

**Nutley Board of Adjustment**  
**May 19, 2008**  
**Meeting Minutes (Amended)**

**CALL TO ORDER:** A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:33:45 by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the "Sunshine Act" notice was read.

**PRESENT:** Robert Beck, Suzanne Brown, Thomas Da Costa Lobo, John Halligan, Ralph Pastore, Diana Petolino, Paul Scrudato, Chairman

**ABSENT/EXCUSED:** Frank Graziano

**MEMORIALIZATIONS/MINUTES:** There were no minutes to be approved. Ms. McGovern read the one memorialization from the previous meeting: Dunkin Donuts. Approved by all.

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**293 Chestnut Street** The Chairman noted that 293 Chestnut Street is here to request a continuance. Marlene Eickmeyer, Esq., representing Metro PCS New York, LLC, came forward and explained that the applicant's professional engineer had a personal emergency and would not be able to attend this evening's public hearing. He was to provide testimony on the proposed installation and to address the concerns noted in the fire official's April 4, 2008 report. Mr. Beck made a motion that the matter be adjourned until June 16, 2008 and that the applicant waive any time constraints (Ms. Eickmeyer agreed); seconded by Mr. Halligan. All in favor. No further notice is required of the applicant.

Mr. DaCosta Lobo during the above discussion.

The Chairman announced that the Board will not begin an application after 11:00. He asked if there was anyone that felt they would need to have their applications moved to July 16. There were none.

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**No. 1 7:39:53 LACORTE Carryover from April 21, 2008 (DENIED)**

**Applicant:** John LaCorte (still under oath), 16 Friedland Road, Block 355, Lot 1, R-2 Zone

**Application:** permit to install an above-ground pool.

**Appearances:** self

The Chairman asked Mr. LaCorte to bring the Board up to speed on as to what has transpired since this matter was last heard on April 21.

Mr. LaCorte said there was discussion about moving and redesigning the driveway in order to fit his proposed pool, having enough pervious space. He did apologize for making being so disagreeable back then. He asked if the board would consider allowing him to move the pool over somewhat. The shed will be removed, which will allow for more pervious space. Because of the angle of the driveway, it is very difficult for his wife to get in and out of the garage. He

wants to move the pool over closer to the sideline (four feet). He wants to be able to landscape around it.

Ms. Brown asked Mr. LaCorte to reconfirm the size, shape and proposed location of the pool. Mr. LaCorte said he wants a 12'x20' pool and about 20+ feet off the rear, which will start at the front of the garage.

Ms. Petolino asked Mr. LaCorte if he was asking the Board to consider the previously submitted drawing. He said yes, but with the driveway drawing that the Board has. Ms. Petolino said the only purpose of the driveway drawing is to change the sideline setback.

Ms. McGovern has a diagram that was marked B-1 (at the April 21 meeting) as an exhibit with the red line. Ms. Petolino said that drawing was showing eight feet off the sideline. Mr. LaCorte said he did not know if they did the driveway because of the impervious or for the pool or for whatever. He will reconstruct the driveway and remove the shed. Ms. Petolino is confused, she said, as to what the Board is considering tonight.

Ms. Petolino asked if the applicant needed a variance to remove the shed. No. Ms. Petolino said she thought the only question here was the sidelines and the impervious coverage. Ms. McGovern said removing the shed would remove some of the impervious coverage; so that leaves the four-foot side yard issue.

Mr. Beck said he fails to understand why the pool has to be four feet from the sideline. He would rather it be eight feet from the sideline. If a variance is necessary, the applicant should get one for being seven feet from the garage. He feels there is enough space to do that. Mr. LaCorte said it is close to the driveway; he would like to put foliage there. Mr. Beck said he does respect that answer.

Mr. Halligan asked how from the driveway the pool would be if it was eight feet from the fence, moving it more to the rear of the property. Mr. LaCorte replied that the front of the pool would be over the driveway. He said he would like to stay in front of the garage. Mr. Scudato asked Mr. Halligan if that was acceptable to him. Mr. Halligan said this would not go beyond the garage. Mr. LaCorte said the illustration shows that; it's pretty much even with the front of the garage and 20 feet off the back fence. He said that is acceptable, but he still has a problem with the driveway.

