

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

AUGUST 4, 2021

The combined public/work session meeting of the Board of Adjustment of the Township of Mahwah held via Remote Zoom Conference was called to order at 7:30 p.m. by Mr. Rabolli, with the reading of the opening statement followed by the flag salute and a reminder that Board of Adjustment meetings are being videotaped and broadcast live. It was noted that adequate notice of the meeting was provided specifying that this meeting would be held remotely and that electronic notice of both general access instructions and specific meeting invitations were posted to the Township Website.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT:

Mr. Calijone	Mr. Montroy
Mr. Cannava	Mr. Rabolli
Mr. DeSilva	Mr. Straffin
Mr. Jackson	Mr. Whiteman
Mr. Kearney	

ATTORNEY: Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Mr. Vahane Costanian, PE, Boswell Engineering
Ms. Deb Lawlor, FAICP, PP,
Colliers Engineering & Design, Inc.
Ms. Geraldine Entrup, Administrative Officer

I. APPROVAL OF BILLS:

July 7 & 21, 2021	\$500.00	Cascio – Meeting Attendance
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A motion to approve was made by Mr. Whiteman, seconded by Mr. Kearney.
A roll call vote revealed 9 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

June 2 & 16, 2021	\$400.00	Colliers Eng. – Meeting Attendance
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A motion to approve was made by Mr. Kearney, seconded by Mr. Calijone. A roll call vote revealed 9 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

II. APPROVAL OF MINUTES:

None to present.

III. MEMORIALIZING RESOLUTIONS:

None to present.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated on the Zoom call or wrote in comments.

V. PUBLIC HEARING(S):

**1. DOCKET #1487-21 PALISADES PROPERTIES, LLC
316 FOREST ROAD, BLOCK 168 LOT 9**

Application for "D1" Use Variance for a Sober Living Home in an existing Single Family Home. *Discussion to determine the next Public Hearing Meeting date only.*

Mr. Rabolli stated that for the purpose of Notice, the hearing of this Application is carried to October 6, 2021 in person, unless otherwise determined. No further Notice is required. If there is an issue with Mr. Steck's availability to attend in person, Mr. Weiner will inform the Board and it will be determined if Mr. Steck could attend hybrid if that option is available. Mr. Rabolli commented that the legal issue is the number of members recused. The Rule of Necessity to have a minimum of five votes for a Use Variance will be implemented. For example, if only three Board of Adjustment Members are available, two Planning Board Members would be called. Under those circumstances, no more than five can vote. Mr. Rabolli added that since Mr. Purcell was not present (nor required to be present) at this meeting, there would be no debate on this issue. Mr. Weiner agreed.

Note: Mr. Edward Purcell, Esq., Price, Meese, Shulman & D'Arminio, P.C., 89 Headquarters Plaza North, Suite 1442, Morristown, NJ 07960 joined the call at 10:00 p.m. Mr. Rabolli informed Mr. Purcell that October 6, 2021 as the next hearing date for Palisades Properties had been discussed with Mr. Weiner pending confirmation. Mr. Purcell requested October 20, 2021 as the Planner is not available on the 6th, and will discuss the date with Mr. Weiner.

**2. DOCKET #1488-21 TYRONE MARNOTES AND JENNIFER SCHUTTE
21 EAST CRESCENT AVENUE, BLOCK 118, LOT 9**

Application for a “C” Variance to convert and expand an existing detached garage into a new principal residence, after which the existing residence will be demolished and removed. The new residence is to be supported by a detached garage.

Mr. Cascio stated that the Notice was in order.

