

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MARCH 2, 2006**

Mr. Mullen called the meeting to order at 7:45 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 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,
Ms. Ryan, Mr. Mullen, Mr. Fox**

Absent: Ms. Wicklund

**Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Jamie Sunyak, P.P.
Joseph May, Acting Board Engineer**

**ZB# 2005-9 Palatial Homes – Request for Postponement to 4/6/2007
Block 63 Lot 19.01 – 231 Bay Avenue**

Mr. Mullen explained that there was a deficiency in the public notice so the applicants attorney has requested that this public hearing be rescheduled for April 6, 2006.

Mr. Duncan offered a motion to reschedule this matter for a public hearing on April 6, 2006, seconded by Miss Tierney and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2006-1 Duane Realty, LLC
Block 94 Lots 1 & 16 – 321 Bay Avenue
Application Review & Schedule Public Hearing Date**

**Present: Mike Letteri, Esq.
 Randy Takian, Principal of Duane Realty, LLC**

Randy Takian stated that this is an application for a mixed use building with commercial use on the first floor and three stories of a residential use with parking underneath the structure. He believes that the residential use will be apartments and extended stay units. They are requesting several variances a FAR, Height (use variance). The two lots have been merged and he is the owner of the property.

Mr. Mullen – because the housing element is clearly the predominant element here that it no longer an accessory so he believes that a use variance would be required for the housing element.

The Board reviewed the application and stated the following:

1. The applicant will need to address the density issue.
2. On the application question #12 needs to be answered because the applicant answered unknown.
3. Provide a comparison of the proposed development with the requirements of a multi-family development.
4. Clarify some architectural issues such as how do you get into the building, the stairs that are shown do not connect to the lobby.
5. There are some mechanical spaces that are below grade and the applicant needs to look at in terms of the flood plain.
6. The applicant must serve public notice.
7. The applicant must address the parking concerns.

Mr. Francy stated that the applicants applications does not refer to the commercial on first floor, residences and extended stay and there is an ambiguity in the applicants words and we need to know what exactly the applicant is proposing.

Mr. Takian – it will be a mixed use building and how that residential use gets defined will be something that we can talk through. We are proposing eighteen one bedroom units.

Mr. Baxter explained that the applicant will need to work through this before the applicant serves public notice.

Mr. Francy – in terms of parking it is not clear what exactly the applicant is asking for and this is a central intersection in town and the applicant has a very high hurdle.

Mr. Takian stated that at this time he is not sure if the residential units will be rental units or condos.

Mr. Letteri stated that the applicant would like a special meeting.

Mr. Mullen explained that the board calendar is not overburden and the board could hear the application in May.

Mr. Baxter explained that he also is not in favor of scheduling a special meeting. The Variance Application was received on March 1, 2006.

Mr. Duncan offered a motion to schedule this matter for a public hearing on May 4, 2006, seconded by Mr. Mintzer and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2005-8 Knox 400, LLC
Block 108 Lot 2.01 – 460 Highway 36
Unfinished Public Hearing**

**Present: Kevin Kennedy, Esq.,
 Eric Rupnarain, P.E.
 Katherine Franco, A.I.A., P.P.
 Mr. Leckstein, Esq., present on behalf of an objector
 Rob Knox**

Conflict: Annemarie Tierney stepped down on this matter

Mr. Kennedy – at the last hearing our engineer was testifying and there was some discussions with regard to the Institute of Transportation Engineers and we stated we would provide the board with definitions and that has been done. What is important about this ITE is the particular use that we are proposing is not specifically permitted in this zone and because its not permitted there are no specific parking guidelines as to how many parking spaces should be required for this use.

The Board engineer's letter stated that the zoning ordinance does not give guidelines and the next best thing to look at is the ITE and the two closest types of definitions for this application were either a health and fitness club or an athletic club. If it's an athletic club then it would require a lesser amount of parking and if you read the two definitions they are very similar in many ways and its a very technical argument as to what type of use we are in terms of that category. He suggest that we do not get lost in an analysis of is this proposed use classification 409 or 410 but rather look at what we are proposing and what we need and why we need and can our site accommodate that. He then described that there are many confusing definitions of uses in many towns. He feels that the application can be approved without substantial detriment to the public good and without impairing the intent and purposes of the borough's master plan and zoning ordinance.