Mr. Scudato asked for a motion with conditions that are acceptable to the Board. He feels the consensus of the members is that if there is a violation, let it be a violation closer to the garage as opposed to the side yard. He also noted that the metal shed will be removed and the placement of the pool should be eight feet off the side property line, starting from the front of the garage to the front of the property line. Mr. LaCorte said he does not really want to remove the shed to make the eight-foot side yard.

Mr. Beck said that he thinks this matter has been exhausted with all the back and forth. He said it is obvious that what the applicant wants is what he is requesting. He made a motion to deny the application citing the following reasons: 1) the pool is going to be too close to the sideline; 2) it violates the impervious coverage; and 3) it is not in the best interests nor on accord with the terms of the zoning ordinance. Seconded by Ms. Brown. The application was denied by a vote of 7-0.

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**No. 2 CAPUTO (APPROVED 7-0)**

**Applicant:** Rosa (sworn) and Gerolamo Caputo, 106 Ridge Road Block 5600, Lot 24, Zone, R-1

**Application:** request to install an above-ground pool attached to the existing deck.

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley states that no detached accessory use shall be located nearer than 10 feet to a main building. The existing deck is considered an extension of the main building. Code requires eight feet to any side and rear yard lot lines. This plan illustrates approximately 4 feet to the side and 3 feet to the rear.

Ms. Caputo said she feels having this pool installed will not affect any other neighbors. Her property is on the pipeline and she does not have neighbors to the rear or one side; the neighbor on the other side has a very large lot.

Mr. Halligan said that this is a very large pool and only four feet off the side yard line. Ms. Caputo said they would like that size but will downsize if necessary.

The chairman noted that the applicant's lot is irregularly shaped and the Newark waterway right of way abutting the property.

Mr. Halligan asked how much smaller the applicants would be willing to go. Ms. Caputo said the alternative would be 25 feet. There is an existing deck.

Ms. Petolino said if they reduced the size of the pool, then they would be able to have more than the required eight-foot setback off the side.

Mr. DaCosta lobo said since there will be access to the pool from the deck, some kind of safety fencing along the deck. Ms. Caputo agreed.

With no one in the audience either in favor of or against the application, Mr. Halligan made a motion to grant the variance; seconded by Mr. DaCosta Lobo. Approval was granted by a vote of 7-0.

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**No. 3 8:01:31 SANABRIA (APPROVED 7-0)**

**Applicant:** Miguel (sworn) and Susan Sanabria, 191 Kingsland Street, Block 309, Lot 32, Zone R-1.

**Application:** second story addition over existing garage with a rear yard setback of 24 feet on a 62'x76' nonconforming lot.

**Appearances:** Self

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires a minimum 30-foot rear yard setback; prohibits an existing non-conforming structure to be enlarged when the enlargement increases the non-conforming feature.

Mr. Sanabria told the members that his family is growing; and the family is settled in the town. They do not want to move.

Ms. Brown asked if the addition will be going over the existing garage and if it will match the existing siding and roof. Mr. Sanabria said it would as best as possible.

Ms. Petolino asked if there were going to be any outside improvements in conjunction with this project. Mr. Sanabria said no.

The Chairman noted that the footprint will not be altered. The lot is undersized by Nutley standards. The rear yard slopes to the back.

With no one in the audience either in favor of or against the application, Mr. Pastore made a motion to grant the variance; seconded by Ms. Petolino. Approval was granted by a vote of 7-0.

