

**Borough of Highlands
Planning Board
Regular Meeting
February 14, 2008**

Mr. Stockton called the meeting to order at 7:38 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 Highlands 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 Mr. Cefalo, Mr. Nolan,
Mr. Stockton**

Late Arrival: Mr. O'Neil arrived to the meeting at 7:51 P.M.

Absent: Mr. Bahrs, Mayor Little, Mr. Harrison, Mr. Schoellner

**Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Catherine Britell, P.E. Acting Board Engineer
Joseph R. Venezia, P.E. of T & M Associates was present at the Meeting**

**PB#2008-1Sandy Hook Dev., LLC
Block 101 Lots 17.02, 27 and 27.01 - Willow Street
Application Review & Set P.H. Date**

**Present: Mark Aikins, Esq.
James Bollerman**

Mr. Aikins stated that this is a site plan for Sandy Hook Bay Marina. There are a variety of uses that occur on this site and there had been a request as uses change from time to time for a site plan to be filed. So we have provided a concept site plan that identifies that includes the uses and at some point they will indicate how the uses overlap, how they are independent and how the site operates. We will also give testimony as to how the parking works on this site. There are no site improvements being proposed.

The board reviewed the application and the following was stated:

1. In the 1998 Resolution the parking was reviewed and the applicant needs to provide information on how the uses and parking have changed since 1998.
2. The applicant needs to review the old resolution and compare it to current facts of the site and provide the board with an analysis.

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3. Parking – the applicant must verify that it was a reasonable assumption and provide the ridership information of the ferry.
4. With regard to the applicants request for a waiver from showing the flood zone and base flood elevation the board requested that the base line and all buildings be shown on the plan.

Mr. Manrodt offered a motion to set a public hearing date for March 13, 2008, seconded by Mr. Nolan approved on the following roll call vote:

Mr. O’Neil arrived to the meeting.

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Cefalo, Mr. Nolan, Mr. Stockton
NAYES: None
ABSTAIN: None

**PB#2007-5 Balland, Thomas
Block 91 Lot 1 – 14 Huddy Avenue
Approval of Resolution**

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

Mrs. Cummins advised Mr. Serpico that there are only two eligible board members able to vote on this Resolution and Mr. Serpico stated that it was fine.

Mr. Stockton recommended that the condition of being required to obtain a DEP Flood permit be added to the resolution.

Mr. Manrodt offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING THE MINOR SUBDIVISION
AND VARIANCE APPLICATION OF THOMAS F. BALLAND,
BLOCK 91, LOT 1**

WHEREAS, the applicant referred to above is the owner of the above mentioned lot, which is located in the R-2.01 Zone; and

WHEREAS, the applicant has applied for a two (2) lot Minor Subdivision with variances and design waivers. The applicant proposes to subdivide the above captioned lot into two new residential lots, one containing an existing single family structure (Lot 1.02) and one vacant for the construction of a three story single family residence (Lot 1.01). Lot 1.01 has frontage on Huddy Avenue and Recreation Place. Lot 1.02 has frontage on Huddy Avenue. The variances and design waivers requested for each lot are as follows:

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Proposed Lot 1.01

1. Minimum lot area is 3,750 square feet, whereas the applicant proposes 3,000 square feet.
2. Front yard setback is required to be a minimum of 20 feet or the average of the existing front yard setbacks for properties within 200 feet of the subject property in the same block. The applicant is proposing a front yard setback of 10 feet from both Huddy Avenue and Recreation Place (both are front yards pursuant to the ordinance since this is a corner lot). It appears that the average setback of properties within 200 feet of the subject property located on the same block is 11.9 feet, therefore a de minimus variance is required.
3. Minimum side yard setback is 6 feet, whereas the applicant is proposing a side yard setback of 3.5 feet from the lot 1.02 side line.
4. The maximum lot coverage for the structure is 33%, whereas the applicant proposes 40%.
5. Residential Site Improvement Standards (R.S.I.S.) requires 2.5 off street parking spaces for single family dwellings when the number of bedrooms is not specified. The applicant may require a "design waiver" from this requirement however the applicant has proposed parking in the driveway and proposed garage to be constructed on the lot therefore a de minimus waiver may be required.