Mr. Baxter asked if the applicant ever made an application for a zone change.

Mr. Kenedy – no

Eric Rupnarain, P.E. stated that he was previously sworn and remains under oath.

Jamie Sunyak, P.P. and Joseph May, P.E. were both sworn in.

The following documents were marked into evidence:

- A-17: Letter from Kevin Kennedy dated 2/8/06 with I.T.F. definitions;
- B-4: One Page Site Plan Requirements form from the Fire Official dated 2/24/06;
- A-18: Large Board with eight photographs of existing site with illustrated drawing;
- B-5: Schoor DePalma Letter dated 3/1/06;
- A-19: Parking Calculation prepared by K. Franco which is nine pages.

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

1. Presently there are two curb cuts along highway 36 and traffic can enter on either one and exist through either one. Also there is a very large opening along Ocean Avenue. There is no really defined entrance or exist for this site.
2. The site is 99% impervious at this point and they are proposing to remove some of this pavement and add some additional greenery.
3. They are proposing to eliminate the most easterly curb cut along the highway and replace that with one defined entrance. Along Ocean Avenue the opening will be replaced with a driveway that is 24-feet wide. Traffic can enter at either direction both off the highway and Ocean Avenue and both drives are for two way traffic.
4. The existing impervious coverage will be reduced from 99% to 80.4%.

5. Presently runoff from this property drains to a southerly direction. Their proposal is to curb this entire westerly portion of the property which will control runoff as it leaves this property. They are proposing a trench drain which will tie into the drain system at Ocean Avenue. This will prevent any runoff that flows in an easterly direction from leaving the property.

5. They will require a State Permit for the drainage and for the entrance that they are proposing.

6. All of the parking units will have wheel stops.

7. He then described the site layout for the parking lot.

8. If the applicant proposes greenery in the right-of-way then they will need the borough's approval.

9. The Shadow Lawn entrance will be directly opposite to the driveway.

10. They will install another fire hydrant where ever the fire department wants them to.

11. The main entrance to the building is in the front of the building. There will be no rear entrance.

12. They will provide curbing along the frontage of Route 36 per the Board Engineers request.

There was a brief discussion regarding possibly installing sidewalks along Ocean Avenue.

Mr. Rupnarain continued his testimony as follows:

13. They have no yet applied to NJDOT for the access permits.

14. He described the traffic circulation for entering the site and stated that the turning radius is okay. Both Highway 36 and Ocean Avenue access has a 24-foot entrance.

15. He stated that there are three types of parking spaces proposed which he further described.

16. Signs will be provided for compact parking spaces.

17. He did not express any objections to the Board Engineers request for the applicant to provide new lighting for the site.

Mr. Leckstein asked if the Rupnarain had any training in traffic engineering.

Mr. Rupnarain – no

Mr. Leckstein – asked if there was originally more green planting around the cell tower.

Mr. Rupnarain – I don't believe so

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Mr. Leckstein – were there revisions between the planning board application and the zoning board application with regard to the number of parking spaces?

Mr. Rupnarain – yes, he believes that they added three parking spaces.

Mr. Leckstein – did that remove some of the green area around the cell tower?

Mr. Rupnarain – no

Mr. Leckstein – so it was always that same size?

Mr. Rupnarain – I am not quite sure.

Mr. Leckstein continued to question Mr. Rupnarain about more green area around the cell tower and an increase in the number of parking spaces.

Mr. Leckstein asked if the parking space next to the cell tower were removed then the applicant would meet the impervious coverage requirement of 80%.

Mr. Rupnarain – yes

Mr. Leckstein questioned Mr. Rupnarain about the proposed activities with regard to the youth and wanted to know where a school bus could park on the site.

Mr. Rupnarain could not answer that question. He did state that the site could accommodate a fire engine.

Mr. Leckstein stated that what he is doing is to indicate for the record that the witness is not really thoroughly versed in certain areas to testify as to the safety and the site.

Mr. Kennedy objected to the classification that Mr. Rupnarain is not qualified.

Mr. Leckstein questioned Mr. Rupnarain about the traffic circulation and deliveries and Mr. Rupnarain answered.

Mr. Mullen asked if any members of the public had any questions for Mr. Rupnarain; there were none.

Katherine Franco, A.I.A, P/P. of 150 Monmouth Avenue, Atlantic Highlands, NJ was sworn in.

