

**Borough of Highlands
Planning Board
Regular Meeting
January 9, 2014**

Meeting Location: Highlands Elementary School, 360 Navesink Ave., Highlands

Mr. Stockton called the meeting to order at 7:39.

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

Mrs. Cummins 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 Zoning Board of Adjustment 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: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Danzeisen, Mr. Stockton, Mr. Korn

Absent: Mr. Schoeliner, Mr. Britton

Late Arrival: Mr. Kovic

**Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Robert Keady, P.E., Board Engineer
Martin Truscott, P.P.**

Motion for appointment of Temporary Chairman Secretary and Attorney

Mayor Nolan offered Andrew Stockton as Chairman, seconded by Mr. Colby; Jack Serpico as Attorney, seconded by Mr. Colby and Carolyn Cummins as Board Secretary, seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Danzeisen, Mr. Stockton, Mr. Korn,

NAYES: None

ABSTAIN: None

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Official Reorganization

Welcome appointment/reappointment of members and administering oath where necessary

Mr. Gallagher stated that all is taken care of exception of Mr. Kovics and that their oath of office is accepted.

Nomination and vote for Chairman and Vice-Chairman

Mayor Nolan offered the following Resolution be memorialized and moved on its adoption:

**BOROUGH OF HIGHLANDS
PLANNING BOARD RESOLUTION
DESIGNATING CHAIRPERSON
FOR THE YEAR 2014**

BE IT RESOLVED by the Borough of Highlands Planning Board that Andrew Stockton be appointed Chairperson of the Planning Board for a term of one (1) year expiring December 31, 2014.

Seconded by Mr. Colby and adopted on the following Roll Call Vote:

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ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Danzeisen,
Mr. Korn, Mr. Stockton

NAYES: None

ABSTAIN: None

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Resolutions:

Appoint Board Secretary

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

**BOROUGH OF HIGHLANDS
PLANNING BOARD RESOLUTION
APPOINTING BOARD SECRETARY
FOR THE YEAR 2014**

BE IT RESOLVED by the Borough of Highlands Planning Board of the Borough of Highlands that Carolyn Cummins be appointed Secretary of the Planning Board for a term of one (1) year expiring December 31, 2014.

Seconded by Mayor Nolan and adopted on the following Roll Call Vote:

ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby,
Mr. Danzeisen, Mr. Korn, Mr. Stockton

NAYES: None

ABSTAIN: None

Appoint Board Attorney & Award Professional Legal Service Contract

Mayor Nolan offered the following Resolution and moved in its adoption:

**RESOLUTION APPOINTING PLANNING BOARD ATTORNEY FOR THE CALENDAR YEAR 2014 &
AUTHORIZING THE AWARD OF A PROFESSIONAL LEGAL SERVICES CONTRACT**

WHEREAS, the Borough of Highlands has a need for professional legal services to be provided to the Planning Board for the calendar year 2014 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services can only be provided by licensed professionals and Jack Serpico, Esq., of the law office of Jack Serpico, Esq. is so recognized;

WHEREAS, the Board Secretary has determined and certified in writing that the value of the contract will not exceed \$17,500; and

WHEREAS, Jack Serpico has submitted that attached contract for Professional legal services for the calendar year 2014; and

WHEREAS, the Planning Board has reviewed attached contract for Professional legal Services for 2014; and

WHEREAS, certification of the availability of funds is hereby provided by the Chief Financial Officer contingent upon the adoption of the 2014 Budget.

Planning Board Budget

For the Period of January 1, 2014 through December 31, 2014

Stephen Pfeffer, Chief Financial Officer

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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;

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

1. Jack Serpico, Esq. of the law office of Jack Serpico, Esq. is hereby appointed as Planning Board Attorney for the calendar 2014 and is awarded a professional service contract for an amount not to exceed \$8,000 for professional legal services provided for the period of January 1, 2014 through December 31, 2014.
2. The attached Professional legal services Contract is hereby approved and the Board Chairman and Secretary are hereby authorized to sign the contract.
3. This contract is awarded without competitive bidding as "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 persons authorized by law to practice a recognized profession.
4. A copy of the Resolution as well as the contract shall be placed on file with the Board Secretary.
5. The Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby,
Mr. Danzeisen, Mr. Korn, Mr. Stockton
NAYES: None
ABSTAIN: None

Appoint Board Engineer & Award Professional Engineering Service Contract

Mayor Nolan offered the following Resolution and moved in its adoption:

**RESOLUTION APPOINTING PLANNING BOARD ENGINEER FOR THE CALENDAR YEAR 2014
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES**

WHEREAS, the Borough of Highlands has a need for professional engineering services as a non-fair and open contract to be provided to the Planning Board for the calendar year 2014 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services can only be provided by licensed professionals and Robert Keady, **P.E.** of the firm of T & M Associates, 11 Tindall Road, Middletown, NJ is so recognized;

