

Village of Walden
Zoning Board of Appeals Meeting
September 22, 2021

Chairwoman:	Rebecca Pearson	Present
Members:	Christine Scieurca	Absent
	Mary Ellen Matise	Present
	Brenda Adams	Present
	William Sestrom	Absent
Alternate Members:	Scott Barilli	
Building Inspector:	Dean Stuckles	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Gina Somma	Present

Chairwoman Pearson - Called the Zoning Board meeting to order at 6:30pm with the Pledge of Allegiance.

Introduced Bill

1. APPROVAL OF MINUTES:

Member Adams made a motion to approve the July 28, 2021 minutes with corrections. Seconded by Member Barilli. All ayes. Motion carried.

2. BOARD BUSINESS

Chairwoman Pearson: We received a letter from the attorney for 150 East Main St for adjournment.

Attorney Dickover: You could send a letter if you chose to. If you don't want to draw a line in the sand, so to speak, then just send them a letter telling them their request for an extension or postponement was granted. We'll see them in October.

Member Adams: Can we send them a letter and say that it's granted until October, but in October, we move onto a decision.

Attorney Dickover: Certainly.

Chairwoman Pearson made a motion to adjourn until October 27, 2021. Seconded by Member Adams. All ayes. Motion carried.

Chairwoman Pearson: We received a letter from Orange County Transit read into the minutes. We are finished that?

Attorney Dickover: Yes.

A. PUBLIC HEARINGS:

A.1 – 16 South Montgomery St

David Kurpic: I am replacing a fence on the corner of South Montgomery St and Center St. Dean brought it to my attention that I needed approval to go from a 2 foot picket fence to a 4 foot fence. With my application, I enclosed some photographs with a caution line marking 4 feet.

Member Adams: Do you intend to live there?

David Kurpic: Yes. I took it off the market.

Chairwoman Pearson: Do you have a reason why you want to put a fence up?

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David Kurpic: I have a dog and also my upstairs tenant also watches also watches her year old grandson. The previous fence was beyond repair.

Chairwoman Pearson: It will be closed in on the back side of the house?

David Kurpic: Correct. It's not going go all the way around. It's going to be adjoined at the back.

Member Matisse made a motion to open the public hearing. Seconded by Member Barilli. All ayes. Motion carried.

Chairwoman Pearson: It's going to be vinyl and looks like you've already purchased it.

David Kurpic: Yes. I did.

Member Matisse: Are they the old posts?

David Kurpic: No. Those are the new posts.

Member Matisse: What size fence was there before?

David Kurpic: 2 feet.

Chairwoman Pearson: What did you do with your dog then?

David Kurpic: I wasn't living there at the time. I rented it out for the last 2 years and I moved back in.

Member Adams: 1 of the things that we have to look at is to see if it can be achieved by other means. So, why can't the fence be in the back to the front edge of the house and leave the lower fence that would be room for a dog and a child in the backyard versus the front yard?

David Kurpic: Because it's a shared residence, with an upstairs apartment and the downstairs apartment. The upstairs need to access the backyard and I have a Great Dane and there's not much of a backyard, really. It's more than just a parking area.

Chairwoman Pearson: I drove the street the other day and came down to see the sight distance would be. What if you go back a foot or 2 off of the sidewalk? Because people that come down to look both ways are going to have an easier access to look both ways if it wasn't up to the sidewalk. I had to come out further into the road to see around that end post. If you went back a foot - foot and a half in the front yard off the sidewalk, the visual obstruction would be a lot less.

David Kurpic: And you feel that the obstruction would be by the fence and not by the cars. The point I want to make, the photos is that there's more obstruction provided by the parked cars on curb. You're able to see over the fence. I doubt that anyone's going to be able to see through the fence, but being that the approach is on a hill that's higher than the yard, you will be able to see over the fence.

Member Adams: I went down the hill several times just to see and I'm not in favor of a fence that's 4 foot all the way to the corner. I would be in favor of compromise for your backyard. So, it would still be part of Center St and across the back to the property behind you. Leave your neighbor on the other side of you, that fence goes all the way back. You would probably join their fence.

