

# TOWN OF KIRKWOOD ZONING BOARD OF APPEALS

April 15, 2024

A Zoning Board of Appeals meeting was held on April 15, 2024 at 7:00 p.m. at the Joseph A. Griffin Town Hall on the Area Variance application of **Michael Rychlewski** regarding property located at 173 Burts Road in the Town of Kirkwood known as Tax Map No. 211.00-1-7 and located in an Agricultural/Rural Residence Zoning District.

Present: Duane Travis, Chairman  
Mike Maciak, Member  
Marc Latini, Member  
Bruce Nemcek, Member  
Chad Moran  
Gina Middleton

Chairman Travis called the meeting to order at 7:00 pm.

## **APPROVAL OF MINUTES:**

Motion by Marc Latini and seconded Mike Maciak to approve the minutes of the March 28, 2024 meeting as submitted. All voted in favor. Motion carried.

## **PUBLIC HEARING:**

Chairman Travis read the notice of public hearing and also read a letter into the record in opposition that was received anonymously and is included in the file. There was a 239 filed and the County responded that the Planning Department has reviewed the above-cited case and has not identified any significant countywide and inter-community impacts associated with the proposed project. This was also forwarded to the Broome County Health Department and Department of Public Works. The Broome County Health Department responded with no additional comments at this time. If the Town determines the garage is intended to be used as livable space, the Health Department will have comments to make regarding the septic system.

Ms. Middleton explained this is a Type 2 action with no further SEQR review.

Chairman Travis opened the public hearing at 7:02 PM.

Mike Rychlewski presented to the Board a signed letter from someone in favor of this project. Mr. Rychlewski explained he talked to Chad about building a garage because they had sold the big house and needed to build a pole barn. The pole barn was built back far enough so the house could not be built behind it. He put in a legal septic and well. Plans were drawn up for a house. They had a house in Florida but wanted to get closer to his properties here. He sold the business here but still has equipment. Chad has told him he had to have living space in the building so he built a 50X80 building. Chad Moran commented that he built a barn then added 750 SF of space into it, he didn't legally make that living space. It was originally a barn; the barn was going to house your things until you built your house the following year. There was not talk of 750 SF of anything until 4-5 months ago. Mr. Rychlewski explained that the intention was to build the house but decided they didn't need it. He had asked Chad what can he do to build a building on any lot that he owns and he was told he could build a building as long as you have 750 SF of living space, he chose a lot up the road. They decided to build a 30X40 building, 500 feet from the road, out of sight of the rest of the houses. He wants to build this building for lawnmowers, tractors, vehicles. Mr. Rychlewski explained to Chad that lives change, they moved to Florida, COVID hit and he wasn't able to fly back and forth so they built a house in Durham but that didn't work out and they sold that house. They moved back up here unexpectedly.

He had asked Chad what does he have to do to build this building in front of the building and was told he had to

get a certificate of occupancy for that living space. Referring to his drawings he stated he can't build this house and Chad Moran agreed. Mr. Rychlewski commented he accomplished all of the requirements to get the C of O for that building. He said he didn't build it illegally, a licensed electrician, a licensed plumber, all the inspections, windows and doors, insulation factors, he accomplished a legal C of O for the State of NY. Chad Moran stated he circumvented it, he didn't get the building permit first, he did all the work without any inspections, then retroactively issued the certificate of occupancy. Mr. Rychlewski stated he doesn't cut corners.

Chairman Travis read the letter that Mr. Rychlewski presented to the Board into the record.

Hearing no other comments, Chairman Travis closed the public hearing at 7:16 PM.

Mike Maciak asked if he was compliant with everything now and Chad Moran explained he has a certificate of occupancy for a single-family home with a 2-stall garage.

Chairman Travis explained what is before us is a 30X40 garage building, accessory building, in front of that building. Chad Moran commented the current building is the principal house. Chairman Travis commented that is not allowed to happen.

Mike Maciak commented the front of his house is the side of his pole barn. There is a driveway coming up leading to it, driving into the front of the house. Mike asked if the code would have made him face that house toward the road and Chad Moran explained that was originally going to be the barn. The orientation of how it faces the house doesn't necessarily mean the orientation towards the road. If the house sits 500 feet off the road technically anything in front of it is in the frontage. Ms. Middleton explained it is based on road frontage. She explained that when you go through the area variance factors, that can be part of your consideration, how far the setback is, how large the property is, etc.