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**No. 4 8:07:15 RUSIGNUOLO (DENIED 7-0) Use Variance**

**Applicant:** Frank Rusignuolo (sworn), 176 Prospect Street

**Application:** 252 Centre Street, Block 182, Lot 2, B-2 Zone, continued use variance- non-complying 2 family

**Appearances:** Frank Rusignuolo, Maureen Cordaro, 137 Oakridge Avenue; Jill Isdanovich, 133 Oakridge Avenue

The letter of denial was read by Mr. DaCosta Lobo. A use variance is required to convert the existing, nonconforming single family dwelling into a two family. Codes of Nutley requires a minimum of two parking spaces per dwelling unit for a total of four parking spaces for a two family dwelling; at least one space must be in a garage.

The Chairman asked the applicant if the subject property is on the market. Mr. Rusignuolo said it is not. He asked the applicant how he plans to handle the parking. Mr. Rusignuolo said he has a driveway big enough for five or six cars. If the cars are stacked, the first car can get out through the easement on the Passaic Ave side, which is also the property of the applicant. He has 14 parking spaces.

Chairman Scrudato had paperwork in front of him going back to 1944 which shows permits taken out for work on a single family home; there is nothing in those documents that shows the applicant property was converted into a two family home. Mr. Rusignuolo said he did not know that. When he bought the property, the town inspected the house. He bought it in 1978 and has been renting it out as a two family.

The applicant owns the property on the corner of Centre and Passaic. The Chairman said there is no written easement allowing access and egress through that property. Mr. Rusignuolo said, "who's gonna write it? It's me, I'm gonna write it." The Chairman said a hundred years from now, what if somebody says no? Mr. Rusignuolo said then, that it's no.

Mr. DaCosta Lobo asked if the applicant purchased the property as a two-family. He responded that he did. He said it was inspected a few months ago. He has had the same tenants for years. When they moved out, he had it inspected and that's when the town notified him that the house is registered as a single-family residence. He said that he is here to tell the board that his is making no changes to the house.

Mr. Beck asked how he was being assessed by the town. Is he being assessed as a two family? He did not know. Mr. Beck said he was being assessed as a one family. He was just paying the taxes that he said he owed. Mr. Beck said, "Ignorance of the law is no excuse." The applicant was represented by an attorney when he purchased the house and it was the attorney's duty to check the zoning at that time to ascertain if it was a one or two family. Just because something has existed for a period of years, there is nothing that says, for a house that has a use that is not permitted that automatically he is entitled now, by virtue of having it there for 20 years, he is entitled to keep it that way.

Mr. DaCosta Lobo asked if the property to the other side of the subject property is a two family as well. That is also Mr. Rusignuolo's house and it is not a two family. He does not occupy any of these three houses.

Ms. McGovern said the zone is a B-2; it is a non-conforming one family, but now he wants to have it as a two family, so it is a use variance. The Chairman said the applicant would need five affirmative votes -- not a simple majority.

Mr. Halligan asked if the tenants are staying put. They are.

The Chairman asked whose van was in the driveway and what it is used for. It is Mr. Rusignuolo's and he uses it to deliver dry cleaning. He acknowledged is a commercial van, without commercial plates.

Mr. Pastore said that all the properties in Nutley were reassessed. When that particular property was inspected, as far as the valuation of that property was concerned, what was the final decision at that time. What was he told? Mr. Rusignuolo said he was not there when it was inspected. He advised the tenants to let the inspector in to see the property.

Mr. Halligan asked if any improvements were planned in the future. There are no plans; it will stay as is.

The Chairman said the applicant must show special reasons why this should be a two family home under the town ordinance, if he is hoping to get the variance. The chairman said in very rare cases, can the board consider finances as a special reason; there is no special reason cited here.

Mr. DaCosta Lobo asked if the utilities are separate. Mr. Rusignuolo said they are not. He pays all of them

Ms. Cordaro was here to ask the Board to deny the application. She was under the impression that this was a one-family house until this evening. She said the whole back yard is blacktop. It is aesthetically unattractive. She stated that she has lived there 40 years and never knew the house was a two family.

Ms. Isdanovich, a 24-year homeowner, agreed with Ms. Cordaro that the rear of the property is all blacktop. She said the lot is constantly filled because of the business. She does not see where he can provide the parking he needs to provide. This is an eyesore. She, too, has never known this to be a two-family house.

