

**Borough of Highlands
Planning Board
Regular Meeting
May 10, 2012**

Mr. Stockton called the meeting to order at 7:42 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 Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Mullen, Mr. Schoellner, Ms. Peterson, Mr. Redmond,
Mr. Hill, Mr. Stockton, Mr. Colby

Late Arrival: Mr. Gallagher arrived to the meeting at 7:44 P.M.

Absent: Ms. Ruby, Mayor Nolan, Mr. Russo

Also Present: Carolyn Cummins, Borough Clerk
Jack Serpico, Esq., Board Attorney
Robert Keady, P.E., Board Engineer

PB#2011-1 Scaturro Irrevocable Trust

Resolution of Approval for Block 1 Lots 14-18 and Block 3 Lots 9 & 10

Resolution of Approval for Block 3 Lot 11

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

**RESOLUTION APPROVING THE MINOR SUBDIVISION, LOT CONSOLIDATION
AND VARIANCE/DESIGN WAIVER APPLICATION OF CHARLES G. SCATURRO
IRREVOCABLE TRUST, ROSARIO SCATURRO IRREVOCABLE TRUST, CHARLES
PAUL SCATURRO IRREVOCABLE TRUST AND THE PAUL SCATURRO
IRREVOCABLE TRUST FOR EXISTING TAX MAP BLOCK 1, LOTS 14, 15, 16, 17 &
18 AND BLOCK 3, LOTS 9 & 10**

WHEREAS, the applicants referred to above are the owners of the above mentioned lots, which are located in the R-1.03 Zone; and

WHEREAS, the applicants have applied for two (2) minor subdivisions and lot consolidations with variances and/or design waivers for the above captioned Block and Lots and existing Tax Map Block 3, Lot 11; and

WHEREAS, due to the complexity of the application each subdivision will be addressed in a separate written resolution by the Board even though both were approved in one motion by the Board; and

WHEREAS, in connection with the first subdivision of Lot 18, the applicants have proposed to subdivide said lot into two lots. One of the two lots will be consolidated with existing Block 1, Lots 14 through 17, into proposed new Lot 14.01 and the second lot will be consolidated with existing Block 3, Lots 9 and 10, into proposed new Lot 9.01; and

WHEREAS, the details and dimensions of the proposed new lots are depicted on the plans and subdivision map(s) submitted into evidence at the public hearings conducted by the Board on October 13, 2011 and February 9, 2012, which plans and maps are adopted herein in full and made a part hereof; 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

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WHEREAS, the Board considered this application at two public hearings held on October 13, 2012 and February 9, 2012; and

WHEREAS, the Board considered the testimony of Walter J. Hopkins, a licensed Professional Engineer and Planner in the State of New Jersey retained by the applicants and various members of the public and the legal argument of Counsel; and

WHEREAS, the applicant submitted into evidence a Minor Subdivision Map and Site Plan in support of the application prepared by Walter J. Hopkins and additional documentary evidence including a Geotechnical Literature Evaluation report prepared by James J. Serpico (not related to the Board Attorney) of Maser Consulting, P.E., dated November 14, 2011, all of which were marked as Exhibits and entered into evidence and are incorporated herein by reference thereto in full; and

WHEREAS, the applicant required the following variances and/or waivers in connection with this subdivision:

1. Proposed Lot 9.01- The applicant proposes a lot depth of 93.63 feet where 200 feet is required. This is a pre-existing condition.
2. Proposed Lot 14.01- The applicant proposes a lot depth of 91.4 feet where 200 feet is required and a front yard setback of 0.6 feet where 35 feet is required. Both of these are pre-existing conditions at the site.
3. The applicants propose roadway construction in connection with this subdivision and the second subdivision that requires two (2) variances from the Borough Steep Slope Ordinance (Section 21-84B). One is for disturbance of the required setback from the top of the slope and the second is for disturbance within the required setback of the toe of the slope.
4. Additional design waivers were required as a result of the proposed subdivisions for lack of sidewalks along the roadway; maximum street grades; sight triangles; street lighting; street signage; additional street and shade tree requirements which are set forth in the reports of T & M Associates, dated September 28, 2011 and February 2, 2012 all of which are incorporated herein in full by reference thereto; and