Bruce Nemcek asked if there is any reason the pole barn can't go back any further and Mr. Rychlewski stated because of the woods and the creek.

Motion by Mike Maciak and seconded by Bruce Nemcek to that this project is a Type 2 and no further SEQR review is required.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Chairman Travis reviewed the Area Variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No, the forest is behind there.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: No.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: Yes, it is self-created, even though there was a change in circumstances since the time the property was purchased it existed as it currently stands and based on prior construction that is what created the issue of the current residential structure being farthest back.

Motion by Mike Maciak and seconded by Marc Latini to grant the area variance.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

**PUBLIC HEARING – KAYE P.COWER – AREA VARIANCE:**

A Zoning Board of Appeals meeting was held on April 15, 2024 at 7:00 p.m. at the Joseph A. Griffin Town Hall on the Area Variance application of **Kaye P. Cower** regarding property located at 197 Stratmill Road in the Town of Kirkwood known as Tax Map No. 146.03-2-47 and located in a Residence Zoning District.

Chairman Travis read the notice of public hearing and also read into the record a letter of opposition from Douglas and Trina Grier. Chairman Travis stated a 239 was filed with Broome County. Chairman Travis read the comments from Broome County Department of Planning and Economic Development, Broome County Department of Public Works, and Broome County Health Department into the record and all are included in the file.

Chairman Travis commented this is a Type 2 and no further SEQR review is required.

Motion by Mike Maciak and seconded by Bruce Nemcek that this project is a Type 2 and no further SEQR review is required.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Chairman Travis opened the public hearing at 7:40 PM.

Jill Gorton and Kaye Cower were present.

Ms. Gorton commented they are confused regarding the comments, they were told there was only one but now there are a lot more that were read, they felt ambushed. She went on to explained they require .04 additional to meet the minimum standard required. They had no idea it was not viable because it had been for sale before, in 2007, they weren't told it wasn't viable at that time. There is a well and septic, many places have a septic that are 40 years old and are viable with maintenance. They make no claims how good the septic system is, it was approved at the time by the County. They think the tank is viable, if they go in and put a house in they will have to re-align the drainage system. The right of way is eminent domain by the County for their drainage because it is a steep hill. There is a driveway off Woodlawn, it is a corner lot. The septic and well sit in the back and they feel it is a viable selling lot and they hope the Board grants the variance of .04, that is all that is needed to be a viable lot.

Ms. Middleton explained the 239 review is just Broome County's general comments, they provide comments on everything that we do. She asked if the survey that was submitted from 1987 was before or after the eminent domain proceeding and Ms. Cower commented it was done after Broome County took their share. Ms. Gorton commented she has been paying taxes on it all this time, she put it up for sale and never had a bit and the Code

Officer said it wasn't legal. If they had known that they would have done things differently, come in for a variance long ago. Ms. Cower explained she spent \$4500 to clean that lot and redoing the driveway.

Hearing no other comments, Chairman Travis closed the public hearing at 7:45 PM.

Chairman Travis asked Chad Moran with a well and a new septic system would everything be met and Chad explained they can meet it with great financial resources. The bigger point of contention was when he spoke to the potential buyers, the information from GIS was .32 acres, which requires a variance. Mike Maciak commented by code, if they put a structure there they would be limited by size. Chad Moran explained code is a minimum of 750 SF. This has two front yards because of the two roads, with a setback of 25 feet in both directions and the pie shape will restrict them. Mike Maciak asked if the septic system has a leach field and Ms. Gorton explained it was approved at the time it was put in. Ms. Cower explained it was for a 3-bedroom, 2 bath home. It has never been used. Bruce Nemcek asked what the zoning is and Chad Moran stated Residence R.

