

CITY OF TWINSBURG
BOARD OF ZONING APPEALS MINUTES
JANUARY 25, 2017

**CITY OF TWINSBURG
BOARD OF BUILDING AND ZONING CODE APPEALS
JANUARY 25, 2017**

Mr. Kancler called the meeting to order at 6:35 p.m.

Roll call was overlooked, attendance was taken from notes taken by Russ Rodic at the meeting and attached to the permanent record for this meeting.

Present: Messrs: Brown, Wilner, Kancler, Griffith and Zeitz

Absent: NONE

Also Present: Mr. Russ Rodic, Building Commissioner
Mr. Sam Scaffide, Council Representative

The Board cited the Pledge of Allegiance.

**CITY OF TWINSBURG
BOARD OF BUILDING AND ZONING CODE APPEALS
WORK SESSION
JANUARY 25, 2017**

Mr. Kancler called for a motion to place appeal #01-2017 on the agenda before appeal #11-2016.

MOTION: I MAKE A MOTION THAT WE MOVE APPEAL #01-2017 TO NUMBER ONE ON THE AGENDA.

MR. WILNER MOVED, MR. GRIFFITH SECONDED
UPON ROLL CALL MOTION PASSED UNANIMOUSLY.

Mr. Kancler called for a motion to forego the work session for item #1, appeal #01-2017 and to go directly to the regular meeting portion for that appeal.

MOTION: I MAKE A MOTION.

MR. SEITZ MOVED, MR. BROWN SECONDED
UPON ROLL CALL MOTION PASSED UNANIMOUSLY.

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2. *Appeal # 11-2016 Second meeting, item tabled 11/9/2016*
Variance 1148.11 and 1148.15

A public hearing will be conducted at 6:30 pm on January 25, 2017 for the purpose of hearing an appeal for variances from Sections 1148.11 and 1148.15 of the Twinsburg Zoning and Development Regulations. These appeals are made by PDQ Hospitality, LLC for an extended stay hotel at 8941 Wilcox Drive, Permanent Parcel #64-07944, located in a C-3 Interchange Business District.

- Section 1148.11 requires a minimum lot area of 1,000 sq. ft. per unit (room). Specifically, a 9,454 sq ft. lot area variance is requested to allow for an additional 10 hotel rooms on this parcel.
- Section 1148.15 requires a building exceeding 35' in height be provided an additional two foot front and rear setback for each foot of height over 35'. Specifically, a 65'4" front setback variance and a 10' 4" rear setback variance are requested.

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Mr. Kancler stated that there are no time limits on what anyone wants to say or how they want to say it, the Board asks that in consideration of everyone present, your remarks, statements and observations be made in as concise a manner as possible.

Mr. Rodic asked that people speak into the microphone and state their name prior to speaking.

Mr. John Kelley with Hotel and Leisure Advisors in Lakewood, Ohio presented the application for variance.

- The applicant hired his firm to conduct a feasibility study, which the board members have received, to address the feasibility of the proposed Residence Inn.
 - Page B41 shows a table of the average size Residence Inns approved in the past three years, the average size in a suburban area is 110-115 rooms.
- After the feasibility study was submitted to the Board, he looked into the impact of the proposed Residence Inn on the existing Hilton Garden Inn on adjacent property and found that they are different brands and different products with separate loyalty groups.

Mr. Kancler clarified that the study presented is based solely on the proposed use of land, not related to the requirements of the existing zoning code.

Mr. Kelley explained that the assumptions stated in the report include that the variance would be approved and move through the process from that point.

Mr. Kancler reiterated that the report does not address what is permitted by Zoning Code for this land.

Mr. Kelley agreed.

Mr. Kancler pointed out that Condition #14 of the report states that there is no audit, review or examination as defined by the American Institute of Certified Public Accountants of any historical or prospective financial information used and therefore does not express any opinion with regard to it.

- They have not examined pro-formas under the existing zoning and not done analysis of income and expenses.

Mr. Kelley stated that they were expressly asked not to do that.

Mr. Kancler noted that in the report, Standard Condition #3 states that no responsibility is assumed for the legal descriptions or any matters which are legal in nature.

Mr. Kelley stated that is correct.