Proposed Lot 1.02

1. Minimum lot area is 3,750 square feet, whereas the applicant proposes 3,666 square feet.
2. Minimum lot width is 50 feet, whereas the applicant proposes 45.83 feet.
3. Front yard setback is required to be a minimum of 20 feet or the average of the existing front yard setbacks for properties within 200 feet of the subject property in the same block. The existing front yard setback is 9.5 feet. It appears that the average setback of properties within 200 feet of the subject property located on the same block is 11.9 feet, therefore a de minimus variance is required.
4. Minimum side yard setback is 6 feet, whereas the applicant is proposing a side yard setback of 3.0 feet from the lot 1.01 side line.
5. The maximum lot coverage for the structure is 33%, whereas the applicant proposed 47.3%.
6. R.S.I.S. standards require a minimum of 2.5 on site parking spaces, whereas the applicant has not proposed any on site spaces therefore a design waiver is required; and

WHEREAS, all jurisdictional requirements have been met and proper notice has been given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board has jurisdiction to consider this application; and

WHEREAS, the Board considered this application at a public hearings held on December 13, 2007 and January 10, 2008; and

WHEREAS, the Board considered the testimony of the applicant, Catherine Franco, a licensed Architect and Professional Planner in the State of New Jersey and Charles Surmonte, a licensed Professional Engineer in the State of New Jersey and the legal argument of Counsel.

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The public was afforded an opportunity to cross examine the applicant and his witnesses and were additionally given an opportunity to offer comments and evidence either in support of, or, in opposition to the application; and

WHEREAS, the applicant submitted into evidence maps, photographs and reports in support of the application which were marked as exhibits; and

WHEREAS, the Board after considering the evidence and testimony presented by the applicant and the interested citizens has made the following findings of fact and conclusions based thereon:

1. The property is located in the R-2.01 Zone.
2. The testimony of the applicant and his witness verified that the variances requested for front yard setbacks are technical in nature since the proposed setbacks are consistent with the lots in the immediate area.
3. The size and layouts of the new lots will be consistent with the lots in the immediate area.
4. The proposed parking will be adequate for the structures proposed on the lots.
5. The applicant agreed to comply with the outstanding conditions and recommendations set forth in the T&M letter dated November 2, 2007, revised on January 10, 2008, which is incorporated herein.
6. The applicant agreed to comply with additional conditions set forth hereinafter.
7. The applicant established the positive criteria required for the variances and waivers which are specifically dictated by the size, shape, location and topography of the site pursuant to N.J.S.A. 40:55D-70c; and

WHEREAS, the Board determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Borough of Highlands; and

WHEREAS, the Board after considering the testimony and exhibits has found the proposed minor subdivision plan, variances and waivers to be acceptable with conditions.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands that the application for a two lot minor subdivision with variances and design waivers is approved contingent upon the following conditions being met;

1. All testimony, evidence and representations made by the applicant and his witnesses are incorporated herein.
2. Taxes, fees and escrow accounts shall be current.
3. The applicant will adhere to the findings of fact set forth above.
4. The applicant agrees to post performance bond and inspection fees if required by the Borough.
5. The applicant will comply with the conditions set forth in the T & M letter dated November 2, 2007 and revised on January 10, 2008.

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6. If the applicant intends to perfect the subdivision by deeds, they must be submitted to the Board Engineer and Attorney for review and approval and must further be recorded within the time provided within the Land Use Act.
7. The applicant will contribute to the Borough sidewalk fund if required by the Borough Ordinances for the subject lots.
8. The applicant will amend its plans to add a site triangle to the corner lot which shall be submitted to the Board Engineer for review and approval.
9. The applicant shall obtain the approval of all outside agencies as a condition precedent to this approval.
10. The applicant will obtain NJDEP Flood Hazard Area Permit and abide by FEMA Coastal Construction guidelines applicable to new construction.