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

1. The properties are located in the R-1.03 Zone.
2. The testimony of the applicant's witness and argument of Counsel verified that the variances requested in connection with this portion of the subdivision application are preexisting in nature and the applicant cannot acquire any additional land in order to eradicate the variance applied for.
3. The new lots as depicted on the maps and plans in evidence will result in a better use and layout of the land due to pre-existing road and topographical conditions.
4. The applicants have agreed to comply with the outstanding conditions if any, set forth in the T&M reports issued in connection with this project dated, September 28, 2011 and February 2, 2012, the contents of each being incorporated herein in full by reference thereto.
5. The applicants have agreed to comply with additional conditions imposed by the Board that are set forth hereinafter.
6. The Board finds that the design waivers and/or exceptions from the R.S.I.S. standards are de minimus in nature and will not adversely impact the area in which the lots are located so long as the applicants comply with the conditions imposed by the Board.
7. The applicant established the positive and negative criteria required for the variances applied for; and

WHEREAS, the Board determined that the relief requested by the applicants 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

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WHEREAS, the Board after considering the testimony and exhibits has found the proposed minor subdivision of existing Lot 18 and the lot consolidations set forth above and the variances, design waivers and R.S.I.S. exceptions 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 of Lot 18 and the lot consolidations set forth above and the variances and design waivers and R.S.I.S. exceptions are hereby approved contingent upon the following conditions being met;

1. All testimony, evidence and representations made by the applicant and its 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 bonds and inspections fees if required by the Borough.
5. The applicant will comply with the outstanding conditions if any, set forth in the T & M reports issued for the project dated, September 28, 2011 and February 2, 2012.
6. The applicant must perfect this subdivision simultaneously with the second subdivision of Block 3, Lot 11, both of which must be set forth on one (1) subdivision map prepared by Walter Hopkins, P.E. and L.P.P. The map must be submitted to and approved by the Board Engineer, Robert R. Keady of T & M Associates prior to submission to the Board for execution by the Chairman.
7. The applicant will comply with the recommendations set forth in the report of the Borough Fire Official for this project. If any further review and approval of the project is required by the Fire Official the applicant will complete the review and obtain the required approvals prior to commencement of the project.
8. The applicant will **comply** with any NJDEP restrictions imposed for the entire project in addition to the requirements of the CAFRA Permit issued for this entire project.
9. The applicant agrees to provide protective measures for the existing structures (neighbors' homes and lands and accessory structures) during the construction of the entire project and bond for same.
10. The applicant agrees to hold preconstruction meetings with the residents who own the properties that border this project and the Borough Engineer (and any additional Borough department heads that need to be in attendance) in order to set a construction schedule and agree to protective measures for the purposes set forth in condition 9 above.
11. The applicants must provide to the Board Engineer for his review and approval construction, sanitary sewer and site triangle easements proposed for the project.
12. The applicants must provide to the Board Engineer for his review and approval a soil erosion and sediment plan for the project; a site specific soil analysis and the proposed method of handling run off at the site.
13. This approval is subject to the applicant receiving approval for the project from the Freehold Soil Conservation District and the Monmouth County Planning Board (if required by applicable law) and any other governmental agency that has jurisdiction over the entire project.
14. The applicant must obtain approval **the necessary construction permits** from the Borough Construction Official **for** the project.
15. If the applicant proposes to install bollard lighting in the Borough Right of Way, the applicants or subsequent property owners must be responsible to maintain said fixtures. This condition must be included in any deeds of conveyance of the lots.

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

ROLL CALL:

Ayes: Mr. Mullen, Mr. Redmond, Mr. Gallagher

Nays: None

Abstain: None

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

RESOLUTION APPROVING THE MINOR SUBDIVISION, LOT CONSOLIDATION AND VARIANCE/DESIGN WAIVER APPLICATION OF CHARLES G. SCATURRO IRREVOCABLE TRUST, ROSARIO SCATURRO IRREVOCABLE TRUST, CHARLES PAUL SCATURRO IRREVOCABLE TRUST AND THE PAUL SCATURRO IRREVOCABLE TRUST FOR EXISTING TAX MAP BLOCK 3, LOT 11

