

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
June 5, 2014**

Meeting Location: Highlands Elementary School, 360 Navesink Ave., Highlands

Mr. Braswell called the meeting to order at 7:42.

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

Mrs. Cummins 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. Knox, Mr. Gallagher, Mr. Mullen, Mr. Braswell, Ms. Pezzullo, Ms. Ziembra, Mr. Fox

Absent: Mr. O'Neil

Late Arrival: Mr. Kutosh arrived at 7:51 p.m.

**Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer**

New Business

Review Application and set hearing date:

**ZB#2014-11 Williams, Ellen
359 Shore Drive, Block 103 Lot 9**

**Present: Ellen Williams
Chris DeLuco, Contractor**

The Board discussed the following with applicant:

1. The 2nd quarter sewer bill is outstanding, and that needs to be taken care of;
2. Need to bring photos to next meeting;
3. Photos to approximate the size of the house;
4. Plot plan of prior structure;
5. Seems to be the same footprint but off the property line;
6. The shed is gone;
7. Need corrected plans;
8. Structure will be on pilings;
9. No parking. There is a 2 parking on-site required;
10. They could do parking in rear, or need a variance;
11. A-9 elevations
12. The door on the westside may change setback on that side. Will add stair to side yard;
13. Need to show stairs and dimensions on plot plan;
14. Be sure to send notice at least 10 days before, publish in newspaper. Also include in notice variances for front yard, side yard, building coverage and parking. And any other variances deemed necessary by the Board;
15. Need photos of neighbor's front yard.

Mr. Mullen offered a motion to schedule this matter for a public hearing on July 3rs. Seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Ms. Ziembra, Mr. Braswell

NAYES: NONE

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ABSTAIN: NONE

**ZB#2014-12 Markou, George
36 Shrewsbury Ave., Block 43 Lots 9 & 9.01**

Mr. Gallagher offered to put the matter on for July meeting for review, seconded by Ms. Ziembra and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Ms. Ziembra, Mr. Braswell

NAYES: NONE

ABSTAIN: NONE

Approval of Resolutions:

**ZB#2014-7 Ernst, M.
40 Jackson St/120 Bay Block47 Lot 12**

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

6/5/14

**RESOLUTION APPROVING BULK VARIANCES
FOR ERNST**

WHEREAS, the applicant, **MICHAEL ERNST**, is the owner of one property at 40 Jackson Street and 120 Bay Avenue in the Borough of Highlands (Block 47, Lot 12); and

WHEREAS, the applicant proposes to build a one-story addition to the existing residential building, in order to accommodate the new flood elevations, and to add a new driveway for the residential use fronting on Jackson Street; 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 this application at a public hearing on May 1, 2014; and

WHEREAS, the Board heard the testimony of the applicant, **MICHAEL ERNST**, and the Board Engineer, **ROBERT KEADY**; and

WHEREAS, no objectors appeared to either ask questions or voice any objection to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1 Variance application (3 pages);

A-2 Zoning denial form dated 3/24/14 with email attached;

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- A-3 12/13/13 survey, revised 12/19/13 b James J. Kuhn

- A-4 Elevation certificate by James J. Kuhn dated 12/12/13
(5 pages)

- A-5 Architect's plans by Anthony Condouris dated 3/5/14
(5 pages)

AND, WHEREAS, the following exhibit was marked into evidence as a Board exhibit:

- B-1 Board Engineer review letter by ROBERT KEADY dated 4/25/14
(4 pages plus aerial photo);

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 B-2 Overlay Zone.
2. The site currently contains two buildings, one for commercial use with residential units upstairs, and a second building for residential use only, both in the AE flood zone.
3. Because of Superstorm Sandy, the applicant proposes to add a second story to the residential building and convert the existing living space on ground level to a garage.
4. Though borough ordinances require that an addition of more than 80% of the existing structure requires variance approval, Ordinance 13-5, recently enacted by the governing body, permits pre-existing non-conforming uses to elevate their structures without the need for variance relief.
5. Here the board determines that the adding of a second story, and converting the original ground floor to garage use, is the equivalent of elevating the structure pursuant to Ordinance 13-5.
6. As a result of the creation of a garage, a driveway is needed, and the applicant requests a design waiver for the same since only one driveway is permitted if the property is under 400 feet of frontage, as this property is.
7. The Board notes that the balcony encroaches onto Bay Avenue. The Board does not approve of that situation, but takes no action with respect to it.
8. The applicants plans show compliance with the ordinance requirements regarding lot area, lot frontage, lot depth, front yard setback (except the balcony), building height, lot coverage, building coverage and floor area ratio.
9. The applicant seeks the following variance relief:

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A. Minimum side yard setback of 3.11 feet where 5 feet are required (pre-existing condition).