Seconded by Mr. O'Neil and adopted on the following roll call vote:

ROLL CALL:

Ayes: Mr. Manrodt, Mr. O'Neil
Nays: None
Abstain: None

Professional Legal Services Resolution

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

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

**RESOLUTION AWARDING CONTRACT
FOR PROFESSIONAL LEGAL SERVICES
TO JACK SERPICO, ESQ.**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Planning Board for the period of January 1, 2008 through June 30, 2008; and

WHEREAS, such Professional Engineering Services can only be provided by licensed professionals and Jack Serpico, Esq. of Jack Serpico, Esq, is so recognized; and

WHEREAS, Jack Serpico, Esq. of the law office Jack Serpico, Esq., was appointed as Planning Board Attorney for the calendar year 2008 on January 10, 2008; and

WHEREAS, Jack Serpico, Esq. of Jack Serpico, Esq. has submitted the attached 2008 contract for approval; and

WHEREAS, the Planning Board has reviewed and hereby approves of the attached contract.

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WHEREAS, the law office of Jack Serpico, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that Jack Serpico has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year and that the contract will prohibit Jack Serpico, Esq. from making any reportable contributions through the term of the contract, and

WHEREAS, the determination of value has been placed on file with this resolution with the Board Secretary; and

WHEREAS, the law office of Jack Serpico, Esq. has submitted the C.271 Political Contribution Disclosure Form in accordance with N.J.S.A. 19:44A-20.26 (P.L. 2005,c271, s2).

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq., requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised; and

WHEREAS, certification of the availability of funds is hereby made as follows:

Account #1141 -3755 \$ 3,375.00
For Legal Services for the Period of January 1, 2008 through June 30, 2008.

Stephen Pfeffer, CFO

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Highlands of the following:

1. Jack Serpico, Esq., of the law office of Jack Serpico, Esq., is hereby awarded a contract for professional legal services to be provided to the Planning Board for the period of January 1, 2008 through June 30, 2008 for an amount not to exceed \$3375.00 and that the attached contract for 2008 is hereby approved.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by person authorized by law to practice a recognized profession.
3. A copy of this Resolution as well as the contract shall be placed on file with the Board Secretary of the Borough of Highlands.
4. The Board Secretary is hereby directed to publish notice of this award as required by law. Seconded by Mr. Manrodt and adopted on the following roll call vote:

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ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Cefalo, Mr. Nolan,
Mr. Stockton
NAYES: None
ABSTAIN: None

**PB#2007-1 Scaturro Irrevocable Trust
Block 2 Lot 1, Block 3 Lots 6 & 7 – Portland Road
Unfinished Public Hearing**

Present: Martin McGann, Esq.

Mr. McGann stated that at the last hearing they concluded their case and the public hearing was closed and it is now open for comments.

Mr. Serpico – that is correct.

Mr. Stockton opened the meeting up to the public for any comments on this application.

There were no comments from the public therefore the public portion was closed.

Mrs. Britell – we have not received updated drawings and if the board wishes to move forward it would be subject to revised plans.

Mr. McGann – we understand that.

The board had a discussion about the application and having an approval subject to the approval of the plans by the Board Engineer.

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

Mrs. Cummins advised the board that both Mr. Kovic and Mr. Nolan listened to the meeting tapes and are eligible to vote on this matter.

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. O’Neil, Mr. Cefalo, Mr. Nolan,
Mr. Stockton
NAYES: None
ABSTAIN: None

**Amendments to Master Plan – Public Hearing (limited to Amendments)
Resolution Adopting Amendments to the Master Plan Adding Open Space & Recreation
Plan**

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Mr. Stockton – at the last meeting we had a presentation with a hand out with regard to the Open Space & Recreation Plan that was prepared by T & M Associates. We went through the document and had some markups and had some public questions and input from the public. T & M Associates has revised the document and provided a markup copy showing those revisions.

Mr. Serpico – adequate notice was provided for this meeting and adoption.

Mr. Stockton described the amendments to the plan.

Mr. Stockton then opened up the public hearing on this matter.