Mr. Robert P. Zisgen, Esq., Robert P. Zisgen, LLC, 79 North Franklin Turnpike, Suite 101, Ramsey, NJ 07446, representing the Applicants, referenced NJSA 40:55D-70(c) and stated that the Applicant seeks permission to temporarily violate the Local Zoning Ordinance 24-3.5A which prohibits two principal structures on one lot, and convert their existing detached garage into their principal residence. Upon completion and the issuance of a Certificate of Occupancy (CO) for that structure, the Applicants would then move from their existing residence which is much closer to East Crescent Avenue, then demolish the former residence. There are two existing non-conformities; the existing residential structure, which is closer to the road, has an existing side yard of 7 feet where 30 feet is required, and the width of the Lot is 138 feet where 150 feet is required in the R40 Zone. The Lot is oversized from a bulk standpoint at 42,200 square feet where 40,000 is required. The end result would be that the deficient side yard would be eliminated when the home is demolished. The existing Lot width situation would not be worsened or bettered by the completion of the plan.

Mr. Vahane Costanian, P.E., Boswell Engineering, attending the hearing for Mr. Michael Kelly, was sworn in by Mr. Rabolli, gave his credentials and was recognized as a Professional Engineer.

Mr. Zisgen called his first witness; **Mr. Thomas Ashbahian, 39 Spring Street, Ramsey, NJ**; providing testimony in the areas of Engineering for the Site Plan and Planning for the Variances being sought. Mr. Ashbahian stated that he is familiar with the site and immediate surrounding area, has collaborated with Mr. Peter Kirch in preparation of the Site Plan and Soil Conservation Plan based on Mr. Kirch’s current survey, and has read Boswell Engineering’s Report dated June 18, 2021 concerning this Application. Confirming the statements made by Mr. Zisgen above, Mr. Ashbahian stated that the Application improves upon the circumstances of the property. The Applicants would be able to remain in their home (garage) until the new addition is constructed and completed. No negative consequences to the Zone Plan are foreseen. Mr. Zisgen added that the Applicant is prepared to post a Bond sufficient for the removal of the existing residence upon completion of the newly constructed residence.

Having no further testimony, Mr. Rabolli opened the questioning to Members of the Board for Mr. Ashbahian.

Questions/comments from Members of the Board included:

Mr. Kearney – the Lot is non-conforming based on width, but has necessary square footage, no Variance required, the Applicants could leave the house and modify it, recognized as pre-existing non-conformity; other than the Lot width, the Lot and setbacks would be brought to conformity; the requested Variance has no negative down side to the Public, agreeing if the second structure is demolished within a period of time of completion; the building owner stated that once the CO is issued, the old building would be torn down in its entirety – is it fair and reasonable to make a statement that the CO going into the new building null and voids the CO in the existing residence given a period of time, say 60, 90 or 120 days, that if they were to sell the property that it would become an expired CO?

Mr. Ashbahian concurred with Mr. Kearney's comments. It was stated by Mr. Zisgen that it could be conditioned in any way to preclude long term co-existence of two principle structures on one lot. Mr. Costanian suggested that it be on the record as a Condition of Approval and be Bonded as well. Mr. Montroy added that 60 days have been granted in the past.

Mr. Calijone – does the existing 3 car garage have a basement; is it living space; what is a reasonable amount of time to shift from one building to the other to avoid risks such as sale of the property; from an aerial view it is a peculiar layout; no second structure under the primary structure, correct?

Ms. Jennifer Shutte – it is a 2 1/2 car garage and yes there is a basement, there is plumbing – it has never been used as a living space. Mr. Ashbahian stated that to his knowledge there was no structure under the primary structure.

Mr. Cannava - while two structures co-exist and if grading run-off to the neighbors takes place, what kind of jeopardy would be caused to the Township?

Per Mr. Ashbahian, there are gutters and leaders, drainage pits will be connected until the house is taken down. The Soil Erosion Control Plan would come into play, it indicates how the land has to be restored – basically plant grass. The contractor will connect the pits to the existing storm drainage temporarily. The area where the home was will be restored.

There were no further questions from Members of the Board for Mr. Ashbahian.

Mr. Rabolli opened the questioning to the Board Professionals for Mr. Ashbahian.

Mr. Costanian referenced Boswell's report dated June 18, 2021 regarding drainage calculations. Mr. Ashbahian stated that drainage calculations would be provided along with Perc Tests and additional drainage pits if required. Mr. Costanian stated that a Soil Movement Permit Application is required. Other items in the Report were discussed including Condition of Approval, Guarantees and tree removal.

