

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS
JANUARY 3, 2006

PUBLIC HEARING

A public hearing is opened at 7:25 p.m. in the case of Gerald and Vicki Feulner for an area variance for frontage. There being no public comment, this public hearing is closed at 7:26 p.m.

A public hearing is opened at 7:26 p.m. in the case of Deborah Fellows for a side setback variance. Michael Toohey, attorney representing the adjacent property owners Rich and Diane Euler, states that they are opposed to this variance. He states that he does not want the Board to be mistaken in its belief that the real applicant here is the property owner, although it is the property owner's burden to prove its cause as we go forward. He states that the reason this is in Ms. Fellows name is that the applicant wants to place a school on this property and there will be a forge, woodworking shop, glass working shop and private cabins. At the Planning Board they found that the building was illegal and improperly put where it is. He provides copies of some building permits that were granted to Mr. Moulton, the property owner. He reviews these and points out the permits for a storage building/equipment shed. He indicates that the chicken coop's location is very important to the location of the building in question which was supposed to be 60' from property line, the next application shows the property line at 35', and the last application is also at 35'. He reiterates that the location of the chicken coop has not changed. He provides copies of the map provided as the basis for the application and somehow this building has come 16' to the property line and the chicken coop is still at 22' and the position of the storage building is now 7' in front of the chicken coop. He states that the argument being made here on behalf of Mr. Moulton is that there was a problem somehow with the surveyor's line on that north property line, that somehow some pin out on the street got moved at some time. He states that he does not believe that has anything to do with it, because if that were true, the relative position of the buildings would have remained the same. He states that there is no way that Mr. Moulton, with two buildings that close together, one of which is supposed to be 13' behind the other, can build a building that is 7' in front of and not know that was an error. He states that the idea of the applicant coming to the Board tonight with clean hands, just looking at the history of this thing based on some survey error, he finds somewhat hard to believe. M. Toohey proceeds to review the standards in the Code, Section 105-86. He states that the applicant states that there is no detriment to nearby property. The purpose of the application is to allow for a craft school to be operated here. He states that it is a for-profit craft school and Mr. Moulton, either knowingly or negligently having built the building too close to the property line, cannot have any rights that are greater than any other applicant who would come in just asking for an area variance. He states that what the applicant shows is that they want to have a commercial craft school with residential buildings on the property for the purpose of allowing people to come in and take lessons. He states that he believes that an undesirable change will be produced because the Board will help to allow a commercial use being placed on this site. If this building were where it was supposed to be, there would be no Zoning Board involvement. The building is not where it is supposed to be and the applicant clearly shows that the purpose for the project is to allow a craft building/school within 16' of the property line and he does not think that the Board would ever allow that to happen. So why should the Board allow it to happen now as a retrofit to a building that he believes was knowingly put up in an improper fashion? He believes that it is a detriment to nearby neighbors because it will allow an illegal building to be used and if you look at the Planning Board's application, 12 hours a day in which there will be a forge and a woodworking shop going, there will be people living on the property for up to 14 days at a time in two different cabins utilizing this space – this building specifically. Regarding whether or not there is another means to solve this problem, he states that there is a cruel one, which is to suggest to Mr. Moulton that he should move the building. M. Toohey states

