

Town of Lexington  
**Board of Zoning Appeals  
Minutes**

April 4, 2019

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The Board of Zoning Appeals held their regular scheduled meeting on April 4, 2019 at 5:30 p.m. in the Council Chambers located in Town Hall, 111 Maiden Lane, Lexington, S.C. Those present for the meeting were Chair Mary Watts, Vice-Chair Troy Fite and Board Members Lindsay Sellers and Reve' Richardson. Board Member Justin Brown was absent.

Staff members present were: Director of Planning, Building and Technology John Hanson, Assistant Zoning Administrator Jessica Lybrand, Digital Media Coordinator Darrell Pritchard, and Municipal Clerk Becky Hildebrand.

Six (6) citizens were present and no one from the news media was present.

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Chair Watts called the meeting to order at 5:30 p.m. and read an opening statement to explain the rules of procedures for a Board of Zoning Appeals meeting as follows:

*All four points must be met and should be read as part of the official record. The Board of Zoning Appeals is a legal board operating under the Comprehensive Planning Act of the State of South Carolina; they make decisions within the parameters of State law and may hear and decide appeals for a variance from the requirements of the ordinance when strict application of the provision of the ordinance would result in unnecessary hardship and a variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all their findings: (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (2) These conditions do not generally apply to other property in the vicinity. (3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. State law further prohibits the board from granting a variance simply because the property could be used more profitably if the variance were granted. The board is not concerned with the use of the property because that is determined by others. If the applicant believes the board made an incorrect decision, they may appeal the decision through Circuit Court within certain time limits provided by State law. Those testifying at the meeting are asked to sign-in.*

**ACTION ITEMS**

1. **Variance 2019-2(V): Variance from the Buffer and Setback Requirements at 456 South Church Street:** Mr. David Cook requested another variance from the buffer and setback requirements for an apartment complex located at 456 South Church Street. The property currently has three buildings with a total of twelve units. Mr. Cook was granted a variance last summer reducing the buffer and setbacks for three new buildings to 58 feet. The new request was to reduce the buffer and setbacks to 35 feet. Apartment facilities are required to have a 100 foot buffer and 150 foot setback from side property lines. Neither the proposed nor the current buildings on this site meet this standard. This type of situation is referred to as an area nonconformity. Area nonconformities can only be expanded if the expansion is in compliance with the Zoning Ordinance.

Mr. Hanson directed the Board to the two site plans included in their packet. He stated that 2018-3(V) was the variance from last year and 2019-2(V) is the current request. He confirmed that the difference is the setback for two buildings indicated by an asterisk (\*)

Chair Watts called for comments from the applicant and/or those *in favor* of the variance.

**Mr. David Cook**, owner, provided a larger site plan indicating the two buildings in question. Mr. Cook pointed out that a second difference from last year is the angle of the drive-way. He stated that due to the water quality control buffer at the back of the property across from the two buildings he was requesting a variance. Mr. Cook stated that the drive-way had to be angled in order to have the proper water quality control buffer which moved it closer to the two buildings and encroached on parking in front of the buildings. He stated that was the main reason for the new variance request and the second reason was for aesthetics which lined the two new buildings up with the existing buildings. He confirmed that his building permit allows for five (5) new buildings and there are three existing buildings. Mr. Cook added that the 1985 site plan called for 10 buildings with 40 units.

Chair Watts asked why this request was not made during the previous variance request. Mr. Cook responded that it was due to a more thorough engineering report. He stated that he hired a new engineering and survey company, Cox and Dinkins, and upon their study of the water quality study, they found that the buffer on the south buildings had to be increased which affected the north buildings. Mr. Cook added that they have already done a site and topography map of the area

Vice-Chair Fite asked if there was a reason that Mr. Cook had delayed the recent work. Mr. Cook responded that the delay was trying to do the work himself and trying to find an engineering company that would take on a small job. He had started with R.B. Todd Engineering but was let go from the project and given other phone numbers because he was too busy. He subsequently met with other firms before hiring Cox and Dinkins who did the recent work and are awaiting the results

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of this meeting to start building. He now feels like the new engineers and architects are in agreement with the Town Building Administrator.