Lori Dibble of 32 Paradise Park was sworn in and stated that on page 22 with regard to activities, she stated that we don't have any room for a golf course. She spoke about public access plan being coordinated with this amendment. She also stated that the bike way on the map is wrong and the marking for Mt. Mitchell is off.

The Board briefly discussed Ms. Dibble's comments.

Mr. Kovic stated that on the map the Association Beach appears to have a pier going out into the water which does not exist.

Ms. Britell – stated that she spoke with Mr. Ricci of T& M Associates today and he did not have a problem with the Board adopting a resolution with some changes in it.

Joseph R. Venezia, P.E. of T & M Associates explained the open space designation to the board.

Connor Jennings of 27 Ralph Street stated that copies of the plan should have been available for the public to have tonight.

Mrs. Cummins advised the board of the eligible voting member for this matter as being Mr. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Nolan, Mr. Stockton.

Mr. Stockton stated that with regard to Exhibit 15 he has two edits that need to be made. One is for the golden rod hatch for Mt. Mitchell Overlook Park needs to be corrected, the text for the Waterwitch Beach Association the color of the leader line needs to be changed from green to black. Page 22 golf may not fit into our community and may need more clarification.

Mr. Nolan offered a motion to approve the plan with the amendments as discussed, seconded by Mr. Mullen and approved on the following roll call vote:

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ROLL CALL:

AYES: Mr. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Nolan, Mr. Stockton

NAYES: None

ABSTAIN: None

Approval of Resolution for Amendments to Master Plan – Open Space/Recreation Plan

Mr. Stockton – with regard to the resolution we will add in the three changes as discussed.

Mrs. Cummins read the title of the following Resolution for approval:

Mr. Mullen offered a motion to move on the adoption of the following Resolution:

**RESOLUTION OF THE BOROUGH OF HIGHLANDS PLANNING BOARD
MEMORIALIZING ADOPTION OF AN AMENDMENT TO THE BOROUGH MASTER
PLAN TO ADD AN OPEN SPACE AND RECREATION PLAN ELEMENT**

WHEREAS, the Planning Board of the Borough of Highlands has been advised that it is in the best interest of the municipality and Borough residents to adopt an amendment to the Borough Master Plan adding an Open Space and Recreation Plan Element pursuant to applicable law; and

WHEREAS, the Board and Borough authorized T & M Associates to prepare the above referenced amendment to the Master Plan which amendment is annexed hereto and made a part hereof. Said amendment was formally presented to the Board and the public at public sessions of the Board on December 13, 2007 and February 14, 2008 by Paul Ricci L.P.P.; and

WHEREAS, the Board voted unanimously in favor of the adoption of the annexed amendment at the February 14, 2008 meeting of the Board; and

WHEREAS, the Board Secretary is hereby directed upon the adoption of this Resolution to transmit a copy hereof to the Clerks of all adjoining Municipalities by certified mail and, to forward an additional copy of this Resolution via certified mail to the Monmouth County Planning Board along with a copy of the annexed amendment to the Master Plan pursuant to the requirements of the applicable statutes.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Highlands that it hereby adopts the annexed amendment to the Borough Master Plan adding an Open Space and Recreation Plan Element subject to the corrections recommended below and does further recommend to the Mayor and Council of the Borough that it adopt the appropriate ordinances and regulations in order to implement the various programs and policies identified within said document if required by law.

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The required corrections to the amended plan are as follows:

1. Exhibit 15- The golden rod hatch is mislabeled and must be corrected. It is in the wrong location for Mount Mitchel.
2. Exhibit 15- The color of the leader line for Waterwitch Beach Association must be changed from green to black.
3. Page 22- The reference to a golf course should be explained or clarified. There is not sufficient open space for an 18 or 9 hole golf course in the Borough.

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

ROLL CALL:

AYES: Mr. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Nolan, Mr. Stockton

NAYES: None

ABSTAIN: None

**PB#2007-2 Everclear Development
Block 60 Lot 7 – Shore Drive
Request for Extension of time to Perfect Subdivision**

Mr. Stockton stated the board received a written request for an extension of time to perfect the subdivision.

Mr. Stockton stated that board usually grants 90-day extensions.

