

**BOROUGH OF HIGHLANDS  
PLANNING BOARD  
REGULAR MEETING  
MAY 10, 2007**

Mr. Stockton called the meeting to order at 7:33 P.M.

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

Mr. Stockton 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 Planning 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. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Bahrs,  
Mr. Schoellner, Mr. Nolan, Mr. Stockton

**Absent:** Mr. Harrison, Mr. Cefalo

**Also Present:** Carolyn Cummins, Board Secretary  
Jack Serpico, Esq., Board Attorney  
Catherine Britell, P.E., Acting Board Engineer

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**PB#2007-2 Everclear Development, LLC – Request for Postponement to June 14<sup>th</sup>  
Block 60 Lot 7 – Shore Drive**

Mr. Stockton stated that the Board received a letter from the applicant requesting a postponement of this hearing to the June 14<sup>th</sup> meeting.

Mr. Manrodt offered a motion to reschedule the Public Hearing on this matter to the June 14<sup>th</sup> meeting, seconded by Mr. Kovic and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Bahrs,  
Mr. Schoellner, Mr. Nolan, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

Mr. Stockton advised the public that the Everclear Development matter has been carried to the June 14 Meeting.

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**Resolution Approving Amendments to the By-Laws**

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

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Mr. Mullen offered the following Resolution and moved on its adopted

**RESOLUTION  
APPROVING BOROUGH OF HIGHLANDS  
PLANNING BOARD BY-LAWS**

**WHEREAS**, N.J.S.A. 40:55D-8 provides that a municipal agency shall adopt rules of procedure consistent with the provisions of the Municipal Land Use Laws (MLUL); and

**WHEREAS**, the Planning Board of the Borough of Highlands has reviewed existing Planning Board By-laws at its Meeting of March 8, 2007; and

**WHEREAS**, the Planning Board made recommendations at its March 8, 2007 meeting for amendments to the Planning Board By-Laws and that they be adopted.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Highlands Planning Board that the By-Laws Governing the Highlands Planning Board, which are attached hereto are hereby adopted as amended and are made the official rules and regulations of the Borough of Highlands Planning Board.

**BE IT FURTHER RESOLVED** that a copy of said By-Laws be on file with the Secretary of the Borough of Highlands Planning Board.

**BE IT FURTHER RESOLVED** that a copy of the within By-Laws be made available to the public for an appropriate fee as per the Borough of Highlands photocopying fee.

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

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. Bahrs, Mr. Nolan, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

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**PB# 2007-3 Claddagh of Highlands, LLC  
Block 82 Lots 6.01 & 1.01 – 297 Bay Avenue  
Hearing on New Business**

**Present:** Kevin Kennedy, Esq.  
Ara Jamgochian of Claddagh of Highlands

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**Conflicts: Mr. Stockton and Mr. Bahrs both stepped down for this matter.**

Mr. Kennedy – we are here for the property located at 297 Bay Avenue also known as Block 82 Lots 1.01 and 6.01. We are here tonight seeking amended site plan approval. What the applicant is looking to do is to place five tables and twenty chairs on an existing concrete patio. We are not seeking approval to pour any concrete, the patio is there and we would like to place the tables and chairs there. His client will testify as to the two main reasons for doing this. One is in reference to the smoking ban that took effect last April 15, 2006, essentially there is no smoking allowed in a public tavern and what happens is that when people want to go out and smoke they either go out to this existing concrete patio area or they will go out onto Bay Avenue onto the street which is not a controlled area and it doesn't look so nice. His client is also seeking permission to have these tables outside to offer another amenity to existing patrons. My client will testify that this will not be an issue that will increase business patrons. Many facilities in the surrounding area have beautiful water views and if someone is looking for outdoor dining with a view they are probably not going to come to the Claddagh establishment. However, there are occasions when there is an existing patron who might not want to sit inside the tavern on a sunny day and this will provide some limited area with which an existing patron could sit outside. The reason that we are here tonight is because the Zoning Officer reviewed a prior Board Engineer Letter which stated be mindful of the fact that any outdoor seating could change parking demands.

Catherine Britell, P.E., Board Engineer of T & M Associates was sworn in and reviewed her review letter with the board. She stated that because this application is proposing additional seats which will increase the parking requirement by five spaces. Her calculations show that the total parking demand is 35 spaces which include the requirements for the existing restaurant plus the additional outdoor seating. Based on the plans that we have it shows that they only have 18 parking spots provided, so we have asked the applicant to provide testimony on how sufficient parking will be provided. Additionally we are requesting that a barrier be constructed between the existing parking area and outdoor seating area to protect any patrons or employees in that area. We are asking the applicant to testify on the refuge and recycling collection and other standard items such as emergency vehicle access, the fire department should review the plans.