Chair Watts asked how long the project would take to complete. Mr. Cook responded that it would take 12 to 15 months. He added that the biggest thing now is the site development. He presented photographs from last year's variance request and stated that one of the Board Members had a concern about the asphalt parking and drive-way. He presented new photos of the completed drive-way, parking and entrance. Mr. Cook added that he had completed this part out of pocket. Chair Watts confirmed that Mr. Cook's complete project would be five buildings and questioned the adjoining property. Mr. Cook stated that the water quality swales will feed to a berm retention in that area. He also hoped to keep as much of the green space as possible. Chair Watts confirmed that the setback variance being requested is only for the two buildings indicated.

Board Member Sellers stated that she sees accessibility on the north end of the property, but on the new plat she did not see accessibility in order to comply with ADA requirements. Mr. Cook stated that the accessibility is still the same, it just was not addressed by the new engineers.

**Mr. Clifton Rogers**, Rogers Property Management and adjoining property owner, stated that he did not object to the proposed project. He added that his only concern was regarding the swale mentioned in the back of the property, which joins what is called the old Still Branch of the creek, and whatever is green should have screening and a buffer. Mr. Cook stated that it should not be a concern because of the water quality buffer and the berm retention will have to be grassed. He added that he had also talked to the Town about landscape requirements and tree canopies and having to add trees back to the area between the buildings, fencing along the side, and screening and canopy trees will be added to the back. Mr. Rogers stated that he was satisfied with the answer, he just did not want to see it clear cut. Mr. Hanson stated that the buffer reduction variance is for side yard setback, not the back of the property. He added that there has not been a request for a rear setback variance. Chair Watts stated that the Board was only addressing the two buildings.

**Mr. Anthony Hutto**, 450 S. Church Street, adjacent property owner, stated that he had no objection to the project and he had discussed it several times with Mr. Cook.

Chair Watts called for comments from those *opposed* to the variance request. There were none.

Chair Watts called for the Board's discussion if there were no further questions for the applicant. Chair Watts stated that the Board needed to set a time limit for the project. She added that if the Board approved the variance, she recommended a time limit of 12 to 15 months, based on Mr. Cook's estimate, to start or finish the project.

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Mr. Cook stated that the time frame could be contingent upon financing. He anticipated to finalize it with the bank next week. He added that he had already agreed to terms so it should not be a problem. Mr. Cook stated that he would like to break ground this year.

Chair Watts restated that a time frame parameter needed to be set for the project to start or be completed especially since they approved a variance last year and nothing happened. She added that this project needed to move forward, if not, the applicant would have to come back and reapply. Mr. Cook stated that he understood and he wanted to proceed just as much as the Board. Vice-Chair Fite stated that he did not want another problem to arise with the engineers once Mr. Cook was ready to put shovels to the ground. Mr. Cook stated that he was more invested now with \$30,000 in asphalt and \$30,000 in engineer and architects fees which has come out of his pocket, so he would like to begin so he can be reimbursed. He asked what the maximum time frame would be as set by the Board. Chair Watts stated that they would allow 24 months because the project could not be open ended. Mr. Cook stated that he was in agreement to 24 months as a start date and he hoped to start within 6 months. Vice-Chair Fite further explained that it meant they needed to see some progress within 24 months. Board Member Sellers asked if the building permit would be pulled in 12 months with completion in 24 months. Mr. Cook stated that he was not opposed to that time frame even though he did not like being given that time line. He added that he liked Chair Watts' version better because it may take longer than 12 months to complete the project. Mr. Cook stated that he understood what the Board wanted since this was the second time they have met, but everything is on go now. He added that the bankers, engineers, architects, and the builder are all lined up and waiting on the result of this meeting. He stated that he does have to get a site developer and he may use Owens Fisher, but would like to get two more quotes. Mr. Cook stated that he would accept the Board's stipulation if he had to accept it. Board Member Sellers explained that the entire project did not have to be complete by then, but Mr. Cook needed to show some intent by pulling the permit within 12 months. Mr. Cook agreed. Vice-Chair Fite wished to also confirm that once Mr. Cook put a shovel in the ground, his intent is to start and finish all five buildings. Mr. Cook responded yes that they would be built simultaneously assuming financing and permits.