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that he is not suggesting that he has seen very many Zoning Boards ever do that, but he has a solution that does not reward Mr. Moulton from putting a building in the improper spot. He states that he believes that the variance is substantial at 54% of the setback that would be required. He states that a request that is more than half of the setback is a substantial variation. He states that he also believes that this is self-created and he understands that does not preclude the granting of an area variance. In this case, he believes that Mr. Moulton knew, or should have known, not by survey but by observation of the building that was there, that his building was far too close to the property line. Regarding the ZBA granting the minimum variance to solve the problem, he asks the Board to focus on the minimum variance standard. He believes that right or wrong, Mr. Moulton made a series of applications to build a storage/garage/equipment storage building very close to the North end of his property. His only expectation in getting building permits to do that was to end up with a piece of property that had a storage building on it and the hen house. He states that the Zoning Board has the right to set conditions to variances that it wishes to grant. If the Zoning Board desires to allow Mr. Moulton to keep a building there that has been there even though it is in violation of the code and he believes it should have been seen to be in violation when it was built, then merely set a condition on the building that it can be used as a storage building/garage, an accessory building to the residential use that is the primary use of that property. He states that by doing that, Mr. Moulton has received every possible benefit he could have ever expected to receive from the building permits that were granted to him by the Town of Greenfield. He states that if there is an argument that says, if you allow this to go forward, the commercial use that is being proposed for this property will make Mr. Moulton more money – that has never been a standard that should be used in regard to either use or area variances. He states that if the Board grants the variance without some condition on it, the next thing that is going to happen is that there is a move, as shown in this very application, to put a commercial use on that property. He states that if Mr. Moulton came in here today to build this building 17' from his boundary and that he wanted to put a commercial craft school in it, he asks if the Board thinks that they would grant that? There being no further public comments, this public hearing is closed at 7:45 p.m.

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Taylor Conard at 7:37 p.m. On roll call the following members are present: Taylor Conard, Paul Lunde, Kevin Veitch and Stanley Weeks. Gerry McKenna, Zoning Administrator, is present.

DECEMBER 6, 2005 MINUTES:

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of December 6, 2005 as submitted.

VOTE: Ayes: Conard, Lunde, Veitch, Weeks

Noes: None

NEW BUSINESS

MICHAEL CHANDLER – Extension of Temporary Use Variance, Case #703

North Greenfield Road

Tracy Chandler is present. T. Conard reviews that this is an application for an extension of a Temporary Use Variance to live in a mobile home during the construction of a house. The variance expires

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February 1, 2006. T. Chandler states that the house is framed except for the roof and they are hoping to be in by May. G. McKenna states that some inspections have been completed by the Assistant Building Inspector.

RESOLUTION – M. Chandler, Case #703

MOTION: P. Lunde

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals grants an extension of a Temporary Use Variance to Michael and Tracy Chandler for property located at 92 North Greenfield Road, TM#125.01-1-28 as follows:

- **Extension of Temporary Use Variance to expire in six months (August 1, 2006)**

This variance is contingent upon:

- **Mobile home to be removed within 30 days of granting of Certificate of Occupancy**

VOTE: Ayes: Conard, Lunde, Veitch, Weeks
Noes: None

DANIEL MULLAN – Area Variance, Case #741

Coy Road

Daniel Mullan is present. T. Conard reviews that the applicant is seeking a 30' left side yard variance for the construction of a home. D. Mullan explains that this is due to the topography of the property and the proposed house location is at the highest point of the lot. D. Mullan also owns the parcels to either side of the subject lot.

RESOLUTION – D. Mullan, Case #741

MOTION: K. Veitch

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals accepts the application of Daniel Mullan for an Area Variance for property located at 301 Coy Road, TM#149.-2-10.1 and sets a public hearing for February 7, 2006 at 7:25 p.m.

VOTE: Ayes: Conard, Lunde, Veitch, Weeks
Noes: None

OLD BUSINESS

KENNETH MERCHANT – Temporary Use Variance, Case #737

South Greenfield Road

Kenneth and Tracey Merchant are present. T. Conard reviews that this was tabled from the last meeting pending some information both from K. Veitch, which cleared up an issue, and from the Town Attorney, which basically verified what K. Veitch had stated. That is that the Zoning Board does not have the right to overturn or overrule municipal and State law. K. Veitch states that this Board is not the Board the applicant should go to for relief in this situation. T. Conard states that the Board should follow the legally correct procedure and complete the SEQRA form. **The Board completes Part II of the Short Form SEQRA. All questions are answered and Box A is checked indicating that the Board has answered yes to one or more question.**

