

ORDINANCE NO. 2942

**AN ORDINANCE AMENDING THE CITY CODE OF ORDINANCES,
CHAPTER 90, ARTICLE I, SECTION 90-15, DEFINITIONS,
AND CHAPTER 90, ARTICLE II, DIVISION 4,
SECTION 90-73, ACCESSORY USES – DEVELOPMENT CRITERIA**

WHEREAS, the City of Highland, Madison County, Illinois (hereinafter “City”), is a non-home rule municipality duly established, existing and operating in accordance with the provisions of the Illinois Municipal Code (Section 5/1-1-1 et seq. of Chapter 65 of the Illinois Compiled Statutes); and

WHEREAS, City has determined City Code of Ordinances, Chapter 90, Article I, Section 90-15, Definitions, currently states, in pertinent part:

Accessory use: Any structure or use that is:

- (1) Subordinate in size or purpose of the principal structure or use which it serves;
- (2) Necessary or contributing to the comfort and convenience of the occupants or the principal structure or use served; and
- (3) Located on the same lot as the principal structure or use served.

and

WHEREAS, City has determined the definition of Accessory Uses in 90-15 (Definitions) includes “accessory buildings” resulting in conflicts in Section 90-73 (Accessory Uses - Development Criteria); and

WHEREAS, City has determined Accessory use, as currently defined in 90-15, is ambiguous when applied throughout different sections of the City Code; and

WHEREAS, City has determined Chapter 90, Article I, Section 90-15, Definitions, shall be amended, in pertinent part, as follows:

Sec. 90-15. - Definitions.

Accessory structure: A detached structure that is:

- (1) Subordinate in size or purpose of the principal structure or use which it serves;
- (2) Necessary or contributing to the comfort and convenience of the occupants or the principal structure or use served; and
- (3) Located on the same lot as the principal structure or use served.

By way of example, detached garages, carports, gazebos, storage sheds, and similar roofed structures are common accessory structures.

Accessory use: Any use that is:

- (1) Subordinate in size or purpose of the principal structure or use which it serves;
- (2) Necessary or contributing to the comfort and convenience of the occupants or the principal structure or use served; and
- (3) Located on the same lot as the principal structure or use served.

By way of example, uses without roofs such as patios, solar panels, and water fountains are common accessory uses.

and

WHEREAS, City has determined City Code of Ordinances, Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria, currently states, in pertinent part:

Sec. 90-73. - Accessory uses—Development criteria.

No accessory building shall be constructed upon a lot until the construction of the principal building has been commenced, and no accessory building shall be used unless the principal building is also used, provided nothing in this section shall be construed to prevent the use of a temporary structure for the purpose of storing tools, materials, and equipment during construction of the principal building.

- (1) No accessory building shall be erected in any required yard except as provided in this chapter.
- (2) No accessory building shall be erected closer than ten feet from the principal building, nor closer than five feet of any other building on the lot.

(3) No accessory building shall occupy a required front yard setback.

(4) No accessory building shall be built closer than ten feet to the rear property line. If an easement exists greater than the ten feet, then the accessory building shall be located adjacent to the easement. Accessory buildings must meet the required setback for the side lot line as is applicable, as set forth in the appropriate zoning classification.

(5) No accessory use including, but not limited to patios and parking areas, shall be located within three feet from any interior, side, or rear property line. This shall include the storage of boats, personal watercrafts, motorcycles, RVs and trailers.

(6) No accessory building or use shall be closer than 25 feet to any public right-of-way, excluding driveways or alleys.

(7) Accessory buildings shall not be used as dwellings.

(8) Residential accessory structures shall not be rented or occupied for financial consideration.

(9) Accessory structures shall be used only by the owner or tenant of the premises.

(10) An accessory building or structure shall be subordinate in area, extent of use and fair market value to its principal building or structure.

and

WHEREAS, City has determined it is necessary to reduce the minimum rear yard setback for accessory structures; and

WHEREAS, City has determined the current ten (10) foot minimum rear yard setback is the most restrictive among surrounding communities surveyed; and

WHEREAS, City has determined rear yard setbacks will permit City residents to make better use of their property and increase property values through continued development and improvement of existing homes; and

WHEREAS, City has determined Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria, shall be amended, in pertinent part, as follows:

Sec. 90-73. - Accessory structures and uses—Development criteria.