Ara Jamgochian was sworn in and stated the following during his testimony and response to questions from the board:

1. The owner of the subject property is Bay Avenue Developers, LLC and the members of that LLC are Bernard Harten and himself. Claddagh of Highlands, LLC is the applicant tonight which rents the restaurant and parking lot from Bay Avenue, LLC and the members of Claddagh of Highlands, LLC are Bernard Harten and himself.

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2. He is familiar with the application and the property and existing establishment on the subject site.
3. The property is located in the B-1 Zone and the size of the lot is roughly 11,565 square feet.
4. The property currently has a two-story structure, first floor is a restaurant/pub and the second floor has two apartments. There is a backyard which is not used for the business and a parking lot.
5. The restaurant and pub is a permitted use in this zone and has operated on the site since 1998 or 1999.
6. He described the existing uses in the surrounding area
7. They are proposing five tables and 20 chairs on the concrete patio area.
8. The two reasons for the requested outdoor seating is as a result of the smoking ban and he wants to make a safe situation verses the existing smoking area where people go out front on the Bay Avenue side. The proposed area will be a safe area away from the cars and it will have a barrier between the cars and they plan on extending the liquor license outside which he further explained. The second reason is during the summer months his business reduces because of competition with waterfront restaurants and people prefer to be outside on nice days and we are hoping that an outside area will keep the patrons from going to other places. We feel that the proposed table and chairs are just the right amount and they may not be used all of the time.
9. If this application were approved we do not anticipate an increase in our patron base, they hope to not have as many patrons not coming by the summer and fall.
10. The patio is on the west side of the building, it's an area that is approximately 17-feet wide by 50 or 60 feet long that is paved. It's an open patio the only closed area that we have is an overhang over the door.
11. There is no need to pour new concrete.
12. He stated that he submitted an outdoor seating chart with the application and stated that they chairs will be movable so that they can be taken in and out.
13. The existing patio can accommodate the proposed five tables and 20 chairs and some planters.
14. The patio area is the most appropriate place on the site for the proposed outside seating.
15. The Sugar Shack and the Driftwood Liquors have outdoor seating.
16. Illumination – the area is already well lit however they may put some mood enhancing lights at night.
17. Buffering – they are working with their insurance company and the fire department to have some kind of barrier so that a car does not cross the barrier and hit a patron.
18. They are looking for approval to have the outside table and chairs on a year long basis.
19. Limited outdoor dinning would occur during the warm months but the smoking aspect of the area would be year round.
20. There is no anticipation of a need to hire additional employees as a result of this application.

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21. Maintenance – we have a daily clean up outside at least once a day.
22. Garbage – they will use the same garbage facility that they have so there is no change.
23. Parking – the patron's park in the 18 spaces in the parking lot, they also park in front and side streets and people do also walk to restaurant. The parking has been sufficient for his needs except for unusual occasions such as St. Patrick's Day.
24. If the application is approved it will not change his parking needs because he does not anticipate an increase in patrons.
25. He read the Fire Official Memo dated April 30th and will comply with those conditions.
26. If the application is approved we would want to do it as soon as possible because summer is coming.
27. The outdoor area may be covered with umbrellas and or something other than that.
28. There will be no heating outside.
29. There will be no outdoor music other than some speakers on low volume.
30. He does not intend to use this area as an entertainment area.
31. The peak operation is on Friday and Saturday nights.
32. There are no plans at this time for a tiki bar.

Mr. Manrodt stated that most of the patrons that will use the outdoor seating are smokers so the applicant is not creating any parking problems.

Mr. Kovic asked if there were any questions from the public.

Bill Iler of 112 South Linden Avenue – stated that the applicants are very good neighbors but it does get noisy at night and there have been some fights. He wanted to know if they will serve food and drinks outside and will there be music. He requested that the applicant put some kind of canopy up and a solid fence around the area.

Mr. Jamgochian explained that there that they are planning on creating a visual barrier. He does expect patrons will be dining outside mostly during the day as far as night they really don't serve food late at night. He does not plan on having entertainment outside, just speakers on low volume. Some day he will do an awning over the outdoor seating.