WHEREAS, the Board Secretary has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, T & M Associates has completed and submitted a Business Entity Disclosure Certification which certifies that T & M Associates has not made any reportable contributions to a political or candidate committee in the in the previous one year and that the contract will prohibit T & M Associates from making any reportable contributions through the term of the contract; and

WHEREAS, T & M Associates has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, T & M Associates has submitted that attached contract for Professional Engineering services for the calendar year 2014; and

WHEREAS, the Planning Board has reviewed attached contract for Professional Engineering Services for 2014; and

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WHEREAS, certification of the availability of funds is hereby provided by the Chief Financial Officer contingent upon the adoption of the 2014 Municipal Budget.

Planning Board Budget

\$4,400.00

For the Period of January 1, 2014 through December 31, 2014

Stephen Pfeffer, Chief Financial Officer

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;

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

1. Robert Keady, P.E. of T & M Associates is hereby appointed as Planning Board Engineer for the calendar 2013 and is awarded a professional service contract for an amount not to exceed \$4,400 for professional engineering services provided for the period of January 1, 2014 through December 31, 2014.
2. The attached Professional Engineering Contract is hereby approved and the Board Chairman and Secretary are hereby authorized to sign the contract.
3. This contract is awarded without competitive bidding as "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 persons authorized by law to practice a recognized profession.
4. A copy of the Resolution as well as the contract shall be placed on file with the Board Secretary.
5. The Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby,
Mr. Danzeisen, Mr. Korn, Mr. Stockton

NAYES: None

Abstain: None

Set 2014 meeting schedule

Mayor Nolan offered the following Resolution be memorialized and moved on its adoption:

**RESOLUTION SETTING THE SCHEDULE FOR REGULAR
MEETINGS OF THE BOROUGH OF HIGHLANDS
PLANNING BOARD
FOR THE YEAR 2014**

BE IT RESOLVED by the Borough of Highlands Planning Board that the following schedule is hereby designated as the official Regular Meeting Calendar of the Planning Board for the year 2014. The official meeting days shall be the second Thursday of each month unless otherwise noted.

February 13, 2014
March 13, 2014
April 10, 2014
May 8, 2014
June 12, 2014
July 10, 2014

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August 14, 2014
September 11, 2014
October 9, 2014
November 13, 2014
December 11, 2014
January 8, 2014 Regular/Reorganization Meeting

BE IT FURTHER RESOLVED that all meetings will be held at the Highlands Elementary School, 360 Navesink Ave, Highlands, NJ at 7:30 p.m.

Seconded by Mr. Redmond and adopted on the following Roll Call Vote:

ROLL CALL

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby,
Mr. Danzeisen, Mr. Stockton, Mr. Korn

NAYES: None

ABSTAIN: None

Designate official newspapers

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

**BOROUGH OF HIGHLANDS
PLANNING BOARD RESOLUTION
DESIGNATING THE OFFICIAL NEWSPAPER
FOR THE YEAR 2014**

BE IT RESOLVED by the Borough of Highlands Planning Board that the **Asbury Park Press, Two River Times and the Star Ledger** are hereby designated as the official Newspaper for the Borough of Highlands Planning Board publications which are required by law for the year 2014.

Seconded by Mayor Nolan and adopted on the following Roll Call Vote:

ROLL CALL:

AYES: Mayor Nolan, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby,
Mr. Danzeisen, Mr. Korn, Mr. Stockton

NAYES: None

ABSTAIN: None

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Unfinished Business

**PB#2013-3 Navesink Capital Partners, LLC
Block 101 Lots 17.02, 27, 27.01, 30 & 30.02
Block 102 Lots 8 & 9**

Mr. Serpico asked which Board members listened to transcripts.

Ms. Cummins took a roll call:

Yes: Mayor Nolan, Mr. Hill, Mr. Korn, Mr. Redmond

Mr. McGann stated that there has been a modification to the plans regarding the retaining wall and the end units.

Sean Savage, previously sworn, offered the following testimony:

1. A-4 shows the location of the proposed elevation. Also removing the most eastern "A" unit and replacing it with a "B" unit.

Mr. Kovics arrived at 7:48 p.m.

Mr. Stockton asked about side yard setback.

Mr. Savage stated that it was slightly over 8 feet.

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A-10 – rendered elevation of Unit B located on Road A.

2. The retaining wall, discussed at the last hearing, in the area of Locust St, Lot 7, was shown around 6½ feet. They are proposing a tier wall with a 3 foot space to plant evergreens and shrubs on the wall.
3. The second change was from and “A” unit to a “B” unit.
4. Proposed to pull down roof line looking from Locust St. The sloping roof lines reduces the appearance of the height of the structure. The peak height will be 35 feet to the peak from the grade. This meets the height requirement for the zone.