Mr. Nolan offered a motion to move on the adoption of the following Resolution:

**RESOLUTION EXTENDING THE TIME TO PERFECT THE MINOR SUBDIVISION
GRANTED TO EVERCLEAR DEVELOPMENT, LLC, FOR BLOCK 60, LOT 7**

WHEREAS, the applicant referred to above is the owner of the above mentioned lot, which lot is located in the R-2.03 Zone; and

WHEREAS, the applicant has applied for a minor subdivision with variances that was granted with conditions by the Board on June 14, 2007; and

WHEREAS, the Board adopted a written Resolution memorializing the foregoing on July 12, 2007; and

WHEREAS, the MLUL requires a minor subdivision to be perfected within 190 days from the date the written Resolution was adopted by the Board unless there are extenuating circumstances that effectively prevent the perfection of the subdivision; and

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WHEREAS, the applicant could not reasonably comply with the conditions of the approval before the expiration of the 190 days referred to above which was January 18, 2008; and

WHEREAS, the applicant has requested an extension of the time within which to perfect the minor subdivision pursuant to N.J.S.A. 40:55D-47g.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands, for good cause being shown, that the application for an extension of time to perfect the minor subdivision is hereby granted for a period of 90 days from January 18, 2008, pursuant to the statute set forth above.

Seconded by Mr. O’Neil and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. O’Neil, Mr. Cefalo,
Mr. Nolan, Mr. Stockton

NAYES: None

ABSTAIN: None

Review of Steep Slope Ordinance – will carry to end of meeting or next meeting.

**PB#2007-4 Knox 400, LLC
Block 108 Lot 2.01 – 460 Hwy 36
Unfinished Public Hearing**

Present: Henry Wolffe, Esq.
Mike Knox, Applicant
Mike Leckstein, Esq. – Attorney for Object Paul Mazzella
Paul Mazzella

Conflicts : Mr. Stockton stepped down for this meeting.

The following exhibits were marked into evidence:

AA-9: Fire Approval Site Plan

Mr. Manrodt will chair this portion of the meeting.

Mrs. Cummins stated that the eligible members on this matter are Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. O’Neil, Mr. Cefalo, Mr. Nolan, Mr. Schoellner.

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Mr. Manrodt stated that both Mr. Nolan and Mr. Kovic listened to the meeting tapes so they are now eligible to vote on this matter.

Mr. Wolffe stated that there were questions about the fire approval and Mr. Murphy is here this evening.

Paul Murphy, Fire Inspector and Code Enforcement officer for the Borough of Highlands was sworn in.

Mr. Murphy was questioned by Mr. Wolffe and the board and he stated the following:

1. He has reviewed this application numerous times in connection with the New Jersey State Uniform Fire Code.
2. The final site plan that they reviewed on December 7, 2007 was in compliance.
3. Initially the first review of the application the fire hydrant was added in.
4. The fire lanes are more than sufficiently wide enough to accommodate fire trucks. He spoke about New State Uniform Fire Code F-311.1. It states that fire lanes shall have a minimum width of 18-feet and the proposed is 24-feet.
5. He spoke about the emergency turn around spot and ingress and egress of the emergency vehicles. A chain and lock will be on Route 36 and it will not be a thru way for other vehicles.
6. He issued an approval on December 7, 2007 which was marked AA-9.
7. The intent is not to enter the site from Route 36 but they could if needed.
8. If an oversized vehicle parks in the undersized spots and fire lane they will be removed.
9. The chain and lock system has been used and has been successful which he further explained. It is currently used at the Seastreak lot and there hasn't been any problems, it's actually helped tremendously.

Mr. Manrodt asked if there were any questions for Mr. Murphy from the public.

