

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
April 6, 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 of Adjustment 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, Ms. Ryan,  
Mr. Mullen, Ms. Wicklund, Mr. Fox**

**Absent: Ms. Tierney**

**Also Present: Carolyn Cummins, Board Secretary  
Greg Baxter, Esq., Board Attorney  
Jamie Sunyan, P.P.  
Joe May, P.E. Acting Board Engineer**

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**ZB#2006-2 Worthington Capital, LLC  
Block 9 Lots 6 & 7 – 1 South Bay Avenue  
Application Review & Set P.H. Date**

**Present: Michael Letteri, Esq. of Law office of Martin McGann**

Mr. Letteri stated that the applicant is proposing to demolish the existing building (Careless Navigator Business) and to construct five condominiums. The applicant is seeking a use variance to be able to proceed with the construction of the five residential units. The Governing Body did adopt an ordinance vacating the paper street that ran behind the property.

The Board reviewed the application and stated the following:

1. The recently adopted Master Plan does specifically modify the zone in this area and some of the applicants paper work shows this property in the WC-1 Zone and although this zone has not been put in an ordinance yet that zone has been given some new characteristics in our Master Plan and the master plan proposes this to be a B-3

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Zone. There is some information in the Master Plan which would be beneficial for the applicant to review in order to comply with the finding of being in conjunction with the Master Plan.

2. The variance Application is incomplete with regard to if the applicant is the owner of the property or the contract purchaser, this must be clarified on the variance application.  
Mike Letteri stated that he believes that the applicant is the owner of the property.
3. The applicant must respond to the Fire Marshall Report which was prepared by Dave Park, Fire Official.
4. The applicant must obtain a letter of no interest from the State of New Jersey, Department of Transportation, Bridge Committee.

Mr. Letteri stated that the applicant grants the board a waiver of time, so that this matter can be scheduled for a public hearing on June 1, 2006.

Mr. Duncan offered a motion to schedule this matter for a public hearing on June 1, 2006, seconded by Mr. Mintzer and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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**ZB#2005-9 Palatial Homes, LLC  
Block 63 Lot 19.01 – 231 Bay Avenue  
Hearing on New Business**

Mr. Mullen announced that the Board will not be able to hear this matter and this matter will be carried to May 4<sup>th</sup>.

Mr. Baxter stated that the applicant has not requested this adjournment. The board is postponing it because there is not enough time this evening to hear it. He also stated that he has reviewed the public notice and newspaper publication and finds it to be in proper form therefore the board can take jurisdiction on this matter.

Mr. Duncan offered a motion to carry this public hearing to May 4<sup>th</sup>, 2006, seconded by Ms. Ryan and approved on the following roll call vote:

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**ROLL CALL:**

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

Mr. Mullen announced to the public that this public hearing has been postponed to the May 4<sup>th</sup>, 2006 meeting and no further public notice will be given.

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

Mr. Duncan offered a motion for a time limit to 9:15 PM for this public hearing, seconded Mr. Francy and all were in favor.

**Present: Henry Wolffe, Esq. (filling in for K. Kennedy)  
Robert Knox  
Mike Leckstein, Esq., Attorney for Objector Paul Mazzallo**

Mike Leckstein stated that he is aware that the applicant wants to enter a new siding plan and he has no objections to that.

Mr. Wolffe - these are plans that are only amending the face of the new structure. There is no change in the size or location.

The following was marked into evidence:

A-20: Amended Architectural Plans prepared by K. Franco showing floor elevations dated 3/27/06.

Mr. Baxter stated that Ms. Joan Wicklund listened to the meeting tapes of March 2, 2006 for voting eligibility but she was not able to hear all of the Franco testimony so she is disqualified.

Ms. Wicklund agreed with Mr. Baxter's statement.

Mr. Mullen stated that Mr. Fox, Alternate #2 Member would be voting this evening.

Mr. Wolffe stated that he had no objection and that the applicant rests.

