

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
June 4, 2009**

Mr. Mullen called the meeting to order at 7:42 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 of Adjustment and all requirements have been met. Notice has been transmitted to the Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Braswell, Mr. Fox, Mr. Anthony, Mr. Britton, Mr. Gallagher, Mr. Kutosh

Late Arrival: Ms. Tierney arrived at 7:45 P.M.

Absent: Ms. Ryan

**ZB#2007-7 231 Bay Avenue, LLC
Block 63 Lot 19.01 – 231 Bay Avenue
Approval of Resolution**

Mr. Mullen read the title of the of this Resolution.

The Board reviewed and discussed the 231 Resolution and amendments were made to add language that refers to a supplemented Flood Review Letter dated May 12, 2009 on page 13 and a also to state that the board approved preliminary and final site approval.

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

**RESOLUTION APPROVING USE AND BULK VARIANCES
AND GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
FOR 231 BAY AVENUE, LLC**

WHEREAS, the applicant, 231 BAY AVENUE, LLC, is the owner of the old Dr. Gimpi's Restaurant and rooming house at 231 Bay Avenue, Highlands, New Jersey (Block 63, Lot 19.01); and

WHEREAS, the owner initially filed an application to renovate the structure by providing for parking on ground level, commercial space on the second level, and three apartments on the third and fourth levels; which application the owner modified, during the course of the hearings, to delete the parking on the ground level, and provide approximately 2,966 square feet of commercial space on the ground level, and two 2-bedroom apartments on a

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second and third level, thereby deleting the originally-proposed fourth level and one apartment; 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 public hearings on May 1, 2008, and April 2 and May 7, 2009, the delay between the initial filing and the first night of hearing, as well as between the first and second nights of hearing having been as a result of the owner having requested multiple adjournments; and

WHEREAS, the Board heard the testimony of MOHAMMED EL-HAWWAT, applicant's engineer; PETER CAMAMIS, member of the owner-LLC; WILLIAM J. DORAN, applicant's architect; and THOMAS BOGDAN, applicant's planner; and

WHEREAS, no one appeared in opposition, or to support, the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning Board Application (3 pages)
- A-2 Zoning Permit Denial (2 pages)
- A-3 Site Plan Review Application (2 pages)
- A-4 11/13/07 Monmouth County Planning Board Conditional Approval
- A-5 8/3/06 Resolution Denying Palatial Homes Use Variance (10 pages)
- A-6 [Exhibit withdrawn]
- A-7 [Exhibit withdrawn]
- A-8 [Exhibit withdrawn]
- A-9 Proposed Site Improvement Plans dated 8/1/07, last revised 3/3/09, by Mr. El-Hawwat (2 pages) [Replaces Exhibits A-6 and A-8]
- A-9a Exhibit A-9 on board
- A-10 Letter from Robert Keady, of T&M Associates, Borough Engineer, approving application for flood plain review purposes
- A-11 12/16/08 Drainage Report by Mr. El-Hawwat
- A-12 9/17/03 Survey by William M. Doran
- A-13 Architectural Plans by William Doran (2 pages), replacing Exhibit A-7
- A-14 Proposed Site Improvement Plans by Mr. El-Hawwat, last revised on 4/15/09 (pages Y-1 through Y-5)
- A-15 Architectural plans by William M. Doran, last revised on 4/14/09 and updating Exhibit A-13
- A-16 Page 2 of Exhibit A-15, with color;

AND, WHEREAS, the following exhibits were marked into evidence as Board exhibits:

- B-1 3/5/08 Board Engineer review letter (6 pages) by Joe May

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- B-2 Mr. May's 4th review letter dated 3/31/09
- B-3 Revised Board Engineer 5th review letter dated 5/5/09, revised 5/7/09
- B-4 Email from Dale Leubner dated 5/7/09 regarding flood plain review
- B-5 5/7/09 Fire Inspector Paul Murphy site plan completed requirements form;