Mr. Ashbahian stated that all items in the report were eminently addressable with no issues. Mr. Zisgen added that the Applicant was prepared to comply with the Bond requirement. A Tree Preservation Application will be submitted with the Soil Movement Permit Application.

There were no further questions from Mr. Costanian or Ms. Lawlor for Mr. Ashbahian.

Mr. Rabolli opened questioning from members of the Public for Mr. Ashbahian.

Mr. Michael D. Kauker, Licensed Professional Planner, Planning Consultant, and adjoining property owner at 2 Doremus Road gave his credentials and was sworn in by Mr. Rabolli. Mr. Kauker stated that he was very familiar with the proceedings, was there to observe, but has a few questions. He will not need to cross examine the witness. Regarding removal of the home and storm water run-off, Mr. Kauker stated that his property is a lower elevation, that he did have issues when the garage was constructed by previous owners and would appreciate Boswell's attention to that.

A discrepancy on the Site Plan was noted; Mr. Ashbahian stated that the rear setback was shown as 20 feet and should be marked as 40 feet.

There were no further questions for Mr. Ashbahian and no re-direct examination by Mr. Zisgen.

Mr. Zisgen called his next witness; **Ms. Jennifer Shutte, Homeowner, 21 East Crescent Avenue** was sworn in by Mr. Rabolli and stated that the property was purchased on August 9, 2011 at which time she was not aware of the deficiency in the side yard or Lot size of 150 below requirement. Ms. Shutte commented that they looked at modifying the house but it was cost prohibitive. Having been on disability since 2006, she wanted one level living; the home is close but not quite. The new home will be so much easier to live; grab bars will be built in. Her immune system is compromised which limits her ability to be around other people which is why they wanted to stay on the property. Ms. Shutte stated that she and her husband were prepared to comply with the condition of the Bond and agreed that it would run with the land and although not planning on selling, successors would have to do the same.

There were no further questions from Mr. Zisgen for Ms. Shutte.

Mr. Rabolli opened questioning to Members of the Board for Ms. Shutte.

Discussion between Members of the Board, Ms. Shutte and Mr. Zisgen took place regarding length of time to build the new structure for the garage; limitations; returning to re-address if necessary and bathrooms in the existing garage. It was agreed that 18 months is fair and reasonable, with 60 days to move into the new structure once completed. The previous homeowners built the garage, utilized it as a pool cabana with a bathroom, storage and office space – it is two stories and has a basement, but there is no kitchen. If approved, the structure will be changed, it is part of the Variance that will go away and it will be all new. The detached garage was approved by this Board in 2005 with a 1,000 square foot limitation secondary building.

Mr. Zisgen confirmed to Mr. Costanian that the Applicant's Engineer will provide the existing condition with the two houses for the storm water plan and also where it will be after the house is built to address run-off concerns of the neighbor.

There were no further questions for Ms. Schutte and no re-direct examination by Mr. Zisgen.

Mr. Zisgen called his next witness; **Mr. Peter Kirch, Surveying Technologies, Inc., 43 Spring Street Ramsey, NJ** gave his credentials and was sworn in by Mr. Rabolli as an expert in Land Surveying and Planning. Mr. Kirch stated that it was necessary to revise the April 6, 2021 Plan in response to Mr. Kelly's review letter dated June 18, 2021 indicating concern with the location and number of trees being removed. The Plan was revised on July 22, 2021. Mr. Kelly has agreed that it is now acceptable – only one major tree is in the disturbing line, which will be replaced with a replacement tree. Based on the field survey and the prior Site Plan, sufficient drainage facilities were approved by the Township at the time the existing garage was built. The proposed Plan is decreasing building coverage but increasing impervious coverage; additional seepage pits will be added to take care of the additional coverage. The Plan will be revised prior to the submission of the Soil Movement Permit Application.

There were no questions from Members of the Board, Board Professionals or members of the Public for Mr. Kirch, no re-direct examination and no other witnesses. Mr. Zisgen rests his case.