David Kurpic: If that was the case, I suppose, yes.

Member Adams: That would give you access to the backyard. She's going to have to walk down the front anyway, so what's the difference if she walks to the front to play with the child. The house isn't that big.

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It's not a big hike to walk around to the backyard. So, I would be in favor of the compromise. But not in the front yard.

David Kurpic: How about altering the size of the fence or a relocation of the fence, as you suggested, moving it back or bringing it to a 45 degree angle at the corner allowing more space for you to see?

Member Adams: You would be putting the gate on the sidewalk?

David Kurpic: Of course. 2 gates.

Member Adams: What is the problem with not using the backyard?

David Kurpic: It's not a lot of space. Its grass mixed with gravel.

Chairwoman Pearson: I would compromise by moving it back, instead of clipping the corner.

Member Matise: I think the car is much more of an obstruction. If you're in a compact car, you can't see a car coming, so that's 1 thing and you're in an SUV, that's something else.

Chairwoman Pearson: Would you compromise on bringing back a little bit?

David Kurpic: I would if necessary.

Member Adams: What would be the setback if we were to push it back?

Building Inspector Stickles: There is no set back for a fence. It could go right on the property line. So, you're asking him to go from his property line or the backside of the sidewalk, back a foot or foot and half.

Chairwoman Pearson: Just off the sidewalk would be a big difference for me.

David Kurpic: The previous fence was a foot off the sidewalk. There has always been a fence there.

Member Adams: But it was a 2 foot fence and it didn't obstruct anything.

David Kurpic: It is 1 foot off of the sidewalk on 16 South Montgomery St. Centers St, it is flush with the sidewalk.

Chairwoman Pearson: I don't have a problem with the Center St line. I have a problem with the 52 line.

Member Adams: I would think it needs to be more than a foot.

David Kurpic: Or the 45?

Member Adams: Where does the 45 start?

David Kurpic: You have your 2 posts on either side before it comes to the corner, you could just join them, so it'll be 45 and that will be much more space.

Chairwoman Pearson: I would be okay with that.

Member Adams: I would say that it needs to be more. To be honest with you, I didn't want it to go down that far. I wanted it to go to the edge of the house. I would go a little more. Then he has to make a gate and that has to be on an angle. We have this law to make sure the sight lines don't give. So, we have a

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sight line and it seems like this one is just too close to a busy street. There's so much traffic, the ambulance comes out of there.

David Kurpic: Their vehicles are so high.

Member Matisse: This tree is a sight obstruction.

David Kurpic: I think it's the cars that are parked on the street.

Member Adams: The way I look at it is our job is to grant the minimum variance to accomplish what he's trying to accomplish. Also, we have to think about the zoning law, is effecting the value of his property versus his personal use of the property. It's more of something to accommodate the quality of his life for using a dog and a tenant that has a child. I just think this is a big one. Going from a 2 foot to a 4 foot, it's a 100% change.

Building Inspector Stickles: If you're on a corner lot, you can't have anything higher than 2 feet and back 50 feet from the intersection. That's the angle of the dotted line that's on the drawing that you all have.

Member Adams: Where does the intersection start for that 50 feet?

Building Inspector Stickles: My determination would be where both streets intersect. In other words, where both curbs come together.

Member Adams: My idea of a compromise is to allow and I realize your yard may not be adequate to use at this time, but everybody does work on their yards to make them usable. People all over town had to accommodate. I know what you want to do. I understand what you want to do, but I don't want to be the one responsible to see an accident and when the ambulance comes out of there and somebody can't see a car and they certainly can't see the fence.

David Kurpic: I am more than happy to discuss any type of scenario that we can imagine, like where an ambulance coming out and someone not seeing the ambulance.

Member Adams: It's a very busy street. It's a main thoroughfare. Nobody goes slower anymore. Nobody looks, they don't stop and look, which is not your fault, but if you add the fence to it and then you can't see through.

David Kurpic: The argument I make is that the fence is not going to obstruct any views that are already constructed by parked cars. I understand and appreciate the creation of the 2 foot limits on corner lots.

