

Mr. O'Neil offered the following Ordinance pass third and final reading and moved on its adoption and authorized its publication according to law:

#### **ORDINANCE #O-10-10**

#### **AN ORDINANCE OF THE BOROUGH OF HIGHLANDS, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, AMENDING CHAPTER 21 (ZONING AND LAND USE REGULATIONS) OF THE BOROUGH OF HIGHLANDS CODE TO IMPLEMENT THE RECOMMENDATIONS OF THE 2009 AMENDMENT TO THE LAND USE PLAN ELEMENT OF THE MASTER PLAN**

**WHEREAS** the Highlands Borough Planning Board adopted a Master Plan Re-Examination Report on June 11, 2009; and

**WHEREAS** the Master Plan Re-Examination Report contained a series of recommendations concerning revisions to Chapter 21 (Zoning and Land Use Regulations) and the Highlands Borough Zoning Map addressing the Bay Avenue business districts and other zoning provisions; and

**WHEREAS** the Highlands Borough Planning Board adopted an amendment to the Land Use Plan Element of the Master Plan on June 11, 2009;

**WHEREAS**, the Borough Council adopted Ordinance 09-33 on December 16, 2009 to implement the Planning Board recommendations;

**WHEREAS**, the Borough Council proposes certain amendments to the new zoning changes;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Borough of Highlands that Chapter 21 (Zoning and Land Use Regulations) of "The Revised General Ordinances of the Borough of the Highlands, 1975" is amended and supplemented as follows:

#### **SECTION ONE**

Chapter 21-8 (Definitions) is hereby amended and supplemented to add the following terms:

"Health/fitness studios- private membership, limited size, health or exercise establishments which do not offer comprehensive athletic facilities nor contain a competitive sports area. This use will be modest in size and offer small or individualized fitness and may have a restricted number and type of exercise equipment."

"Hotel shall mean a facility offering accommodations to the general public for limited tenure lodging and which may include additional facilities and services, such as restaurants, meeting rooms and personal services. The hotel facility shall include a public lobby or guest registration area. A dining room area for guests and/or general public may be provided. The hotel facility shall have –full time on-site management. *Limited tenure* shall mean occupancy of fourteen (14) days or less. In addition occupancy of no more than fourteen (14) days of any period of thirty (30) successive days."

#### **SECTION TWO**

Chapter 21-77 (Principal Buildings and Structures) is hereby amended and supplemented to amend Paragraph A of this section as follows: (underlined text is added thus; text with strikethrough is deleted).

“A. Every principal building or structure shall be built upon a lot with frontage on a public street, The principal building shall have pedestrian and vehicular access for driveway and parking purposes from that improved public street.”

### **SECTION THREE**

Chapter 21-91 A (B-2 Central Business District) is hereby amended and supplemented as follows (underlined text is added thus; text with strikethrough is deleted):

1. Delete “hotels, motels, inns” as permitted principal uses in subsection A.1.a (4)
2. Revise subsection A.2 to read as follows:

#### 2. Permitted Accessory Uses

~~Residential use in commercial buildings provided that such use shall not be established on the first floor, that off street on site parking be provided and that the requirements of subsection 4.b be met.~~  
Reserved.”

### **SECTION FOUR**

Waterfront Commercial), Paragraph A.1 is hereby amended and supplemented as follows: (underlined text is added thus; text with strikethrough is deleted).

“A. The following shall apply in all WC-1 Districts.

1. Permitted Principal Uses.  
All uses permitted in the WTC-1 Zone district ~~and the B-1 district~~, except that residential uses shall be prohibited.  
Restaurants  
Bars and taverns  
Marine Sales  
Boat yards  
Charter and excursion boats, off-shore uses.”

### **SECTION FIVE**

Chapter 21 Section 96.02 B-1 Neighborhood Business Overlay Zone District is hereby amended and supplemented to delete this subsection (B-1 Neighborhood Business Overlay Zone District) and insert the following in its place and stead:

“ A. B-1 Zone Overlay Zone District. An overlay zone district is a district superimposed upon another district which supersedes, modifies or supplements the underlying regulations.