Mr. Stockton questioned the window.

Mr. Savage stated that the window will stick out somewhat.

Mr. Stockton asked to see the front elevation exhibit – A-8.

Mr. Savage and Mr. Stockton discussed the “B” and “A” units and the roof line.

Mr. Gallagher asked why the changes were made.

Mr. Savage - due to comments at a previous hearing, specifically the proximity of the building to the property line and the retaining wall.

Mr. Keady asked Mr. Savage to address the sanitary sewer line.

Mr. Savage referred to A-4. He stated that it was brought to their attention that there was some concern with regard to the sanitary sewer main located within Locust St. and located at the site. He stated that the sanitary sewer flow is broken into two groups, residential (49 units), which will leave the site through Road A and connect to the existing sewer on Locust St. The remaining sanitary sewer for commercial, will exit the site and connect to the existing system on Willow St.

Mr. Redmond asked if residential sewer can connect into the sewer line on Shore Dr.

Mr. Savage stated that he will take a look at that.
The Board continued to discuss the sanitary sewer issue.

Mr. Keady asked Mr. Savage with regard to the Lighthouse.

Mr. Savage discussed A-3, accessory structure, office and storage. The height is approximately 43 feet.

Martin Truscott was sworn in and provided the following testimony:

The ordinance provides for two different height requirements. Within the residential district for accessory buildings it's 15 feet. For this zone it is 35 feet.

The Board discussed the height ordinance.

John Bollerman, previously sworn, provided the following testimony:

The lighthouse has two components. He explained trying to bring the marina back to its former image in the marketplace. He stated that it needs an image, something different from the competition.

The uses of the building are bathrooms, and open air veranda, a small 12 by 12 area for storage and the top is a widows' walk and spire. Behind is the marina office and a component of a marina shop.

Mr. Bollerman continued his testimony with regard to the marina's image and future.

Mr. Stockton questioned the use of the 3rd level, originally proposed as office space and is now stated as storage.

Mr. McGann stated that the room is 12 by 12 and is too small to be an office.

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The Board continued to discuss the uses at the lighthouse.

The Board stated that the lighthouse qualifies as accessory use.

The Board opened the matter for public questions.

Charlie McGuae – 2 Locust St. – questioned the retaining wall and existing contour elevations.

Mr. Savage referred to A-5 with regard to the retaining walls. He stated that the existing contour in that area varies 6/7 foot.

Mr. McGuae continued to question Mr. Savage with regard to the retaining wall.

Mr. Keady stated that additional survey information needs to be obtained off-site. He requested additional off site survey information to understand the drain flow patterns better.

Mr. McGuae and Mr. Savage continued discussions.

Mr. Stockton asked if it were possible to show elimination of one “A” unit being replaced by a “B” unit, while maintaining the eight foot setback. Is it possible to eliminate two “A” units, but the “B” unit and take the “A” unit and put it on one of the water buildings along road C, either the waterfront or the back building?

The Board discussed the setback.

Mr. Kovics left the meeting at 8:30.

Discussion continued.

The Board called a brief break at 8:32 p.m.

The meeting was called back to order at 8:39 p.m.

Mr. McGann stated there was an alternative, not elimination a unit, lost two units already with the parking, need enough units for financing.

Mr. Savage referred to A-10, in particular the retaining wall previously discussed. The first option would be the removal of the lower retaining wall, located at the property line, then grading up towards the secondary wall. He further explained the grading.

The second option would be to have the foundation of the end unit to be exposed even further and utilize that as the retaining wall.

Mr. Gallagher asked if it would be possible to give approval for the one unit that was taken off.

Mr. McGann stated that they would then lose the required parking.

The Board discussed the retaining wall.

Mr. McGann stated that it was his understanding that they can come back in the future, acquire more land, shift the parking to a different location and build the two units. The construction permits will not be issued, there is a right to build 49 units, but the permits will not be issued unless the parking issue is resolved.

The Board continued discussion regarding parking and retaining wall.

Mr. Savage continued is testimony.

Mr. McQuabe asked about the structure and grade and the building height.

Mr. Savage referred to A-10 and stated that the building is 41 feet from the peak to the grade at Locust Street. In the current scenario, the grade is another 6 feet higher, the height of the building is 35 feet to the peak.

Mr. Savage and Mr. McQuabe continued to discuss the grading, referring to A-4.

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Sean Byrnes, Esq., questioned the shifting of the units.

Mr. Savage explained the roadway prevents the shifting of the units.

Mr. Byrnes continued to question the shifting of the units and how it will be prevented.

Mr. McGann objected and stated that this issue has been addressed.

Mr. Stockton stated that Mr. Byrnes is representing Mr. McQuabe and they are both asking the same questions.