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Mr. Leckstein stated that he has appeared at all of the meetings and he represents an objector Paul Mazzella and he has three witnesses. We are going to address what this is which has been controversial. We will talk about the planning issue and we will talk about the parking. We will represent to you that this is a health care facility and nothing but. We are going to represent to you that none of the criteria of a use variance has even been close to being met and lastly that the parking requirements for a facility such as this are two to three times what has been proposed for this site.

Terry Vandermark of 376 Route 130, Plymouth, MA 02563 was sworn in by Mr. Baxter.

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

1. He is the Executive Vice President of the Thomas \_\_\_\_\_ Co. They are a continuing education and consulting group. They do nation wide seminars for health club owners and operators. They have approximately 4,000 club owners per year attend their workshops. They are the only company that tracks independent health clubs in our industry. As a consultant over the last ten years they have roughly helped developed 300 start up projects with clients.
2. They have two publications (1) Making Money in Fitness Business, (2) Business of Fitness, which are the only two books of our industry which have made the Amazon top 100 list. These books center on the health fitness industry.
3. For the past ten years he has implemented a software program in independent health clubs to track various statistics and gather information and data from it.
4. He has reviewed this application and is familiar with the size of the proposed which is 8,500 square feet and has seen what has been outlined as the use that will take place in this facility. He believes that this facility would be classed as a fitness center by definition because to be an athletic club would require a full service racquetball courts, basketball courts, pool where they could not necessarily would but could host some type of a meet or a group where they could pay for a service to utilize that as a league game, which he further explained.
5. He has over 17,000 fitness clubs in his database.
6. He has owned three clubs, the smallest being 8,500 square feet and the largest being 38,000 square feet and he has bought and sold six other clubs.

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7. Having 5,500 square feet of the proposed club being devoted to a health and fitness center and approximately 3,000 square feet for a great room for exercise classes is not an unusual type of thing to happen in a health and fitness facility, it happens in almost every fitness center. We would just call that a group room where they would host aerobics and group exercise. If they were to host a full size court with a league game then yes it would.

8. He contributed to the two books written which he spoke about earlier. He has testified in courts and before boards as an expert on health clubs. There isn't a licensing requirement but there is a governing body, The International Health Racket and Sports Club Association which does a nationwide forum on this industry and he does speak at there conventions. The Company that he is Vice President of has a staff of 17 people.

9. He believes that Paul Mazella is a member of Licensing Organization.

10. I.R.S.A. (International Health & Racket and Sports Club Association) does classify the definitions for clubs. The applicant would have to be able to host a full size league game and in his opinion the proposed is a fitness center/gym.

11. Athletic Clubs by definition of IRSA are not classified by size but being able to host a league games on a full size court, which he further described.

12. There is no way that the proposed can be classified as an Athletic Club.

13. In his database there is a formula for what kind of membership is usually in a club of a certain size and it is based upon square footage. For a club that is 8,500 square feet and being a health facility club the projected membership would be 1,400 members which is a nationwide average. It could be four or five hundred but it's not recommended because there would be no money.

14. Based on the usage rate which means that of the membership base they track how often people use the clubs on a daily basis and on Monday evening roughly 10% of the total membership base is what would be required. So if there were 1,000 people you would need 100 parking spaces. The minimum would be 10 spaces for every 1,000 square feet would be the minimum of what he would recommend to his clients. Based on 8,500 square feet he believes that a minimum of 85 parking spaces would be required. Parking is a huge entry barrier for a lot of clubs.

15. Smaller communities have a higher usage rate based on there membership. He has been tracking Sculpt's Fitness and Kings Fitness in Hazlet and both of them exceed

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that average per square feet. The average is .166 of the square footage for membership base. This calculation does not take into consideration employees. The number of employees for a 8,500 square foot facility would be if fully staffed would be 15 employees not all at one time. The peak time would be from 5:00pm to 7:00PM and the number of employees would be five.

Mr. Leckstein stated that he had no further questions for Mr. Vandermark.

