

**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
JULY 6, 2006**

Mr. Mullen called the meeting to order at 7:51 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, Mr. Anthony

**Absent:** None

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

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**ZB#2006-1 Duane Realty, LLC  
Block 94 Lots 1 & 16 – 321 Bay Avenue  
Request for a Postponement of Public Hearing**

Mr. Mullen explained that the Board received a written request to postpone this public hearing to October Meeting.

Mr. Mintzer offered a motion to reschedule the Duane Realty Public Hearing to the October Meeting, seconded by Mr. Duncan 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

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**ZB#2005-8 Knox 400, LLC  
Block 108 Lot 2.01  
Approval of Resolution**

Mr. Mullen read the title of the following Resolution for approval:

The Board reviewed and discussed the following resolution for approval:

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

**RESOLUTION APPROVING USE AND BULK VARIANCES  
AND GRANTING SITE PLAN APPROVAL FOR  
KNOX 400, LLC AT  
460 STATE HIGHWAY 36**

**WHEREAS**, the applicant, KNOX 400, LLC is the contract purchaser of property at 460 State Highway 36, Highlands, New Jersey (Block 108, Lots 2.01); and

**WHEREAS**, the applicant filed an application to construct a health fitness center, and to continue the existing uses of an upstairs apartment and a cellular telephone monopole and structure; and

**WHEREAS**, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

**WHEREAS**, the Board considered the application at public hearings on February 2, March 2, April 6, May 4 and June 1, 2006; and

**WHEREAS**, the Board heard the testimony of the applicant, ROBERT KNOX; the owner of the property, JOSEPH NATALE; ERIK RUPNARIAN, Licensed Engineer with Goldenbaum Baill Associates; and CATHERINE FRANCO, Planner and Architect, all of which witnesses testified on behalf of the applicant; and

**WHEREAS**, PAUL MAZZELLA, a competing objector was represented by MICHAEL LECKSTEIN, ESQ., and the following witnesses testified on behalf of the objector: TERRY VANDERMARK, Health and Fitness Club Consultant; VICTOR FURMANEC, Professional Planner; and AL LITWORNIA, Traffic Engineer and Planner; and

**WHEREAS**, the following members of the public testified/commented on their views of the application: ELAINE HOFFMAN, SEAN JOHNSON, WILLIAM JONES, LORI ANN BODNAR and THOMAS O'NEIL; and

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- WHEREAS**, the applicant submitted the following documents in evidence:
- A-1: Variance application (3 pages);
  - A-2: Zoning permit denial with chart by Zoning Officer dated 8/10/05;
  - A-2a: Supplemental memo by Zoning Officer dated 11/21/05;
  - A-3: Preliminary Major Site Plan dated 9/14/05 and last revised on 1/18/06 by ERIC RUPNARIAN, of Goldenbaum Baill Associates (8 pages);
  - A-4: Architectural drawings by CATHERINE FRANCO dated 12/20/05, last revised 1/16/06 (5 pages);
  - A-5: Site plan review application (7 pages);
  - A-6: Article written by ROBERT KNOX in *Chloe* entitled “In the Beginning”;
  - A-7: Article written by ROBERT KNOX in *Chloe* entitled “You, Your Family and Fitness”;
  - A-8: Article written by ROBERT KNOX in *Chloe* without title on page captioned “Myths and Tips”;
  - A-9: CBS News website printout dated 1/6/05 entitled “Fat Kids Become Fat Adults”;
  - A-10: CBS News website printout dated 11/2/05 entitled “Kids Need Help Fighting Fat”;
  - A-11: US Department of Health & Human Services website posting of 1/6/04 entitled “Overweight and Obesity: Health Consequences”;
  - A-12: CNN website posting dated 1/6/04 entitled “International Survey: Fattest Teens in US”;
  - A-13: US Department of Health & Human Services website posting of 11/2/05 entitled “Overweight and Obesity: What Can You Do”;
  - A-14: 11/7/05 *New York Daily News* article entitled “Fat Kids – Diabetes Link”;
  - A-15: Colored rendering of proposed project;