Intent: Building additions or improvements are to be attached to the principal building in a manner consistent with the zoning provision of this chapter and the Building Regulations (Chapter 18). When not so attached, buildings or uses shall be deemed either accessory structures or accessory uses and be in compliance with the requirement of this section.

A. Accessory Structures.

(1) No accessory structure shall be constructed upon a lot until the construction of the principal building has been commenced.

(2) No accessory structure shall be used unless the principal building is also used, provided nothing in this section shall be construed to prevent the use of a temporary structure for the purpose of storing tools, materials, and equipment during construction of the principal building.

(3) No accessory structure shall be erected in any required yard except as provided in this chapter.

(4) An accessory structure shall be subordinate in area, extent of use, and fair market value to its principal building or structure.

(5) No accessory structure shall:

a.) Be built closer than ten feet from the principal building, nor closer than five feet from any other building on the lot.

b.) Occupy a required front yard setback or be placed between the front of the principal building and the front lot line.

c.) Be built closer than five (5) feet to the rear property line.

d.) Be built closer than five (5) feet to the side property line for interior lots.

e.) Be built in a manner inconsistent with:

i. Section 90-9 requiring corner or through lots to meet the front setback requirements of the zoning district in which it is located on every side having frontage; and

ii. Sight distance triangle requirements as defined in Section 90-15.

f.) Encroach into any easement.

g.) Be used as a residential dwelling except as provided in 90-207 (Guesthouse).

h.) Be rented or occupied for financial consideration.

i.) Be used by anyone other than the property owner or tenant of the premises.

j.) With the exception of alleys, be closer than 25 feet to any public right-of-way.

B. Accessory Uses.

(1) In the R-1-A, R-1-B, R-1-C, R-1-D, R-2-A, R-2-B and R-3 districts, no accessory use including, but not limited to accessory uses without roofs such as patios, solar panels, water fountains, and swimming pools, shall be located within five (5) feet from any interior, side or rear property line.

(2) In the C-1, C-2, C-3, C-4 and I districts, accessory uses may be zero (0) feet from any interior, side or rear property line unless the lot abuts a residential dwelling or a lot zoned for residential purposes, in which case a setback of five (5) feet shall apply.

(3) For the storage of boats, personal watercrafts, motorcycles, recreational vehicles, trailers, and appurtenant parking areas, a minimum three (3) foot setback from any side or rear lot line shall be required per Section 90-228 Parking and Storage of Vehicles. For interior lots, driveways shall be at least three (3) feet from side property lines. For fences, see Section 90-208 Fences and Walls.

(4) For corner and through lots, no accessory use other than driveways shall be closer than 25 feet to any public right-of-way, except public alleys.

and

WHEREAS, City Staff recommended to the Combined Planning and Zoning Board (“CPZB”) that it should approve the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria (*See* Staff Report attached hereto as **Exhibit A**); and

WHEREAS, the Combined Planning and Zoning Board recommended to the City Council that it approve the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria (*See* CPZB Report attached hereto as **Exhibit B**); and

WHEREAS, the City Council finds it should approve the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria as stated in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein as findings of the City Council of the City of Highland, Illinois.

Section 2. City has determined City Staff recommended to the CPZB Board that it approve the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria. *See Exhibit A.*

Section 3. City has determined the Combined Planning and Zoning Board recommended to the City Council that it approve the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria. *See Exhibit B.*

Section 4. City Council approves the text amendments in Chapter 90, Article I, Section 90-15, Definitions, and Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria as stated in this Ordinance.

Section 5. Chapter 90, Article I, Section 90-15, Definitions, shall now state, in pertinent part:

Sec. 90-15. - Definitions.

Accessory structure: A detached structure that is:

- (1) Subordinate in size or purpose of the principal structure or use which it serves;
- (2) Necessary or contributing to the comfort and convenience of the occupants or the principal structure or use served; and
- (3) Located on the same lot as the principal structure or use served.