Henry Wolffe questioned Mr. Vandermark and Mr. Vandermark stated the following:

1. He has tracked certain clubs in Monmouth County.
2. He has never given advice to a club in Monmouth County.
3. He has never given any consulting advice to any club that would be started in Highlands or Atlantic Highlands, but he did work with Sculpt Fitness for five years prior to Paul Mazzella purchasing that club. He has done feasibility studies and demographic studies of the area over the years.
4. Yes, he has consulted for a club and recommended that they start a club even though the parking facilities available were not exactly what was necessary to run a fitness club.
5. He does not feel that the usage would be less in a suburban area such as Highlands because there is less to do here which he further explained.
6. Paul Mazzella is not a member of IRSA but the previous owner of Sculpt Fitness was. He does understand that Mr. Mazzella does have a club and would be in direct competition with the applicant.
7. Parking is self regulating and if parking was inadequate then the membership would be reduced.
8. He has not examined the proposed plans.
9. With regard to the use of a facility as an athletic club verses a fitness center is that it will have a large membership base.
10. Even if the Knox facility was 100% open space it still would not be classified as an athletic club under IRSA.

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11. He explained that to meet the IRSA definition of an athletic club you must be able to host league games on a full sized regulation court.

12. He does not have the IRSA definition book with him. He then explained that what IRSA is an organization that represents health club owners in legal matters.

Mr. Wolffe asked Mr. Vandermark if he believes that the IRSA definitions are binding with this board.

Mr. Leckstein objected to Mr. Wolffe's question.

Mr. Vandermark continued his testimony as follows:

13. There are two organizations in our industry one is called Body Training Systems and the other one is called Less Mills and basically what they do is development programming for group exercise and their recommendations for the smallest size classes is 3,000 square feet and in a class like that you have one person per 30 square feet which would be 100 people.

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

Tom Burke of Highlands – how many fitness centers do you work with that are already in an existing shopping centers?

Mr. Vandermark – a very large majority but he does not have a number and parking is always an issue.

Mr. Wolffe – Mr. Vandermark I asked you before if you were familiar with the applicant's current space and you said that you were not.

Mr. Vandermark – no I am not, before he was there when it was a pharmacy and the previous owner David \_\_\_\_ was looking at that space.

Mr. Wolffe – and you have no idea what of the current parking requirements of the applicant are in that area?

Mr. Vandermark – no, I don't.

There was a problem with the electronic recording machine so the public hearing stopped at 8:41 PM and started again at 8:44 PM.

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Bill Johnson of Highlands – are you a paid consultant?

Mr. Vandermark – yes

Bill Johnson – did you look at the Stewarts Root beer facility?

Mr. Vandermark – yes on my way here.

Mr. Leckstein questioned Mr. Vandermark and Mr. Vandermark stated the following:

1. The fact that there is a 3,000 square foot facility within the health club does not in anyway change the statistics as to membership.
2. An all purpose room could exceed the density of the health club facility.

Mr. Leckstein – the fact that there may be a basketball game on half court one day, the next day there being an exercise program or a dance program or training for a basketball clinic for a school, that facility could create a density as great as the health facility itself, is that correct.

Mr. Wolffe objected to Mr. Leckstein's leading question.

Mr. Vandermark – yes, that is correct and I am not being paid to be here

Randy Takian of Bay Avenue, Highlands – you stated that there would be 1,400 members based on that code if there are two clubs that are so close together would you divide that in half because they would share membership.

Mr. Vandermark – no, that's not the calculation. The calculation is the average club holds of that size across the country is 1,400 members. If I were to do a feasibility study of the area I would look at how many prospects based on the tracking that we do that a club could attract in that particular area.

The Board questioned Mr. Vandermark and he stated the following:

1. In peak times between 5:00 & 7:00 PM you will generally have 10% of your population.
2. Sculpt's Fitness is at peak capacity for square footage.



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3. He only had experience with the A & P center where Mr. Knox is now because David had looked at that space and called him and the amount of leftover parking spaces from the A & P was a concern.

