

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, July 13, 2017, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Mark I. Fisher, Chairman
Paul Katz
Ernest Fiore
Michael Strone
Steven Lowenthal
Paul Valentine
Tom Foristel

Members Absent

The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z16-019	12 Nelson Avenue LLC	267	11	Variance Granted
Z17-012	Stephen & Maryann Clow	441	104	Variance Granted
Z17-014	Ersilia Laurino	92	21	Withdrawn without prejudice
Z17-017	Richard Morgado	856	17	Not Heard – Adjourned to the September Meeting
Z17-018	Michael & Suzanne Valentino	542	29	Heard – Adjourned to the August Meeting
Z17-019	Adam Murray	873	46	Heard – Closed – Findings being prepared
Z17-020	James & Catherine Moore	706	1	Variance Granted
Z17-021	Briggs & Jennifer Forelli	521	12	Heard – Closed – Findings being prepared
Z17-022	Westchester Avenue Associates, LLC	602	2	Extension Granted
Z17-023	Bates Road Development, LLC	222	55	Heard – Adjourned to the September Meeting
Z17-024	SMG Realty Associates	224	56	Heard – Adjourned to the September Meeting

The next meeting was scheduled to August 10, 2017.

There being no further business to come before the Board, on a Motion ~~and seconded~~ and seconded, the meeting was declared adjourned.

Jacqueline Sheer
Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z16-019

Date: July 13, 2017

Property Owner: 12 Nelson Avenue LLC

Property Address: 12 Nelson Avenue

Block 267, Lot 11

WHEREAS, the property owner applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Mark Mustacato, on behalf of the property owner, originally filed an application on August 17, 2016 for a variance from the Zoning Ordinance for a new four story multi-family building. The property is located in a PB Zoning District and pursuant to §235-12 B of the Table of Dimensional Regulations, two stories are allowed and four stories are being proposed, thus requiring a variance for two additional stories. §235-12 B of the Table of Dimensional Regulations allows a height of 35 feet, the proposed height is indicated to be 36.12 feet thus requiring a variance of 1.12 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on September 8, 2016, October 13, 2016, November 10, 2016, February 23, 2017 and June 8, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they had listened to tapes of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Michael Strone, Steve Lowenthal, Paul Valentine and Thomas Foristel.

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

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WHEREAS, at said Hearing, the applicant appeared in support of the variance and neighbors appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) 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 variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The subject property is located on the NW corner of Nelson Avenue and Calvert Street—across the street from the entrance to the municipal parking lot adjacent to the southbound side of the Metro-North New Haven line. The rear of the property abuts an area of single-family and two-family homes bounded by the SE intersection of Holland Street and Batavia Place. Historically improved with a 3-family residence, the subject property is situated anomalously in a PB Zoning District, by which the Town Board has legislatively created a zone to enhance, encourage and promote development of a mixed-use, multi-family building. The Zoning Board does not legislate; it hears appeals from those aggrieved by a decision made at a lower level of the Harrison governmental structure.
2. This final version of this application reflects significant modifications from the original application, which modifications were requested of the applicant over the course of 5 separate meetings with this Board suggesting to the applicant that they needed to minimize both the number and the materiality of

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the variances and to reduce the visual and volume impact upon the adjacent residential neighborhood. The Board appreciates the willingness of applicant to be sensitive and reactive to the concerns of both the Board and the community.