Mr. Rusignuolo testified that the property is paved to the driveway, but the rest of it is gravel covered.

Ms. Petolino asked if there was some kind of buffer between his property and the residential areas. He said there is a garage, fences, trees and shrubs. He further stated that the houses behind his property are on Passaic Avenue, not Oakridge.

Mr. DaCosta Lobo asked Ms. McGovern if it is possible in this case to conditionally grant a variance like this, such that it would expire. Ms. McGovern said it runs with the property. It cannot be done temporarily. It becomes part of the record for that lot and block.

The Chairman noted that the applicant would need five out of seven affirmative votes. With no one else in the audience to testify, a motion was made by Mr. Beck to deny the application for the continued use of the property as a two-family residence stating that the evidence presented to the Board fails to demonstrate special reasons for the granting of the variance; the evidence fails to demonstrate that the variance can be granted without substantial detriment to the public good, or not substantially impair the intent and purposes of the zone plan and the zoning ordinance; the evidence fails to establish that the property is not reasonably adaptable to a conform use – a one-family use. Seconded by Ms. Brown. Denied 7-0

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**No. 5 8:23:35 PIGNINELLI**

Ms. Brown recused herself.

**Applicant:** Anthony (sworn) and Marisa Pigninelli, 15 Howe Avenue, Block 522, Lot 6, Zone R-1.

**Application:** request to enclose the attached rear yard deck.

**Appearances:** self

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires a rear yard setback of 40 feet. The plans have a 20-foot setback.

The applicant preferred to respond to the Board's questions. The Chairman asked if the applicant's mother, who is also his neighbor, would be testifying against the application. Mr. Pigninelli said she would not.

Mr. Petolino asked if there was any reason why the applicant could not have the additional space he needs by building over the one story part of the house. Mr. Pigninelli said this is more or less a sunroom – not a permanent living space. There will be no heat in there. He also owns the rear property.

The chairman wanted to know why the small deck along the side of the addition sticks out the way it does. He responded that that is the way it was erected.

With no one in the audience either in favor of or against the application, Chairman Scrudato asked for a motion. A motion was made by Mr. Pastore to grant the variance. Seconded by Mr. Halligan. Approved 4-2. Mr. Halligan and Ms Petolino voted no.

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**Ms. Brown returned to her seat.**

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**No. 6 8:42:35 COZZOLINO (APPROVED 7-0)**

**Applicant:** Augustino (sworn), 45 San Antonio Ave., Block 8300, Lot 5, Zone: R-1

**Application:** request to install an above-ground pool

**Appearances:** John Becz, Esq.; Gina Siembra, 52 San Antonio

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley states that no detached accessory use shall be located nearer than 10 feet to a main building. The existing deck is considered an extension of the main building.

Mr. Cozzolino had nothing to add to what was stated in his application, except that he would like the pool for his family's enjoyment. The Chairman said it was seven feet from the deck. The deck is about three feet off the ground. It would be very difficult for children to jump from the deck to the pool.

The Chairman noted that there is a five-foot aluminum fence that is not shown on the survey. The applicant said that he replaced the existing fence in 2003 without a permit. The Chairman suggested he get one.

Mr. Pastore asked if the pool will have a fence around it and a locking gate. Mr. Cozzolino said that was correct. He also said he would put his filter along the deck. It will be in the middle of the yard away from the neighbors.

John C. Becz representing Gina Siembra approached. After his testimony that his client is literally next door and has a legitimate fear that the pool could collapse and cause damage to her property and after the testimony of his client, and after several questions by Board members, Mr. DaCosta Lobo asked what Ms. Siembra's address is. When she replied that here address is 52, Mr. DaCosta Lobo pointed out that the address of the applicant is 45, which would put it on the other side of the street. Ms. Siembra said the applicant lives right next door to her. The Chairman said that is very odd. Mr. DaCosta Lobo said he never saw that. Both the attorney and Ms. Siembra saw their error and apologized to the Board.