Ms. Middleton explained the square footage requirement for a single family detached, minimum lot size where there is no public water or sewer is 20,000 SF which converts to .457 acres, which is a very minimal variance. This variance is only allowing for construction of residential on this property, they would still need to apply for variances if they didn't want to meet setback requirements, size requirements, etc. They would still have to fit within other code requirements, this is just a variance to allow for some form of construction. We are looking at 37.6 feet out of 20,000.

Chairman Travis reviewed the Area Variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No, it is what it is.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: No, the percentage variance is .0019%.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: No.

Motion by Mike Maciak and seconded by Marc Latini to grant the area variance.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

### **NORBUT SOLAR FARM:**

A Zoning Board of Appeals meeting was held on April 15, 2024 at 7:00 p.m. at the Joseph A. Griffin Town Hall on the Area Variance application of **Norbud Solar Farms** regarding property located at 149 Quilty Hill Road (TM# 147.00-1-2.2 & 147.00-1-7.11) in an Agricultural/Rural Residence Zoning District and property located at 165 Foley Road (TM# 147.00-1-2.11) in a Residence R and Agricultural/Rural Residence Zoning Districts, to extend the lot regulations beyond the allowed 25 feet for the installation and operation of a Commercial Solar Energy System.

Chairman Travis read the notice of public hearing and Ms. Middleton explained that there was an error in the notice, it left out the word interpretation of the area variance. We are going to continue to move forward, it is substantially similar enough and all the prior board meeting minutes and all of the application submissions noted that it was an interpretation.

Chairman Travis read a letter of opposition from Kenneth Crocker into the record and is included in the file.

Ms. Middleton explained that since this isn't the actual area variance application, it is an interpretation, it is going to be a Type 2, not subject to any SEQR review.

Motion by Mike Maciak and seconded by Marc Latini that this project is a Type 2 and is not subject to any SEQR review.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Chairman Travis opened the public hearing to public participation at 7:56 PM.

Ashley Champion, Victor Ciaccia, and Jason Zambrzycki, all from Norbut Solar Farms were present. Ms. Champion commented we are here for a public hearing, we will be hearing comments from interested folks. If there are any questions or any comments you would like us to address they would be happy to do so. The landowner is also here tonight and will be speaking. Their request is just on an interpretation that was rendered by the Code Officer, it is not on the actual variance. The request here is to extend the 25-foot limitation. This is a split lot parcel with the majority of the parcel in the agricultural zone, the portion of the property where the interconnection will be located, not where the panels will be located. There is a provision in your code that allows the landowner, at its discretion, to determine applicable regulations of the split zone may apply to the entire parcel, however there is a limitation to only extend 25 feet beyond the parcel boundary. The interpretation from the Code Officer was that they would need to apply for a use variance, which they had the right to apply for. However, doing so that provision is an issue and would be completely inapplicable. We could at any time apply for a use variance and say we would like to put solar in a residential zone, that is not what they are asking for. We are asking for an extension of the provision of Section 304 that allows one portion of a split zone parcel to be applied to the entire parcel, up to 25 feet. They are not looking for a use variance to construct a solar farm in a residential zone, they are looking to extend the agricultural zoning regulations more than 25 feet into the neighboring portion of the split zone parcel.

Chairman Travis explained he would like to keep the comments to just the interpretation of the law and not deal with any of the particulars of the solar farm itself. We can decide on this without even considering whether there is a solar farm on it or not.

Scott Ferguson, 167 Foley Road, commented he lives right next door. If you grant this variance... Ms. Middleton explained the Board isn't granting any variances now. Mr. Ferguson commented this has the potential to destroy our home. There will be either an 18 or 15 pole cluster, which will be right outside their backyard. Their well is on that side, dug in 2015, struck water at 10 feet so the well is only 30 feet deep. It is a very shallow well and he is concerned that if they put 15 or 18 poles right outside that area it could potential damage or destroy their well. He had talked to Norbut about that already and they said if that happens they would dig a new well so they admit that it could damage or destroy the well. If you did a new well is it going to result in good water or bad water, could you hit natural gas down there. At this point they have a good well and they want to keep it that way. Mr. Ferguson commented the poles could change the drainage of the hill. Last July there was a heavy rain storm, the water came down very quickly and overwhelmed the ditch and flowed into their yard. He is concerned that if the poles had been there the water would have gotten into their basement and damaged their home. They are on a very flat parcel. Mr. Ferguson commented with the poles being 100 feet from their backyard, not only is it unsightly, they also hum. They sit on the deck and that is their view.

