

THE CHARTER TOWNSHIP OF HARRISON
HARRISON TOWNSHIP, MI 48045
ZONING BOARD OF APPEALS MINUTES
TUESDAY, JULY 8, 2008
APPROVED ZBA MINUTES – AUGUST 12, 2008
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A regular meeting of the Charter Township Zoning Board of Appeals was held on Tuesday, July 8, 2008 at 7:00 P.M. at Rosso Memorial Hall located at 38255 L'Anse Creuse Road, Harrison Township, Michigan 48045.

A. CALL MEETING TO ORDER:

Meeting was called to order at 7:05 p.m.

ROLL CALL:

MEMBER:	LAWRENCE MISLINSKI	Present
VICE CHAIRMAN:	JAMES SENSTOCK	Present
MEMBER:	WILLIAM SERVIAL	Present
MEMBER:	JAMES ULINSKI	Absent – Excused
MEMBER:	KENNETH VERKEST	Present
SECRETARY:	MARIA ZINGAS	Present
CHAIRMAN:	ARCHIE LYTLER	Present
ALSO PRESENT:	ROSEMARY DAVIS	Township Attorney
	CYNTHIA CHAMBOS	Recording Secretary

B. APPROVAL OF AGENDA:

Member Mislinski would like the agenda to reflect a restricted time limit of 11:00 p.m. for this meeting.

Motion by Member Mislinski supported by Member Senstock to approve the agenda as amended.

Ayes: 5 Nays: 0 Motion Carried.

C. APPROVAL OF MINUTES: June 10, 2008

Motion by Member Zingas supported by Member Mislinski to approve the meeting minutes of June 10, 2008 as presented.

Ayes: 5 Nays: 0 Motion Carried.

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D. HEARINGS AND REVIEWS:

- 1) **Case #06-08-ZBA:** **Brian Spinkowski – Petitioner**
37941 Mast, Harrison Twp, MI 48045 (Zoned R-1-C)
Point Rosa Subdivision No. 5, South 58' of Lot 212 and North 52' of
Lot 213, Harrison Twp, MI 48045
Property #0620-0063-00, Sidwell #17-12-21-354-002
Purpose of Request: Request to place Inground Pool in Side Yard.

Mr. Brian Spinkowski – 37941 Mast: Mr. Spinkowski is requesting to put an inground pool in his side yard.

Chairman Lytle questioned whether or not the shed was going to stay or come down to which the applicant stated the shed will be remaining where it is.

A brief discussion ensued between Board members and the applicant relative to front yard setbacks, side yard setbacks, if fencing would be provided, type of fencing, possible shrubbery or landscaping and type, existing fencing to canal, and changes to variances.

Rosemary Davis, Township Attorney, read to the Board the paragraph on the advertised notice that explains and gives the Board the power to make changes to the variances being requested – either added or deleted – as per the new Michigan Enabling Act.

Mr. Spinkowski stated the reason for the pool is to spend more time together as a family as they do not travel in the summer and they use their boat, which is moored behind the home on the canal, as a floating cottage; but, with gas prices the way they are, they don't take the boat out much, and they would like to be able to spend some quality time together as a family unit. They could do this with a pool. It would be like being on a vacation.

Chairman Lytle asked if there was any public comment on this case and hearing none closed the public comment section of this case and brought it back to the Board for further discussion or motion.

Motion by Member Mislinski supported by Member Servial to approve Case #06-08-ZBA, Brian Spinkowski – Petitioner, 37941 Mast, Harrison Twp, MI 48045 (Zoned R-1-C), Point Rosa Subdivision No. 5, South 58' of Lot 212 and North 52' of Lot 213, Harrison Twp, MI 48045, Property #0620-0063-00, Sidwell #17-12-21-354-002, Purpose of Request: Request to place Inground Pool in Side Yard, subject to the following:

- 1) **Grant the inground pool in the side yard.**
- 2) **The hardship being the size of the lot, contingent upon the petitioner putting adequate fencing around his yard within the building setback, not requiring any other variances.**
- 3) **Grant a six (6') foot front yard variance to address the existing condition of the house.**

Member Servial requested to have the vegetated screening across the front of the pool included in the motion.

