draft Minutes of the September 26, 2007 Regular Session.

Moved by D. Gregorka, Seconded by, K. Loomis, **“that the minutes of the September 26, 2007 Regular Session be approved as presented.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS

C - APPEALS & ACTION

C-1 707, 709 and 711 Packard Street – 2007-Z-020

Sahba La'al is requesting one variance from Chapter 59 Section 5:167 (Required Parking) of 13 parking spaces from the required 21 parking spaces, 8 parking spaces exist on site.

Description and Discussion:

The subject parcel is located at 707-711 Packard. The parcel is zoned C1A (Commercial District) and is located near the corner of Packard Road and State Street. The parcel contains one 4-story 9,332 square foot building with 5 apartments and 3,300 square feet of retail space. The parcel also contains one small parking lot with 8 parking spaces reserved for the residential units. The variance is being requested due to the addition of one apartment on the 4th floor of the building. The petitioner has indicated that this apartment has existed historically and is not new construction. However, during an inspection of the premises by the Ann Arbor Housing Department, inspectors discovered that this unit was not listed in the rental housing database. As such the rental unit is consider new floor area if the petitioner wished to utilize the space as habitable. Because of the added floor area, the addition of this apartment triggers the need for an Administrative Amendment to the approved site plan.

53 In order to be approved through the administrative amendment process, the site has to be
 54 brought up to current city codes. The site can satisfy all requirements of applicable city
 55 codes except for the vehicular parking requirements. The petitioner received variances for
 56 parking lot dimensional landscaping requirements in 1980. Based on Chapter 59 (Off-Street
 57 Parking) requirements the site is required to have 21 parking spaces total based on the
 58 square footage of uses within the building. Of the 21 spaces, 13 are required for the retail
 59 portion of the building and 8 are required for the residential units. The 8 spaces existing on-
 60 site are reserved for the residential units.

61
 62 While the building and surrounding parcels are constructed in a 'downtown' development
 63 pattern with zero setbacks and minimal off-street parking, the parcel is not located in the DDA
 64 district, so off-street parking is required for new or expanded uses. Most buildings, including
 65 the subject building, in the immediate vicinity were constructed around 1920 and as such they
 66 are non-conforming for many code requirements. The area is heavily populated by student
 67 housing and as a result most of the traffic for retail uses is generated by pedestrians and not
 68 vehicles.

69

70 **Questions to Staff by the Board**

71

72 R. Eamus (to M. Kowalski) – Where is the fourth floor of this building? (It's recessed; you
 73 can't see it from the street level).

74

75 **Petitioner Presentation**

76

77 Sahba La'al was present to speak on behalf of the appeal. He stated that the third floor
 78 apartment has been an apartment for the caretaker. Now that the situation has changed,
 79 they would like to make that apartment into a rental unit, and this is what triggered the need
 80 for this variance. In the 1980's, there was a variance given for parking, but the retail space
 81 was never mentioned.

82

83 K. Loomis – How is current parking allocated? Are there eight spots and five units? Is it one
 84 spot per unit and then the others for public visiting the store? (I believe five or six are for the
 85 apartments). (Mr. Lagos (the owner) was present and stated that those spaces are for both
 86 retail and the apartments).

87

88 D. Gregorka – How many residents are in the current apartment units and how many
 89 additional residents would be added with the new unit? (Mr. Lagos stated 9 total spaces
 90 currently and 11 with the proposed new apartment if the variance is granted).

91

92 D. Gregorka – (To M. Kowalski) – With the additional apartment, are eight spaces adequate
 93 to cover the parking requirements for this? (No. This would end up being six units, and it is
 94 one and a half spaces per unit, so they would be one shy).

95

96 Mr. La'al stated a correction on the number of apartment units – there are four existing, and
 97 the proposed would make it five. We need seven and a half and we have eight spaces.

98

99 **Public Commentary** – None.

100

101 **Discussion by the Board**

102

103 K. Loomis – I'm concerned with the amount of spaces and how they're allocated, if they're not
 104 earmarked for the residents there – but this wouldn't stop me from supporting this. This is
 105 within a student area, although they wouldn't need to park their cars there.

