

**BOROUGH OF HIGHLANDS
ZONING BOARD MEETING
REGULAR MEETING
AUGUST 3, 2006**

Mr. Mullen called the meeting to order at 7:53 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. Mintzer, Mr. Francy, Ms. Ryan, Mr. Mullen, Mr. Fox, Mr. Anthony

Absent: None

**Late Arrival: Mr. Duncan arrived at 7:56 P.M.
Mr. Braswell arrived at 7:55 P.M.
Miss Tierney arrived at 7:55 P.M.**

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

**ZB#2006-1 Duane Realty, LLC
Block 94 Lots 1 & 16 – 321 Bay Avenue
Request to Postpone P.H. to November 2, 2006**

Mr. Mullen stated that the Board received a request to postpone the public hearing on this matter to the November 2, 2006 Meeting.

Mr. Mintzer offered a motion to carry this matter to a public hearing on November 2, 2006, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2006-3 Gordon, Gary & Patricia
Block 19 Lot 21.04 – S. Peak Street
Request for Postponement of P.H. to October 5, 2006**

Mr. Mullen stated that the board received a request to postpone the public hearing on this matter to the October 5, 2006 meeting.

Mr. Wolffe, Esq. stated that they will grant an extension to the board to the October Meeting.

Mr. Francy offered a motion to reschedule the public hearing on this matter to the October 5, 2006 meeting, seconded by Ms. Ryan 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**

**ZB#2005-9 Palatial Homes, LLC
Block 63 Lot 19 – 231 Bay Avenue
Approval of Resolution**

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

Mr. Baxter described the changes to the resolution that have been made.

8/3/06
R2 (rev'd)

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

**RESOLUTION DENYING USE AND BULK VARIANCES
FOR PALATIAL HOMES, INC. AT
231 BAY AVENUE**

WHEREAS, the applicant, PALATIAL HOMES, INC., is the owner of property known as 231 Bay Avenue, Highlands, New Jersey (Block 63, Lot 19.01); and

WHEREAS, the applicant filed an application for use variances, associated bulk variances, various waivers and for site plan approval to construct a five-unit multi-family dwelling in which the application was subsequently amended to request approval to

construct a four-unit multi-family development consisting of two (2) two-family dwellings; 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 held on June 1 and July 6, 2006; and

WHEREAS, the Board heard the testimony of the following witnesses for the applicant: JAMES KENNEDY (Engineer); ANTHONY ERCOLINO (Architect); and CREIGH RAHENCAMP (Planner); and

WHEREAS, the Board heard questions from the public and also testimony from CATHERINE LUSTIG, an objector speaking on behalf of the Highlands Business Partnership; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (4 pages);
- A-2 Application for zoning permit dated 11/16/05;
- A-3 12/1/05 letter from Freehold Soil and Conservation District;
- A-4 Site plan application (7 pages);
- A-5 Stormwater management report by Kennedy Consulting Engineers dated 10/27/05;
- A-6 Conditional approval letter from Monmouth County Planning Board dated 12/12/05;
- A-7 Site plan by JAMES KENNEDY dated 10/26/05, revised 1/25/06 (7 sheets);

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- A-8 Architectural plans by ANTHONY ERCOLINO dated 11/16/05;
- A-9 Certified letter from Freehold Soil and Conservation District dated 2/16/06;
- A-10 Landscape plan, with color, on board;
- A-11 Aerial photograph on board (1000-foot radius);
- A-12 200-foot radius aerial map;
- A-13 8 ½" X 11" color photographs of property;
- A-14 8 ½" X 11" color photographs of property;
- A-15 8 ½" X 11" color photographs of existing fence;
- A-16 Photographs of Cedar Street;
- A-17 Photographs of Cedar Street;
- A-18 Cedar Street elevation;
- A-19 Bay Avenue elevation;
- A-20 Architectural renderings by ANTHONY ERCOLINO;
- A-21 Sheet 2 of 7 of revised site plan, last revised 6/21/06 by MR. KENNEDY;
- A-22 Revised colored site plan, on board, dated 6/29/06 by MR. ERCOLINO;
- A-23 2-page revised architectural plans dated 6/20/06 by MR. ERCOLINO;

