



Historic Town of Hyde Park
Zoning Board of Appeals
4383 Albany Post Road
Hyde Park, NY 12538
(845) 229-5111, Ext. 2

"Working with you for a better Hyde Park"

November 17, 2022, 6:00 PM

**MINUTES FOR PUBLIC HEARING/REGULAR MEETING
OF THE HYDE PARK ZONING BOARD OF APPEALS**

In Attendance:

Present David McNary, Chairman
Present Gerald Bowen, Vice Chair
Present James Agrawal, Board Member
Present Paul Donnelly, Board Member
Present Richard Perkins, Board Member
Absent John Scileppi, Alternate

Present Kathleen Moss, Zoning Administrator
Present Sarah Wilson, ZBA Consulting Attorney
Present Kathleen Hoppe, ZBA Secretary

PLEDGE OF ALLEGIANCE *David McNary opened the meeting and led the Pledge of Allegiance.*

Chairman David McNary made a motion to accept the minutes from October 26, 2022 and Paul Donnelly seconded it. The motion was carried by unanimous voice vote.

NEW PUBLIC HEARINGS:

TENBROCK (#22-21Z)

Location: 50 White Street, Staatsburg
Grid #: 6167-03-038323

Applicant's representative, Alec Gladd of Cuddy and Feder LLP, was in attendance, along with his paralegal (and applicant's sister) Sandy Way.

Area Variances – from Town Code Chapter 108-4.4E Bulk Regulations and 280-a NYS Town Law in Hamlet District and Historical Overlay District

As related to the installation of an inground pool and to change the required frontage on a public road from 25 feet to 0 feet in consideration of a right-of-way to an existing parcel.

Chairman David McNary asked for a motion to open the public hearing for the Tenbrock application. Vice Chair Gerald Bowen made the motion and Richard Perkins seconded it. Motion was carried by unanimous voice vote.

Alec Gladd from Cuddy & Feder, the applicant's representative, distributed some additional materials to the Board members before he introduced himself and his paralegal (and applicant's sister), Sandy Way.

David McNary: Tell us about what we're looking at here.

Alec Gladd: Yes, absolutely. To start with, why are we here – Sharon is the widow of George Tenbrock. They were married in 1994. George unfortunately passed away in 2019. She inherited their property, which George had owned since 1962. In the process of trying to sell her home, because she can no longer physically take care of it, it was discovered that there was an outstanding building permit for a pool that was constructed some time in the 1960s after George had purchased the property and moved in. On August 30, 2022 we received a zoning referral for 280-a frontage, and were asked to come here to get a variance for that. That's how we arrived here.

To start with, the property setting, it's located at 50 White Street in Staatsburg, and if you have our application packets in front of you, it's Exhibit C, it has some aerials to look at. White Street intersects with Old Post Road, and there are about six properties that use this right-of-way, and access to the Tenbrock property is guaranteed by an easement on a filed deed in the Dutchess County Clerk's office.

David McNary: Is that the owner who owns the 6.5 acres behind, is that the one? It's parcel number 063324.

Alec Gladd: Yes, that is the parcel that granted the easement. We know that this easement has existed for the last 60 years, at least since 1962. But actually, the second document in the packet I just handed out is another deed from one of the pieces of property that also uses White Street, and there's language in that deed saying that sometime in the 1800s, the easement was granted over that property for the use of oxen, cattle, horses and buggies, and that sort of stuff. So use of White Street to access the different properties that use it has conceivably gone back even farther than the 60 years.

David McNary: The person who was given that right, was that a property here we see?

Alec Gladd: Yes, there's a black & white picture with it, highlighted, so that's property #021343, and I just brought that as an illustrative example, the title report for other properties has the same language in the deeds too.

David McNary: Okay, so clearly you have a deeded right-of-way.

