

**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
JANUARY 5, 2006**

Mr. Mullen called the meeting to order at 7:40 P.M.

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

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular/Reorganization Meeting of the Borough of Highlands Zoning 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. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Mullen, Mr. Fox, Ms. Wicklund, Ms. Ryan**

**Absent: None**

**Also Present: Carolyn Cummins, Board Secretary  
Gregory Baxter, Esq., Board Attorney  
Francis Mullan, P.E., Board Engineer**

---

---

**REORGANIZATION:**

Mr. Duncan offered a motion to adopt a Resolution on behalf of Mrs. James for all of her years of service at the next meeting, seconded Mr. Mintzer and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Tierney,  
Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

**Appointment of Chairperson**

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

**BOROUGH OF HIGHLANDS  
ZONING BOARD RESOLUTION  
DESIGNATING CHAIRPERSON  
FOR THE YEAR 2006**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that **PETER MULLEN** be appointed Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2006.

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

**ROLL CALL:**

**AYES:** Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen  
**NAYES:** None  
**ABSTAIN:** None

**Appointment of Vice Chairperson**

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

**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT RESOLUTION  
DESIGNATING VICE CHAIRPERSON  
FOR THE YEAR 2006**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that **WILLIAM DUNCAN** be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2006.

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

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney, Mr. Fox,  
Mr. Mullen  
**NAYES:** None  
**ABSTAIN:** Mr. Duncan

**Appointment of Board Attorney**

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

**BOROUGH OF HIGHLANDS ZONING BOARD OF ADJUSTMENT  
RESOLUTION APPOINTING BOARD ATTORNEY  
FOR THE YEAR 2006**

**WHEREAS**, there exists the need for the professional legal services for the Zoning Board of Adjustment of the Borough of Highlands; and

**WHEREAS**, such professional legal services can only be provided by a licensed professional and **GREGORY BAXTER, ESQ.** is so recognized; and

**WHEREAS**, the Local Public Contracts Law, N.J.S.A.40A:11-1 et. seq. requires that the Resolution awarding the contract state the circulation not more than (10) days after passage of the Resolution;

**NOW, THEREFORE, BE IT RESOLVED**, by the Zoning Board of Adjustment of the Borough of Highlands that **GREGORY BAXTER, Esq.**, from the firm of **CARUSO & BAXTER** be appointed Zoning Board Attorney for the term of one (1) year expiring December 31, 2006. The person appointed is a member of a recognized profession and it is not possible to obtain competitive bids; and

**BE IT FURTHER RESOLVED** that a copy of this Resolution be published in an official newspaper of the Borough within ten (10) days of its passage.

Seconded by Duncan and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

**Board Attorney's Contract**

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

**RESOLUTION  
FOR PROFESSIONAL LEGAL SERVICES  
FOR THE BOROUGH OF HIGHLANDS ZONING BOARD**

**WHEREAS**, the Borough of Highlands Zoning Board of Adjustment has a need for professional legal services for the Zoning Board; and

**WHEREAS**, such professional legal services can only be provided by a licensed professional; and

**WHEREAS**, the Borough of Highlands Zoning Board memorialized a Resolution on January 5, 2006 appointing Gregory Baxter, ESQ., from the firm of Caruso & Baxter as Zoning Board Attorney for a term of one (1) year expiring December 31, 2006; and

**WHEREAS**, the Zoning Board is hereby approving the attached Contract for professional legal services for the year 2006; and

**WHEREAS**, in addition to this contract a contract is hereby awarded for an additional amount not to exceed \$600.00 for legal services provided for the period of January 1, 2006 through June 30, 2006, for the legal services provided to the Zoning Board which are not covered in his annual salary; and

**WHEREAS**, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2006 Budget:

Zoning Board Budget  
Account #1151 – 3755      \$600.00  
Account # 1151-3010      \$4,410.00  
January 1, 2006 – June 30, 2006

---

Stephen Pfeffer, Chief Financial Officer

**WHEREAS** the Local Public Contracts Law, NJSA 40A:11-1 et. seq. requires that notice with respect to contract for professional services awarded without competitive bids must be publicly advertised.