By way of example, detached garages, carports, gazebos, storage sheds, and similar roofed structures are common accessory structures.

Accessory use: Any use that is:

- (1) Subordinate in size or purpose of the principal structure or use which it serves;
- (2) Necessary or contributing to the comfort and convenience of the occupants or the principal structure or use served; and
- (3) Located on the same lot as the principal structure or use served.

By way of example, uses without roofs such as patios, solar panels, and water fountains are common accessory uses.

Section 6. Chapter 90, Article II, Division 4, Section 90-73, Accessory Uses – Development Criteria, shall now state:

Sec. 90-73. - Accessory structures and uses—Development criteria.

Intent: Building additions or improvements are to be attached to the principal building in a manner consistent with the zoning provision of this chapter and the Building Regulations (Chapter 18). When not so attached, buildings or uses shall be deemed either accessory structures or accessory uses and be in compliance with the requirements of this section.

A. Accessory Structures.

- (1) No accessory structure shall be constructed upon a lot until the construction of the principal building has been commenced.
- (2) No accessory structure shall be used unless the principal building is also used, provided nothing in this section shall be construed to prevent the use of a temporary structure for the purpose of storing tools, materials, and equipment during construction of the principal building.
- (3) No accessory structure shall be erected in any required yard except as provided in this chapter.
- (4) An accessory structure shall be subordinate in area, extent of use, and fair market value to its principal building or structure.
- (5) No accessory structure shall:
 - a.) Be built closer than ten feet from the principal building, nor closer than five feet from any other building on the lot.
 - b.) Occupy a required front yard setback or be placed between the front of the principal building and the front lot line.
 - c.) Be built closer than five (5) feet to the rear property line.
 - d.) Be built closer than five (5) feet to the side property line for interior lots.
 - e.) Be built in a manner inconsistent with:
 - i. Section 90-9 requiring corner or through lots to meet the front setback requirements of the zoning

district in which it is located on every side having frontage; and

ii. Sight distance triangle requirements as defined in Section 90-15.

f.) Encroach into any easement.

g.) Be used as a residential dwelling except as provided in 90-207 (Guesthouse).

h.) Be rented or occupied for financial consideration.

i.) Be used by anyone other than the property owner or tenant of the premises.

j.) With the exception of alleys, be closer than 25 feet to any public right-of-way.

B. Accessory Uses.

(1) In the R-1-A, R-1-B, R-1-C, R-1-D, R-2-A, R-2-B and R-3 districts, no accessory use including, but not limited to accessory uses without roofs such as patios, solar panels, water fountains, and swimming pools, shall be located within five (5) feet from any interior, side or rear property line.

(2) In the C-1, C-2, C-3, C-4 and I districts, accessory uses may be zero (0) feet from any interior, side or rear property line unless the lot abuts a residential dwelling or a lot zoned for residential purposes, in which case a setback of five (5) feet shall apply.

(3) For the storage of boats, personal watercrafts, motorcycles, recreational vehicles, trailers, and appurtenant parking areas, a minimum three (3) foot setback from any side or rear lot line shall be required per Section 90-228 Parking and Storage of Vehicles. For interior lots, driveways shall be at least three (3) feet from side property lines. For fences, see Section 90-208 Fences and Walls.

(4) For corner and through lots, no accessory use other than driveways shall be closer than 25 feet to any public right-of-way, except public alleys.

Section 7. This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

Passed by the City Council and approved by the Mayor of the City of Highland, Illinois and deposited and filed in the office of the City Clerk on the 17th day of June, 2019, the vote being taken by ayes and noes and entered upon the legislative record as follows:

AYES: Hipskind, Bellm, Frey, Sloan

NOES: None

APPROVED:

Joseph R. Michaelis
Mayor
City of Highland
Madison County, Illinois

ATTEST:

Barbara Bellm
City Clerk
City of Highland
Madison County, Illinois



City of Highland

Building and Zoning

To: Combined Planning and Zoning Board
From: Scott Hanson, AICP
RE: Side Yard Setback Ordinance revision
Date: June 5, 2019