#### B. Permitted Principal Uses

All principal uses permitted in the B-1 District and the following:

1. Retail sales and service establishments (except tattoo/body piercing and massage parlors, shops which offer for retail sale or wholesale the firearms and/or ammunition).
2. Art galleries, artist studios and craft stores.
3. Live theater and museums
4. Medical offices.
5. Flower shops and retail plant stores
6. Gift and antique shops
7. Hobby stores
8. Pet stores
9. Clothing and apparel stores
10. Sporting goods sales
11. Home furnishing stores
12. Music, ballet and dance studios, above the first floor
13. Hardware, plumbing and electric supply sales
14. Health/fitness studios, above the first floor

C. Permitted Accessory Uses

1. All accessory uses permitted in the B-1 Zone.

D. Permitted Conditional Uses

1. All conditional uses permitted in the B-1 Zone.
2. Hotels, as defined in this chapter and subject to the standards as set forth in Section 21-97.
3. Bed and Breakfasts, subject to the standards set forth in Section 21-97.
4. Residences above the first (ground) level, subject to the standards as set forth in Section 21-97.

E. Prohibited Uses.

1. Drive through and drive-in uses.

F. Bulk Yard Area Requirements

The bulk, yard and area requirements in the B-1 Overlay Zone are the same as the requirements in the underlying Zone District with the exception of the following:

1. Floor Area Ratio (FAR)
  - a. Maximum FAR of 2.5 when the entire structure is non-residential use.
  - b. Maximum FAR of 2.0 when the structure consists of both residential and non-residential uses (i.e. mixed use building)
2. Impervious or Lot Coverage: 100% unless an on-site loading berth is required by the Planning or Zoning Board.
3. Maximum Building Coverage: 90%.
4. Maximum Building Height: three stories or 42 feet.
5. In the case of any conflict between the bulk requirements of the B-1 Zone district and that of the B-1 Overlay zone, the more stringent regulations shall apply.

G. Off-street Parking Requirements. Each use shall comply with the minimum off-street parking requirements of section 65.14 of Chapter 21. However, The Planning or Zoning Board may reduce or eliminate the off-street parking requirement for non-residential uses in the B-1 Overlay zone district provided the applicant can show evidence of available and sufficient municipal parking spaces within 1,000 feet of the front or rear customer entrance of the commercial establishment. If the Board reduces or eliminates the parking requirement of the non-commercial portion of the building, then the applicant shall address the one-time fee to the Borough of Highlands Municipal Parking Capital Improvements Fund as outlined in Section 21-65-14E.2.c.

H. On-site parking shall be sufficiently screened with fences, vegetation or similar materials. Parking beneath structures shall be screened from adjoining lots using building material and architectural elements consistent with the subject site and architectural features appropriate for the Bay Avenue downtown area.

Parking, provided underneath a structure, shall not abut the front property line or sidewalk area to minimize the disruption of the commercial street wall and maintain the retail and commercial character of Bay Avenue.

I. Design Standards The following design standards shall be considered as bulk requirements of the conditional use. Relief for the requirements of this section shall be addressed under 40:55D-970.c.

1. All new construction alterations and renovations should strive to be consistent with the "Highlands Central Business District Design Manual", Appendix A of Chapter XXI. The design guidelines in the Manual are not mandatory but should guide applicants, the Planning and Zoning Boards and their professionals during the design phase of improvements to structures in the overlay zone.
2. Transparency. A minimum of 50 percent of the street facing building façade between two feet and eight feet in height must comprise clear windows that allow views of the indoor space or product display area.
3. The area requirements used to satisfy the transparency standards above shall exclude window areas below 2 feet and above 7 feet from the grade of the adjoining sidewalk.
4. Curb cuts are discouraged unless deemed necessary for adequate and appropriate access to a property or use. Shared driveway access or rear entry to the lot shall be encouraged."

