

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
May 3, 2007**

Mr. Mullen called the meeting to order at 7:30 P.M.

Mr. Mullen asked all to stand for the Pledge of Allegiance.

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board and all requirements have been met. Notice has been transmitted to the Courier, The Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Anthony, Mr. Mullen, Mr. Gallagher, Mr. Britton

Absent: Mr. Fox

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Joe May, P.E., Acting Board Engineer

**ZB# 2006-10 Hall, George – Request for Postponement to June 7th
Block 116 Lots 12 & 13 (410 Navesink Avenue)**

Mr. Baxter stated that he received a call from the applicants Attorney who stated that there were three reasons for the postponement and that they want to renotice the public just to play it safe. He then explained that this application does require a use variance.

Ms. Ryan offered a motion to reschedule this public hearing to June 7th, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen made an announcement to the public that this matter would not be heard this evening and that the public would receive new public notice.

**ZB#2007-2 Alvator, Donna
Block 35 Lots 6 & 7 - 10 N. Peak Street
Approval of Resolution**

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Joseph Dorin questioned the Alvator Resolution and the board responded to his questions.

Mr. Mullen read the title of the following Resolution for approval:

Mr. Francy offered the following Resolution and moved on its adoption:

**RESOLUTION APPROVING BULK VARIANCES
FOR ALVATOR AT 10 NORTH PEAK STREET**

WHEREAS, the applicant, DONNA ALVATOR, is the owner of a single-family home at 10 North Peak Street, Highlands, New Jersey (Block 35, Lots 6 and 7); and

WHEREAS, the owner filed an application to add a second story addition; and

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

WHEREAS, the Board considered the application at a public hearing on April 5, 2007; and

WHEREAS, the Board heard the testimony of the applicant, DONNA ALVATOR; REGGIE SEERS; and ROBERT BURTON; and

WHEREAS, GERALD NICHOLSON appeared to ask questions and make comments regarding his concern about construction vehicles coming on his property; and JERRY FELICIANO, another neighbor, appeared to give the historical background of the area, but did not take any position with regard to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application and denial, including Zoning Officer's bulk and area requirements chart;
- A-3: 1/13/06 Survey by Charles Widdis;
- A-4: Architectural plans by Anthony Ercolino (2 pages);
- A-5: Tax map with some neighbors' properties shown in green;
- A-6: Six 8 1/2" X 11" color photos, sub-lettered "A" through "F".

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WHEREAS, the following exhibits were also marked into evidence:

- B-1: Tax map with subject property in red (provided by Board Engineer);
- O-1: 6/6/05 survey by William Fiore of Hubbard property, next door, provided by Mr. Nicholson.

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicant is the owner of property located in the R-1.01 Zone.
2. The site currently contains a one-story single-family home fronting on North Peak Street, which street is rather narrow.
3. The applicant seeks to add a full second story addition with the same footprint as the existing home, with a screened-in porch at the rear.
4. The applicant testified that her mother is elderly and may be coming to live with her, which is one of the primary reasons for the application.
5. The current home has two small bedrooms without closets, a small kitchen, a full bath, living room and master bedroom on the main floor, and a basement which contains a washer and dryer.
6. The applicant proposes to remove the existing master bedroom on the first floor, creating a larger living area, in a great room, and construct bedrooms on the second floor.
7. The current home has no closets in two of the very small bedrooms and a minimal closet in the master bedroom. The addition, therefore, will give more storage space and provide better living flow within the home.
8. The applicant has lived on the property for 23 years, and has no plans to move.
9. There is a proposed dining room in the rear, which will also be part of a great room.
10. The existing height of the home is 23.25 feet. It is proposed to be 26 feet in height. The rear, however, is higher because of the downward slope to the rear of the property. According to the Borough Engineer, the height of the structure after the proposed addition will be 27 feet. There is, however, no height variance required.
11. The applicant proposes to resurface the entire structure and to remove the shed.
12. The requested porch at the rear will not be converted to habitable space, nor shall the basement.
13. There is a retaining wall at the rear of the property which belongs to the applicant, and has been there a long time. Her former husband installed it.
14. There is no existing easement for entry to the house from North Peak Street, which access is partially over the neighboring (HUBBARD) property.
15. When questioned by the Board, the applicant testified that she did not want to put the addition on the south side because it would block her view in the winter.

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16. The neighbor, GERALD NICHOLSON, was not objecting to the application, but did want courtesies shown to him and the owner of his home when construction vehicles come to build the addition.