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T. Conrad reopens the public hearing at 8:00 p.m. Dan Glasser, attorney with Michael Schafer's office asks for clarification on the SEQRA completion. T. Conrad states that it should be completed on any use variance and that includes, particularly in this case, a temporary use variance. This is not the normal temporary use variance that the Board grants as this is an existing building that does not have a CO. D. Glasser states that he would like to reiterate what M. Schafer previously stated, that there is no CO for this property and assuming that the Board is thinking of granting this, they would be opening themselves up to a lot of liability. He states that it has already been six months and if the Board tables it again, he believes it is an attempt to skirt around the Zoning Law. J. Fox states that he is the neighbor most opposed to this and has been dealing with this since the year 2000 with two different tenants and there has been someone living in this with no CO for over 2 of the 5 years. There is currently someone in there who has been there for eight months and he put G. McKenna on notice last Memorial Day, that is 6 months ago and they are in there tonight. He states that there is no septic, it is within 5 feet of his property line and that is a 10' variance. He states that per the R3 Zoning and the decision from Judge Nolan of the State Supreme Court, his concern is that he cannot believe that this Board with this situation would go against the ruling of a State Supreme Court Judge when a ruling has already taken place. He states that he also has correspondence that when Mr. Merchant bought this property he was put on notice from the Town as well as Ernie Bonner, the realtor with RealtyUSA, and by J. Fox's attorney at the time, so he was well informed when he bought this property that he could only use it for a garage. He states that he feels bad, their situation is a difficult one but that should have nothing to do with the law. He states that he does not feel that he should be a victim of that, it has gone on way too long and it has been hard enough to even live in the same neighborhood. He states that he has lived here for 18 years and there has not been one problem on his street with a zoning issue, this property has been up twice in 6 years alone. He states that he is also recommending that upon making, hopefully, the proper legal decision, that the plumbing, the incorrect septic system, etc. be removed so that he will not have to live through this anymore, and that the tenant should be removed as soon as possible. He states that last time, after Judge Nolan's decision, it still took almost 6 months before the tenant was evicted from the property. He states that he has correspondence, pictures, etc. The garage was built illegally yet the property owner was given a 29' variance for the garage and the property width is only 45'. He states that he did not ask to have the garage removed. He states that the applicant has also built a woodshed within 10' of the property line which shows no respect to the neighbor or the Town law. K. Merchant states that in speaking with G. McKenna, they cannot even get a temporary CO until the ZBA grants a temporary use variance, and the ZBA is stating that they cannot issue a temporary use variance without the CO. T. Merchant states that she spoke with someone out of Albany and was asked if she was representing a Town Board. She stated that she was going before one and was trying to understand what is going on. She told the person that the ZBA was seeking additional information as what was provided by the Town Attorney was not sufficient. T. Conrad states that is not quite right. He states that the ZBA asked for the Town Attorney to rule on the issue of a CO, whether the ZBA could grant a temporary use variance without a CO. He has since returned a letter stating that the ZBA cannot, the ZBA cannot overrule State Law and municipal law to do that. T. Merchant states that she was told that within the Zoning Committee they have the right to grant temporary use and a CO, which could be temporary and could have any conditions on it that the ZBA felt necessary – a time allotment or in relation to something else. K. Veitch states that the ZBA can, in the right situation, grant a variance with conditions. What the applicant is asking the ZBA to do is grant something before they can. He states that there is a building there that has never been approved by the State of New York, and the ZBA cannot give the applicant the right to live there. He states that the State overrules the ZBA, the ZBA cannot change State law. T. Merchant states that the other thing the man told her was that there is 61 days from when everyone leaves tonight to formally write down and make a decision. T. Conrad states that we have already run that 60 days, we have tabled it once. T. Merchant reiterates that she was told 60 days from when it closes and is no longer tabled, and cannot be tabled again, there are 62 days to formally write everything down, hash it over and submit the final decision and then another 5 days to file it with the clerk, and then the two parties have 30 days to appeal it. K. Veitch states that is the maximum time allowed and the minimum is that the ZBA can make the decision tonight. He states that what the applicant needs to understand is that they came to the wrong party as the ZBA does not have the right to give them a variance. He states that they need a variance from the State. T. Merchant states that she understands all of that, but the question which

