



TOWN OF WAYLAND
MASSACHUSETTS
01778
BOARD OF APPEALS

TOWN BUILDING
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Meeting Minutes

Tuesday April 13, 2021

A public hearing was held on Tuesday April 13, 2021 remotely on the following application(s) at the time indicated:

Attending the meeting at 7:00pm via Zoom, Wayland members were in attendance: Chair Jim Grumbach, Evans Huber, David Katz, Shaunt Sarian, and Joshua Wernig. Also in attendance: Louise Miller, Town Administrator; Geoff Larsen, Building Commissioner; Katherine Brenna, Department of Parks & Recreation; Brud Wright, Co-Chair of Recreation Department; various applicants and their representatives (as identified under the minutes for their relevant cases); and Jason Adams, as moderator. Absent: Wayland members Aida Gennis and Tom White. Audio and video recorded by WayCam.

Jim Grumbach opens the meeting and reads the instructions to all present on protocols during the meeting.

Jim Grumbach reviews the agenda, but announces that some cases on the agenda may not be heard at this meeting, due to a lack of time and necessary paperwork.

Public Comment:

Kate Fitzpatrick asks about discrepancies between the meeting's current agenda and the one made available to the public previously. She has particular interest in the 3 Amey Rd. case and wants to know at what point it will be addressed. Jim Grumbach responds that it is scheduled for 8:15pm but that he cannot guarantee at what time they will reach it, as some of the earlier cases may take some time.

No further public comment.

Minutes Review:

Evans Huber moves to approve March 9, 2021 Minutes, and Shaunt Sarian seconds, voted (5-0 by roll-call).

Jim Grumbach reads the legal description

Application of **Joe Bertola (owner) by Eric Goldberg (Attorney/Agent)** for any necessary approvals, findings, special permits and/or variances as may be required in order to reconstruct a single family dwelling on a preexisting nonconforming foundation (side yard/ROW setbacks) with a new carport that will then exceed lot coverage on a nonconforming lot (insufficient frontage and square footage) under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 201, 203, 401.1.3 703, Article 8 and §198 Attachment 1 Table of Dimensional Requirements. The property is located at **119 Dudley Road** which is in the R-20 Zoning District and Aquifer Protection District. Case **#21-03**.

In attendance for this application are: Eric Goldberg, Attorney; and Ernie Dimeo, Tektoniks Architects. Eric Goldberg says his client Joe Bertola is aware of this meeting and that he was expecting him to attend, though he does not appear to be present.

Questions from members:

Jim Grumbach asks what documents have been filed, as he is missing a packet. All other members appear to have received the relevant documents. Eric Goldberg says that the Board of Health application has been filed and has been in process for a while. He says the applicant has provided photo renderings of the house (both as existing and as planned), a site plan, two letters of support from the abutters from either side, and both existing and planned elevations.

Geoff Larsen says that he has checked with the Board of Health, and they have not given approval.

Discussion of continuing the matter at a future meeting, due to the Board of Health approval still pending, the packed agenda before the ZBA at this meeting and the absence of Mr. Bertola. Eric Goldberg states that the Board of Health status should not prevent consideration of the case at this meeting, but ultimately agrees to a continuance.

Jim Grumbach moves that the Board postpone further consideration of this case until the next meeting, on May 11. (No second.) Voted (5-0 by roll-call).

Jim Grumbach reads the legal description

Application of **John Maccini for Mary Ann Borkowski (owner)** for any necessary approvals, findings, special permits and/or variances as may be required in order to continue construction under a building permit of the nonconforming portion of the altered roof assembly (side yard setbacks) on a completely reconstructed preexisting nonconforming single family dwelling (front and side yard setbacks) on a preexisting nonconforming lot (insufficient frontage and square footage) under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to: Sections 104.2, 201, 203, Articles 4, 7, 8 and §198 Attachment 1 Table of Dimensional Requirements. The property is located at **251 Lakeshore Drive** which is in the R-20 and Aquifer Overlay Zoning Districts. Case #**21-04**.

In attendance for this application are: John Maccini, contractor; David Johnson, architect; and Mary Ann Borkowski, owner.