17. There has apparently been an ongoing dispute between the owners of the HUBBARD and ALVATOR properties, which is either currently in litigation or will be shortly, all of which concerns the property lines and usage by the ALVATOR occupants and guests of part of the HUBBARD property.

18. The public road is too narrow to make a 90-degree turn into the subject property, which requires the continued use of the existing driveway.

19. The Board reviewed the requirements of and reasoning behind Borough Ordinance 21-98A(2), which restricts any addition to 80% of the original building footprint. In this case, however, the Board did not find the proposed addition to be overpowering, especially considering the lack of any nearby structures to the subject.

20. The Board did feel, however, that the rear setback variance requested is not necessary, considering the size of the lot. Also, the steep slope in the rear dictates against the granting of the requested rear yard variance.

21. The applicant testified that the existing shed will be removed.

22. The applicant has requested variances for the preexisting conditions of lot depth of 80 feet, where 100 feet is required; front setback of 24.09 feet, where 35 feet is required; and side yard setback of 3.77 feet/33.48 feet, where 8 feet/12 feet are required, the latter of which will be a continuation of the existing setback.

23. The applicant also seeks new variances for rear setback of 9.34 feet (where the current setback is 15.34 feet), where 25 feet is required; and from Ordinance 21-98A(2), limiting any addition to 80% of the original building footprint.

24. The proposed second story addition will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance and, based upon the testimony, the Board is empowered to grant this variance pursuant to N.J.S.A. 40:55d-70c(2). The Board felt that the proposed addition would be an enhancement and improvement to the property and to the neighborhood.

25. The Board does not feel, however, that the applicant has provided proofs which would warrant the granting of a rear setback variance for the proposed enclosed porch.

WHEREAS, the application was heard by the Board at its meeting on April 5, 2007, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of DONNA ALVATOR to add a second story addition be and the same is hereby approved, and that variances for lot depth, front setback, side setback and an increase over 80% of the original building footprint are hereby granted in accordance with the measurements set forth in the findings above. The requested rear yard setback variance, however, is denied;

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AND BE IT FURTHER RESOLVED that these variances are granted upon the following conditions:

1. The existing shed will be removed.
2. There will be no conversion of the basement to habitable area.
3. Vehicles which access the property for the purposes of construction shall not encroach on Lot 4.01 (HUBBARD property), other than to use the existing driveway entrance to the subject.

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

ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Anthony, Mr. Gallagher,
Mr. Mullen
NAYES: None
ABSTAIN: None

**ZB32007-3 Burton, Robert
Block 72 Lot 4 – 22 Atlantic Street
Approval of Resolution**

Mr. Mullen read the title of the following Resolution for approval:

Mr. Mintzer offered the following Resolution and moved on its adoption:

**RESOLUTION APPROVING BULK VARIANCES
FOR BURTON AT 22 ATLANTIC STREET**

WHEREAS, the applicant, ROBERT BURTON, is the owner of a single-family home at 22 Atlantic Street, Highlands, New Jersey (Block 72, Lot 4); and

WHEREAS, the owner filed an application to add a covered front porch; and

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

WHEREAS, the Board considered the application at a public hearing on April 5, 2007; and

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WHEREAS, the Board heard the testimony of the applicant, ROBERT BURTON, and no one appeared in opposition or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application and denial, including Zoning Officer's bulk and area requirements chart;
- A-3: 7/10/06 Survey by Thomas Finnegan;
- A-4: Front elevation and floor plan prepared by applicant (2 pages);

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicant is the owner of property located in the R-2.02 Zone.
2. The site currently contains a two-story single-family home, which sits further back from the street than most, if not all, of the homes on the street.
3. The applicant seeks to add an enclosed front porch and, because the addition will exceed the lot coverage requirement, requires variance relief.
4. The house is currently approximately 29 feet 4 inches high and approximately 26 feet wide.
5. The addition of the front porch will make the home more aesthetically pleasing, and be a better look for the neighborhood.
6. Aside from being set so far back from the street, this is one of only a few houses on the block that are set back from the street.
7. One neighbor is approximately 3 feet to 4 feet from the property line, although that neighbor has advised the applicant that they are planning to tear down the house.
8. The subject property has no driveway, but, rather, grass in the front yard. The applicant wants to maintain the grassy area.
9. The Board felt that it was unfortunate that a variance application had to be filed in this case, however, the same was necessary because the addition would exceed the permitted lot coverage.
10. The proposed enclosed porch will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance and, based upon the testimony, the Board is empowered to grant this variance pursuant to N.J.S.A. 40:55d-70c(2). In fact, the Board felt that the proposed addition would definitely be an enhancement and improvement to the home.
11. The applicant requests variances for the following preexisting conditions: Lot size of 2,700 square feet, where 4,000 square feet is required; lot width of 30 feet, where 50 feet is required; side setback of .5 feet/3.5 feet, where 6 feet/8 feet is required;