106

107 D. Gregorka – The spaces there are supposed to be ‘tied’ to the residences there, and the
 108 fact that they aren’t is a bit of a concern. To support this, I’d like to have these tied to the
 109 motion, but this is a downtown area, and most people in that area don’t have off-street
 110 parking anyway. I don’t have an issue if we can tie spaces to them.

111

112 K. Loomis – Can we tie these to the variance? (M. Kowalski – If you make it part of your
 113 motion).

114

115 C. Kuhnke – (To M. Kowalski) – If our ordinances require parking for the residential units,
 116 what stops an owner to use those for other purposes? (Nothing. If it’s on a site plan, we
 117 could enforce it on the site plan – those are required for those residential units, but otherwise,
 118 no).

119

120 M. Lloyd – Stated that it’s a product of site management, by whoever owns that property.
 121 Typically, if we discover there are problems associated with parking, we would review the
 122 circumstances and do enforcement out there, so ultimately, the housing inspections unit
 123 would have to deal with that. From a day-to-day event, that’s a site management. We grant
 124 approval, expecting that the management there will comply with what we require – if not, we
 125 commence enforcement.

126

127 D. Tope – The practice for many in apartments in the student area is that while the owners
 128 comply as nearly as they can for allotted spaces, there are landlords in the area who rent the
 129 parking out to non-residents. If you rent the unit, you’re not guaranteed that you’ll have a
 130 parking space that is supposed to be provided for that resident. That’s the marketplace.
 131 Tagging a parking space to a unit that we’re allowing to built would be difficult to enforce.
 132 There is no legal connection to the resident and the parking space.

133

134 C. Kuhnke – It seems the concept is to provide more parking when you provide more housing
 135 but that doesn’t necessarily take place (Correct).

136

137 R. Eamus – I support flexibility in this area. The zoning requirements, especially for parking
 138 envision more than this historical commercial development, and I think you have to keep
 139 flexibility in this area. The parking requirement is a ‘formula,’ and it’s for a site plan, and this
 140 doesn’t require one for the parking. I wouldn’t be in favor of tying this to the motion. I’m in
 141 favor keeping this area both residential and commercial.

142

143 MOTION

144

145 Moved by K. Loomis, Seconded by D. Tope “in regard to Appeal Number 2007-Z-020, 707,
 146 709 and 711 Packard Street, that based on the following findings of fact and in
 147 accordance with the established standards for approval, the Zoning Board of Appeals
 148 hereby grants a variance from Chapter 59, Section 5:167 (Required Parking) of 13
 149 parking spaces from the required 21 parking spaces.

150

151 a) The alleged hardships are peculiar to the property and results from conditions
 152 which do not exist generally throughout the City

153

154 b) That the alleged hardships or practical difficulties, or both, which will result
 155 from a failure to grant the variance, include substantially more than mere
 inconvenience, inability to attain a higher financial return, or both.

156

c) The variance, if granted, will not significantly affect surrounding properties.

- 157 d) The circumstances of the variance request are not self-imposed.
- 158 e) The variance request is the minimum necessary to achieve reasonable use of
- 159 the structure.”

160 **On a Voice Vote – MOTION PASSED – UNANIMOUS (Variance Granted)**

161

162

163 **C-2 2145 Amelia Place – 2007-Z-021**

164

165 Jim Scrivens is requesting permission to alter a non-conforming structure and

166 one variance from Chapter 55 Section 5:29 (R1B, Single-Family) of 2 feet from

167 the required side setback of 5 feet for an addition to the existing house.

168

169 **Description and Discussion:**

170

171 The petitioner is proposing to build an approximately 26 square foot one-story addition to the

172 existing house for enlargement of the kitchen. The addition will measure 13 feet long and

173 extend 2 feet into the required side open space. The required side setback is 5 feet and the

174 petitioner is requesting permission to allow a 3 foot side setback. The parcel has an irregular

175 front lot line due to the location on the end of a cul-de-sac. The house is nonconforming for a

176 corner of the attached garage located within the front setback. The existing setback for the

177 garage is approximately 28 feet and the required front setback is 30 feet.