Questions from members:

Jim Grumbach asks whether un-permitted work has been done on this site. John Maccini says that, initially, he applied for permits for the roof, windows and siding only, believing those to be the only areas in need of work. Upon realizing the house needed further repairs and construction, he says, he chose to continue work, citing Covid-19 and the related difficulty of getting permits expeditiously. He says he consulted Commissioner Geoff Larsen. He has submitted a complete application, Board of Health approval, surveys, and photos. He says an addition was built in 1972, and no zoning relief was requested at that time.

Jim Grumbach again states he is missing a package of relevant materials; other Members have the package.

Evans Huber asks about one of the photos provided in the packet, “rear house looking North.” John Maccini clarifies that the section of roof in question was formerly a flat shed roof, and they instead continued the existing roof from the front, and added a cant. David Johnson clarifies that they extended the tent-pitch on the front part of the roof to the back, so now the ends of a section of roof extend a bit farther into the setback.

Geoff Larsen points out that at issue is the increase in the house's volume; by changing the slope of the roof, they have increased the volume. He says this is in violation of both building and zoning codes, and he put a stop-work order on it.

Evans Huber asks why the sloped roof wasn't part of the original proposal. John Maccini says, regretfully, he did not anticipate how much work this job would require.

Geoff Larsen points out that, as in the previous case, the Board of Health has not given approval yet.

Public questions and comment:

Interested Party: Dan Dreher, a neighbor on the east side of the house, states he has had multiple interactions with the owner, architect, and builders. He addresses the footprint of the property, having sent photos documenting changes to the house. He asks whether the building is allowed to be as close to his property line as it is. Jim Grumbach encourages him to attend the next hearing on this issue and to communicate directly with the builder and property owner.

Interested Party: Kate Fitzpatrick thanks Geoff Larsen for his rigorous work. She emphasizes the need to make sure everyone has the necessary documents for each case. Discussion of screen-sharing documents on Zoom meetings, as well as distributing hard copies.

Jim Grumbach moves to postpone further consideration of this case until May 11, and Shaunt Sarian seconds. Voted (5-0 by roll-call).

Jim Grumbach reads the legal description

Application of **Wayland Swimming & Tennis Club, Inc.** for any necessary approvals, special permits, variances and/or amendments as may be required to extend previous ZBA Decisions; including but not limited to, Decision Nos. 94-5, 97-21, 01-51, 03-09, 04-16, 05-21, 06-32, 10-16, 11-34, 12-09, 15-06, 16-08 and 20-10 to extend the term of the special permit 5 years under the Town of Wayland Zoning By-Laws Chapter 198 Sections 201, 203, 802-Table of Permitted Principal Uses by District (Use #21). The property is located at **228 Glezen Lane**, which is in the R-60 Single Residence District and Aquifer Protection District. Case **#21-05**.

In attendance for this application is: Melissa Davis-Bell, Business Manager for Wayland Swimming & Tennis Club, Inc.

Discussion of potential conflicts of interest for Members David Katz and Josh Wernig, who are a member and prospective member, respectively. David Katz also wrote the decision that led to this appeal case. Jim Grumbach says recusal shouldn't be necessary. Louise Miller agrees, but says a written disclosure must be made and filed with the Town Clerk.

Melissa Davis-Bell says that the Club was preparing its standard 5-year permit renewal process during the previous year, when the ZBA advised them to solicit feedback from abutters. She says they have statements of support from 7 abutters saying that noise is not an issue.

Jim Grumbach recalls that, at the prior year's hearing, one neighbor was quite unhappy with the noise. The meeting was contentious and incomplete. Due to the conflict and lack of evidence, the ZBA granted a 1-year provisional permit and required that the Club poll neighbors as to the noise and related issues.

Josh Wernig asks Louise Miller if he and David Katz need to submit disclosures prior to actually hearing the case; she advises that they do need to submit them first. Josh Wernig then suggests postponement of this case, to give them time to file their disclosures.

Questions from Members:

Jim Grumbach asks if a postponement would negatively impact club operations, as the club operation it is seasonal; Melissa Davis-Bell says it would. Evans Huber suggests extending the special permit by one month, arguing that the applicant should not be penalized because of procedural requirements on the part of the Board.

Evans Huber moves to extend the existing special permit for Wayland Swimming and Tennis Club, Inc. for one month and to postpone further consideration of this case until May 11, and Jim Grumbach seconds. Voted (5-0 by roll-call).