Mr. Byrnes feels that he is not asking the same questions as his client.

Mr. Byrnes asked Mr. Savage with regard to the sanitary sewer and what problems may exist at Locust St.

Mr. Savage stated that they will get the proper approvals.

Mr. Byrnes continued to question Mr. Savage regarding sanitary sewer.

Mr. McGann stated that these questions could better be answered by the planner.

Mr. Savage explained the sanitary sewer and the setbacks.

The Board discussed the sanitary sewer and setbacks.

Mr. Francy stated that it should be a goal to get the sewage directly to the Shore Drive pumping station without going through the Waterwich station. He stated that there are currently flooding issues at the Waterwich station.

Mr. Savage stated that he will be meeting with and working with the Borough Engineer to address these concerns.

Peter Mullen – 11 Marine Pl. – stated that they are asking for a lot of variances for that particular group of buildings.

Mr. Savage explained the variances needed.

The Board closed the public portion.

Kaitlyn Walsh, previously sworn, provided the following testimony:

Working as a planner for five years. Licensed in the State of New Jersey.

The Board accepted her credentials.

With regard to subdivision, Lot 27.03, which is 1.45 acres where 2 acres is required. The subdivision of the lots was to keep the non-residential and residential uses separate. The overall design is continuous between the two.

She stated that there are a few locations where there are setback variances.

Mr. ---- asked Ms. Walsh to describe the building and the setback, and how it could affect the properties as far as future development.

Ms. Walsh stated that there is no potential for future development due to environmental constraints.

Ms. Walsh continued to describe the setback variance.

She stated that the property is narrow and oddly shaped. The average setback requirement for the entire property is 20 feet and we are at 32.47 feet. She stated that they are consistent with the character of the neighborhood.

For the non-residential lot containing the marina and the restaurant, the proposed coverage is 89.33 percent where 80 is permitted.

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The next five variances are related to the townhouse buildings. First, there are six units in a structure where a maximum of five are permitted, six connected townhouses with a zero setback variation between them where two are supposed to have the same setback. Providing a 59.25 foot spacing between front to front window walls of the residential buildings where 75 is required. There are 15 feet spacing from end to end window walls of residential buildings where 30 is required. Additionally, there is a 9 feet setback of the building base to the residential roadway.

Ms. Walsh stated that the architectural design proposed for the units will provide the variation setbacks as well as the fact where they are too close, they are all offset from one another.

With regard to the parking situation, Ms. Walsh stated that it was covered by the traffic engineer in the last meeting. However, they are requesting a variance for the non-residential site, proposing 100 spaces and 182 are required, as outlined in the Board Engineer's letter.

Regarding the variance for the lighthouse accessory, they are proposing a 40½ building height where 15 feet is permitted for accessory and residential zone and 20 feet in non-residential zone.

Ms. Walsh stated that there are also a number of waivers. First, curbing is now provided on both sides of the street. The minimum townhouse unit width is 24 feet, where they are proposing 18. There are parallel parking spaces. The townhouse structures are required to have a minimum of three units per structure, where they are providing two. There are side entrances in some of the buildings where there are only supposed to be from the front. The garages are located on the front and side street, where the ordinance requires them to be in the rear of the building.

Ms. Walsh continued, aside from being restricted by the shape of the lot, they have been created with how they laid out the buildings, and provided parking and keeping the locations of same where they are accessible and easy. However, that might still not conform to the ordinance.

As discussed previously, the property is constrained to the west by a County park and the north and east by the Sandy Hook Bay. In addition to these constraints, they also have the initial regulatory constraints of the mean high water lines and FEMA's requirement of raising the site in order to build it in compliance with the zoning ordinance. All of which have led to the need for the variances.

Ms. Walsh stated that it is her opinion that granting these variances will not impair the intent purpose of the Borough's Master Plan or zoning ordinances. It will not result in substantial detriment to the health, safety and general welfare of the public.

While they have asked for some bulk variances, the uses and density of development are all within the zones requirements. The proposed development is going to bring the site into compliance and help advance the master plan and zoning ordinance.

The Master Plan and Zoning Ordinance states that the MXD zone is meant to encourage development of livable neighborhoods that contain townhomes and non-residential uses that are supported by multi-modal transportation as well as uses that are compatible with and can benefit from the ferry service, marina and open space.

They are proposing townhomes, marina and restaurant. All accessible by many different modes of transportation, cars, boats, walking and ferry.

Ms. Walsh stated that the planning that has gone into the site design has included attractive and innovative design developments needed to raise the site according to FEMA regulations. There is public access to the waterfront through the marina.

Overall, the proposed uses and design of the buildings conform to advance the Master Plan and the vision that the town has for this property.