B. Rear yard setback of 2.88 feet where 12 feet are required (pre-existing condition).

10. The Board finds that the requested variance relief is only for two pre-existing conditions, and the requested design waiver for the second driveway (on Jackson Street) is a *de minimus* change to the existing structures and footprint.

11. The Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) have been met, as the proposed adding of the second floor for residential purposes, will promote a public purpose by taking it out of the flood plain, thereby improving community planning; plus the benefits of the variance and design waiver substantially outweigh any detriment, of which the board finds none.

12. This relief can be granted without any substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan. The board finds no detriment to the surrounding properties, nor any damage to be caused to the character of the neighborhood.

WHEREAS, the application was heard by the Board at its meeting on May 1, 2014, 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 MICHAEL ERNST to build a one-story addition to the existing residential building, and add a new driveway for the residential use is hereby approved. Variance relief for the preexisting conditions of front and side yard setbacks, and a design waiver for the second driveway, are both granted;

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

A. The applicant shall provide details for the new driveway, driveway apron and curb, and the driveway apron shall be ADA-compliant.

B. Any damages to the existing pavement, sidewalk or curb shall be repaired or replaced to the satisfaction of the borough.

C. The applicant shall verify with DEP that he is eligible for an NJ DEP permit by rule, and obtain any necessary permits.

D. Compliance with the flood elevation is deferred to the Flood Plain Officer.

E. This resolution shall not be interpreted to approve the encroachment of the balcony over the lot line onto Bay Avenue.

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

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen,
Ms. Pezzullo, Ms. Ziemba

NAYS: None

ABSTAIN: None

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Hearings on New Business

**ZB#2014-15 Davis, Robert & Cynthia
7 Seadrift Ave. Block 72 Lot 37**

Mr. Baxter stated that the notice is proper and that the Board has jurisdiction to proceed.

Sworn in: Cynthia Davis; Robert Davis; Robert Keady

The following Exhibits were offered on the record:

- A-1 Variance application, 3 pages;
- A-2 Zoning Officer's denial email;
- A-3 Location Survey dated 5/1/13 by Richard Stockton;
- A-4 Plot Plan dated 4/15/14 by Richard Stockton;
- A-5 Preliminary construction plans, 3 pages, prepared by John Hyrsi;
- A-6 Photo of house.

B-1 Board Engineer letter dated 4/25/14.

Mr. Davis offered the following testimony:

The original intention was to renovate the house and add a 3rd floor. When the demolition was started, it was discovered that basically everything was not even close to code. The floor joists were undersized, or some were broken, pipe issues. It got to a point where nearly every part of the house would need to be replaced rather than renovated.

Mrs. Davis stated that the only difference in the footprint is the height.

The new footprint is identical to the old. The only difference is the height.

Mr. Keady stated that he wants to make some revisions, maximum building height proposed is now 34 feet and the building coverage is slightly higher, 49.8%.

Mr. Baxter explained the variances in the Board Engineer's letter and discussed same with the Board and the applicants.

Mr. Davis stated that the rear deck is the same as the old deck on the 1st floor with no roof, the new construction is to code and they are raising to comply with regulations. There will be two spaces for off street parking.

Ms. Davis stated that the deck will be 12 deep by the width of the house. The original deck was deeper and attached to the bulkhead.

Mr. Mullen stated that he is reluctant to grant a variance for the height when buildings are so close to one another.

Mr. Davis stated that as long as he builds to code, he would be required to have some fire regulations on the side walls. He did not include windows on the side close to other property.

Mr. Mullen: If you are building to code, regardless of how close you are to the property line, it doesn't have any impact on the neighbor?

Mr. Davis: As long as it is to code, that's correct.

Ms. Davis stated that there is one neighbor and the other side is a vacant lot.

