

Village of Walden
Zoning Board of Appeals Meeting
December 27, 2023

Chairwoman:	Brenda Adams	Present
Members:	Lisa Mazzeli	Present
	Mary Ellen Matise	Present
	William Sestrom	Present
	Scott Barilli	Absent
Alternate Members:	Vacant	Present
Building Inspector:	Robert Wallner	Absent
Village Attorney:	Robert Dickover	Present
Secretary:	Anisetta Valdez	Present

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

1. **APPROVAL OF MINUTES:**

November 15, 2023

Chairperson Adams made a motion to approve the November 15, 2023 minutes with one change on page 8 under **52 Walker Street**, it's typed as 75' it should be 25'. Seconded by Member Sestrom. 4 ayes.
Motion carried.

2. **BOARD BUSINESS**

Chairperson Adams: I'm going to make one change to the agenda on B. There will be a B3 which will be the final resolution for **83 East Main Street**. First, is the minutes.

Chairperson Adams made a Motion to Approve. Seconded by Member Sestrom. 4 ayes and no abstains.
Minutes are approved with one change.

A. **PUBLIC HEARINGS:**

A.1 45 Second St

Chairperson Adams: Next, we have **45 Second Street**, I'd like a motion to continue the public hearing.

Member Sestrom: I so move.

Chairperson Adams: Second?

Member Matise: Second.

Chairperson Adams: I'm going to read, because it had to be re-noticed, so I'm going to read the notice again. Please take notice [a] public hearing will be held Wednesday, Dec 27, 2023 at 6:30pm or as soon thereafter as the matter can be heard at the village offices at, 1 Municipal Square, Walden, New York to consider the the appeal of Mr. Felix Enchautegui. How's that, is it close enough?

Mrs. Margaret Enchautegui: For now, we'll take it.

Chairperson Adams: For area variances for property located at **45 Second Street**, located in the R5 single-family zoning district and identified in the tax map as section 302, block 4, lot 14.2 from certain provisions of the zoning law of the Village of Walden so as to construct a 21'x 27' single story garage.

Mr. Felix Enchautegui: It's not a single-story garage, it's a carport; that's what I was trying to say before, [it's a carport].

Chairperson Adams: Ok. We'll discuss that in a minute, ok. The area variances requested are as follows: vary section 305-6 dimensional regulations so as to reduce the side yard setback from the required 15' to the requested 20", number two: vary section 305-6 dimensional regulation so as to reduce the front yard set back from the required 25' to the requested 10", number 3 vary section 305-13A 3

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accessory buildings to be used so as to construct and 21'x27' single story garage within the required side yard area, vary section 305-6 dimensional regulations so as to allow lot coverage of 40% where the maximum lot coverage is 35%.

Member Matisse: Brenda, did they give us all a copy of that?

Chairperson Adams: No. Yes.

Member Matisse: Oh, I only have the original without the additional variances, because I know at the last meeting we said that it had to be four variances. Do you have any extra copies?

Chairperson Adams: Right, no I don't, it came in my package.

Member Sestrom: I had one too, if I was smarter I'd find it, but I know I've seen it.

Chairperson Adams: Scott has one, are you sure you don't have it Mary Ellen. Alright, Mr. Enchautegui, would you like to talk to us, do you have your pictures and everything that you need? Come to the front please, so they can record it, it has to be recorded.

Mr. Felix Enchautegui: When it was open to the floor, it was stated that it was classified as a single-structure garage. It's not a garage, it's a carport. So going back and forth with Rob and showing him the pictures and going through everything with him, it's still again, it's a carport, not a garage. It's only going to be held up by 6x6's and racked with metal roofing, there's no power, nothing there, it's on solid structure, it's all solid fill so most maximum is 250lbs all together. So, like I said, it's not a garage, it's a carport.

Chairperson Adams: And what's going on the sides?

Mr. Felix Enchautegui: Metal panels. Three sides racked, front side wide open.

Chairperson Adams: Ok, and you had a picture last month?

Mr. Felix Enchautegui: I had a bunch of pictures, and I submitted a lot of them to Rob and Rob came over and took additional pictures that he needed. Rob, do you have the pictures?