178

179 **Questions to Staff by the Board**

180

181 D. Tope – The purpose of side setbacks are to really provide a buffer for the neighbor.- where

182 is the neighbor? (M. Kowalski points out their location). Also, the foundation is set in closer

183 than it actually looks, as the bay window would jut out.

184

185 D. Gregorka – Asked staff for a clarification as to how it is measured. I thought we measured

186 from the foundation? (M. Kowalski – It’s ‘livable space,’ so because this increases the square

187 footage, it’s measured to the wall. Because this sticks out, it’s considered floor area.

188 (Discussion on other elements that don’t count as ‘floor area’).

189

190 **Public Commentary** – None. (The chair mentioned four supportive communications that

191 were received on behalf of this appeal, including the impacted neighbors who are in the back

192 of the lot).

193

194 **Petitioner Presentation**

195

196 Mr. Jim Scrivens with Reuter and Associates Architects was present to speak on behalf of the

197 appeal. He stated that he had nothing to add to the staff report and that he was available to

198 answer questions or clarify any issues if needed. He stated that they had looked at other

199 solutions to this addition, but encountered too many hardships with each proposal.

200

201 **Questions to Staff by the Board** – None.

202

203 **Discussion by the Board**

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205 **MOTION #1**

206
207 **Permission to alter a Non-Conforming Structure:**

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209 Moved by K. Loomis, Seconded by R. Eamus, “concerning Appeal Number 2007-Z-021,
210 2145 Amelia Place, that based on the following findings of fact and in accordance with
211 the established standards for approval, the Zoning Board of Appeals hereby grants
212 permission to alter a non-conforming structure.

- 213
214 a) The alteration complies as nearly as practicable with the requirements of the
215 Zoning Chapter.
216
217 b) The alteration will not have a detrimental effect on neighboring property, per
218 the attached plans.

219
220 **On a Voice Vote – MOTION PASSED – UNANIMOUS**
221 ***(Permission to Alter a Non-Conforming Structure - Granted).***

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224 **MOTION #2**

225
226 **Variance:**

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228 Moved by K. Loomis, Seconded by D. Gregorka, “concerning Appeal Number 2007-Z-021,
229 2145 Amelia Place, that based on the following findings of fact and in accordance with
230 the established standards for approval, the Zoning Board of Appeals hereby grants a
231 variance from Chapter 55, Section 5:29 (R1B, Single-Family) of 2 feet from the required
232 side setback of 5 feet to permit expansion of the existing house 3 feet from the side
233 property line.

- 234
235 a) The alleged hardships are peculiar to the property and results from conditions
236 which do not exist generally throughout the City
237
238 b) That the alleged hardships or practical difficulties, or both, which will result
239 from a failure to grant the variance, include substantially more than mere
inconvenience, inability to attain a higher financial return, or both.
240
241 c) The variance, if granted, will not significantly affect surrounding properties.
242
243 d) The circumstances of the variance request are not self-imposed.
244
245 e) The variance request is the minimum necessary to achieve reasonable use of
246 the structure, per the attached plans.”

244 **On a Voice Vote – MOTION PASSED – UNANIMOUS**
245 ***(Variance - Granted).***

247 **C-3 200 East William Street (NW Corner of William at Fifth Street) –**
 248 **2007-Z-022**

249
 250 Mike Jacobson is requesting one variance from Chapter 47 Section 4:20 (Curb
 251 Cuts and Driveway Approaches) of 20 feet from the required 30 feet maximum
 252 width for driveway widths onto Fourth and Fifth Avenues.
 253

254 **Description and Discussion:**

255
 256 The subject parcel is 52,403 square feet in total size and is located at the corner of Fifth
 257 Avenue, William Street and Fourth Avenue. The parcel is zoned C2A/R (Business
 258 Service/Residential District).
 259