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was brought up last time and she thinks is reasonable, is whether this place is safe. She states that they had the apartment inspected and dug up the septic and did all the tests. She states that she understood from the last time all they had to do tonight, was provide that information, and then for the Board to take that information and a little more time, write that down and turn it in. K. Veitch states that the person to inspect that building to determine whether it is safe or not is the current building inspector and if he determines that is was safe enough to legally issue a CO, it would have been done by now. G. McKenna states that he cannot inspect it because it is an illegal building. K. Veitch states that the applicant needs the State to say it is ok and bend the law. T. Merchant states that as long as the Board operates within the 62 days, they are not bending the law and that is all she is asking. She states that every decision made from here on in has a cumulative effect down the line. She states that when she spoke with J. Fox initially he had told her that there had previously been a family that he was close with living there and he had explained that they had family living there, he had never said a word, it was family, they got along well and everything was fine. J. Fox states that is absolutely not true. T. Conard states that he is aware of the previous case and this is a little different because the applicant is asking for a temporary use variance, but the Board cannot grant it and should not be allowing people to live there if it is not a legal residence. He states that the Board is responsible to the Town, the residents of the Town, and liability to the Town. The ZBA has a responsibility to uphold the laws and the laws of New York. K. Veitch states that if the Board gives the applicants what they want, the State will come down on the ZBA. T. Merchant asks if the State will retro something like this. K. Veitch states the applicant has the right to try and appeal that law. T. Conard explains that even if it is safe and there was a fire, it is still a non-legal building and the Town is still liable. T. Merchant states that if she brought in 500 people, the line of defense would start to change. T. Conard states that would not change any line of defense, whether she had 300 people in here or not. J. Fox states that the septic system, which he has pictures of, is totally not safe – there is no distribution box, the pipes are running within 100’ of his well. T. Conard states that at this point legally the ZBA cannot grant a use variance anyway. T. Merchant states that she understands and is only asking for time. T. Conard states that there are three items identified on the SEQRA as potential adverse effects and the Board would have to go through a full EAF if they were going to grant this. P. Lunde asks what obligation the Board has to make sure that this does not happen again. K. Veitch states that he does not think that the ZBA has any responsibility and that there is a court case pending. That would be for the Judge to decide and impose the dismantling, boarding up, any kind of penalty, etc., if he so chooses, unless the applicant can get an appeal from the State. K. Veitch states that it is not the ZBA’s job to remedy the situation. S. Weeks states that he agrees with that statement and states that it is not the ZBA’s responsibility. Applicants apply to the ZBA for a certain thing and assuming other things is not the ZBA’s responsibility.

RESOLUTION – K. & T. Merchant, Case #737

MOTION: K. Veitch

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals denies the application of Kenneth and Tracey Merchant for a Temporary Use Variance for property located at 294 South Greenfield Road, TM#151.-1-34, based on the following:

- **The issue here is not an issue that the Zoning Board of Appeals can address. This is a building that has not satisfied the State codes and needs to satisfy the State codes before anything can be resolved by this Board.**

VOTE: Ayes: Conard, Lunde, Veitch, Weeks

Noes: None

K. Merchant asks how long they have to remove T. Merchant’s sister. K. Veitch states that is up to the Judge and if he feels that the applicant needs time, the applicant will have the opportunity to present the case to him. In the meantime, K. Veitch suggests contacting the State and going through those channels. K. Merchant states that what K. Veitch is saying is that the State needs to grant a CO. K. Veitch states that the

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State needs to say that that building is allowed to be there, it was built without permits, etc. He states that the State may require the applicant to submit plans for the building, make certain alterations for the building that the Building Inspector may indicate need to be done, and the applicant may be able to make it be a legal building. He also states that the State may only allow it to be a garage and not allow for the living space. Discussion takes place that the reason this property was sold was because the previous owner was denied the ability to use the space for living space. K. Merchant reiterates that he was told that the space could not be rented. K. Veitch states that once the determination has been made by the ZBA and then the Judge, there are organizations out there to help his sister-in-law. Until she reaches that point it is hard to find housing. When you reach that point the County, by law, has to help the applicant find her emergency housing.