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

1      The attached contract for the year 2006 is hereby approved by the Zoning Board and the Board Chairman and Board Secretary are hereby authorized to sign said contract.

2. That Gregory Baxter, Esq., from the firm of Caruso & Baxter is hereby retained to provide Professional legal services as described above for an annual salary of \$8,820.00 for the calendar year 2006.
3. In addition to his annual salary an amount of \$600.00 is hereby approved for Professional Legal Services for the period of January 1, 2006 through June 30, 2006 for services, which are not covered in his annual salary.
4. This contract is awarded without competitive bidding as a "Professional Services" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a)(i) because it is for services performed by persons authorized by law to practice a recognized profession.
5. A copy of this Resolution shall be placed on file with the Zoning Board Secretary.
6. The Borough of Highlands Zoning Board Secretary is hereby directed to publish notice of this award as required by law.

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

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**  
**NAYES: None**  
**ABSTAIN: None**

**Appointment of Board Engineer**

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

**RESOLUTION  
APPOINTING ZONING BOARD ENGINEER  
FOR THE YEAR 2006**

**WHEREAS**, the Borough of Highlands Zoning Board of Adjustment has a need for professional engineering services; and

**WHEREAS**, such professional engineering services can only be provided by licensed professional and **FRANCIS MULLAN, P.E.** from the firm of **SCHOOR & DEPALMA, INC.** is so recognized; and

**WHEREAS**, the Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq. requires that the Resolution awarding the contract state the circulation not more than ten (10) days after passage of the Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Highlands that **FRANCIS MULLAN, P.E.**, from the firm of **SCHOOR & DEPALMA, INC.** be appointed Zoning Board Engineer for a one (1) year term expiring December 31, 2006. The person appointed is a member of a recognized profession and it is not possible to obtain competitive bids.

**BE IT FURTHER RESOLVED** that a copy of this Resolution be published in an official newspaper of the Borough within ten (10) days of its passage.

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

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

**Appointment of Board Secretary**

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

**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION APPOINTING BOARD SECRETARY  
FOR THE YEAR 2006**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that **CAROLYN CUMMINS** be appointed Secretary of the Zoning Board of Adjustment for a term of one (1) year expiring December 31, 2006.

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

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**

**NAYES: None  
ABSTAIN: None**

**Approval of 2006 Meeting Schedule**

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

**RESOLUTION SETTING THE SCHEDULE FOR REGULAR  
MEETINGS OF THE  
BOROUGH OF HIGHLANDS ZONING BOARD OF ADJUSTMENT  
FOR THE CALENDAR YEAR 2006**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that the following schedule is hereby designated as the official Regular Meeting Calendar of the Zoning Board of Adjustment for the year 2006. The official meeting days shall be the first Thursday of each month unless otherwise noted.

February 2, 2006  
March 2, 2006  
April 6, 2006  
May 4, 2006  
June 1, 2006  
July 6, 2006  
August 3, 2006  
September 7, 2006  
October 5, 2006  
November 2, 2006  
December 7, 2006  
January 4, 2007 Regular/Reorganization

**BE IT FURTHER RESOLVED** that all meetings will be held at the Highlands Municipal Building, Council Chambers, 171 Bay Avenue, Highlands, NJ, at 7:30 p.m.

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

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**  
**NAYES: None**  
**ABSTAIN: None**

**Designate Official Newspapers**

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

**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT RESOLUTION  
DESIGNATING OFFICIAL NEWSPAPERS  
FOR THE YEAR 2006**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that the **COURIER, THE ASBURY PARK PRESS, and THE TWO RIVER TIMES**, are hereby designated as the official Newspapers for the Borough of Highlands Zoning Board for publications which are required by law for a term of one (1) year, expiring December 31, 2006.

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

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney, Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN:**

---

---

**ZB#2005-9 Palatial Homes, LLC  
Block 63 Lot 19.01 – 231 Bay Avenue  
Review Application & Set P.H. Date**

**Present: Wayne J. Peck, Esq.**

Mr. Peck explained that this is the site where Dr. Gimpi's is located on Bay Avenue. This is a defunct restaurant with a parking lot in the rear. What we are proposing is five town homes. We have submitted a full set of site plans and architectural renderings of the proposed. This application requires a use variance along with site plan approval and they do not wish to bifurcate the application.