Mr. Mullen: When asking for variances, there should be some basis for wanting those. Building a home and keeping the same footprint has traditionally been something the Board has

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approved. But asking for additional floor area, a taller building, there has to be some justification, some basis to say that it is a good idea.

The Board discussed variances with applicant.

Mr. Keady: The zoning table is incorrect. It says the height is 34 feet being proposed, and if you look at the architectural drawings and calculate the building height, it's actually 33 feet.

The Board briefly discussed height.

The Board opened the floor for public questions.

Colleen Flynn questioned the height.

Mr. Baxter stated that there is no precedent.

Mr. Mullen stated that if an applicant is adding an addition to a house that exceeded ordinances, they would have to come for a variance.

The Board opened the floor for public comments.

Colleen Flynn, 9 Seadrift Ave. – she feels this house is too big and is concerned with fire safety.

Ms. Ziemba: On that street, are all the houses the same height?

Ms. Flynn described neighboring houses (inaudible)

The Board questioned Ms. Flynn regarding the size of her structure.

Mr. Keady described O-13-5 height ordinance.

The Board took a brief recess while Mr. Baxter and Mr. Keady reviewed O-13-5.

Chris Francy, 36 Fifth Street – He was a part of the Commission to set the Ordinance. There was no intention to eliminate the 2½ foot bonus.

The public comment portion is closed.

Ms. Pezzullo asked the applicant to reduce the height by six inches. She is concerned about the height and wind.

Mr. Davis stated that he is building to code.

Mr. Gallagher offered a motion to approve the application seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Ms. Ziemba, Mr. Braswell

NAYES: Mr. Mullen, Ms. Pezzullo

ABSTAIN: None

**ZB#2013-15A Olivera, P. & N.
14 Seadrift Ave. Block 77 Lot 4**

Present: Arnen McOmber, Esq.
Greg Waga, R.A.AIA
Mr. & Mrs. Olivera

Mr. Baxter stated that the notice is proper and that the Board has jurisdiction to proceed.

- A-1 Variance, 7 pages;
- A-2 Foundation location survey, 2 pages;

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- A-3 Zoning officer letter dated 4/7/14;
- A-4 Architect plans by Waga Ent., dated 7/31/13, revised 5/22/14.

- B-1 Board Engineer's letter dated 5/29/14;
- B-2 Zoning Board resolution dated 1/2/14.

Mr. Armen: Seeking to amend the approval granted by the Board on January 2nd, 2014. The applicant received approval at that time to construct a new single-family dwelling, consistent with the requirements, which they are in the process of constructing right now.

Unfortunately, due to a failure to communicate, the structure that has been built does not precisely match that which was approved by the Board. Part of the issue, the zoning table and the plans didn't match up precisely. Although that was corrected in the Resolution, when they built the structure, the facts on the ground did not match up with what was approved by the Board.

For example, my clients were approved for a minimum side yard setback on one side of 3.08 feet and on the other side a 5.37 feet. Where the zoning table on the original plan showed 4 feet and 4.6 feet, respectively. We are here to seek approval for this deviation. I think, in most cases, it's a very small deviation.

I will note that the lot coverage will not change, it will be consistent with what was approved. The building coverage will actually be less than what was approved in January.

The only major difference is that my clients were seeking to put a deck on the structure, which is not in the original plans.

Mr. Keady: In his letter of May 29th, the first page, disregard #5 and 6. With regard to page two, based on discussion under the prior application, the requirement for height is 32½. He calculated that the height the applicant is proposing is approximately 30.67 feet, therefore there is not a height variance for this application.

The differences from the prior approval to what is being proposed, there is a front yard set back variance approval for 9.25 feet, they are seeking 8 feet. Secondly, there is a side yard set back variance of 3.08 feet on one side, 5.37 feet on the other side. The applicant is proposing 4 feet on one side, but on the other side they are seeking 4.33 feet, approximately 1 foot additional.

The Board discussed the various dimensions.

Gregory Waga was sworn in and provided the following testimony:

1. Described his professional background;
2. The reduction of the side lot lines does not change the wall construction fire codes.
3. There is no impact on the neighboring homes in terms of the fire rating, etc,

Mr. Oliveira was sworn in and provided the following testimony:

1. Val Sazinski came out and surveyed the lot. Also staked the property, and doubled checked everything. Mr. Owns measurements were not measuring because he was going off a different table. He used the figures that were on the plans that were submitted.