Member Mislinski stated that the petitioner is not required to do that, just whatever fencing is required. If fencing is required to be screened, then that's in the motion. No variance is granted on the fencing. He's got to put up whatever type of fencing and screening that's required. That's what the intent of my motion was.

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There is no screening requirement on the pool according to Mr. Parakh. But, it's been the policy in the past because a pool is an "attractive nuisance".

Member **Mislinski** amended his motion to include proper screening on the street side which Member **Servial** supported.

<u>Roll Call Vote:</u>	Member Mislinski	Yes
	Member Servial	Yes
	Member Senstock	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

- 2) **CASE #08-08-ZBA:** **Huron Pointe Party Store – Michael Putrus – Petitioner**
29965 South River Road, Harrison Twp, MI 48045 (Zoned B-1)
Described Property – Commonly known as: 29965 South River Rd.,
Harrison Twp, MI
Property #0140-0036-00, Sidwell #17-12-16-154-014
- Purpose of Request:** (A) Requesting a front yard variance of twenty-two (22') feet from the
required twenty-five (25') foot front yard variance. Existing is three (3') feet
on South River Road.
(B) Requesting a front yard variance of twenty-two (22') feet from the
required twenty-five (25') foot front yard variance. Existing is three (3') feet
on Chart Street.

Marvin Putrus, speaking on behalf of his father, who owns the business – 29965 South River Road (1977 French Creek, Troy, MI): Mr. Putrus was available to address this project for his father. He is requesting to put a double pole sign up on the corner for better visibility.

Chairman Lytle reiterated the requests the petitioner was asking for to the audience.

A brief discussion took place among the Board and petitioner relative to the number of signs on the building already, the total square footage of all the signs up now, who approved this logo sign, (Mr. Tony Buscemi), would the petitioner be interested in a monument sign, single pole signs, and other small details related to the signage.

Member Mislinski stated that it would be in the best interest of the petitioner to come back to this Board with another proposal for a better design of the sign. A good suggestion is the design of the sign at the Speedway gas station at Crocker and Jefferson. Which, then you could add some shrubbery around it and make it look very appealing. That was his suggestion to the petitioner.

Mr. Putrus questioned if it was because of the height of the sign which Member Mislinski stated yes it was.

Chairman Lytle stated that this sign is rather large. It really sounds more like the petitioner is trying to preserve his parking lot because this is well beyond the typical setback for that area. He questioned the petitioner as to whether he had given any thought to using his green space on the back of the lot. Maybe the petitioner could put some thought into redoing his property and developing more parking towards the back of the lot. This would allow you to put your sign in a more appropriate spot on your lot and moving the green space up front.

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Mr. Putrus stated that maybe a project of this magnitude would be in the future but not at this time.

Rosemary Davis, Township Attorney, asked the Board if they have read the Planner's review comments that were presented with the package of which Chairman Lytle acknowledged that he had. She went on to state that due to the Planner's comments, that was the reason the petitioner was here at the ZBA level. It was tabled at the Planning Commission meeting.

Another brief discussion ensued among the Board members relative to the number of signs allowed on this site – square footage wise – whether the petitioner has added up all the square footage of all of his signs including the neon signs on the windows which the petitioner stated he would be willing to clean up whatever signs would have to go. This pole sign is very important to his business.

Member Zingas asked if this was the only design (referring to pole sign) the petitioner considered.

Mr. Putrus stated that they considered the single pole sign but decided that the double pole design would work better and look aesthetically more pleasing. We even designed it without the brick work but decided it would look better with the brick.

Member Servial brought up the triangular area that is not allowed which was brought up by the Planner. A three foot high brick wall would hinder the sight of a small car and that's a detriment.

Mr. Putrus: A monument sign would create the same effect.

Member Mislinski: Has anyone thought of a single pole sign adjacent to the building like on the east side of it? That way, the only issue would be the front yard setback, but the building is already encroaching, but may be a better alternative than this one presented. And, you really haven't presented why this is a hardship to the property or hardship to the land. That's what you need to show when you come to the ZBA. It would be easier to accept if it were a single pole sign adjacent to the building. I am looking for something that will be easier and more helpful to you.