Building Inspector Wallner: I submitted all the pictures. Actually, I gave them to Dean.

Chairperson Adams: Pass this down.

Member Sestrom: And you said this was 12' high. At the peak of the roof, you said 12'. 9' to the bottom of the roof.

Mr. Felix Enchautegui: No, 9' high. 12' all together [at] the center with the pitch of the roof. 9' from the base of the driveway to the opening to the top of the heft so from that to the peak, overall is 12'.

Chairperson Adams: Yes. Rob Wallner, building inspector, can you weigh in on this: is this a carport or a garage? Do we have a situation here?

Building Inspector Wallner: By definition, it's a carport.

Chairperson Adams: By definition, it is a carport. And does that change anything as far as dimensions? All of these variances are still needed to do a carport.

Building Inspector Wallner: Not that I'm aware of.

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Member Matise: I noticed that because you applied for a carport but the building inspector submitted to us as a single-story garage but your application says carport.

Building Inspector Wallner: That would have been Dean's misinterpretation. This is definitely a carport by definition.

Member Sestrom: That's definitely how I see it.

Chairperson Adams: So we will consider it a carport, no problem. Rob, I don't have your pictures. I mean, I have my own pictures that I took from looking at your property, but I'm presuming Mr. Wallner's pictures are more in detail.

Mr. Felix Enchautegui: Well I went and took pictures the day after we had the last meeting here because you asked me what it was the measurements from the sidewalk to the block and I went and measured each one, one was at 48" the other was 51" and that was at the actual pin to where it was going to start and I had gave, like I said, Rob had about twenty-some pictures that John Revella had also and everything was on the mark with all the measurements and Rob also went back to the house and took additional pictures. Brenda, what Mary Ellen had asked before, about looking at the new block only, and I stated that last month, you're only taking pictures of the new block. If you didn't get out and actually walk around the yard, and see the old block that existed, what I replaced, I only replaced what was damaged. So, if you look there you can see old block, of course of the new one I just replaced, old block that I originally went off of, with the footings, and came across. So everything here, you can still see, old block, and just new block that I fixed on top, and replaced what was broken. So that was my thing. It's not like I replaced the whole thing, brand new, I went on top of existing and only fixed what was broken and needed to be fixed.

[repeated to board members as they looked]

... so each one is solid fill, and each hole is pinned with rebar, all the way around and there's my pins.

Chairperson Adams: Do you have anything else you'd like to add? And you just made mention that one piece is from 48" and the other is 51", is that because the property is run into a little off? So you've covered all 3'.

Mr. Felix Enchautegui: You asked about the sidewalk—here's the sidewalk here's the block. So from the sidewalk to that block right here is 36". From the sidewalk right here, to where that pin is at, where the actual structure is going to stand, that's 51", to the left 48" to the other side, to the right. So 6x6 will be base right here.

Member Matise: Is the wall going to go here, it's going to start back here? So, then, is he going to have enough of visibility when he comes up? To get out? Where does he park in the winter? In the winter he can't park on the street, where does he park?

Mr. Felix Enchautegui: He's got plenty of visibility. He doesn't even park in his driveway, that's an abandoned car. They were selling it, that car is sitting with flat tires, does not run, and he's already had multiple citations. He has a white car that he parks in front of the house, and it's a rental. He parks in the driveway and half on the sidewalk. Where all my vehicles are parked all in the driveway. And the only reason I wanted to put a carport up was because I'm a first responder for fire I'm also EMS and I respond directly to the lights and siren so I like to have my vehicle under cover so when I do go out to calls I don't have to worry about snow coverage, I just pull out and go.

Member Sestrom: You're a first responder in Walden?

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Mr. Felix Enchautegui: Yeah, I'm also Town of Montgomery, I'm an assistant captain. Like I said, I just want to keep my vehicle out of the weather so that I can go.

Member Sestrom: Thank you for what you do. I understand, I used to be a first responder.

Chairperson Adams: Let's see if there's anyone from the public who would like to discuss this particular application.

Mr. John Clark: My name is John Clark I live at 58 Second Street, that's caddy corner. I have no problem with it. Right across the street. No.