In addition, this project also advances many of the purposes of the Municipal Land Use Law. To encourage municipal action, to guide the appropriate use and development of land in a manner which will promote public health and safety. To secure safety from flood and other natural and man-made disasters. To provide adequate light, air and open space.

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The idea behind this site layout was to provide open space throughout and to the public, to ensure that the development of individual municipalities does not conflict with the development of the general welfare of the neighboring municipalities, the county or the state.

Ms. Walsh stated that the site is located in the State's metropolitan planning area, which means that it is meant to provide areas for redevelopment and revitalization of land to promote growth in compact forms. There is also the cooperation between the neighboring Atlantic Highlands and Highlands to annex a portion of the property so that there is no issue of crossing municipal boundaries. To provide sufficient space in appropriate locations for a variety of uses, including residential, recreational, commercial and living space, both public and private. To encourage the location of transportation routes, to promote the free-flow of traffic. To promote a desirable environment through creative development techniques and civic design and arrangement.

To promote the conservation of historic sites and districts, open space intermediate resources and valuable natural resources. To prevent derogation of the environment through improper use of land. There is no negative impact on valuable resources. This plan is within the State's metropolitan planning area, and is therefore meant for free development.

The project is focused on redeveloping a previously functioning site and to use the land in accordance with the Borough's code. To encourage plan unit developments to incorporate the best features and design and relate the type of design and layout, residential, commercial and recreational development to a site.

The site has been designed to include a mix of uses, residential and non-residential in an efficient and attractive manner. Lastly, to encourage coordination of public and private procedures in actively shaping line development and lessening the costs and to a more efficient use of land. Working on annexing a portion of Block 7 Lot 1 from Atlantic Highlands, so that there isn't a sliver of unused property that would otherwise be left to have no use.

Ms. Walsh stated that it is her opinion that the variance requested here do not constitute substantial deviations from the ordinance that would cause any significant detriments. They stem from an attempt to develop a property that is very unique and narrow and the additional regulatory requirements that mean that there is an extensive infrastructure need.

Not only does the project advance the purpose of the zone, it conforms to the uses permitted in the zone.

Mr. questioned Ms. Walsh with regard to her statements. He asked her if it is her opinion that there are substantial benefits and that any deviation is minor in nature as it relates to setbacks associated with some of the units and the design waivers.
Ms. Walsh stated yes.

Mr. asked Ms. Walsh if she finds no substantial detriment to the public good.

Ms. Walsh stated no.

Mr. asked if she finds that there are significant benefits derived from this application.

Ms. Walsh stated yes.

Mr. asked if she finds that there is no substantial impairment of the zoning ordinance.

Ms. Walsh stated no.

Mr. asked if any deviation is minor in nature associated with the practical exceptional difficulties which a developer has in developing this site in conforming with the ordinance.

Ms. Walsh stated yes.

Mr. asked if the elevation of the entire site, which DEP requires, will give relief for future flooding issues associated with this site.

Ms. Walsh stated yes.

The Board opens the matter for public questions.

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Sean Byrnes, Esq., for Charles McQuabe asked Ms. Walsh if she would agree that raising the elevation magnifies the impact of the structures on the property with respect to the neighboring properties.

Ms. Walsh stated that if it were directly on the property line.

Mr. Byrnes questioned Ms. Walsh with regard to the setback.

Ms. Walsh does not feel it will cause substantial detriment to the properties.

Ms. Walsh referred to A-10 with regard to the retaining walls.

Mr. Byrnes continued to question Ms. Walsh with regard to the variances and setbacks.

The Board discussed Mr. Mcquabes' property and the height of the proposed project.

Mr. Byrnes continued questions to Ms. Walsh.

Mr. feels his questions are more suited for an engineer.

Mr. Byrnes asked Ms. Walsh if she agrees that the Master Plan expresses concerns about close proximity of structures to adjacent properties.

Ms. Walsh stated yes.

Mr. Byrnes continued to discuss the Borough Master Plan. He questioned if this particular variance that is being sought is exactly the type of condition the Master Plan is concerned about.

Ms. Walsh stated yes.

Mr. Byrnes continued to question Ms. Walsh with regard to the Master Plan with regard to setbacks and retaining walls.

Mr. Stockton asked Ms. Walsh if there are other areas in town where there are taller buildings that are close to other residential buildings that might be shorter.

Ms. Walsh stated that the required zoning for this street and these homes is eight feet side yard setbacks. This home is four and a half feet off the property line, Mr. Mcquabes home is a foot to less than a foot off of the property line. It is not uncommon for all of these homes to have those side yard setback issues.

Mr. McGann asked Ms. Walsh, if the Board determines that the benefits substantially outweigh any detriment by reason of deviation that justifies the granting of a C-2 variance, correct?

Ms. Walsh stated yes.

Mr. McGann asked if it is her opinion that the benefits are substantial.

Ms. Walsh stated yes.