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A-16: Illustrated Sheet #3 of Exhibit A-3;

A-17: 2/8/06 letter from KEVIN E. KENNEDY, ESQ. (applicant's attorney) with ITE definitions (10 pages);

A-18: 8 photographs with drawing and 2 maps, all on board;

A-19: Parking calculations by CATHERINE FRANCO (9 pages);

A-20: Amended architectural plans by CATHERINE FRANCO, revised 3/27/06, showing 4 elevations; this exhibit replaces Exhibit A-4; and

**WHEREAS**, the Board marked into evidence the following exhibits:

B-1: Highlands Division of Fire Prevention Approval form dated 11/29/05;

B-2: 2/2/06 review letter of Board Engineer;

B-2a: 11/7/05 planning board review letter by DONALD NORBUT, of T&M Associates;

B-2b: 11/10/05 supplemental letter by DONALD NORBUT, of T&M Associates;

B-3: 5/7/98 resolution granting preliminary and final site plan approval;

B-4: 2/24/06 site plan requirements list from Highlands Division of Fire Prevention;

B-5: Review letter by JAIME SUNYAK, Planner, of Board Engineer's office;

B-6: Board Engineer review letter dated 4/28/06; and

**WHEREAS**, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicant is the contract purchaser of property located in the B-1 Zone.
2. The site currently contains a 2,410 square foot two-story Stewart's drive-in root beer restaurant with upstairs apartment, plus a free-standing cellular monopole and service building in the left rear corner of the property.
3. The Stewarts building is quite old, and not very well maintained.
4. The property is approximately .64 acres, and fronts on New Jersey State Highway 36. The rear of the property is along Ocean Avenue.
5. Current access to the site is provided via 47-foot wide and 50-foot wide curb cuts along State Highway 36, as well as from the rear (Ocean Avenue).

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6. The applicant proposes a two-story addition to the existing building, which would result in an addition of 3,124 square feet.

7. The applicant proposes the entire first floor, as well as a portion of the second floor, as a health fitness club. The applicant further proposes to use approximately 1,044 square feet of the second floor as a renovated two-bedroom apartment.

8. The applicant proposes that the southeasterly driveway along Route 36 be closed, and that curbing be provided along the existing southwesterly driveway. A 24-foot wide ingress/egress drive is proposed. An additional 24-foot wide ingress/egress driveway is proposed along Ocean Avenue.

9. The applicant proposes a total of 39 parking spaces. Two of those spaces have been previously designated/allocated for use by the cellular monopole (pursuant to this Board's resolution dated May 7, 1998). Another two spaces are required for the apartment; resulting in the remaining 35 spaces being designated for use by the proposed health fitness club.

10. Health fitness clubs are not permitted uses within the B-1 Zone. Article XVII (Ordinance 21-90) of the Highlands Zoning Ordinances provides that the following principal uses are permitted in the B-1 Zone:

“Retail, business and personal service establishments which are clearly of a neighborhood service character, such as but not limited to the following:

Stores selling groceries, meats, baked goods and other such food items.

Drug and pharmaceutical stores.

Package liquor stores.

Stationery, tobacco and newspaper stores.

Restaurants.

Bars and taverns.

Barber and beauty shops.

Shoe repair shops.

Tailor shops, dry cleaners and self-service laundries.

Banks and fiduciary institutions.

Professional, administrative and business offices.

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Parking.

Public uses operated by the borough.

In the overlay area only, uses will be limited to: Professional, administrative and business offices.”

11. When this application was first submitted to the Borough’s Zoning Officer, the use was deemed an approved use under the borough ordinance. Subsequently, the Zoning Officer revisited the issue, and determined that, in the Zoning Officer’s opinion, the proposed use was not permitted in the B-1 Zone, and that Zoning Board approval would be required.

