

**Town of Northwood
Zoning Board Adjustment
May 19, 2014**

Chairman Roy Pender calls the meeting to order at 7:03 p.m.

PRESENT: Chairman Roy Pender, Vice-Chairman Tom Lavigne, Doug Pollock, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

VOTING DESIGNATION: Roy Pender, Tom Lavigne, and Doug Pollock.

ABSENT: Bruce Farr, Curtis Naleid, and Alternate Robert Bailey

Mr. Pender states that because there are only three members present any decisions made by the board tonight must be unanimous.

MINUTES:

April 28, 2014 and April 30, 2014

Mr. Lavigne makes a motion, second by Mr. Pollock, to accept the minutes of April 28 and April 30, 2014, as written. Motion passes unanimously, 3/0.

NEW CASES:

Case #14:06: Stanley Orzechowski, 40 Ober Road. Map 121, Lot 4.

Applicant seeks a variance to Article IV, Section (B)(4), of the Northwood Development Ordinance, to permit the construction of a garage within the setbacks; Article IV, Section (B)(2) for lot size; lot is 0.19 Acs., where 2 Acs is required; a variance to Article IV, Section (B)(1) as the existing frontage is on a private road that does not meet the zoning standard; and appeal to RSA 674:41, to build on a private road. (Property owned by Orzechowski 1997 Trust, Bertha Orzechowski).

Variance – Article IV(B)(4) - Setback

Mr. Pender asks how far the proposed garage is from the lot line. Mr. Orzechowski states that the garage is 19' and 14' from the setbacks. Mr. Lavigne asks what the setbacks are supposed to be and Mr. Pender replies that the setbacks should be 20'. He asks what the road width is and Mr. Orzechowski replies 93'. The formula is discussed for setbacks and Mr. Pender states that they cannot meet the 20 ft. setback.

Mr. Orzechowski states that Ober Road is a private road that is not maintained; it is a right of way owned by the Decatur family who are abutters. Mr. Lavigne asks if there is any maintenance agreement established for Ober Road. Mr. Orzechowski explains that there is no association; however, there are permanent residents that live on the road year-round who donate for the annual maintenance.

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Mr. Pollock asks why this location is proposed. Mr. Mr. Orzechowski explains that some of the topographical elements of the lot are not shown. He states that the lot is a hillside with the flattest piece of the property being where the garage is proposed. He states that he is choosing to put the garage in this location as the intention is to demolish the existing garage and remove it. He states that the garage will be used for off season storage for a boat and other summer items. He explains that the current location of the garage splits the property in half. In addition, he notes that there are also overhead utilities that run through the property.

Mr. Lavigne states that if the garage were to be re-positioned, it would not be necessary for the setback variance. Mr. Orzechowski replies yes.

Mr. Pollock asks if there are environmental issues for the proposed location and Mr. Orzechowski replies yes and adds that they would be encroaching on the power lines. He states that the existing garage is undersized, 50+ years old, and a new garage would be more efficient. He adds that the property is only .19 acres and the proposal is to rebuild in the rear of the lot.

Mr. Pender asks if the new location is in an area of better topography of the land. Mr. Orzechowski replies that the new area is the best fit so not to encroach wetlands, power lines and the overall general topography of the lot.

Mr. Orzechowski states that he has NHDES approval for the proposed structure.

Mr. Lavigne states that he visited the area. A discussion is held regarding the placement of the stakes. Mr. Orzechowski states that he placed the stakes, and the surveyor measured, hence the source of the plot plan provided.

No abutters are present and no correspondence has been received. Mr. Orzechowski states that he has spoken to both of the abutters and they have no issues.

Mr. Pender states that the items will be addressed separately.

5. Variance Criteria

1. Granting the variance would not be contrary to the public interest because:

Mr. Orzechowski states that the garage is a permitted use and incidental to a single family home. He explains that the purpose is to have a garage to house the off season items.

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2. *The use is not contrary to the spirit of the ordinance because:*

Mr. Orzechowski states that the density between the structures still meets the use. The construction is keeping within the character of the neighborhood. He adds that the abutters in the area have out buildings and garages for their summer items.

3. *Granting the variance would do substantial justice because:*

Mr. Orzechowski states that a garage is a permitted use and is keeping within the neighborhood.

4. *The proposed use would not diminish surrounding property values because:*

Mr. Orzechowski states that the property would be improved. He states that the yard area would become larger when the existing garage is removed. He notes that the existing garage will be removed.