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and rear setback of 6.4 feet, where 20 feet is required. Applicant also seeks a building coverage variance of 40%, where 33% is allowed by ordinance.

WHEREAS, the application was heard by the Board at its meeting on April 5, 2007, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of ROBERT BURTON to add an enclosed front porch be and the same is hereby approved. Variances are hereby granted for the preexisting conditions of lot size, lot width, side setback, and rear setback, as more fully set forth above. A building coverage variance is also granted for 40%. Seconded by Mr. Gallagher and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Anthony, Mr. Gallagher,
Mr. Mullen
NAYES: None
ABSTAIN: None

**ZB#2006-3 Gordon, Gary & Patricia
Block 19 Lot 21.04 – S. Peak Street
Unfinished Public Hearing**

Present: Henry Wolffe, Esq.
Mr. McEntee, A.I.A.

Mr. Baxter stated that this case began on December 7th, 2006 and there were several Exhibits that were marked into evidence and we heard the testimony of Mr. McEntee the Architect and a couple of people appeared and asked some questions and then it was carried. We do have a Certification by Tara Ryan, Board Member indicating that she listened to the Zoning Board meeting tapes of that meeting, so she is eligible to vote on this matter. He then stated that there are six board members present this evening that are eligible to vote on this matter.

The following documents were marked into evidence:

- A-7: Reply letter from Daniel Busch of Maser Consulting dated 4/23/07 consisting of 6 pages;
- A-8: Report of Preliminary Subsurface Exploration and Slope Foundation Evaluation prepared by James Serpico dated 3/9/07;
- A-9: Two Page Layout and Grading Plan prepared by D.Busch of Maser Consulting;
- A-10: Two Page Amended Plan last revised on 3/30/07;
- A-11: Deed dated 3/14/1991
- A-12: Deed of Easement for driveway access dated 8/11/03;

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B-3: Board Engineer Review Letter prepared by J. May, P.E. of Schoor DePalma dated 4/26/07.

Mr. Wolffe stated that they have revised plans reversing the garage.

Mr. McEntee who was previously sworn stated the following during his testimony and response to questions from the board:

1. He described Exhibit A-10 and stated that that this is exactly the same as presented back in December with the exception that the garage is on the other side, it's a mirror image. He has adjusted the roof pitch just to give us further comfort with regard to the height ordinance.
2. The applicant has proposed a conforming house in terms of height and will comply with the height restrictions.
3. The footprint is the same its 40 by 30 feet.

Mr. Wolffe stated that that the rear yard setback was previously approved for 17 feet and they are requesting a 15 1/2 foot rear yard where 25 feet is required. He believes that the Zoning has been changed because at that time the lot was not a conforming lot and now it is. Exhibit A-5 is a site plan of the previous approval.

Mr. Mullen asked if there were any questions from the public for the Architect Mr. McEntee.

Joe McFadden of 50 Twinlights Terrace questioned the existing driveway and the inaccuracy of the grading as shown on the plan.

Mr. McEntee stated that the grading is accurate which he further described as being a close representation of the grading as it is now.

There were no further questions from the public for Mr. McEntee.

Daniel W. Busch of Maser Consulting Engineers in Red Bank, N.J. was sworn in and stated the following:

1. He is a licenses Professional Planner and a Professional Engineer in the State of New Jersey and described his Professional Background.
2. He prepared Exhibit a layout and grading plan which was marked as Exhibit A-9.
3. We have a 30 by 40, 1200 square foot footprint single family dwelling in a Residential Zone.
4. Initially the design showed a driveway on the east side and when we looked at the grading of the site and the proximity to the driveway we moved the driveway to the westerly side, to take the same house and mirror the house. So the plans before you

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represent taking the previously submitted Architectural Plan and mirroring the home and placing a 12 foot wide driveway on the westerly side servicing the single car garage which provide for some separation between the existing driveway on lot 21.01 which crosses as an easement on the subject property and the existing driveway. There is also an easement and the driveway is clearly contained entirely within that easement which he further described.