4. It's a shame that the applicant does not expect more than four or five hundred in this proposed space.

Mr. Francy questioned Mr. Vandermark about the applicant's testimony regarding the number of clients and the proposed number of parking spaces.

Mr. Leckstein – there are two problems with Mr. Francy's questions one is that there is an assumption that this model of what ever it is, will be that model for ever, that it will never be sold or used by anyone else. Variances go to the property not the individual and if its going to be a health facility of some kind, its going to be a health facility of some kind So we have to assume that a 500 seat movie theater at some point in time will have five hundred people and you will have to provide parking for that.

Mr. Francy – or its self regulating

Mr. Leckstein – well than we may as well not have a single parking regulation in the borough or in New Jersey. The Board of Adjustment has to assume that the ordinances and regulations of the town are there for some purpose.

Mr. Braswell – we have heard testimony that the average person if they can't find a park space near the door then they will not go there.

Mr. Duncan – what is the typical radius for attracting membership.

Mr. Vandermark – a 12 to 15 minute drive time which he further explained. Membership is seven and a half percent of the population of the drive time. The number of fitness clubs has increased. Under ten percent of the health club population comes in with a spouse or significant other.

Mr. Baxter swears in Victor Furmanec, P.P. of 41 Hwy 34 South, Colts Neck, NJ .

Mr. Furmanec stated the following during his testimony and response to question from the board:

1. He is employed with Beacon Planner and he is a licensed Professional Planner in New Jersey and described his professional background to the board.  
The Zoning Board accepted Mr. Furmanec's qualifications.

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2. He has been present through all of the meetings on this matter.
3. The criteria for a use variance has been established in a court case known as the Medici Case, that case established that there are several topics that need to be demonstrated to the board in order to enable the board to grant a use variance. There is a two prong test, the positive criteria and the negative criteria which he further described.
4. He is not sure that there is a lack of Health Care centers in Monmouth County. Within a 10 mile radius there are about 50 health and fitness centers from the Red Bank/Middletown area. I think that within five miles there were about 6 to 8 facilities.

Mr. Duncan – there not adding a new facility, its just a relocation of an existing one within one mile.

Mr. Furmanec continued his testimony as follows:

1. There is no need for this facility to be located at this site.

Mr. Leckstein summarized Ms. Franco’s testimony with regard to special reason for granting this approval and then asked Mr. Furmanec if he agreed.

Mr. Wolffe objected to Mr. Leckstein’s recollection of Ms. Franco’s testimony because he just spoke with Ms. Franco and she denies that that was her testimony.

Mr. Furmanec continued his testimony as follows:

2. His recollection of Ms. Franco’s testimony was that the proposed health and fitness center would not take away business from the down town, so it was not in direct competition with the businesses down town and that it was a use that would be appropriate, that it would have a positive relationship with the down town as opposed to taking business away from the down town. He is not sure how accurate that argument is, that would imply that the uses permitted in the B-1 district are really not appropriate because they are hindering another part of the community. That was her testimony has he understands it. He does not believe that this demonstrates a special reason.

Mr. Mullen explained that the Zoning Officers initial determination was that this is a permitted use and subsequent to that rescinded that decision and went on to say that they were not sure therefore it had to be advocated before this board. Is there any merit to that wavering in her mind as to if this is a permitted use.

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Mr. Furmanec continued his testimony as follows:

3. I think that after the Zoning Officer was asked to take another look she determined that it did not fall under the permitted uses.
4. This particular use would not hinder business down town. He also does not believe that any of the permitted uses would hinder business down town.
5. You really need to demonstrate that this use is appropriate for this property regardless if it's the 25<sup>th</sup> health center or the 1st health center in Highlands. It really needs to stand on its own merits and relate to this property. The competition aspect of this property is secondary to whether the use can function properly. Part of the positive criteria for special reasons is that you need to demonstrate that a site is suitable for a particular use. If you can't provide adequate parking for a use on a site then that indicates that a site is not suitable. The Planner has indicated that there will be lack of parking calculations of 57 parking spaces and the applicants planner also has indicated that there is a deficit in parking and depending on whether you consider part of it as an athletic club or if you consider all of it together a fitness club it just lessen the degree of the parking deficit. There is a deficit of 12 spaces if you consider the entire establishment a health club and there is a deficit of 7 spaces if you consider the upper floor an athletic club. This site is not really suitable for the proposed use.
6. As far as for use it would have to be uniquely qualified to get special reasons. The property is large enough and has access and would be suitable for any of the retail uses that are permitted there.
7. The criteria would make a property uniquely suited for a health and fitness facility is property that provided adequate access and provide adequate space for the facility and parking. He does not feel that this property is suited.
8. The existing restaurant use is a permitted use at this site. There are periods of where the proposed use would be more and less intense than the existing restaurant use. The summer months for the restaurant use would be the more intense use period.
9. If you are proposing a facility of a certain size than you have to expect that when you build it they will come. It is not physically possible to accommodate this facility on this site, you know that people will park in the neighboring streets, neighboring properties.

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Mr. Mullen stated that we still have to open up to the defense and public for questions of the witness so we are going to adjourn this hearing now and reconvene this hearing at our May 4<sup>th</sup>, 2006 meeting and there will be no further notice of this application.

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The Board took a brief break to allow for the Board Secretary to change the recording disk.

Mr. Mullen called the meeting back to order at 9:36 PM.

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

**Present: Michael Letteri, Esq.  
Gary Branin**

**Conflict: Mr. Mintzer stepped down for this matter.**

Mr. Letteri explained that they renoticed for this public hearing because they determined that there were two other variances needed.

Mr. Baxter reviewed the public notice and stated that the new notice sites the minimum front yard setback, minimum side setback, rear setback, building coverage and the 80% issue of the vertical addition and any other variances deemed necessary. So the public notice and the advertisement date and the mailing receipts are all in order. The board has jurisdiction to proceed.

Mr. Mullen – this applicant appeared before this board in 2004 for a garage addition and in 2005 made this application for a second story addition on the original house. The relief granted in the first application was for a rear yard setback.

Mr. Letteri – this property is located in the R-2.02 Zone. This applicant was before this board two years ago for permission to build a two story attached garage and the board approved that on September 2, 2004 granting bulk variance for a rear yard setback and a variance for area ratio coverage. In addition the board made findings of fact with regard to the front yard setbacks in the area and of the applicant's property and found that the garage addition would be aesthetically pleasing. That garage addition has been completed. The two-story garage addition was restricted to a garage and storage space, there is to be no residential dwelling in that space. The applicants have one child and are expecting another, so the family is expanding and they are in need of space. This application is for permission to put a second story addition which will house three new

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new bedrooms for the children and a master bedroom suite as well as a couple of bathrooms and a sitting area. The style will be in accordance with the same style of the garage and will be a beautiful complex when completed. There are five variances required and two of them are pre-existing. The rear yard setback where 25-feet is required and 5.62 feet is provided and that is pre-existing. The Zoning Officer believes that we need a second bulk variance for the rear yard setback of the house for the new addition.

Mr. Mullen – according to the survey it's a 6.32 foot variance according to the survey verses the 5.62-feet.

The following exhibits were marked into evidence:

A-1: Variance Application dated January 23, 2006, zoning application and survey Prepared by Ernst dated 3/28/03 for a total of five pages.

There was a discussion between the Board Attorney and Mr. Letteri regarding the new public notice requesting variances that are not listed on the variance application.

Mr. Duncan offered a motion to update the variance application for all variances sought in this application, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Francy, Ms. Ryan, Ms. Wicklund,  
Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

The following documents were marked into evidence:

- A-2: Bulk and area requirements prepared by Zoning Officer dated 1/31/06
- A-3: Location Survey prepared by J. Goddard dated 2/14/06
- A-4: 10-Page Architectural Drawing prepared by applicant.
- A-5: Photo board
- A-6: Photo board
- B-1: 9/2/04 Zoning Board Branin Resolution

Gary Branin was sworn in by Mr. Baxter.