A motion to move into Work Session was made by Mr. Whiteman, seconded by Mr. Kearney. All voted in favor.

Note: Work Session immediately followed the hearing of this Docket.

**3. DOCKET #1491-21 PRESTIGE PRE-OWNED, LLC
7 INDUSTRIAL AVENUE, BLOCK 110.02, LOT 1**

Application for “C” and “D” Variances for demolition of the existing building and construction of a new building containing 38,012 square feet to be used for storage, preparation, servicing, purchase and sale, on a wholesale basis of motor vehicles to also include the servicing of classic and high-end cars.

Mr. DeSilva recused himself from the hearing of this Docket.

Mr. Cascio stated that the Notices were in order.

Mr. Mitchell Abrahams, Esq., Cole Schotz, PC, Court Plaza North, 25 Main Street, Hackensack, NJ 07601, representing the Applicant, stated that a Use Variance was granted by this Board in February of 2018 for an Auto Service Center, basically the same use that is being proposed now. The Use Variance is required because the property is in the GI-80 Zone and while that permits business storage and warehousing, the storage of cars for sale and servicing are not permitted. The proposal is to demolish the existing structure and construct a 38,012 square foot building.

Mr. Abrahams called his first witness: **Mr. Michael Dipple, L2A Land Design, LLC 66 Grand Avenue, 2nd Floor, Englewood, NJ 07631** gave his credentials and experience and was sworn in by Mr. Rabolli as a Civil Engineer. Sharing his screen, Mr. Dipple displayed the Plan that was prepared under his direction; a view of the property and commented that it was just shy of 4 acres. Mr. Dipple described the area and building, (a small 1 story), and explained the uses in the area, stating that the Applicant is proposing a large building to move the vehicles inside. Displaying a colored rendering of the **Site Plan, Sheet C-100, revision date April 21, 2021 as Exhibit A-1**, Mr. Dipple described the area, the proposed structure, the parking area, etc. Twenty-eight parking spaces are proposed in the Tandem area. The existing driveway will remain. Also described were the additional parking, office space, loading area, vehicle entrances, lifts, trash area in the rear corner and the roll-up doors. Due to the irregular triangular shape of the property, difficulty placing the building on the site and accessing the back of the site is why the building is being proposed at the South end as far as it can go. There is still an issue with violating the front yard setback that creates the need for a Variance.

Continuing, Mr. Dipple described the Zoning Compliance Table, lot width, lot depth, and the existing non-conformities. More green space becomes available under the proposed conditions; 3,700 square feet of which is new. The Applicant is not seeking a Variance for lot coverage. The maximum building height requirement will be in compliance. A 30 foot front yard setback Variance is being requested. The minimum side yard setback of

25 feet on the South side is being met. The side yard setback on the North side is deficient by quite a bit. No Variance is required for the rear yard setback.

A discussion took place regarding the breakdown of parking spaces, i.e., employees, customers, inventory, parking in the back, inside parking, size of parking spaces, handicap space and parking lot landscaping.

Mr. Rabolli announced a 5 minute break at 9:05 p.m. The hearing resumed at 9:10 p.m.

Mr. Rabolli opened the questioning from Members of the Board for Mr. Dripple.

Mr. Kearney inquired about the loading, delivery and maneuvering of cars.

Mr. Straffin requested a definition of Tandem parking and questioned the ability for tractor trailers and fire trucks to enter the site.

Mr. Costanian inquired about circulation of vehicles and loading/off-loading of car carriers.

Mr. Dipple responded to the questions above stating that he does not anticipate a lot of car carriers. It will be more like a platform truck. It has to do with the type of service and the type of customer – this is a business that restores high-end cars. Loading is for parts. **Exhibit A-2 Sheet C-07 of the Civil Site Plans** – no loading will take place out on Industrial Avenue. On the Site Plan some of the Tandem spaces were eliminated at the Northwest corner to allow space for trucks to position and backup; other areas were shaved back to allow for circulation to get out of the site. Some cars are brought in, some are driven in. The Tandem spaces, one behind another, referred to as inventory spaces, will remain as is; 28 spaces, 4 rows of 7 spaces.