**SECTION SIX** Chapter 21 Section 96.02 B-1 Neighborhood Business Overlay Zone District is hereby amended and supplemented to delete this subsection (B-1 Neighborhood Business Overlay Zone District) and insert the following in its place and stead:

**"21-96.03 B-2 Central Business Overlay Zone District**

The following regulations shall apply in the B-2 Overlay Zone District:

A. Permitted Principal Uses

1. All principal uses permitted in the B-1 and B-2 Business Districts.
2. Retail sales and service establishments (except tattoo/body piercing and massage parlors, shops which offer for retail sale or wholesale the firearms and/or ammunition).

3. Art Galleries, artist studios and craft stores.
4. Live theater and museums
5. Medical offices.
6. Garden and flower shops
7. Gift and antique shops
8. Hobby stores
9. Pet stores
10. Clothing and apparel stores
10. Sporting goods sales
11. Home furnishing stores
12. Music and dance studios, above the first floor
13. Hardware, plumbing and electric supply sales
14. Health/fitness studios, above the first floor

C. Permitted Accessory Uses

1. All accessory uses permitted in the B-2 Zone.

D. Permitted Conditional Uses

1. All conditional uses permitted in the B-2 Zone.
2. Hotels, as defined in this chapter and subject to the standards as set forth in Section 21-97.
3. Bed and Breakfasts, subject to the standards set forth in Section 21-97.
4. Residences above the first (ground) level, subject to the standards as set forth in Section 21-97.

E. Prohibited Uses

1. Drive through and drive-in uses.

F. Bulk Yard Area Requirements

1. The bulk, yard and area requirements in the B-2 Overlay Zone are the same as the requirements in the B-2 Zone District , with the exception of the following:
  - a. Front Setback. The front setback of any floor above the second floor shall setback minimum ten (10) feet from the property line.
  - b. Building height: A maximum of forty-two (42) feet/ three stories is permitted.
  - c. Impervious/Lot coverage: A maximum of one hundred percent (100%) except for business establishments which, in the opinion of the Planning or Zoning Board require an on-site loading berth. In the latter case, the maximum lot coverage shall be reduced to reflect the area of the on-site loading berth.
  - d. Maximum Building Coverage: 90%.
  - e. Floor Area Ratio (FAR)
    - Maximum FAR of 2.5 when the entire structure is non-residential use.
    - Maximum FAR of 2.0 when the structure consists of both residential and non-residential uses (i.e. mixed use building)

2. In the case of any conflict between the bulk requirements of the B-2 Zone district and that of the B-2 Overlay zone, the more stringent regulations shall apply.

G. Surface parking area below a building structure shall not be included in the floor area for floor area ratio (FAR) computations but is considered a floor in any calculation of building height.

H. Off-street Parking Requirements.

Each use shall comply with the minimum off-street parking requirements of section 65.14 of Chapter 21. However, The Planning or Zoning Board may reduce or eliminate the off-street parking requirement for non-residential uses in the B-2 Overlay zone district for lots less than 10,000 square feet in area provided the applicant can show evidence of available and sufficient municipal parking spaces within 1,000 feet of the front or rear customer entrance of the commercial establishment. If the Board reduces or eliminates the parking requirement of the non-commercial portion of the building, then the applicant shall address the one-time fee to the Borough of Highlands Municipal Parking Capital Improvements Fund as outlines in Section 21-65-14E.2.c.

On-site parking shall be sufficiently screened with fences, vegetation or similar materials. Parking beneath structures shall be screened from adjoining lots using building material and architectural elements consistent with the subject site and architectural features appropriate for the Bay Avenue downtown area.

Parking, provided underneath a structure, shall not abut the front property line or sidewalk area to minimize the disruption of the commercial street wall and maintain the retail and commercial character of Bay Avenue.