260 *The existing vacant building (former YMCA) and the current AATA (Ann Arbor Transportation*
 261 *Authority) Blake Transit Center will be razed. The petitioner is proposing to construct a*
 262 *282,000-square foot (usable), mixed-use building that includes a transit center, 46,000*
 263 *square feet of office uses, 100 housing units, a 230-room hotel, a 23,000-square foot banquet*
 264 *facility, and 4,200 square feet of ground floor retail space. The proposed transit center will*
 265 *function as the main terminal for the Ann Arbor Transportation Authority. It is proposed to be*
 266 *located on the ground floor of the north side of the site. Access to the terminal will be*
 267 *provided from Fourth and Fifth Avenues.*
 268

269 *In February of 2006 City Council approved a previous version of this plan and in March of*
 270 *2006 the petitioner was granted four variances from the ZBA, as detailed below:*
 271

- 272 1) A variance to allow drive widths of 40 feet for two-way drives on Fourth and Fifth
 273 Avenue, exceeding maximum allowed per code by 10 feet;
- 274 2) A variance to allow drive widths of 22 feet for one-way drives on Fourth and Fifth
 275 Avenue, exceeding maximum allowed per code by 2 feet;
- 276 3) A variance to allow a drive width of 20 feet for a two-way drive on Fifth Avenue, 4 feet
 277 less than required by code;
- 278 4) A variance to allow a total of 5 curb openings exceeding the maximum allowed by 2
 279 curb openings.

280
 281 In September 2007 the petitioner submitted a revised site plan for this location. The revised
 282 plan will utilize three of the exiting variances granted by the ZBA in March 2006. The new
 283 variance request will replace the previous variance that allowed 40 foot drive widths on
 284 Fourth and Fifth Avenues. As a result of revised plans by the AATA the petitioner is now
 285 requesting a variance to allow 50 foot drive widths on Fourth and Fifth Avenues an increase
 286 of 10 feet in width over the previously approved variance.
 287

288 The variance being requested is related to the function of bus use by the AATA. Currently,
 289 on the combined site four curb cuts exist with a total of 164 feet of curb openings. The project
 290 as proposed will have five curb cuts for a total of 154 feet of curb openings, a decrease of 10
 291 feet. The variance is discussed in detail below:
 292

293 The petitioner is requesting driveway widths 20 feet wider than the maximum 30 feet allowed
 294 by Chapter 47 for two-way drives. This increased width is needed because of the 40 foot
 295 length of the AATA buses. The busses cannot make the turn without running over adjacent
 296 curbs; current standards are not designed to accommodate the length of busses. The
 297 petitioner has provided detailed turning radius diagrams that graphically illustrate this
 298 problem. This variance will affect one driveway on Fourth Avenue and one driveway on Fifth
 299 Avenue.

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Questions to Staff by the Board:

(The Board discussed the previously granted variance and whether that could just be amended or whether it required a new variance to address this request. It was determined that although the driveways are in basically the same locations, the initial plans called for underground parking and this plan does not. M. Kowalski explained that since the 'use' of this building has changed, it had to go back to City Planning and well as City Council and ZBA, but the plan itself is essentially the same, except one driveway is ten feet wider).

D. Tope – Asked if the drive that is the widest is a two way drive. (Yes, this is why the increase is needed. It essentially removes the busses from along Fourth Avenue). So that's decreasing traffic along Fourth? (Correct). I think anything that allows it to function properly is a definite benefit to the area.

D. Gregorka – (Clarified the variance required to grant – in essence, replacing request #1).

W. Carman – I would argue that the plan has changed and that we should once again approve those. I don't have a problem with these, but in any other instance where we granted some variances and they changed, we might not agree to those. These are only good 'per the submitted plans,' and the plans have changed.

M. Lloyd – Stated that this would be covered by stating "per the attached plans" with the new plans attached.

W. Carman – Restated that the old plans are not valid now, so 2, 3 and 4 should be re-granted. (M. Lloyd – You can do that).

Petitioner Presentation

Mike Jacobsen was present to speak on behalf of the appeal. Mr. Jacobsen introduced representatives of the AATA and Smith Group Architects who were also available to answer questions.