5. Topographical features of the subject - in the southeast corner to the northwest corner you have basically elevation 136 in that far upper corner and your close to elevation 116, so there is roughly 19 to 20 feet of fall across the property. The most significant slope is on the westerly side, there is a grade change in the area of 10 feet and the balance of the site is fairly uniform and the center of the site has flat grade and then the easterly side is steeper.

6. With regard to the slope stability they did a series of three test borings, drilling those borings down anywhere from 22 to 53 feet to basically get the underlying soils and that was presented in the report. They also did a slope stability analysis to see how stable this slope and its about 1 ½ slope. He then described the safety factor as being 1.3 and explained that 1.3 is an acceptable number and a building safety factor of 1.75. We have proven through the testing and analysis that this can be done safely and in accordance with the building code which he further described in detail to the board.

Mr. Mullen explained that part of the relief that is being sought here is that you are not allowed to build on anything within 25 feet of the top of the slope and a steep slope is identified by its grade as a percentage and you are not allowed to build anything within 35% of the grade and this is in excess of that. You are also not allowed to disturb the soil within 15 feet of the top of the hill or put a structure within 25 feet and that is the relief that the applicant is requesting.

Mr. Busch continued his testimony as follows:

7. We are seeking a structure within 13 ½ feet of the top of the slope and he estimates that the disturbance would be within 10 feet from the slope which he further explained. He then stated that there was a comprehensive soil erosion control plan that was provided that identified a silt fence on the lower side to prevent some vegetation from moving off site and they also identified placing a stabilization fabric down to allow for grass to grow. Right now the slope does not have much vegetation on it and its stable at its current.

8. At a 1.3 safety factor the structure is stable on the slope and suitable for being built had the safety factor been less some additional techniques would have to be employed to bring the safety factor back up. This is a conventional foundation and there is no need for anything other than his engineering analysis. He continued to describe and discuss the safety comfort of the structure and the slope with the board.

9. He described the proposed drywell system and the outfall for this site.

10. He described the water runoff and stated that overall you have a general reduction.

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11. He described the existing and proposed grade to the board and stated that basically the grades are close to the existing with the exception of the one front corner.

12. The variance for the rear is for a proposed 15 feet where 25 feet is required. Conforming to the rear yard requirements of 25 feet would cause a hardship because the existing lot depth is 65 feet where 100 is the required, so there is a 35 foot deficiency from the front to the back. We conform to the front yard so that leaves a small building envelope which he further explained. The ordinance allows for a 40foot deep envelope and we are only at 30 so we are less than the ordinance would otherwise provide because of the shape of this lot particularly in the front line which creates a reduction in lot depth there isn't really any other way to build a house of a reasonable size on this lot without some relief to the rear yard setback. He does not believe that there is any negative impact as a result of the rear yard setback. The home on lot 24 is about 30 feet to the proposed line for neighbors so we are talking about a separation of about 45 feet.

13. In the previous subdivision they had a 20 foot front yard and a 17 foot rear yard with a 30 foot envelope basically as a result of trying to fit the lot to the grading to the east without encroaching into the easement. So deminimous changes are as a result of just kind of shifting the building slightly.

14. There are two variances being requested one for the rear yard setback and there is a variance for no disturbance within 15 feet of the top of the slope where 10 is proposed and a waiver for no structure being within 25 feet of the top of slope where 13 is proposed.

Mr. Mullen stated that there are other variances that are preexisting.

Mr. Busch continued as follows:

15. The required parking is provided on site and they are not seeking a height variance.

Mr. May questioned Mr. Busch with regard to drainage that was not covered in his report.

Mr. Busch stated that the drainage report would be updated based on the final location of the driveway.

Mr. May – with regard to the location of the drywell the report should be configured to capture some of the swaled water by putting a riser of that structure and a grate. The northeast corner of the building he is concerned about water starting to erode along the foundation and suggested that Mr. Busch modify that drain there.

Mr. Busch – we could place vegetation or something that does not have to be maintained there.

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Mr. May – with regard to the sanitary lateral impacts to the easterly lots driveway he wanted to know if that would call for any replacement of that driveway.

Mr. Busch – the idea was to keep that lateral outside that easement but we could look at placing it in another location.

