

**Borough of Highlands
Zoning Board of Adjustment
Special Meeting
June 15, 2006**

Mr. Mullen called the meeting to order at 7:50 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 Special 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. Braswell, Mr. Mintzer, Miss Tierney, Ms. Ryan, Mr. Mullen
Mr. Fox, Mr. Anthony**

Absent: Mr. Francy, Mr. Duncan

**Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Joseph May, P.E., Acting Board Engineer**

**ZB#2006-2 Worthington Capital, LLC
Block 9 Lots 6 & 7 – 1 South Bay Avenue
Hearing on New Business**

**Present: Martin McGann, Esq.
James Kennedy, P.E.
Richard Villano, A.I.A.
Steve Owens, P.P.
John Cunningham, Principal of Worthington Capital**

Mr. McGann explained that he anticipates calling three witnesses this evening. The proposal is to construct five residential townhouses on the site. This does require a use variance and site plan approval.

Mr. Baxter stated that he has reviewed the notice to property owners and the affidavit of publication and finds everything to be in order therefore the Board has jurisdiction to proceed.

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The following documents were marked into evidence:

- A-1: Variance Application consisting of 3 pages;
- A-2: Highlands Fire Prevention Letter dated 3/20/06;
- A-3: Site Plan Application dated 1/27/06 consisting of 7 pages;
- A-4: Zoning Permit Application Denial dated 4/6/06;
- A-5: Site Plan prepared by Kennedy Consulting last revised 5/12/06 consisting of 7 pages.
- A-6: Architectural Elevation prepared by Villano last revised 5/17/06;
- A-7: Colored Rendering;
- A-8: Vacation Ordinance O-05-08;
- A-9: Rendering on Small Board;
- A-10: Page 2 of Exhibit A-6;
- A-11: Aerial Photo on Large Board.

B-1: Schoor DePalma Letter dated 6/15/06 consisting of 7 pages.

Joseph May, P.E. of Schoor DePalma was sworn in.

Mr. Mullen explained the hearing process to the public.

Mr. Baxter asked if there were any objectors present that are represented by counsel; there were none.

Mr. Baxter swears in James Kennedy, P.E. of Kennedy Consulting, 211 Maple Avenue, Red Bank, NJ.

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

1. He described Exhibit A-7 which shows the general location of the site as well as a colored version of the site plan and landscaping plan.
2. The Careless Navigator Restaurant currently exists at the site which is a commercial structure with a large paved area for parking. There is also retaining walls made of railroad ties that basically hold up the toe of the existing slope. The slope appears to be man made.
3. They are proposing five town homes each with a single car garage as well as on-site parking in a couple of different areas and driveway parking in a few of the units.

4. They meet the Residential Site Improvement Standards for parking.
5. They have provided a two way access right near where the Careless Navigator access is now. They have provided a one way in off of South Bay Avenue which he further described. No access out onto South Bay Avenue is proposed, only out onto the Route 36 jug handle in or about the same location that exist today.
6. He then showed the driveway spaces that are being proposed as being in front of the last three units which he further explained. The other two units do not have enough distance to park in front of the garage and will be restricted from parking in front of the garage by Master Deed and the Police could enforce “no parking” areas.
7. He explained why they did not propose exiting the site onto South Bay Ave.
8. From the garage to the landscape island it’s about 10 to 12 feet.
9. Four additional off-street parking spaces are provided on the site.
10. There is a total of 12 parking spaces being provided on site which includes the five garage spaces and three driveway spaces and the four additional off-street spaces. The parking does comply with the Residential Parking Standards.
11. There are two lots involved with this project.
Mr. McGann stated that the two lots would be merged into one lot.
12. The borough vacated the pathway that previously existed which was done by Borough Ordinance O-05-08.
13. On Sheet two of seven there is a dotted line that says “edge of bridge overhead” which shows the existing bridge.
14. They have reached out to NJDOT regarding the new bridge project and there are two engineering companies that are sub-contractors for NJDOT and they have spoken to them and they gave them something in writing stating that no property is being taken from this site for the bridge improvements, but the overhead portion of the bridge is moving slightly closer to this site.

Ms. Ryan stated that she was told that as of last week the final bridge plans have not been completed.

Mr. McGann explained that with regard to this application its been about two years now and we came to a point where we had to make a decision to go forward. We are assuming certain things. We are assuming that the bridge is going to be built but we can’t wait any longer. We have to proceed with our application and if it does effect our site and result in a condemnation then we will have to deal with NJDOT over that issue. His client purchased this property about five years ago from a foreclosure situation. The liquor license was sold by the division of taxation so there is no liquor license presently at this site.