Evans Huber requests that the applicant be prepared to speak to any noise complaints at the next meeting. Melissa Davis-Bell says that the Club was very transparent about this meeting and fully supported neighbors attending and voicing any concerns.

Jim Grumbach reads the legal description

Application of **Louise Miller (Town Administrator) on behalf of the Town of Wayland (owner)** for any necessary approvals; including but not limited to Site Plan Approval, findings, special permits, and/or variances as may be required in order to construct an illuminated multi-use rectangular artificial turf athletic field with parking

under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to: Sections 104.2, 201, 203, 401.1.2, 501.2, Article 6 Site Plan Approval, 603.2, Articles 7, 8 and the Tables of Dimensional Requirements and Uses. The property is located at **412 Commonwealth Road** which is in the R-30 Zoning District. Case #21-02 (Cont. 3/9/2021).

In attendance for this application are: Louise Miller, Town Administrator; Brud Wright, Co-Chair of the Recreation Commission; and Katherine Brenna, Recreation Director.

Louise Miller updates on the project. Since the last meeting, the Conservation Commission has concluded its hearing and issued an Order of Conditions. Jim Grumbach points out a document from the Planning Board, that the Board didn't previously have, as well as some other new materials from interested parties. Jim Grumbach mentions that Members have had the opportunity to conduct a site visit.

Public questions and comment:

Interested Party: David Shein, an abutter, has concerns about noise, traffic, and safety. He is concerned that there has been no analysis of potential noise generation in the neighborhood. He believes that having the field stay open until 10pm is likely to attract adult teams, which may or may not bring alcohol. He is skeptical that automatically shutting the lights off at 10pm, as the proposal suggests, will be enough to keep people from lingering late. He expresses concern about traffic on Rice Road, and how narrow the street is. He does not believe people will abide by signs prohibiting pickups or drop-offs, as there are currently "No Trespassing" signs in the area that people ignore. He does not think it is a safe location for kids to be walking or cycling to or from. He believes that, if the project moves forward, the Rice Road side of the field should be available to abutters only.

Interested Party: Daniel Levy asks about whether the environmental impact assessment has been updated (related to the recent discovery of PFAs in the Town's water supply). He is concerned about potential shedding from the field. Louise Miller clarifies that the PFAs aren't new, but rather that MassDEP just changed its detection criteria. She says that the Town is conducting ongoing testing on the new turf field (the manufacturer does not use PFAs), and that when results come back the Town will update the Loker proposal with any adjusted specifications.

Interested Party: John Sax emphasizes ensuring that storm water gets directed under the parking lot, as ConCom has ordered. He expresses concern about the access road on Route 30 at night; he claims that emergency vehicles will not be able to move

down the road if cars are parked side-by-side. He's also concerned about lighting on the road, and he urges the ZBA to make approval conditional on such lighting. He also expresses concern about the presence of PFAs on the existing site, based on the site's history as a fire department training location. He calls the project a "mistake."

Interested Party: Tom Maglione is concerned about potential contaminants in the lubricant used to make turf. He brings up the issue of people already illegally accessing the aqueduct and how unlikely it is that they will observe new posted signs. He expresses concern about "design creep:" he doesn't see how the project could be economically feasible, considering the number of adjustments to the design based on public complaints. He is skeptical, having not seen any bids.

Interested Party: Scott Walters, 100 Draper Rd., speaks in favor of the field. He coaches a number of sports and has children who play sports. He emphasizes the importance of sports, especially now that children are spending so much time indoors. He calls the overuse of fields in Wayland "dramatic." He says teams can't practice or play on two of the fields at Claypit due to overuse; DPW has actually closed them until the Fall season so that they can be re-seeded, as they are now dirt pitches. He says the Town doesn't have enough fields, and it takes a year or more for grass to regrow, so those fields won't be usable for a long time. He also points out that other existing fields have abutters much closer than this field would have.

Interested Party: Alexia Obar, 18 Dean Rd., speaks in favor of the field. She has children who have participated in many sports, and she sees a huge need for this field. She lives nearby and think it's in a great location. She is on the Soccer Board; there are 800-900 kids who play soccer, so there is a huge need. Currently, youth athletes play in other towns where players have access to turf, so Wayland teams are at a disadvantage. She points out that hard-packed dirt fields can cause injuries.