Chairperson Adams: How close are you to this gentleman? Is that Clark with an 'e'? And you have no problem with what he wants to do. Anyone else?

Member Sestrom: Nice to hear, thank you sir.

Mrs. Arlene Clark: I live at 58 2nd Street, and we, I have no objection. I think it's going to be very nice.

Chairperson Adams: Ok, thank you. Alright I'd like to read into the minutes that the GML came back from the county that this is a local determination. I would like a motion to declare the Walden Zoning board as the lead agency and to type this action as a type II action.

Member Matise: So moved.

Member Sestrom: Seconded.

Chairperson Adams: Mr. Building Inspector, do you have anything you'd like to add to this?

Building Inspector Wallner: It's unfortunate that the photos I took aren't in your packets because there was quite a lot of good information I think that would help you to make a determination other than the fact that it's definitely a carport.

Member Sestrom: The applicant has stated that it's 250 lbs of material, am I right? You're in agreement with what he's claiming?

Mr. Felix Enchautegui: Once it's constructed.

Building Inspector Wallner: As far as being able to support the structure? That would take an engineering degree to make that assessment. I'm not qualified to make that determination.

Member Sestrom: Fair enough.

Chairperson Adams: Ok, if there's no other information, if everybody on the board has what they need, we can make a motion to close the hearing.

Member Barilli made a Motion to close the public hearing. Seconded by Member Sestrom. 4 ayes, no abstains. Motion is carried.

Chairperson Adams: The public hearing is now closed. We'll go through the factors. First factor is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances. And please keep in mind that there are five area variances. Anyone like to weigh in on that? Lisa?

Member Barilli: I don't believe it'll be a change.

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Member Mazelli: No.

Member Sestrom: It won't be undesirable or people would be here complaining.

Member Matisse: The only concern I have is about the setback being back far enough. But, aside from that it's not a detriment to the neighborhood. I'd like to have that list, is it four variances? And also from the corner, George Street.

Chairperson Adams: It's five variances, and I'd like that back please because I'm taking it out of the file. And I have no problem with it being, changing the character. Mary Ellen is worried about sight from the neighbor. That shouldn't be a problem.

Member Sestrom: It's not.

Member Matisse: Well, yeah, but it's when you try to look over far enough to see what's coming. We're just working on variance number one right? All of them together?

[Mr. Felix Enchautegui explained the line of sight.]

Chairperson Adams: The second factor is number two is; no, yeah, unless you have a problem with any one, that why I said remember that we are dealing with five variances but it's all pertaining, I do not believe that we have to do each variance separately.

Member Matisse: No, I know, it's just we started off with two and we realized that we did need more. No, when this first came to us, a couple of weeks ago.

Chairperson Adams: No, we started out with the first factor. Ok. Number two whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance? Lisa? Scott?

[All board members agree there is no other way.]

Chairperson Adams: And the only other way that I can think of is if he was to put it in his yard and then he'd have to put a driveway in from the driveway that exists there now. Number three is whether the requested area variance is substantial. Ok, it is substantial. We do not have exact percentages, usually, Mr. Dickover gives them to us, but we are looking at 20" to 15' that's sizeable without a doubt, so we're talking approximately a foot and a half to fifteen, so I do not have the percentage but that's sizeable. The second one is 25' to 10" which is also very sizeable and the third is just to put in the front yard the code says you cannot put a building, an accessory building within your front yard. The fourth is 21' to, excuse me, no, sorry, the sideyard variance and the third one which is probably the most or last one is most serious where 40% is covering the property where 35% is allowed which has to do with run-off and where it's all going. So, Lisa?

Member Mazelli: He's building on preexisting, the base, so to me it doesn't seem to me he's going beyond what was already there. Exactly.

Chairperson Adams: That's correct. Actually, he's just putting something on top of it. Even though it may be substantial in size, based on the percentages for the code, it's not as substantial as it may appear.

Member Barilli: Well, that's what I was going to say. So yeah, if it's being built on existing foundation; basically, there's really no change even though the code seems to call it substantial.