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

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Gary Branin of 39 Cornwell Street, Highlands was sworn in by Mr. Baxter.

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

1. He needs additional living space for his family and that is the reason for the proposed addition.

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**ZB#2005-5 Coleman, Janet  
Block 49 Lot 8 – 53 Shrewsbury Avenue  
Hearing on New Business**

Mr. Duncan stated that due to the late hour it does not seem likely that the Board will be able to hear this matter.

Mr. Mullen apologized to the applicant for the delay.

The Board had a discussion about placing this applicant first on the May 4, 2006 agenda.

Mr. Duncan offered a motion to establish the following order for the May agenda:

- 1<sup>st</sup> Coleman, Janet
- 2<sup>nd</sup> Knox 400, LLC
- 3<sup>rd</sup> Palatial Homes
- 4<sup>th</sup> Duane Realty

Seconded by Mr. Francy and all were in favor.

Mr. Mullen announced to the public that this matter will be carried to the May 4, 2006 meeting and that no further public notice will be given.

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**ZB#2005-10 Branin, Gary & Denise  
Block 48 Lot 3 – 39 Shrewsbury Avenue  
Public Hearing**

Mr. Branin continued his testimony as follows:

2. The rear yard is basically a cleaned pathway to maintain the building because its only like five to six feet wide.

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3. He is aware that once he puts a cover on the front porch the front yard setback must be that of structure and the front porch will be in line with the neighboring houses. He then described the photo board marked A-5 and A-6.

4. The front porch will have a wood cover and will not be an enclosed porch.

5. His front yard has more space than most of the houses on the street and that will not change.

Mr. Letteri stated that the front yard setback is 20-feet and the applicant is providing 13.42-feet.

Mr. Mullen –so the evidence presented here this evening is that the average of the houses that are there are in alignment with the 13.42-feet and there is one that is closer, so there may not even be relief required because you are keeping within the average.

Mr. Letteri – it will not be moved, the porch will just be covered.

Mr. Branin continued his testimony as follows:

6. He has completed the garage as shown on the photograph board.

7. The plans for the second floor addition will be the same architectural style as the garage as shown on A-4.

8. The first floor will be the same brick façade and the second floor will be the cedar impression. The green siding that is on top of the garage will be the second floor of the project, its vinyl siding that looks like cedar shade.

9. The front porch is now wood that is deteriorated, its going to be a concrete porch top with limestone treads. It will be a nice sitting area even if its raining. This porch will remain open with railings and will be covered not enclosed. Other houses on the street have porches that are both enclosed and covered porches.

Mr. Letteri stated that the application meets the 30-foot height regulations and if the Planning Board forces the applicant to raise the house out of the flood zone then we would have to come back to the board.

Mr. Branin continued the testimony as follows:

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10. He described the A-4 to the board. He stated that there is a proposed chimney for the utilities and the brick oven in the kitchen. The projection of the two items projecting out in the side yard are 32-inches from the building on the west side.

Mr. Mullen stated that the allowed projection amount is two-feet.

Mr. Branin continued as follows:

11. He will reduce the projection of the two items to comply with regulations.

12. There are three windows in the back and he described them.

13. He described the foundation plan and stated that it was approved already. The foundation connecting the garage to the house has been completed.

14. He is proposing a new deck on the east side of the property to the front porch. Its was existing but we are going to rehab it.

15. The first floor plan was described and will consist of a kitchen and dining area, den and the existing living room will stay and the porch will stay the same but will be covered. There will be no additional rooms added to the first floor.

16. The proposed second floor addition will have three bedrooms for the children, two bathrooms, laundry room, master bedroom and office space.

17. The total square footage of the house when completed will be just under 5,000 square feet and that includes the garage.