Mr. Truscott stated that he helped develop the ordinance currently being discussed. He stated that this is a very difficult site to develop in terms of all the constraints involved between setbacks and CAFRA issues, etc. He is satisfied that the applicant has addressed fulfilling the Master Plan vision.

Public comments.

Doug Card – 28 Shrewsbury Ave – was sworn in and provided the following comments:

Recommended that the Board put in a protective measure/insurance policy. What should happen if this projects starts and a storm comes and the town is left with a dilapidated area, who pays for the clean-up.

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Mr. McGann stated that the developer will have liability insurance, flood insurance once the structures are up.

Peter Mullen - 11 Marine Place – asked if the Board is going to vote tonight regarding this issue. He felt there would be more information.

Charles Mcquabe was sworn in and questioned by Sean Byrnes, Esq.

Mr. Byrnes: Mr. Mcquabe, you own property adjacent to the development site, correct?

Mr. Mcquabe: Yes.

Mr. Byrnes: What is the address?

Mr. Mcquabe: 20 Locust Street.

Mr. Byrnes: How long have you owned that property?

Mr. Mcquabe: Five years.

Mr. Byrnes: What is your background in terms of your business?

Mr. Mcquabe: I'm a site contractor, civil engineer.

Mr. Byrnes: So you have some knowledge with respect to movement of dirt and grading and things like that.

Mr. Mcquabe: Yes.

Mr. McGann objected. Is he being offered as an expert?

Mr. Mcquabe: Thirty years.

Mr. Byrnes: You have prepared a sketch of your house and you show, based on your understanding of the project and the retaining wall, that the building that's proposed closest to your property, what that would look like, correct?

Mr. Mcquabe: Yes.

O-2 Sketch from Mr. Mcquabe.

Mr. Byrnes: Can you describe sketch one?

Mr. Mcquabe: Sketch one is an elevation based on the existing contour of the developer's plans at elevation six.

Mr. Byrnes: So that house on the right is depicted to be your house, 20 Locust St., correct?

Mr. Mcquabe: Yes.

Mr. Byrnes: And you indicate a roof elevation of 20 feet, is that right?

Mr. Mcquabe: 14 feet up from the six foot elevation.

Mr. Byrnes: To the left of the house is your depiction of the retaining wall...

Mr. Mcquabe: Proposed on the grading plan.

Mr. Byrnes: And putting it at that location, what did you rely on?

Mr. Mcquabe: That it is within one to two feet of the property line, and the structure is on the property line.

Mr. Byrnes: Your existing house is on the property line?

Mr. Mcquabe: Yes.

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Mr. Byrnes: And is that retaining wall where it would be?

Mr. McQuabe: (inaudible)

Mr. Byrnes: And the elevation that is shown to the left from the retaining wall, that's also something from the plans?

Mr. McQuabe: Correct.

Mr. Byrnes: And then the distance from your house to the structure is how far?

Mr. McQuabe: I thought the setback was six feet, but it was supposed to be eight.

Mr. Byrnes: In the current depiction as you show in here, you have the ability to go next to your house and put a ladder in that space between the wall and your house?

Mr. McQuabe: No.

Mr. Byrnes: Anything else you want to tell the Board about this drawing before we move on to sketch two?

Mr. McQuabe: No.

Mr. Byrnes: Sketch two is the next page. What, in general, are you trying to accomplish with this sketch?

Mr. McQuabe: Trying to not render my property worthless by trying to get a setback of 15 feet and to try and save the wall so that it's not such a large impact.

Mr. Byrnes: So you're essentially proposing a design that would, although not as an expert, just as a homeowner, you're proposing a design that would put the retaining wall 15 feet from your property, correct?

Mr. McQuabe: Correct.

Mr. Byrnes: And then beyond that, you've proposed staging of the increase in grade at two/three foot increments and then two foot increments, correct?

Mr. McQuabe: Six feet vertical wall looks massive.

Mr. Byrnes: Could you approximate the distance between your house and the structure as you propose it on this sketch?

Mr. McQuabe: Ten feet.

Mr. Byrnes: Ten plus fifteen?

Mr. McQuabe: Correct.

Mr. Byrnes: So that's a 25 foot setback.

Mr. McQuabe: To the structure.

Mr. Byrnes: Is there anything else you want to tell the Board regarding Sketch 2?

Mr. McQuabe: No.

Mr. Byrnes: The third page ...

Mr. McQuabe: Some of the issues are things like flooding, water, in this area and the way my property sets.

Mr. : Your lot is lot 7, right?

Mr. McQuabe: Yes.

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Mr. : And the highlighted structure is....

Mr. Mcquabe: That is my structure, and it is on the wall.

Mr. : But that entire lot is your lot. Okay.

Mr. Byrnes: Is there anything else about the application or these sketches that you want to share with the Board?