Interested Party: Reed Newton, 9 Haven Ln., lives right around the corner. He has lived in town and coached multiple sports for many years. He mentions that he had a practice just that evening by the Town building, where there are similar potential safety concerns; he has never had an issue or heard of one. In terms of noise, he emphasizes that the field would see mainly youth games, with no loudspeakers, and roughly 20-40 people in attendance. Adults couldn't illuminate the field after-hours with car headlights (as another caller fears), as the field is so much higher than the parking lot. He says that scheduling for teams is currently a "nightmare," and that they are using fields at least twice as much as they should be.

Interested Party: Linda Segal, 92 Varick Rd, Newton, MA, lived in Wayland for 41 years. She asks if the email she sent has been accepted as a public record; it has. She supports the due diligence the ZBA is performing.

Interested Party: David Pearlman, 34 Pequot Rd., is a member of the Recreation Committee, but speaking as private citizen. He is a parent; he says that sports are very important to his kids, especially during Covid when they aren't seeing friends as much. He points out that the Town purchased this land 20 years ago. He feels that it's time for the issue to go to Town Meeting so that the voters can decide on the project.

Brud Wright emphasizes that there will be no sound amplification of any kind. The Recreation Department grants permits for use of their fields and enforces those permits stringently. If there are complaints, they can address them next-day, and if necessary they will withdraw a permit. As to the issue of "design creep," he acknowledges how the proposal has changed to accommodate the different suggestions and requirements of various boards. He thinks the plan has changed for the best. He emphasizes again that this is about getting the permitting, and then the voters will decide whether to fund it. He says the Town had previously voted to put fields at this location, but that vote was for grass fields, which turned out to be too costly to water properly. Evans Huber asks for clarification about the lighting concern on Route 30; Brud Wright clarifies that such lighting is already in the plan.

Discussion by the Board. Jim Grumbach believes they should grant the application. He says there are so many conditions from the Planning Board, Conservation Commission, etc., that the project may not be feasible in the end, but that's not for the Board to decide. He says that it will be expensive, but that if it can be pulled off, the voters should get the chance to vote for it. David Katz agrees, emphasizing the amount of time and effort other boards and members of the public have put into drafting the conditions. He re-emphasizes the urgent need for this.

Evans Huber asks about preventing pickups and drop-offs on Rice Rd. David Katz points out that this concern is already addressed in the application, as the plan accounts for a gate and "No Entry" signs. Brud Wright says that the Recreation Department can make granting permits conditional on users' agreeing not to use Rice Rd. for pickups or drop-offs. He emphasizes that if there are ever complaints, they will be handled swiftly and strictly. If someone abuses their permit, they can no longer use the field; anything beyond that is a police matter. He clarifies that there are adult men's and women's soccer teams that could have access to the fields, but that priority will be given to children's teams.

Jim Grumbach asks about the 10pm stop time at the field. Brud Wright says that, based on work they've done with neighbors and the need for fields, there may be a need a few days a week for the field to be in use until that time.

Katherine Brenna, Recreation Director, addresses the lighting issue. She says the existing fields have lights permitted till 10pm, but that they often aren't in use that late. She says the Town doesn't currently have issues with adult teams drinking alcohol or staying late at other fields, as far as she knows.

Discussion of what is in the ZBA purview. Discussion by the Board of what other boards' conditions the ZBA could require in their decision language. David Katz points out that, in the past, the Board has had lawyers or applicants craft decision language for them. He suggests the Town craft the specific special permit language enumerating the conditions they will follow upon approval. Louise Miller agrees to prepare this for the next meeting on May 11.

Jim Grumbach moves that the Board postpone further consideration of this case until May 11, and Evans Huber seconds. Voted (5-0 by roll-call).

Jim Grumbach points out that Case **#21-08**, 51 Riverview Circle, is a case that has an enforcement issue, and suggests that, due to a lack of time, this case be postponed until the next meeting. David Himmelberger, an attorney appearing for the applicant, agrees to a continuance of the case.