Michael Leckstein – Attorney for Objector Paul Mazzella questioned Mr. Murphy and Mr. Murphy stated the following:

1. The original plan approved had an opening on Highway 36. It was easier to work with because we didn't have to rework this emergency exit system.
2. Anytime anybody were in the fire lane that would impair their progress of force.
3. He doesn't measure our vehicles per New Fire Code it's a minimum of 18-feet wide. We go 18-feet wide for a straight away and 24-feet wide on the turning radius and this plan has 24-foot wide marked all the way through.
4. It is not our intention to enter from Highway 36, it is our intention to come in from Ocean Ave that is why there is a fire hydrant being located there.
5. It is not our procedure to place templates on engineer plans and review them. The answer is no they did not place a template on the plan for turning radius.

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6. He does not have a background in traffic just in Fire Code.

There were no further questions from the public therefore Mr. Murphy was dismissed.

Mr. Wolffe – the applicant rests.

Mr. Leckstein questioned the status of a drainage report and he has not seen any report to address the outstanding issues.

Ms. Britell – she just received a letter on February 12, 2008 from the applicants engineer addressing all of the comments from the T & M letter. Regarding drainage and grading we have come to an agreement on the outstanding drainage and grading issues.

Mr. Leckstein – we are asking for an opportunity to see those calculations and an opportunity so that we can provide testimony as to those issues. He then requested a copy of the February 12, 2008 letter.

Mr. Stockton – your entitled to have them.

Mr. Wolffe – He feels that this is another attempt to prevent us from getting where we want to go by process of delaying us which he further explained.

Mr. Serpico explained to Mr. Wolffe reason for allowing objector time to review the letter.

Mr. Wolffe stated that Mr. Leckstein could have had his engineer here this evening.

Mr. Leckstein – as far as delays he will accommodate a special meeting. They are not going to pay an engineer to sit here without seeing anything,

Mr. Wolffe -with regard to engineering issues he assumes that the board only wants to hear testimony relevant to the issues. So that would be the variances that we asked for in this case and the design waivers. If the Board Engineer is satisfied with our engineering calculations then there really is nothing at issue that this board could decide that could be objected to by Mr. Leckstein.

Mr. Serpico explained that Mr. Leckstein can bring in an engineer if he wants to claim that our engineer made an error.

Mr. Leckstein – spoke about the requirement of two parking spaces for the cell tower and he can't find where that requirement came in. If it was a referral in the resolution in a parking plan (A-6). Apparently when this was adopted it was a use variance when it was adopted. The present ordinance says that there has to be three parking spaces. There is nothing in the resolution that states that they got a variance from three spaces to two spaces. So he submits that the applicant needs three parking spaces for the cell tower so they need a variance for a parking space.

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Mr. Serpico stated that he can't respond to this at this time.

Mr. Leckstein stated that he feels that the public notice is deficient that they need one parking space.

Mr. Serpico advised Mr. Leckstein to send him a letter to him and he will respond to it.

Mr. Leckstein – absolutely.

Mr. Leckstein then called Paul Mazzella, Objector up to testify.

Paul Mazzella was sworn in.

The Board took a five minutes recess.

The meeting was called back to order.

ROLL CALL:

Present: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. O'Neil, Mr. Cefalo, Mr. Nolan,

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

1. He is the owner of a fitness center, one that is similar to this application in several ways.
2. His fitness center is located at 2399 Highway 36 which is about less than 100 yards from this site.
3. He has owned his facility for six years and it is very busy.
4. He has 5300 square feet for the fitness center portion and 1200 square feet for chiropractic and massage area that is somewhat separate from his facility.
5. His fitness area of 5300 square feet is approximately 3,000 square feet smaller than what the applicant is proposing.
6. He did three different surveys of his facility.

Mr. Wolffe objected to the study because it was not an official study and there has been no foundation of the study and no documents provided.

Mr. Leckstein – all of the testimony as to the needs and the loads of the applicant have been the same type which he further explained.

Mr. Manrodt – I will allow it.

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Mr. Wolffe – we don't need a parking variance under a new application so what difference does it make whether Mr. Mazzella has heavier traffic because we meet the ordinance.

Mr. Serpico – your objection is noted for the record but the Chairman has ruled to allow it in.

Mr. Leckstein – I am laying a foundation for a later witness as to traffic circulation.

