



**APPROVED MINUTES OF THE REGULAR SESSION OF THE
BUILDING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
January 13, 2010 - 1:30 P.M. – 100 NORTH FIFTH AVENUE, SECOND FLOOR,
CITY COUNCIL CHAMBERS.**

MEETING CALLED TO ORDER at 1:32 p.m. by Chair Kenneth Winters

ROLL CALL

Members Present: (5) K. Winters, S. Callan,
P. Darling, R. Hart & R. Reik

Members Absent: (0)

Present: (3) A. Savoni, K. Chamberlain and B. Acquaviva

A - APPROVAL OF AGENDA

A-1 Approved without objection.

B - APPROVAL OF MINUTES

B-1 Draft Minutes of the October 14, 2009 Regular Session

Line 256 *should read* detection (add) **system** is Included (KW).

Moved by S. Callan, Seconded by P. Darling, **“That the draft minutes of the January 10, 2010 Regular Session be approved as amended.”**

On a VOICE VOTE – MOTION TO APPROVE – PASSED (UNANIMOUS)

C - APPEALS & ACTION

C-1 BBA09-031– 3861 Research Park Drive

Allen Scott of Rand Construction, contractor for this property, is requesting a variance from **Section 1009.3** of the **2006 Michigan Building Code**.

Description and Petitioner Presentation

The applicant is requesting a variance from Section 1009.3 of the 2006 Michigan Building Code that states:

“Stair riser heights shall be 7 inches maximum and 4 inches minimum.”

Further, **Section 1009.3.2** states:

“Stair treads and risers shall be of uniform size and shape. The tolerance between the largest and smallest riser height or between the largest and smallest tread depth shall not exceed 0.375 inch in any flight of stairs.”

51 Petitioner has constructed a new curved staircase. Due to the finish on the upper floor, the riser
52 for the top stair is 7 1/2 inches. Code states that maximum acceptable riser height is 7 inches.
53 Also, code would allow a riser variance in a stair of .375 inch (3/8 inch).
54

55 Mr. Allen Scott, director of construction with Rand Construction was present to speak on behalf
56 of the appeal. He stated that they built this entrance addition with all glass and concrete on the
57 north face of the forty something year old building for "Gift of Life" foundation. Upon final
58 inspection, the wood flooring (represented as slanted lines on the plan) nosing at the top of the
59 step makes that step between 7 3/8 and 7 1/2 inches, where code states 7 inches. We are
60 seeking a variance for that step on behalf of the client.
61

62 **Recommendation:**

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64 A. Savoni (*Building Official*) – Staff would not be supportive of this request as the code
65 requirements are not being met and the petitioner has not proposed an equal or better form of
66 construction.
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68 K. Chamberlain (*Fire Marshall*) – The Fire Department concurs with the Building Department.
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70 **Comments and Questions from the Board**

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72 R. Hart (To A. Savoni) – If that 1/2" discrepancy were taken down to 3/8 that would make it
73 compliant, wouldn't it?
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75 A. Savoni – The code states that the maximum rise is 7 3/4, and you can go 3/8 inch above that.
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77 R. Hart - Is there an option to sand the wood flooring at that point down an 1/8 to 1/4 of an inch?
78 (Petitioner – Technically, it may be 7 3/8 now, I was being generous saying 7 1/2. I could prove
79 one way or another. Sanding could be an option – it was a pre-finished item but I suppose you
80 could sand something that's pre-finished.
81

82 K. Winters – If you did that, wouldn't it have to be on a slope? You couldn't have a 'ledge;' in
83 other words, you can't make it level.....
84

85 Petitioner – No – you couldn't make it level with the wood as that nosing houses the wood
86 planking.
87

88 K. Winters – States it would have to be feathered out.
89

90 R. Hart – The accessibility code states that it can have a 1:48 slope; so for an 1/8 of an inch,
91 we're talking about six inches feathered back. (Petitioner – That's the difficulty with the design
92 in materials – The wood planking comes out as if the door is not there, and I had to work with
93 the elevations that I was given – I couldn't really deviate due to finish floor heights on an older
94 building. I was very aware of this difference due to the architecture.
95

96 P. Darling – When we grant a variance, we have to explain how the code doesn't really apply
97 here or how you could suggest an equivalent (or better) alternate form of construction.
98

99 R. Reik - We can't just grant a variance because you can't meet code.
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101 K. Winters – Re-stated that the petitioner was not presenting the Board with an alternate method
102 to allow the Board the room to be able to grant that variance – *an 'equivalent' (or better) form of*
103 *construction.*

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Petitioner – If I sand the top of that item until it comes into 7 3/8, I will gladly do that, but it won't extend 6 inches. The nosing item is only 2 inches wide.