WHEREAS, the applicants referred to above are the owners of the above mentioned lot, which is located in the R-1.03 Zone; and

WHEREAS, the applicants have applied for two (2) minor subdivisions and lot consolidations with variances and/or design waivers for the above captioned Block and Lot and existing Tax Map Block 1, Lots 14-18 and Block 3, Lot 11; and

WHEREAS, due to the complexity of the application each subdivision will be addressed in a separate written resolution by the Board even though both were approved in one motion by the Board; and

WHEREAS, in connection with this subdivision of Lot 11, the applicants have proposed to subdivide said lot into two new lots designated as proposed Lots 11.02 and 11.03. No improvements are proposed on either lot at this time. Each proposed lot will be undersized however proposed Lot 11.02 is intended to be conveyed to the owner of Block 3, Lot 8 in order to give the owner of Lot 8 waterfront ownership and access and proposed Lot 11.03 may be developed at a later time. In addition to the foregoing the applicant has requested the right to apply to this Board at a later date for the potential construction of an accessory structure on Lot 11.02 such as a boathouse and the potential development of Lot 11.03 in conjunction with existing Lot 12; and

WHEREAS, the details and dimensions of the proposed new lots are depicted on the plans and subdivision map(s) submitted into evidence at the public hearings conducted by the Board on October 13, 2011 and February 9, 2012, which plans and maps are adopted herein in full and made a part hereof; 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 two public hearings held on October 13, 2012 and February 9, 2012; and

WHEREAS, the Board considered the testimony of Walter J. Hopkins, a licensed Professional Engineer and Planner in the State of New Jersey retained by the applicants and various members of the public and the legal argument of Counsel; and

WHEREAS, the applicant submitted into evidence a Minor Subdivision Map and Site Plan in support of the application prepared by Walter J. Hopkins and additional documentary evidence including a Geotechnical Literature Evaluation report prepared by James J. Serpico (not related to the Board Attorney) of Maser Consulting, P.E., dated November 14, 2011, all of which were marked as Exhibits and entered into evidence and are incorporated herein by reference thereto in full; and

WHEREAS, the applicant required the following variances and/or waivers in connection with this second subdivision:

Proposed Lot 11.02

5. The applicant proposes a lot area of 2,458 square feet where 14,000 feet is required.
6. The applicant proposes a lot frontage of 25.04 feet where 75 feet is required.
7. The applicant proposes a lot depth of 93.74 feet where 200 feet is required.

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Proposed Lot 11.03

8. The applicant proposes a lot area of 11,516 square feet where 14,000 feet is required.
9. The applicant proposes a lot depth of 100.89 feet where 200 feet is required.
10. The applicants propose roadway construction in connection with this subdivision and the first subdivision that requires two (2) variances from the Borough Steep Slope Ordinance (Section 21-84B). One is for disturbance of the required setback from the top of the slope and the second is for disturbance within the required setback of the toe of the slope.
11. Additional design waivers were required as a result of the proposed subdivisions for lack of sidewalks along the roadway; maximum street grades; sight triangles; street lighting; street signage; additional street and shade tree requirements which are set forth in the reports of T & M Associates, dated September 28, 2011 and February 2, 2012 all of which are incorporated herein in full by reference thereto; and

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

8. The properties are located in the R-1.03 Zone.
9. The testimony of the applicant's witness and argument of Counsel verified that the variances requested in connection with this portion of the subdivision application can be granted so long as adequate conditions are incorporated in the approval granted by this Board.
10. The new lots as depicted on the maps and plans in evidence will result in a better use and layout of the land due to pre-existing road and topographical conditions.
11. The applicants have agreed to comply with the outstanding conditions if any, set forth in the T&M reports issued in connection with this project dated, September 28, 2011 and February 2, 2012, the contents of each being incorporated herein in full by reference thereto.
12. The applicants have agreed to comply with additional conditions imposed by the Board that are set forth hereinafter.
13. The Board finds that the design waivers and/or exceptions from the R.S.I.S. standards are de minimus in nature and will not adversely impact the area in which the lots are located so long as the applicants comply with the conditions imposed by the Board.
14. The applicant has agreed to put adequate restrictions in the deeds for lots 8, 11.02 and 11.03 that will restrict future development of the lots that will be inconsistent with the approvals granted by this Board of both subdivisions.
15. The applicant established the positive and negative criteria required for the variances applied for; and