Mr. Kutosh questioned why this was not verified before the house was built.

The Board briefly discussed the survey and construction and the zoning tables.

Mr. McOmber stated that construction was not started without permits.

Ms. Ziemba: Was the first stop work order ignored?

Mr. Oliveira: No, because he was never given the notice. His contractor was away, he never got the notice. The stop work order that he got was when he went into the office to resolve issues, and he was then handed the two stop work orders.

Ms. Ziemba: Was there something on the building?

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Mr. Oliveira: He stated that when there was a red sticker, there was also police tape across his property.

Mr. McOmber: Stated that he sought permission with the Borough Attorney to have applicant waterproof the house.

Ms. Ziemba: There were two work orders and the first one was issued before the foundation and framing were complete.

Mr. Baxter read into the record an email from Dale Leubner dated 4/21/14, to the Borough Attorney.

“Basically, the applicant received Board approval to construct a house with specific setbacks. He started construction without building permits or flood plan approval and was issued a stop work order by the building official. He ignored that and continued to complete the foundation, framing, sheeting and windows. He then submitted a foundation location plan which showed that he constructed the house approximately one foot closer to the neighboring property line, and closer to the street than approved. I denied the foundation location plan, and requesting that he return to the Zoning Board for further action. I attach a copy of my letter.”

Mr. McOmber: I apologize on behalf of the applicant for any procedural issues or problems with the builder. Since I have represented them, they have done nothing but seek my advice in doing things the right way. I can't tell you how this got so messed up.

The Board discussed A-3, from previous case, dated 12/5/13.

Mr. McOmber asked that the Board not punish the applicant for a builders mistake. Kindly grant the variance.

Mr. Keady stated that the house is essentially the same, the zoning table that was provided was different than what the architecturals showed.

Mr. McOmber apologized on behalf of the applicant.

Mr. Gallagher thanked Mr. McOmber, and stated he was offended by Mr. Owen's conduct in not complying with the survey stakes and starting the work without a permit. If he had the authority to come down on him, he would. This application is an improvement from the last application. The applicant should not be penalized for the sins of the contractor.

The Board opened the matter for public questions/comments.

Claudette D'Arrigo – 12 Seadrift. She is affected by the 1 foot difference. The contractor issues caused a hardship for her. There were workers were urinating on her property. She installed security cameras. She is in jeopardy of losing her insurance due to windows and distance of his house. The insurance company wants fire sheathing installed.

Mr. Greg Waga, AIA – the original did not have windows. He will visit the site and come up with a proper conclusion.

Mr. McOmber stated that they will make that a condition of approval.

The Board took a brief recess.

The Board moved to continue the meeting passed 10:00 and all were in favor.

Mr. McOmber stated that they will comply with insurance issues and will work with neighbors to resolve the issues.

Mr. Braswell stated that the Zoning Board does not have the jurisdiction on codes but will point out problems in Resolution.

Mr. McOmber stated that they will have amended plans for windows as a condition of approval. The plans show fire safety.

The Board continued to questioned mistakes within the project.

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Ms. D'Arrigo asked to make sure that the windows meet the code.

Mr. Gallagher wants the site inspected by the Board Engineer and A.I.A.

Barbara Ianucci – 28 Shrewsbury – Have there been any inspections?

Mr. Oliviera: Mr. Vitale approved the framing, the sheath roof, and the windows. There is a delay with fire-proofing on the sides.

Mr. Baxter: Has a building permit been issued for this property?

Mr. Oliveira: I think so. He let the contractor handle everything.

Mr. McOmber: While we are anxious to finish this process and begin building again, there are some unanswered questions. He wants the Board to be comfortable voting on this application. He requests that the Board carry this matter to the July meeting.

The Board discussed leaving the public portion opened and continued to the next meeting without notice.

Mr. McOmber does not object to continue the public portion to the next hearing.

Mr. Gallagher offered a motion to carry application to the July 3rd meeting, seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2014-8 Gates, Gerald
20 Cornwall Street Block 52 Lot 19**

**Present: Gerald Gates, Applicant
Joseph Gates, A.I.A.**

Mr. Baxter stated that the notice is proper and that the Board has jurisdiction to proceed.