K. Winters – But as Robert (Hart) mentioned, you can't have more than a 1 to 48 slope. (R. Hart – That was for an accessible stair. That guideline doesn't necessarily apply to this anyway, but this would probably bring this in compliance with code.)

P. Darling – You could actually cut the edge of all the boards back so that you have a full tread dimension of wood and put a new top tread in there that you could pitch the 1:48, that way you're not dealing with the pre-finished stuff.

(The Board and the Petitioner discussed trying to find an alternate method of construction to solve the petitioner's problem).

Petitioner – So, the options are: Placing flooring on top of the nice looking concrete and that creates a problem wherever you decide to stop. If you stop at the bottom of the stairs, you have that problem on the next level. I did think of the cut back and ramp back to zero, it just won't look good, frankly. In my eyes, it's not the world's biggest problem. I'll level off the nosing.

The Board stated that they suggested tabling this in case the petitioner had to come back for a possible variance if they can offer another alternative to remedy this situation. If *sanding can* remedy the problem, petitioner will not have to come back to the board.

Petitioner – So.... The 'variance' technique is to find an 'alternative' technique?

P. Darling – Per the Code, there are three issues by which a variance can legally be granted:

- The true intent of the Code has not been correctly interpreted – saying... that you feel that you're complying with the code, but that the Building Officials' interpretation is incorrect; or
- The provisions of the Code do not fully apply – Meaning, that you feel that this section of the code has little or no effect on your situation.
- Offering an equivalent or better 'alternate' form of construction.

Those are the three that we are able to use in our evaluation for granting a variance.

Petitioner – So, if we elect to "Table," is it another \$500 to walk in the door? (No. This is why it's being offered to table the matter).

Staff and the Board discussed this with the Petitioner, and stated that once he is done 'sanding' and/or 'modifying' the stair in question, he needs to call for a final inspection. If he passes the inspection, the variance request can be dropped; if he doesn't pass it, he has the tabled appeal still open and should contact staff to reactivate the variance.

Discussion:

MOTION

Moved by S. Callan, Seconded by R. Hart, **"In regard to Appeal Number BBA09-031, 3861 Research Park Drive, the Board TABLED this issue to allow the petitioner time to use an alternative means with which to comply on his final inspection.**

157 **On a Voice Vote – MOTION TO TABLE – PASSED – UNANIMOUS**

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159 **Note:** Concerning BBA09-031, 3861 Research Park Drive, B. Acquaviva checked the
160 inspection records for this property on 3/22/10. The work under this permit is now acceptable
161 and the permit was finalized out. Records were adjusted in the permitting/processing system to
162 show that the variance was denied/no longer necessary and this item was closed out.

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C-2 BBA09-032 – 117 East Davis Drive

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167 Bob Leffler of Valley Builders, contractor for this property, is requesting a variance from **Section**
168 **R304.3** of the **2006 Michigan Residential Code**.

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Description and Petitioner Presentation

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171 The applicant is requesting a variance from Section R304.3 of the 2006 Michigan Residential
172 Code that states:

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“Habitable rooms shall not be less than 7 feet (2134 mm) in any horizontal dimension.”

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177 This is rental property. The petitioner is proposing to reconfigure space on the second floor to
178 create a bedroom. While a small portion of the room near the entry door is more than 7 feet
179 wide, the majority of the space is only 6 foot 8 inches wide. Code requires that habitable rooms
180 be a minimum of 7 feet 0 (zero) inches wide.

181

182 Mr. Robert Leffler was present to speak about the appeal. He stated that this is college area
183 housing, and that he had provided the Board with two set of floor plans; one that shows the
184 room in question divided. What they are looking for is to satisfy both the city rental housing
185 requirements as well as building code. They seek a variance to waive the 7’ x 7’ room area
186 requirement. He offered to answer any questions that the board may have.