The Board reviewed the application and stated the following:

1. Prepare a report of a comparison of the proposed verses the requirements of the multi-family requirements.
2. Provide Site photographs.



3. The applicant should have their Professional Planner focus on the positive aspects of the use variance.
4. Provide data on how they have established the average setbacks.
5. Provide lighting and sign details.
6. Mr. Peck stated that the applicant is willing to pay for the Board to have a Planner at the hearing if the board so desires.
7. Applicant needs to verify the building coverage calculations to included covered porches and overhangs.
8. Applicant needs to calculate the building height to current ordinance.
9. Applicant is to provide information regarding building height bonus for mechanical systems.

Mr. Duncan offered a motion to schedule this matter for a public hearing on March 2, 2006, seconded by Mr. Francy and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

---

---

**ZB#2005-10 Branin, Gary & Denise  
Block 48 Lot 3 – 39 Cornwall Street  
Application Review & Set P.H. Date**

**Present: Gary Branin, Applicant**

Mr. Branin stated that he is here for an appeal of the Zoning Officers decision. He believes the Zoning Officer denied his application for a rear yard off set that he believes he was already approved for by the previous Zoning Officer. This is an application for new construction within the existing footprint to build up. If the application is approved it would allow for him to construct three bedrooms and a laundry room.

The Board reviewed the application and discussed the following with the applicant:

1. Applicant needs to clarify what is the existing structure and what isn't the existing structure on the survey.
2. Applicant needs to provide photographs of the site.
3. The applicant gave authorization for the board members to visit the site.
4. The board explained that the zoning denial also states that the second floor Addition covers the entire first floor and can not exceed 80% of the first floor.

5. He is constructing a covered porch where there was a previous deck.
6. The board had a lengthy discussion with the applicant with regard to the appeal process and suggested that the applicant apply for the variances in addition to the appeal and serve public notice.
7. Mr. Mullan explained that if we only decide weather or not the zoning officers interpretation of one or two provision is correct or not and during the review of the entire property and project the board engineer will critique all of the zoning parameters of the property and if another variance of non-conformity comes up during the review that hasn't been specified by the zoning officer then we would be basically starting from scratch. So it would better to do it in a comprehensive way, all simultaneously so that we don't make one decision only to find out there are other non-conformities that are needed that you did not notice for or where not part of the application.
8. The applicant was directed to have the zoning officer review the drawings that he is going to be submitting to us, not previous ones and give a new denial letter.
9. Mr. Mullan explained that even if the Zoning Officer does not site a specific variance, it will still come up during the course of the hearing and will need a decision by the board of whether or not to grant it.
10. Mr. Branin stated that he will apply for the variances in addition to the appeal.
11. Mr. Baxter advised the applicant that he must serve public notice no matter if the applicant applies for the variance or not. Notice would be required for the appeal alone.
12. The Board determined that they would not require a board engineer review letter for this matter.
13. Mr. Baxter explained to the applicant the requirements for personally serving public notice.
14. The board requested an updated survey to show what is new and what is existing (asbuilt). Mr. Branin stated that he would have his surveying prepare a new survey.
15. It appears that the applicant will need a front yard setback in addition to the other variances.
16. The board explained to Mr. Branin that he must have his paperwork to the Board Secretary at least 10-days prior to the meeting date and further explained that there are scheduled matters for February so there is a chance that he may not be heard that night.

Mr. Mintzer offered a motion to schedule this matter for a public hearing on February 2, 2006, seconded by Mr. Francy and all were in favor.

---

---

**The remainder of the meeting was not electronically recorded in error.**

**ZB#2005-7 234 Bay Avenue, LLC  
Block 69 Lot 1 – 234 Bay Avenue  
Unfinished Hearing**

**Present: Kevin Kennedy, Esq.  
Mr. Luttrell, Applicant  
Craig Bahrs, Applicant  
Kathy Franco, A.I.A, P.P.**

Mr. Kennedy stated that the application has been reduced from four proposed units down to three proposed units. Mr. Luttrell has reviewed the Board Engineers Letter dated 1/4/06 and agrees to comply with all conditions.