Cortenze \_\_\_\_\_ of Huddy Avenue - she is the owner of a six family structure that is next to the Claddagh and currently there is a see through fence and wants to know if they plan on installing a new fence. She also questioned the smoking ban law.

Mr. Jamgochian – we had no plans to change it, just to repair it but we have no objections to having a solid fence if necessary.

There were no further questions from the public.

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Mr. Kovic asked if there were any comments from the public.

Paul Hess of 255 Shore Drive asked if there was any noise ordinance because he is concerned about the noise.

Mr. Jamgochian – there will be no speakers outside that are hooked up to the music inside.

Mayor O’Neil stated that there is a noise ordinance.

Hortense Senakis of 83 Huddy Avenue was sworn in and expressed her concerns of the proposed outdoor seating.

William Iler of 112 Linden Avenue was sworn in and stated that she was not clear if the board would impose a requirement of a new fence and canvas to be installed.

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

The Board discussed the application.

Mr. Mullen stated that the installation of a canopy is a good suggestion, the fence that borders the Hortense property should be a solid fence, there will be no service bar outside, speakers will comply with Borough Noise Ordinance, additional lighting may be needed and must be directed onto the tables not the neighbors.

Mr. Kovic stated that he would want to see a fixed canopy on the outside patio area.

Mayor O’Neil offered a motion to approve the application, seconded by Mr. Nolan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:**           **Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O’Neil, Mr. Schoellner, Mr. Nolan**

**NAYES:**       **None**

The Board had a discussion about the requirement of the applicant to pay a fee for a parking deficiency of five parking spaces.

Mr. Kovic offered a motion to amend the approval to add the condition that the applicant comply with the parking deficiency ordinance and pay for five spaces, seconded by Mr. Nolan and approved on the following roll call vote:

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**ROLL CALL:**

**AYES:**        **Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil,  
Mr. Schoellner, Mr. Nolan**

Mr. Stockton and Mr. Bahrs both returned to the meeting table.

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**PB#2006-1 Fleming, Daniel  
Block 26 Lot 12 – 127 Highland Avenue  
Unfinished Public Hearing  
8:30 P.M.**

**Present:**     **Henry Wolffe, Esq.  
Dan Fleming  
Ted Maloney, P.E., P.P.**

**Conflict:**    **Mr. Kovic and Mayor O'Neil both stepped down**

Mrs. Cummins stated that there are three affidavits from Mr. Bahrs, Mr. Nolan and Mr. Schoellner stating that they have listened to the meeting tapes and are now eligible to vote on this matter.

The following board members that are present tonight and are eligible to vote on this matter are:

Mr. Manrodt,, Mr. Mullen, Mr. Bahrs, Mr. Schoellner, Mr. Nolan, Mr. Stockton

Mr. Wolffe stated that he will pretty much start from the beginning because it's been a long time since the last hearing.

The following exhibits were marked into evidence:

- AA-1: Drawing on large board dated 5/10/07;
- AA-2: Subdivision & Grading Plan, two Sheets dated 4/30/07;
- AA-3: Minor Subdivision Plan on large board;
- AA-4: Photos on a board of the neighbors;
- AA-5: Photo on board.

Joseph Edward (Ted) Maloney, P.E., P.P. of Charles Widdis & Associates was sworn and stated the following:

1.     He prepared the revised plans dated April 30, 2007.
2.     He described Exhibit AA-1 and stated that the property slopes from Bay Street easterly toward Highland Avenue.
3.     The property is a residential through lot located between Highland Avenue and Bay Street.