Member Adams: There are some streets where it's no big deal. This is a main street, very active, very densely populated neighborhoods.

David Kurpic: And it's those reasons why I want to put up a fence.

Member Adams: I understand, you need your privacy and protection. I get it, I just don't feel on the sight lines are enough. I feel it should be back further.

Chairwoman Pearson: What if it's 3 feet off of where it is now? He has 18 feet from the corner of the house. It's either flipping that corner and bringing it back or just bring the whole sight line back. That's a compromise that he is going to have a 15 foot yard in the front.

Building Inspector Stickles: The fence that was existing came down Center St and went right across the front yard, right behind the sidewalk.

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Chairwoman Pearson: The posts in there, I would say 3 feet back from there. It's probably to where your first step is. I actually had to pull out to the second line to see around that. If it was back further, I would stop where I'm supposed to stop. I would be fine with taking the fence line now, not the sidewalk, back 3 feet. It would give him the sight distance that I would be happy with.

David Kurpic: Going back to that 45 degree suggestion, from that post to that post is where the fence would run. Leaving you able to see beyond the deli here.

Chairwoman Pearson: I still think I want it back. I don't care about the 45, just bring it back 3 feet.

Building Inspector Stickles: It would be easier if you're going to go from the back side of the sidewalk, back 3 feet on both South Montgomery and Center. Or just South Montgomery.

Member Matise: Just South Montgomery.

Member Barilli: You pay taxes on that land. Now you're making that spot unusable. Is the property line going up to the sidewalk?

Building Inspector Stickles: Generally, they do.

Member Barilli: So, it should be from the sidewalk. I don't think you should take more than 3 feet.

Member Adams: You do understand that zoning laws are in effect that we are supposed to follow and that's what he has to come here to do. Most of the zoning laws do infringe on everyone's property. Unfortunately, I agree with that. But the only way to do that is to have the Village change zoning laws. That's our problem. Once they set zoning laws that says that you have to have no more than a 2 foot fence on a corner. We have that criteria that we have to look through.

Member Barilli: I understand, that's why we're compromising. You can't go up to the property line, you're pushing it back a couple feet.

Chairwoman Pearson: The other thing is we don't have to compromise at all because of the law that's written. So, we are compromising. Trying to get you something for your dog and your people. The important part to me is definitely the sight distance. It's 1 foot off the side walk now, so I'm saying 3 feet from the fence line now, which is going to make 4 feet off the sidewalk.

David Kurpic: How far down the street would you like to see?

Chairwoman Pearson: I want to see toward the deli, to that house right before the deli.

Member Adams made a motion to close public hearing. Seconded by Member Barilli. All ayes. Motion carried.

A.2 – 15 & 17 Overlook Terrace, Continuance 6:30 PM

Member Adams made a motion to reopen the public hearing. Seconded by Member Barilli. All ayes. Motion carried.

Chairwoman Pearson: There wasn't easement on the property that was in front of the other houses that are there now, on yours it doesn't show on here. Dean, the easement went up to the first house on the plans?

Building Inspector Stickles: On the plans that were approved in 2001, the draining easement appears to be on lots 19 and 21 Overlook. They don't appear as on these 2 lots.

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Chairwoman Pearson: But there was a storm drain?

Building Inspector Stickles: There is shown a basin on 17.

Chairwoman Pearson: Correct. Do you have a copy of the old plan?

Brad Cleverly: Yes. We obtained the filed map and that shows the easements on the adjoining lots, not on these ones.

Chairwoman Pearson: We're talking also now about the catch basins in front of the first house, closest to the house that's already built, which is 17. On the old man, there's a catch basin in front of 17 and there's not one on front of 15. So, the water runoff coming from that house where is that going to go?

Brad Cleverly: It would just run in the street and not go into these lots. It wouldn't effect the plan that I have shown.

Chairwoman Pearson: The driveways are sloping to the road, not to the back?

Brad Cleverly: Yes. There's a slight pitch from the houses to the road.

Chairwoman Pearson: Also on these plans, you have the retaining wall in the back of 17 and part of 15 and underneath a part of that, that's what you're calling the underground filtration system. Which is the runoff from the roof?