WHEREAS, the Board determined that the relief requested by the applicants 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 of existing Lot 11 and the variances, design waivers and R.S.I.S. exceptions 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 of Lot 11 and the variances and design waivers and R.S.I.S. exceptions are hereby approved contingent upon the following conditions being met;

7. All testimony, evidence and representations made by the applicant and its witnesses are incorporated herein.
8. Taxes, fees and escrow accounts shall be current.
9. The applicant will adhere to the findings of fact set forth above.
10. The applicant agrees to post performance bonds and inspections fees if required by the Borough.
11. The applicant will comply with the outstanding conditions if any, set forth in the T & M reports issued for the project dated, September 28, 2011 and February 2, 2012.

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12. The applicant must perfect this subdivision simultaneously with the first subdivision referred to herein above, both of which must be set forth on one (1) subdivision map prepared by Walter Hopkins, P.E. and L.P.P. The map must be submitted to and approved by the Board Engineer, Robert R. Keady of T & M Associates prior to submission to the Board for execution by the Chairman.
7. The applicant will comply with the recommendations set forth in the report of the Borough Fire Official for this project. If any further review and approval of the project is required by the Fire Official the applicant will complete the review and obtain the required approvals prior to commencement of the project.
8. The applicant will **comply** with any NJDEP restrictions imposed for the entire project in addition to the requirements of the CAFRA Permit issued for this entire project.
9. The applicant agrees to provide protective measures for the existing structures (neighbors' homes and lands and accessory structures) during the construction of the entire project and bond for same.
10. The applicant agrees to hold preconstruction meetings with the residents who own the properties that border this project and the Borough Engineer (and any additional Borough department heads that need to be in attendance) in order to set a construction schedule and agree to protective measures for the purposes set forth in condition 9 above.
11. The applicants must provide to the Board Engineer for his review and approval construction, sanitary sewer and site triangle easements proposed for the project.
12. The applicants must provide to the Board Engineer for his review and approval a soil erosion and sediment plan for the project; a site specific soil analysis and the proposed method of handling run off at the site.
13. This approval is subject to the applicant receiving approval for the project from the Freehold Soil Conservation District and the Monmouth County Planning Board (if required by applicable law) and any other governmental agency that has jurisdiction over the entire project.
14. The applicants must obtain **the necessary construction permits** from the Borough Construction Official **for** the project.
15. If the applicant proposes to install bollard lighting in the Borough Right of Way, the applicants or subsequent property owners must be responsible to maintain said fixtures. This condition must be included in any deeds of conveyance of the lots.
16. The applicant must submit to the Board Attorney and Engineer for their review and approval, deeds for proposed Lots 11.02 and 11.03 that contain restrictions against future development of said lots with the exception of an accessory structure on Lot 11.02, that is dedicated to the owner of existing Lot 8. Additionally a restriction must be included in the deeds for both existing Lot 8 and proposed Lot 11.02 that requires both lots to be owned by the same individuals.
17. The applicant may appear before this Board in the future to request **relief from or modification of** the terms and conditions set forth in number 16 above based on a change in circumstances relating to the lots.

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

ROLL CALL:

Ayes: Mr. Mullen, Mr. Redmond, Mr. Gallagher

Nays: None

Abstain: None

May 10, 2012

Review of Zoning Ordinance Amendment O-12-9 (3rd Revision)

Adoption of Resolution with Recommendations for Ordinance O-12-9

The Board reviewed the revised ordinance.

Mr. Keady described the revisions made in this 3rd Revisions of Ordinance O-12-9.

Discussions about making a change in the ordinance on item 5-k from "midsize" "to midrise".