Vice-Chair Fite requested clarification on the variance and how it is to be calculated. Mr. Hanson stated that the request is for a variance of 115 feet for the two north buildings only, because it is supposed to be 150 feet and the motion should negate the previous variance approved.

Chair Watts called for a motion if there were no further questions from the Board.

A motion was made by Board Member Fite and seconded by Board Member Richardson to grant variance request #2019-2(V) to reduce the buffer on the north side of the property by 115 feet to 35 feet to allow for the construction of two buildings on the north side of the property with the stipulation that the building permit for this project be pulled within 12 months from today with work completed within 24 months. Chair Watts

called for a roll call vote. Roll call vote results: Fite – Yes to the motion as stated. Watts – Yes to the motion as stated. Richardson – Yes to the motion as stated. Sellers – Yes to the motion as stated. The motion to grant variance request #2019-2(V) was unanimously carried by all those present.

2. **Variance 2019-3(V): Variance from the Sign Ordinance at 521 Columbia Avenue (Caliber Collision):** Mr. Robert McDonald requested a variance and an appeal of an administrative decision related to signage being placed above their roofline at 521 Columbia Avenue. The Sign Ordinance states that no portion of a wall sign shall be permitted to project over the roofline or parapet of the building to which it is attached. According to the Dictionary of Construction Terminology a parapet is defined as: a wall placed at the edge of a roof to prevent people from falling off. The question for the Board is to determine whether the area where the proposed Caliber Collision sign is to be located constitutes a parapet. If it does not, then the applicant will need a variance to place the signage above the roofline.

Mr. Hanson added that his position is that it is not a parapet and he was not comfortable calling it a parapet based on the definition stated. Mr. Hanson stated that the Architectural Review Board, which includes two architects, also looked at the project for other reasons and he solicited their opinion on a parapet. He added that a copy of those minutes were attached to the Board's package which addresses several key points. Mr. Hanson wished to comment on some of the key points from the minutes of the Architectural Review Board's meeting including: (1) Page 8 – *Chair Wilund (an architect) responded that it is a 6 ½ foot tall addition and is a parapet that serves as a sign. Mr. Hanson stated that a parapet that serves as a sign may not be allowed by the Sign Ordinance. Mr. Hanson stated that they have been talking about this for a while.* (2) Page 9 – *Board Member Rogers (an architect) stated that he was concerned that the parapet is not really a parapet and is free standing and floats off the building. The design of the site worries him because it opens the opportunity to start putting large structures on buildings and calling it a parapet. He would prefer for the sign to be tied in over the canopy with a free standing look to the letters. He recommended that the applicant resubmit the sign portion since this cannot be called a parapet. Board Member Rogers later stated that he would prefer that the sign on the roof be moved to the main metal building roof which would make it look like a parapet. Board Member Rogers clarified that he was not against branding on the building he was just concerned about it being called a parapet.* Mr. Hanson stated that the discussion continued on and on, but it was not in the purview of the Architectural Review Board. Since that meeting Mr. Hanson also asked three other architects and there was still no clear answer. (3) Page 10 – *A motion was made to send the item back to Staff for review of the following five items: 1 through 5 with #4 being change parapet and shift it over one bay and make it meet the sign design requirements. Mr. Hanson stated that sign design requirements falls to the Board of Zoning for a decision. Mr. Hanson presented two new photographs of the building which were taken today; an aerial photograph of the building taken in 2003 which shows a shadow of a sign; and a picture of the old Addy Dodge sign which was removed from the building because it was nonconforming. Mr.*

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Hanson hoped this would help the Board understand his dilemma and concern. He added that a letter was included in the Board's package from Caliber Collision's architect stating in their opinion it did qualify as a parapet. Vice-Chair Fite clarified that their architect's letter stated they "interpret" it to be a parapet, not that it is a parapet.

Board Member Sellers stated that a parapet by definition as stated in the package is to prevent people from falling off the building. She asked two questions: (1) why would anyone be on top of the building to fall off, and (2) if that is the concern, why doesn't it go all the way across the entire length of building. Mr. Hanson stated that he included the definition in the package as one that was most applicable to this particular hearing.

Board Member Richardson stated that it appears to be a parapet on the building to hold the sign.