Mr. Fox stated that he is working on the Highlands Bridge Project as the Architect.

Mr. Baxter questioned Mr. Fox about his knowledge of information about the bridge project and his employment relationship with regard to the bridge project.

Mr. McGann stated that it does not appear that Mr. Fox has a conflict and he has no problem with Mr. Fox.

Mr. Kennedy continued his testimony as follows:

15. The location of the bridge right now is about 30-feet from the radius of this intersection and its about 82 feet to the nearest point of proposed building five.
16. It appears that the inlet to the existing bridge is at elevation 32 and change. The proposed garage floor elevation is 15.9 feet, 18.1, 20.3, the finished floor varies at 28.7, 28.57 and it varies up to 36.33 feet.
17. He does not know the finished elevation of the new bridge.
18. Garbage – each garage will have storage and there will be a concrete pad for residents to put the garbage containers out on South Bay. There will not be a garbage dumpster they will be individual garage. The enclosure will be 5 by 7.
19. He described the proposed buffer plantings.
20. He described the proposed storm water management plan and stated that they took a non-structural approach which is a reduction in the water runoff. He explained how this process is done through landscaping and that there is a storm collection system due to the slope which will flow into existing storm water system. He stated that the Board Engineer has requested a storm water report showing the reduction of water runoff and they will provide that.
21. He then reviewed the Board Engineers letter and stated the following for each item:

Item 1.1 – is just informational.

Item 1.2 – our Planner will testify regarding this.

Item 1.3 – is just the passage way which the Borough Council vacated about a year ago.

Item 1.4 – relates to 1.2 and our Planner will address that.

Item 1.5 – we will provide the two surveys that we referenced.

Item 2.1 – He provided testimony with regard to site distance and they will show site triangles as requested by DOT.

Item 2.2 – With regard to the refuge system he already provided testimony on that.

Item 2.3 – DOT is milling and repaving the access road. The state highway curbing was not in bad shape but if there repairs needed and it falls to us then we will do it.

Item 2.4 – He believes that he testified about their efforts to minimize the impacts of this intersection on a residential development.

- Item ____ - Lighting – they are proposing three lighting fixtures and the mount height for those lighting fixtures is 15 feet and they are about 3 ½ foot candles. The lighting detail is on sheet 4 of 7 which he further described. The lighting is of a Dark Sky lighting plan.
- Item 3.1 – They will provide the board engineer with information about the stabilization of the slopes. The maximum wall height is around 6-feet. He then described the wall and the rear yards.
- Item 3.2 - They will comply
- Item 3.3 - They can provide a continuous retaining wall on the south side which he further described. He stated that the existing wall now is currently not protected. They would meet the requirement of the ordinance and they will provide a rail on top of the wall to provide for pedestrian fall protection.
- Item 3.5 - He explained that they will make sure that when they do the soil reports that they have adequate space. If geogrid is required they would make sure that they do not go onto the neighbor's property to install the geogrid.
- Item 3.6 – He stated that they will provide calculations to the Board Engineer and if a drywell is needed then they can do that.
- Item 3.7 - They will provide the calculations.
- Item 3.8 – They will clarify this with the Sewer Authority.
- Item 4.1 – They will provide the additional foot candles for the lighting. They are not proposing any big street lights that will impact any neighbors.
- Item 4.2 – He defers to the Architect.
- Item 4.3 – Basically we are just adding a light fixture detail on the back.
- Item 5.1 – He will talk to the Board Engineer to come up with demolition schedule.
- Item 5.2 – If a sign is being provided then we will show details on the plan.
- Item 5.3 – They will comply.
- Item 5.4 – They will provide that.
- Item 5.5 – They will provide those details.
- Item 5.6 – Is informational.
- Item 5.7 – He will provide that survey.
- Item 5.8 – He will provide that survey.

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

Donna O'Callaghan questioned the parking and the amount off street parking that will be lost due to the proposed access to the site.

Mr. Kennedy explained that are meeting the off street parking requirements and it is probably true that the proposed access will eliminate two off street parking spaces but whether or not they are formal spaces he does not know.

Ron Hendrickson, President of the Gateway Condo Assoc. questioned the proposed parking and if it would be sufficient for the guest of the new units and if this is a good site for the proposed development.

Mr. Kennedy stated that the applicant has met the parking requirements of the State and the Borough.

Diane Kawiatec of 27 S. Bay Ave – stated that there is no street parking for these condos.