3. There have been significant concerns voiced by the community and its representatives and the Board takes those concerns to heart. These concerns, however, to a large degree, go to the construction of *any* edifice on the subject property—a position completely understandable in light of the historical use of the property—but something which the applicant is permitted to do as a matter of right in a PB Zone—something that includes, for example, a building that does not need to satisfy any front yard setback requirements. The question is *not* whether a large-box building can be built at the site; it can be. The decision to place this property within the PB Zone is within the purview of the Town Board that makes the law. The challenge for this Board is to balance the community's overarching opposition to the construction of any large-size building with the ability of the applicant to build a similar building less favorable to the neighborhood on the subject property which can be built as a matter of right.
5. In this decision, the Board is balancing the legal rights of the applicant while *minimizing* (as opposed to eliminating) the impact of the new building on the neighborhood by insisting, for example, that the applicant include a plan for significant screening at the rear of the property to shield the rear yard views of the homeowners of the affected properties whose front doors face Holland Street and Batavia Place, as well as placing much of the parking underground which creates less impervious space above-ground while rendering moot a previous request for a parking variance (although, paradoxically thereby adding a floor to the elevation requiring a variance both for the number of floors as well as the overall height of the building). One variance (the "Height Variance") would permit the building to exceed its legal height limit by 1.6 ft. The other (the "Floor Variance") is to permit the construction of a 4-floor building where 2 is the legal maximum.
6. Within such a context, the 2 requested variances are relatively small in scope but each variance request must be evaluated by the application of the Five Factors (set forth A-F, *supra*). To start with, it is unquestionable that each proposed variance is self-created in that they relate to a voluntary construction project at the subject property. On the other side of the plate, given the scope of the project, the 2 requests for variances are not substantial as to the height and volume of the proposed structure. Also, there does not appear to be another better way for the applicant to achieve its purposes other than by the variance applications submitted.
7. Let us encounter the remaining Factors, the responses to which are somewhat intertwined. In comparing the benefit to the applicant vs. detriment to the community, one must consider any potential detriment to the health, safety

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and welfare of the community which takes into account the physical and or environmental impact on the area. On all these potentially negative possibilities, there seem to be none except a slight increase in traffic exiting and entering the building which was not deemed to be of sufficient concern for the Board to request a traffic study. The benefit to the applicant is obvious. As to the overall detriment to the community, once the physical concerns had been addressed, that which remained was the aesthetic of having to look at a 31.6 ft. wall. As that pertains to the Height Variance request, from the vantage point of adjoining landowners, the difference between 30.0 ft, and 31.6 ft. is *de minimis*. So too with the Floor Variance, as that variance only applies to that which goes on inside the building—one of which floors is (with a small commercial space) totally allocated to vehicular traffic, its impact on the adjoining landowners is effectively nil. The sole visible aspect of requested variances is that the size of the structure is amplified by 1.6 ft. in height.

NOW THEREFORE BE IT RESOLVED, that the application for a variance to allow construction of a new four story multi-family building as indicated in the plans submitted by RMG Associates dated 5/2/16, last revised 5/4/17 (A-1 – A-9) and planting plan prepared by A. Anthony Acocella dated 6/24/16, last revised 6/21/17, be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if the applicant shows good cause and, if in the Board's judgment, the facts and circumstances, which existed at the time of the original application, have not materially changed.

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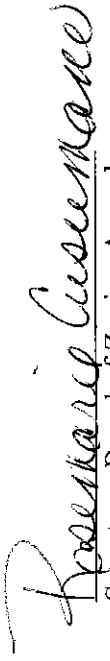
Foregoing Resolution submitted by Zoning Board Member Michael Strone, seconded by Zoning Board Member Steven Lowenthal at the July 13, 2017 meeting.

ADOPTED: AYES: Mark Fisher, Paul Katz, Michael Strone, Steven Lowenthal,
Paul Valentine and Tom Foristel

NAYS: Ernest Fiore

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055 or 670-3056.