A-24 Colored rendering of new building;

A-25 8 ½" X 11" aerial photograph; and

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

B-1 Board Planner review letter dated
4/5/06 (5 pages);

B-2 Board Engineer review letter dated
3/2/06 (7 pages);

B-3 Board Engineer review letter dated
7/6/06 (redone table on page 3,
plus sidewalk comments);

B-4 Fire Marshal's requirement form dated
6/2/06; and

WHEREAS, the Board had input and testimony from JAMIE SUNYAK, Board Planner; and

WHEREAS, the Board has jurisdiction to hear this matter pursuant to N.J.S.A. 40:55D-70(d); and

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

1. The property previously housed a tavern and restaurant, which facility has been closed for many months.
2. The property is in the R-2.02 Zone.
3. Multi-family dwellings (i.e., a building which contains three or more dwelling units) are not permitted in the R-2.02 Zone. Two-family dwellings are also not permitted in the R-2.02 Zone.
4. The property is approximately 10,000 square feet in size. The minimum lot area required for permitted uses in the R-2.02 Zone is 4,000 square feet. The minimum lot area required in the MF Zone is one acre.
5. The minimum front yard setback in this zone is 20 feet. The minimum requirement in the MF Zone is 35 feet. The applicant proposes setbacks of 15 feet on Bay Avenue and Second Street, and 16 feet on Cedar Street.
6. The minimum side yard setback required in the zone is 6 feet, which the applicant will meet. The minimum side yard set back in the MF Zone, for comparison purposes, is 25 feet.

7. The maximum height permitted in the zone is 30 feet, and in the MF Zone is 35 feet. The Borough's bulk and area requirements schedule indicates that where a dwelling is constructed or reconstructed to provide the required parking under a structure, the maximum height is increased by 2.5 feet. The applicant proposes a height of 36.1 feet, with parking below the structure. Height approval for the proposed application would require a "D" variance.

8. The maximum building coverage permitted in the zone is 33% (22% in the MF Zone). The applicant proposes building coverage of 43%.

9. This zone does not have a maximum floor area ratio requirement. The FAR in the MF Zone is .45, while the applicant proposes .77.

10. The maximum density allowed in this zone calculates at 10.9 dwelling units per acre. In the MF Zone, the maximum dwelling units per acre is 14. This applicant proposes 17.4 dwelling units per acre (on the four-unit application).

11. The Borough's Master Plan, which sets forth land use policy, speaks against the concept of permitting more multi-family housing in areas that are not zoned for such uses, and further speaks against more dense housing than permitted by the zoning ordinance. The Master Plan recommends revisiting the zoning ordinance to limit the number of consecutive attached townhouses. Furthermore, the Master Plan recommends creating specific regulations for townhouses, which will encourage heights and architectural features that are compatible with surrounding properties.

12. This application proposes a greater density than permitted within any of the residential zones, including the multi-family zone.

13. While the prior use of the property as a tavern and restaurant may not be attractive to the town or the neighbors to the property, the proposed use is far too much construction on too small a property.

14. The Board rejects the testimony of the applicant's witnesses regarding the economic feasibility of constructing less than the number of units requested, such issue not being relevant to the Board's consideration of this application.

15. During the hearing process, the applicant removed one of the originally-requested units, and divided the building in half, with two units on either side of an open area. That was an improvement to the plan, but still does not resolve the density problem, which most Board members commented negatively on.

16. The Master Plan talks about the need to preserve the primary uses allowed in each zone and preserve the integrity of single-family neighborhoods; and also to avoid encroachment of commercial and multi-family uses within the single-family residential zones.