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4. Currently there is an existing two-story framed dwelling located in the middle of the existing lot. The existing lot which is known as lot 12 is 11,407 square feet and it has an existing two-story single family dwelling with a driveway access to Highland Avenue, the lot frontage is 58 feet, the lot depth is 185 feet and the building coverage is 7.4%.
5. The location of the of the existing dwelling has a side yard deficiency setback of 4.8 feet and which is tied to lot 11.02.
6. The applicants are proposing to subdivide the lot and the property line would be down the middle of the lot and they are proposing to move the existing house easterly toward Highland Avenue and construct a new house on the westerly part of the tract which would be proposed lot 12.02 and the existing house would be on proposed lot 12.01 and a new driveway would be constructed on that lot.
7. The two new lots will be conforming lots. Proposed lot 12.01 will be 6,179 square feet, lot 12.02 will be 5, 524 square feet.
8. The two proposed lots will both require lot depth variances where 100 foot lot depth is required and 91.55 feet for lot 12.01 and 93.43 feet for lot 12.02.
9. Drainage issues he deferred to his grading plan which shows stormwater management which he is proposing and described.
10. Currently the water runoff is uncontrolled and the proposed is a decrease in runoff which he further explained.
11. The slope on lot 12.02 is an existing 38% and the slope on proposed lot 12.01 is flatter approximately 10% -14%. There are steeper slopes on surrounding properties.
12. Proposed lot 12.01 will have a blue stone driveway and there will be parking provided underneath the structure a two car garage.
13. Proposed lot 12.02 they are proposing graveled pull off parking of 3 angled parking spaces, there is no proposed garage for lot 12.02.
14. He described Exhibit AA-3 describing surrounding lots describing the slopes.
15. There are bulk variances required for lot depth for both lots which are fairly minor variances from the requirement. Proposed lot 12.02 requires a steep slope variance which he further described as a the slope on the north side is 38% and in the center is 38% and the southerly property line is approximately 33% which exceeds the maximum slope requirement of 35%.
16. At time of construction of the building and retaining wall the applicant is planning on having the entire site and wall certified by a Geotechnical Structural Engineer which is not his area of expertise. In looking at the adjacent properties and homes built on the same slopes he would say that a foundation could be constructed and designed to support both the hillside and the structure itself which he further explained.
17. On proposed lot 12.02 there are several places where the wall steps down and fences are proposed around the parameter of the walls.
18. He described exhibit AA-4 which are photos of the houses that have been built on neighboring properties which are on slopes.
19. He described exhibit AA-5 which are photographs of subject property and adjacent properties.



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20. On proposed lot 12.01 they will be moving the existing house away from the property line. On the boarder of the property there is a sanitary sewer easement to service proposed lot 12.02.

21. He reviewed the May 9<sup>th</sup>, 2007 Planning Board Engineer letter and he stated that with regard to the comment of the stability of the slope according to his calculations they are only approximately 15 to 16 feet away from the 36% slope, its not quite 50%.

22. With regard to the stability of the slope and the proposed construction he doesn't feel that it causes any problems with the adjacent properties and it is there intension to have Geotechnical information done by a Geotechnical Engineer to ensure the structural stability.

23. In his opinion based on the adjacent properties and the similarities of the slope and the structure built there that a structure can be built in the rear part of this tract; however he is not preparing those calculations and submitting those at this time but it is his opinion that it can be done.

Ms. Britell - the slope line if taken perpendicular to the grade comes up at 50%.

Mr. Maloney agreed with Ms. Britell.

Mr. Maloney continued his testimony as follows:

24. He discussed the slope percentage of different contours with the Board Chairman and Engineer.

25. With regard to the 10 foot wide sanitary sewer easement, the RSIS requires a 20 foot easement for a sanitary sewer main and this is a 4 inch lateral so he believes that 10 feet is sufficient room to repair.

26. With regard to height the applicant will conform to all height requirements but will look to determine the height of the existing structure to see if it complies on proposed lot 12.01. On proposed lot 12.02 there are no architectural plans, it will be 4 levels with a flat roof and will meet the height requirements.

Mr. Mullen – why can't you provide testimony about this specific building on this site specifically the stability.

Mr. Serpico advised Mr. Maloney that if this is an application for a generic subdivision then you can't reference to the number of stories. If you are going to tell us then go all the way or don't tell us at all.

There was a discussion about this being an application for a generic subdivision.

Mr. Mullen – if they are asking for relief from our steep slope ordinance then don't we need something to base that relief on.

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Mr. Serpico – yes, the board engineer has to be satisfied that the topography and the slope can support the structure.

The board had a discussion with Mr. Wolffe about how to proceed with this application.

The Board requested that the applicant provide a report of testing of the disturbance to show the positive and negative criteria of the disturbance.

Mr. Wolffe – that would require a Geotechnical Engineer and that will bring us back to the board so schedule us for 60 days to continue and the applicant approves of an extension of time for the board to act.

Mr. Nolan offered a motion to carry this matter to the July 12, 2007 meeting with no further public notice, seconded by Mr. Bahrs and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Manrodt, Mr. Mullen, Mr. Bahrs, Mr. Schoellner, Mr. Nolan,  
Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

Mr. Stockton advised the public that this matter has been carried to out July 12 Meeting without any further public notice.

The Board then took a brief recess at 9:23 P.M.

Mr. Stockton left the meeting for the night.

Mayor O’Neil and Mr. Kovic returned to the meeting table.