Mr. Hanson stated that it boils down to if it is a parapet they can put a wall sign on it and if it is not a parapet they cannot put a sign on it. He advised the Board that representatives from Caliber Collision were present to answer any questions.

Chair Watts called for comments from the applicant and/or those *in favor* of the variance.

**Mr. David Scroggins**, 4336 Marsh Ridge Road, Carrollton, Texas, Account Vice President Cross Development (the primary real estate developer for Caliber Collision), stated that as they were considering this building for Caliber Collision the first thing they noticed was the building is very low and there's not a good place for signage. He presented a picture of the elevation which showed the parapet and a place to identify the building. Mr. Scroggins stated that Mr. Hanson had concerns about it and they were directed to come before the Architectural Review Board. He personally appeared before the Architectural Review Board on June 11, 2018 before they purchased the property. He stated that there were five concerns, one of them being the parapet. Mr. Scroggins stated that Chair Wilund and Board Member Rogers all heard it because the word parapet was used 16 times in the minutes and it was even used in the motion to "change the parapet". He added that it was clear during that meeting that the only reason they were building the parapet was to use it as identification for the business. Mr. Scroggins stated that they got a favorable ruling and purchased the property followed by putting the parapet on their building plans which went through review. He added that they even enhanced it at the direction of the Building Inspector and brought it down lower to cover the gap in the roof, made it wider and put trim around it. AT that time he thought the matter was settled with the unanimous vote. Mr. Scroggins stated that the International Building Code does not limit a parapet to be an edge protection, it is any extension of the roof.

Vice-Chair Fite asked why not use free standing letters as mentioned if the parapet was an issue. Mr. Scroggins stated that he understood that free standing letters above a roof line were not allowed, but a sign could be applied to a parapet. Mr.

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Scroggins stated that the question was if it was a parapet and the Board ruled that it was a parapet. Vice-Chair Fite stated that he disagreed with Mr. Scroggins conclusion in that it was simply referred to as a parapet and they could have called it a puppy. He stated that he Googled the word parapet and looked through three pages of photographs and every parapet he saw ran from edge to edge of the building and not one was in the middle of the building. Vice-Chair Fite stated that if they extended it from one side of the building to the other and put a sign on it, he would call it a parapet, but this is a sign mounted on a building. He added that he understood that the Architectural Review Board reviewed it, but now they are at the Board of Zoning and they cover signs, and this is a nonconforming sign. Mr. Scroggins restated that the image they presented had the parapet on the roof and it was approved. He added that even the sellers were present at that meeting and everyone knew that they would not have bought the building and the deal was contingent upon it. Vice-Chair Fite stated that there were other issues also because this building had come before the Board of Zoning before and certain variances were given based on electricity. He stated that he was not trying to be rude, but it is pretty large to say that this one issue would have kept you from buying the building. Mr. Scroggins stated that it was an important issue to them and they brought it before the Board of Appearance and they accepted it. He added that the two issues were to move it over and to make sure that the signage that was depicted was too large.

Vice-Chair Fite asked for clarification for item #4 from the Appearance Board minutes, and explain what changed and why the item came back to the Board of Zoning. Mr. Hanson explained that the photograph they have is the same one presented to the Appearance Board and he would characterize what they did different from what Mr. Scroggins stated. He added that they basically punted, because their purview is to look at the building and they accepted the building as it was and in his effort to clarify this issue early, he asked the Board of Appearance to weigh in on if they thought it was a parapet. Mr. Hanson stated that as he had read from the minutes, there was a lot of discussion to move it and they also said to turn the corner and go up the side of the building which would make it clearer that it was a parapet. He added that they did not specifically say that it had to go all the way around the building, but one idea was to at least go around the corners of the building. Mr. Hanson stated that even though the Board of Appearance had a discussion about it, they do not administer the Sign Ordinance. Board Member Richardson stated that in other words the Board of Appearance could not have approved it. Mr. Hanson stated that if the experts on that Board had said, yes, that is a parapet, then we would not be here. He added that they did not give a clear answer to the parapet question and he did not want to set a precedent on Staff reviews that another business in town can erect a structure that you could arguably say is a background for a sign. Vice-Chair Fite stated that this same building had a sign in the middle of the building that was found back then to be nonconforming.