Mr. Kearney requested the size of the truck depicted on the Plan.

Per Mr. Dipple, it is a WB50, a normal tractor trailer size truck, not as big as grocery trucks, but would need a 4 foot loading dock.

In response to Mr. Kearney's reference to the note from the Fire Prevention Bureau, Mr. Dipple stated that the Applicant will comply with the Fire Prevention Bureau's request that the Fire Lane and No Parking Zones be striped, and adequate maneuvering for the Fire Department should they need to access the site.

There were no further questions from Members of the Board for Mr. Dipple.

Mr. Dipple requested that **the entire Civil Site Plan** be marked **Exhibit A-2** and provided detail on the plans for grading, drainage, utilities, lighting, landscaping, truck turning, soil movement, the Soil Erosion & Sediment Control Plan, and site details.

Mr. Rabolli opened the questioning from Board Professionals for Mr. Dipple. Referring to the Boswell Report, Mr. Costanian's questions included: wholesale purchase of vehicles and pre-owned vehicles; snow removal; parking lot and road asphalt; at least 5% of the parking areas be landscaped; ADA spaces; customer spaces, signage; striping; route-of-travel on Section II of the Soil Movement Permit Application.

In response to Mr. Costanian's inquiries, Mr. Dipple commented that he believes the proposal includes wholesale purchases but he would leave that for another witness to reply; snow would be pushed to the North end close to the detention basin where inventory is kept - if it becomes a burden it will be removed from the site; 2 inches of asphalt will be applied as requested; all ends are being landscaped, the back is asphalt, more of a utilitarian area; the permitted area of impervious coverage is being looked at - if not meeting the required 5%, a waiver will be requested; four ADA spaces are at the Northeast corner of the building and one van accessible space are being brought to the front; Mr. Turner will testify on the number of customer spaces; the Applicant is not requesting signage, there is an existing sign that is not electronic; the Applicant concurs with the Fire Official's comments regarding striping; the route-of-travel will be completed.

Mr. Cascio stated that the soil moving calculations differ from the Engineer's letter of July 27, 2021 and need to be refined.

Ms. Lawlor stated that the four additional trees were identified on the Plan and asked where the 16 trees being removed were located. Referencing **Sheet C-100 of Exhibit A-1** which depicts the driveway width as 80.45 feet of depressed curb on the 38 foot driveway. Learning that the width of the driveway is 30 feet at the narrowest point, Ms. Lawlor stated that a Design Waiver is required. Ms. Lawlor also requested the size of the handicap spaces.

In response to Ms. Lawlor's inquiries, Mr. Dipple displaying **Sheet C-02 of Exhibit A-2**, the Existing Conditions and Demolition Plan, pointed out the trees to be removed in the front, and stated that some were in good shape, some not, varying sizes to clean up the site and some growing out of the building to be removed. Handicap spaces will be 9' x 18' with 8' x 18' ADA van accessible; complying with the requirement.

A discussion took place between Messrs. Costanian and Dipple regarding the structural calculations for the existing and proposed retaining walls and the required certification by

a Professional Engineer. It was agreed that only both items will only be required for the proposed retaining wall.

There were no further questions from the Board Professionals for Mr. Dipple.

Mr. Abrahams called his next witness; **Mr. Christopher Turner, Owner and Operator of Prestige Pre-Owned, 7 Industrial Avenue** was sworn in by Rabolli. Mr. Turner stated that the nature of the business involves servicing, preparation, storage and wholesale, not retail, sales of high-end vehicles. No auctions, body work or retail sales are performed at this facility. The majority use of the site is for parking. The building is very small and not in great condition. Inventory is stored. There are currently 9-car carriers coming on and off the property frequently, and single car flatbeds are frequently used. Mr. Turner stated that he is looking to transform the building from a large parking structure to more of a warehouse and then eliminate the nine car carriers, no longer storing inventory, but focusing on the service business. Currently customers very rarely come to the site. Restorations are done with infrequent standard service. There are two flatbeds, under 40 feet long – standard flatbed trucks, enclosed by cloth material.