They will have to hear the humming. Mr. Ferguson commented the road they are showing is approximately 10 feet from their property. This has the potential to destroy their home.

Susan Spalik, 119 Foley Road, presented the board with a picture of a solar farm in Cortland, NY where they took farmland, cut trees down, and covered the entire hill. In 2006 and 2011 there was major flooding here, damaged many homes and in 2018 flash flooding damaged homes. She asked how many trees will be cut down and how much property will be destroyed, and how much flooding do the people of Kirkwood have to endure. She asked if the Board knew there is a legal case against this company regarding a solar farm they put in in Coventry. Ms. Spalik asked where do they plan on hooking up to the power, power doesn't go through that property and a representative from Norbut explained there is currently an existing 34.5 kilovolts distribution line near the Haskins Road and Foley Road exit, which currently terminates there. They are working with NYSEG, they can extend an existing circuit down the road where either it drops to one phase or two phase or even no phase and you can extend the circuit to a point at the interconnect. Ms. Spalik asked if they had permission from NYSEG and they do.

Ms. Middleton noted for the record we look forward to public comments but there is a time and place when it will be relevant. The comments that were just made, both comments, are not technically relevant for today's decision. She wants to make very clear what today's decision is regarding the interpretation of a provision of our code and whether it is subject to an area variance. The area variance itself is not what is being decided. The area variance factors, which are impacts on neighborhoods, sound, potential impacts to water, SEQR review, all of those items are not at issue today. The comments that were just made are not going to be relevant to the Board for its decision. They will be relevant in future periods for this application and welcome the public to come back during the course of this application. However, for today, the only thing at issue is whether that provision of the code that allows for the 25 feet extension is subject to an area variance that would allow it to extend further. If the applicant wants to respond to any of those comments they can but it isn't relevant to the board's determination today for the interpretation that is at issue.

Ms. Champion commented if and when we are able to proceed with the area variance there is also going to be a process before the Planning Board involving a lot of site details and considerations as well as environmental impacts, review under SEQR, and analysis of Part 1 to determine that there are no significant environmental impacts. After that there is the site plan and permitting issues. There will be public hearings at them as well.

Larry Holt asked if the area variance is going to be decided by this board and Ms. Middleton explained no, tonight's decision is not on the area variance. The area variance was requested and our Code Enforcement Officer issued a decision that said the provision that they are trying to extend is not subject to an area variance and would instead require a use variance to do what they are requesting. The applicant then appealed that decision and brought that in front of the board. The only decision that is at issue here is whether the provision is even subject to an area variance. As an example, if the board said tonight, yes, that is subject to an area variance then we would be back here again with the area variance application at which time the area variance would be decided. If the board says no, this isn't subject in our interpretation to an area variance then we would likely be back here with a use variance application or some other application or an appeal could be made on that interpretation and at that time the board would take additional action. The area variance is not up tonight.

John O'Neil commented those poles should not be put on that property, he agrees with the code decision. He has no skin in the game but understands what they are going through. It is commercialization of a residential property and it shouldn't happen.

James Jackson, 127 Foley Road, asked why does it have to come down Foley Road, why can't they go down towards Colesville Road? Ms. Middleton explained that is not relevant for tonight's determination. Mr.

Jackson asked if it was set in stone which direction they will go and Ms. Middleton stated no it is not, tonight's interpretation is only an interpretation of our code. There is a provision in our code that says you can extend for 25 feet. The only question for the board today is whether that can be extended by area variance. It isn't setting anything in stone, it isn't making any decisions on any site plan or any future area variance. It is simply an interpretation of whether they can use the code in the matter they have proposed to seek an area variance in the future.

Mr. Ferguson asked if you do go 1000 feet is it going to rezone the land and create a problem for their home. If you go with the 1000 feet it will bring it up to the road and will be a problem. Ms. Middleton explained the interpretation is just whether the area variance even applies so the 1000 feet would be relevant once the area variance, if it ever happened, were to be decided, because it would be the extent to which a variance is being requested.