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HARRISON, NY
2017 JUL 18 A 11:30

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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z17-012

Date: July 13, 2017

Property Owner: Maryann and Steven Clow

Property Address: 1 Genesee Trail

Block 441 Lot 104

WHEREAS, the property owner applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Maryann Clow filed an application on March 8, 2017 for a variance from the Zoning Ordinance for a new driveway. The property is located in an R 1/3 Zoning District. Accessory off-street parking spaces, other than those which might be incidentally available within the actual driveway area, may not be located within the front yard or required side yard or within 10 feet from any property line in a required rear yard. However, the Ordinance permits construction of a second driveway on a property, provided that: (a) the property has a lot width of 100 feet or more; (b) the nearest points of the driveways will be no closer than 50 feet to each other measured at the street and at the property line nearest the street; (c) the driveway is no closer to the street or any property line than 20 feet measured along a radius at the midpoint of a line between the nearest points of the driveways at the street or at the property line, whichever is longer; (d) the width of the driveway does not exceed 12 feet; and (e) each driveway leads to a permitted parking area or garage on that property. The proposed driveway/parking area is located within the required front yard, thus requiring a variance. The proposed circular driveway has a radius of 13.2 feet from the property line, thus requiring a variance of 6.8 feet. The proposed circular driveway does not lead to a permitted parking area or a garage on the property, thus requiring a variance. The proposed driveway will be 38 feet apart, thus requiring a variance of 12 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on May 11, 2017 and June 8, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they had listened to tapes of the meeting: Ernest Fiore, Mark Fisher, Michael Strone, Steve Lowenthal, Thomas Foristel, Paul Valentine and Paul Katz.

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New

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York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) 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 variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

- 1. The front of the property is located on Genesee Trail and the side of the property is located on Union Avenue. This application relates to the construction of a circular driveway on Genesee Trail within the required front yard of the property.
- 2. The existing attached two car garage is located on Union Avenue which is a major thoroughfare. The garage is located directly across the street from a duck pond and diagonally across the street from the Harrison Avenue School. In addition, the Louis M. Klein Middle School is located a short distance away from the property.

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3. As a result of the narrowness of the existing driveway, there is insufficient room to allow cars to turn around in the width of the driveway. Accordingly, it is necessary for cars to exit the driveway by backing up onto Union Avenue. Union Avenue is a very busy thoroughfare, particularly during the morning and evening rush hours and at the beginning and end of the school day.
4. The location and configuration of the driveway has over the years led to a significant number of accidents involving cars exiting from the driveway.
5. As set forth above, the garage is located directly across the street from a duck pond. As a result of insufficient drainage, the duck pond has overflowed on a significant number of occasions and flooded the driveway as well as the garage.
6. Applicant's ability to park on Genesee Trail in front of the house is also constrained since parking is not permitted on Genesee Trail within 30 feet of Union Avenue. This restriction was imposed as a result of the existence of two pillars located on either side of Genesee Trail at the intersection with Union Avenue. These pillars obstruct the view of vehicles seeking to turn onto Genesee Trail from Union Avenue. As a result of this restriction, parking is not permitted in front of applicant's property.
7. The circular driveway is designed to address the issues associated with the existing garage that are referred to below. Applicant has designed the driveway in consultation with the Town Engineer so as to maximize the distance between the end of the driveway and Union Avenue. This design addresses the safety issue referred to in paragraph 6 but increases the extent of the variance with respect to the radius from the property line.
8. Applicant has also been parking cars on the side of the lawn on Genesee Trail in order to avoid parking in the driveway, the garage or in front of the adjacent neighbor's house. Construction of a circular driveway would eliminate the necessity to park on the lawn and also reduce the need to park on Genesee Trail.
9. A neighbor on Genesee Trail who lives across the street from the property expressed opposition to the granting of the variance based, in part, on the negative impact that a new circular driveway would have on the character of the neighborhood. On the other hand, the neighbor immediately adjacent to the property on Genesee Trail supported the granting of the variance and expressed the view that a new circular driveway would be beneficial to the neighborhood in that it would reduce the number of cars parked on Genesee Trail. In addition, there are a number of both straight and circular driveways on Genesee Trail.
10. The requested variance is clearly substantial.
11. The applicant's difficulty is in part self-created in that the driveway was in existence at the time applicant purchased the property. However, applicant may not at

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that time have been fully aware of the difficulties associated with the location of the driveway.