With no further questions from the Board members and no one else in the audience to speak either in favor of or against the application, Ms. Brown made a motion to grant the variance; seconded by Mr. Pastore. The members approved the application by a vote of 7-0.

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**No. 7 9:02:15 DeLUCA Approved 5-2**

**Applicant:** Scott DeLuca (sworn), 13 White Terrace, Block 1402, Lot 9, Zone R-1

**Application:** install a solid four-foot fence between the dwellings.

**Appearances:** Self

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley prohibits the height of a fence to exceed four feet between dwellings and shall be 50% open construction.

Mr. DeLuca said that he is seeking to install a four-foot solid fence between his house and the neighbors for security reasons. There is a five to six inch gap in the fence. The neighbor behind him has a pool. He also has a four-foot chain link fence along the back and wants to put in a solid 6 foot for privacy purposes.

The Chairman asked if the applicant gave any thought that a solid fence can sometimes be a detriment to children in the yard; they cannot not be seen by the neighbors or from the street, if there was a danger to the child(ren). Mr. DeLuca said he did not.

Ms. Brown referred to the sketch that the Board was provided. It says that a six-foot fence is requested along the rear, another six-foot fence along the lot line between #13 and #15, and a four-foot fence from the back of the house to just short of the front of the house. She noted that the applicant is only being cited for a solid four-foot fence. Ms. Brown asked him to explain the six-foot fence.

Mr. DeLuca said that fence is from the rear of the house along #13 and #15 White Terrace between #13 White Terrace and 64 Highfield Lane and then between #11 and #13 White Terrace (his neighbor from 11 White Terrace is here for a variance, too). The portions that are outlined on the sketch would be a solid four-foot fence.

Ms. McGovern said the Code states that a fence erected along the side lines from the rear line of the main structure to the rear property line, along such property line, within such line, shall not exceed six feet in height and shall not be of solid construction. But then there is change in that – paragraph k says, “notwithstanding the foregoing, a stockade fence with no open construction may be erected in accordance with what is allowed in Section C, if written consent of the adjoining property owner . . .” which he has. It is just the small piece of four-foot solid fence that runs along the side of the house that he is here for variance. Chairman Scrudato noted that the good side of the fence goes to the neighbor’s side. Mr. DeLuca said he understood.

Ms. Petolino asked what the reasons were that Mr. DeLuca had for needing a four-foot solid fence instead of a 50% open. Mr. DeLuca said that comparing the proposed fence to the existing chain link, he said that the chain link has no support at the bottom. Ms. Petolino said there are other types of open fences he could have. Mr. DeLuca said he understands that, but one reason for the solid fence is because of the neighbors’ dogs. It should prevent the dogs from barking constantly at each other.

Mr. DeLuca had a brochure with a picture of the type of fence he would like (white vinyl).

The Chairman asked if there would be only one fence going down the property line adjacent to his at #11. Mr. DeLuca said that is correct. The existing fence is his own. The Chairman asked about the existing fence between his and #15. That fence is also Mr. DeLuca’s. Chairman Scrudato asked why the proposed fence could not come up to the rear of the dwelling and put a gate there? Mr. DeLuca said there is a side door that he uses and he would like that to open into the yard.

Ms. Brown asked Mr. DeLuca if he planned on having any kind of enclosure from the east side of the property to the house or garage. He said there will be a four-foot gate at the side of the garage, right in the middle. Ms. Brown asked if that needs to be included in the variance. Ms. McGovern said the applicant was not cited for that, but if the Board is so inclined to grant it, then it could be included as part of this. Ms. Brown said because it is not shown. Mr. DeLuca said he would like to install a four-foot solid gate just to make it uniform with the surrounding fence.

Mr. Beck asked if this fence has a good side and bad side or are they both good sides. Mr. DeLuca said they are both good sides. That is one of the reasons why Mr. DeLuca likes this particular fence.

With no further questions from the Board members and no one in the audience to speak either in favor of or against the application, Mr. Pastore made a motion to grant the variance; seconded by Mr. DaCosta Lobo. The members approved the application by a vote of 5-2 with Mr. Petolino and Chairman Scrudato voting against it.