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

**RESOLUTION
BOROUGH OF HIGHLANDS PLANNING BOARD
FINDINGS OF REVIEW OF THE THIRD REVISION TO ORDINANCE O-12-9
ZONING ORDINANCE AMENDMENTS**

WHEREAS, the Mayor and Council of the Borough of Highlands authorized the Planning Board to undertake a review of proposed second revision to Borough Ordinance O-12-9, which Ordinance will amend the Borough Zoning Ordinance; and

WHEREAS, the Municipal Land Use Act, NJSA 40:55D-26 & 64, requires that the Planning Board prepared and transmit a report back to the Governing Body; and

WHEREAS, said statute does further require that the report of the Planning Board shall include an identification of any provision or provisions set forth in the proposed Ordinance amendment which is or are inconsistent with the Borough Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, the Board conducted a third review of the proposed amendments on May 10, 2012; and

WHEREAS, the Board received comments from Board Members, the Board Engineer and Attorney and various members of the public.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Highlands that the third revision of Ordinance O-12-9 is partially inconsistent with the Land Use and other elements of the Highlands Borough Master Plan due to the provision allowing mid-rise multifamily development in the MH Zone.

BE IT FURTHER RESOLVED that in addition to the foregoing the Board hereby makes the following recommendations to the Mayor and Council:

1. The Board recommends that the phrase "mid-size" set forth on page 3, in section 5. k, be replaced with the phrase "mid-rise".

BE IT FURTHER RESOLVED that the Board hereby directs its Secretary to transmit said findings to the Clerk of the Borough of Highlands pursuant to the Statute first mentioned above forthwith for consideration by the Mayor and Council of the Borough of Highlands.

Seconded by Ms. Peterson and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Schoellner, Ms. Peterson, Mr. Redmond, Mr. Hill, Mr. Gallagher,
Mr. Colby
NAYES: Mr. Mullen
ABSTAIN: None

**Review of Zoning Ordinance Amendment O-12-10 (2nd Revision)
Adoption of Resolution with recommendations for Ordinance O-12-10**

The Board reviewed Ordinance O-12-10 (2nd Revision).

Mr. Keady described the second set of revisions to Ordinance O-12-10 and discussed them individually with the board and Board Attorney.

Mr. Colby offered the following Resolution and moved its adoption:

**RESOLUTION
BOROUGH OF HIGHLANDS PLANNING BOARD**

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**FINDINGS OF REVIEW OF THE SECOND REVISED ORDINANCE O-12-10
ZONING ORDINANCE AMENDMENTS**

WHEREAS, the Mayor and Council of the Borough of Highlands authorized the Planning Board to undertake a second review of revisions to proposed revised Borough Ordinance O-12-10, which Ordinance will amend the Borough Zoning Ordinance; and

WHEREAS, the Municipal Land Use Act, NJSA 40:55D-26 & 64, requires that the Planning Board prepared and transmit a report back to the Governing Body; and

WHEREAS, said statute does further require that the report of the Planning Board shall include an identification of any provision or provisions set forth in the proposed Ordinance amendment which is or are inconsistent with the Borough Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, the Board conducted a second review of the proposed amendments on May 10, 2012; and

WHEREAS, the Board received comments from Board Members, the Board Engineer and Attorney and various members of the public.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Highlands that second set of revisions to Ordinance 0-12-10 are inconsistent with the Land Use and other elements of the Highlands Borough Master Plan due to the proposed expansion of the permitted uses in the MXD into the R-1.03 and WC-2 zones and allowing hotels as a permitted use in the MXD Zone.

BE IT FURTHER RESOLVED that in addition to the foregoing the Board does hereby make the following findings and recommendations to the Mayor and Council:
None

BE IT FURTHER RESOLVED that the Board hereby directs its Secretary to transmit said findings to the Clerk of the Borough of Highlands pursuant to the Statute first mentioned above forthwith for consideration by the Mayor and Council of the Borough of Highlands.

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

ROLL CALL:

AYES: Mr. Mullen, Mr. Schoellner, Ms. Peterson, Mr. Redmond, Mr. Hill,
Gallagher, Mr. Colby
NAYES: None
ABSTAIN: Mr. Stockton

Approval of Minutes

Mr. Mullen offered a motion to approve the March 8, 2012 minutes, seconded by Mr. Gallagher and all eligible members were in favor.

Mr. Mullen offered a motion to approve the April 12, 2012 minutes subject to correction on page one, seconded by Mr. Schoellner and all eligible members were in favor.

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

The Meeting adjourned at 8:26 P.M.

Carolyn Cummins, Board Secretary

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