AND, 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 vacant restaurant (formerly known as DR. GIMPI'S) with vacant boarding rooms on the upper levels. It is currently a 3-story building, and has been vacant for about nine years.
3. The owner seeks to renovate the building by providing for approximately 2,966 square feet of commercial space on the ground level, and two 2-bedroom apartments on the second and third levels, respectively.
4. This zone does not permit multiple uses, nor does it permit commercial uses, nor does it permit expansion of non-conforming uses or changes to other non-conforming uses. As a result, applicant seeks a use variance. The prior four (4) uses on the property were non-conforming uses.
5. The owner seeks bulk variances for the following preexisting conditions:
 - A. Maximum lot coverage of 80.5%, where 75% is permitted (note that the property currently has 85% of lot coverage).
 - B. 1.8 foot front yard setback on Cedar Street, and 14.3 foot setback on Bay Avenue, where 20 feet is required.
 - C. 4.4 foot side yard setback, where 6 feet is required.
6. The applicant also seeks a parking variance for 13 spaces, where 15 are required.
7. There will be a decrease in lot coverage from 85% to 80.5%. The building footprint will also be reduced by approximately 93 square feet.
8. The property fronts on three streets (Bay Avenue, Cedar Street and Second Street). As a result, there are three front yards and one side yard.
9. The application proposes better access to the property than previously existed.
10. Railroad ties and fencing at the rear of the building will be removed.
11. The applicant proposes to finish the attic, which is the third level. There will also be a few dormers along the long side of the building, to accommodate windows.
12. The existing free-standing sign will be kept, but moved in order to meet the ordinance requirements. There will also be two façade signs, which

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shall meet the Borough ordinance requirements, both on the Bay Avenue side of the structure.

13. The applicant testified that they can and will meet the requirements set forth in Exhibit B-4 (Leubner email). The property is currently six feet above grade.

14. The Cedar Street side of the structure is wood construction. The other three sides are block construction. The Cedar Street side will be changed to block, non-permeable construction. It is being done with a new product, which seals the openings—which should also allow the owner to do the glazing he wants to. The building will have new siding added. The block will be painted on the first floor, which is actually a colored stucco. On the second and third levels there will be new cedar-impression siding and windows.

15. The average height of the proposed/existing structure is 28.5 feet, according to the Board Engineer. No variance is required for height.

16. There will be a flat roof over part of the building, with the air conditioning condensers.

17. If the gas meters stay in their current location, they will be protected with bollards, since they are so close to the street.

18. There will be no fire hydrant, and the sprinkler system will be retrofitted, repaired and maintained.

19. The parking lot will be reconstructed. The pavement thickness is to be 4" of base and 1.5" of top. There will also be handicapped parking. Both of these will be significant improvements to the property.

20. The premises currently has no loading area. There will be a temporary loading area under the new plan.

21. The commercial area on the first level will have sufficient space for two stores (one, if a single tenant is willing to rent the entire space).

22. The applicant has testified that there will be no restaurant or tavern on the premises, which will be a condition of this approval.

23. The county has requested a five-foot easement for the potential widening of Bay Avenue. The applicant agrees to the same, and it is shown on Y-3 of Exhibit A-14.

24. The applicant's professionals testified that the property owner will comply with Section 2 of the Board Engineer's review letter (Exhibit B-3), with the exception of items 2.3, 2.4 and 2.6. The three items to which the applicant agrees, and testifies he can comply with, will be conditions of this approval.

25. The applicant requested a waiver of the request by the Engineer to dig a test pit and take soil samples. Since the property has been designed for a dry well for a two-year storm that is sufficient, according to the Board Engineer.

26. As to Section 3 in the Board Engineer review letter (Exhibit B-3), the applicant's plans comply with item 3.1. As to item 3.2, there will be shields on the lights, both the pole and wall-mounted lights. There will be no direct lighting going off of the property.

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27. As to flood management, the applicant will comply with item 4.1 of the Board Engineer's review letter (Exhibit B-3), and he so testified.

28. Access to the upstairs apartments will be from the rear only.

29. As previously stated, this property previously housed a restaurant/tavern and boarding rooms. It was not in conformance with the Borough's zone requirements.

30. The area in which the property is situated is predominantly residential. There are some commercial uses, so it is mixed.

31. This application proposes a mixed use (commercial and residential), with commercial space on the first floor, a two-bedroom apartment on the second floor, and a two-bedroom apartment on the third floor).

32. The proposed use is far less intrusive than the prior use, and will be a substantial upgrade to the property and the neighborhood.

33. The applicant's planner opined, and the Board so finds, that the applicant met the special reasons required by N.J.S.A. 40:55D-70(d) by meeting the special reasons set forth in 40:55D-2(a) (the property is particularly suitable to the proposed use, promotes the public welfare, and is maintaining the mixed use of the property); subsection (b) (because the building will be flood-protected, where it currently is not); subsection (i) (because a desirable visual environment will be created by the refurbishing of an old building in great need of repair, and by putting on the type of siding proposed; an eyesore will, therefore be removed); and subsection (m), because the public and private procedures will be coordinated by granting the requested 5-foot easement, which the county would not otherwise receive, in the absence of condemnation.

34. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), one of the negative criterion is that there is not much else you can do with this building. The Board heard, at great length, a prior application by a different applicant, which it denied, and is well aware of the particular problems posed by this property. This applicant is keeping the current structure. There will be no more noise or exacerbation of traffic. In sum, the proposed uses will have much less impact than the previous use.

35. The applicant's planner testified that he did not believe the governing body considered this particular site when last revisiting the Master Plan and zoning ordinance. Though it might be a plus for the Borough if the property was adapted to residential use, the size of the property dictates against that, and the floor plan further dictates against that. At a minimum, this property would best be suited for a multi-family type of residential use, and this application is for only two apartments.

36. The Board spent some time discussing the parking variance and how many spaces are required under the ordinance. Based upon the RSIS (Residential Site Improvement Standard) tables, it appears that there are two ways to calculate the number of spaces required. The Board determines that 15 spaces are required for the proposed uses, and that 13 are provided for in the plans.

37. The Board finds that there is no negative effect on the area or on the zone plan by having 13 parking spaces on this site. The site is maxed out

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now. The proposed uses here actually require less parking than the parking that should have been required for the previous uses. When considering the times of day for the proposed uses, the parking issue is even less of a concern.

38. The applicant is, in the Board's view, putting the maximum number of spaces possible on the premises.

39. The Board finds that the proposal is still compatible with the uses in the neighborhood. The flood-proofing of this building will be a "Highlands milestone".

40. The Board was particularly pleased with the applicant's modification to its original plans in submitting a proposal that was more in line, both in degree and height, with the other uses in the neighborhood.

41. As previously stated, the proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. To the contrary, the proposed addition and re-siding will fit in well with the character of the neighborhood and improve the streetscape in that area.

WHEREAS, the application was heard by the Board at its meetings on May 1, 2008, April 2, 2009, and May 7, 2009, and this resolution shall memorialize the Board's action taken at the meeting on May 7, 2009;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of 231 BAY AVENUE, LLC to renovate the existing former DR. GIMPI'S restaurant structure at 231 Bay Avenue, as shown on the applicant's most recent plans (Exhibits A-14 and A-15 in evidence) be and the same is hereby approved. Variances are hereby granted for the preexisting conditions of maximum lot coverage (80.5%, where 75% is permitted); 1.8 foot setback on Cedar Avenue, and 14.3 feet on Bay Avenue as front yard setbacks, where a minimum of 20 feet is required; and a side yard setback of 4.4 feet, where 6 feet is required. A parking variance is hereby approved for 13 spaces, where 15 are required. In addition thereto, a use variance is hereby approved to permit the requested uses (commercial on the first floor, and residential on the second and third floors).

AND BE IT FURTHER RESOLVED that preliminary and final site plan approval are hereby granted, on condition that the applicant comply with the terms of the Keady letter referred to in item A below.

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

A. The applicant shall meet the requirements set forth in the Leubner (flood review) email (Exhibit B-4), which was supplemented in accordance with the email, after the last hearing date, with a formal letter dated May 12, 2009 from Robert R. Keady, Jr., Highlands Borough engineer (same office as Mr. Leubner).

B. The applicant will comply with the following requirements set forth in the Board Engineer's review letter dated May 5 (revised May 7), 2009, together with any

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modifications thereto as set forth in the findings and conclusions of the Board: 2.1, 2.2, 2.5, 3.1, 3.2, 4.1 and 4.2.

C. There will be no restaurant or tavern permitted on the premises.

D. If the gas meters remain in their current location, they will be protected. Otherwise, they will be moved to a more protected location.

E. The 5-foot easement requested by the county on Bay Avenue shall be given by the owner to Monmouth County, the recording of which shall be a condition precedent to any building permit issuing.

F. No direct lighting will go off of the property. The lights, whether pole or wall-mounted will be shielded, including the deck lighting.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Anthony, Mr. Gallagher, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2008-2 Pace, Vincent
Block 34 Lot 2 – 22 Prospect Street
Application Dismissal**

The Applicant was not present for tonight’s hearing.

Mr. Baxter explained the history of this application to the board and the fact that at the last meeting this application was adjourned for the fifth time and that the board directed him to send the applicant a notice last month informing him that if he did not appear this evening that the board would dismiss the application for failure to prosecute it.

The Board had a brief discussion on this history of this application.