17. Though the proposed construction was felt, by some, to have a desirable visual effect, most Board members felt that did not justify the density requested by the applicant.

18. The testimony by the applicant's Planner as to the possible benefits of the proposed project would also be addressed by any other new development on the premises. Accordingly, the Board rejects that testimony as not supporting the special reasons requirements necessary to be proven by a use variance applicant.

19. The close proximity from the rear of the 3-story structure, or structures, to the residential neighbors to the south limits the amount of open space provided. The overall massing of the buildings gave the appearance of a warehouse-type looking building towering over the residential homes in the neighborhood.

20. In simple terms, the applicant proposed a non-permitted use which was far too large for the property, and which, because of its density, would not even have been permitted in the borough's multi-family zone.

21. "Special reasons" are required to be proven by an applicant seeking a use variance under N.J.S.A. 40:55D-70(d).

22. The Board finds that the proposed 4-unit residential development does not meet any of the special reasons that would justify approval of a multi-family use, at a density of approximately 17.4 units per acre, in this single-family zone.

23. Accordingly, the Board finds that the granting of the requested use variances for multi-family, height, set backs, building coverage, and density would cause a substantial detriment to the public good, as a result of which the applicant has not been able to satisfy the negative criteria of the statute.

24. The Board further finds that the proposed multi-family use with the density requested would violate the purpose of the zone plan and zoning ordinance, as well as impair the intent of the Master Plan of the Borough of Highlands; and

WHEREAS, the application was heard by the Board on the meeting dates set forth earlier in this resolution, and this resolution shall memorialize the Board's action taken at its meeting on July 6, 2006;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of PALATIAL HOMES, INC. for use variances, height, set backs, building coverage, and density, as well as site plan approval to construct a 4-unit residential development at 231 Bay Avenue (Block 63, Lot 19.01), in Highlands, New Jersey is denied.

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**

**ZB# 2006-4 Alvator, Michael
Block 70 Lot 5 – 49 Cedar Street
Hearing on New Business**

Present: Michael & Diane Alvator

Mr. Baxter stated that he has reviewed the public notice and finds it to be proper therefore the Board has jurisdiction to proceed.

The following documents were marked into evidence:

- A-1: Variance Application, 3 Pages;
- A-2: Flood Review Application, 1 Page;
- A-3: Zoning Permit Application, 2 Pages;
- A-4: Survey prepared by T. Finnegan dated 2/3/1992; - The applicant kept this item.
- A-5: Building Plans;
- A-6: Portion of the Survey with proposed addition drawn on it by the applicant;
- A-7: Fifteen Photographs;
- A-8: Letter from Applicant to Dave Gilson, Flood Officer.

Both Mike and Diane Alvator of 49 Cedar Street were sworn in.

Mike Alvator stated the following:

1. He is asking for a 2.3 foot side yard where 6-feet is required and a rear yard of 2-feet where 20-feet is required.

Mr. Mullan – 1.7 feet is the existing side yard and the proposed addition starts at 2.3 feet.

Mike Alvator continued as follows:

2. He described the photographs marked as Exhibit A-7 which shows his driveway and stated that if he puts the addition on the side yard then it would take away from the play area that he has for his three children.
3. He wants to put the addition in the rear yard so he won't lose the play area.
4. The existing shed located in the rear yard will be removed.

Diane Alvator stated that the shed in the rear yard is 2-feet of the property line so there would be about a 4-foot distance between the proposed addition and the rear neighbors shed.

Mr. Mullen stated that the Flood Plain Application was reviewed by the Flood Plain Administrator and he approved it and noted that it was not a substantial improvement and that there was an extreme hardship.

The Board discussed with the applicant putting the addition on the side yard verses the rear yard.

Mike Alvator continued as follows:

5. He explained the reason for the proposed addition and that it was needed to care for his child whom is very fragile and has a lot of medical needs and requires nurses to come to the house daily. They have to sleep in the child's room at night and this addition would allow for more space for their child's needs and medical equipment.