Chair Watts stated that it is not a parapet because it does not cover the length of the front of the building, so what this Board is dealing with is signage. Mr. Hanson restated that what he is asking for is an expert opinion to say it is a

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parapet and something other than a panel to put a sign and he has not gotten that direction. Board Member Richardson stated that it does not meet the definition of a parapet. Vice-Chair Fite asked what is the construction of the sign right now, based on the photograph taken today. Mr. Scroggins confirmed that the construction is steel studs.

Chair Watts restated that if this Board is not dealing with a parapet, then they are dealing with a sign variance. Mr. Hanson stated that if the Board does not think it is a parapet, then the applicant will need a variance to place the signage on that structure. Chair Watts asked if the size of the sign conformed with the size of the building. Mr. Hanson responded that he could not answer that at this point. He added that the Town has not issued any permits for signage at this location.

Board Member Richardson confirmed that they would have a monument sign. Mr. Hanson clarified that there would be a monument sign and the property includes an outparcel so there will be a group development sign which could potentially be on the side street and in front of the building, including a sign on the building even without a variance. Mr. Hanson clarified that if the project is viewed as a commercial center, then they could have a sign on the building and two monument signs.

Vice-Chair Fite called on Mr. Scroggins to clarify his understanding that the Board of Appearance recognized this a parapet. Mr. Scroggins responded yes. Vice-Chair Fite referred to the Board of Appearance minutes, page 9, which quoted Board Member Rogers as stating: *“He recommended that the applicant resubmit the sign portion since this cannot be called a parapet.”* Mr. Scroggins agreed that there had been a long discussion and it began with Chair Wilund stating *“this is a tough one”* followed by a free discussion about it being an older building and how to apply design elements to it. He further agreed that Board Member Rogers did say it was not a parapet and how the roof slopes forward and he went on to ask if they could move it out to the front edge and later agreed that moving it over would fix it, which was on page 9. Mr. Scroggins concluded that based on all the discussion about the parapet, it appeared clear that it was a place to put the identification for his client’s business.

**Ms. Linda Thompson**, 4301 West William Cannon Drive, Austin Texas, stated that she works for the company that builds all the signs for Caliber Collision. She added that they always make sure the sign is okay before they purchase the building. She understood that they were going with the sign that was submitted. She confirmed for Vice-Chair Fite that they had received the blue prints of the building and architectural drawings and then they designed the sign which was then submitted to Cross Development. Vice-Chair Fite asked if her company submitted the sign as they see it in the photograph. Mr. Scroggins interjected that the first proposal was to build it as a parapet with the letters and mount it to the roof. He stated that wasn’t to be approved and they understood that the sign had to be attached to and be part of the physical building. He and Mr. Robert McDonald, the owner of Caliber Collision, discussed several options and then submitted it as a building parapet for the sign to mount to. Vice-Chair Fite

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confirmed that the sign maker received the drawings from Cross Development. He presented a simplified drawing of the building with a rectangle structure on top, and confirmed with Mr. Scroggins and Ms. Thompson that they received something along these lines in which to design and build the sign. Ms. Thompson stated for the record that was correct. Ms. Thompson later stated that they looked forward to helping make it work for everyone.

Chair Watts asked how was the sign approved before they bought the building. Mr. Scroggins said he did not intend to state it that way and he meant they presented this elevation and rendering with the sign with the parapet which was approved by the Board of Appearance. Chair Watts stated that the Board of Appearance could not approve a sign. Mr. Scroggins stated that they did not have to because they approved the extension of the building so it would not be a roof mounted sign, it would be mounted to a parapet.

Chair Watts called for comments from those *opposed* to the variance request. There were none.