Mr. Gallagher offered a motion to dismiss the Pace application for failure to prosecute it, seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Braswell, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Kutosh,
Mr. Mullen**

NAYES: None

ABSTAIN: None

**ZB#2009-2 Dorau, Karl & Hala
Block 115 Lot 3 - 130 Linden Avenue
Hearing on New Business**

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**Present: Karl & Hala Dorau
Tariq Bashir, P.E.**

Conflict: Mr. Gallagher stepped down

The following documents were marked in to evidence:

A-1: Variance Application
A-2: Zoning Application
A-3: Survey dated 11/12/07 prepared by B. Yuro
A-4: Gentech Drawings, 3 Pages
A-5: Architectural Plan dated 5/28/09 prepared by Paul Damiano
A-6: Soil Report dated 5/27/09
B-1: Board Engineer Letter dated 5/29/2009
B-2: Letter Report dated 5/30/09 prepared by William Recurio of CMX
B-3 a,b,c: Three aerial photos of subject environment printed off County GIS submitted by K. Braswell, Board Member

Mr. Baxter swears in the following people:

Joseph May, P.E., Board Engineer of CMX, Inc.
Hela Dorau of 49 Maida Terrace, Red Bank, N.J. 07701
Tariq Bashir, P.E.
Karl Dorau of 49 Maida Terrace, Red Bank, N.J. 07701

Mr. Bashir described his professional background and education to the board. He stated that he has 25 years experience in geotechnical foundations.

The Board accepted his professional qualifications.

Mr. Mullen stated that the issue before the board this evening is that the Zoning Officer feels that this is too close to the slope and there are regulations that prohibit the rebuilding of the terrace in that location and we want to have some comfort level with the proposals that you make to replace the deck are going to not destabilize the hill and that its going to be something that we can have confidents will be an appropriate development.

Mrs. Dorau stated the following during her testimony and response to questions from the board:

1. The survey dated 11/12/2007 was done for their purchase of this property which occurred in December of 2007 and the deck had already been existing. She stated that she submitted a copy of the survey that was prepared for the previous property owner which shows the deck was existing.

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2. What they are looking to do is replace the deck and make it more safe and add hand rails to it.
3. Shortly after purchasing the property the Homeowners Insurance Company came to look at it and sent them a notice that stated that it had to be repaired/fixed because it was dilapidated and that if it wasn't fixed then they would cancel the insurance policy.
4. They were not able to repair the deck to make it a safe situation because there was a lot of rotted wood and missing pieces, they just took the deck down for safety sake.
5. After taking down the unsafe deck they submitted an application to replace the deck and it was denied.
6. She has communicated on several occasions with the Board Engineer, Joe May. Mr. Bashir who did original drawings that we had submitted for footings to replace the deck, that's when it came back that we had to do soil testing.
7. Mr. Bashir did do the soil testing recently and we submitted it to Mr. May and we are back here to determine if we can replace the deck or not.
8. The deck runs in an "L" shape around the building.
9. The project is for a deck and a garage but no variance is required for the garage, its separate.

Mr. Bashir stated the following during his testimony and response to questions from the board:

1. He stated that he did visit the site and he is the one who directed the subsurface investigation and the information gathered was useful in terms of developing a structural system.
2. The Township will obviously be observing the construction and the applicant will probably pay for his services to observe the foundation installation.
3. He was at this site more than a year ago before the applicant bought the property so he is familiar with the house. He has inspected it and he has looked at the deck and there was a report generated at that time and when the applicant called him in he designed the footing to replace the existing deck.
4. He has had conversations with Mr. May who called him and was concerned about stability and soils. Subsequent to that he spoke with one of Mr. May's soil engineers Mr. Bill McCurio of CMX and it was agreed between him and his self. Basically he was concerned about the soils on top of the slope and he had asked that we do two borings on top of the slope where the footings would be on the rear side and so they did the two borings and in addition they did one at the bottom of the slope to have a full stability analysis.
5. Mr. McCurio's concerns were about if there were any loose fill at the top and we said that we would address that. We did not find any of that except for a very thin loose filling on one of the soil borings which is outlined in the report. It's a little loose below the footing and we have addressed that, it will be compacted.
6. They have used a very conservative soil bearing capacity for the foundation.
7. They have revised the drawings and they have added additional steel and tied the footing to that.
8. The Stability Analysis shows that the slope is stable. They are not adding any additional load. From the best of his recollection they have reduced the size of the original deck .

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9. The failure of the last deck could have been a construction issue, it was constructed on small pillars that were exposed. It wasn't totally out of whack, the deck was still standing. It wasn't like it was collapsing.
10. They have basically reduced the size from the original deck especially around that corner.
11. He explained that if you look at sheet three of his drawings he located the center of the footings and the deck, that's the maximum that he thought would be stable.
12. He spoke about the two foundation options both supporting the deck. He believes that the applicants have shown interest in option two which is the Continuous Footing. He does not have a problem with either of the two options. There is no problem with soil pressure because it's a light load and is spread out.