- A-1 Variance application, 3 pages;
- A-2 Zoning officer denial letter dated 4/10/14;
- A-3 Plot Plan, 4/22/14, 1 page;
- A-4 Plan of Survey, Anthony Romeo dated 12/15/06;
- A-5 Architect plans dated 4/30/14 and revised 8/14;
- A-6 8x11 picture, 4 photos each page;
- A-7 8x11 picture, 4 photos each page;
- A-8

- B-1 Board Engineer review letter dated 5/29.

Mr. Joseph Gates was sworn in and provided the following testimony:

He briefly described A-6 and A-7. He stated that he wants to save the tree.

Mr. Gates stated that he is a licensed architect in the State of NJ.

Mr. Gerald Gates was sworn in and provided the following testimony:

1. Home damaged by the storm. He wants to make a nice house.
2. He wants to put the house on pilings with lattice work.
3. There will be parking on-site, 2 spots.

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4. The old house is still there and will be demolished.

Joseph Gates stated to following:

1. There is an existing garage. If the house shifts to the right it blocks access to back yard.
2. They will match the footprint of existing footprint.
3. The house is 58 square feet larger.
4. There will be no deck off the rear of the house, there will be stairs.
5. The garage and driveway are existing and are not changing.
6. Described the proposed layouts and reasons.
7. The house will be to code and flood compliant.
8. The average front yards are about 5 to 8 feet.
9. The house will have a vertical height of 29 feet.
10. There will be storage under the house.

Mr. Gerald Gates stated that the location of the house will be the same.

11. Feels that the design is a positive look, in line with neighborhood.

Mr. Gates and the Board discussed plot measurements and parking.

The Board opened the matter for public hearing. There were no public questions or comments.

Mr. Gallagher offered a motion to approve the application, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo,
Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2014-10 Gauthier, Florence
1 Private Road Block 56 Lot 11**

Present: Florence Gauthier
Dee Grover, Granddaughter
Chris Grover, Builder

Mr. Baxter stated that the notice is proper and that the Board has jurisdiction to proceed.

- A-1 Variance application, 3pages;
- A-2 Zoning Officer Denial and email, dated 4/10/14;
- A-3 Plot Plans, Richard Stockton, dated 5/28/14;
- A-4 Architect plans, Paul Damiano, dated 4/10/14, 4 pages;
- A-5 Section of tax map.

- B-1 Board Engineer review letter dated 5/29/14, 5 pages including aerial.

Mr. Baxter explained the application with regard to the building, variances and measurements.

Mr. Keady stated that the building is on the lot line and stated that that the proposed will be an improvement.

Chris Grover was sworn in and provided the following testimony:

The house is in total disrepair. Need to bring house up to code and on the property. New building will be slightly smaller. It is an improvement. There needs to be easy access for grandmother to gain entrance. They want to make a cute cottage.

Mr. Keady: There is no room for a dumpster. Any damage to other properties must be repaired.

Florence Gauthier and Diana Grover were sworn in.

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The Board opened the matter for public hearing.

Tony Catalano was sworn in – questioned the 6 inch setback, is that from the gutter on the house or from the foundation?

Chris Grover stated it is 1 inch from gutters. The gutters run out to Private Road.

The Board briefly discussed the gutters.

Mr. Baxter stated that the Board can't approve gutters on another property.

Mr. Grover will make sure that the gutters do not go over the property line.

Mr. Keady stated that the gutters cannot exceed beyond the property line.

Mr. Doug Card was sworn in – 28 Shrewsbury – He stated that Mr. Grover built his house and he does not take shortcuts.

Mr. Mullen offered a motion to approve the application, seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo,
Ms. Ziemba
NAYES: None
ABSTAIN: None

Approval of Minutes

Mr. Gallagher offered a motion to approve the May 1st, 2014 meeting minutes, seconded by Mr. Knox and all were in favor.

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Communications

Colby Application

Mr. Baxter stated that Mr. Colby was going to decide whether to come back or not. We have not heard from him and it was not on tonight's agenda. It is suggested that it be listed for the next meeting for review or dismissal.

Offered by Mr. Mullen and seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Know, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo,
Mr. Braswell
NAYES:
ABSTAIN:

Mr. Gallagher offered a motion to adjourn the meeting. Seconded by Mr. Knox and all were in favor.

The Meeting adjourned at 11:08 P.M.

Carolyn Cummins, Board Secretary