N. Design Standards. The following design standards shall be considered as bulk requirements of the conditional use. Relief for the requirements of this section shall be addressed under NJSA 40:55D-970.c.

1. All new construction alterations and renovations should strive to be consistent with the "Highlands Central Business District Design Manual", Appendix A of Chapter XXI. The design guidelines in the manual are not mandatory but should guide applicants, the Planning and Zoning Boards and their professionals during the design phase of improvements to structures in the overlay zone.
2. Transparency. A minimum of 50 percent of the street facing building façade between two feet and eight feet in height must comprise clear windows that allow views of the of indoor space or product display area.
3. The area requirements used to satisfy the transparency standards above shall exclude window areas below 2 feet and above 7 feet above the grade of the adjoining sidewalk
4. Curb cuts are discouraged unless deemed necessary for adequate and appropriate access to a property or use. Shared driveway access or rear entry to the lot shall be encouraged.

## **SECTION SEVEN**

Section 21-97. I is hereby amended and supplemented to delete subsection I and insert the following in its place and stead:

“ I. Hotels in the B-1 and B-2 Overlay District.

Where specifically permitted pursuant to this chapter, the following minimum standards shall be met:

- a. The minimum floor area per unit shall be 250 square feet.
- a. A hotel as defined herein may have a maximum building height of thirty six (36) feet or three (3) stories. If more than 50% of the ground level of the hotel consists of an on-site parking area, the building height may be forty seven (47) feet or three stories above the off-street parking area.
- b. All solid waste containers for storage and pickup shall be centrally located and easily accessible and within a screened enclosure on the street level
- d. All hotel uses shall be provided with adequate fire safety and evacuation provisions and sprinkler systems. Regardless of the number of rooms, such facilities shall be approved by the municipal Fire Sub code Official and shall incorporate all applicable requirements of the National Fire Protection Association Code and the NJ Uniform Construction Code.
- e. Each unit of accommodation shall contain a minimum of two rooms, a bedroom, and a separate bathroom which affords privacy to a person within the room and is equipped with a toilet, a wash basin and bathtub/shower. Kitchen facilities are prohibited.
- f. The first floor area of a hotel, or the first level over on-site parking, may be used for offices, permitted non-residential uses, coffee shop or restaurant. The first floor area of the hotel structure does not have to be associated or related to the hotel use.
- g. The hotel shall contain a main lobby, a central reservation/ guest registration desk and a specified area for the pick up and drop off of guests and luggage.
- h. Each hotel shall provide parking at a ratio of one space per unit of accommodation. The parking may be provided on-site or within 1,000 feet of the hotel property. A minimum of 50% of the required parking shall be provided on the same lot, parcel, and tract of the hotel use.
- i. The hotel use may provide some of the required parking on another parcel, which may or may not be contiguous to the hotel parcel, provided that the property line of the off-site parking lot is within one thousand (1,000) feet from the front or rear customer entrance of the hotel structure. In addition the applicant shall provide written assurances acceptable to the appropriate Board that the parking will remain available in the future. Such assurances shall be in the form of lease agreements or deed restrictions which will be reviewed by the Attorney of the Board of jurisdiction. The parking assurances may be linked to a municipal mercantile license.
- j. The buffer zone between the rear setback of a hotel and adjacent residential uses or district shall comply with the requirements of this chapter but shall not be less than ten (10) feet in width.
- k. The structure shall not be a “rooming house” or “boarding house” as defined by current New Jersey statute.
- l. Once established, a hotel use shall not be converted to a multi-family residential use such as apartments, townhouses, or condominium living arrangements.