12. The Board finds that the proposed deletion of the Stewarts restaurant, and its replacement, albeit in an enlarged structure, with a health and fitness club, is the type of use intended for the Highway Business District. The Board determines that the proposed use is either a personal service establishment or, certainly, akin to a personal service establishment. The proposed use is very much in character with the examples of permitted uses listed in Ordinance 21-90.

13. In the immediate vicinity of this site is a strip mall, a car wash and an ice cream store.

14. The permitted uses in the zone, as set forth in the ordinance, are not a comprehensive list, but, rather, are designed, as the ordinance itself states, to provide the Borough with the type of commercial uses to be permitted in the B-1 Zone. The proposed use here fits well into those characteristics. The Board specifically finds that the health and fitness center was not a use which was purposefully omitted from the examples of permitted uses in the ordinance.

15. Since the borough’s current parking requirements do not address fitness centers, the issue of parking received considerable attention from the Board during the various hearings. Much time was spent, by both the applicant and the objector, in testimony regarding what type of facility this was, vis-à-vis the definitional requirements pertaining to “health fitness clubs” and “athletic clubs” by the I.T.E. (Institute of Traffic Engineers). The I.T.E. offers illustrations of parking requirements based upon different use groups, and should be used as a reference, since its sampling may reflect a much different size and location for such facilities (i.e. Midwestern state samplings).

16. The primary B-1 Zones in the Borough are in the downtown section of Bay Avenue and on Route 36 (a/k/a Navesink Avenue). The downtown area, however, is comprised of relatively small lots with little, if any, off-street parking, and certainly is not conducive to larger parking areas or uses that would attract a larger number of cars.

17. The subject site is particularly suited for a use such as the proposed one, not only from a parking and traffic standpoint, but also from a “fit” with the other uses on the highway and as permitted in the B-1 Zone.

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18. Testimony was given by the experts for both sides concerning the requirements for a use variance under the New Jersey Supreme Court's holding in the case of Medici v. B.P.R. Co. and Bd. of Adj. of South Plainfield, 107 NJ 1 (1987). Medici is the seminal case in New Jersey, and stands for the proposition that, in order to obtain use variance approval for a use that is not inherently beneficial, the applicant must prove that the proposed use promotes the general welfare and that the proposed site is particularly suitable for the proposed use. This is often referred to as the "enhanced proof" criteria for use variances.

19. The Board does not find the proposed use to be an inherently beneficial use. Though the proposed use does not inherently serve the public good, the use of the location for exercise and exercises by youth, adults and senior citizens does promote the general welfare.

20. The Board does not find the proposed use to be inconsistent with the intent and purpose of the master plan or the zoning ordinance (as specifically referred to earlier herein). In fact, the proposed use is consistent with the intent and purpose of the master plan and is further consistent with the examples of permitted uses within the B-1 Zone. The applicant, therefore, has met the "enhanced proof" standard required by Medici.

21. The Borough does not have an ordinance to which it can refer to compute the parking requirements for this type of use, or mixed use. As such, the Board has taken testimony and has referred to other municipalities and other sources of information regarding reasonable parking requirements for this type of proposed use.

22. The most compelling information submitted to the Board regarding parking requirements was provided by the Board Planner, who provided examples of parking ordinances in the municipalities of Middletown, Marlboro and East Brunswick, the first two of which are in Monmouth County and, interestingly, have a lower parking requirement than the third municipality (i.e., East Brunswick), which is in Middlesex County. The Board finds the Middletown and Marlboro formulas both reasonable and instructive. Mathematically, the required number of parking stalls for the proposed health and fitness club use only would be 42, using the Middletown and Marlboro formulas. In addition thereto, two parking stalls would be required for the existing/continued apartment, bringing the total required to 44 parking stalls. This number does not include any number of spaces for the cellular monopole facility (currently, two are required by the Board's resolution; Exhibit B-3).