Jim Grumbach moves for a continuance on Case **#21-08** (Application of Weston Development Company (owner) by David Himmelberger (Attorney/Agent); for any necessary approvals, findings, special permits and/or variances, etc. until May 11, and Evans Huber seconds. Voted (5-0 by roll-call vote).

Jim Grumbach reads the legal description

Application of **Carlos Ferreira (PE) on behalf of Mark Seto (owner) and Mark Kablack (attorney/agent)** for any necessary approvals, findings, special permits and/or variances as may be required in order to demolish an existing single family dwelling and construct a new single family dwelling with an attached 2 bay garage on a preexisting nonconforming lot (insufficient square footage) that increases the gross floor area by more than 20% under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 201, 203, 401.1.3, 401.1.3.1, 401.1.3.2, Articles 7, 8 and §198 Attachment 1 Table of Dimensional Requirements. The property is located at **20 Dean Road** which is in the R-30 Zoning District. Case **#21-06**.

In attendance for this application are: Carlos Ferreira, Mark Seto, owner; Mark Kablack, attorney.

Discussion of whether the Board should postpone discussion of this case until Members can conduct site visits. Discussion of how many cases are currently scheduled for next meeting. Discussion of possibly adding another meeting in May and possibly extending the standard meeting length. Jim Grumbach suggests that all matters previously scheduled for the May 11 meeting be postponed for another meeting, as five current matters have been postponed for that meeting.

Shaunt Sarian suggests that, for any site visits at 20 Dean Rd., a licensed engineer or architect be present to demonstrate the damages necessitating teardown. Mark Kablack points out that the teardown is not a legal requirement in the bylaws and questions the need for a full site visit from the Board. Jim Grumbach expresses that it's the Board's preference, based on previous experiences, to see in-person whether there a particular property is salvageable. Discussion of relevant bylaws and the Board's interpretation of them. Jim Grumbach declines to change the Board's standard practice of site visits. Mark Kablack says his client will not conduct a site visit with an engineer present, as they are not required to demonstrate defects for demolition. He claims any structural deterioration of the house is irrelevant to the case, which rests solely on a determination of whether new construction would be detrimental to the community. Discussion of the purpose of a site visit, if not for structural determinations. Further discussion of relevant bylaw(s). No formal site visit is scheduled, but anyone on the Board who wants to examine the property on the outside is welcome to do so. The Board will review the relevant bylaws.

Jim Grumbach proposes that the Board postpone further discussion of this case until the June 8 meeting. Mark Kablack agrees to grant the continuance and all necessary related extensions.

Jim Grumbach reads the legal description

Application of **Peter Barbieri (attorney/agent) on behalf of John Warren (owner)** for any necessary approvals, findings, special permits and/or variances as may be required in order to construct vertical and horizontal additions on a preexisting primary use dwelling unit (lot includes apparent preexisting nonconforming 2nd dwelling use) that increases the gross floor area of that same unit by more than 20% that under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 201, 203, 401.1.2, 401.1.3, 401.1.3.1, 401.1.3.2, Articles 7, 8 and §198 Attachment 1 Table of Dimensional Requirements. The property is located at **3 Amey Road** which is in the R-20 Zoning District. Case **#21-07**.

In attendance for this application are: Peter Barbieri, attorney; Bill Rodenhiser, builder; Jonathan Word, architect, Grady Consulting; Rob Carlezon, architect, Grady Consulting.

Peter Barbieri gives background on the property. There are two dwellings on the lot, a main house and a one-bedroom bungalow. At issue are modifications proposed to the main house. Site plans, architectural plans, and floor plans have been provided. The existing building setback will remain, except on one side toward Amey Road. Improvements are all at full compliance, but the 20% increase in size is at issue. Applicant has provided photos of other nearby properties with similar additions and modifications that have been previously approved. Peter Barbieri asserts that the expansion will make the property be and look consistent with others in the neighborhood and will not be detrimental to the community. The Health Department has granted approval. There are modifications planned to the bungalow as well, but those will be addressed in a separate, future, application.

Questions from members:

Evans Huber asks for the plot plan; Peter Barbieri shares it on his screen.

Examination of existing and modified floor plans, with use descriptions. Peter Barbieri asserts that the bungalow will remain a separate, one-bedroom habitable unit.