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**Applicant:** Michelle and Larry Mienkiewicz (sworn), 11 White Terrace, Block 2602, Lot 10, Zone R-1

**Application:** four-foot solid side yard fence between dwellings.

**Appearances:** self

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley prohibits the height of a fence to exceed four feet between dwellings and shall be of 50% open construction.

Ms. Brown asked if this fence is going to be the same as the neighbor's fence. Mrs. Mienkiewicz said yes, it would.

Ms. Petolino asked if there was some compelling reason why the applicants needed to have a solid fence along the side yard. Mrs. Mienkiewicz said it would be for privacy and uniformity.

Ms. Brown asked if the applicant was proposing some kind of fence that would go from the east property line to the house, at some point, which is not shown on the submitted drawing. Ms. Mienkiewicz said the yard is identical to her neighbor's – with a cyclone fence. She is proposing the same white PVC white fence. Ms. Brown's question is, if one is looking at the left side of the house, will there be a fence going across from the left side of the property to the house and if so where will it be. Mr. Mienkiewicz said there will be a gate there. Mrs. Mienkiewicz said it will be to the side of the garage – about the middle – and on the other side, the same as her neighbor's. It will be the same exact spot. It will be set back about five feet from the front of the house.

Mr. Beck noted there is a six-foot solid PVC along the back on the plans. Is it existing? No. They do have the consent of the rear neighbors to erect it.

With no one in the audience either in favor of or against the application, Chairman Scrudato asked for a motion. Mr. Halligan made a motion to grant the variance; seconded by Mr. DaCosta Lobo. Approval was granted by a vote of 5-2; Ms. Petolino and Chairman Scrudato voted in the negative.

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#### **No. 9 RIDDLE (APPROVED 7-0)**

**Applicant:** Georgia Riddle (sworn), 15 Daily Street, Block 2902, Lot 4, Zone R-1A

**Application:** Chain link fence needs to be replaced with a six-foot solid on the rear property line

**Appearances:** Self

**Exhibits:** A1 and A2

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley prohibits the height of a fence to exceed six feet and shall not be of solid construction.

Ms. Riddle said she is trying to make improvements to her home. She already has a permit to extend the dormer in the back, install new siding and replace the roof. She is also landscaping the property. The existing fence is quite ugly – it is a chain link with privacy slats. Exhibits A1 and A2 were entered into the record. She described the fence as being solid on the bottom with lattice on top. The gate would be lattice. She said she notified all her neighbors and they are pleased with what she wants to do. There is a short section of fence that runs between the house and the garage. Sitting on the deck, she wants a view to the pool.

Ms. Petolino said there is a condition with the property in that Poplar Place is almost like an alley, or a lane, and this block that the applicant is on is unique in the sense that the properties go from street to street. The rear yard is actually a front yard on Poplar Place. That is the reason the applicant needs the variance. Is that correct? Ms. Riddle believes that to be true. She said she wants to make it look pretty for those neighbors and would landscape on their side of the fence.

Chairman Scrudato noted that Ms. Riddle is spending a lot of time, effort, and money on these home improvements. He said he thinks it would be a benefit to everyone with this type of fence.

The Chairman asked if the members had any questions and if there was anyone in the audience either in favor of or against this application. With no response, the Chairman asked for a motion.

Motion was made by Ms. Brown to grant the variance; seconded by Mr. Halligan. Approved by the members 7-0.

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**BUSINESS:** Three Pennoni invoices were approved for Dunkin Donuts work -- \$150. \$2,328.60; \$600. Mr. Beck made a motion to accept; Ms. Petolino seconded. All approved. The Chairman announced that Michael Naughton will be sworn in next week as fourth alternate.

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**LITIGATION:** None.

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**ADJOURNMENT:** 9:42:05

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Respectfully submitted,

*Marie L. Goworek*

Marie L. Goworek  
Recording Secretary