23. This applicant proposes a total of 39 on-site parking stalls, which is no more than 7 less than would be required under the Middletown and Marlboro formulas.

24. The applicant's current business is located approximately one mile north/west on State Highway 36. He proposes to move from that facility to this one. Most, if not all, board members were familiar with the strip mall shopping center layout in which the applicant's current business operates.

25. The Board is of the opinion that the proposed total of 39 parking stalls on site is adequate and sufficient for the intended uses (the health and fitness club, the

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apartment, and the cellular monopole). Though the Board is acutely aware of the parking difficulties within the Borough, most of those difficulties arise out of the lack of parking in the downtown business and residential areas. This property is quite a distance from the downtown area, and fronts on a 4-lane state highway.

26. The Board heard testimony from the objector's expert regarding the number of members needed to sustain a viable health and fitness club. Based on the entirety of the testimony heard by the Board, the Board rejects the numbers provided by the objector's witness, TERRY VANDERMARK, as being inordinately high.

27. Though the testimony was not finite on this issue, the applicant did testify to the availability of off-site parking, should he require the same. This would be provided by a neighboring commercial property owner.

28. The objector's witness, AL LITWORNIA, testified regarding access to the site and the use of two jug handles---one at Orchard Avenue (leading to Buttermilk Valley), and the other at Linden Avenue. There are actually four maneuvers to arrive at the subject site, depending on where you are coming from. Two paths are provided for eastbound traffic on Route

36, and two paths are provided for traffic heading westbound on Route 36 (one by entering from Route 36, and the other by entering from Ocean Avenue). The Board does not find the access to the site to be difficult or problematic, and certainly does not see it having any effect on the traffic on Route 36. The Board specifically rejects the testimony of the objector's witness, AL LITWORNIA, opining that traffic problems would be created. The Board finds to the contrary.

29. The master plan envisions highway-oriented businesses being operated on the highway. This is just such a business as the master plan envisioned.

30. The proposed use is one that will likely be less intense than either the existing use or many of the other permitted uses in this zone.

31. The ordinance permits lot coverage of 80%, which condition this applicant meets.

32. The FAR (Floor Area Ratio) in the ordinance is maximized at .65. The applicant proposes only .36.

33. The ordinance provides a maximum building coverage of 35%. This applicant proposes only 21%, which is certainly not an overwhelming use of the site.

34. The applicant proposes improvements to on-site circulation and to the overall appearance of the site, which will effectively serve as a "gateway" into the Borough of Highlands.

35. The Board was favorably impacted by the proposed renovations and improvements to the property and was further favorably impacted by the testimony of LORI ANN BODNAR, of the Highlands Business Partnership, regarding the need in the Borough for more businesses just like the applicant, and that this business in particular would be a welcome addition to the town.

36. The Board could find no negative features of the application and, therefore, finds that there will be no adverse impact on the Borough's zone plan or its



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master plan. Rather, the proposed use fits well within the Borough's zone plan and master plan.

37. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. To the contrary, the proposed use will fit in well with the character of the neighborhood and the types of uses permitted in the zoning ordinance for the B-1 Zone; and

**WHEREAS**, the application was heard by the Board at its meetings on February 2, March 2, April 6, May 4 and June 1, 2006, and this resolution shall memorialize the Board's action taken at the meeting on June 1, 2006;

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Highlands that the application of KNOX 400, LLC for the proposed two-story addition to the existing building, the creation of a health fitness club on the entire first floor and a portion of the second floor, the continued use of a renovated two-bedroom apartment upstairs, and the continued use of the cellular monopole facility in the left rear of the property is hereby approved. Variances are specifically granted for rear yard setback, side yard setback, parking, outdoor living space, height for the freestanding sign, and the area of the freestanding sign, all as set forth in the applicant's exhibits. Final site plan approval is hereby approved, subject to the conditions below. This approval, therefore, is subject to the following conditions:

1. Applicant must seek and obtain approval for the adding of grass within the Ocean Avenue right-of-way.
2. A fire hydrant shall be installed pursuant to the Highlands Fire Department's directions.
3. There will be an ADA curb cut at the building sidewalk, which shall be shown on the plan.
4. DOT approval shall be obtained regarding access and curbing.
5. All requirements as set forth in the Board Engineer's review letter dated February 2, 2006 (Exhibit B-2), in sections 2, 3, 4 and 5 shall be met.
6. The applicant will not sell prepared food. There shall be no oven and no restaurant on the premises.
7. The premises will not be used for parties, overnight functions (such as lock downs) or proms.
8. There will be no live music or bands.
9. The applicant shall make the contribution required by the Borough's municipal parking ordinance (Ordinance O-02-10, and any amendments thereto) for the deficiency of seven parking spaces.

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,  
Mr. Mullen, Mr. Fox

**NAYES:** None

**ABSTAIN:** None

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**Other Resolutions**

Mr. Mullen read the titles of the following Resolutions for approval:

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

**RESOLUTION  
FOR PROFESSIONAL LEGAL SERVICES  
FOR THE BOROUGH OF HIGHLANDS ZONING BOARD  
FOR THE PERIOD OF JULY 1, 2006 THROUGH DECEMBER 31, 2006**

**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**, in addition to Professional Services Contract a contract is hereby awarded for an additional amount not to exceed \$600.00 for legal services provided for the period of July 1, 2006 through December 31, 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 2007 Budget:

Zoning Board Budget  
Account #1151 – 3755      \$600.00  
July 1, 2006 – December 31, 2006

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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 \$600.00 for the period of July 1, 2006 through December 31, 2006.
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 Ms. Tierney and adopted 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**

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

**RESOLUTION  
FOR PROFESSIONAL ENGINEERING SERVICES  
FOR THE BOROUGH OF HIGHLANDS ZONING BOARD  
FOR THE PERIOD OF JULY 1, 2006 THROUGH DECEMBER 31, 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 a licensed professional and **Francis W. Mullan, P.E.**, from the firm of Schoor DePalma, Inc., is so recognized; and

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**WHEREAS**, the Borough of Highlands Zoning Board memorialized a Resolution on January 5, 2006 appointing Francis W. Mullan, P.E., from the firm of Schoor DePalma, Inc. as Zoning Board Engineer for a term of one (1) year expiring December 31, 2006; and

**WHEREAS**, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon the Adoption of the SFY 2007 Budget:

Zoning Board Budget  
Account #1151 – 3757- \$ 1,950.00  
July 1, 2006 – December 31, 2006

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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. That Francis W. Mullan, P.E. from the firm of Schoor DePalma, Inc is hereby retained to provide Professional Engineering services as described above for an amount not to exceed \$1,950.00 for the period of July 1, 2006 through December 31, 2006.
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.
4. A copy of this Resolution shall be placed on file with the Zoning Board Secretary.
5. The Borough of Highlands Zoning Board Secretary is hereby directed to publish notice of this award as required by law.

Seconded by Miss Tierney and adopted 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

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**ZB#2005-9 Palatial Homes, LLC  
Block 63 Lot 19 – 231 Bay Avenue  
Unfinished Public Hearing**

**Present: Wayne J. Peck, Esq.  
Creigh Rahenkamp, P.P.  
James Kennedy, P.E.**

The following documents were marked into evidence:

- A-21: Sheet 2 of 7 of the Revised Site Plan revised 6/21/06;
- A-22: Revised Colored Site Rendering Plan on Board dated 6/29/06
- A-23: Two Page Revised Architectural Plan prepared by Ercolino dated 6/20/06;
- A-24: Large Sheet R-1 prepared by Ercolino dated 6/22/06;
- A-25: Aerial Photo 8 by 10
- B-3: Revised Board Engineer Letter dated 7/6/06;
- B-4: Fire Marshal Site Plan Review Letter dated 7/6/06.