Alec Gladd: Yes, the relief we're here for is a 280-a variance and the purpose of 280-a as you know is just to provide safe, adequate, and reliable access in case of an emergency, and we do think we meet that standard. For one, it's been used safely, adequately, and reliably for the last 60 years. Under NYS Town Law Section 280-a, what the statute says is "the presumptive frontage for safe and adequate access is 15 feet" and here we actually have 25 feet of frontage for all of White Street. The access is straight, relatively flat, and it's maintained by the owners.

David McNary: Which owners are maintaining that road?

Alec Gladd: They all do, collectively.

David McNary: Okay. Some have fallen down, I think. I drove it today.

Alec Gladd: Yes, I think the last time, it was a couple of years ago, they all pitched in and fixed it up.

David McNary: They need to have another meeting. It needs work.

Alec Gladd: Yes. Also, as you know, the fire department visited the site.

David McNary: That was at our request.

Alec Gladd: Yes, and I had emailed them also, asking them to fulfill it after Kathleen emailed me asking that. They wrote a letter, which I assume you've all seen, and what they confirmed, which I think is important for the purpose of the variance we're seeking, is that they can get there, and I was also able to speak with the Assistant Fire Chief, is that they can get their biggest rig up and down the street, they have done that before, they had to do it a couple of years ago. So anything smaller, like an ambulance, of course that would fit. In my conversation with the Assistant Fire Chief, he referenced some damage in his letter, and actually that was from hitting a rock at the corner of White Street and Old Post Road, so it had nothing to do with our client's property. And as you can see from the pictures we submitted to you, we did complete his request of trimming the trees back, so that there wasn't any branches interfering with the truck.

David McNary: Actually, I would take some exception to that, the property 021343, which has the second right which you just described in the 1800s – the bushes on there extend out in the road.

Alec Gladd: We can only cut what was on our property, so we acquiesced to that request from the fire department, so we trimmed back, as you can see in the picture there, the pine trees on our property that were hanging over the road.

David McNary: Yes I did see that.

Alec Gladd: Again, just to summarize quickly, the basis for the 280-a variance is: safe, adequate, reliable access; it's been there for sixty years; we meet the state presumptive standard of 15 feet – we have 25; the fire department has, in real life, gotten a truck up and down the street, so if they ever need to again, they can; and we

did do what we could as far as our property and trim back the branches that they asked us.

And then, just to touch on the 267 balancing test too, because that's also something that needs to be taken into consideration. The standard there, as you well know, is the benefit to the applicant vs. the detriment and harm to the neighborhood or the community, that's the overall balancing test, and you use the five factors as a tool to analyze that. So for that "big picture" balancing test, the benefit we're seeking is so that we can get a building permit for a pool that was constructed in the 1960s so our client can sell the home that she can no longer physically take care of. And the detriment to the community is none, because there's no changes proposed to the property. All we're trying to do is get the Town to recognize the sixty years of access that have existed to date.

Just to run through some of the five factors quickly – we don't think there can be an undesirable change to the character of the neighborhood, because there's no change to the property, and the pool that is the subject of the building permit has been there since the 1960s. We really don't have any alternative than to seek the variance. We got the referral from the Zoning Department, and there's no other means of accessing this property. There's no adverse effects on the environment and no changes, and this request is a Type II action which the DEC says has no impact as Type II. And we really don't think this is a self-created hardship. Her late husband, who she did not marry until thirty years after the pool was constructed, was the one who built it, and she reasonably thought he had all permits, I think as anyone would, so it was unknown to her that this condition was existing when she assumed ownership of the property.

David McNary: Questions?

Richard Perkins: Is there any place that it mentions the length of White Street? In other words, does it go all the way to Hughes Avenue?

Alec Gladd: It does not.

Richard Perkins: I see the same kind of thing over there. (Points to aerial map in front of him.)

Alec Gladd: Hughes Avenue does have access, but the gravel path doesn't go all the way through that property.

David McNary: I have heard historically there are people that have walked that path to go to some of the houses on Milford Avenue. The only access that you've been able to document are the two by your client and the other client, in terms of a formal access, in terms of deeds.