Mr. Mazzella continued with his testimony as follows:

7. He has a maximum of 8 employees at any given time. The occupancy with the members at peak time ranges over 45 people at certain points. Regularly well over 38 people not counting employees. Several times a week he hits 53 people with employees.
8. The majority of his customers come in their own car, its well into 90% that come by themselves.
9. No designated parking spots at his facility which is located in a strip mall which can hold hundreds of cars.
10. He described his facility verses the applicant's activities. He described his classes and attendance at those classes.
11. He then spoke about URSLA Regulations

Mr. Wolffe objected to the witness quoting from a group.

Mr. Serpico – give us the facts of it.

Mr. Mazzella continued his testimony as follows:

12. He spoke about the capacity of the his gym. He has a possibility in his facility of 5300 square feet he could have 90 people at one time and would need 75 cars.
13. His facility generates 8 bags of garbage a day which is brought to a dumpster and to his knowledge the applicant is not providing a dumpster or facility.
14. Deliveries – he gets about five deliveries per week from large trucks.
15. He described the nature of his garbage which contains paper towels, magazines, people's trash that they bring in.
16. He has a washer and dryer on site.
17. His hours of operation is 5am – 10pm Monday through Thursday, 5am – 8pm on Friday and 7am – 5pm on weekends.
18. Between 6pm and 7pm is the busiest on Mondays, Tuesday and Wednesdays. On the weekends it would be early in the morning 8 or 9 am.
19. He does provide child care at his facility.

Mr. Wolffe cross examined Mr. Mazzella.

Mr. Mazzella stated the following during cross examination:

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1. He does not have an address in New York City but he lived there over five years ago. He currently lives at 330 Shore Drive, Unit C-15, Highlands. He does have a new jersey's driver's license.
2. He has a profitable gym facility.
3. He does not have an average of 53 people on average.
4. He is the Manager of this gym and does not have another job and is at the facility 60 to 70 hours per week.
5. He has a card swipe system at his facility and if they don't have a card they are supposed to sign in. The customers are Not required to swipe out on their way out. So he only knows the amount of people coming in his facility not leaving his facility.
6. The card swipe system produces records showing the attendance but he did not use his computerized document to come up with his numbers of his analysis. He performed head counts and used three of them but he does not have his counts with him tonight.
7. He operates his business in Middletown but he is not sure of the Middletown parking requirements.
8. He has not found any traffic tie ups on Route 36 during his peak hours of operation.
9. He explained that he does not believe that the site is big enough for this facility. He is funding this opposition to this application because of the fact that he is a competitor.
10. He previously objected to the parking shortage and the fact that the applicant has provided six more spaces does improve things but it's still not enough.
11. He does not understand how the applicant is going to fund what he is telling the board about the multi-purpose room.
12. He does not have enough space in his facility large enough to have a basketball room or volleyball to compete with the applicant.
13. If the applicant uses the multi-purpose room for what he told the board he would use it for then it would be a less intense use verses his 800 square feet used for fitness.
14. The applicant's gym would be the same use as his use without his multi-purpose room.

Mr. Leckstein redirects Mr. Mazzella.

Mr. Mazzella stated the following during redirect:

1. Traffic during peak hours – there is a problem on Ocean Blvd from the ferry traffic which comes out the same time as his peak hours which he further explained.
2. He stated that Quick Check is located between his site and the subject property and he is fear full of overflow parking onto his site which he further explained.

There were no further questions from the public for Mr. Mazzella therefore Mr. Mazzella was excused.

Mr. Leckstein called Arnold Garonzik, P.P., AICP up to testify.

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Mr. Garonzik was sworn in and stated the following during his testimony and response to questions from the board:

1. He is a Transportation Planner and is employed by Litwornia Associates, Inc. for the past twenty years. He then described his education and professional background to the board. He stated that he has a specialty in traffic planning issues. He has been a member of the Transportation of Engineers for over ten years.
2. He reviewed Exhibit AA-7 and described the problems that he feels there are with the on-site traffic circulation. He feels that their site design is a dangerous situation which he further described.
3. He feels that there is a lot of pedestrian and bike riders on Ocean Ave and he feels that it's not safe and feels that there should be sidewalks there.
4. They are putting 45 parking spaces on the site.
5. He checked the Borough Ordinance and the ordinance requires 3-parking spaces for a cell tower not two spaces. The ITE recommends for a health club such as this 56 parking spaces.