Overview

At present, the City's zoning code contains language on side yard setbacks for accessory buildings/uses that is conflicting and needs to be improved in clarity of intent. Specifically:

- The definition of Accessory Uses in 90-15 (Definitions) includes "accessory buildings" under its broad definition. Defining accessory buildings as accessory uses results in conflicts in Section 90-73 (Accessory Uses - Development Criteria). For example, Section 90-73 applies side yard setbacks for "accessory buildings" and "accessory uses" differently, resulting in staff having to wrestle with how to differentiate between the two.
- While 90-15 views the terms interchangeable, "accessory uses" and "accessory structures" have distinct elements that make them different from one another. Generally, accessory uses are usually temporary, usually lack a roof, are readily moved or removed, do not require a building permit, and are frequently a motorized vehicle (or are towed by a motorized vehicle). Conversely, accessory buildings usually have a roof and/or a foundation, are difficult to move, usually have a building footprint of more than 100 square feet (therefore requiring a building permit), and from a property owner's perspective, are generally meant to be more "permanent" in nature.
- As they are moveable (e.g. vehicles) or relatively easy to remove (e.g. patios), 90-73 allows "accessory uses" to be closer to the side property line (3 feet) than accessory buildings (between 5 and 10 feet in residential districts, depending on the underlying zoning district). This difference can be difficult to explain to property owners however, especially since 90-15 essentially views the terms as interchangeable.
- While Section 90-73 does provide some details in how they are different, re-organization of the text in this section would also assist in clarifying accessory use versus accessory building.

In addition to the above, staff would also like the Combined Planning and Zoning Board to consider another change to Section 90-73: Reducing the minimum rear yard setback for accessory structures such as detached garages. Numerous variances requesting a reduction in this distance have come before the CPZB in recent years. In comparing Highland's requirements to other cities in the Metro East, the 10 foot minimum setback is the most restrictive among the 7 other communities surveyed.



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Building and Zoning

City	Min rear yard setback for accessory structures in residential districts
Alton, IL	2 feet
Belleville, IL	5 feet
Collinsville, IL	8 feet
Columbia, IL	5 feet
Edwardsville, IL	5 feet
Highland, IL	10 Feet
O'Fallon, IL	3 feet
Troy, IL	5 feet

The 10-foot minimum rear yard setback for accessory structures can be especially problematic for lots of under 8,500 square feet. Owners of these smaller lots already need to be efficient with their available space (while still conforming with lot coverage maximums), so the loss of what is commonly 400-700 square feet for lots between 40 and 70 feet wide presents an additional challenge. Staff's opinion is that a change from 10 feet to 5 feet is appropriate for rear yard setbacks for accessory structures, as long as there are no conflicts with utility easements.

Ordinance Summary

The following is a section by section summary of the proposed ordinance, with a summary of key issues.

Section 90-15 – Definitions

Changes to this section as follows:

- To differentiate between the two, separate definitions are provided for "Accessory Uses" and "Accessory Structures."
- The new definitions provide examples of what are accessory uses and accessory structures. Generally, the example accessory structures cited have roofs while examples for accessory uses do not.
- Separate definitions will clear up confusion about these terms in the current code and recognize that "accessory uses" can have a different meaning and intent than "accessory structures."
- As will be further detailed in the Staff Discussion section, minimum side yard setbacks will be the same for both accessory uses and accessory structures in residential zoning districts (5 feet).



City of Highland

Building and Zoning

Section 90-73 – Accessory structures and uses – Development Criteria

Changes to this section as follows:

The new ordinance deletes all references to “accessory buildings,” instead referring to “accessory structures.” (Accessory Building was not a term identified in the Definitions section 90-15).

An intent statement is provided to clarify when Section 90-73 is applicable.

Section 90-73 is re-organized to differentiate between Accessory Structures (Subsection A) and Accessory Uses (Subsection B). Text in BLACK means that the existing requirements are the same (just re-organized) while text in RED indicates when additional requirements have been added.