Chairperson Adams: The one thing I would want to add to this, I'll get to you in a minute Bill, is that right now it's a retaining wall, that's what you've created. You have a retaining wall that you've been parking

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things on top of. That means that you park your truck there, and it collapses, under any circumstances, that's on you. When we approve something for you to put a building or any structure of any kind on top of that and add weight to it puts some responsibility on the Village of Walden and the zoning board for having authorized this. So that adds a little bit of substantiality of this project. Ok, Bill.

Member Sestrom: I don't see any of it as substantial but in particular, with respect to the run-off, the run-off won't change at all because it's a flat surface on top of flat surface.

Chairperson Adams: Ok. Mary Ellen?

Member Matise: I don't really have any concerns. I'm just going to agree with Bill.

Chairperson Adams: Number four, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

[All board members do not believe so.]

Chairperson Adams: And I do not think it will change the environmental conditions at all. Whether the alleged difficulty is or was self-created which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the variance. Almost every time anyone wants something that is different than the code it's self-created. That to me would be a yes, but it does not stop the motion from going forward in any way. Lisa?

[All members agree, that it is self-created but not fatal.]

Now that we have our factors done, I believe that's all we need. So what we need is a motion to approve or deny and request the attorney to draw up a resolution for a denial or an approval of these variances and to be finalized at the next meeting. So would somebody like to make a motion to instruct the attorney to draw up a resolution either to approve or to deny?

Member Sestrom moves for approval of the variances and to instruct the attorney to draw up a resolution for approval. Seconded by Member Barilli.

Chairperson Adams: I would like to add to that motion with a condition of an engineer's report. And my reasoning for that is to make sure that the village has no responsibility here should anything go wrong with the weight of [the carport].

Mr. Felix Enchautegui: So, now I have to pay for an engineer to come over just to put a carport up? So all that's going to cost a lot more money than what the actual materials are going to be to put a carport up?

Chairperson Adams: That may be true, but we must protect the village and protect ourselves from what you need to do.

Mr. Felix Enchautegui: I'm not blaming you, but this is totally unfair. [Mr. Enchautegui became very upset and went into his reasoning.]

Chairperson Adams: I'm sorry, even Mr. Wallner said he was not qualified to say that it could hold that structure.

Mr. Felix Enchautegui: All of this should have been brought up the first time with all the building inspectors before I even applied for all this and spent all this money and all this time.

Mrs. Margaret Enchautegui: All this money we spent on variances, and now this!

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Mr. Felix Enchautegui: Meanwhile, I had to get my property resurveyed because they didn't want to [inaudible]. Now, I have to pay for an engineer. I think that's totally unfair. And I'm sorry for getting mad, but every time, and like I told him, if you need something let me know in advance I'll have it done. Never heard back from him of what I needed. Now this is coming to me? Something that was only supposed to cost me a couple hundred dollars now I have to pay a thousand dollars to get an engineer for something crazy when I could have just went with tubing and had it done?

Chairperson Adams: I have no thought on what it would cost you.

Ms. Margaret Enchautegui: This was a waste of our time, your time, and our money.

Mr. Felix Enchautegui: For an engineering report, I'm not doing it. I'm sorry Rob, if you had to say this before and you didn't tell me beforehand or our last conversation but you know what I think it's totally unfair of the whole entire system here, for something simple that I want to do, improve my property, do something nice and [inaudible].

Mrs. Margaret Enchautegui: [inaudible] Now he has to take time. It might be you that needs an ambulance, you that needs an ambulance.

Chairperson Adams: And we do appreciate what he does for the community, but we also have an obligation to make sure that that wall, you said that you rebuilt that wall. Well, it's a retaining wall, it was a retaining wall and now it's going to be a foundation so we really do need to know that it's not going to collapse.

Mr. Felix Enchautegui: That wall has been there for years! All I did was replace the top block and the side that I dug out that was already falling apart. So that's not a retaining wall, that's my driveway from 2005 when I bought the property. All I did was fix what was loose on top, and replace the broken wall. Just deny. Just, we're done. I'm not paying for an engineer [inaudible].

Mrs. Margaret Enchautegui exited the meeting.

Chairperson Adams: That will be your decision.