GERALD & RHONDA MAHAY – Area Variance, Case #708

Lake Desolation Road

No one is present representing this application. A letter was received from the applicant's attorney requesting that this be tabled to the next meeting.

RESOLUTION – G. & R. Mahay, Area Variance

MOTION: P. Lunde

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals tables the application of Gerald and Rhonda Mahay for an area variance for property on Lake Desolation Road, TM#149.-1-1 to the February 7, 2006 meeting.

VOTE: Ayes: Conard, Lunde, Veitch, Weeks

Noes: None

GERALD & VICKI FEULNER – Area Variance, Case #739

Ormsbee Road

Gerald & Vickie Feulner are present. The application is requesting a 250' frontage variance to build a log home on Ormsbee Road extension. P. Lunde asks about the camp on the property. G. Feulner states that it will be removed. G. McKenna explains that this is on the right-of-way to the cell tower, it is not a Town road, but the cell tower owner does plow it.

RESOLUTION – G. & V. Feulner, Area Variance

MOTION: K. Veitch

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals grants an area variance to Gerald and Vicki Feulner for property located at 515 Ormsbee Road, TM#110.-1-11 as follows:

- **250' Frontage variance**

This variance is based on the following criteria:

- **No negative impacts to the area**
- **No environmental impacts**
- **No change to the character of the neighborhood**

VOTE: Ayes: Conard, Lunde, Veitch, Weeks

Noes: None

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DEBORAH FELLOWS – Area Variance, Case #740

Miner Road

Deborah Fellows is present and is requesting a 19' right side yard variance for an existing workshop. She explains that they closed on the house on December 23rd and the property no longer belongs to the Moulton's. She explains the discrepancy with the iron rod that caused the issues with the property line and setbacks. She states that knowing J. & D. Moulton she cannot imagine them doing anything underhanded. She states that Planning Board members did visit the property to see how the problem occurred. Ken Rohling states that on a recent survey done on the neighbor's property done within the last year or two, there are recent posts stuck at that location which say 'point on property line, lot #2', which is Euler's property. The post is still there and apparently causing some issues. He states that he did not find the map from Euler's survey filed anywhere. He states that the building has been there for 12 years and if they knew it was not in the right location, they would have built it further away. He states that it is a little ingenuous to insinuate that the Moulton's came in with dirty hands. D. Fellows states that regarding the comment that this is a substantial variance, when you are looking at 500' a 17' variance is subjective. She states that she came in and spoke with G. McKenna, laid out the whole plan for everything and asked how to proceed. She states that they have been honest with everything that they have said and done. K. Rohling comments on the approval for 250' frontage variance for someone with zero frontage. T. Conard comments on the issues he has had with his own survey being incorrect. P. Lunde states that surveying is not an exact science. D. Fellows comments that with GPS there are additional issues as it is showing that property lines that were laid are not correct. M. Toohey states that there is news that calls into question the entire application and that is that the ownership has changed. The application shows the ownership of this property being Mr. Moulton. We have just been told that the ownership changed on the 23rd and that the application should have been changed before it was brought before this Board. He states the standard of self-created hardship absolutely does come into play, 100%, with this particular application. The people buying this property absolutely knew that this problem existed with regard to the property, they bought the property knowing that the building, as a storage building, was illegally placed. They are now coming before the ZBA with that knowledge saying that they bought it anyway. He states that J. Moulton can argue that he made a mistake when he placed the building. That argument is wholly lost now since he no longer owns the property. The applicants here truly are these folks and they are the owners, and the application before the Board is erroneous. He states that as a result he thinks the application is wrong and the self-created hardship is a bar to this application because they knew exactly what was wrong with this and they bought it anyway. P. Lunde asks the applicant when they purchased the property. D. Fellows states on the 23rd, a week ago. The application was submitted November 23, 2005. T. Conard states that the application, as submitted, was accurate. P. Lunde states that the application states that the intention is the sale of the property. S. Weeks states that it is clear from the application. K. Veitch states that the applicant knew going into the sale that there was a problem and that is why they applied. P. Lunde asks if there is anything the applicant is willing to do to mitigate, anything on the property that could be placed farther away from the property line. D. Fellows explains that the other buildings are portable. The chicken coop is 22' from the property line. There is a woodshed that they will empty and move. D. Fellows states that when they first started looking at the property, K. Rohling contacted Mr. Euler and they discussed what they could do to make this better. Rich Euler states that when they came in and asked him, he stated that he did not have a problem with their teaching, but they are taking a 6-acre parcel and cutting it in half. With the area variance, they get to subdivide the property and then put a school with two more buildings, two cabins that are in his view SRO's – single room occupancys. They have a bedroom, bathing facilities, coffee pot, microwave and a little refrigerator. He states that if this property goes, if something goes wrong, if the business fails, he will have two single room occupancy cabins next door and he will be back at this Board arguing. He states that this applicant might do everything perfect, but 3 or 5 years down the road, we don't know what is going to happen, but he does know that these two cabins will be there. He states that if they want to run a small school without the two cabins, he probably would not get upset about it. T. Conard states that the cabins are not a concern of the ZBA. The concern of the ZBA is strictly the area variance for the side. R. Euler states