90-73 A - Accessory Structures

Existing Code	Revised Code	Change
90-73	90-73 A (1) and (2)	No substantive change
90-73 (1)	90-73 A (3)	No substantive change
90-73 (10)	90-73 A (4)	No substantive change
90-73 (2)	90-73 A (5) a	No substantive change
90-73 (3)	90-73 A (5) b	No change to text requiring accessory structures to be clear of the front yard setback. HOWEVER, adds language to disallow accessory structures to be placed between the front of the principal building and the front lot line.
90-73 (4)	90-73 A (5) c	Reduces the minimum rear yard setback for accessory structures from 10 feet to 5 feet.
90-73 (1)	90-73 A (5) d	States that accessory structures shall be built at least 5 feet from the side property line. Previous language based accessory <u>structure</u> setbacks to underlying zoning district (which could vary between 5 and 10 feet.) Accessory <u>uses</u> could be as close as 3 feet however.
90-9 on accessory use setbacks for corner and through lots and 90-15 on Sight Triangles	90-73 A (5) e	No change to language found elsewhere in the Zoning Code, but language included here so it is all in one place.
90-73 (6) requiring 25 foot setback for accessory buildings to any public right-of-way	N/A	This section can be deleted so as to avoid conflicts with new language here and elsewhere in the code. (NOTE: Accessory buildings already cannot be in front yards or side yards for corner lots so this language is redundant.)
90-73 (4)	90-73 A 5 f	Simplifies existing language to state accessory structures cannot be in easements.
90-73 (7)	90-73 A 5 g	Uses existing language that accessory structures cannot be used as a residential dwelling, but notes an existing exception with regard to guesthouses per 90-207.



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90-73 (8)	90-73 A 5 h	No substantive change
92-73 (9)	90-73 A 5 i	No substantive change.

90-73 B Accessory Uses

Existing Code	Revised Code	Change
90-73(1) in conjunction with 90-125 Lot and Building Requirements and 90-129 Lot and Building Requirements for the R-1-A, R-1-B, R-1-C, R-1-D, R-2-A, R-2-B and R-3 districts.	90-73 B 1	Does away with the varying side and rear yard setback requirements for accessory uses. Currently, these can vary from 5 to 15 feet, depending on the residential zoning district. This is a challenge to implement and enforce. The new standard is 5 feet for ALL residential districts.
90-73(1) in conjunction with 90-149, 90-162, 90-172, 90-182, and 90-187 Lot and Building Requirements for the C-1, C-2, C-3, C-4 and I districts.	90-73 B 2	Does away with the varying side and rear yard setback requirements for accessory uses. Currently, these can vary from zero (0) to 5 feet, depending on the zoning district. This is a challenge to implement and enforce. The new standard is a zero (0) feet for the C-1, C-2, C-3, C-4 and I districts EXCEPT when the lot abuts a residential dwelling or a lot zoned for residential purposes, in which case a setback of five (5) feet shall apply. <u>This EXCEPTION is part of the existing code language and will remain in place.</u>

Staff Discussion

While the proposed changes to 90-15 and 90-73 will be positive, there are several related issues that should be highlighted.

1. Section 90-73 currently calls out drives and parking areas as accessory uses. These currently need to be a minimum of three (3) feet from the side property line. Proposed changes to section 90-73 will result in accessory uses to be a minimum of five (5) feet from the side property line. There are pros and cons to the 5-foot driveway / parking area setback requirement:

- o Pros:



City of Highland Building and Zoning

- There will be an increased pervious separation between the driveway edge and the property line, potentially reducing stormwater runoff impacts onto adjoining property.
- Vehicle storage/parking will be at least 5 feet from neighboring property, potentially reducing nuisances associated with these vehicles.
- Cons:
 - Increase the minimum distance between the driveway/parking area edge to the property line from 3 feet to 5 feet may further curtail the ability to place a driveway or parking area between the principal structure (house) and the side property line. This change may impact property owners with multiple vehicles who wish to park their car(s) in the driveway or the side of their house.
 - The change will be most impactful on property owners with lot widths of 75 feet and less. This includes some R-1-C areas (which has a minimum lot width of 70 feet), many R-1-D areas (with 50 foot minimum lot widths), R-2-A and R-2-B areas (with 70 foot minimum lot widths) and R-3 (with 50 foot minimum lot widths). It will also impact the C-2 zoned residential areas near the city center.