The following exhibits were marked into evidence:

- A-11: 12/16/05 Letter from Monmouth County Planning Board
- A-12: Architectural Plans prepared by Katherine Franco dated 12/20/05  
Exhibit A-5 not to be considered any more
- B-4: Board Engineer Letter dated 1/4/2006.

Katherine Franco stated the following during her testimony and response to questions from the board:

1. This is a single-family zone and there is an existing three family home which does not meet current building codes.
2. She has reviewed the Master Plan and the existing structure is not owner occupied and the units were rentals. The proposed units will be owner occupied.
3. There are four proposed parking spaces per unit which would be two spaces in the garages and two spaces in the driveways for a total of four spaces per unit.
4. The proposed would be stopping commercial from spreading into this area.
5. The proposed will be a raised structure and would comply with FEMA regulations and improve existing condition of the site and would not be encroaching onto the municipal right-of-way.
6. There would be a 10-foot setback to Bay Avenue, 5-feet to Cedar from the steps.
7. With the reduction of the number of units to three, two units stayed the same size and one unit was increased in size.

Mr. Luttrell stated that there will be a restriction on the site that two of the three units be owner occupied.

Ms. Franco continued her testimony as follows:

8. This project would be an improvement to the town aesthetically.
9. This will be the only building facing Cedar Street so these units would be the main user of Cedar Street.
10. This is a long lot 7371 square feet.
11. The lots in the area are very small, so this is a high density area by nature and we would be further back than the average.

Mr. Kennedy explained that this is not a vacant lot. There is a three family non-conforming structure that does not look nice on the site.

Katherine Franco continued:

12. The previous lot coverage is 73% and the current is 56%.
13. With regard to the impact to the neighbors, they currently look at the existing structure and they are proposing this aesthetically pleasing structure.
14. They will not disturb Cedar Street with the utility connections.
15. She then described her increased landscaping plan.
16. She then discussed with the board the comparison of the proposed project with the multi-family zoning requirements.
17. Each unit will have covered decks for outside use in addition to the common areas.

Mr. Luttrell stated the following:

1. He explained that if they wanted to they could fix up the existing structure and it would be a three-family structure. Each unit has their own separate entrance.

Mr. Kennedy – keep in mind that there are three existing units and they are proposing three units. Yes, it's a larger building but the number of units are the same.

Craig Bahrs stated the following:

1. He explained that they could obtain certificates of occupancies for each of the three existing units if they did some work but they would prefer to proceed with the proposed project.

The board expressed to the applicant that they needed more testimony with regard to the reasons for granting this use variance.

Mr. Kennedy stated that this would promote a visually desirable environment and that there are three existing units at the site.

Ms. Franco described large developments that are within the area of this site.

Mr. Mullen asked if there were any questions from the public but there were none.

Mr. Luttrell stated that they would comply with conditions in the Board Engineers Letter.

Mr. Kennedy stated that there are no detriments if this application were approved because they are going from three units to three units.

Mr. Mullen asked if there were any comments from the public but there were none.

The Board closed the public portion and then discussed the application.

Mr. Duncan offered a motion to approve the application, seconded by Mr. Mintzer and it was not approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Ms. Wicklund**

**NAYES: Mr. Francy, Miss Tierney, Mr. Mullen**

**ABSTAIN: None**

The application was not approved because a use variance requires five affirmative votes.

---

---

**ZB#2005-8 Knox 400, LLC  
Block 108 Lot 2.01 – 460 Highway 36  
Hearing on New Business**

Mr. Mullen announced that do to the late hour this hearing will not be heard tonight and will be carried to the February 2, 2006 meeting.

---

---

**APPROVAL OF MINUTES:**

Mr. Mullen offered a motion to approve the December 1, 2005 Minutes, seconded by Mr. Francy and all eligible members were in favor.

Ms. Wicklund abstained from voting on the minutes.

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

The Meeting adjourned at 10:05 P.M.

---

**CAROLYN CUMMINS, BOARD SECRETARY**