Mr. Leckstein spoke about a information about the Zoning Board Hearing and Mr. Wolffe objected.

Mr. Serpico explained that what went on before the Zoning Board is a different set of facts and what goes on before this board is what is relevant.

Mr. Leckstein stated that one witness has testified here and at the Zoning Board.

Mr. Serpico – you want to put on the record that you felt that the Zoning Board decision was relevant to what goes on before this board.

Mr. Leckstein – no that is not correct and stated that he will approach it a different way.

Mr. Leckstein stated that he understands that the parking issue is no longer relevant because the town changed the ordinance and he agrees that we have to use the standard of what is in the ordinance. The purpose of what he is going at now is to make the board have an understanding that although they don't need a variance none the less when you look at the site plan and how it functions they have still have planning issues. He continued to speak about the site plan and the parking.

Mr. Garonzik continued to testify as follows:

6. He is familiar with the ITE which is the Institute of Traffic Engineers and they would require 56 spaces for this facility.
7. He then explained that how the ITE comes up with a parking amount.

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8. If there are no available parking spaces on the site a person will then leave the site. He then expressed how one might circulate around the site to exit it.
9. The previous site layout was a better plan.
10. He spoke about having a sign on Hwy 36 and people not being able to enter the site on Route 36 and he feels that there will be confusion.
11. He has reviewed the Borough Ordinance and it requires three spaces.
12. In the resolution granting a use variance for the cell tower and spoke about it.
13. With the changes to the site the board has the right to review the requirements of the cell use variance. The board should apply the current ordinance and require three parking spaces for the cell tower.

Mr. Leckstein spoke about the use variance application for the cell tower at this site.

Mr. Serpico stated that he will be reviewing the old files for the cell tower.

Mr. Garonzik continued his testimony as follows:

14. He is concerned about the lack of area for a loading and unloading which he further described.
15. There is no place on this site for a buses.
16. There is a variance for lot coverage of 84% where 80% is permitted.
17. If the addition were designed smaller they could comply with lot coverage and he feels that this is a self created hardship.
18. There is no positive criteria for granting a lot coverage variance.
19. He did not do a traffic study for this.
20. He discussed the jug handle traffic circulation with the board and the traffic that occurs during peak hours of operation.
21. He anticipates overflow parking to occur in the car wash property.
22. He feels that a sidewalk is needed along Ocean Avenue
23. Current lot coverage is 99% so the applicant is reducing the lot coverage.
24. He is not sure if there is a loading area at the Mazzella fitness center.

Mr. Mazzella stated that there are designated walk areas on his site.

Mr. Garonzik continued his testimony as follows:

25. The Borough parking ordinance is one spot per 200 square feet. The ITE is 5.19 on average.
26. If there is no parking available the customers will go to another facility.

The testimony stopped while Mr. O'Neil left the room for a moment.

Mr. O'Neil returned to the meeting.

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Mr. Leckstein spoke with the Board about having a special meeting and the Objector would pay the cost for meeting. A Special Meeting date was discussed by the board and the Attorneys.

Everyone agreed to a Special Meeting date of March 27, 2008 at 7:00 pm. and no further public notice required.

Mr. Manrodt advised the public that this matter will be carried to a Special Meeting date of March 27, 2008 at 7:00 pm and that the public cross examination of Mr. Garonzik will be carried to that meeting.

Mr. Stockton returned to the meeting table.

Review of Steep Slope Ordinance

The Board decided to carry this matter to the March Meeting.

Approval of Minutes

Mr. O'Neil offered a motion to approve the December 13, 2007 minutes, seconded by Mr. Nolan and all eligible board members were in favor.

Mr. Manrodt offered a motion to adjourn the meeting, seconded by Mr. Nolan and all were in favor.

The Meeting adjourned at 10:29 pm.

Carolyn Cummins, Board Secretary