Mrs. Alvator - her daughter is very susceptible to illness and this will allow her to be isolated.

6. The proposed location of the addition would connect to the daughter's room.

7. The proposed addition is 24 by 18.

8. He described the surrounding properties and their distances.

9. He stated that if the addition were placed on the side then they would really impede on the side neighbors privacy.

Mr. Mullan suggested that the applicants have the Fire Officials look at the proposed to see if 2-feet on 2-sides the rear and right side are acceptable.

Mr. Alvator stated that yes they are okay.

The Board discussed with the applicants the possibility of an L shaped addition verses the proposed but the applicants expressed their objections to this. The Board questioned the proposed set backs and the lot coverage.

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

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

Mr. Mullan stated that the proposed lot coverage is 65.3% where 75 is permitted.

Mrs. Alvator stated that with regard to item 2.3 of the Board Engineers Letter there are no curbs or sidewalks on Cedar Street.

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Mr. Mullan stated with regard to item 2.3 with the driveway being new and so wide he would suggest that it's in adequate condition so they would not push for new curbing or sidewalks

Mr. Duncan offered a motion to approve the application subject to the conditions of the Board Engineers letter and Fire Marshall's approval, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2006-5 Hamilton, Anne
Block 72 Lot 39 – 3 Seadrift Avenue
Hearing on New Business**

**Present: Henry Wolffe, Esq.
 Anne Hamilton
 Mark Evan Teichman, A.I.A.**

Mr. Baxter stated that they he has reviewed the public notice and finds it to be proper therefore the board has jurisdiction to proceed.

The following documents were marked into evidence:

- A-1: Variance Application;
- A-2: Flood Review Application with Revised Flood Approval Letter 7/27/06;
- A-3: Elevation Certificate;
- A-4: Fire Prevention Letter
- A-5: Architectural Plans;
- A-6: Zoning Permit, 3 Pages with addition dated 2/17/09 (misdated);
- A-7: Survey prepared by Vincent Lungari dated 10/5/05;
- A-8: Photographs – 4 Sheets;
- A-9: Drawing of Roof;

B-1: Board Engineers Letter dated 8/1/06.

Anne Hamilton of 288 Roslyn Court, West New York, NJ was sworn in.

Francis Mullan, P.E. of Schoor DePalma, Manalapan, NJ was sworn in.

Anne Hamilton stated the following during her testimony and response to questions from the board:

1. She and her husband are the owners of the subject property which is currently vacant.
2. The house needed to be gutted and is unlivable which she described.
3. The house is a single-family two-story home and the lot size is 25 by 75 feet.
4. She described the photographs marked A-8.
5. They want a single-car garage on the first floor and a deck in the back yard because the yard sinks into the marina which she further described.
6. She described the current layout of the house and stated that it has been completely gutted.
7. There will be no change to the first floor footprint. She stated that on the first floor it would be a renovation, the second floor gets a small rear addition and the third floor would be an entirely new floor for two bedrooms and a utility room. The roof will be flat with an exterior steel cable railing and will have no permanent fixtures on it and stated that the roof would be strictly for observation.
8. She described photo #3 as being the neighbors to the left and right of her.
9. The house to the left is about 6-feet away and the house to the right is about 4-feet away.
10. They want to build out to same length as neighbors.
11. There is a basement under ground which is about 5 ½ feet in height, so the garage would be built over the basement.

The Board questioned the flood approval that was granted for this application by the Flood Officer and stated that they believe that the proposed improvements exceed 50% of the value of the structure.

Mr. Mullan discussed with the applicant the elevations as follows: The first living level is at six steps which is roughly 3 feet above grade. The garage would be at grade and you would go about 6 steps from the garage into the first living floor. The flood elevation required for this property is elevation 12.

ZB#2006-6 Bahrs, Craig
Block 66 Lot 8 – 52 Fifth Street
Hearings on New Business

Mr. Baxter stated that no public notice was given for this matter and he feels that notice would be required.