Mr. Ludgy LaRochelle with Weston Hurd, representing the applicant on their business interests, summarized his letter to the Board, dated January 11, 2017.

- The variances requested meet the purpose of the C-3 interchange zoning district in offering an upscale, efficient facility for travelers.
- The Ohio courts look at whether a restriction deprives the owner permitted use of the property.
 - The courts have listed factors which determine the reasonableness of zoning restrictions.
 - The letter addresses all seven factors and is consistent with Section 1199 of the Twinsburg Zoning Code.
- The variance request is not solely based on economic hardship as defined by the Supreme Court of Ohio; a variance is warranted where an owner would find it inconvenient to his property.
 - This is not an inconvenience; they are stating that the project cannot go forward without this variance.

Mr. Kancler asked if the applicant has any financial or any income and expense information to establish that the project cannot go forward under the existing zoning requirements.

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Mr. LaRochelle stated that they do.

Mr. Kancler noted that it has not been presented to this Board.

Mr. LaRochelle explained that he does not believe that Marriott would approve this project without 99 rooms.

Mr. Kancler asked if he has that information in writing.

Mr. LaRochelle replied that he does not.

Mr. Robert Chernett with Weston Hurd addressed the questions from Mr. Kancler.

- There is cost information in the feasibility study indicating that it would be a \$7,000,000.00 project.
- This would be over \$171,000.00 per key (room) which is high for building a hotel.
- They are under the Duncan Rule for the variance; they are here to address those factors in relation to this variance.

Mr. Kancler noted that, in the Duncan case, the Supreme Court upheld the denial of variance sought because there was no evidence presented by Duncan as to whether or not it was feasible to build an additional four units and instead requested an additional eight units without evidence.

Mr. Chernett replied that they went through the analysis and the applicant is prepared to do that and prove that they do meet the requirements of the Duncan Factor.

- No single factor determined it, if a majority of the factors are met, the variance should be granted.
- They listed all seven factors and explained under each one why the variance should be granted.

Mr. Kancler pointed out that one of those reasons was that the applicant did not check the zoning prior to purchasing the property.

Mr. Chernett stated that is correct.

There was a comment (unidentified speaker) that the question is not whether zoning was checked prior to purchase, but if the applicant knew what the use would be prior to purchase.

Mr. Kancler read from the letter from Weston Hurd, LLP in support of the variance request dated January 11, 2017. Factor #5 "Whether the property owner purchased the property with knowledge of the zoning restriction." The applicant states that they did not know the zoning restriction when purchasing the property.

Mr. LaRochelle explained that the applicant did not originally plan to build a Residence Inn on the property; they had planned a more budget type hotel

- After researching what is reasonable and feasible for the market they found that a more upscale hotel was appropriate.
- There were several configurations for this building; this is the best one to meet the needs.

Mr. Kelley pointed out that page B42 of the report talks about the preliminary budget and page B43 it explains why people don't build a 60 room Residence Inn.

- This market cost is a bit higher due to labor and construction.
- An owner would not build a smaller hotel at higher price per room due to the inability to generate a high enough room rate.
- The same applies to a more budget hotel; the cost to build would be too high for the room rate.

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Mr. Kancler stated that does not relate to the specific issue of this particular land and this particular proposal.

Mr. Kelley commented that the typical hotel brand will allow a minimum of 120 rooms in order to allow it to be a franchise hotel.

Mr. Kancler asked if the applicant, when creating the report, considered the size of land and the Zoning Ordinance (referred to as "the Ordinance" throughout these meeting minutes) that applies to it.

Mr. Kelley replied that he met with the Zoning Department in Twinsburg to discuss the land, square footage and learn more about the zoning requirements.

Mr. Kancler explained that the Board is obligated to follow the intent of the Ordinance as written and in order to grant a variance they must determine substantial practical difficulty.

- The Ordinance clearly states that if you want more rooms you must increase the depth of the front, rear and side setbacks; if you want to go up the same applies.
- The intent of the Ordinance is that if you want to build bigger, higher or more units you need more land.

Mr. Kelley stated that there are other hotels on similar size lots; many hotels do not require a significant setback from the road.

Mr. Kancler asked if it would be reasonable to place the parking lot in front of the building instead of behind.