Shaunt Sarian asks about proposed heights. Peter Barbieri says the house is two stories. The Board examines height projections, which they estimate at 23.5 feet, though Members express skepticism about this figure.

Josh Wernig asks if the applicant has consulted abutters. Peter Barbieri says they have, and that the response has been positive.

Discussion of property use. Bill Rodenhiser, builder working with the Warrens, says that the client's Mother-in-law will be occupying the bungalow.

Geoff Larsen has been in communication with the owner's agent. He says a complaint was filed about the bungalow in 1969, but no apparent action was taken. He says that, in 1977, there were petitions to split the lot into 2 parcels; the petitions were denied. He says the buildings are in compliance and that the bungalow is planned to be razed and rebuilt with an increase in size of no more than 20%. His determination is that the only issue is the 20% increase in the primary dwelling.

Peter Barbieri points out the Town's ten-year statute of limitations on enforcing compliance. The buildings in question have existed since 1945. He says that the razing and reconstruction of the bungalow is a separate issue. Jim Grumbach cautions them, moving forward, about meeting the requirements for teardowns.

Shaunt Sarian asks about the bungalow's septic system. Rob Carlezon, from Grady Consulting, says there is a new septic system proposed that connects to both the main house and the bungalow. David Katz follows up to clarify whether, by approving this application about the main house, the Board would therefore also be implicitly approving an update to the bungalow septic system; the bungalow is already connected to the main house system, so that aspect wouldn't change.

Public questions and comment:

Interested Party: Kate Fitzpatrick, 19 Fuller Rd, wants to clarify that the only issue is the main building. She asks if the applicant has provided all necessary documents. She is concerned about potential curb cuts; Bill Rodenhiser says there will be no further curb cuts, and that there is no formal curbing on part of the property.

Discussion of the driveway toward the bungalow being part of this application versus the bungalow application.

Interested Party: Daniel Levy, 42 Fuller Rd, says that, as a close neighbor, he objects to the statement that the owner made serious efforts to contact him. He doesn't think the bungalow can be considered separately, and he believes connection via the septic system invalidates the number of bedrooms in the original application. He asserts that the properties are noncompliant, saying they lack either frontage (assuming they're fronted on Amey Rd.) or backyard clearance (assuming they front on Fuller Rd.). He is concerned about encroachment on the neighboring property on Amey Rd. and further increasing noncompliance on that side. He is not necessarily against the project, but he feels the application lacks necessary information.

Geoff Larsen responds, clarifying that "frontage" does not have to correspond to a building's front door. He says that he is not aware that there is Board of Health approval. Peter Barbieri says the BOH has signed off on the main house plans—though not the septic system specifically. He also clarifies that the setbacks will be in compliance with requirements (which are 15 ft minimum), and points out that the dimensions are noted in the plans. Bill Rodenhiser says he is almost certain the BOH signed off on the septic system.

Discussion of whether the property should be designated as a 4-bedroom, as the Board of Health approved it, or a 5-bedroom—counting the bungalow—as the builder has stated. Discussion of how the septic system connecting the two affects that designation.

Interested Party: Molly Upton, Bayfield Rd, speaks to an earlier case, for 119 Dudley Rd. She encourages Board members to view the house from across the pond on Lakeshore Dr. and consider the proposed house from there.

Interested Party: Daniel Levy again speaks to plan dimensions and compliance. He says the zoning documents provided in the application give a stated distance of 50ft. from the right-of-way center of line, but that the requirement is 55ft. Shaunt Sarian clarifies that this requirement exists only if the road is more than 20ft wide. Daniel Levy believes that at least one of the two roads is wider than 20ft. Jonathan Word says the design was actually based on the zoning bylaws. He goes on to quote the relevant bylaws.

Josh Wernig moves to approve the application as to changes to the main house only (subject to other Board approvals) dated and filed March 11, 2021, with a maximum height increase of 24 feet, and not to imply approval of changes to the secondary dwelling on the property. Jim Grumbach seconds. Voted (5-0 by roll-call). David Katz will write the decision.

Shaunt Sarian moves to adjourn the meeting, Josh Wernig seconds. Voted (5-0 by roll-call vote).

Meeting adjourned at 10:30pm.

Date Approved _____

Prepared By _____