Mr. Kennedy stated that Ms. Franco is here as a Planner and an Architect.

Mr. Leckstein questioned Ms. Franco about her qualifications.

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

1. The subject property is located in the B-1 Zone.
2. She then described Exhibit A-18 and described each item on this exhibit. She described the existing conditions of the site.
3. She then reviewed the March 1, 2006 Board Engineers Letter and described her own parking calculations known as Exhibit A-19 and described how she came up with her required number of parking spaces. She stated that she has divided the spaces as follows: 3,000 square feet for athletic space and 5,450 square feet for a fitness center
4. She read through the ITE use definitions and the calculation for parking for the two uses of Athletic Club and Health & Fitness Center and she stated that they have 39 parking spaces on the site.
5. There expected amount of membership 548.
6. Her exhibit A-19, should be amended to show that where it states a total of 42 required spaces it should be changed to 45 because you need to add three employee spaces.
7. Under the Athletic Club definition 36 parking spaces would be necessary and we have 39 spaces. Under the Health & Fitness Club definition 49 spaces would be necessary and we are providing 39 spaces therefore requiring a 10-space deficiency. Under her mixed use definition 45 spaces would be necessary and they have 39 spaces therefore requiring a 6 space deficiency.

Mr. May stated that it should be understood that when they state there are thirty nine parking spaces on the site two spots are designated for the cell tower from a prior approval.

Ms Franco continued her testimony as follows:

8. Those two cell tower parking spaces are never used based on information provided by the current owner of the property. She then stated that in the cell tower contract it states that they have to provide 24 hour notice to the property owner.

Mr. Leckstein made an objection and stated that the resolution of this board in approving the cell tower provided for two spaces and it does not matter if they are ever used.

Ms. Franco continued as follows:

9. So instead of requesting a variance for six spaces we are asking for a variance of 8 parking spaces.

There was a discussion with regard to parking between the Board and the Board Planner.

Ms. Franco continued her testimony:

10. We could eliminate the two areas of sidewalk proposed on the site and increase the parking by one or possibly two more parking spaces but they would rather not.

11. They have had discussions with Eastpointe Shopping Center and they would allow for the employees to park there.

Mr. Kennedy explained that this is a self regulating type of business, there are other gyms in the area and if people have to wait people will not go again, they will go some where else.

Mr. Leckstein objected and stated that Mr. Kennedy's comments were not appropriate at this time.

Ms. Franco continued:

12. Stated that the number of fitness centers has increased 200 % over the past 25-years and named a few local gyms. The point to be made is that if a member can't get on a piece of equipment in an acceptable time or get a parking space upon arrival they will either not join or end there membership.

13. The other issue to be addressed is the existing use, Stewarts Restaurant is a quick service restaurant with both inside seating and car service. This restaurant use has a greater parking demand and a more erratic traffic pattern in comparison to the controlled parking lot of the athletic club.

Mr. Objected for the record and stated that Mr. Kennedy is leading the witness.

Ms. Franco stated the following:

14. She described the positive criteria for this application and referred to page 4 of the Master Plans Goals and Objectives. They are improving this property by asthetics, physical structure, site plan and the highway entrances and a better traffic pattern. They have provided 37 parking spaces for the athletic club. This site and building need to be rehabilitated. They are improving the surroundings by improving this site.

15. They are hoping to have some community dialog and this will offer a diversified range of activities which she further explained and stated will improve the quality of life.
16. With regard to the ADA access what they have done is in the main entrance it is at grade, they will have an ADA curb cut near the ADA parking spaces. This curb cut will have to be included on the plan.
17. The building height is 36 feet
18. They are proposing to do is actually leave the roof then build a new wall and new roof and drainage system on top which she further described in detail the outside building material.
19. They are asking for a waiver for the outdoor living space requirement for the residential unit because this apartment has been here for a number of years and there is currently none.
20. She described the emergency door exit.
21. Her overall parking calculation did not include the two cell tower parking stalls.
22. They are very confident that at the highest peak they do not anticipate more than thirty. They are very comfortable with the parking that they are providing.
23. She explained that they are not going to have basketball for kids at the same time as the classes that they will offer which she further explained.
24. They are not proposing any changes to the apartment.
25. With regard to the wall on Ocean Avenue they are not wrapping the wall due to budgeting.
26. The application needs a use variance and she does not believe that they really need a variance for parking because there isn't any requirements in the ordinance that would have to be up to the board.