Mr. Kelley replied that as a logistics standpoint, it would not work as most hotels are surrounded by parking.

Mr. Kancler explained that other Residence Inn hotels in the area have parking in the front.

Mr. Kelley pointed out that they would not be able to fit 99 spaces in the front.

Mr. Kancler noted that in the Columbus area there are several hotels which back up to the freeway and have all parking in front.

Mr. Kelley explained that those hotels have parking on three sides.

Mr. Kancler noted that a similar configuration would require less of a variance.

Mr. Chernett stated that the applicant has presented several plans which were considered not feasible.

Mr. Kancler asked how it was not feasible.

Mr. Chernett replied that the other configurations would require a larger variance.

Mr. Kancler explained that the Board only has the plans associated with this variance application, nothing which was submitted to the City previously.

- The fact is that the applicant is asking the Board to reverse the requirements of the Ordinance.

Mr. Chernett stated that the point of a variance request is to prove a need to vary from an ordinance and if the request complies with the law reasonably the variance would be granted.

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Mr. Kancler replied that the Board considers a variance request by what they are obligated to prove under the Ordinance.

Mr. Chernett noted that the variance would most likely impact the neighbors; the closest neighbors are Cracker Barrel, who has submitted a letter of support.

Mr. Kancler noted that any restaurant would desire more trade.

Mr. Chernett commented that if it would adversely impact their property they would voice objection.

Mr. Kancler suggested that placing the building further back on the property would allow the applicant to request a parking variance, which would be far smaller than the current setback variance.

Mr. Chernett asked if Mr. Kancler would be more inclined to support a parking variance.

Mr. Kancler stated that he thinks that setting the building back from the street would be far better than the current proposal.

Mr. Chernett asked if it would be preferable even if a reconfigured building resulted in reduced parking.

Mr. Kancler replied that he does not know what the layout would look like because he has not seen the plan on paper.

Mr. Chernett noted that plans with that configuration were submitted to Planning Commission and refused.

Mr. Kancler clarified that Marriott will not permit the applicant to build the hotel with less than 99 Suites.

Mr. Chernett stated that is correct.

- It is a bit smaller than what they normally allow in order to be profitable.

Mr. Art Borowski with Emerald Hospitality commented on the possibility of decreasing the plan from 99 rooms to 90 rooms.

- That would reduce the building by one half floor, it would require even less rooms to eliminate an entire floor.
- Marriott will not approve a hotel that size.
- With no variance, a three story building would hold approximately 60 rooms.
- They had an initial plan for 102 rooms, which was reduced to 90 because of parking and then a Civil Engineer was engaged to assist with gaining parking spaces to allow as close to 100 rooms as possible.

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PUBLIC PARTICIPATION - NONE

1. Appeal # 01-2017
Variance 1153.03(a), 1143.09 R-4

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A public hearing will be conducted at 6:30 pm on January 25, 2017; for the purpose of hearing an appeal for a variance from section 1153.03(a), 1143.09 R-4 districts of the Twinsburg Zoning and Development Regulations which states minimum side yard depth shall be 10 feet. The applicant is proposing an attached garage (14'x20'). This appeal is made by Ebony London/Tanisha Jones of 1850 Dooridge Drive.

- Specifically, a 1 foot-6 inch side setback variance is requested.

Mr. Kancler explained that this appeal involves a situation where the building involved was supposed to have ten feet of yard on either side of the house. For unknown reasons, there are twelve feet of side yard on one side and eight feet on the other, necessitating an application for a variance to construct a one car garage so that the garage can be on the best side of the house for use of the applicants.

Mr. Rodic administered the Oath to Ms. Tanisha Jones.

Mr. Kancler asked if the garage could be accessed if built without the variance.

Ms. Jones replied that the garage would be pushed back.

Mr. Kancler asked if it would require a large expense to move the foundation of the house over two feet.

Ms. Jones replied that is true.

Mr. Kancler noted that would be an unreasonable practical difficulty.

Ms. Jones replied that it would be.

MOTION: I MOVE THAT WE APPROVE APPEAL #01-2017.

MR. BROWN MOVED, MR. GRIFFITH SECONDED
UPON ROLL CALL, MOTION PASSED UNANIMOUSLY.