Shirley Oman, Board Member of Gateway Villas questioned how practical it is to have two units with no driveway parking.

Mr. Kennedy explained that they can't park there.

Donna O'Callaghan questioned if anything is being done for the South Bay Avenue intersection.

Jim Wright of Portland Road questioned the amount of required parking spaces for this zone.

Mr. Kennedy explained that the borough ordinance requires 2.5 spaces per unit which would be 13.5 spaces required and the RSIS standards requires 2.3 spaces per unit which would be 12 spaces required He explained that Residential Site Improvement Standards are what has to be met.

Mr. Baxter explained that the Boards are obligated to comply with the State.

Helen Kawiatec of 27 South Bay Avenue questioned the fact that the lot depth requirement is 150-feet and the applicant only has 81.6 feet.

Mr. Kennedy explained that Planner will provide testimony relating to that.

Mr. McGann stated that they are not going to be able to comply with that ordinance because they are not able to acquire additional land.

John Warden of Portland Road questioned if the installation of a retaining wall could weaken his condo foundation structure.

Mr. Kennedy stated that they are going to provide a soil report and he does not know of any pounding that would disturb his foundation.

There were no further questions from the public for Mr. Kennedy.

Mr. May questioned if the sidewalk in the front was going to be replaced.

Mr. Kennedy explained that the sidewalk along the frontage exists and there are some areas of failure. They did put a note on the plan that it would be repaired pursuant to your direction but it might all come out as a result of the reconstruction of the bridge and of the access road.

Mr. May explained that he may want to see them replace it instead of piecemealing it. He then asked Mr. Kennedy if there was any thought about putting a foundation drain in.

Mr. Kennedy stated that he would defer that partly to the architect and then he explained what he has seen in the past with regard to that.

Mr. May – the driveway up along South Bay Avenue appeared to be infringing in a 25-foot requirement.

Mr. Kennedy stated that he believes that they extended the street line and measured it and it was in excess of 25-feet.

Mr. May – are you asking for relief for the parking spaces within the front yard setback along the right side.

Mr. Kennedy – if that is a requirement.

Mr. Baxter swears in Richard Villano, A.I.A. of 1001 Deal Road, Ocean, NJ.

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

1. He described his professional background and Architectural Licensing.
2. The exterior of the building is going to be a vinyl cedar shake. He then described Exhibit A-9. He stated that there are three stories in appearance in the front but two stories in the rear and side because of the slope. It is a vinyl cedar shake with an asphalt roof with white trim around the windows. It's of a traditional style a seashore style townhouse project. The foundation is covered is some type of

stone. Until we get the soil report we are not going to know what type of foundation we will use yet but more than likely it will be a poured wall.

3. He described Exhibit A-6, page 2 which is the floor plan of the units that depicts the first floor, the second floor and the third floor. The first floor consist of a one car garage which is oversized and a family room, a powder room and a utility behind the garage. The second floor is the main entry to the unit and explained the stairway to the main living area which will consist of a living room, bath room and an eat-in kitchen. There will be a 12 by 10 wooden deck off of the living with steps down to grade. The third floor will have two bedrooms, two baths and a laundry area. The family room is built below grade so there is no door to the rear.

4. The building height average range is 29 feet 4 inches, 29 feet 8 inches, 29 feet nine inches and 29 feet eight inches and 29 feet 4 inches. This is the overall height of the structure to the mid point of the roof.

5. He will add windows to the end unit and to the bedroom levels to provide for a water view.

6. They will try to do the best they can to address the noise from the bridge by sound insulation in the walls and double sheet rocking the walls but the noise will still get in through the windows.

7. The living room is at elevation 36 and then there is another 9 feet floor to floor to get up to the master bedroom so you would get up to 45 above sea level.

8. The third floor is 889, the second floor is 954 feet and the lower floor is 356 which is a total of 2199 square feet.

Mr. McGann they will have that sheet corrected on the plan and they will have to review the lot area calculation.

Ms. O'Callaghan questioned the size of the decks in the rear.

Mr. Villano – 12 by 10.

Ms. O'Callaghan wanted to know if there will be barbequing on the decks.

Mr. McGann stated that if the fire code and ordinance permits that then the answer is yes.

Ms. Hendrickson of 30 South Bay Ave questioned the height of the building compared to surrounding buildings.

Mr. Villano explained that this building was designed for this site so therefore there is stepping as your going down the site. The other buildings at the top of the hill he believes are all at one height. He tried to explain to her that there is stepping with the grade so that it doesn't look like a massive box.