Mr. Kennedy stated that they did serve public notice and request a sign variance for both the height and square footage.

Ms. Franco continued:

27. It is there intent to maintain the existing sign in terms of the height and physical area. It is staying the same square footage but they have added some modifications to it and she described the illuminated portions.

ZB#2005-10 Branin, Gary & Denise
Block 48 Lot 3 – 39 Cornwall Street
Hearings on New Business

Mr. Duncan offered a motion to reschedule the public hearing for the Branin application to April meeting and to extend the meeting time to 10:30, seconded by Mrs. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: **Mr. Duncan, Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Mullen**
NAYES: **None**
ABSTAIN: **None**

Mr. Letteri stated that on behalf of Mr. McGann's office we will mark this matter for the April meeting. He then requested that the Branin application be put up first after this application.

Mr. Duncan offered a motion to approve the following order for the April Agenda, seconded by Mr. Braswell and approved on the following roll call vote:

1. Knox 400, LLC
2. Branin, Gary
3. Coleman, J.
4. Palatial Homes

ROLL CALL:

AYES: **Mr. Duncan, Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Mullen**
NAYES: **None**
ABSTAIN: **None**

Mr. Baxter stated that we have not taken jurisdiction on this matter yet.

Mr. Mullen stated that the Branin application will not be heard this evening. It has now been scheduled for April 6, 2006.

There was a discussion with regard to Mr. Branin's public notice.

Mr. Baxter stated that the applicant did not serve notice for the variance application only for the interpretation; therefore the applicant must renotify.

**ZB#2005-8 Knox 400, LLC
Block 108 Lot 2.01 – 460 Highway 36
Continuation of Public Hearing**

Mr. Leckstein asked if Ms. Franco was versed in enhanced proofs.

Ms. Franco- yes

Mr. Leckstein – what are the enhanced proofs?

Ms. Franco – to prove almost beyond a reasonable doubt that your positive criteria is correct.

Mr. Leckstein questioned Ms. Franco with regard to her testimony. He also questioned her about the proposed use.

Ms. Franco stated the following:

1. It will focus on individual fitness and training and will provide exercise classes, weight lifting and locker rooms.
2. There will be no gymnastic equipment.
3. They will offer juices.
4. They would like to have the athletic use be the primary use.

Mr. Leckstein continued to questions Ms. Franco about the proposed use and the parking calculations and her professional background.

Mr. Leckstein stated that he had nothing further.

Mr. Mullen asked if there were any questions from the public.

Mr. Knox – when was the study done.

Mr. Leckstein objected because the applicant is represented by an attorney.

Mr. Baxter advised Mr. Knox that he could not ask questions.

Mr. Duncan questioned Ms. Franco with regard to exhibit A-19.

Ms. Franco stated that the proposed use is a use that is not competing with any other uses in the community.

There were no other questions for Ms. Franco from the public.

Mr. Duncan offered a motion to carry this hearing to the April 6, 2006 meeting without any further public notice, seconded by Mr. Fox and all were in favor.

Mr. Mullen stated at this time the board will adjourn this hearing and carry it to the April 6, 2006 meeting without any further public notice.

Other Business:

Memo From Borough Clerk RE: ZB Annual Report & List of Recommendations

The Board reviewed a memo from the Borough Clerk dated February 15, 2006 asking for suggestions with regard to the recommendations and the board determined that this should be referred to the Planning Board.

Approval of Minutes:

The Board reviewed and discussed the February 2, 2006 minutes with regard to the review of Branin's public notice and it was determined that he did serve proper notice therefore he does not have to renote and the February 2, 2006 minutes were accurate.

The Board Secretary stated that there was a error in the minutes on page 11 that Exhibit B-3 must be added to the minutes.

Mr. Duncan offered a motion to approve the February 2, 2006 meeting minutes with the correction on Page 11, seconded by Mr. Mullen and all were in favor.

Communications:

Mr. Mullen reminded the Board of the upcoming educational classes.

Mr. Mullen also advised the Board to hold on to the Worthington Capital Plans because they will not supply new ones.

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

The meeting adjourned at 10:54 P.M.

CAROLYN CUMMINS, BOARD SECRETARY