Mr. Rodic explained that the applicant will appear at the next Architectural Review Board meeting on February 2, 2017; following that, the Council Representative, Mr. Scaffide, will bring a motion to the Council session on February 14, 2017 to waive the 30 day waiting period.

PUBLIC PARTICIPATION

2. Appeal # 11-2016 *Second meeting, item tabled 11/9/2016*
Variance 1148.11 and 1148.15

Terry Brennan with Baker Hostetler, 127 Public Square Cleveland, Ohio represented the owner and operators of the Hilton Garden Inn.

- Looking at the Duncan factors it is clear that this variance should not be granted.
- The questions:
 - Is there a beneficial use for the property without a variance? Absolutely, there are many possible uses for the property.
 - Did the owner purchase it with knowledge of the zoning? They did or should have.
 - Is the variance substantial? Undoubtedly, this is a substantial variance.

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- This plan would be a detriment to the community in general with increased traffic as well as threatening the viability of the other hotel nearby.
- The owner's "predicament" is one they created by only wanting a hotel under the Marriott sign with a certain number of rooms.
 - The discussion should be whether the property is useful without the variance and he feels it is.

Roger Greene, General Manager of the Hilton Garden Inn 8971 Wilcox Dr. Twinsburg, Ohio

- The applicant commented on Mr. Brennan's statements regarding the fit of the building on the land.
 - There were discussions on a smaller hotel, knowledge of zoning requirements and number of rooms.
- The Marriott would have a large impact on the business of the Hilton Garden Inn, both in extended and transient stay customers; however, the variances are the issue at hand.
- If the variance were approved, the height of the building would be a detriment to the visibility of the Hilton as well as to traffic leaving the area in the morning.

Mr. Bob Voelker, 8921 Canyon Falls Blvd. President of Gateway Hospitality Group, Developer of Wilcox Place spoke regarding the Wilcox Place complex.

- The complex was master planned ten years ago to include what is there today; a hotel, restaurants and an office complex on 60 acres of land.
 - They have invested over forty million dollars to build the complex.
 - They have done everything necessary to make it work for the community, which he also lives in.
 - They have lost over ten thousand room nights due to companies leaving the area.
 - They have replaced that business with group business from outside of the community.
- The concept of Wilcox Place was to have all of the businesses working together.
 - When the business guests were not satisfied with the chain restaurants in the area, they built Blue Canyon to accommodate the need.
- The Hilton is five stories with no variances on six acres of land.
 - If the Marriott is allowed to reduce parking the overflow will end up on the Hilton property.
 - The increased height would block the view of the Hilton from eastbound traffic on Interstate 480.
- Only 44% of the Marriott business is extended stay, they will be pulling the other 56% from the Hilton customers.
 - There are not enough extended stay customers in this market.
 - They are attempting to place directly competing businesses next to each other which will have a negative impact on both businesses; they will not bring in new customers, they will share what customers there already are.
- The left turn lane leaving Wilcox place can accommodate five vehicles because there is one hotel emptying in the morning.
 - Another 100 rooms will impact traffic.
- If there was a need for another hotel on Wilcox Place, he would have built it on the six acres of land next to the Hilton.
- The Marriott hotel is too big for the land; a restaurant should be built there with appropriate parking.

Mr. Brennan addressed Mr. Voelker's comments individually;

- The feasibility study shows that the Marriott will not hurt the Hilton's business; it says that the market can handle another hotel with it being an extended stay hotel.
 - They do a feasibility study to make sure that it is feasible to build a hotel and that it will be successful.

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- This hotel will not have conference rooms, their guests will be in the building only to sleep and eat.
- Some businesses have left the area and some have come in; Cleveland Clinic, Amazon and others.
- Other hotels have been built in the last ten years and are doing well as shown in the feasibility study.
- The Marriott and Hilton Garden Inn have different customers as people go to the chain that earns them points.
 - This will bring in new customers.
 - The nearest extended stay is in Beachwood.
 - Hilton has more conference space than rooms; the Marriott could supplement that need.
- The larger parking and traffic issue would be from conference clients, not morning traffic.
- The Hilton cannot be blocked from Interstate 480 because it is not visible now, there are trees blocking the view.
 - The Marriott would be built on the lowest elevation of the Wilcox Place complex and will not block the view of the Hilton from the intersection.