Alec Gladd: No, we looked at every property around there, and they all have the same right-of-way easement to use it. And there's a color aerial in Exhibit C which shows the end of the road which goes about to where the pool is.

David McNary: To turn around there, I'd turn into the driveway of the other house that is down there.

Alec Gladd: Yes.

David McNary: So the turnaround really is – it may not be pertinent to what we're talking about here. It seems like the group [*neighbors using and maintaining White Street*] ought to get together and figure that out.

Richard Perkins: Did you get back to the fire department and ask them to come up and look?

Alec Gladd: Yes, he visited the site, the Assistant Fire Chief. He actually had a chance to meet with Sharon because she was outside. That's when he asked her to trim back the trees on her property, which her son did this past weekend.

Richard Perkins: That was good, what I meant was, has he been back since then, since the trimming?

Alec Gladd: No, I don't think he's gone back, but I did also share with him the photographs that I gave you guys.

Richard Perkins: Did we hear anything else from the fire department?

David McNary: No, we did receive a letter indicating that they had looked at the road. They did not feel that the road was measuring up to today's standards, and mentioned that turnaround would be very difficult in there. Overgrowth in the trees, the bushes, but that's been taken care of, and that's about it. So from that, I would surmise the fire department can get their engine back there. It won't be pretty.

Kathleen Hoppe: Excuse me, David. I just wanted to mention I did ask Mr. Stretz if he would be able to attend tonight and he was not able to attend because of work.

David McNary: Okay, thank you. Alright, anything else?

Richard Perkins: Does the Town assume any liability on this road at all?

David McNary: Yes, counselor?

Sarah Wilson: From my understanding, it's not on any maps, so it would be considered a private road. It should be accessible by the fire department. I think clearly that burden is met. I don't believe there would be liability, but I think that it's circumstantial, I mean, I don't want to speculate as to what circumstance could occur that could make the Town liable. For our purposes, I don't see any issues.

Alec Gladd: Just to second that, I don't believe there is any liability. Under easement law, the dominant parcel has a responsibility to maintain their easement, so it's on all those six property owners to maintain it.

Richard Perkins: That's good information, I didn't know that.

Sarah Wilson: I do want to comment though, because we've talked about 280-a, and Tad, correct me if I'm wrong – is that still necessary here for this application?

K. Moss: I think what we had talked about is that under 280-a, it's not on a filed map. If the property is already developed, that presumes access, so you don't need a 280-a, but the local law under 108-4.4E does require the frontage, so I don't believe we need the 280-a, but we do need the 108-4.4E.

Sarah Wilson: That was my understanding too, in our prior discussions of the application, because 280-a, the text clearly states it pertains to a permit for the erection of any building, which we aren't dealing with here. But I would concur with the Zoning Administrator about the frontage requirement, so it's really bringing it down to a zero frontage, because it's the private road, and that's what's linking you to access to the Town road, and that would be necessary for the building permit.

Richard Perkins: We can't consider the right-of-way frontage?

Sarah Wilson: I don't believe it is considered frontage. Which I learned. Because I thought, it's on a road, and it connects to another road, but if it's not on the map, I think is where it's...

K. Moss: It's not on the map, it's not on a filed map, it's not on an official Town map.

Sarah Wilson: It's confusing because it's called a street, it makes it sound official, but it's not official.

Richard Perkins: But if it was their property, and it was still 25 feet, it would have 25-foot frontage. If it was theirs, if they had ownership.

K. Moss: Yes, then it would be a flag lot, and...

Richard Perkins: Okay. I'm getting the difference.

David McNary: Okay, any other questions, comments? Any other people here who want to speak up?

The Zoning Board of Appeals received the following emailed letter from Nancy Keeney, Staatsburg resident:

Dear Zoning Board Members of Hyde Park, NY,

I write on behalf of Sharon Ten Broeck who lives behind us in a home built by her late husband some decades ago. She is ready to sell her house and property but has hit obstacle(s). As a widow – Sharon cared for her husband in their home during his battle with emphysema – the property maintenance is too much for her. We got to know Sharon after George passed, as my brother came to live with us during his long battle with skin cancer. Sharon helped us enormously with her expertise in caring for the sick, and she always brought a smile, good cheer, and something good to eat with her during my brother's final months. I would like to advocate for her now.