A discussion ensued relative to the set back issues and optional areas where the sign could be placed along with an option to update the property with a change in the parking area. The Board would like to see the area cleaned up to keep up with the significant changes that are being done in the area and used West Marine as an example.

Member Mislinski suggested to the applicant that this case be tabled to allow the petitioner to address some of these issues that have been suggested here tonight, and allow the petitioner to come back with another updated proposal. That way, the petitioner will not have to pay another fee, if this is denied, in order to come back later with another proposal.

Mr. Putrus: You want a different design of the sign and another position of the sign?

Member Mislinski stated this was correct.

The members of the Board gave the petitioner some other suggestions to help make this look aesthetically pleasing to that corner.

Chairman Lytle asked if there was any public comment from the audience this evening and hearing none brought the discussion back to the Board.

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Member Mislinski asked the petitioner if he would like to have this tabled to allow him to come back later with another proposal which the petitioner acknowledged he would.

Motion by Member Mislinski supported by Member Senstock to table CASE #08-08-ZBA, HURON POINTE PARTY STORE – MICHAEL PUTRUS – PETITIONER, 29965 South River Road, Harrison Twp, MI 48045 (Zoned B-1), Described Property – Commonly known as: 29965 South River Rd., Harrison Twp, MI, Property #0140-0036-00, Sidwell #17-12-16-154-014, Purpose of Request: (A) Requesting a front yard variance of twenty-two (22') feet from the required twenty-five (25') foot front yard variance. Existing is three (3') feet on South River Road. (B) Requesting a front yard variance of twenty-two (22') feet from the required twenty-five (25') foot front yard variance. Existing is three (3') feet on Chart Street, subject to the following:

Table this case for a period of three (3) month to allow petitioner to come back with another proposal or proposals.

Member Senstock suggested the applicant go in front of the Tech Team and see what they suggest because what you are proposing here won't work. If you get something closer to the ordinance and meet the ordinance, you may not even have to come back here.

<u>Roll Call Vote:</u>	Member Mislinski	Yes
	Member Senstock	Yes
	Member Servial	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

3) Case #07-08-ZBA: **Garwood's Restaurant/ Bar/Marina – Tom LeFevre - Petitioner
24214 Jefferson Avenue, St. Clair Shores, MI 48080**

Property in Question: Lukas' Conger Bay Marina, 41680 Conger Bay Drive, Harrison Twp, MI
Described Property – Commonly known as: 41680 Conger Bay Drive,
Harrison Twp, MI (Zoned WF)
Property #0001-0474-00, Sidwell #17-12-10-300-002

Purpose of Request: Requesting an Appeal of Special Land Use Denied by Planning
Commission

Chairman Lytle stated that there some administrative items that need to be taken care of before we go forward with this review. For the people in the audience who are here for this, I am requesting that you be respectful for all parties involved in this case. As this is an appeal, we actually have the records from the Planning Commission, and we have had a chance to review the comments made by several of you in the audience, so they are already on record as far as part of the evaluation of this case.

Chairman Lytle went on to state that we do have a Board member who is also on the Planning Commission and my understanding from our Township Attorney, and I'll ask again, Ms. Zingas will have to recuse herself to afford the applicant due process, is that correct?

Rosemary Davis, Township Attorney, stated that is correct.

Chairman Lytle: We will have Mr. Ken Verkest, who has sat in the past and is one of our alternate members, take her position this evening. He then, at that time, asked for a motion to that effect.

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Motion by Member Mislinski supported by Member Servial to recuse Ms. Zingas and accept Mr. Verkest as alternate.

Ayes: 5 Nays: 0 Motion Carried.

Motion by Member Mislinski supported by Member Servial to excuse Ms. Zingas for the remainder of the evening.

Ayes: 5 Nays: 0 Motion Carried.

Chairman Lytle proceeded to question Rosemary Davis, Township Attorney. This case is a de novo hearing and that means we limit our review of the case to the facts on record. Is that correct?