Mr. Griffith asked if they have done a traffic study.

Mr. Brennan replied that they have not.

Mr. Griffith noted that the applicant did not know the zoning prior to purchasing the property.

Mr. Brennan answered that he is not aware of that.

Mr. Griffith stated that they are trying to fit this project on two acres of land and there is land available up the street that it could have fit on without problem.

Mr. Brennan replied that the initial project was to be a different type of hotel which likely would have fit but it was determined that the lower budget hotel was not appropriate for this community.

Mr. Kancler commented that the application stated that the owner did not check the zoning first.

Mr. Brennan explained that was referring to building a Marriott, they may have had zoning information for the originally planned Springhill Suites.

Mr. Kelley stated that the land held a vacant restaurant for several years; if something else was more appealing to build there someone likely would have done it.

- As there are two vacant restaurants in the complex, another restaurant is probably not feasible.
- Hilton would also not allow the Garden Inn to be built on a smaller scale.

Mr. Griffith asked how he is to know that a hotel will be feasible on this particular lot, there are other properties and other extended stay hotels in the area.

Mr. Kelley explained that there are other extended stay hotels in the area but many are lower budget products.

Mr. Kancler asked when the feasibility study was requested.

Mr. Kelley replied that it was just after Thanksgiving.

Mr. Kancler pointed out that was after the Board of Zoning Appeals requested it.

Mr. Kelley agreed.

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Mr. Kancler asked if a variance should be granted based on the brand or name of the corporation requesting it.

Mr. Kelley stated that there are many variables to be considered, a lot of projects require setback variances.

- This particular lot is desirable due to its location near the highway.

Mr. Kancler clarified his question, should a zoning variance favor one corporation over another in drafting or applying a zoning ordinance.

Mr. Kelley replied that they should not favor a corporation but they should favor a hotel that is feasible, particularly if you are looking for an upscale brand which requires a larger hotel.

Mr. Kancler noted that the feasibility study is based on a five story, 99 room hotel; there is no information in terms of what the zoning would require as far as building size, setbacks, etc.

Mr. Kelley agreed.

Mr. Griffith commented that the hotel would be feasible anywhere in Twinsburg that is near the highway.

Mr. Kelley stated that the report was based on this location.

Mr. Kelley noted that the Marriott would bring in different guests, benefitting the owners of the hotel as well as the bed tax for the City.

Mr. Kancler pointed out that the report states that a 70% occupancy rate is typical for this area.

Mr. Kelley replied that on page C26 the market demand analysis shows the performance of different brands in the area, including the Comfort Suites which typically performs at a lower number.

- The 70% occupancy rate was a stabilized figure for the market.

Mr. Kancler asked if that rate would be the same with 99 rooms as opposed to 90.

Mr. Kelley replied that it is possible but he can't say for certain.

Mr. Kelley explained that it is not less expensive to build a smaller hotel because the common areas do not change, it only raises the rate required to stay in the rooms.

Mr. Kancler asked to incorporate all comments from the work session into the record for the regular session so that all statements are contained in the minutes as if they were all presented during this part of the meeting. The public statements will be part of the record as well.

Mr. Brown commented that all of the comments about cost and other issues avoid the basic problem that the owner purchased property without checking the zoning.

- Regardless of the City saying that a nicer hotel would be nice, it still does not meet the requirement.
- He wants to see businesses coming into Twinsburg and the town thriving but this is not the way to do it.

Mr. Kancler asked that everyone who made statements raise their right hand and affirm that their statements were, to the best of their ability, true and honest statements.

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The gentlemen affirmed.