**Mr. James Barfield**, 116 Lake Murray Court, has resided in Lexington for 55 years. He stated that when the Town's Sign Ordinance was passed he was the owner of the property that is now Radius Church and accompanying buildings. He added that one building had a sign that was placed behind a parapet. Mr. Barfield stated that they built a parapet around that building for the aesthetics of it and to protect the roof line. He added that he was not a historian, an engineer or an architect, but he understands what a parapet is. He stated that originally it was something to protect people from invaders which provided a wall to protect yourself from arrows and bullets. Mr. Barfield stated the sign that was on the old Addy Dodge building in 1965 when he came to Lexington was required to be taken down at the same time his sign was required to be taken down when this ordinance was passed. He stated that at first there was a lot of concern among business people and they objected to the ordinance because they had paid money to put signs up and they did not like the idea of early depreciation of those signs. Mr. Barfield stated that one of the biggest complainers was Frank Hutchins, of Frank's Car Wash, which is still directly across the street from the subject property. He added that Mr. Hutchins was vehement because he had just put up a \$10,000 sign and he did not want to give it up in seven or eight years or whatever the time frame was then, but Mr. Barfield was glad he did and there was no objection. He stated that they gave up their sign at the time they were told to take it down. Mr. Barfield stated that Lexington is a better place today than when he came here. He added at that time all of Lexington's Town complex would fit in this room and the old fire station was on Church Street. He commented that there has been tremendous improvement here and he does not want to see any more signs on top of buildings and that is why he gave his up. Mr. Barfield stated that when he rode by the subject property a few weeks ago he saw a sign on top of a building that replaced a sign that had been on top of the building. Mr. Barfield compared it to when you ride down the road with a child and the child says "Daddy, see that horse?" and it is cow. He saw a sign, he did not see a parapet and he was asking the Board to keep the ordinance in tack and not grant any

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variances to it. He added that he did not think there were any variances granted to create roof top signs since the ordinance was passed and Lexington is a better place.

Chair Watts called for the Board's discussion. Board Member Sellers read the definition of a parapet which described a parapet as running the length of the building. Vice-Chair Fite stated that he did not have a problem with the lettering of the sign but for it to be a parapet the structure should run the entire length of the roof. Board Member Richardson stated that the business would have all the benefits of other signage which is allowed by the Town so they did not need the sign on the roof. All four Board Members agreed that the structure on top of the building was not a parapet, therefore, the sign attached to it would be considered a nonconforming sign. Chair Watts confirmed that if the Board has determined that the structure is not a parapet, then the business would need a variance to install the sign as presented.

Mr. Hanson advised the Board that they should first rule on the Administrative Appeal which is to determine if it is a parapet or not, then vote on the variance request.

Chair Watts called for a motion on the Administrative Appeal regarding the parapet and whether or not to deny or support Mr. Hanson's Administrative decision that it is not a parapet followed by a second motion for a sign variance if it is determined that the structure on the roof is not a parapet.

A motion was made by Board Member Richardson and seconded by Board Member Fite to uphold the Administrative Decision that the structure on the roof is not a parapet. Chair Watts called for a roll call vote. Roll call vote results: Fite – Yes to the motion. Watts – Yes to the motion. Richardson – Yes to the motion. Sellers – Yes to the motion. The motion to uphold the Administrative Decision on Variance Request #2019-3(V) was unanimously carried by all those present.

It being determined by the Board of Zoning by upholding the Administrative Decision that the structure on the roof is not a parapet, a second motion was required regarding the request to place a sign on the roof for Caliber Collision located at 521 Columbia Avenue. A motion was made by Board Member Sellers and seconded by Board Member Richardson to deny Variance Request #2019-3(V) to place a sign on the roof. Chair Watts called for a roll call vote. Roll call vote results: Fite – Yes to the motion. Watts – Yes to the motion. Richardson – Yes to the motion. Sellers – Yes to the motion. The motion to deny the sign variance request was unanimously carried by all those present.

**APPROVAL OF MINUTES**

A motion was made by Board Member Fite and seconded by Board Member Richardson to approve the Board of Zoning Minutes from the February 7, 2019 meeting as submitted. The Board of Zoning did not meet in March, 2019. The motion was unanimously carried by all those present.

**OTHER BUSINESS**

Mr. Hanson advised the Board that they would have a meeting May 2, 2019. Board Member Sellers stated that she would be out of town on that date.

**ADJOURNMENT:** There being no further business Chair Watts called for a motion to adjourn. A motion was made by Board Member Fite and seconded by Board Member Richardson to adjourn the meeting at 6:35 p.m. The motion was unanimously carried by all those present.

Respectfully submitted by:

Becky Hildebrand, CMC  
Municipal Clerk

**APPROVED:**

Mary Watts  
Chair