12. We believe that this application is unique in many respects as a result of the location of the existing garage adjacent to Union Avenue, the configuration of the driveway, the proximity and frequent overflowing of the duck pond, the restrictions on parking on Genesee Trail and the safety factors associated with the current driveway.

13. Based on the above factors, we find that the benefit to the applicant from the granting of the variance outweighs any potential detriment to the health, safety and welfare of the neighborhood; there will be no undesirable change produced to the character of the neighborhood or a substantial detriment to nearby properties created by the granting of the variance, the benefit sought by the applicant cannot be achieved by any other feasible method, the granting of the variance will not have an adverse effect or impact on the neighborhood and the granting of the variance will not have any adverse effect or impact on the physical or environmental conditions of the neighborhood. The foregoing factors outweigh the substantiality of the requested variance and the fact that applicant's difficult is, in part, self-created.

NOW THEREFORE BE IT RESOLVED, that the application for a variance to permit construction of a circular driveway, as indicated in the plans filed with this application reflected in a survey, originally dated April 3, 2000, prepared by The Munson Company, be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if the applicant shows good cause and, if in the Board's judgment, the facts and circumstances, which existed at the time of the original application, have not materially changed.

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Foregoing Resolution submitted by Zoning Board Member Paul Katz, seconded by Zoning Board Member Paul Valentine at the July 13, 2017 meeting.

ADOPTED: AYES: Mark Fisher, Ernest Fiore, Paul Katz, Steven Lowenthal,
Paul Valentine and Tom Foristel

NAYS: None

ABSTAINED: None

ABSENT: None

RECUSED: Michael Strone


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

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HARRISON, NY

2017 JUL 18 A 11:30

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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z17-020

Date: July 13, 2017

Property Owners: James & Catherine Moore

Property Address: 42 Old Lyme Rd.

Block 706 Lot 1

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Stephen Marchesani, on behalf of the property owners, filed an application on 4/13/17 for a new driveway. The property is located in an R-1/3 Zoning District. Pursuant to the Ordinance, accessory off-street parking spaces shall not be located within any front yard or side yard or within 10 feet from any property line in a required rear yard. However, a second driveway is allowed, provided (a) the property has a lot width of 100 feet or more, (b) the nearest points of the driveways are no closer than 50 feet to each other measured at the street and at the property line nearest the street and (c) the driveway is no closer to the street or any other property line than 20 feet measured along a radius at the midpoint of a line between the nearest points of the driveways at the street or at the property line, whichever is longer. The proposed radius is indicated to be 17 feet and 19 feet thus requiring a variance of 3 feet & 1 foot.

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on June 8, 2017 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present: Paul Valentine, Paul Katz, Tom Forestal, Michael Strone, Steven Lowenthal, Ernest Fiore and Mark Fisher; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

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- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) 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 variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The existing driveway is very steep and can be hazardous in times of inclement weather.
2. The configuration of the property makes it impracticable to construct the driveway in a conforming manner as the driveway would be located too close to the house.
3. Granting of the variance would not create any adverse impact on any adjacent property and the variance was supported by a number of adjacent property owners.

NOW THEREFORE BE IT RESOLVED, that the application to construct a new driveway as indicated in the plans submitted with this application (Plans, dated 4/11/17, prepared by Stephen Marchesani) be, and the same is hereby granted:

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do

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not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

Foregoing Resolution submitted by Zoning Board Member Ernest Fiore, seconded by Zoning Board Member Paul Katz at the July 13, 2017 meeting.

ADOPTED: Mark Fisher, Ernest Fiore, Paul Katz, Michael Strone, Steven Lowenthal, Paul Valentine and Tom Foristel

AYES: None

NAYS: None

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Zoning Board of Appeals

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ANNOUNCING
TOWN CLERK
OFFICE

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