Mr. Felix Enchautegui: It's a decision you forced my hand in! I'm not going to pay a thousand, two thousand for an engineer. It's crazy, for a lousy carport when the guy around the corner from me has a carport, another guy a block and a half from me has a carport, because I don't want to go with metal tubing and 6x6's, now I have to do an engineer [report]. Did they get an engineer when they had their carports put up? Did they? For tubing. The one on Way street, the other on Oak street.

Building Inspector Wallner: I don't know. I don't know which one you're talking about.

Chairperson Adams: Ok, we're going to call the vote here. Ok. So the motion is to approve to have the attorney write up a resolution to approve the variances requested with the condition of an engineer's report. Does anyone have, any further discussion?

[All members agree no further discussion is necessary.]

The motion passes unanimously with the condition of an engineer's report.

Chairperson Adams: The motion is approved it'll be up to you how you proceed.

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Mr. Felix Enchautegui: Well I'm not going to proceed now, if you want an engineer's report then we're done. So there's no sense in going any further or doing anything because I think it's ridiculous.

Chairperson Adams: We will follow through with this and give you permission to do it and if you reconsider, you would go see the building department.

Mr. Felix Enchautegui: He can contact me if there's any other changes. Like I said, I'm not paying for an engineer. It's my property but [inaudible] thank you for your time and wasting my time.

Chairperson Adams: Mary Ellen, can I have that piece of paper back for the file?

B.1 52 Walker St

Chairperson Adams: We're going to re-open a variance request. Next is 52 Walker Street. Motion to continue public hearing.

Member Barilli Motioned to reopen the hearing. Member Sestrom Seconded. All Ayes. Carried.

Chairperson Adams: I do have notes from Mr. Dickover on this property and first I will ask if there's any further comments. Anybody? Anything to add or share? Nobody has anything to offer to this application?

Member Matise: Where did we leave it? It was so long ago.

Chairperson Adams: Well we left it for further information as was written in the minutes. Mr. Dickover had a discussion with Mr. Lustig regarding things you needed here, right here and that's where we left it to see if there would be more information coming forward. I have followed up with Mr. Revella; he said that the village attorney is working on this and at this point, he could give me no information. I did talk to Mr. Lustig on the way up for a second on the elevator and he has not had any information from Mr. Revella either, correct? Correct.

Mr. Lustig: Correct.

Member Matise: At the last meeting Mr. Lustig told us he didn't have any further information for us, and is that still, correct?

Kevin Gagliano: Members of the board if I could introduce myself I'm Kevin Gagliano I'm here with Mr. Lustig, I'm an attorney, recently, I didn't know if you were seeking comment from members of the community.

Chairperson Adams: How about you come up and speak in here, yes, that's what I was asking is anyone ready to [speak].

Kevin Gagliano: My last name is Gagliano, it's spelled (spells last name), my first name is Kevin, and I've had an opportunity to review minutes from the last meeting and as well as the prior meeting, my understanding was that the village attorney was seeking information as to whether a variance was needed for the 70' lot width, dimensional width, whether that was even required, so my understanding was that there's not an answer yet regarding that. And then besides that, we had the total side variance seeking one foot exception.

Chairperson Adams: Right and we also have the situation which the village has to find; they're trying to figure out the transfer for ownership of a paper street, of what once was a paper street.

Kevin Gagliano: Alright so, I did a bit of research on that, I do have the deed, did you receive that? I also in my review of the property records, we have a trace of deeds to 1999 and it appears if was a paper street, we have New York highway law dictates that a street that's not in use for six years or more shall be

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deemed abandoned and whether the village wants to formalize that or not, would be the prerogative of the village but I don't believe that affects the matter before the zoning board. If there is a latent title issue, I believe that that should be in an appropriate venue, court of law, and I would hope that the board simply considers matters within the zoning code so I believe the issues at hand have to do with the side variance which Mr. Lustig is seeking a one-foot variance and the other open issue is the 70', whether the 70' restriction applies in this instance.

Chairperson Adams: And that's where our problem lies. We need to know at what point the road was abandoned. To know if it's 50' or 70'.