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Recommendation:

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190 A. Savoni (*Building Official*) – Staff would not be supportive of this request as the code
191 requirements are not being met and the petitioner has not proposed an equal or better form of
192 construction. While it is true that a small portion of the room is more than 7 feet wide, the
193 majority of the useable space is not and therefore does not meet the intent of the code. He
194 added that he wants to clarify with the Board of Appeals how they would like to handle these
195 matters. He stated that these types of issues come up in our rental housing area and if you
196 technically read the code, the measurement that he has does meet the code at a certain point –
197 but it’s not a 7’ x 10’ room all the way through. We had this problem prior with contractor Scott
198 Klaussen in which we told him he had to relocate the bathroom in his problem area. In this
199 case, the petitioner could move the closet in this room and come very close to code. I’m looking
200 for guidance from the Board on how you want to handle these matters.

201

202 K. Winters – Asked if the Building Official had ever contacted the authors of the code to see if
203 this sort of thing was acceptable? (No, but it might be a good idea for future cases.)

204

205 A. Savoni – (Demonstrated photo’s from another rental showing space usage, etc. and the fact
206 that this does ‘work’ for these type of troubled areas.)

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208 R. Leffler – Stated that there are constraints in the back of the room due to the dormer that will
209 create that small amount of extra space.

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K. Chamberlain (*Fire Marshal*) – To double check, the existing window *is not* an egress window?

(R. Leffler – That is correct, but I believe we are grandfathered in. In the information on the second plan that was submitted, there will be a second egress window on the dormer.)

K. Chamberlain - The Fire Department concurs with the Building Department, with the caveat that it should be noted that the area is very tight if it had to be accessed by Fire Operations personnel. That egress window would certainly be beneficial for life safety issues.

(Discussions were done regarding possible furniture in front of that window by a potential resident. It was decided that as long as it is not 'blocked,' that that was ok and should be enforced by the property owner or agent.)

Comments and Questions from the Board

R. Reik (To A. Savoni) – Is the egress window required? (In the bedroom? Yes.)

R. Hart – I've always understood that the 'minimum' dimension is the 'minimum' dimension and that it's not selective. If it's a habitable room, that dimension must apply to the habitable portion of the room. This is quite a space. Its 7'2" tall, has a 2' door on it (which I understand meets Code). You can make any tiny space work, but.....

K. Winters (To Petitioner) – Did you say that this wall is a bearing wall? (That wall is a bearing wall for a dormer that serves that existing bedroom.) The whole length of that is bearing? (Yes, there's a roof load that sits on that wall.)

P. Darling – My opinion is that the shape of the room is pretty unusual, but you could make this into a 7' x 10' room and would be better than what he has now? He has the minimum square footage.

(Further discussion between the Board and the Petitioner).

R. Hart – There are other variables (like you've described). It's not just the 7' in and of itself. The 7' helps to make it palatable.

R. Reik – Asked if the contractor could increase the size of the door. (Yes, up to 30 inches is your standard size, it's currently at 28").

Discussion:

MOTION

Moved by R. Hart, Seconded by P. Darling, **"In regard to Appeal Number BBA09-032, 117 East Davis Avenue, the Board permits a variance from Section R304.3 of the 2006 Michigan Residential Code to permit a habitable bedroom with a width dimension of 6'8", with the following provisions:**

- **Install a building wide interconnected hard-wired smoke detection system;**
- **The door width to the bedroom shall be increased to 30"; and,**
- **Occupancy of this room will be limited to 1 (one) person.**

The other dimensions of the room (13') and the egress window and compliance with

263 ceiling height compensate to make this equivalent to what the Code requires.

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265 **On a Voice Vote – MOTION TO APPROVE – PASSED - UNANIMOUS**

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268 **D-1 – BBA09-026 - 1015 Aberdeen Drive** (This issue was originally heard in November
269 of 2009 and postponed until further notice.)

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271 Stephen Brownell of Arbor Valley Builders, contractor for this property, is requesting a variance
272 from **Section R311.4.3** of the **2006 Michigan Residential Code**.

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274 **Description and Petitioner Presentation**

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276 Petitioner is constructing a new home. One of the secondary entrances to the home has a set
277 of French doors with the top of the threshold 9 1/2" above the porch. Code allows a maximum
278 of 7 3/4" from the porch to top of the threshold.