Mr. Luttrell, Esq. attorney for the applicant stated that it is their intension to pursue the interpretation and not a variance.

Mr. Mullen suggested that the applicant submit a variance application.

Mr. Luttrell stated that an October hearing date would be acceptable to them.

Mr. Duncan offered a motion to carry this matter to the October 5, 2006 meeting, seconded by Ms. Ryan and all were in favor except for Mr. Francy who abstained.

**ZB#2006-5 Hamilton, Anne
Block 72 Lot 39 – 3 Seadrift Avenue
Public Hearing**

The Board did a recap of the variances as follows:

1. The new variances being created are the front yard, the rear yard, the building coverage, lot coverage and height for the railing.
2. The pre-existing variances are for lot area, lot width, lot depth, front yard and rear yard and side yard and parking.

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

Mr. Mullen explained to the applicant that the flood regulations are meant to ensure the security of the property owner's investment and best construction practice is to elevate the house and further prevent for the moving water from collapsing the house.

Mark Teichman, A.I.A. of 127 Wilson Ave, Aberdeen, NJ was sworn in.

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

1. He described his professional background to the board.
2. There is no change in the front yard setback.
3. The overhangs can be reduced back to be within the property.
4. The lot coverage included the deck in the rear and if not required to be calculated then the lot coverage would be 70%.
5. There are three decks at three levels and they are willing to move the decks in more so that they wouldn't encroach more into the side yards so it would be like a 10 to 12-foot deck.
6. Building Coverage did not include the decks.

Mr. Mullan stated that the deck areas must be included in the lot coverage calculations at stated on page 94 of the Zoning Ordinance

7. The total floor area is 2837 for the house and 2617 without the garage.
8. He does not see a way to build without encroaching into side yard setbacks.
9. They propose a flat roof - increase in height from 27 feet to 32.3 feet.
10. He described Exhibit A-9.
11. He described the site plan.
12. As far as the flood regulations go he is recommending that some structural work be done to this house. As far as being in a velocity zone he will hire a structural engineer to assist him in the design of this project.
13. There will not be a need to upgrade the existing utilities.
14. The house to the north has no side windows so the proposed will not block neighbors light to windows.
15. The aircraft cable railing is visually unobtrusive and is 36 inches above the floor of the roof and if the local code requires a 42 inch railing then they will comply.
16. The spiral stairs are pre-manufactured.
17. They are willing to reduce the width of the decks to be more in conformance.

The Board questioned the 80% vertical addition ordinance because the applicant is proposing in excess of a 100% addition along with all the other non-conformities.

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

Walter Guenther of 2 Marina Place stated that he supports the improvements but not the proposed height.

Mr. Guenther of 4 Marine Place expressed his concerns with the lack of off street parking and stated that the lot is too small to have such a tall structure.

Mr. Wolffe stated that they will probably be submitting amended plans as a result of all of the board comments because the project will have to be scaled back. He also granted the board a time extension through the month of September if so needed.

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

ROLL CALL:

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

NAYES: **None**

ABSTAIN: **None**

The Board announced that this matter will be carried to the September 7, 2006 meeting with out any further public notice.

Approval of Minutes:

Mr. Francy offered a motion to approve the June 1, 2006 Regular Minutes, seconded by Ms. Ryan and all eligible members were in favor.

Mr. Francy offered a motion to approve the June 1, 2006 Executive Session Minutes, seconded by Ms. Ryan and all eligible members were in favor.

Ms. Ryan offered a motion to approve the June 15, 2006 Special Meeting Minutes and Executive Session Minutes, seconded by Mr. Mullen all were in favor except for Mr. Duncan and Mr. Francy who both abstained.

Mr. Francy offered a motion to approve the July 6, 2006 Minutes, seconded by Miss Tierney and all were in favor.

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

The Meeting adjourned at 11:03 PM.

CAROLYN CUMMINS, BOARD SECRETARY