## SECTION EIGHT

Chapter 21-97 is hereby amended and supplemented as follows (underlined text is added thus):

“J. Mixed Use buildings in the B-1 and B-2 Overlay Districts

Residential dwelling units shall be permitted above non-residential uses, as a conditional use in the B-1 and B-2 Overlay Zones, subject to the following conditions:

1. In the B-1 and B-2 Overlay Zones, no more than one story, floor or level shall be used for residential purposes. The density of the residential dwellings in mixed use buildings in the B-1 Overlay shall not exceed eight (8) units to the acre. In the B-2 Overlay Zone, the density of the residential dwelling units may not exceed a density of ten (10) units per acre.
  2. The floor area of the residential dwelling unit(s) may not exceed thirty-three percent (33%) of the floor area of the structure. If the structure is limited to two stories, the permitted limit of floor area may be up to fifty percent (50%). For purposes of this section, the floor area used to compute the allowable limits shall not include parking area underneath a building, storage areas, basements/cellars or garage areas.
  3. Maximum building height: forty-two (42) feet or three (3) stories, whichever is less. In the B-2 Zone only, if 50% or more of the ground level of the mixed use building consists of an on-site parking area, the building height may be forty seven (47) feet or four stories (one parking level and three building levels).
  4. The first floor must contain a permitted non-residential use or area for on-site parking. If the first or ground level consists of on-site parking, the residence must be above a non-residential use. Residences shall not be located on a story below a non-residential use.
  5. All residential units shall have an entry separate from the non-residential use and the residences shall have a common entry, accessible from the street.
  6. Notwithstanding other provisions of this chapter, the parking requirements for the residential dwellings of mixed use buildings shall be addressed on the same lot, site, and parcel as the mixed use building.
  7. Minimum Dwelling Unit Requirements. Each dwelling unit shall contain complete kitchen facilities, toilet , bathing and sleeping facilities as well as living space, and shall have a minimum gross floor area of one thousand (1,000) square feet provided that dwelling units in excess of two bedrooms per unit shall not be permitted.
  8. Storage space. In addition to any storage space contained inside the individual dwelling units, there shall be provided for each dwelling unit three hundred fifty cubic feet (350 c.f.) of storage space in a convenient, centrally located area, possibly the ground floor for use of the residents .The area should be secured and locked without creating a safety hazard.
  9. Site Appearance. Adequate provisions and facilities shall be provided for maintenance of the property for trash and garbage.
  10. Heating, ventilation and air conditioning equipment shall be located in an enclosed area above the base flood elevation or on the roof, in the attic or other adequately screened area.
- ~~13.11~~ Residences in mixed use buildings in the B-1 and B-2 Overlay zone districts are exempt from the outdoor living space requirement of Section 21-90.A. 4.b (B-1 Zone) and 21-91 A.4.b (B-2 Zone).”



**SECTION NINE Severability**

*The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.*

**SECTION TEN Repealer**

All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION ELEVEN Certified Copy**

A certified copy of the within Ordinance shall be forwarded by the Borough Clerk to the clerks of all adjoining municipalities, the Monmouth County Planning Board and the following:

- 1. Borough Administrator
- 2. Borough Engineer
- 3. Planning Board
- 4. Zoning Board
- 5. Borough Attorney
- 6. Tax Assessor
- 7. Zoning Official

BE IT FURTHER ORDAINED that this ordinance shall take effect upon final passage and publication in accordance with law.

ATTACHMENT: PROPOSED ZONING CHANGE MAP-Overlay Zones

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

**ROLL CALL:**

**AYES:** Mr. O’Neil, Mr. Francy, Ms. Kane  
**NAYES:** None  
**ABSENT:** Mr. Nolan, Mayor Little  
**ABSTAIN:** None

**DATE:** May 19, 2010

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**CAROLYN CUMMINS, BOROUGH CLERK**

**Introduced:** April 21, 2010  
**Publication:** April 30, 2010 Asbury Park Press  
**P.H.Date:** May 19, 2010  
**Adoption:** May 19, 2010

**Publication:**

I hereby certify this to be a true copy of Ordinance O-10-10 adopted by the Governing Body of the Borough of Highlands on May 19, 2010.

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**BOROUGH CLERK/DEPUTY CLERK**

**NEED TO INSERT MAP  
ATTACHMENT HERE**