Brad Cleverly: Yes. Only the roof will be going into the filtration systems in the ground. Those are done in response to the public comments about storm drainage. So, we're accommodating that by essentially all of the roof goes into underground filtration system.

Chairwoman Pearson: When you put in the retaining wall, there's going to be fill put in the back of that house. Probably 15 feet or more. So, when you put the filtration system in at that level and the water seeps down into the ground. What keeps that water from pushing down into that retaining wall? There's no drainage coming down from the retaining wall?

Brad Cleverly: That's part of the geotechnical design for the retaining wall. The geotechnical engineer would accommodate that loading from the roof. Now, bear in mind, it's just for the roof. It's really not significantly different from having your typical configurations and roof drains, which just charge about 10 feet or so from the roof. That's the same amount of water that's coming off the roof above the retaining walls. It's really not that different.

Chairwoman Pearson: Would they be putting in a drain from that system through the retaining wall?

Brad Cleverly: Yes. Like during big events, I know during Ida, those systems would fill up and they would go out behind the retaining wall. There would be an overflow for that system. And those systems hold in the moderate size events and then big events like Ida, the overflow, just as they normally would for any residents. It would roll off the side and around the retaining wall.

Chairwoman Pearson: Between the house and retaining wall.

Brad Cleverly: Well, yes, it would be downhill from the retaining wall, but off the side of the retaining wall, where we have a pipe that goes through the retaining wall to accommodate that big overflow.

Chairwoman Pearson: There is behind one of the houses, the next house up, looks like a detention basin. The first project the retaining walls failed and they had to redo them. So, we don't want the same

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thing to happen. It's not like you're putting water into a stable ground, you're putting it into loose dirt. So, all of that retaining wall is holding back is basically mud.

Brad Cleverly: Well, apparently it wasn't designed very well. This will be designed by a geotechnical engineer to accommodate the slope.

Chairwoman Pearson: Would there be piping into that swale part that is behind?

Brad Cleverly: No. We don't really want to impact any adjoining residents. These systems were just discharged downhill.

Member Adams: The patio, is same as the houses next door?

Brad Cleverly: I don't really have any extensive knowledge of what's on the house next door, but essentially the basement level has a walk out patio.

Member Adams: No, the one on the front. I'm asking because would that effect our variance for 25 foot?

Brad Cleverly: No, that's just a porch. Your code calls for, if it doesn't have a roof on it, it doesn't count. You can have a porch.

Member Adams: There's going to be a pipe that will go through the wall. Which will run downhill. Just to be absorbed in that hill?

Brad Cleverly: Just as every house has roof drains, they discharge the surface, they run downhill. That's what will happen here. But we accommodated the neighbors by keeping them as much as we can on the side. So, it's really going to minimize any changes downhill by putting in the systems.

Member Adams: It was talked about diverting for erosion and sediment control facilities. What happens when the water comes off and the erosion starts?

Brad Cleverly: We'll have sill fence downhill, just like most projects do.

Member Adams: So, you're not putting down a retention pond of any kind?

Brad Cleverly: No. It would create more disturbance by putting a retention pond in.

Member Adams: The 25 foot doesn't bother me so much in the front. I'm worried about that house that is down below. I don't want to see having to deal with your neighbors. And I don't want to be the one that said yes to something that they get drowned with. My second concern is that if it isn't done correctly, the other one, the Village taxpayers had to pay for it. So, I'd rather the builder pay for it.

Member Matise: Is the sill fence going to be a permanent feature?

Brad Cleverly: No. Sill fences are never permanent. They are always removed once the area is stabilized and grass grows. That will be downhill of the retaining wall. Just uphill of the tree line.

Building Inspector Stickles: The design for the retaining wall will be reviewed by a structural engineer or a geotech engineer from Lanc & Tully, to make sure it's designed properly and will not fail.

Chairwoman Pearson: If we decide to move forward with this, can we say that they have to go to the Planning Board for review as a condition?