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280 The applicant is requesting a variance from Section R311.4.3 of the 2006 Michigan Residential
281 Code that states:

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283 *“There shall be a floor or landing on each side of each exterior door. The floor or landing at the*
284 *exterior door shall not be more than 1.5 inches lower than the top of the threshold. The landing*
285 *shall be permitted to have a slope not to exceed 0.25 units vertical in 12 units horizontal (2-*
286 *percent).*

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288 *Exceptions:*

289 1. *Where a stairway of two or fewer risers is located on the exterior side of a door, other than*
290 *the required exit door, a landing is not required for the exterior side of the door provided*
291 *the door, other than an exterior storm or screen door does not swing over the stairway.*

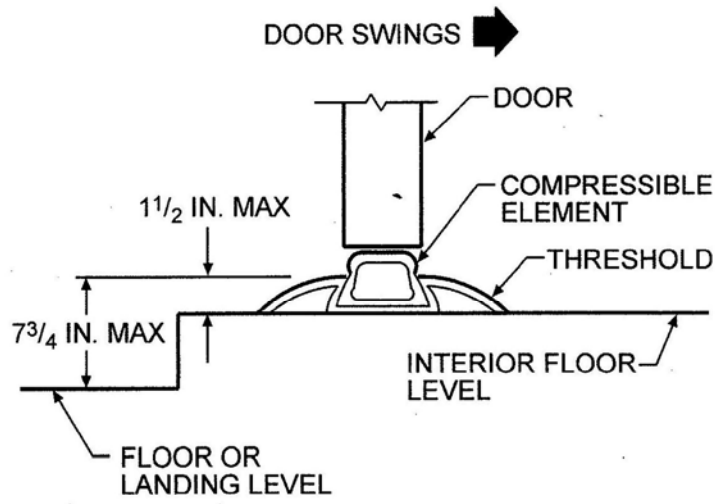
292 2. *The exterior landing at an exterior doorway shall not be more than 73/4 inches below the*
293 *top of the threshold, provided the door, other than an exterior storm or screen door does*
294 *not swing over the landing.*

295 3. *The height of floors at exterior doors other than the exit door required by Section R311.4.1*
296 *shall not be more than 73/4 inches lower than the top of the threshold.”*

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298 **The following is an illustration of this code section from the code commentary:**

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For SI: 1 inch = 25.4 mm.

**Figure R311.4.3
THRESHOLD HEIGHTS**

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303 Mr. Stephen Brownell was present to speak on behalf of the appeal. He stated that he was
304 contracted to build this home, and the door wall in question leads into an office space. The
305 homeowner was concerned with security and wanted a three-latch door system. He went to
306 Chelsea lumber, and due to the width of the door (5'), this door (made by Anderson) was the
307 only one available. We didn't realize that this was a potential issue until the actual inspection.
308 There is a flange on the sill – and door is constructed this way because it has a skirt and a drip
309 edge that drips into this little flange to shed water and that is its only purpose.

310
311 When the inspector was going through the house, he noted that it was higher than the 8 ¼ rise.
312 Either side of that meets the requirements – it's only the flange area that is the barrier. We
313 installed a door and framing during the home construction and the architect drew the plans so
314 that both porches were the same elevation. The other front entry door has no problems. It was
315 done by a different manufacturer as to the sill issue. We're requesting a variance to allow this to
316 stay because of the problems with removing the door, and there is no other door available that
317 is a triple-lock system that meets the 5' width requirement. He stated that he had no other
318 solution for this situation at this time.

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320 **Recommendation:**

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322 A. Savoni (*Building Official*) – Staff would not be supportive of this request as the code
323 requirements are not being met and the petitioner has not proposed an equal or better form of
324 construction.

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326 K. Chamberlain (*Fire Marshal*) – If I understand the drawings correctly, the egress path from the
327 inside is free and clear. There is no encumbrance there to speak of. The change would be in
328 stepping down to a lower level. (There is a 1 ½ inch difference between the floor and the flange,
329 so you would be stepping 'over' that flange to step outside.)

330
331 The Fire Department concurs with the Building Department.

