

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
January 13, 2014

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Suzanne Brown, Thomas DaCosta Lobo, Serge Demerjian, Frank Graziano, Gary Marino, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Ralph Pastore

EXCUSED: None

MAYOR'S ADDRESS: The Mayor addressed the Board members. He thanked everyone for their e-mails and kinds thoughts regarding his son. He welcomed Mr. Fusaro to the board and is certain he will bring a lot to the group. He thanked the Chairman and commended the board on its professionalism and their favorable representation for the town. It is a pleasure to be the town's mayor. He is confident in this board and its decisions. He wished everyone a happy new year.

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ELECTION OF OFFICERS

- Nominated and voted for Chairman: Paul Scrudato
- Nominated and voted for Vice Chairman: Frank Graziano
- Nominated and voted for Secretary: Thomas DaCosta Lobo
- Diana McGovern retains her position as Board Attorney
- Marie Goworek remains as Recording Secretary

The following members were reappointed and sworn in:

Mary Ryder, 1st alternate (reappointed)
Lou Fusaro, 2nd alternate (appointed)
Sergio Demerjian, full member (reappointed)

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No. 1 North American Eagle adjourned to special meeting in February

Applicant: 180 Franklin Avenue Block-Lot-Zone: 9204-21 & 20-B2

Appearances: Donald Rinaldi, Esq.

Mr. Rinaldi requested special date for this matter. He is bringing in a number of experts.

A motion was made to hold a hearing in this matter at a special meeting on February 3, 2014. All approved.

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No. 2 AMBU-Trust LLC VIOLATION Adjournment

Applicant: Medical Transportation Service, 40 Rev. Roberts Place, 14 Harrison Street Block-Lot-Zone: 9204-21 & 20-B2

Application: request for a zoning permit at the above referenced premises, to occupy a portion of the one (1) story commercial building and to park ambulance vehicles for a Medical Transportation Service.

Appearances: Donald Rinaldi, Esq.

Mr. Rinaldi requested an adjournment for this application until the next regular meeting. The attorney representing the church will not dispute the request.

A motion to adjourn this matter until February 10, 2014, was made, seconded, and approved by a vote of 7-0.

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No. 2 MOSCARA USE VARIANCE (violation)

Applicant: Mr. & Mrs. Michael Moscara, 165 Franklin Avenue, Block / Lot /Zone: 7604-21-B3A

Application: request for a zoning permit, at the above referenced premises, to operate a Medical Billing Office on the ground floor in a B-3A zoning district,

Appearances: Donald Rinaldi, Esq. Michael Moscara, Kathleen Locarro (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article V, Section 700-7 A of the Codes of Nutley requires all uses to be listed.

Chapter 700, Article V, Section 700-18 of the Codes of Nutley lists the permitted uses in a B-3A zoning district; office space is listed on a second floor only.

The applicants have tried renting the space to a building company; prior to that, the space was rented to retail businesses. None lasted more than six month each. The space stayed vacant for more than a year. The current tenants are in violation of the zoning ordinance and that is why they are here.

Mr. Graziano asked how long the tenant has been using the space. Mr. Moscaro said it's been a year

The chairman inquired as to the parking facilities. There is a parking lot that accommodates six vehicles. . In response to Mr. DaCosta Lobos's question, the applicant said there is a lot of parking on the avenue because many of the businesses have closed. However, there is the Sylvan Learning Center across the street which is still in operation. He did have an optician in that space for nearly 25 years.

Mrs. Ryder asked what the hours of operation are for this business. Mr. Moscara said they are 10 a.m. to 5:30, five days a week, no weekends. Mr. Rinaldi said the tenant is present and she will testify to questions about the business.

Kathleen Locarro testified that she is the owner of First Class Medical Billing. She moved into the office space a year ago. She has one employee; it is very rare that anyone else would come to the office.

Mr. DaCosta Lobo said, based on the line of questioning, that this area is a retail zone. The fact that there are no customers coming and going is a bad thing for the zone. That is what needs to be addressed – if an office use is justifiable in a retail zone. Mr. Demerjian responded saying that you have to look at the other vacant properties, that's an important factor here.