18. There is an interior door to connect to the second floor of the garage which is a storage area.

Mr. Duncan – the testimony given is that the existing footprint of the building is not changing, the only exterior changes is the second floor addition and the covered porch, which does not change the front yard setback. The Front yard setback is okay because it meets the average of the neighborhood. The rear yard setback was granted last year for the garage, so that's not an issue. The side yards because the applicant has agreed to reduce the chimney flu a variance is not required. The covered porch a variance will be required.

Mr. Letteri explained that they also need a variance for total coverage of 40% and a variance for exceeding the 80% vertical addition and the side yard in the front off of the porch.



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Mr. Branin stated the following:

19. The building that is directly south of you with the porch is a driveway distance away from his property line and he showed the board a picture of that house that was on the photograph board.

Mr. Mullen asked if there were any questions from the public or comments; there were none.

Mr. May – as part of the prior resolution dry wells were supposed to be installed on the property and wanted to know if they were installed yet.

Mr. Branin – no, not yet. He believes that he will do the same for this addition as well as the garage.

Mr. Duncan offered a motion to approve the application subject to the Planning Boards flood plain approval, the applicant will not exceed the 24-inch chimney extension regulation and the porch will be open and not enclosed, seconded by Mr. Francy and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Duncan, Mr. Braswell, Mr. Francy, Ms. Ryan, Ms. Wicklund,  
Mr. Fox, Mr. Mullen**

**NAYES: None**

**ABSTAIN: None**

Mr. Letteri requested permission to take exhibits A-5 and A-6 so that they can use them for their Planning Board hearing.

Mr. Mullen granted him permission to take the exhibits and requested that they be returned to the board afterward.

Mr. Letteri asked if the applicant could apply for building permits prior to receiving the written zoning board resolution.

Mr. Baxter explained that they could not apply for building permits.

Mr. Mullen also advised the applicant that this approval is subject to the applicant receiving planning board approval for flood relief.

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**Approval of Minutes:**

Mr. Francy offered a motion to approve the March 2, 2006 meeting minutes, seconded by Mr. Fox and all eligible members were in favor.

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**Communications:**

Mr. Mullen announced that he has just received a letter of resignation from Ms. Wicklund and thanked her for her years of service.

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**Approval of Resolutions:**

Mr. Mullen read the following resolution for approval:

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 to represent the Zoning Board in a litigation matter of 234 Bay Avenue, LLC vs. the Borough of Highlands Zoning Board of Adjustment; and

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

**WHEREAS**, certification of availability of funds is hereby provided by the Chief Financial Officer :

Zoning Board Budget  
Account #1151 – 3755      \$2,500.00

\_\_\_\_\_  
Stephen Pfeffer, Chief Financial Officer

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**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. That Gregory Baxter, Esq., from the firm of Caruso & Baxter is hereby retained to provide Professional legal services as described above for an amount not to exceed \$2,500.00.
2. 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.
3. A copy of this Resolution shall be placed on file with the Zoning Board Secretary.
4. The Borough of Highlands Zoning Board Secretary is hereby directed to publish notice of this award as required by law.

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

**ROLL CALL:**

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

Mr. Mullen read the following Resolution for approval and moved on its adoption:

**RESOLUTION  
EXECUTIVE SESSION**

**BE IT RESOLVED** that the following portion of this meeting dealing with the following generally described matters shall not be open to the public:

**Litigations re: 234 Bay Avenue**

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**BE IT FURTHER RESOLVED** that it is anticipated that the matters to be considered in private may be disclosed to the public at a later date when the need for privacy no longer exists; and

**BE IT FURTHER RESOLVED** that no portion of this meeting shall be electronically recorded unless otherwise stated; and

**BE IT FURTHER RESOLVED** that the private consideration is deemed required and is permitted because of the following noted exceptions set forth in the Act:

9. Related to pending or anticipated litigation or contract negotiations in which the public body is or may be a party.

Seconded by Mr. Duncan and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

The Board then entered into Executive Session.

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**CAROLYN CUMMINS, Board Secretary**