Mr. Mcquabe: With setbacks, the 15 foot setbacks, when you change the elevation with the adjacent property by eight vertical feet

Mr. Byrnes: I want to add that, we don't disagree that it's a good project, we know what the town needs, we know what the zoning is, we know what the Master Plan says. This potentially would be a good thing for the Borough of Highlands. But we do think that the variance that is being sought along this edge of the retaining wall, adjacent to my client's property, is something that could be accommodated with without an undue burden or an excessive degree of pain to this applicant. They have in a certain sense created that need, there's a variance to go to six units that creates a need for a variance for that lot setback along that property. When you drive down Locust, there's going to be a wall in front of that street and a city, essentially, on top of that way, that looms over those folks. I think we can soften that impact without a huge impact financially or otherwise on the applicant.

Mr. Gallagher stated that this is a non-conforming property and asked Mr. Mcquabe if he was aware that that when he purchased?

Mr. Mcquabe: I don't know what you mean by non-conforming.

Mr. Gallagher: It's a preexisting non-conforming use where your property does not meet the setback line. You knew that when you bought it, right?

Mr. Mcquabe: I just assumed that if it's 100 years old, it's grandfathered in.

Mr. Gallagher: Yes, it's grandfathered in, there's no requirement that you move it, but you bought a property that you knew was a non-confirming conditions.

Mr. Mcquabe: Yes.

Mr. Gallagher: You do not live, but is there someone living there?

Mr. Mcquabe: Yes.

Mr. Gallagher: And you don't know if you have a requirement to raise that house?

Mr. Mcquabe: I didn't have insurance, so I fixed the house. So I have no clue what I want to do with the house until I find out what happens here.

Mr. Byrnes: But you haven't received anything telling to?

Mr Mcquabe: No.

Mr. Stockton: If you ever sold the property to anyone in the future that has a mortgage, that future owner would have to have flood insurance, right?

Mr. Mcquabe: I believe so, yes.

Mr. Stockton: The flood insurance rates are supposed to skyrocket unless you bring the structure into conformance, right?

Mr. Mcquabe: That is correct. But I have done nothing to address this because I don't know what is going on here.

Mr. Stockton: With regard to sketch 1, the retaining wall that you showed colored in purple and labeled eight feet high, that is not exactly consistent with the testimony that you heard the applicants, professionals and team present tonight, right?

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Mr. Mcquabe: This is before I got here tonight.

Mr. Stockton: In sketch 2, why did you choose 25 feet ...

Mr. Mcquabe: I didn't actually, it's to show the 15 foot setback...

Mr. Stockton: So you chose to set the retaining wall structure at the 15 foot setback.

Mr. Mcquabe: Correct.

Mr. Stockton: With regard to sketch 3, you mentioned water, I do not see anywhere on this sketch that shows any drainage lines or...

Mr. Mcquabe: Going back to a previous meeting when drainage impacts were talked about on Locust Street. I do believe that the engineer said that it had not been done, and it was going to be done.

Mr. Gallagher: You said that your house may not be fit to be lifted?

Mr. Mcquabe: It's not structurally sound enough, it may need to be replaced in time.

Mr. Gallagher: It may need to be replaced anyway, regardless of this development or not?

Mr. Mcquabe: At some time in the future I would propose replacing the house, yes.

Mr. Gallagher: How far into the future do you think, a year?

Mr. Mcquabe: I really don't know.

Mr. Gallagher: Do you have a Certificate of Occupancy on the new rental?

Mr. Mcquabe: Yes.

Mr. Gallagher: Do you have permits to do the work?

Mr. Mcquabe: Yes.

Mr. Gallagher: But you have no indication from the town that lifting it was required?

Mr. Mcquabe: I own the house, I didn't have insurance, I fixed it myself. And nobody told me I needed to do anything.

Mr. Gallagher: But your opinion as a professional, not an expert, in the construction business, is that this house is not structurally sound to be lifted.

Mr. Mcquabe: Yes. I'm not sure if it is sound enough to withstand being lifted ten feet. It is structurally fine to be lived in.

No public questions for Mr. Mcquabe.

Mr. McGann stated that after the last hearing, his client directed him to approach Mr. Byrnes to determine the interest in selling the property to them. He did not get a reply. He feels that there has been an effort made on his client's part. He would like the Board to make a decision.

Mr. Byrnes stated that it is not a factor in anyone's determination why or why not somebody didn't respond to some overture to sell their property as a means to satisfy some variance issue. His client should have an opportunity to talk about what his conversations were with Mr. Bollerman before this application was submitted.

Mr. One of the requirements under the law is you have an obligation to see if you can expand your property to not need the variance. Absolutely he was required by law to make the overture.

Mr. McGann we didn't hear anything and the Board should not take that as a negative commentary against his client.