Hearing no further comments, Chairman Travis closed the public hearing at 8:14 PM.

Chairman Travis had handed out to the Board members a sheet regarding his thoughts on Article 3, Section 304. He reviewed the sheet with the Board. That sheet is included in the file. In his opinion, with the exception of the 25-foot discretionary extension, a use variance is needed to extend the boundary beyond 25 feet. He believes this was put in place by the Town to limit, in this case, commercial use into a residential district.

Mike Maciak asked if that was the only piece of residential on that side of the road and Ms. Middleton stated she believes there are other residences along that strip. She went on to say one of the thought processes is to simplify it, if it was a property that was 100 feet deep, 50 feet is residential and 50 feet is business district and someone said I want to extend the business district 50 feet instead of 25, would they be allowed to do that with an area variance. Or if they only wanted to extend it 5 feet, the question is whether that 25-foot provision is subject to an area variance or if the Board feels that it is not subject to an area variance and instead a use variance would be required based on the extension of whatever the underlying requirements are to a separate district. We are not focusing on how big of an area variance is being requested just whether an area variance applies. Mike Maciak asked if they were able to look over the entire project and say the use variance would be able to apply to what they are trying to do and Ms. Middleton explained with regard to the project specifically the only thing we are looking at is whether they can request an area variance to extend. If the Board decides no, that is does require a use variance, they have every right to apply for a use variance, to that portion of the property. They would prefer to use this provision and then go through an area variance request rather than a use variance request. Ms. Champion commented that is correct, they could have applied for a use variance at any time. The standards are different between an area variance and a use variance. Had this provision not existed in the code they would have had to apply for a use variance, they would be looking to put something that is permitted in the agricultural zone but not permitted in the residential zone even though they have one parcel that has two different zoning districts. Your Town has lots of parcels that are split zoned in a very similar manner where you have one parcel with two different zoning districts that are competing uses, which is why they think this provision is in your code. With so many split zoned parcels it gives landowners some flexibility to maximize the use of their property where it is split zoned and be able to pull the district regulations from one portion of the property over another to maximize what they can do. Had the code not had that provision we would have to apply for a use variance but because you do have a provision that says in particular circumstances, like ours, where you have a split zoned parcel the landowner, may at its discretion, apply one of the regulations for one of the zones to the entire lot up to 25 feet. They are looking for relief through that provision and saying we need to go beyond the 25 feet because that is a dimensional threshold, you can't go beyond 25 feet per the code, they need relief from that 25-foot threshold requirement maximum and they would like to have this board say, not that yes you have proven that you have met the area variance standards and you can go beyond the 25-feet, just yes, that is appropriate and we will hear your variance request and see whether

or not they think an extension of that 25-foot maximum in the code is appropriate in your circumstances.

Ms. Middleton explained our office submitted papers and the applicant submitted papers and most of the underlying arguments are contained in there but the base question is whether this provision is a dimensional or physical requirement that is subject to an area variance or whether it is a hard stop and instead a use variance would be required. It would be whether an area variance applies and then the area variance application itself is a separate independent question. Mike Maciak commented what we are saying is 25 feet to 1000 feet if we go with the area variance. Ms. Middleton explained that would be a question that would be answered during an area variance application which is not on the table tonight. The only question that is in front of this Board is whether that provision can be extended beyond 25 feet by an area variance. Ms. Champion commented it could be 1 foot or 5 feet or 1,000,000 feet, is it appropriate for them to seek an area variance extending that 25-foot limitation. Bruce Nemcek commented the purpose of a residential is to keep it residential. If they are against a business that is ½ a mile away and now they will be on top of your residence, what good is having a residence in a residential district. Ms. Champion commented that that code provision is what allows regulations from one zoning district to apply to the other, that is already written in the code as a right. Bruce Nemcek commented that 25 feet gives you a little leeway, but if it goes more than 25 feet the residence district is busted. Chad Moran commented the biggest difference is the area variance is a little easier to get and is less of a threshold. The impact is so substantial that they need a little bit more in depth explanation of how they want to do it, therefore go after the use variance. He feels that Residence R is the strictest, Residence 1 is a little less strict, it is a go between before you get to the AR/R, which is on the other side of Quilty Hill. So, to jump from a Residence R to the AR/R, he feels is too big of a leap for an area variance. Ms. Champion commented that is just the reality of what the lot is. Chad Moran commented it is a big ask and the use variance would satisfy the need rather than an area variance. Ms. Middleton commented the substantiality isn't really the issue, it is whether that provision can be extended to essentially change the underlying use by extending whatever the other districts regulations are further, via the area variance, whether it is 5 feet, 50 feet, 1000 feet, or 2000 feet. Marc Latini commented he thinks the 25 feet is there for a reason. If we could change it, whenever we wanted, it would just be zero and they would go for an area variance. Ms. Champion commented it is similar to all the dimensional thresholds in the Town, you can't have an accessory structure larger than your principal structure, you have to be setback at least 5 feet from the road, you can't have a house that is greater than 40 feet tall, those are all meant to protect the uniformity and the consistency of the zoning regulations so that is why the variance process exists. Constitutionally while the Town has the ability to have comprehensive land use regulation, property owners have the ability to say this doesn't work for me and plead their case as to why it should be varied for their particular circumstance. Ms. Middleton commented this gets to the other line of arguments that are laid out in both the letters that were provided, the difference is when you request an area variance for a setback it still doesn't alter the underlying uses that are permitted on the property.