Regarding the initial request, the plan was to house 12 of the Transit Authorities 15 busses inside the terminal. In the interim, we've studied the problem, and it is now possible to provide space inside for all 15 busses inside this location. This will help to eliminate the noise and pollution from the street, and we have a new ventilation system planned to disperse the fumes and the public benefit will be greatly enhanced. The issue of widening the curb cut to enable this to happen is why we are here.

Questions of the Petitioner by the Board:

D. Gregorka – If we didn't grant this, you could still operate on the plans and variance previously approved? (Petitioner – The most likely result is that two busses would remain on the street, and the busses would have to swing even wider).

R. Eamus – (Directed to the AATA Representative) – The busses will be able to stack heading west and how much of a lane is there between the busses? (It will be tight, but there will actually be two lanes). So, you could have four busses in that fifty feet?

(The idea is that they are coordinated – we have a 'pulse' system where all the busses come in at a quarter to and a quarter after the hour and would leave straight out following behind each other, unless they're waiting for a late transfer, where others could go out around it.

353

354 The original design had twenty feet for entering and exiting to the parking ramp, and now
 355 you're using that to have trucks to go in and out? You're not asking for a variance for that?
 356 (No. That's essentially a loading dock/trash receptacle area where the trucks will back in and
 357 pull out).

358

359 **Public Commentary** – None.

360

361 **Discussion by the Board**

362

363 R. Eamus - The other subject brought up at the Planning Commission was the amount of
 364 driveway that pedestrians had to walk past. It's somewhat a concern, but as Donna
 365 mentioned, this plan has the added benefit of lessening the congestion on the street, so I
 366 think this is a good idea. One thing not pointed out, but discussed at the CPC at length, was
 367 that you can use the walkway on the north side and cross over. I'm in favor of this.

368

369 K. Loomis – I think there are plenty of reasons to support this, but want to echo what Wendy
 370 said earlier that we need to pass all four variances as the plans have changed.

371

372 D. Gregorka – I also support the variance.

373

374 **MOTION**

375

376 Moved by D. Gregorka, Seconded by W. Carman, **“that in the case of 200 E. William
 377 Street, Appeal Number 2007-Z-022, that based on the following findings of fact and in
 378 accordance with the established standards for approval, the Zoning Board of Appeals
 379 hereby grants a variance from Chapter 47, Section 4:20 (Curb Cuts and Driveway
 380 Approaches):**

381

382 **1. A variance to allow drive width of 50 feet for two way drives on Fourth and Fifth
 383 Avenues, exceeding the maximum allowed per Code by 20 feet.**

384

385 **2. A variance to allow drive widths of 22 feet for one way drives on Fourth and
 386 Fifth Avenues exceeding the maximum allowed per Code by 2 feet.**

387

388 **3. A variance to allow a drive width of 20 feet for a two-way drive on Fifth Avenue,
 389 4 feet less than required by Code, and**

390

391 **4. A variance to allow a total of 5 curb openings exceeding the maximum allowed
 392 by 2 curb openings due to the following findings of fact:**

393

394 **a) The AATA Transit Center functions are unique and do not exist anywhere
 395 else in the city.**

396

397 **b) A transit center of this size could not be effective or operate effectively
 398 without wider drives than are currently permitted by our code. This wider
 399 drive allows the busses to be pulled into the new facility and off of Fourth
 Avenue.**

399

400 **c) The granting of the variance would allow the Transportation Authority
 401 substantial justice and allow them to continue a public benefit in the most
 402 efficient manner possible since city code does not address unique site
 403 design and usage requirements of a transit center.**

- 404 d) The variance will allow the Transit Center to operate efficiently while
 405 maintaining public safety and minimizing conflicts of turning into and out of
 406 the facility, per the attached plans.

407 **On a Voice Vote – MOTION PASSED – UNANIMOUS (Variance Granted)**

408
 409
 410 **C-4 1307 East Stadium Boulevard – 2007-Z-023**

411
 412 Lawrence Lup is requesting one variance from Chapter 55 Section 5:28 (R1C, Single-Family)
 413 of 10 feet 6 inches from the required rear setback of 30 feet for an addition to the existing
 414 house.

415
 416 **Description and Discussion:**

417
 418 *The subject parcel is located at 1307 East Stadium Boulevard. The parcel is zoned R1C*
 419 *(Single-Family Residential District) and is located on the corner of East Stadium and*
 420 *Montclair. The house was built in 1937 and is 973 square feet.*

421
 422 The petitioner is proposing to build several additions to the house, including converting the
 423 existing garage to living space. These additions will increase total floor area of the house to
 424 1,546. All additions to the house conform to zoning requirements except the area being
 425 converted from garage to living space. The one car attached garage currently extends 10 feet
 426 6 inches into the rear setback. The garage is not nonconforming since garages are allowed
 427 to be placed in the required rear open space. However, conversion of the garage space to
 428 living space would require a variance because it would place living space within the required
 429 rear open space, which is not permitted. A new one car attached garage will be built next to
 430 the new living space and will be 8 feet 10 inches from the rear property line.

431
 432 ***NOTE:** (M. Kowalski noted that contrary to his initial report, the entire existing garage would*
 433 ***NOT** be converted to living space, but rather just the area above the existing garage-this*
 434 *does not change the request, as it is still adding living space added closer to the property*
 435 *line).*

436
 437 **Questions by the Board to Staff**

438
 439 W. Carman – Is the space (shown on drawings a hatched lines) behind the garage
 440 considered non-conforming as well? (M. Kowalski – That is like a garage, which would be
 441 allowed, since it's not living space. That portion is storage space). The proposed living
 442 space does not extend over that area).

443
 444 **Petitioner Presentation**

445
 446 Mr. Rob Reimenschneider of Riemco Development, Inc., was present to speak on behalf of
 447 the owner, Laurence Lup. The contractor explained the storage area above the garage and
 448 also stated that the staff report represents their proposal.

449
 450 **Audience Participation - C. Kuhnke – Stated there were several letters of support.**

451
 452 **Discussion by the Board**

453
 454 R. Eamus – (To M. Kowalski) – Why is it that this house is set back so far from Stadium?
 455 (The required setback is only thirty feet; I think it's just the way the house was built).

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D. Gregorka – What we're really looking at is a variance on their rear setback, which from Montclair *looks like* the side setback? (Correct). If we approve the variance, they end up with 19'4" for a rear setback? (Correct. The garage does not count – not living space).

Moved by K. Loomis, Seconded by D. Tope, “concerning Appeal Number 2007-Z-023, 1307 East Stadium Boulevard, that based on the following findings of fact and in accordance with the established, standards for approval, the Zoning Board of Appeals hereby grants a variance from Chapter 55, Section 5:28 (R1C, Single-Family) of 10 feet 6 inches from the required rear setback of 30 feet to permit expansion of the existing house 19 feet 6 inches from the rear property line.

- a) The alleged hardships are peculiar to the property and results from conditions which do not exist generally throughout the City due to the age it was built and its position on the lot.
- b) That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.
- c) The variance, if granted, will not significantly affect surrounding properties.
- d) The circumstances of the variance request are not self-imposed.
- e) The variance request is the minimum necessary to achieve reasonable use of the structure per the attached plans.”

On a Voice Vote – MOTION PASSED – **UNANIMOUS** (*Variance Granted*)

- D. **UNFINISHED BUSINESS** – None.
- E. **NEW BUSINESS** – Reappointments of Gregorka and Kuhnke.
- F. **REPORTS & COMMUNICATIONS**
- G. **AUDIENCE PARTICIPATION – GENERAL** – None.

ADJOURNMENT

Moved by D. Gregorka, Seconded by R. Eamus, “that the meeting be adjourned.”

On a Voice Vote – MOTION PASSED - **UNANIMOUS**

Chairperson Carol Kuhnke adjourned the meeting at 7:18 p.m.

(Submitted by: Brenda Acquaviva, Administrative Support Specialist V – Zoning Board of Appeals)



Carol Kuhnke, Chairperson

11-28-07
Dated ZBA Minutes