Kevin Gagliano: Would it be helpful to move the issue forward seeking variance for the 70' even if it may be moved, we could amend the application either by motion here today or by submission of the amended application to include the [inaudible]? Even if it may be moved just to move it forward and resolve the hearing?

Chairperson Adams: I understand what you're saying. Our problem is the lawyers, our lawyers have advised us; we're in a predicament here, the 1' is not that big of a deal, but the 70-50' for an amended, we can't close that out. we can't give one variance if they're going to amend the original application. Secondly, we need to have the village and now that you're involved, personally, and I'm speaking for myself, we were prepared to close this hearing tonight, but it would be ok to extend this hearing another month and have you speak to the village because this is really a problem for the village. We sort of got it dumped here with us because once you have the information you can't un-know it, to put it very generically. I mean so we don't know exactly, we're in a bit of a turmoil over this. The village needs to make a statement, one way or another.

Member Sestrom: We need the village to weigh in on it.

Kevin Gagliano: So suppose we get the village to declare that it was a lot in existence prior to these zoning regulations and therefore exempt from the 70' requirement and therefore grandfathered in then we can move the application forward as is. Otherwise, we would have to amend the application and add in the seeking of the variance for the 70' area exception.

Chairperson Adams: And I'm saying this without a lawyer's opinion as our lawyer is missing, but we've been going through this for so long that

Member Sestrom: Does a member of the public have something to say?

Christine Scurca: No, I just have a suggestion, if you don't mind, that Mr. Gagliano put that in writing; the law, the reference to the law [inaudible] and to the attorney.

Chairperson Adams: I was going to ask him for the exact number. He said it faster than I could write it.

Kevin Gagliano: It's section 205 of the highway law so that the village can formalize the abandonment with a vote of the board but otherwise my reading of the law is that the abandonment and the waiver of the right of way takes effect automatically so procedurally it would formalize it, put it on record. But I'll be in touch with the village and try and move it forward and get [inaudible], make it easier for everyone.

Chairperson Adams: That would be great. Thank you. Does anybody else have anything to add? And I can keep this? Alright. I had a little question mark there, on that number, because you have it by heart. So I would say that that changes what we were looking at tonight. To continue the public hearing. Does anyone have an opinion one way or another? And maybe they can resolve this issue?

Member Matisse: No, I think we need to hear, the village needs to deal with it before we can.

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Chairperson Adams: So you're in favor of continuing the hearing? Will someone make a motion to continue the public hearing?

Member Sestrom motioned to continue the public hearing. Member Barilli seconded. 4 ayes. Motion carried.

Chairperson Adams: So, it'll be the fourth Wednesday of January will be our next meeting. We will put it on the agenda for that night and hopefully, some movement can be made on this.

B. FORMAL APPLICATIONS:

B.3 Resolution for 83 East Main Street

Chairperson Adams: Alright last on the agenda is the final resolution for 83 East Main street did you all have a chance to read the resolution? And further information I can add from the building department is that the planning board approved this apartment with the stipulation that based on the code that it's going to be owner-occupied or caretaker apartment only so we do not have to worry about what our resolution says there is a spot here on the resolution that I asked you all to look at to see if you wanted to add any information or if you're happy with what it says it's underlined. In the decision and it says the second story addition shall be occupied and used solely by either a caretaker or owner dwelling unit an employee of the first floor business user or by a caretaker charged with looking after and caring for the subject property. If you feel like we need to we could cross out an employee and leave it as caretaker or owner or we can leave it just exactly as it's written and know that the planning board has defined it as an apartment for caretaker or owner.

[All members agree that it is fine as written.]

So I would need a motion to approve me to sign this resolution as it was written.

Member Matisse so motioned. Seconded by Member Sestrom. 4 ayes and the motion is carried.

C. DISCUSSION ITEMS:

Reminder about Continuing Education credits opportunities.

D. INFORMATION ITEMS:

Adjourned until the next meeting on January 24, 2024 on the second floor at 6:30pm.

E. CORRESPONDENCE:

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: Yes

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

RESPECTFULLY SUBMITTED
Anisetta Valdez, Zoning Board Secretary