5. *Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:*

The special conditions of this property that distinguish it from other properties in the area are as follows:

Mr. Orzechowski states that this is a non-conforming lot as it does not meet the minimum lot size. He states that due to the lot size and shape they cannot meet the setbacks with the proposed structure.

(A) Owing to the special conditions, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

Mr. Orzechowski states that a garage is an incidental use to a single family home. He states that the structure will allow utilization of the property consistent to surrounding properties.

Mr. Lavigne makes a motion, second by Mr. Pollock, to deny the variance for the setbacks based on the fact that none of the 5 criteria have been met. Mr. Lavigne states that he is not opposed to the project; however, he feels that there are other options for the project to go forward. He suggests turning the garage.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

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Variance – Article IV(B)(2) - Lot Size

Mr. Pender asks if it is possible to gain any other property. Mr. Orzechowski replies no. Mr. Lavigne asks if the Partridge right-of-way is in the deed stating that there must be an open area maintained on this property to allow access to the abutters' houses. Mr. Orzechowski replies yes.

Mr. Pender reads the five questions and Mr. Orzechowski replies that he has previously answered the five questions. Mr. Pender confirms that all responses previously provided are now being incorporated into the questions relative to lot size and Mr. Orzechowski replies yes.

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the variance for lot size, based on the fact that all of the 5 criteria have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Variance – Article IV(B)(1) – Road Frontage/Length

Mr. Pender asks what the length of the road is and if there is any way to expand the road. Mr. Orzechowski replies that he believes the road is 93' and adds that there is no way to expand the length of road.

Ms. Smith states that the plan is a surveyed plat and there is a scale provided. Mr. Lavigne states that there is nothing to believe that it is more or less than the 93' and Mr. Pender agrees.

Mr. Pender asks if Mr. Orzechowski will be using the previously provided responses relative to the road frontage/length. Mr. Orzechowski replies yes.

Mr. Pollock makes a motion, second by Mr. Lavigne, to grant the variance for road frontage/length, based on the fact that all of the 5 criteria have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Variance – Article IV(B)(1) – Road Frontage/Type of Frontage

Mr. Pender states that Ober Road is a private road and it does not have any public road frontage.

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Mr. Pender asks if Mr. Orzechowski will be using the previously provided answers for the issue of the road frontage/type of frontage. Mr. Orzechowski replies yes.

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the variance for road frontage/type of frontage length, for 93' on a private road, based on the fact that all of the 5 criteria have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Appeal RSA 674:41 – Private Right of Way

Ms. Smith explains the criteria for 674:41. She states this application is removing the garage and the building and adding a new garage on the same lot. She states that the board must determine if it is necessary by that change if it is necessary for the use of the structure be related to public roadways and it is the applicant's obligation to explain why that is or is not necessary. She states that if this was a bare lot with a new house being proposed, people who reside in a house would need to be connected to the outside by use of a residence. She notes this is an accessory structure. She adds that the garage is the same use; however, it is in a different location. The board must decide if this meets the threshold. Also, if the board approves the garage in its new location would it impact the purpose of the master plan.

Mr. Lavigne asks if this was an issue addressed by the selectmen. Ms. Smith explains that this is only a portion to the statute. She states that there are other options under 674:41; however, it depends on the type of road frontage as there are different categories. She explains that there is a process with the selectmen for some types of frontage. She states that this proposal is on a private right-of-way. The statute is reviewed and Ms. Smith states that with this proposal (right-of-way) the statute requires the applicant to appeal to the ZBA.

Further discussion is held regarding access and egress of the lot. Mr. Orzechowski states that they enter through Partridge Way. The current parking area is also discussed.

Mr. Pender reads the criteria for the appeal and states that all criteria must be met for the appeal to be granted, as follows:

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1. The enforcement of RSA 674:41 minimum frontage requirements would entail practical difficulty or unnecessary hardship.

Mr. Pender states that this matter has been discussed and addressed by the variance. Mr. Lavigne states that the board has considered that 93' was adequate. Ms. Smith states that the relief being sought is not relative to the amount of frontage needed. She explains that it is relative to the street giving access to the lot and the board should not consider Ober Road. Mr. Orzechowski states that the lot size cannot be changed and Ober Road is unlikely to be changed as it has been this way for decades.

2. The circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets. Mr.

Orzechowski states that there are no new streets proposed. The property will remain the same (seasonal).

3. The erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan.

Ms. Smith states that the town does not have an official map so this does not apply.

4. The erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

Mr. Orzechowski replies no and adds that they are exchanging one structure for another and the new structure proposed will be built to code. Mr. Pender states that a new garage would be less liability to the town than a garage that is falling down. He states that a new building will be built to code.

Mr. Pender asks if it is reasonable to go beyond RSA 674:41 and allow the garage to be built as proposed. Mr. Lavigne states that there will be no additional impacts and the proposal is in compliance to the RSA.

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the appeal to RSA 674:41 based on the fact that all of the criteria has been met, there are no additional impacts, and the applicant is in compliance of the statute.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

General discussion ensues regarding relocating the proposed structure. Mr. Orzechowski states that the reason why the garage is proposed in this location is mainly for the access to back the boat from the Partridge right-of-way; the

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driveway, from the lake, and into the garage. He states that it is an issue with the line of sight. In addition, he explains that one item he must comply with for the state is the NHDES shoreland permit because of the amount of trees, bushes, and shrubs remaining on the lot. He notes that there is a point system that the state uses. He explains that the location of the power lines could make it difficult if the garage needs to be relocated. This may require additional trees, etc., to be cut down and in turn fail the point system for the state permit.

A discussion is held regarding the need to re-apply to the state should the proposal be amended. Ms. Smith states that it is her understanding that if anything on the plan is changed the applicant would need to re-apply to the state.

Mr. Pender explains the appeal process. Discussion ensues regarding the setbacks of the front and rear of the property. Mr. Lavigne asks what is considered to be the front of the property. Mr. Pender replies that the road setback is the front, not the water setback. Mr. Orzechowski asks if this is a conflict with NHDES as the front is the lakeshore side and is the reason why the garage is proposed in this location, pushing it back, and thus being kinder to the lake. Ms. Smith replies that typically the board uses the road; however, this matter can be addressed with the building department relative to building setbacks. Mr. Lavigne comments that when dealing with waterfront lots, he considers the front to be the lake side. Mr. Orzechowski states that they have considered the garage as being placed on the rear of the property and the road is along the rear of the property.

Mr. Pollock states that if the garage is turned too much, it may be within 150' of the lake and would be an issue with the shoreline. Mr. Orzechowski adds that if the garage is turned, he may need to drive over the septic. He states that the proposed position and angle of the garage has been proposed for the best access of the existing house and the right of way.

Mr. Pender suggests that Mr. Orzechowski talk with the building inspector to determine where the front of the property is and if the front is the lake side then there is a different situation. Ms. Smith states that if the house is the front area then there is still an issue with the side and rear setbacks. Mr. Lavigne states that it is his opinion that Ober Rd. is the rear of the property and the lake is the front.

A discussion is held regarding the maximum width of the lot. Ms. Smith states that the lot width is 100' or less and the building inspector should determine the width; if he determines the width at 90' then there will still be 18 ft. needed for the setbacks. Mr. Pender asks what the waterfront setback is. Mr. Orzechowski replies 55 ft. from the lake. Discussion ensues regarding

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requirements for accessory structures. Mr. Pender states that the ordinance states to consider the widest point in the lot. The formula is reviewed. Ms. Smith states that the maximum width of the lot is 90' and the applicant would need to comply with 18' on the rear and the sides for setbacks. Mr. Lavigne states that it is already within 150' as it is.

The easement is discussed. Mr. Lavigne asks what the utility easement width is. Mr. Orzechowski states that he does not know. He explains that all power served to the area comes through this easement; electric, cable, etc.

Ms. Smith explains the process of a motion to reconsider. She states that a motion can only be made by someone who voted in the affirmative. **Mr. Lavigne makes a motion, second by Mr. Pollock, to reconsider the variance for setbacks, Article IV(B)(4).**

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Mr. Pender notes that there are no abutters present relative to this case.

Variance – Article IV(B)(4) - Setback

Mr. Lavigne states that there has been new testimony regarding the shoreland and cutting trees and the state's shoreline point system. He adds that there is an existing easement for power, which crosses the lot. He states that throughout the discussions he thought that the access to the proposed garage was from the street side not the lake side and this is not the case. Mr. Lavigne states that based on these new items and the additional comments he believes that the proposal is reasonable.

Mr. Lavigne makes a motion, second by Mr. Pollock, to grant the variance for setbacks based on the fact that all 5 criteria have been met. Mr.

Lavigne explains that there is a right-of-way/utility easement and there is a specific setback distance required to build. He adds that there is a specific number of trees that can be cut due to the shoreland protection act. There are also issues with the power lines, which causes access problems.

Mr. Orzechowski states that all trees were measured and a drawing was submitted to NHDES with that information. He adds that they were awarded an approval based on that information and drawing. He adds that he is not sure how much farther he can go, if at all.

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Mr. Pender asks if Mr. Orzechowski still stands by the five questions previously provided and he replies yes.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Case #14:07: William and Harmony Fowler, 24 Newman Drive. Map 125, Lot 15. Applicant seeks:

- a variance to Article IV, Section (B)(1) of the Northwood Development Ordinance, to raise the home and add a basement with no road frontage as the existing frontage is on a private road that does not meet the zoning standard.
- a variance to Article IV, Section (B)(2) to allow the expansion of a dwelling on a non-conforming lot; lot has .31 Acs., where 2 Acs. is required;
- a special exception Article VII, Section (B)(3) of the Northwood Development Ordinance, for an upward expansion of an existing non-conforming structure located within the setbacks.

Mr. and Mrs. Fowler are present.

Mr. Pender notes that there are no abutters present.

Variance – Article IV(B)(1) – Road Frontage/Length

Mr. Pender asks how much frontage there is. Mr. Fowler replies 100'. Mr. Pender states that this is 50' shy of the requirement. Mr. Pender asks what the frontage is, is it Lucas Pond or Newman Drive. Mr. Fowler replies that he is lacking about the same amount either way. Mr. Lavigne states that the lack of frontage is 4' either way.

Mr. Fowler states that this is a year round home on post and peers. He explains that it is difficult to get to the wiring and plumbing. He states that they would like to raise the house, add a foundation, and use the area for storage and living space. This will also add an area for electric and plumbing. He states that they are not expanding the footprint of the current structure. Mr. Lavigne asks if the expansion is a full 8 ft. high. Mr. Fowler replies yes, up to the ceiling. He explains that they are about 4 ft. from the water level. Mr. Fowler states that they may need to go up one more foot; however, the structure will be less than 35 ft.

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Further discussion is held regarding moving the house to another area on the property. Mr. Lavigne asks about the view of the lake for the abutters behind them. Mr. Fowler explains that it would not be cost effective to move the entire structure and there are wetlands on the property. He adds that this proposal has been approved by NHDES. In addition, if the house were moved, it would block the views of the abutters across the street.

Mr. Pollock asks if the decks are included within the existing footprint. Mr. Fowler replies that the decks are not included as a part of the footprint for the foundation but will remain with the house.

Mr. Pollock asks if there is a state approved septic system. Mr. Fowler replies yes and states that the system is a pump up system, built 4 years ago.

Mr. Pollock asks if the basement will be living space. Mr. Fowler replies yes; however, there will be no additional bedrooms.

Mr. Pollock asks what the total height will be. Mr. Fowler states that the slope down to the water from the front of the house is 18 ft. and that will increase to a maximum of 25'. He states that it should only increase about 5'; however, he is not sure as to the elevation and where the footings could be placed.

5. Variance Criteria

1. Granting the variance would not be contrary to the public interest because:

Mr. Fowler states that the home already exists and they are not asking to extend the footprint; only to add the foundation, which will be used for storage and living space.

2. The use is not contrary to the spirit of the ordinance because:

Mr. Fowler states that the home and subdivision were approved by the state and town in the 1960's. He states that this will not increase the footprint, only raise the home. He adds that they are not expanding the footprint.

3. Granting the variance would do substantial justice because:

Mr. Fowler states that they are only trying to improve the building and increase the safety and security of the home. He adds that they believe the proposal will increase the value of the home as well as homes in the neighborhood.

4. The proposed use would not diminish surrounding property values because:

Mr. Fowler states that the proposed use will not diminish the surrounding properties; it will increase the values because this will be improving their home. He adds that he has had discussions with the neighbors and abutters about

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the project and they believe this improvement will help in the value of their homes.

5. Literal enforcement of provisions of the ordinance would result in an unnecessary hardship because:

(A) Owing to the special conditions, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because:

Mr. Fowler states that the relationship of this ordinance and the specific application to this property is that this references an existing structure that was approved by the town. He states that they are not expanding the building footprint, only expanding the height of the existing structure.