Mr. Rabolli opened the questioning from Members of the Board for Mr. Turner.

Mr. Kearney stated that his understanding is that the current operation is not for restoration of cars, it is really for storage, which will mostly be eliminated by the proposed plan. If a car carrier does come in, you do have the ability of that carrier to come in and unload based on the length of the trailer. What would be the potential frequency vs. the 9-car carrier that you have today; unloading of vehicles; the difference between restoration and auto body?

Mr. Turner stated that there is service, and lifts on the site, and he is looking to enlarge the building, not for more storage but to continue the service business. There are 8 and 9-car carriers on the site frequently, but once the changes, enlarging the building and business changes are made, that operation would cease and it would strictly be the one car flatbeds or a one car trailer with a pick-up truck. A condition of the prior approval was that the truckers have to unload on the site. Mechanical restorations are done on site, no auto body work is done and there is no plan to do body work in the future. Body work is outsourced.

Mr. Whiteman stated that the change in operation sounds more like retail than wholesale. Will that increase the traffic on the site? How does the retail repair of motor vehicles fit in the current Zone?

Per Mr. Turner, wholesale buying and selling is done; the only retail sales are for the mechanical work being done on the vehicles. Buying inventory and selling trades

through the site will continue. The dealer license is specific and separate for a wholesale license versus retail license. Compliance is required for the Town and the State of New Jersey. The repair work is for clients, for retail customers, not to buy and sell cars, just for mechanical repairs their cars. Mr. Abrahams stated that a Use Variance is required. Mr. Turner stated that there is another repair shop in the neighborhood on the same street.

Mr. Rabolli announced that the Application is carried to September 1, 2021. No further Notice is required.

VI. WORK SESSION

1. DOCKET #1488-21 TYRONE MARNOTES AND JENNIFER SCHUTTE 21 EAST CRESCENT AVENUE, BLOCK 118, LOT 9

Application for a “C” Variance to convert and expand an existing detached garage into a new principal residence, after which the existing residence will be demolished and removed. The new residence is to be supported by a detached garage.

Mr. Rabolli summarized the Application and stated that the issue is that the Code prohibits two primary structures on a single lot; the Township Zoning Officer properly denied it and the matter appears before this Board. The Applicant has made a strong case. Deviation from the Code will be reduced. The remaining issue is the timeframe; 18 months for the new structure to be built; 60 days to move into the new house as Conditions of Approval for the dual CO during those timeframes. Boswell Engineering is to provide an estimate of the cost of demolition for Bond amounts. Other conditions are compliance with the run-off as suggested by Boswell; stipulation that if anything happens to the owners or if the property is sold, the deadline for the build and demolition remain and no possibility of having two structures on the lot beyond that date.

A motion to approve with conditions was made by Mr. Kearney, seconded by Mr. Montroy. A roll call vote revealed 9 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

A motion to move out of Work Session and return to the Public Hearing portion of the meeting was made by Mr. Kearney, seconded by Mr. Montroy. All voted in favor.

2. CLOSED SESSION – LITIGATION

Held just prior to adjournment.

Mr. Rabolli closed the Public Hearing portion of the meeting at 10:03 p.m. for the Board to discuss matters involving litigation. Mr. Ronald Mondello, Esq. was appointed to

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participate in litigation on behalf of the Township. A Resolution was prepared and voted on approving Mr. Mondello's appointment as Special Counsel.

Moving out of Work Session at 10:15 p.m., a motion to approve and adopt was made by Mr. Cannava, seconded by Mr. Jackson. A roll call vote revealed 9 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

A motion to adjourn was made by Mr. Kearney, seconded by Mr. Whiteman. All voted in favor. The meeting adjourned at 10:21 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on October 1, 2021 for approval at the Regular Meeting to be held on October 6, 2021.