MOTION: I MOVE TO DENY THE VARIANCE SOUGHT FOR A NUMBER OF REASONS, WHICH I WILL RECITE; FIRST OF ALL, THERE HAS BEEN NO EVIDENCE PRESENTED OF ANYTHING THAT WE CAN UNDERSTAND THAT SAYS THAT THE PROPERTY CANNOT BE FEASIBLY DEVELOPED UNDER THE EXISTING ZONING, WHETHER IT IS MARRIOTT'S REQUIREMENTS OR NOT ARE NOT OUR RESPONSIBILITY, THAT IS A BUSINESS DECISION THAT IS MADE BETWEEN PARTIES THAT ARE NOT PART OF THE BOARD, PARTIES THAT ARE NOT PART OF THE CITY, PARTIES THAT ARE NOT PART OF THE GOVERNMENT. SECOND, IS THE VARIANCE SUBSTANTIAL? YES. THE FRONTAGE VARIANCE REQUESTED IS NEARLY FIFTY PERCENT, THE REAR IS A HIGH PERCENTAGE, THE SIDE YARDS ARE LOW PERCENTAGE BUT THE VARIANCE IN TOTAL IS A SUBSTANTIAL VARIANCE ON AN EIGHTY-NINE THOUSAND SQUARE FOOT PARCEL. DID THE PROPERTY OWNER PURCHASE THE PROPERTY WITH KNOWLEDGE? I THINK IT IS PRETTY CLEAR THAT NO STUDY, NO EXAMINATION OF THE ORDINANCE WAS MADE WHEN THE PROPERTY WAS PURCHASED. WHETHER THE SPIRIT AND INTENT BEHIND THE ZONING REQUIREMENT WOULD BE OBSERVED, IT IS MY POSITION AND MY MOTION AND ONE OF THE REASONS I AM STATING IT IS THAT THE SPIRIT AND INTENT OF THE ORDINANCE IS THAT WHEN YOU WANT MORE UNITS, WHEN YOU WANT MORE HEIGHT, YOU HAVE TO HAVE MORE LAND AND THIS PARCEL DOES NOT ALLOW FOR THAT, IT DOES NOT ALLOW FOR NINETY-NINE UNITS IT DOES NOT ALLOW FOR THE HEIGHT UNDER OUR ZONING CODE, IN FACT, IT IS ASKING FOR LESS LAND, LESS FRONTAGE, LESS REAR SETBACK. THE SCOPE OF THE FEASIBILITY STUDY HAS NOTHING TO DO WITH THE EXISTING ZONING, IT HAS EVERYTHING TO DO WITH A NINETY-NINE UNIT MARRIOTT RESIDENCE INN HOTEL. AS A CONSEQUENCE, THERE IS NO EVIDENCE IN FRONT OF THIS BOARD AS TO WHY IT IS ECONOMICALLY UNFEASIBLE TO DEVELOP THIS PROPERTY AS A NINETY UNIT HOTEL AND THAT IS ONE OF THE FACTORS THAT LED THE OHIO SUPREME COURT IN THE DUNCAN CASE TO AFFIRM DENYING THE VARIANCE, THAT THERE WAS NO ECONOMIC EVIDENCE PRESENTED. FINALLY, THE LAST REASON I GIVE IS THAT ZONING ORDINANCES ARE NOT DRAFTED TO TAILOR THE USE CONTEMPLATED TO A PARTICULAR COMPANY, TO A PARTICULAR BRAND NAME, THEY ARE SUPPOSED TO BE UNIFORM, APPLYING TO EVERYBODY NOT JUST ONE CORPORATION NOT JUST ONE APPLICANT AND FOR THOSE REASONS I MOVE THAT WE DENY THE VARIANCE.

Mr. KANCLER MOVED, MR. BROWN SECONDED
UPON ROLL CALL MOTION PASSED UNANIMOUSLY.

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Mr. Kancler informed the applicant that they have a right to appeal to City Council and other avenues of appeal if they so choose. He suggests that they reexamine the plans that they have to see if there is a way to develop the property with far less variances; the Board has an obligation to the ordinances as written.

APPROVAL OF MINUTES – Dated January 11, 2017.

MOTION: TO APPROVE THE MINUTES DATED JANUARY 11, 2017.

MR. GRIFFITH MOVED, MR. WILNER SECONDED
UPON ROLL CALL, MOTION PASSED UNANIMOUSLY.

COMMUNICATIONS- NONE

EXCUSE ABSENT – NONE

ADJOURNMENT- The meeting adjourned at 7:46pm

Ed Kancler, Chairman

Russ Rodic, Building Commissioner