My husband and I live at 8 Mulford Avenue in the hamlet of Staatsburg. Our property abuts a dirt lane in the back that is known locally as White's Lane (and maybe other names, too.) Four houses use the lane in order to access their properties, including Sharon's. (We don't use the lane as our driveway is on Mulford, but we do occasionally drive the lane to park an extra car in our backyard.)

I hope you extend a variance or whatever needs to happen for Sharon to sell her home so she can move on with her life.

My husband and/or I plan to attend your Thursday meeting at 6:00 p.m. The work you do for the Town of Hyde Park is so valuable. Thank you for your commitment to the community, and I hope that a solution can be found for Sharon's property to move on to another owner.

*Sincerely,
Nancy Keeney*

The Zoning Board of Appeals received the following emailed letter from neighbor John Rizzo:

Dear Sirs,

My name is John Rizzo and I am an adjacent property owner to 50 White St. My property is located at 13 White St. I understand what Ms. Tenbrock is doing in regards to the potential sale of her house and permissions she is requesting from the Town of Hyde Park. I have no objections. Thank you and please contact me if you should have any further questions.

John Rizzo

There were no other public comments.

Chairman David McNary asked for a motion to close the public hearing for Tenbrock. Vice Chair Gerald Bowen made the motion and Richard Perkins seconded it. The motion was carried by a unanimous voice vote.

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RESOLUTION TO GRANT AN AREA VARIANCE

**Sharon L. Tenbrock and Justin O’Keeffe
50 White Street
Staatsburg NY 12580**

Date: November 17, 2022

Motion: David McNary

Resolution: #22-21Z

Second: Richard Perkins

WHEREAS, the applicants, Sharon L. Tenbrock and Justin O’Keeffe, have submitted an application for an area variance from Town Code Section 108-4.4E to approve the recognition of the existing 60-year-old access to the property and to change the required frontage on a public road from 25 feet to 0 feet at 50 White Street, Staatsburg, NY 12580 identified as tax parcel no. 6167-03-038323 in the Neighborhood District (the “Site”); and

WHEREAS, the applicants authorized Alec R. Gladd of Cuddy and Feder LLP to represent their interests in this matter before the Zoning Board of Appeals; and

WHEREAS, the applicants seek a building permit for an existing inground pool on the property, but must first obtain recognition of the existing access road to the property; and

WHEREAS, the existing property does not have direct access to a town road and therefore must utilize White Street, the private access road that has been in use for over sixty (60) years; and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, a duly noticed public hearing was held on November 17, 2022 during which all those who wished to speak were heard; and

WHEREAS, the applicable standards for considering an area variance are set forth in Town Law Section 267-b and Hyde Park Zoning Law Section 108-33.6(B)(2), which require the Board to take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 267-b of the Town law and Hyde Park Zoning law Section 108-33.6(B)(2) regarding the Requested Variance:

1. The Requested Variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The recognition of the long-existing access road to the property will not change the

character of the neighborhood which remains the same as it has been since the 1980s. No changes are being undertaken on the property.

2. The Requested Variance cannot be achieved by some method feasible for the applicant to pursue, other than an area variance. There is no other possible access to the property except for the access provided by White Street.
3. The Requested Variance is substantial given the frontage requirements outlined in Section 108-4.4(E) of the Zoning Code. In this case, the frontage would be reduced from 25 feet to 0 feet since the access to a Town road is via White Street, a private road. However, there is no significant change in the property or the access to the property.
4. The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. While access to the property will remain on a private access road rather than a recognized Town road, there will be no impact or change on the physical or environmental conditions of the neighborhood.
5. The Requested Variance is self-created. The property access via a private road was created at the time the property was developed. It predates the existing access requirements.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variance subject to the following conditions:

1. Payment of all fees and escrow.

Adopted:

ROLL CALL VOTE BY SECRETARY

James Agrawal	YES	
Gerald Bowen	YES	
Richard Perkins	YES	
Paul Donnelly	YES	
David McNary	YES	CARRIED

CONTINUED PUBLIC HEARINGS:

CAMP VICTORY LAKE (#21-15Z)

Location: 277 Crum Elbow Road, Hyde Park

Grid #: 6265-04-630350

Applicant's agent is Peter Sander, Rennia Engineering

Area Variance – Section 108-5.15 Bulk Regulations in Greenbelt District
Change maximum permitted building height from 35 feet to 47.5 feet for construction of a stadium-style sanctuary space.

Area Variance – Section 108-4.3G(2)(a)

Change stream corridor setback from 100 feet to 0 feet from the Fall Kill Creek for a stream crossing and other construction incursions.

David McNary asked for a motion to re-open the public hearing for Camp Victory Lake. Vice Chair Gerald Bowen made the motion, and Richard Perkins seconded it. The motion was carried by a unanimous voice vote.

The Board is still awaiting SEQRA determination from the Planning Board which is lead agency. The ZBA Secretary confirmed there are no updates yet.

There was no public comment.

Chairman David McNary made the motion to adjourn the public hearing to next month, and Paul Donnelly seconded it. The motion carried by unanimous voice vote.

ARRIETA (22-20Z)

Location: 609 Salt Point Turnpike, Poughkeepsie (Town of Hyde Park)
Grid #: 6263-02-851768

The applicant's representative, Christopher Marta, was in attendance.

Three (3) Area Variances – Section 108-5.15 Bulk Regulations in Greenbelt District
Change rear setback from 50 feet to 15 feet, change side setback from 25 feet to 15 feet, change impervious from maximum of 15% to 23%, for the demolition of an existing home and building of a new single-family residence.

David McNary asked for a motion to re-open the public hearing for Arrieta. Vice Chair Bowen made the motion and Paul Donnelly seconded it. The motion carried by unanimous voice vote.

Chairman David McNary welcomed Christopher Marta, the applicant's representative, who distributed some additional materials demonstrating that he has brought the impervious percentage for the property down to 20%.

David McNary: You have moved it [the impervious percentage] from, it was 27%, I think, originally?

Chris Marta: The current is 30.1%, I had it down to 29.8%, and then 23%, and now 20%.

David McNary: That's fantastic. Very good. Other information? Did we have clarification on the generator?

Chris Marta: Yes, the package I provided previous to this included an updated site plan where I showed the 23% impervious, as well as the mandated setback for accessory structures, locations of the propane tank, the generator, and cooling system, as well as specs for all of that equipment, demonstrating that it falls well outside of the 12 foot 6 inches required.

David McNary: Good, excellent. Questions? *(The Board had none.)*

Sarah Wilson: No questions. Just two comments on the draft [of the resolution] that has been prepared, that we would just make corrections in the sixth “Whereas” clause to 20% and then number three, under “Therefore be it resolved” would also be down to 20%.

David McNary: Other questions? Ms. Moss, anything from the Village [Town]?

Ms. Moss: No.

David McNary: Nothing, okay. I would commend you for really coming back and looking at the pervious, we really appreciate that, it does make a difference and I think it makes everybody’s life easier.

Chris Marta: We appreciate the opportunity. I think they’re very excited about developing this property.

David McNary: Yes, we are too.

There was no public comment.

Chairman David McNary asked for a motion to close the public hearing for Arrieta. Richard Perkins made the motion and James Agrawal seconded it. The motion carried by unanimous voice vote.