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Attorney Dickover: Yes, if you don't think that you can resolve it here with letters from geotechnical. The Planning Board relies upon their consultants. And you have a letter perhaps, 2, from John Queenan that addresses issues. If you want more, you could deal with it here, or you could make your approval subject to site plan approval and specifically the issues about drainage and retaining walls and so on.

Brad Cleverly: That's really a building permit for type issue. *read comment from Mr. Queenan* He's saying that this will be designed by professional engineer, that it can go with a building permit application to the Building Department and then the Building Department can defer those drawings over to Lanc & Tully for their review. So, it's not really a Planning Board thing.

Member Matise: There have been changes in the code since 2001 and since 2005. *read John Queenan's 2nd comment* Going back to the Planning Board would review.

Chairwoman Pearson: It would give us a piece of mind that we say that possibly this is something that will really fly. We are just trying to be cautious of what's happening there.

Member Matise: What happens if we don't grant the variance? These designs are for a 25 foot setback.

Brad Cleverly: All those houses essentially are going to be back 10 feet. Your concern is with the infiltration system. They can be removed.

Member Matise: If you're saying that you can only build this with a 25 foot setback, the way you see here and put the filtration systems, which are poorly located according to John Queenan, then you're trying to shift any responsibility to us if we don't give you this variance.

Brad Cleverly: No, I'm just saying that it will be greater impact *inaudible* because there's only so much you can do. Move these residences back, essentially 10 more feet of tree line removal.

Member Matise: You can change your plan. Different size house.

Chairwoman Pearson: Did you get a letter from Mr. Queenan?

Brad Cleverly: Yes, just before the meeting.

Chairwoman Pearson: *read letter and comments into minutes* are you clear cutting property?

Brad Cleverly: Well, clearing as much as a necessary to put the building in, but no more than that. Mr. Queenan is questioning, as I stated on those drawings, that both the residence and the walls were designed by a professional structural engineer. Typically, from these systems like this, where you design the foundation for the residence will go down to existing grade. The home will be stable unto itself. The wall would be stable unto itself. So, they're not getting building from the residence on the walls.

Member Matise: So, its 16 feet high, but it's going to be 10 feet back from the dwelling?

Brad Cleverly: Yes. There's essentially enough room from the dwelling for the deck and then the wall will be beyond the deck.

Member Matise: I was just reading something online today and I know we've had earthquakes in Walden, they shake the house. What level of earthquake protection do you put into these houses or into these walls?

Brad Cleverly: They were designed to meet building code. There would be another engineer that is on retaining wall and the foundation.

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Member Adams: I just want to confirm, what you're telling us, is that someone from Lanc & Tully will be on site that appeared regularly, periodically or at certain critical moments to inspect?

Building Inspector Stickles: No. Prior to issuing a permit, foundation design and retaining wall design will be reviewed to ensure that it will withstand the loads that he's speaking about. When the retaining wall is being constructed, I can ask the engineer to come to the site to see it being done. But not for the foundation. It's not a requirement.

Member Adams: Who will do this test that John Queenan is speaking of that the concentrated flow for storm water discharge?

Building Inspector Stickles: Any tests that are required would be done by the applicant and it would be witnessed by our engineer.

Brad Cleverly: Mr. Queenan was questioning technical things that I can work out with him.

Member Matise: I don't want to speak for anybody else, it's just the fear of those people that live at that bottom of that hill, their house, their driveway, even their motorcycle was parked there the other day, in a few hours, and they could have a serious concern.

Chairwoman Pearson: When they cut more trees down, there's going to be more runoff because there's nothing there holding it in.

Member Barilli: Drainage off the roof, is it a front roof, front and back roof?

Brad Cleverly: We provided architectural drawings and what we would be doing is the typical roof. All the water would go into a filtration system. That will address those concerns about the neighbors down there. They want to keep the water in the yard, uphill in the ground.

Member Adams: I'm good with the condition that our engineer follows this.