Mr. Peck reminded the board that at the last meeting they agreed to comply with the requirements of the board engineers last two reports. There is an issue with the sidewalk that we will touch on this evening.

Mr. May explained that the revised updated board engineers letter that basically all the comments stayed the same the bulk area comments were the main area of focus on the revised letter.

Mr. Baxter swears in both Joseph May, Board Engineer of Schoor DePalma and Creigh Rahenkamp, P.P.

Mr. Peck explained that the original application was for five units on the property and the board spoke last month and they listened and two of the issues that the board was concerned about was more openness on the site and also was that each unit owner could have some area where each unit could enjoy out door activities of some sort even if it was just to sitting on a porch. So we have done the following:

1. Eliminated the middle unit and they have taken the end units and made each unit the same as the previously proposed end units.
2. Each unit will now have a side entry with a porch which can be used for an outdoor activity. There will be a garage for the entrance but the pedestrian entrance is off to the side.

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3. Each of the four units is now identical whereas before the interior units were different.

Creigh Rahenkamp stated the following during his testimony and response to questions from the board:

1. He is a licensed Professional Planner in the State of New Jersey and described his professional background.
2. He conducted a survey of the area and the plan.
3. His role as a Planner is to link the testimony that the board heard from the Architect and the Engineer about what is proposed and tie that back to the policy determinations that the board has to make in order to decide whether we get to do this through a use variance. There are three parts that he is going to address. First, they have to establish that there are special reasons, that there is some important public policy being advanced here. Secondly, that we are not creating a substantial detriment in doing this. Thirdly, we need to reconcile ourselves with the policies of the Master Plan and the Zoning Ordinance to make sure that while we are advancing some good policies here, we are not compromising others.
4. This is not a situation where we are starting with a vacant piece of property.
5. In terms of bulk variances on Cedar we measure 1.8 feet the Boards Planner stated its 2 feet and we are not going to argue because we are increasing that to 15 feet, where the zoning ordinance would want 20 feet. The residential side, the Boards Planner identifies it as shrinking from the existing 6 feet down to six with three asterisk, we intend to be at six feet. In terms of overall coverage on the site, the site as existing is at 86.5% and we are bringing that down to 63.2% with the original plan and it comes down further with the removal of the middle unit.
6. They are starting from a position that on this site is an existing non-conforming structure in virtually every dimension and in every measurement. It is also a non-conforming use on the property.
7. He then reviewed the Master Plan and spoke about certain policies that he believes are being advanced with this applications such as in the Master Plan comments #5, #1, #2, #4 and under the Housing Policies he discussed item #1, Purpose I, G, A.
8. He stated that the existing use is not located with in the commercial area and the proposed would remove a non-conforming use with in a residential neighborhood and the proposed is a less intensive use compared to what is existing.
9. In terms of detriment such as traffic and noise the proposed is substantially better than the prior use on the site. He does not believe that the four proposed units are in any way a substantial detriment compared to what exists on the site.
10. The statement in the Master Plan about not doing multi-family doesn't apply to a two family situation.

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11. The proposed is for four individual homes under the condominium form of ownership.
12. The proposed is for four individual homes attached two each and they are seeking a use variance for the plan that is proposed.

Mr. Baxter explained that the board is going to approach this as multi-family application.

Mr. Rahenkamp continued his testimony as follows:

13. Why can't this lot be developed in accordance with the ordinance – you have an existing non-conforming structure and use on the site. In order for that non-conforming structure and use to go away there needs to be an economically viable alternative. This was originally proposed to the board as five homes and then we decided that it was possible to proceed with the application as four homes, at three homes there is no application.

Mr. Mullen stated that at four homes the density is greater than what we permit in our most densely occupied area.