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**PB#2006-3 Catsaros, Gregory  
Block 14 Lot 3.01 – 30 Grand Tour  
Request for 2<sup>nd</sup> Extension of Time to Perfect Subdivision**

Mr. Kovic called the meeting back to order.

Mrs. Cummins explained that this is a second request for an extension of time to perfect their subdivision for 90-days.

Mr. Mullen offered a motion to approve an additional 90-day extension of time for Catsaros, seconded by Mr. Nolan and approved on the following roll call vote:

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**ROLL CALL:**

**AYES:** Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Bahrs,  
Mr. Schoellner, Mr. Nolan  
**NAYES:** None  
**ABSTAIN:** None

**The Planning Board will adopt a Resolution for the time extension at the next meeting.**

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**Review of Ordinance O-07-07 Zoning Amendment Ordinance**

Mr. Manrodt stated that he has a conflict on this matter and therefore he stepped down.

Mr. Nolan stated that the property owner came to the Governing Body to ask for the same zoning as the adjacent zone of Eastpointe Condos.

Mr. Mullen – and moving it to the Planning Board is to review to see if it is consistent with the Master Plan?

Mr. Serpico – yes, its standard for review of any zoning ordinance is that the board looks it over in conjunction with the Master Plan to see that it is consistent or not. Whether it is or not it must identify those inconsistencies. The Governing Body can accept or reject the board's comments.

The Board had a discussion about obtaining a Professional Planners advice on this matter.

Mr. Mullen offered a motion to have a Planner review the ordinance and to prepare a report on it but this motion was not seconded by another board member.

Mr. Kovic offered a motion carry this matter to the June 14<sup>th</sup> meeting for a vote without the need for a Professional Planners review, seconded by Mr. Bahrs and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Bahrs, Mr. Schoellner,  
Mr. Nolan  
**NAYES:** None

Mr. Serpico stated that he will prepare a generic resolution which can be adopted at the next meeting.

Mr. Serpico advised the board that this matter has been carried to the June 14<sup>th</sup> meeting.

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Lori Dibble of Paradise Park asked how a challenge would work when Eastpointe is the property owner within 200 feet.

Mr. Serpico directed her to the Borough Attorney.

Unidentified Woman made comments about the ordinance and Mr. Serpico advised her that it was inappropriate to comment at this time.

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**Approval of Minutes**

Mr. Mullen offered a motion to approve the April 12, 2007 minutes, seconded by Mr. Schoellner and all eligible members were in favor, Mr. Nolan abstained.

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Mayor O'Neil offered a motion to adjourn the meeting at 9:43 P.M., seconded by Mr. Nolan and all were in favor.

The meeting was called back to order at 9:43 P.M.

**ROLL CALL:**

**Present: Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Bahrs, Mr. Schoellner,  
Mr. Nolan**

**Absent: Mr. Manrodt, Mr. Stockton, Mr. Harrison, Mr. Cefalo**

**Also Present: Carolyn Cummins, Board Secretary  
Jack Serpico, Esq., Board Attorney  
Catherine Britell, P.E., Acting Board Engineer**

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**PB# 2005-2 Johnson, William  
Block 40 Lot 5 – 78 Navesink Avenue  
Approval of Subdivision Deeds**

Mr. Serpico – on the Johnson subdivision deeds as he has explained in the past the decision of the boards denial was reversed so the board has to sign off on the deeds. However, in discussions with the board engineer the applicant must comply with the usual conditions of approval which will be put on the record via a resolution at the next meeting.

Ms. Britell stated that the conditions for signing the deeds are as follows:

1. The plan should show the number of trees to be removed as part of the resolution as per T & M letter dated March 7, 2006, Item A-5.

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2. Item C-2 retaining wall issues – the wall doesn't have a fence or other approved barrier on top as required, so that applicant shall address this matter.

3. Item C-3 which is uncertain as to which loads will be on the retaining wall therefore one of two things should happen. (1) The applicant should submit wall design calculations for surcharge load of 240 pounds per square foot. (2) Or a deed restriction should be placed on lot 5.02 restricting the building or structures for parking within the six feet from the back of the wall.

Mr. Serpico stated that he will prepare a resolution detailing these conditions.

Ms. Britell stated that she has reviewed the deed descriptions and she finds them to be acceptable.

Mr. Mullen offered a motion to adjourn, seconded by Mr. Nolan and all were in favored.

The Meeting adjourned at 9:47 P.M.

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**CAROLYN CUMMINS, BOARD SECRETARY**