Mr. May – in your report is speaks about permanent parking and within 12 feet of the edge of slope – do you feel that the driveway has no effect of sinkable parking within that area of the slope.

Mr. Busch – no, obviously the weight has an impact like anything else but the fact of the matter its been analyzed already at this point.

Mr. May – with regard to construction activity, who would be obligated to perform inspections or observations during construction.

Mr. Busch – I would have to defer to my client.

Mr. Mullen asked if there were any questions from the public for Mr. Busch.

Mr. McFadden – wanted to know the distance of the house from the corner of the driveway and Mr. Busch replied that it's about five feet and to the easement its about two feet.

Claire Corney questioned the possibility of trucks parking on her lot and Mr. Busch replied that there is room in the front to park during construction and that he would not be managing the construction.

Mr. McFadden questioned the drainage and Mr. Busch explained the proposed drainage.

Dodi Bowers questioned her concerns about the water runoff and curbing and Mr. Busch stated that they are not proposing curbs.

Mr. McFadden questioned Mr. Busch about certain items on the plans which Mr. Busch explained to him.

Ms. Bower questioned the need for a large house and Mr. Busch explained that you would need certain relief to fit a house on the lot.

Clair Corney questioned if it was appropriate for the house to be build there.

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Mr. McFadden questioned privacy requirements.

Clair Corney questioned where she would go to address any construction concerns.

There were no further questions from the public.

Mr. Wolffe submitted the deed and there was a discussion about the need for this driveway easement and Mr. Busch explained that the proposed is the best location for this driveway. They also discussed the closeness of the house to the driveway.

Mr. Mullen asked if there were any comments from the public on this matter.

Joseph McFadden of 50 Twinlight Terrace was sworn in and expressed his opposition to the proposed.

There were no further public comments therefore the public portion was closed.

The Board began to discuss the application that was presented.

Mr. Francy questioned the previous variances that were granted for this site and Mr. Baxter explained that those variances are not binding because the zone has changed and stated that the applicant can build the question is what can they build.

Ms Ryan questioned if there were any water runoff issues what recourse would the neighbors have.

Mr. Braswell expressed his satisfaction with the steep slope issues and does not believe that the house will compromise the slope.

Mr. Mullen stated that it was a great improvement to mirror the house to get the driveway away from the other driveway was a far improvement.

Mr. Francy expressed his concerns with the issue of the house minimizing the approach to the easement and the scale to the houses in the area and suggested that the house be smaller.

Mr. Francy offered a motion to allow the project with a reduction of the square footage from the proposed structure.

Mr. Wolffe stated that he wants the board to vote on what was proposed so Mr. Francy withdraws his motion.

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Mr. Mullen stated that he would offer a motion to approve the application because he felt that the testimony brought forth with regard to the steep slope was appropriate, the change in zoning with regard to the previous application shed a new light on the

deliberations of the board in terms of development of this site. The rear yard requirement is a deminimus change from the original rear yard setback

Mr. Mullen offered a motion to approve the application and granting variances for lot depth of 75 ft where 100 is required, front yard of 20 feet where 35 is required, rear yard setback of 15.6 feet where 25 is required, the steep slope variance be granted subject to the following conditions: 1) the location of the drywell is subject to board engineer approval; 2) As built be provided prior to final construction c/o being issued; 3) Overflow of drywell be added to the plan; 4) Provide architectural plans to board engineer with verification of height; 5) Revise drawings to relocate utilities so that not to compromise existing driveway with the easement. Seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Ms. Ryan, Mr. Anthony, Mr. Mullen

NAYES: Mr. Francy

ABSTAIN: None

Approval of Minutes

Ms. Ryan offered the approval of the April 5, 2007 meeting minutes, seconded by Mr. Mintzer and all members were in favor except Mr. Braswell who abstained.

Communications

Mr. Braswell explained that he has visited the Monmouth County GIS Office and they have a software program which is aerial photography which is free to the Borough of Highlands but the Borough would have to purchase a computer and he would suggest that we purchase it with the board budget if funds are available.

Mr. Baxter stated that he was concerned how the board would mark it into evidence.

The Board had a discussion about the purchasing of a computer for the GIS software and they supportive.

Mr. May stated that he would have his office provide a memo on this topic to provide the board with some addition information.

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Mr. Gallagher offered a motion to adjourn the meeting, seconded by Ms. Ryan and all were favor.

The Meeting adjourned at 10:05 P.M.

CAROLYN CUMMINS, BOARD SECRETARY