Mr. Rahenkamp continued as follows:

14. The decision that is before you is whether or not to keep that existing structure and what ever commercial use that it is put to or to replace that with something that we feel is more in conformity with the neighborhood. Neither one of them gets you to what is permitted there today.
15. The existing is a commercial use and could be used for a commercial use in the future.
16. The existing structure could be rehabilitated for commercial use, its not to the point where its 75 or 80% destroyed.

Mr. Peck stated that one or two residential units is not economically viable. What is there now is totally out of the realm of what it is the Master Plan would like to see. They are offering an economically viable alternative.

Mr. Rapehkamp continued his testimony as follows:

17. He described Exhibit A-22 and described the setbacks and the proposed site. In terms of the front yard setback of they are roughly 15-feet from the right of way to the porch and back about 3 feet from the building. On the other side there is a 16-foot

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dimension from the pop outs to the curb and 15 feet on the side. The size of each unit is 1932 square feet.

19. He explained that in the original proposal for five units the end units were larger than the central units, so essentially what they have done is take that end unit and replicate it four times. So these two central units are bigger than the central units that would have been, so they did increase the size of the two central units. There is now a 14-foot corridor between the two sets of buildings from porch to porch and about 20-feet from building to building.

Mr. Peck stated that in addition to the concern of the size of everything there was concern raised by some board members about the fact that the interior units offered no ability for the unit owners to enjoy the outdoors in anyway. So that's when the decision was made to replicate the end units so that you would have four end units and everyone could enjoy outdoor living.

Mr. Rahenkamp continued his testimony as follows:

20. The key issue with out distances from Second Street and Bay Avenue rather was the neighborhood. You can see on each of the drawings that our building parallels the existing building immediately adjacent to it. On Second Street our entry and porch stick out which doesn't occur on the building immediately adjacent to it but it does occur on virtually every other building in that building row. So we maintained exactly the same building line that exists on that block. The same thing happens on Bay Avenue but it's a little unique. Our neighbor lot and lot next to them are the furthest set back from Bay Ave and we have paralleled them almost exactly in terms of our building and them. He then described Exhibit A-12 describing front yard setbacks.

21. The school generation for a two bedroom unit is down around .05 so the idea that we need to provide yards for children doesn't fit with the architecture that we are providing.

22. He described Exhibits A-19 and A-24 and explained the reason for the larger units and the size of the porches.

23. The existing building height is 33.2 feet and the proposed is 31.7 feet to the flat portion of the roof as shown on A-24. What is not conforming with the height is the architectural features added to the roof. To height to the mid point of the turret the mean height would come to 36.1 feet and the absolute top of the turret is 44.35-feet. The question is can they have the extra height for the turret.

24. The proposed height will not block any views.

25. The nearest taller building is the Ptak Towers located on Shore Drive and then there is a multi-family on Marina Drive.

26. The maximum lot coverage comes from non-conforming to conforming from 32% to 43% in terms of the impact on the environment.



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27. He described the proposed windows and stated that the rear windows will not be heavily used because they are linked to stairway areas, bathrooms none of them are in bedrooms which he further explained and stated that they will not impact the neighbors.
28. He described Exhibit A-12 and described the surrounding sites.
29. The proposed is for four units in a single-family zone.

Mr. Mullen stated that the board engineer's letter shows that .77 is the density and .45 is the maximum permitted in the multi-family zone and the Floor Area ratio is 17.4 units per acre.

Mr. Rahenkamp continued his testimony as follows:

30. They will hold to the six foot side yard.
31. The only variance that we have that the existing structure does not have is building coverage, height and the rear yard but what we are proposing is less intense with regard to the impact on the neighborhood and the site verses what is existing.

Mr. Peck stated that there is a 23% difference between how much of the site will be paved if we are approved compared to what exist today. Right now 86% of that site is covered by building and parking lot and we are proposing 63%.

Mr. Rahenkamp continued his testimony:

32. If we were proposing this on a vacant parcel there is no way in the world this board should entertain it. The only reason that this application makes sense is its an opportunity for the community to get rid of a non-conforming commercial use in a residential area as the Master Plan proposes.
33. He explained why he does not believe that the proposed is out of character of the neighborhood.