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RESOLUTION TO GRANT AREA VARIANCES

Jessie Arrieta
609 Salt Point Turnpike
Hyde Park, NY 12538

Date: November 17, 2022

Motion: James Agrawal

Resolution: #22-20Z

Second: Gerald Bowen

WHEREAS, the applicant, Jessie Arrieta, has submitted an application for three (3) area variances related to the demolition and reconstruction of a single-family residence (the “Project”) at property located at 609 Salt Point Turnpike, identified as tax parcel no. 6263-02-851768 in the Greenbelt Zoning District (the “Site”); and

WHEREAS, the applicant authorized Christopher Marta to represent her interests in this matter before the Zoning Board of Appeals; and

WHEREAS, the Project is depicted on a sketch prepared by the applicant's representative, dated October 7, 2022 entitled "Arrieta Residence 21-008"; and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit the building of a new home with a 15 feet rear yard setback where a 50 feet setback is required; and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit the building of a new residence with a 15 feet side yard setback where a 25 feet setback is required; and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit the building of a new residence with a 20% maximum impervious area where the maximum impervious area coverage permitted is 15%; and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, a duly noticed public hearing was held on October 26, 2022 and continued to November 17, 2022 during duly noticed meetings during which all those who wished to speak were heard; and

WHEREAS, the applicable standards for considering an area variance are set forth in Town Law Section 267-b and Hyde Park Zoning Law Section 108-33.6(B)(2), which require the Board to take into consideration the benefit to the applicant if the variances are granted, as weighed against the detriment to the health, safety, and welfare of the general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 267-b of the Town Law and Hyde Park Zoning Law Section 108-33.6(B)(2) regarding the requested variances:

1. The requested variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The current residence is in a dilapidated state. The current house and garage are within the required setbacks. Reconfiguring and relocating the home and garage will be increasing the side and rear setbacks, although not to the extent required.
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than area variances. Building within the setbacks would result in a home that is approximately 12 feet wide and 50 feet long. No other homes in the neighborhood are in this configuration. The home could be reconfigured and sited closer to the front yard setback, although the homes along that section of Salt Point Turnpike are set quite far back from the county road.
3. The requested variances are numerically substantial. The rear yard setback variance requested represents a 70% reduction from 50 feet to 15 feet, the side

yard setback variance represents a 40% reduction from 25 feet to 15 feet, and the maximum impervious area coverage is changed from 15% to 20%.

4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. The site is already developed and the location of the well and septic system will impact the location of the home.
5. The difficulties are self-created. The applicant purchased the house as-is.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variance subject to the following condition(s):

1. Pursuant to Section 108-33.5(F)(1), the authorized activity must commence within one year from the date of issuance, otherwise it is revoked.
2. Payment of all fees and escrow.

Adopted:

ROLL CALL VOTE BY SECRETARY

James Agrawal	YES	
Gerald Bowen	YES	
Paul Donnelly	YES	
Richard Perkins	YES	
David McNary	YES	CARRIED

OTHER BUSINESS:

Resolution to set meeting dates for 2023. Gerald Bowen made the motion and read the resolution and Richard Perkins seconded it. It passed by unanimous voice vote.

Town of Hyde Park
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**RESOLUTION SETTING REGULAR MEETING DATES
AND APPLICATION SUBMISSION DEADLINES FOR CALENDAR YEAR 2023**

Date: November 17, 2022

Motion: Gerald Bowen

Resolution: #2022-B

Second: Richard Perkins

Town of Hyde Park
Zoning Board of Appeals
2023 Regular Meeting Dates

Meetings take place at 6:00 pm on the fourth (4th) Wednesday of each month, except for November & December.

Submission deadlines are 15 days prior to the meeting.

REGULAR MEETING

January 25
February 22
March 22
April 26
May 24
June 28
July 26
August 23
September 27
October 25
November 16 (Third Thursday)
December 21 (Third Thursday)

SUBMISSION DEADLINE

January 10
February 7
March 7
April 11
May 9
June 13
July 11
August 8
September 12
October 10
November 1
December 6

Adopted:

VOICE VOTE

All in favor: 5

All opposed: 0 CARRIED

ADJOURN: *Chairman David McNary made a motion to adjourn and Vice Chair Gerald Bowen seconded it. The motion passed by unanimous voice vote. The meeting ended at 6:32 PM.*