Mr. May spoke about drainage and the possibility of buildup of water behind that wall. He stated that the applicants engineer may want to concentrate on that flow of one point because he is concerned about erosion at the one point.

Mr. Bashir continued his testimony as follows:

13. He agreed with Mr. May's comment and stated that if the applicant were to go with the Pier System then we would not have those concerns and actually the applicants have expressed interest in doing it that way.
14. He has been told that they would excavate for this by hand but he does not have a problem if they do it by a small machine.

Mrs. Hala stated that she wants the digging of the pier to be done by hand and Mr. Mullen agreed. She agreed to do the pier footings .

Mr. Bashir continued his testimony as follows:

15. He is aware of the slope issue to the left of this site and explained how you can go twenty feet and the slope is different.
16. He stated that he looked at several features to do his report. He looked at the topography, the trees, the vegetation and the applicant has some big trees that look pretty stable. So not only is the area that they are working on but the slope going down the bank is stable.
17. He stated in his report that any fill removed must be carted away from the site.
18. This is not a big project but he does not control the means of a contractor but they could put an erosion fence up if they want.

Mr. May suggested that they put biodegraded Jute matting to ensure that whatever grass was killed during the installing of the footings does not cause problems down the road.

Mr. Bashir continued his testimony as follows:

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19. If there were any erosion developed it would go down the hill and not effect neighboring property . He has cautioned the applicant not to throw anything down the hill.
20. Currently there are no leaders going on the back yard that he saw.
21. He does not expect too much soil removal because it's a small footing.
22. Stability of piers – he did tie the left side together to increase stability and then left the right side an option to keep as continuous footing or have piers which isolated. The piers on the slope side/right side.

Mrs. Dorau stated that they prefer to do the isolated piers even in the front as well.

Mr. Bashir continued as follows:

23. The deck is tied to the house.
24. The piers will be a minimum of three feet below grade.
25. He looked at the Architectural plans to see if the top of the slope was accurate or not. He stated that he is not sure where the architect got the top of slope for his plan.
26. He stated that the footing is close to the slope which is shown on sheet three of three it shows a minimum of two feet away from the top of the slope.
27. He stated that the old footings don't have to be taken out to minimize the disturbance unless it interferes with the new ones.
28. If the pier has to be two and a half it's a field decision of what will work.
29. He is satisfied that the slope is stable and will remain stable based the best of his investigation.

Mrs. Dorau stated that they will not remove any vegetation and that she will hire Mr. Bashir to investigate during construction to make sure things go the way that he has suggested.

Mr. Mullen asked if there were any questions for either Mr. Bashir or Mrs. Dorau but there were none.

Mr. Mullen asked if there were any comments from the public on this application but there were none; therefore the public portion was closed.

Mr. May spoke about the requirement of using Jute Grass or something similar after construction.

Mrs. Dorau stated that there is not any grass under the deck area because the deck was over it.

Mr. Bashir stated that his oversight and inspection is not really needed for the entire deck. He believes that it is only needed for that left corner by the slope.

Mr. Mullen stated that it's the board interest that the testimony that Mr. Bashir gave this evening will be followed through in the field and that Mr. Bashir will be the person to make sure that things are put together the way that they he has presented it this evening. The frequency of those

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visits is up to Mr. Bashir and the responsibility of making sure the design is carried out with his plans.

Mr. Braswell – we are going to add that no vegetation will be removed during construction. He also wants to assure that this work will be done by hand and not a machine on the slope side.

Ms. Tierney wanted to make sure that no vegetation would be removed during construction.

Mr. Braswell offered a motion to approve the application with all conditions as discussed during the hearing, seconded by Mr. Fox and approved on the following roll call vote;

Roll Call:

AYES: Mr. Braswell, Mr. Fox, Mr. Anthony, Mr. Britton, Ms. Tierney,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Baxter explained to the applicant that a resolution memorializing this approval be placed on the next meeting agenda.

Fire Official's Request to Add Fire Form to Board Application

Mr. Mullen – the Fire Official is requesting that we add a Fire Form to our applications.

The board reviewed the fire form and discussed some of the questions that they had with the form. The board requested that the Board Engineer discuss this form further with Fire Official.

The Board did not have a problem with adding this form but wanted the form to be modified to be less confusing to an application.

Approval of Minutes:

Mr. Kutosh offered a motion to approve the May 7, 2009 Zoning Board Minutes, seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Anthony, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSENT: None

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Ms. Tierney offered a motion to adjourn the meeting, seconded by Mr. Fox and all were in favor.

The meeting adjourned at 8:55 P.M.

Carolyn Cummins, Board Secretary