Attorney Dickover: I don't know that he would do any more than what he already has. He has this applicant's plans. He's reviewed them. He's made his comments. My suggestion, you can go either way, you can you can approve the variance subject to site plan approval from the Planning Board. And if you're going to do that, I think you would highlight your referral to the Planning Board and say this Zoning Board is particularly concerned about drainage. Or you can take Mr. Queenan's comments and make the applicant's compliance with these comments a condition to your approval. And frankly, I think that's all that the Planning Board would do in this matter. These lots were previously approved for construction and so they can be built as they were approved. I think the applicant's proposal is an improvement. They're creating more surface area between the homes and the properties downhill. They're putting in drainage control measures that are not required under the existing subdivision plan. I think that's an improvement over what they could do as of right. I think the board actually, if you adopted the variances that are being requested are improving what's obviously a bad situation. You're never going to stop all the water. The applicants are not required to stop all of the water. They have the right to shed water off of their properties. They don't have the right to change its course or to increase it or to divert it. But they have the right to shed water. And that's what the original subdivision plan calls for, for these 2 lots. And they could build that as of right.

Chairwoman Pearson: Couldn't we put a condition on that we would want the engineer to be more involved if we don't send it to the Planning Board? I know what happened last time, I don't want that to happen again.

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Attorney Dickover: What the applicant has says that they will present to you a geotechnical report showing you the design for the retaining wall and the drainage that's going to come in and around it. And until you receive that, perhaps you don't grant a variance.

Brad Cleverly: That goes beyond what we're asking for here. It will be subject to the building permit that we retain a geotechnical engineer.

Attorney Dickover: But what I'm hearing the board say is that they're not ready to do that. So, I don't disagree with what you're saying. It could be a condition of the building permit. I'm not sure I hear this board saying that.

Chairwoman Pearson: I still have reservations. I still think it should go to the Planning Board. I get that it's an extra step. I understand it. This Village spent a lot of money to fix the mistakes last time and maybe we have better sources and things happening. And if you can go to the Planning Board and it can be looked at by a few different eyes and different people looking, there may be a few different things you have to tweak, but I think it's going to be better for the residents in the Village. The engineer will be there anyway. Not putting it on another agency in the Village, but making sure we're doing the right thing.

Member Adams made a motion to close the public hearing. Seconded by Member Matise. All ayes. Motion carried.

B. FORMAL APPLICATIONS:

B. 1 – 16 South Montgomery St, Area Variance

The Board reviewed aloud the 5 factors associated with an Area Variance:

a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

Chairwoman Person spoke for all by answering no.

b. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

Chairwoman Person spoke for all by answering it could be by putting a 2 foot fence, but as long as sight distance is achieved.

c. Is the requested area variance substantial?

Chairwoman Person spoke for all by answering the core is substantial, but with what was talked about with the setback, it would be okay.

d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Chairwoman Person spoke for all by answering no.

e. Was the alleged difficulty self-created?

Chairwoman Person spoke for all by answering yes.

Chairwoman Pearson made a motion to approve a 4 foot fence, set back 4 feet from the sidewalk on the South Montgomery Street and the 4 foot fence would be allowed to be constructed in the current location of the existing fence on Center Street. Seconded by Member Matise. 3 ayes. 1 nay. Motion carried.

B. 2 – 15 & 17 Overlook Terrace, Continuance, Area Variance

a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

Chairwoman Person spoke for all by answering no.

b. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

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Chairwoman Pearson spoke for all by answering perhaps, but we are willing to move forward for a community that is going to look the same on street.

c. Is the requested area variance substantial?

Chairwoman Pearson spoke for all by answering the no.

d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Chairwoman Pearson spoke for all by answering we don't know that. We hope it's not.

e. Was the alleged difficulty self-created?

Chairwoman Pearson spoke for all by answering yes.

Member Adams made a motion to approve the area variances as requested, subject to a Planning Board site plan. Seconded by Member Barilli. Motion carried.

C. DISCUSSION ITEMS:

Chairwoman Pearson: Training, there's a webinar that I sent to Marisa. I will send some to Marisa and she'll send them out. Some are webinars, some you go to.

Member Barilli: I did the last webinar.

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

MEETING ADJOURNED: Member Barilli made a motion to adjourn. Seconded by Member Adams. All ayes. Motion carried.

RESPECTFULLY SUBMITTED
Gina Somma, Zoning Board Secretary
8:03pm