Mr. Mintzer asked if this building would be blocking any structures.

Mr. McGann stated that there are aerial photos and other photographs here that we can show.

Mr. Villano described Exhibit A-11 describing the aerial photograph and different elevations.

Ms. O'Callaghan wanted to know how far from her hot tub will the proposed building be.

Mr. Villano stated that from her hot tub to the building it would be 60 feet.

Ms. O'Callaghan questioned the height of something to determine if people could see into her yard.

Mr. McGann stated that they are at the same grade but there is a rather large tree there.

Mr. Wright – is this property zoned WC-1 or was it changed?

The Board Secretary stated that the zoning amendments failed adoption at the last Council Meeting.

John Wardon of Gateway Villas questioned the height of the existing bridge because he wanted to see if the proposed building would be higher and block his existing view.

Mr. McGann explained that it would depend on the what elevation Mr. Wardon is at.

John Wardon asked if the public comments are considered.

Mr. Mullen explained to Mr. Wardon that the board does take into consider the public comments.

Karen Lonczysky stated that she is concerned that she will loose her existing view.

Mr. Wright wanted to know how the board can hear this application without knowing the bridge information.

Mr. Baxter explained that under the law any applicant who files an application must be heard.

There were no further questions from the public for Mr. Villano.

Mr. McGann requested a brief recess.

The Board called for a brief recess at 9:50 P.M.

Mr. Mullen called the meeting back to order at 9:59 P.M.

Mr. Baxter swears in John Cunningham, Principal of Worthington of 205 Worthington Ave, Spring Lake, NJ

Mr. McGann stated that due to the late hour the Planner will not testify this evening.

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

1. He is the owner of Worthington Capital, LLC
2. He acquired the subject property through a foreclosure process which he further described in 2000.
3. The property has been vacant since he acquired it and he never had any plans to open the restaurant up himself.
4. They do not own a liquor license for this site because the previous owner sold it.
5. He has had some inquires about opening the restaurant from people and one or two people tried to pursue a liquor license but were not able to acquire one so nothing materialized. There was one other person interested in just running the restaurant but negotiations never continued because the person had no financial backing.
6. The property is not currently listed for sale and he has never listed it for sale.
7. He is not a builder
8. He tries to maintain the property as best as he can but he has no desire to be in the restaurant business.
9. He did some minor research of the zoning before he purchased it.
10. Even though he did not have this property actively on the market people did make inquires.

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

Mrs. O'Callaghan of 29 S. Bay Ave questioned Mr. Cunningham about expenses for past repairs or caretaking of the property. The first time that she ever seen any work done at the site was last week.

Mr. Cunningham stated that he will try harder in the future with regard to maintaining the site but he can show her cancelled checks for his expenses of maintaining the site.

Mrs. O'Callaghan stated that there are critters on the site which she further explained.

Mr. Cunningham stated that he will deal with the issue.

Ms. Bensen wanted to know if the proposed units would be sold or rented out.

Mr. Cunningham stated that he would sell the units but he does not have a purchase price yet.

Ms. Oman wanted to know if they could reduce the number of units.

Mr. Cunningham stated that he really didn't know how to answer her question.

Mr. Braswell - has there been any consideration for doing something commercially?

Mr. Cunningham stated that the commercial options are very limited and he is not interested in the restaurant/bar business plus there is no liquor license.

There were no further questions from the public for Mr. Cunningham.

Mr. McGann spoke with the Board about scheduling a date to continue this hearing.

Mr. McGann agreed to a September meeting date.

Mr. Mintzer offered a motion to continue this hearing on September 7th, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Braswell, Mr. Mintzer, Miss Tierney, Ms. Ryan, Mr. Fox,
 Mr. Anthony, Mr. Mullen**

NAYES: None

ABSTAIN: None

Mr. Mullen announced to the public that this hearing will be carried to the September 7th meeting at 7:30 PM and that no further public notice will be given.

Executive Session Resolution:

Mr. Baxter read the following resolution for approval:

Mr. Mullen offered the following Resolution and moved 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:

234 Bay Ave, LLC Litigation vs. Highlands Zoning Board

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 Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: **Mr. Braswell, Mr. Mintzer, Miss Tierney, Ms. Ryan,
 Mr. Mullen, Mr. Fox, Mr. Anthony**

NAYES: **None**

ABSTAIN: **None**

The Board then entered into Executive Session at 10:19 P.M. and did not return to the Regular Meeting.

CAROLYN CUMMINS, BOARD SECRETARY