Rosemary Davis, Township Attorney: The petitioner has an opportunity to present his case and give his request for an appeal as to why he believes that the Planning Commission made an error of law in their determination. Then you listen to the petitioner's presentation and you can ask questions of him regarding the Planning Commission decision and what was presented to them. You have the record before you from the Planning Commission and your authority is to review their decision and determine whether it was properly made.

Chairman Lytle: I think we have had this in the past where they have to show substantial material evidence to support their decision, is that standard?

Rosemary Davis, Township Attorney: You would have to find that there was substantial material evidence presented for the Planning Commission to make its determination. Was there sufficient evidence on the record that the Planning Commission made a proper decision? Or not?

Chairman Lytle: And we are evaluating based on the eight standards that the Planning Commission used in making their determination?

Rosemary Davis, Township Attorney: That is correct.

Chairman Lytle: The applicant has to show that all eight standards were met.

Rosemary Davis, Township Attorney: He will be presenting what he stated at the Planning Commission and how he feels that he had met the standards.

Chairman Lytle: Board members, before we proceed, are there any other administrative questions for Township Counsel at this time?

Member Senstock: If we find that the Planning Commission was correct in one of the items, that essentially upholds their decision?

Rosemary Davis, Township Attorney: Per the ordinance, yes. If one of the standards of the Special Land Use approval is not met then that would be sufficient under the ordinance to deny approval.

Chairman Lytle: Are there any other questions for Township Counsel? Hearing none, let's proceed with the case. Do we have a representative for Mr. LeFevre's Garwood's case?

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Carl Rashid, Attorney, appearing on behalf of Mr. LeFevre, the petitioner. A point of order, Mr. Chairman, before we do start, and before I make my presentation. I would ask that Member Senstock also recuse himself. Member Senstock did the unusual task of showing up at the public hearing – the second public hearing – voicing his objections to the proposed plan. Therefore, I think he is conflicted out of this hearing tonight.

Member Senstock: I don't believe I'm conflicted out of this hearing tonight. I live three quarters (3/4) of a mile away, as the crow flies, I have an interest in it, I spoke as a citizen, and I did not have a vote on the item or an issue. If you had a question concerning that, you should have raised it prior to this hearing tonight, in your appeal, so that we could have our attorney take a look at it, but right now, for you to spring this on us at this moment, is not very kosher, Mr. Rashid.

Mr. Rashid: Sir, I don't think it's my duty to raise that, I think it's your duty to step down in light of the fact as a public official of the Zoning Board of Appeals.....

Member Senstock: I am not going to step down.

Chairman Lytle: Mr. Rashid, your objection is noted.

Chairman Lytle: Mr. Senstock, do you have any fiduciary interest in this property?

Member Senstock: No I don't.

Chairman Lytle: Township Counsel, we would like your "on the spot" opinion on this case.

Rosemary Davis, Township Attorney: I do believe that it would have been prudent for petitioner to have made that request prior to...I do recall that Mr. Senstock spoke as a citizen...offhand I don't believe that's a conflict per se, he would not have, as speaking as a resident within the notification requirements of the petition, he's entitled to speak. Whether he thought it was going to be appealed and be coming before him, that's all speculative. So, offhand, I don't believe that there's a conflict, but if the Board desires us to research us, we could do so, but then I think then the petitioner would have to request an adjournment so we could have a third alternate to be here.

Chairman Lytle: Okay, thank you.

Member Senstock: I would also like to add that while the attorney brings the question of whether or not I have a duty to step down, he didn't bring the question of when I sat on the Planning Commission and assisted Mr. LeFevre with Garwood's and voted for him and assisted him with road blocks on that – he didn't bring that up. So, you know what, I feel as a Zoning Board of Appeals member, I was appointed to represent the citizens of Harrison Township. I think my record is very clear that I have the ability to be fair and I will, since we are dealing with this de novo hearing, the record is clearly here. So, we'll take a look at the records.

Mr. Rashid: That's my second objection. The record is not clearly before you. I think what you have are the comments from the last public hearing. There were actually two public hearings in this case. The first one was conducted in April and those comments, I don't believe are not before you. If I'm not mistaken is that correct?

Rosemary Davis, Township Attorney: I would have to object. I think the Zoning Board of Appeals, in their packets, has all the public hearing minutes and they would be charged with reviewing all of them before making their decision.