Mike Maciak commented the use variance would be substantial and Ms. Middleton explained it is not whether the use variance is substantial, it is a question of whether that provision can be extended by an area variance. Whether extending that 25-foot requirement, which will inherently alter the uses that that property, you think

that is subject to an area variance as proposed by the applicant based on the fact that it is a dimensional issue or based on the fact that it would inherently alter the uses, you think it requires a use variance. It isn't a substantiality question, it is just whether you think that that is even subject to an area variance.

Larry Holt asked if the application was submitted and Chad Moran stated yes. He asked what is the reason that application was submitted and Ms. Middleton explained there are two different types of variances, an area variance is a variance on a dimensional or physical requirement. Classic area variances would be for setback

changes, requirement is 25 feet back from the road front, an area variance would be if you only wanted to be 20 feet from the road front. A use variance is a request to vary the underlying use to which the property can be used. An example of a use variance is there is a residential property but want to build a commercial structure on it. The issue here, the area variance was submitted to extend the 25-foot provision that allows the extension. Section 304 allows someone who has two different uses on one parcel, so half is residential and half is AR, it allows them to extend one of those uses 25 feet because it is a split parcel. The question at issue here isn't whether a variance is being granted, it's whether they can even request an area variance to extend that. Depending on how the Board decides tonight there will then be an additional variance application and/or a renewal of the area variance application which will then be decided on and the variance factors will be reviewed by the Board at a different time.

Chairman Travis commented there are many parcels on that side hill that are AR and R zoning. This interpretation doesn't affect just this property, it will affect all those properties. Ms. Champion commented it doesn't change anything that people are allowed to do as a right, it is just whether they can come before this board, along with all the other variances that you hear, and say I would like to extend this 25 feet to allow this overlapping use for X amount of feet. Ms. Middleton explained this interpretation would apply to anyone that would come before this board requesting this type of variance. If another property owner, not ever a solar company, a completely different type of project, and say I want to extend this by 5 feet whatever this interpretation decision is, this would determine whether they can do that or whether they would have to request a use variance for that 5-foot portion. This would apply to multiple parcels but it would only apply to a single parcel that has two difference zones on it.

Ms. Middleton explained the Board's options, being a motion to uphold the Code Enforcement Officer's interpretation and find that an area variance does not apply to this particular provision or you can overrule the Code Enforcement Officer's interpretation and state that Section 304 is subject to an area variance and an area variance can be submitted to extend that Section 304.

Motion by Mike Maciak and seconded by Marc Latini to uphold the Code Enforcement Officer's interpretation of Section 304 and find that the area variance is not applicable to it.

Roll Call Vote:	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Motion by Marc Latini and seconded by Bruce Nemcek to adjourn the meeting. The meeting was adjourned at 8:41 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary  
Zoning Board of Appeals