Mr. Peck explained why he feels that this project should be approved for this particular piece of property.

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

Bill Downer of 51 Cedar Street wanted to know the sale price of the proposed units and wanted to know why the need for a 40-foot tower on the units.

Mr. Rahenkamp showed him Exhibit A-19 & A-24 to show the proposed tower portion of the roof and the height of it.

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Joseph Bellavance of 67 Second Street questioned the length of the two proposed buildings.

Mr. Rahenkamp stated that the length of each of the two buildings is 75-feet long.

Mike Alvator of 40 Second Street wanted to know if sidewalks are being proposed for Cedar Street.

Mr. Rahenkamp stated that they provide sidewalks on Cedar to connect to Bay Ave and Second Street.

Joseph Bellavance questioned if sidewalks are a good idea in the corner because a fire truck can't make the turn.

Mr. Peck stated that they will comply with the Fire Prevention letter which was marked as Exhibit B-4. He also stated that they will conform to the height and remove the towers if required to do so.

James Kennedy, P.E. stated that they can comply with all comments in board engineers 7/6/06 letter except item 2.2 which is asking them to reconstruct the entire roadway along the local roadway and he does not feel that it is warranted.

Joe May stated that they must submit updated utility, grading and lighting plans and if they are planning on having a lot of road openings then we would want the road milled and overlaid and curbs replaced because they do not want to see a scared up road. If the board finds in favor of the application then he would request that Mr. Kennedy submit an updated utility plan, grading plan, lighting which reflects these new changes.

James Kennedy agreed.

Mr. May stated that if the board finds in favor of the application that they be required to submit an updated utility plan, landscaping plan, site layout plan and that all details pertinent to the application be updated.

Mr. Mullen asked if there were any questions from the public for Mr. Kennedy; there were none.

Mr. Mullen asked if there were any comments from the public with regard to this application.

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Katherine Lustig of the HBP was sworn in and expressed the Highlands Business Partnerships opposition to this application.

There were no further comments from the public.

Mr. Duncan offered a motion to close the public portion, seconded by Mr. Mintzer and all were in favor.

Mr. Peck gave his closing statement and stated that the choice is Gimpi's or the proposed application and if approved you will have 63% impervious coverage verses the existing 86%.

The Board then discussed the application and testimony that was provided.

Mr. Braswell stated that if we approve this application then we will have to live with this non-conformity for the next one hundred years regardless of the business environment changes that will be happening on Bay Avenue. He further explained why he is not in favor of putting in a residential use on this site where there is presently no residential use. This may be an opportunity for someone but for others it's not necessarily a good thing. Highlands is very densely populated and to try to allow greater density than what is allowed in the ordinance is something that he is not prepared to do.

Mr. Francy stated that we should not play with the density allowance in the zoning ordinance there for he can not support this application.

Mr. Duncan explained that he feels that the Board has to draw a line on the density regulations and he does not feel that the proposed number of units will fit on this site.

Mr. Mullen expressed his opinion that the revised plan of splitting the building is a good plan for appearance but we should not grant variances from the single family zoned projects that exceed the multi-family zone requirements and that the density was not justified in this application which he further explained.

Mr. Francy again stated that density is a problem.

Miss Tierney stated that we need to fight back on the issue of density.

Mr. Francy offered a motion to deny the application based on all the reasons that the board just expressed, 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  
**ABSENT:** None

The application was denied.

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**Communications**

**234 Bay Avenue vs. Highlands Zoning Board**

Mr. Baxter explained that the judge dismissed this appeal but on the order that the application may come back as a new case or he can come back with the existing application. They will treat it as a new case so we will hear it as a new case. The applicant will not have to repay the application fee and we would give it a new case number.

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

The Meeting adjourned at 10:15 P.M.

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**CAROLYN CUMMINS, BOARD SECRETARY**