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Mr. Rashid: Well, I appreciate that; if that's the case – if you have them. There were two public hearings in case you didn't know it.

Chairman Lytle: Yes, we realize that.

Mr. Rashid: There are a lot of unusual things that took place before the Planning Commission but before I get into those in specifics, let me indicate to you what I think the hardship is here.

Member Mislinski: Mr. Chairman, if I may, I'm not sure this objection to this attorney is put to bed yet. In all fairness, Mr. Senstock is a citizen of the Township and has every right, whatsoever, to speak at the Township meetings on opinions that he has. Furthermore, he could not sit on this Board unless he was a citizen of the Township, and I think that's common sense. Our law does not deal in fairness or common sense and because of the raw nature of this particular case, I think it may be to the interest of the Township, that this case be tabled for at least one month until we can find out whether or not the objection that was made tonight, does not throw this "baby out with the bath water". That would be my suggestion.

Chairman Lytle: Okay. Thank you. Well, before we proceed, Mr. Rashid, Mr. Mislinski has brought up a point and I would ask that before we proceed with the case that we take up Mr. Mislinski's comments and discuss them as far as whether or not we should table this case.

Member Servial: There are five members and two alternates. Both alternates are currently sitting at the table now. Ms. Zingas cannot, she has a conflict. The best case scenario is you could, theoretically, have five members, but it would still be the same two and you need three – you need three out of five in order to prevail. And the two alternates are already sitting here.

Mr. Rashid: Or, three out of four.

Rosemary Davis, Township Attorney: Correct!

Mr. Rashid: I need a majority.

Rosemary Davis, Township Attorney: You need two-thirds (2/3) vote.

Member Servial: It's really a non-issue.

Chairman Lytle: Would Township Counsel like to speak?

Rosemary Davis, Township Attorney: I'm always of the opinion that airing on the side of caution is the wisest thing. Off the top of my head, the reason for the conflict with Ms. Zingas is because she sits on the Planning Commission and the new Zoning and Enabling Act addressed that as far as recusing yourselves. I don't recall ever researching where a member of the ZBA made a comment at the Planning Commission. As a citizen who is entitled to be noticed and heard, any requirement causing him to, or requiring him to be removed; but it might not be a wise...or a bad idea to give you something...a definitive answer if I can find one. But, if the petitioner is willing to prolong it, that's his request and we can table it for one month and go forward from there.

Member Mislinski: I think the petitioner objected and whether he wants to extend it for one month or not, presently, is not part of this question. Part of this question is, if we proceed and Mr. Senstock sits here and the petitioner's denied, it goes to court and our hearing is thrown out because the court finds that Mr. Senstock was prejudice in his thoughts and his statements and his vote. That's my whole point.

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Rosemary Davis, Township Attorney, stated that was correct. But, then again, he needs three out of five anyways. So if he voted.....

Chairman Lytle: It don't think....looking at the applicant's case, you know, saying the applicant or saying that it goes for the applicant, I don't think Mr. Senstock's sitting up here is going to taint the rest of our opinions. We are very much an independent group and frankly, we don't have an eighth alternate or person to sit on this. So, whether Mr. Senstock sits up here or not, the applicant has raised their objection to Mr. Senstock; it would be an appealable issue before court, but I don't think that delaying this would necessarily be something that would either benefit or add to the detriment of the applicant. I think we could proceed on this case with the applicant's objections noted.

Rosemary Davis, Township Attorney: In addition to that, I don't believe and correct me if I'm wrong, Mr. Mislinski, but you will not be here next month.

Member Mislinski: That is correct.

Rosemary Davis, Township Attorney: We have no more alternates and possibly three people sitting here - if that were to play out that way.

Member Senstock: Mr. Ulinski would be back.

Chairman Lytle: But, he has not heard the case. So, he wouldn't be able to just step in midway through a case.

Member Senstock: I guess it appears that this attorney is trying to create an appealable issue and as far as I am concerned, and I think it's in our best interest, to get it decided. I agree with Mr. Mislinski. And, if in fact, it's ruled that I can't sit up here, Mr. Ulinski will be back and he still will not have heard any part of the case, and as a result, there will be no loss other than time.