2. Section 90-73 (3) already disallows accessory buildings in the required front yard setback. In residential districts, this distance is 25 feet (except R-1-D where it is 10 feet). In C-1 and I, this distance is 10 and 20 feet, respectively. (In C-2, C-3 and C-4, the minimum front yard setback is zero). New language in 90-73 A (5) b increases this restriction to disallow accessory structures to be placed between the front of the principal building and the front lot line. (Accessory uses may still be placed in the front yard area, however, allowing for driveways, vehicle parking, and unroofed patios, etc. Additionally, additions to principal buildings are still allowed as long as minimum setbacks are met, allowing for attached carports, garages, porch additions, etc.). Overall, staff does not anticipate this change to be impactful in most circumstances. For those wishing to have a detached accessory structure in front of the principal building, a property owner can explain why this is necessary via the zoning variance process.

3. Minimum side yard setbacks will be the same for both accessory uses and accessory structures in residential zoning districts (5 feet). While the change means that accessory uses will need to be five feet instead of three feet from the side property line, accessory structures will actually be allowed to be closer to the side property line in all residential zoning districts except R-1-D (where there is no net change to the 5 foot minimum). A consistent side yard setback for accessory uses and accessory buildings will not only make zoning implementation and enforcement easier, it will also enable staff to more effectively guide property owners on diverse issues such as whether a building permit will be required, or how far away an accessory structure or use needs to be from the principal use (10 feet for accessory structures but no minimum for accessory uses).



City of Highland

Building and Zoning

Staff Recommendation

While CPZB input on items in the Staff Discussion would be helpful, overall staff recommends approval of the proposed ordinance change.



City of Highland
Building and Zoning

Exhibit "C"
Determination for Zoning Text Amendment

On June 5, 2019, the City of Highland Combined Planning and Zoning Board at its regular meeting approved/denied a Zoning Text Amendment for the following:

The City of Highland (1115 Broadway) is requesting a text amendment to The City of Highland (1115 Broadway) is requesting a text amendment to Chapter 90, Article I "In General," Section 90-15. – Definitions of the Zoning Code to amend the definition of "accessory use" and "accessory structure."

The City Council will consider the recommendation of the Combined Planning and Zoning Board at the June 17, 2019 meeting of the City Council.

In recommending APPROVED (action) of this Zoning Text Amendment, the Combined Planning and Zoning Board considered all standards listed in the zoning regulation and all other conditions listed for that use in other sections of these regulations. In addition, the Combined Planning and Zoning Board found that the proposed use **did/did not** provide safeguards to assure its compatibility with the surrounding area.

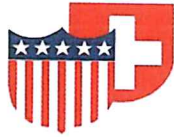
Conditions (if any): AS AMENDED



Chairperson of the Combined Planning and Zoning Board



Date



City of Highland
Building and Zoning

Exhibit "C"
Determination for Zoning Text Amendment

On June 5, 2019, the City of Highland Combined Planning and Zoning Board at its regular meeting ~~approved~~/denied a Zoning Text Amendment for the following:

The City of Highland (1115 Broadway) is requesting a text amendment to Chapter 90, Article II "Administration and Enforcement," Section 90-73. – Accessory Uses of the Zoning Code to amend the required side setback for accessory uses..

The City Council will consider the recommendation of the Combined Planning and Zoning Board at the June 17, 2019 meeting of the City Council.

In recommending APPROVING (action) of this Zoning Text Amendment, the Combined Planning and Zoning Board considered all standards listed in the zoning regulation and all other conditions listed for that use in other sections of these regulations. In addition, the Combined Planning and Zoning Board found that the proposed use ~~did~~/did not provide safeguards to assure its compatibility with the surrounding area.

Conditions (if any): AS AMENDED

Chairperson of the Combined Planning and Zoning Board

6/5/19
Date