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333 **Comments and Questions from the Board**

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335 R. Hart – I'm going to ask the obvious – why don't you just get rid of the threshold? (Cut that
336 flange right off?) Yes. The door is set back in a protected area. Just reestablish the drip and
337 knock off the 1 ½". (*Continued discussion between the Board and the Petitioner*)

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339 **MOTION**

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341 Moved by P. Darling, Seconded by R. Hart **"That in the case BBA09-026, 1015 Aberdeen**
342 **Drive, the Board grants a variance from Section R311.4.3 to allow the door threshold not**
343 **to exceed 8 ½ " from the porch elevation to the top of the threshold, provided that two**
344 **other means of egress from the house are provided. This is considered a 'supplemental**
345 **door,' and we find that this meets the intent of the Code."**

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347 **On a Voice Vote – MOTION TO APPROVE – PASSED - UNANIMOUS**

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350 **D-2 – BBA09-023 - 1415 Wells Street** (*This issue was originally 'heard in November of*
351 *2009 and postponed until further notice.*)

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353 Ruth and David Markovitz, owners of this property, are requesting a variance from **Section**
354 **R310 of the 2006 Michigan Residential Code.**

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Description and Petitioner Presentation

The applicant is requesting a variance from Section R310 of the 2006 Michigan Residential Code that states “Basements and every sleeping room shall have at least one operable emergency escape and rescue opening. *Where emergency escape and rescue openings are required, they shall have a sill height of not more than 44 inches above the floor. The minimum net clear opening height shall be 24 inches. The minimum net clear opening width shall be 20 inches.*”

Petitioner is remodeling an existing bedroom. This would require that an egress window be installed if the room does not already contain one. Per the petitioner there is an existing window in the bedroom which meets egress requirements in overall open size and height. It does not however meet the minimum opening width requirement. The opening width of the existing window is 17-1/4 inches. Code requires the minimum opening width of 20 inches. This window was installed a few years ago, before the start of this bedroom remodeling project.

Ruth and David Markovitz were present to speak on behalf of the appeal. They stated that they had been doing some remodeling, and they turned a closet into a bathroom (which adjoins a bedroom). It then included that room to have an egress compliant window. The window that we’re talking about is just a few years old, its high efficiency and in good condition. When we were here last, we had changed the crank mechanism on the window, but it didn’t add enough room to satisfy the egress requirement.

Our request was tabled, and we went back and obtained weather shield egress hardware so that each of these windows are now 19 ¼ wide.

Recommendation:

A. Savoni (*Building Official*) – Staff would not be supportive of this request; the egress requirement is 20” which this window still does not meet.

K. Chamberlain (*Fire Marshal*) – The Fire Department concurs with the Building Department.

Comments and Questions from the Board

K. Winters – So you obtained hardware that allowed the greater opening? (Yes, and there was a mention of 10 percent that if this came within that amount that a variance could be granted?) You’ve tried to accomplish that compliance, but there is nothing in the code that allows a variance except by this Board.

R. Hart – So does everything else comply? The window is not more than 44” above the floor? If the minimum clear open space is 24, you have twice as much? (Yes). The height of the opening. You have smoke detectors? (Yes, hard-wired).

K. Winters – The room is on which floor? (On the second floor, it faces the front of the house).

R. Reik – What does the egress window egress out to? Is there a porch roof to step out on? (No, it’s straight out).

P. Darling – What is the opening from the sash. The window probably sticks into the opening is my guess. It probably goes from the mullion in the middle and that is the 19 ¼. Net opening if you didn’t have the sash.....

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Maybe because this is on the second floor we can make it a condition to have an emergency escape ladder. You could make it out the window.

R. Hart – It’s actually twice as tall as it needs to be and she meets the smoke detection requirement which would have been a part of the variance.

(Continued discussion among the Board)

Discussion:

MOTION

Moved by P. Darling, Seconded by R. Hart, “In regard to Appeal Number BBA09-023. 1415 Wells Street, the Board grants a variance from Section R310 of the 2006 Michigan Residential Code, to allow the modification of existing casement windows as a part of a bathroom renovation project to improve the egress from the sleeping area, provided that inter connected, hard-wired smoke detectors be installed throughout the house, and that the minimum clear width opening is not to be less than 19 ¼ inches by 46” tall (the sill height meets code). Two windows of this size be provided in the room. We find that this improves the life safety from the space and the adjoining bathroom. A safety ladder shall remain available at the base of this window to facilitate safe egress access to the outside.

On a Voice Vote – MOTION TO APPROVE – PASSED - UNANIMOUS

- E -** **NEW BUSINESS** – 2010 Meeting schedule. Please note that the March meeting is a Thursday.

- F -** **REPORTS & COMMUNICATIONS** – None.

- G -** **AUDIENCE PARTICIPATION – GENERAL** - None.

ADJOURNMENT

The meeting was adjourned without opposition at 3:30 p.m.

Minutes prepared by B. Acquaviva, Administrative Support Specialist V