Ms. McGovern asked Ms. Locarro if the doctors she does the billing for are local doctors, the doctors from town. Ms. Locarro said she cannot reveal names and addresses of the clients, but she has accounts from doctors in Nutley, Belleville, Kearney, Montclair. The work is faxed to her office.

Mr. Rinaldi addressed the members. He said he has had in office in Nutley for a many years on Franklin Avenue. Franklin Avenue is a very long street and he thinks that to believe that there will be a retail business in every storefront on Franklin Avenue from the Clifton city line to the Belleville line doesn't appear to be a reality anymore. Having an office use with no traffic is a plus. A store would require parking and there just wouldn't be enough. He believes that there has to be exceptions made once in a while. There are vacant properties up and down the street. This use will least infringe upon the neighborhood; the office was in use for a year before anyone realized it.

Mr. Moscara mentioned that the Muscle Maker Grill, directly across the street from 165 Franklin, just recently closed its doors.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. Graziano and seconded by Mr. Marino. The variance was granted by a vote of 7-0.

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No. 3 FILIAN LAE attached pool deck to be continued at February 10, 2014 meeting)

Applicant: Jaime Filian, 540 Kingsland Avenue, Block, Lot, Zone: 286 / 3 / R-1

Application: request for a permit to leave as erect 12'x18' deck attached to the existing pool, having a zero foot rear yard setback.

Appearances: Shaina Filian, Jenny Tran, 92 Joreck Avenue, sworn.

Exhibit: O-1 photos, B-1 markup of survey

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article V, Section 700-9(d)(2) of the Codes of Nutley states that the pool shall be no closer than eight feet to any side or rear lot line.

Chapter 700, Article III, Section 700-3 of the Codes of Nutley definitions for non-commercial swimming pool is an indoor or outdoor swimming pool, or tank, whether permanently installed, portable, collapsible, or otherwise, situated above or below grade level with a water depth in excess of 36 inches or surface in excess of 120 sq. ft. or capacity in excess of 1400 gallons, designed or maintained upon any premises by any person for use by himself, his family or guests, and shall include all buildings, structures, equipment, and appurtenances, thereto.

The applicant noted on the application that the pool is desirable for the use of some special needs children and the existing placement is the most efficient for the property.

Ms. Filian is the daughter of the owners of the property. She is speaking on their behalf because of a language barrier. Ms. Filian said that her 11 year old brother was diagnosed with autism. The Filians were told that having a pool would benefit his therapy. Having a pool at their former home was difficult, so they made the move to Nutley which they found to have a good reputation in helping children in the most convenient way possible.

The pool came with a ladder, but they found that the ladder was a hazard to the 11 year old. To avoid further injuries they installed the deck attached to the pool with the handrails to prevent any accidents.

It was not the intention of the applicants to break any rules and regulations set by the town. Instead it was just to help their son so he could perform his therapies and be safe.

Ms. Brown asked if the pool was installed with a permit (it was); but the deck attached to the pool was not. Ms. Filian thought that since the deck is not very big, there would be no problem. Mrs. Brown ask how far above ground is the deck. Ms. Filian believes it is about 42 inches. She was asked how high the fence is in the back that it abuts to. The fence around the property is six feet. The fence on the deck is 32 inches.

Mr. Fusaro asked what is behind the subject property. Ms. Filian said her neighbor's backyard is behind them.

The Chairman asked how deep the pool is: Ms. Filian said it is about 42 inches. The chairman asked if there was another area of the pool that the deck could be attached. There is no other place because the yard is small. Ms., Filian said they installed the deck because the ladder that came with the pool was hazardous.

Ms. Tran asked to be heard on behalf of her mother and for herself. The property, the ladder and the deck is very close to the fence. Because of the height, if safety is an issue, the child would be able to fall over onto the other side which is patio blocks and not grass. This was built without their consent and were not aware of the construction. She has lived in Nutley for 25 plus years; with the installation of this deck, the Tran's quality of life has been altered. The deck is very close to their property line. Speaking for Mrs. Tran, she said in order to accommodate the ladder and deck where it is now, a blue shed used to be on the opposite of the property. It has been moved and is now facing the Tran's.

The members looked at pictures provided by the Trans. One was a view from Ms. Tran's bedroom. Mr. Graziano asked what he brick structure, it is part of the patio. He asked if someone is standing on the deck in the applicant's yard, can they see into the Tran's yard? They can.

The chairman asked the applicant to return to the podium. He said there are options – 1) to narrow the deck, keeping he rails, so that it is away from the fence; 2) move the deck around to the other side of the pool away from the back fence. Ms. Filian discussed this with her mom and she agrees with narrowing the deck. There is a walkway on the opposite side of the pool that would be rendered useless if the deck were to be moved there. The applicants have a pool behind the deck.

The chairman asked if it was possible to narrow the deck and by how much. It could be reduced to half the size. The Chairman asked the Trans if this was acceptable, to have the deck a foot or so off the fence. Ms. Tran said the fence that separates the properties belongs to the Trans.

Mr. Demerjian said it appears from the documents that the existing deck is about eight feet wide. From the pool edge to the rear yard fence, if that were to be cut to four feet, would that be satisfactory to the neighbors. Ms. Tran said it is not only the distance to the fence, the height is an issue. Someone standing on that deck can look directly into the backyard and impede on their privacy.

Mr. DaCosta Lobo said even if this deck was on the other side of the pool and at a four foot height, they would still be able to see over the fence. Mr. Demerjian thinks the issue is the proximity of the deck to the yard, the fence line.

Ms. Filian said originally, there was not a fence on the deck They installed it, in order to give them more privacy, because when it was open, they did not accept it. That is why they installed a higher fence. She said that they have a deck where, when they are out on it, they can also see into the neighbor's yard and patio. The intent of adding the deck around the pool was not to invade their privacy, but for a safety issue for their son.

Mr. Marino said as it is now, it doesn't look safe; it looks like the back fence is a lot lower than the railing. When the kids get bigger . . . it should be moved away from the fence.

Mr. Graziano stated that everything is in the wrong spot. Although, he is sure the members sympathize with the situation, there is no hardship on the property ... to the applicants, yes. If they grant a variance to leave as erect, that variance is going to stay with the home. Whoever else comes to own the property will be able to do that. Someone could climb over the rail and fall into the other yard causing personal injury on the neighbor's property. He sees no reason not to move the deck to the other side. It still will be against code, but it will be in a better situation. Mr. DaCosta Lobo said the shed could be moved to the other end, 90 degrees around; it won't be close to the house nor the fence. Mr. Graziano said the only solution he sees is to move the deck to the other side.

Another suggestion is to move the deck 180 degrees and cut it back to four feet. Mr. Filian asked if the deck, instead of 180 degrees, could be moved to the side of the pool on the opposite side of the shed (the shed, the pool and then the deck). This would put the deck by the side fence. Mr. DaCosta Lobo said he doesn't know how much clearance would be there. Ms. Filian said her parents would make the deck smaller to accommodate the size of the pool.

The chairman said the consensus is that the deck must be moved. The Filians suggested that it be moved to the right side of the pool; they could make it narrower and less wide to accommodate the length of the pool. The distance of the pool to the fence would then be 10 feet on the right side. Mr. Demerjian marked the survey showing the new placement of the pool and the dimension.

Ms. Filian said, if the Board has no objection, her mother will speak to the neighbor on the side of the proposed new position. The neighbor's share a parking lot.

The applicant requested a continuance to the February 10 meeting.

With no further questions from the members and no one in the audience with questions or comments, a motion for a continuance to February 10, 2014, was made by Mr. Marino and seconded. The motion was approved by a vote of 7-0.

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No. 4 SCIARRA to be continued at the February 10, 2014 hearing.

Applicant: Ms. Judith Sciarra, PO Box 1100, Bloomfield, NJ

Application: request for a permit, at 46 Humbert Street, Block/Lot/Zone: 6702 /14 /R2, to convert the existing one (1) story block and stucco garage at the rear of the property, which has been used as a non-conforming light assembly manufacturing use, into a one (1) bedroom dwelling unit with a one (1) car garage, which will increase the number of dwelling units to three (3) and will have two (2) principal structures on one lot.

Appearances: Diane Lennon, Esq. Totowa, NJ; Sal Corvino, Architect/
Planner, Anthony Calandra, 42 Humbert St.; (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article V, Section 700-12 B of the Codes of Nutley states a two-family dwelling, not to exceed one dwelling unit on each lot. The proposed conversion will increase the number of dwelling units to three (3).

Chapter 700, Article V, Section 700-7 of the codes of Nutley states no building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in this article as permitted in the district in which such building or land is located nor in any manner contrary to any of the requirements specified in this article. ***Two (2) principals' structures on the same lot are not permitted.***

Chapter 700, Article XVI, Section 700-113A of the Codes of Nutley states no nonconforming use nor structure nor any lawful use on a nonconforming lot shall be enlarged, extended, reconstructed or structurally altered, except that such structure or use may be structurally altered to correct an unsafe condition. A nonconforming structure or a lawful structure on a nonconforming lot may be restored or repaired in the event of partial destruction thereof.

Chapter 700, Article VIII, Section 700-46A of the Codes in Nutley entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," hereto attached and made a part of this article, is hereby adopted and declared to be a part of this chapter and may be amended in the same manner as any other part of this chapter.

Existing 2 1/2 Story Dwelling Zoning Schedule

	<u>REQUIRED</u>	<u>EXISTING NON- CONFORMING</u>
Lot Area	6,000 SF	5960 SF
Lot Width	60'	35.15'
Lot Depth	100'	164.67'
Per Dwelling	3000 SF	2980 SF
Front Yard	25'	10.70'
Rear Yard	30'	121.9'
Side Yards	6'	1.66'
Other Side Yard	6'	9.48'
Max Lot Coverage	35%	35.9%
Impervious Coverage	70%	63.0%

Proposed Rear Building - One (1)- Family Dwelling.

REQUIRED PROPOSED VARIANCE

Lot Area	6,000 SF	5960 SF	Yes
Lot Width	60'	35.15'	Yes
Lot Depth	100'	164.67'	
Per Dwelling Unit	3000 SF	1986 SF	Yes
Front Yard	25'	60.59'	Yes (700.46 B (6) (c))
Rear Yard	30'	42.93'	
Side Yards	6'	4.34'	Yes
Other Side Yard	6'	10.25'	
Max Lot Coverage	35%	35.9%	Yes
Impervious Coverage	70%	63.0%	

Chapter 700, Article XI, Section 700-71A of the Codes of Nutley states no building or premises shall be used nor shall any building be erected nor shall any building be altered so as to expand its usable floor area unless there is provided parking spaces upon the same premises upon which the use or building is located.

The existing two (2) family dwelling requires four (4) parking spaces. The new proposed one (1) dwelling unit required 1.5 parking spaces; therefore, six (6) parking spaces are required in total. Three (3) parking spaces are provided.

Applicant's attorney addressed the board advising them of her client's request for a variance to build a one-bedroom dwelling in a one-story brick building that was formerly a light, non-conforming assembly manufacturing business. The proposed plan includes changes only to the interior of the building, the footprint will not be affected.

In the spirit of full disclosure, the applicant's ex-husband filed an application in 1986 seeking to build a two-family dwelling (now on the property) and was denied. At that time, the applicant's husband wished to build a two-family apartment where the applicant is now seeking a one-family. The two family would have required additional structure and to be built up. This application does not require those changes. In the past, this building was used for an office and there were many complaints from the neighbors. It is not a viable use for business. If the board does not grant the variance to allow for a one bedroom apartment, the applicant can use it again as a light assembly business.

Ms. Lennon said Humbert is a very tiny one-way street and there is no parking on the street. Although it is non-conforming, the light assembly use was permitted. This, however, is not the best use for the property. The applicant believes it would be better served as a one-bedroom apartment.

Mr. Corvino described for the board the property and the two family house that is on it and the rear building that was previously used for light manufacturing

assembly. A one-bedroom dwelling is proposed for the building in the rear. This zone is approved for single and two-family homes, although no two principle uses nor two principle structures are allowed on a lot. All the variances, somewhat extensive, are all non-conforming existing conditions. [see the chart above]. By proposing the one-bedroom apartment, the use becomes less restrictive than the light manufacturing; there is no loading, noise, deliveries, etc. The owner is trying to utilize the building in a manner that is closer to what is allowed in the zone even though this would be a second principle use on the lot.

At one point this property was two separate lots; there was an easement. One person did own it, but under two different company names. The applicant purchased the building and it automatically merged with the other because it is under one ownership. There used to be an easement between the lots to get to the garage at the rear of the property. The application for two apartments in that rear space that was made in 1986 was denied because it required much more parking, and an addition to the building.

As a result of this application, the applicant has gotten a permit to relocate a staircase on the front building, to the interior of the building, taking away some living space, but increasing the area of the lot to get two parking spaces outside and one in the rear building. However, this still does not comply as six spaces are required. Mr. Corso continued to state his case regarding the use of the property.

Mr. Corso said a neighbor did complain about the retaining wall and poison ivy. The applicant has taken measures to treat the poison ivy and cleaned up the yard. She is also willing to redo the two-foot high retaining wall between the lot and the rear neighbor's property.

The use is less restrictive than the property next to this one, which has six or eight units, also non-conforming. Even with both structures on one lot is less imposing than that structure in this two family zone. This proposed use would mean less noise, less traffic. The applicant would be willing to make site improvements as well as building improvements. To be able to reuse this property in a better way in a beneficial way, will benefit all the neighbors. By eliminating the outside stairs, it opens up the air, light and open space between the two buildings and allows for more parking. He continued to talk about the positive criteria. He presented a landscape plan to the members (Exhibit A1) and detailed other plans for the building and property.

Mr. Demerjian asked if the client lives at the property. She did at one point, but no longer does.

Ms. McGovern said if the Board is inclined to approve the application for a residential use, it could then not revert back to commercial use. Mr. Corso said that was fine. A condition would be made that this would stay as a one-family unit.

Ms. Sciarra said she bought the property over 25 years ago. The building in the back was used as a venetian blind assembly company at the time. Since then, the

building has been the home of different businesses – office space, warehouse space, etc. – and each time the neighbors have complained and then the town got involved. She does not want to be intrusive in the neighborhood; she is trying to make the best use of the building. The simplest and least problematic use for the building is a dwelling – and the grounds would be improved. For the last three years, the space has not been used. The chairman asked what the building uses were in the past. Ms. Sciarra said there was a business office there, a company stored machinery and an attorney stored records.

Ms. Brown said that after all this testimony, she doesn't understand why they should grant this use. Ms. McGovern recapped what she heard the expert testify to:

- Section A to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner which would promote the public health, safety morals and general welfare.
- Section C to improve adequate, light, air and open space. As Ms. McGovern understands it, the removal of the exterior stairs was the reason for that being suggested as a special reason.
- Section I to promote desirable, visual environment through creative development techniques and good civil design and arrangements. The look of the property will be improved by the exterior for the building, the interior of the building and the exterior landscaping including the retaining wall.

The negative impacts, as she sees them would be less traffic than would otherwise have been there; the only negative impact being there are enough cars parked there, so they are not really suggesting there is really any negative impact other than the fact that you have two principle uses on the one lot which is not permitted under the code.

Mr. Graziano said it would also promote preservation of the character of the neighborhood and the conservation of the neighborhood values. Ms. McGovern doesn't know that Mr. Corvino testified to that ... Mr. Graziano and Mr. Corvino agreed that he did not say that, but Mr. Graziano was suggesting that himself. However, Mr. Corvino did agree with Mr. Graziano. This would fall under paragraph G.

Mr. Marino would be more comfortable with a two-bedroom apartment.

Ms. Brown asked if the owner would consider converting the two-family into a one family and then creating a second two-bedroom apartment having two families on one lot. Mr. Corvino does not know if that could easily been done the way to two family house is situated. And there are tenants in the building that would be evicted. Ms. Brown said that was right; they could move into the new space. Mr. Corvino said it would be up to his client, since she bought it with the understanding of having three viable sources of income (he is aware that finance has nothing to do with the matter). She could lose one of those sources of income and it would not be a very good investment on her part. Ms. Brown said the street is bad enough for driving on and even worse for parking. Six spaces are required

for this application and the applicant only has three. Mr. Corvino pointed out that they have increased the parking where there were only two spaces, to three. There was also a loading area for trucks. It was worse off than it is now. Ms., Brown said there are two, two-bedroom units in the main structure. Mr. Corvino corrected here – there are two one-bedroom units. As part relocating the stairs, the living area in each apartment was removed to incorporate the stairs in the original structure. Ms. Brown said is more reason to convert it to a one-family house. Mr. Corvino said that is not his call.

Ms. Lennon said her client would prefer to be able to continue to use it as a two-family residence and to be able to convert the concrete structure in the back to a one-bedroom apartment.

Ms. Sciarra said the house in the front is a small with two small one-bedroom apartments. She is not sure if she made it a one-family house, would it have two bedrooms? Ms. Brown said it's a matter of density that changes the parking requirement. Ms. Sciarra said it would still be a one-family house which is similar to having two one-bedroom apartments. She doesn't know that it would save her much in terms of parking.

Mr. Corvino said obviously if the applicant gets denied, she is going to have to try to rent the space as a commercial use. It's not going to stay empty forever.

Mrs. Ryder said the outside looks very industrial and nothing at all residential. What is the green building material on the outside. It is stucco and could be made any color, said Mr. Corvino. She said it is not aesthetically pleasing; it needs to be updated. Mrs. Ryder asked if shutters could be added to make it look better. Mr. Corvino said it could certainly add details to make it look residential.

Ms. Brown said, in all seriousness, how would the pizza delivery guy find this place – go down the long driveway, make a left, make a right and walk halfway down the building and you'll find it. Mr. Corvino said there would be identifying markers.

Mr. Demerjian said the key issue here is it doesn't feel like a home and it certainly look like a home. It only looks like a converted garage or warehouse building. He doesn't think Mr. Corvino took enough steps, architecturally, to do those things to make it look like a home, to feel like a home, make it feel like it's part for the neighborhood. The hard part for him is to say, "ok, convert this thing," because we don't want an industrial use for it, but he only went halfway. Can he add a gable roof to it . . . they know he is very creative, but he is just not there. Ms. Brown said if you look a little closer, there can also be a front door in the front. Mr. Demerjian said lattice could be added and other materials to add dimension to it to make it feel more homey. The applicant said she has no problem with this.

Mr. Corvino asked if the members would like him to come back with another rendition of the plans. Mr. Demerjian would like to see a proposal on how they will dress up the building.

Mr. Calandra, co-owner of the multi-family building next door to this property. He does not have an objection, but he does have an issue and he would like to express it. Parking is a nightmare on this street. There are 16 spots on his lot, more than enough for his tenants. However, in the past, one of the applicants tenants (her boyfriend) arbitrarily decided to park in that lot. In another situation a tenant negotiated with one of his tenants to park in that lot. He asked that in the applicant's lease, there be a rider specifically says they are prohibited to park in that lot. He did not see the plans, so he asked where exactly the parking would be. Mr. Corvino said the spot is here the stairs are being removed on the outside of the building.

With no further questions from the members and no one in the audience with questions or comments, a motion to continue this application to the next regularly scheduled meeting was made and seconded by a vote of 7-0.

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RESOLUTIONS: Approved.
50 Glenview Road

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MINUTES: Approved.
July 15, 2013
August 19, 2013
September 16, 2013
October 21, 2013

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BUSINESS: Ms. McGovern prepared a draft resolution as to whom would be elected to the board this year. She asked that each regular member sign on the dotted line indicating that they voted as they did. She asked Mr. DaCosta Lobo to swear her in at the end of the meeting.

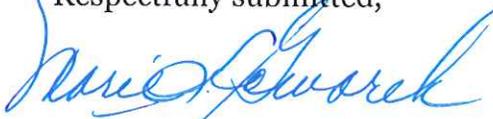
The joint meeting with the Planning Board is scheduled for February 26, 2014.

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INVOICES, LITIGATED MATTERS: None.

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Respectfully submitted,



Marie L. Goworek