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Mr. Stockton stated that the Board will deliberate.

Mr. Stockton stated that the applicant has rested their case, the objectors have presented their case and have rested. Now it is up to the Board to make a decision on the matter.

Mr. requested that each Board member give a reason for their votes.

Mr. Stockton stated that his thoughts on the matter are that we should proceed with bifurcating the application and move to grant a preliminary site plan approval and the minor subdivision approval, allowing the applicant the opportunity to go and collect all the permits and approvals and address the comments from the Board review letters. Then come back for the final approval.

Mr. Gallagher asked if that would include the new proposed moving the wall back eight feet?

Mr. Stockton stated yes.

Mr. McGann asked that the Board consider preliminary and final this evening. There are going to be a substantial amount of conditions which will have to be met by his client. His client now has to go for financing, and it's a very difficult environment to get this type of financing. He has to go with preliminary and final.

We know that we have to get A, B, C, etc. We know that the Board Engineer and Board Attorney will make sure that they comply with all conditions. It is so important to get preliminary and final at this juncture. For them to go with just preliminary, it does not carry the weight that final would with the financing.

Mayor Nolan asked Mr. Keady what the recommendation would be to satisfy the applicants' need?

Mr. Keady stated to make it a condition of the approval, subject to review.

Mr. McGann continued and stated that during the drafting of the Resolution, he can submit a list of what he understands the conditions to be, Mr. Serpico can, Mr. Keady can, so that at the next meeting everyone is in accord as to what the conditions are.

The Board discussed making conditions.

Mr. Gallagher asked for a restriction on the property being gated.

Mr. Savage stated that the only gate is between the marina and the residential.

Mr. Gallagher would like to see the public access on the plans.

Mr. McGann stated that the street will be private, quasi public, no through street.

Mr. Stockton on the plan there is a label that says "proposed roof deck bar", the testimony wiped that out – the text has to come off the plan.

Mr. Serpico stated that there will be variances and waivers. There should be factual basis for either granting or denying the variances or the waivers.

The Board discussed the variances and waivers.

Mayor Nolan offered a motion to approve/deny the applicant's request for preliminary and final major site plan approval, minor subdivision approval, with variances and waivers and subject to terms and conditions, to be outlined between the Borough Engineer, Attorney and the applicant's attorney and the Board's notes and seconded by Mr. Redmond and approved on the following roll call vote:

Mr. Serpico asked that as each member explain their vote and if there are any conditions.

Mayor Nolan: Go to a C variance for the lighthouse as an accessory, 15 feet to 40½. That will be a significant focal point coming into the marina. Happy that Mr. Mcquabes's concerns were addressed, moved back eight feet. This site plan is well done. They went from six to five units

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in some areas, it looks esthetically pleasing. Concerned with regard to the connection to the sewer on Shore Drive. That will be addressed prior to a final vote.

Mr. Gallagher: He concurs with the Mayor's comments. Wishes there was a little more accommodation possible on Locust, the applicant and the Board has worked hard on this issue.

Mr. Hill: The main concern with the property are environmental constraints of any redevelopment. He believes that will change a lot of the character of the town moving forward. Based on the waivers and variances requested, he believes this projects fits with the Borough's direction. Happy with the public access. HE feels the density issue has been addressed, more than adequately.

Mr. Redmond: This project means 100% for this town to move forward.

Mr. Colby: This is far beyond what he thought it would be, and he sees no detriment to the Borough. He feels that this project will raise the property values for everyone around.

Mr. Danzeisen: He concurs with previous comments. He feels this is a necessity for the growth of the town. He is impressed with the planning, the open space, the integration into the environment and the water that surrounds it.

Mr. Korn: He agrees with previous comments. This contract is important to the town. He feels that Mr. Bollerman has made every effort to accommodate the properties around the site. It feels that it is a model for what the rest of the town could be.

Mr. Stockton: He put a lot of weight into Mr. Bollerman's explanation and testimony regarding the layout and design, and also to the Planner's testimony.

ROLL CALL:

AYES: Mr. Schoellner, Mayor Nolan; Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Danzeisen, Mr. Stockton, Mr. Korn

NAYES: None

ABSTAIN: None

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Approval of Minutes;

Mr. Gallagher offered a motion to approve the December 12, 2013 minutes. Seconded by Mr. Hill and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Schoellner, Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Britton, Mr. Danzeisen, Mr. Stockton

NAYES: None

ABSTAIN: None

Mayor Nolan stated that he and Mr. Redmond are going to ask the council to direct the Planning Board to revisit the Master Plan at the next meeting.

Mayor Nolan offered a motion to adjourn the meeting. Seconded by Mr. Redmond and all were in favor.

The meeting adjourned at 10:49 P.M.

Carolyn Cummins, Board Secretary

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