Member Servial: We won't have a full Board if it's next month.

Member Senstock: Yes you will – Mr. Ulinski will be back.

Rosemary Davis, Township Attorney: You would have a quorum to go forward; you would just need three out of four.

Chairman Lytle: Mr. Verkest you have a personal matter that you need to take care of next month?

Member Verkest: As a matter of fact I do have a prior commitment next month, but I consider this a pretty important responsibility, and if it's necessary, I'll modify that commitment to be here. I wouldn't want that commitment....the decision shouldn't be based on what that commitment is. If necessary, I can be here.

Chairman Lytle: Okay – thank you!

Member Mislinski: The reason why I emphasize this point and Mr. Senstock can also put this on the table, the reason this petitioner is here, and my thought is, that if it should be denied, he is definitely taking the Township to court. This is why we need to look at this, this issue.

Chairman Lytle: The applicant has the right to exhaust all his administrative remedies and this is one of the administrative remedies that has to be...that he has to go through.

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Member Senstock: We have the right to protect the Township, too. And, if he's going to raise an issue on appeal, we should do everything we can to make sure it's not a successful appeal.

Member Verkest: I would say we have a responsibility to make sure we proceed properly – regardless of what we anticipate that to be. And if our Counsel suggests, then we may want to look at this in a month, and I really respect her opinion on the matter.

Chairman Lytle: Well, we have had advice from Counsel, discussed it among us Board members, and I'll ask for a motion on the case.

Motion by Member Mislinski supported by Member Servial to table Case #07-08-ZBA, Garwood's Restaurant/ Bar/Marina – Tom LeFevre – Petitioner, 24214 Jefferson Avenue, St. Clair Shores, MI 48080, Property in Question: Lukas' Conger Bay Marina, 41680 Conger Bay Drive, Harrison Twp, MI, Described Property – Commonly known as: 41680 Conger Bay Drive, Harrison Twp, MI (Zoned WF), Property #0001-0474-00, Sidwell #17-12-10-300-002, Purpose of Request: Requesting an Appeal of Special Land Use Denied by Planning Commission, date specific to August 12, 2008, subject to the following:

To allow our Counsel to advise us on the objection raised by the petitioner's attorney on the reason of "whether or not" Mr. Senstock had prejudiced himself by speaking at the Township Planning Commission meeting regarding this particular case.

Chairman Lytle asked if there was any discussion on the motion.

Chairman Lytle asked the petitioner if there were any other objections he had that we may want to review.

Mr. Rashid stated that he had exhausted all of them for this evening.

Chairman Lytle questioned Counsel as to whether they should request the applicant provide some information or a review on his objection on this or is it not appropriate?

Rosemary Davis, Township Attorney stated she thought it would be appropriate to ask Mr. Rashid to put that in a letter, in writing, to the Township and I will respond to that.

Member Mislinski requested to modify his motion. I would like to have the applicant put his objection in writing and forward it to the Township and to the Township attorney. Member Servial amended his support to modify this motion.

<u>Roll Call Vote:</u>	Member Mislinski	Yes
	Member Servial	Yes
	Member Senstock	Yes
	Member Verkest	Yes
	Chairman Lytle	Yes

Motion Carried.

E. OLD BUSINESS:

Chairman Lytle stated he was notified that there were some changes to the Winowski property – something that had come before us previously, and rather than all of us call the Building Official, I asked that information about the case be provided to you in a packet. Mr. Parakh has provided that for you.

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- F. **ANNOUNCEMENTS:** None
- G. **NEW BUSINESS:** None
- H. **PUBLIC COMMENT:** None
- I. **NEXT MEETING:** August 12, 2008 @ 7:00 pm in the Rosso Hall.
- J. **ADJOURNMENT:**

Motion by Member Servial support by Member Mislinski to adjourn the meeting at 8:10 PM.

Ayes: 5 Nays: 0 The motion carried unanimously.

Maria Zingas, Secretary
Harrison Township Zoning Board of Appeals

Cynthia Chambos, Recording Secretary

Date Approved: _____