

Mayor O'Neil offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING THE AMENDED SITE PLAN
AND VARIANCE APPLICATION OF
CLADDAGH OF HIGHLANDS LLC
BLOCK 82 LOTS 6.01 & 1.01**

WHEREAS, the applicant Claddagh of Highlands LLC, hereinafter referred to as the "applicant" is the owner of property known as Block 82, Lots 6.01 & 1.10, on the Highlands Borough Tax Map, which property is located at 297 Bay Avenue, Highlands, New Jersey and is located in the B-1 Business Zone; and

WHEREAS, Preliminary and Final Site Plan Approval and Variances were previously granted to the applicant for the subject property in 1998. The Resolution memorializing said approvals was adopted by the Planning Board on November 12, 1998. The substantive terms and scope of the approvals are set forth in detail within the Resolution; and

WHEREAS, the applicant now requests an amended site plan to be approved permitting outdoor dining in a patio area at the premises the particulars of which are set forth in the application and the exhibits and testimony in evidence, with the following variances:

1. Section 21-65.N.g of the Borough Ordinances requires 1 parking space for every 4 seats for eating and drinking establishments. The applicant proposes to add 20 additional seats in the patio area thereby requiring 5 additional on-site parking spaces that the applicant cannot provide.
2. The total on-site parking requirement for all of the uses at the subject property is 35 spaces. The applicant can only provide a total of 18 spaces; and

WHEREAS, all jurisdictional requirements have been met and proper notice has been given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board has jurisdiction to consider this application; and

WHEREAS, the Board considered this application at a public hearing held on May 10, 2007; and

WHEREAS, the Board heard the testimony of Ara Jamgochian, a principal of the applicant and the arguments of his Attorney Kevin Kennedy; and

WHEREAS, the applicant submitted the following documents into evidence: A location survey prepared by Richard Stockton, P.L.S., dated February 8, 2006 and a proposed outdoor seating sketch; and

WHEREAS, the Board after considering the evidence and testimony presented by the applicant and the interested citizens has made the following of fact and conclusions based thereon:

1. The property is located in the B-1 Business Zone, which permits the pub and restaurant and outdoor seating proposed by the applicant.
2. The parking variance or variances are necessitated by the need for the outdoor seating proposed by the applicant. The applicant through witnesses established that due to the new law prohibiting smoking by patrons in the existing restaurant and pub, patrons are going outside and smoking in the front sidewalk area causing an overcrowding of the sidewalk. This also causes a crowd control problem that will be alleviated if patrons that smoke are seated in the proposed patio area that will be enclosed and controlled by the applicant.
3. The Board agrees that the proposed patio will insure patron control and reduce the detrimental effect that the crowd on the front sidewalk has caused to the neighborhood and zone plan and zoning ordinances of the Borough.
4. Additionally, if the application was denied it would result in a hardship to the applicant due to the existing conditions at the site.
5. The Board has concluded that the application can be granted with conditions imposed that will insure the integrity of the foregoing ordinances and lessen the negative impact on the neighborhood. These conditions hereinafter stated are voluntarily agreed to by the applicant.
6. The Board hereby adopts the contents of the letters prepared by the Board Engineer, dated April 12, 2007 and May 7, 2007, for the project.
7. The Board also accepts the conditions of approval by the Borough Fire Marshal, dated April 30, 2007, which conditions are made a part of this approval and must be complied with by the applicant prior to the use of the proposed patio area; and

WHEREAS, the Board determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Borough of Highlands; and

WHEREAS, the Board after considering the testimony and exhibits has found the proposed amended site plan and variances to be acceptable with conditions; and

WHEREAS, this resolution shall memorialize the Board's action taken to approve the proposed site plan and variances with conditions at the meeting held on May 10, 2007.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands that the application for Amended Site Plan Approval and Variances is hereby approved contingent upon the applicant complying with the following conditions:

1. All testimony, evidence and representations made by the applicant and its witnesses are incorporated herein.
2. Taxes, fees and escrow accounts shall be current.
3. Compliance with the conditions set forth in the report of the Borough Fire Marshal, dated April 30, 2007.
4. Compliance with the recommendations set forth in the letters from the Board Engineer dated April 12, 2007 and May 7, 2007.
5. Compliance with any of the outstanding conditions of the prior approval unless such conditions have been waived or superseded by this approval.
6. The applicant shall comply with the Borough Parking Deficiency Ordinance for the 5 deficient parking spaces created by this application
7. The applicant shall submit an amended plan showing the addition and location of the proposed exterior lighting, landscape buffering, fencing and canopy to be installed in the patio area for the approval of the Board.
8. There shall be no outdoor music in the patio area with the exception of music being generated inside of the premises through outdoor speakers. The volume of the music must comply with the Borough noise ordinance.
9. No service bar can be located outside of the existing structure.
10. The fence that bounds the Zenakis property must be a "closed" type of fence.

Seconded by Mr. Nolan and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mayor O'Neil, Mr. Nolan
NAYES: None
ABSTAIN: None

DATE: June 14, 2007

CAROLYN CUMMINS, BOARD SECRETARY

I certify this to be a true copy of a Resolution adopted by the Borough of Highlands Planning Board on June 14, 2007.

BOARD SECRETARY