(ii) The proposed use is a reasonable one because:

Mr. Fowler states that the proposed use is reasonable because they are looking to increase the value, living space, storage space, and more importantly the safety of the existing home by raising it and putting a full standard foundation under the home.

Mr. Pollock makes a motion, second by Mr. Lavigne, to grant the variance for road frontage, length, based on the fact that all 5 criteria have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Variance – Article IV(B)(1) – Road Frontage/Type of Frontage

Mr. Pender states that this road is a private road. Mr. Lavigne asks if there is a maintenance agreement on Newman Drive. Mr. Fowler replies that there is no official agreement. He states that there is an annual meeting and all residents agree to pay for the maintenance and plowing of the road. Mr. Lavigne asks if there is any plan for the town to accept Newman Drive. Ms. Smith replies that there is no scheduled plan.

Mr. Pender asks if the answers to the 5 criteria are the same as previously given. Mr. Fowler replies yes they are.

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Mr. Lavigne makes a motion, second by Mr. Pollock to grant the variance for road frontage/type of frontage, based on the fact that all 5 conditions have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Variance – Article IV(B)(2) – Lot Size

Mr. Pender asks if any of the neighbors are selling their property. Mr. Fowler replies no. He states that there is no way to make the lot any larger.

With no further discussion, Mr. Pender asks if the answers to the 5 criteria are the same as previously given. Mr. Fowler replies yes.

Mr. Lavigne makes a motion, second by Mr. Pollock to grant the variance for lot size, based on the fact that all 5 conditions have been met.

Mr. Lavigne asks the size of the lot. Mr. Fowler replies .32 acres, where 2 acres is required. Mr. Lavigne asks when the lot was developed. Mr. Fowler replies that the lot became a lot September 13, 1967. Ms. Fowler adds that the lot was developed by her grandfather.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

Special Exception

Upward Expansion

Mr. Pender asks what the final height of the upward expansion will be. Mr. Fowler replies that the final height will be between 23-25 ft. with the total structure being no more than 9' higher than what it is now.

A) if an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.

Mr. Fowler replies that the expansion will not block any views. He states that he has talked to the only abutter that would be affected and the abutter is in favor of the project moving forward.

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B) if an upward expansion it shall not exceed the maximum height limitations specified in this Ordinance.

Mr. Fowler states that the maximum height of the expansion will not exceed 35 ft. He states that he does not believe that the height will exceed 25’.

C) the expansion shall not increase any other non-conforming aspect of the structure or lot.

Mr. Fowler states that they are staying within the same footprint.

Mr. Pollock makes a motion, second by Mr. Lavigne, to grant the special exception based on the fact that all 3 criteria have been met.

Roll Call Vote:

Mr. Pollock – yes

Mr. Lavigne – yes

Mr. Pender – yes

Motion passes unanimously; 3/0.

INTERNAL BUSINESS

Letter of Interest

Ms. Smith states that she has received an email from Matt Fowler expressing interest in becoming an alternate member of the ZBA.

Mr. Pender notes that Mr. Fowler has attended the past three meetings over the past few months. He requests support from the board in a recommendation for Mr. Fowler to be appointed as an alternate member. Mr. Lavigne indicates that in the past the board has requested interested candidates to attend at least three meetings. Ms. Smith states that he has attended recent meetings and she notes that the chair has the discretion to appoint the alternate members to the cases; therefore, the alternate member may not be voting until designated by the chair.

Mr. Pender makes a motion, second by Mr. Pollock, to recommend Matt Flower as an alternate member. Motion passes unanimously; 3/0.

Application Checklist Changes

Ms. Smith states that there needs to be a change made to the checklist that is in the application. She states that counsel has recommended that the board receive the applicant’s statements in writing and the application does not indicate that written comments must be provided. All board members are in favor and agree to the change.

Other

Mr. Pollock refers to a former case and states that it is sometimes difficult for the board members to locate all lot lines on the road/property when viewing a

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property and it would be helpful to have some delineation. Ms. Smith states that this can be requested and if the information is not available or visible the board can always vote to do a site walk. Mr. Pollock states that this would be to the applicant's advantage.

Ms. Smith states that she will draft some language for the next meeting for the board to review and discuss.

ADJOURNMENT

Mr. Lavigne makes a motion, second by Mr. Pollock, to adjourn. Motion passes unanimously at 8:48 p.m.

Respectfully submitted,

Lisa Fellows-Weaver
Board Secretary