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that the applicant knew exactly what was going on when they bought the property and they knew that he would fight this. K. Veitch asks if they are applying for this because they are already in front of the Planning Board. G. McKenna states that the applicant is before the Planning Board for a Special Use Permit during which time a survey was done and the violations were discovered. Our code will not let the applicant go to another Board until they solve the violation first. S. Weeks states that it happens all the time and that is why he is going to be more and more insistent on having surveys. R. Euler states that they had the survey and knew what the game was. T. Conard states that the Board has also run into the problem of contractors putting the buildings in the wrong locations. G. McKenna states that the property owner built this and there was an error. He states that for a \$3000 building you can't very well make someone do a \$3000 survey. K. Veitch states that the ZBA can grant the variance and then the Planning Board can still deny the application. G. McKenna states that the variance will allow the building to remain. K. Veitch asks if the ZBA puts a condition on the building use, can the Planning Board overrule that. G. McKenna states that he is unsure of that. S. Weeks states that he is not willing to make that determination. K. Rohling states that if the only issue is what happens after the property is sold, it can easily be put in the contract that the cabins must be removed. D. Fellows states that they offered to put a fence up or whatever. K. Rohling states that R. Euler's biggest contention at their initial discussion was that he did not want transients near his grandchildren. D. Fellows states that she does not want them near her grandchildren either. P. Lunde asks if D. Fellows understands R. Euler's concerns for the future. D. Fellows states that she does and she would sign a contract now. K. Veitch states that if this is to just make the structure legal, he can understand that, but knowing that they are asking for a variance and then they are going to modify the use, it doesn't sit right. T. Conard states that he does not have a problem with the variance and does not care what they use the structure for - that has to go through Special Use Permit by the Planning Board. P. Lunde asks the applicant if she would accept a condition to move the lean-to. D. Fellows states that they have already said they would and have no problem with that. T. Conard asks if there are any trees on that side of the building. D. Fellows states that they had included in their plans to plant a pine row and she has no problem with a contingency. Discussion takes place about how many and what kind of trees to plant. D. Fellows states that the area is also wooded. K. Veitch comments that we are talking about blocking the view of something that they are hoping to get approval of from the Planning Board. P. Lunde states that the building is already there and asks the applicant if she would be adverse to saying that she would plant pine trees along the property line. D. Fellows states not at all, that she has it in the application and if the ZBA wants to make it a condition they can. K. Rohling states that they were hoping to wait until the spring when things are thawed to move the woodshed.

RESOLUTION – D. Fellows, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals grants Deborah Fellows an area variance for property located at 280 Miner Road, TM#111.-1-8.12 as follows:

- **19' Right side yard variance**

This variance is contingent upon:

- **Removal of wood shed to another location to comply with Zoning within 6 months**

This variance is based on the following criteria:

- **No real change to the neighborhood, the building is pre-existing, non-conforming**
- **No alternative means of relief**

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VOTE: Ayes: Conard, Lunde, Veitch, Weeks
Noes: None

Meeting adjourned 8:50 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary