

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 7, 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. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan,
Mr. Mullen, Mr. Fox, Mr. Anthony

Late Arrivals: Mr. Duncan arrived at 9:42 P.M.
Miss Tierney arrived at 8:09 P.M.

Absent: None

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

**ZB#2006-9 Shute, Eugene
Block 59 Lot 35 – 114 Shore Drive
Application Review & Set P.H. Date**

Present: Eugene Shute

Mr. Shute stated that he is proposing to raise the house eight feet and to provide a two car garage underneath and to construct a third floor addition. The existing structure is currently a two-family structure and will continue to be a two family structure. There will be four off-street parking spaces provided on the site.

The Board reviewed the application and stated the following:

1. The applicant must provide evidence of the structures existing two-family status.

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2. The Board advised the applicant to look into the lot coverage and building coverage to see if you need a variance because the vertical addition is greater in floor area than the one below. The applicant must provide lot coverage calculations.
3. The applicant must provide a zoning chart.
4. The Board advised the applicant that any decks above the first floor are part of the coverage calculations.
5. The applicant must provide an up dated tax payment printout.
6. The applicant must provide a Flood Elevation Certificate.
7. Put the Flood Elevations on the plan.

Mr. Mintzer offered a motion to schedule this matter for a public hearing on October 5, 2006, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

The Board did advise the applicant that there is a possibility that he may not be heard at the October meeting but the applicant wanted to take a chance for the October Meeting.

**ZB#2006-4 Alvator, Michael & Diane
Block 70 Lot 5 – 49 Cedar Street
Approval of Resolution**

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

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

**RESOLUTION APPROVING BULK VARIANCES
FOR ALVATOR AT 49 CEDAR STREET**

WHEREAS, the applicant, MICHAEL ALVATOR, is the owner of 49 Cedar Street, Highlands, New Jersey (Block 70, Lot 5); and

WHEREAS, the applicant has filed an application to add a 2-story addition to the rear of his single-family home; and.

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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 a public hearing at a meeting on August 3, 2006; and

WHEREAS, the Board heard the testimony of MICHAEL ALVATOR and DIANE ALVATOR; and

WHEREAS, no persons appeared in objection or to ask questions regarding the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Flood plain review application (1 page);
- A-3: Zoning permit application (denied) with Zoning Officer's chart;
- A-4: 2/3/92 survey by THOMAS FINNEGAN;
- A-5: 3 pages of building plans prepared by the applicant;
- A-6: Portion of the same survey (A-4) with proposed addition drawn thereon by applicant;
- A-7: 15 photographs of subject and other properties in the neighborhood, in 3 folders;
- A-8: Hardship letter regarding daughter's medical problem; and

WHEREAS, the Board received a review letter dated July 27, 2006, from FRANCIS MULLAN, Board Engineer;

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

1. The applicant is the owner of a single-family home in the R-2.02 Zone.
2. The current home is rather small, and does not adequately accommodate the owners and their three children, all of whom are under the age of 7 years.
3. The applicant requires the following variances for preexisting conditions: Minimum lot size of 3,756 square feet where 4,000 square feet are required; and front yard setback of 13.12 feet where 20 feet are required.
4. The applicant also requires variances for the following: Side yard setback of 1.7 feet and 25 feet where 6 feet and 8 feet are required. It is noted that the 1.7-foot setback on the left (north) side is preexisting; and rear yard setback of 2 feet where 20 feet are required.
5. The applicants want to retain a green/play area on the property, and have designed the proposed addition to accommodate such an area.
6. The existing shed in the right rear of the premises will be removed.
7. The neighbor's garage to the rear is within 2 feet of the property line, as a result of which the proposed addition will be approximately 4 feet from the neighbor's garage.
8. The applicants considered building an addition to the north of the current home, on the current driveway area, or to the rear of the driveway area; however, that addition would be too close to the neighbor's home, which is almost on the property line. Such a location, therefore, is contraindicated.
9. The applicants have a child at home who needs round-the-clock care. As a result, one of the reasons for the proposed addition is to enlarge her bedroom to allow for the ventilator equipment and a nurse or other person to stay in the room with the child.
10. The proposed addition is configured in such a way as to not adversely impact other neighboring homes.
11. There are no changes in grade planned by the applicant.
12. Because of the 4 dormers at the rear of the property, it was difficult to configure the addition to the home in a design different from the one proposed.
13. The proposed design accommodates for better circulation within the house.
14. There is adequate off-street parking on the property, which meets the requirements of the zoning ordinance.
15. The design proposed by the applicant maximizes the green area on the property.
16. The proposed lot coverage, after the addition, would be approximately 65.3% where 75% is permitted by ordinance. Accordingly, no variance is required.
17. Air circulation is much better with the addition proposed to the rear, rather than to the north of the home.

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18. The footprint of the existing home will not change, except for the addition to the rear.

19. The proposed addition will not be a substantial detriment to the public good and will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on August 3, 2006, and this resolution shall memorialize the Board's action taken at the August 3, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of MICHAEL ALVATOR to add a 2-story addition to the rear of his home at 49 Cedar Street (Block 70, Lot 5), as defined on the plans submitted and referenced herein, be and is hereby approved, and variances are hereby granted for the preexisting conditions of lot size and front yard setback, as set forth earlier herein; and for side and rear yard setbacks, as described herein;

AND BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

- (1) The shed to the rear of the property will be removed and not replaced.
- (2) Roof runoff shall be directed toward the street, and not onto adjoining properties.
- (3) Approval is required from the Fire Marshal and Fire Subcode Official.

Seconded by Ms. Ryan and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan,
Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2006-2 Worthington Capital
Block 9 Lots 6 & 7 – S. Bay Avenue
Unfinished Public Hearing**

Present: Martin McGann, Esq.
John Cunningham, Principal of Worthington Capital
Stephen Owens, P.P.

The following exhibits were marked into evidence during the public hearing:

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- A-12: Photograph of Lot 2, Block 8 - Multi-family use.;
- A-13: Photograph of Lot 1, Block 7;
- A-14: Photograph of Lots, 9.01-9.03, Block 9 Gateway Villas Condo's;
- A-15: Photograph of Lots 5, 6,7 in Block 38 a multi-family use on Hwy 36;
- A-16: Photograph of Twin Lights Terrace Condo's 156 Units on 9.6 acres;
- A-17: Photograph of Lot 8, Block 6 a multi-family use with 3 units;
- A-18: Photograph of Signs that point out the business district;
- A-19: Photograph – view of Gateway Villas Apartments;
- A-20: Photograph – view of Gateway Villa Apartments.

Mr. McGann stated that his notes reflect that the following board members were present at the June 15th meeting:

Mr. Mullen, Mr. Mintzer, Mr. Braswell, Mr. Fox, Miss Tierney, Ms. Ryan,

Mrs. Cummins stated that the following members would be eligible to vote on this matter tonight:

Mr. Braswell, Mr. Mintzer, Mr. Francy (listened to tapes), Miss Tierney (not present this evening), Ms. Ryan, Mr. Mullen, Mr. Fox and Mr. Anthony.

Mr. Mullen explained the public hearing process to the public.

Miss Tierney arrived to the meeting – 8:09 P.M.

Mr. McGann stated that this is an application for five residential townhouses and then described the site issues that were previously testified to at the June Meeting.

Mr. Baxter swears in Stephen Owens, P.P. of 331 Newman Spring Road, Red Bank, NJ.

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

1. He stated that he is a Professional Licensed Planner in the State of New Jersey. He then described his professional background to the board.
2. The applicant is proposing five multi-family residential units in the WC-1 Zone where residential uses are not permitted.
3. He has reviewed the borough's Zoning Ordinance and Master Plan.
4. He then described how he felt that this application relates to the borough's Master Plan and stated that this application is consistent with a number of goals and objectives of the Master Plan such as number five which relates to owner occupied units, number one which relates to preserve and protect existing character of the borough. He stated that the

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he feels that the neighborhood is residential and this property is adjacent to a multi-family units.

5. He described exhibit A-11 and pointed out the multi-family units in the area.
6. He described exhibits A-12 – A-17 which are photographs of multi-family uses in the area.
7. How does the bridge affect the use of the site with regard to residential verses commercial – the bridge acts as a buffer to property. This piece of land is the only piece zoned Waterfront Commercial south of the bridge, so it acts like a buffer.
8. This property is really isolated from the rest of the business district, so it acts like a demarcation between the actual business district and what appears to be a predominantly residential and multi-family use.
9. The property has been vacant and has been for a period of time.
10. There are signs at the bottom of the bridge ramp pointing to the north as shown in Exhibit A-18.

Mr. Mullen explained that he feels that this area is a gateway to the business area and that the bridge itself is something that maybe detrimental to residential development and more appropriately for a commercial development because of the activity of the bridge.

Mr. Owens continued as follows:

11. The Master Plan is saying commercial use for this piece of property and it is his opinion that based on the location of the site commercial use is not appropriate for this piece of property.
12. The Master Plan recommends to rezone this property to the Resort Business District. The Master Plan states that lots 6 and 7 are in appropriate for hotel and motel uses.
13. The permitted uses in the current zone are restaurants, bars & taverns, marine sales, boat yards, charter and excursion boats and off shore uses. Residential is not a permitted use in this zone.
14. The applicant does not own a liquor license so the owner can't have a restaurant/bar. The marine uses are not practical for this site because the site does not border on the water.

Mr. Francy questioned why the applicant can't put a commercial use at the site that would support the future fishing pier.

Mr. McGann stated that there is no fishing pier at this time.

Mr. Owens continued as follows:

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15. Retail uses are not permitted in this zone either.
16. He explained why it doesn't make sense from a planning perspective to have a restaurant use adjacent to a residential use because of the nuisance type issues that would be associated with the restaurant use such as noise, trash, traffic, deliveries, etc.
17. The applicants proposed 5-residential unit use is more compatible with the adjoining residential uses verses any of the permitted uses in the zone.
18. He described the grade changes on this site verses the adjacent residential sites.

Mr. Mullen stated that in this case we have a site that is facing on a major artery/entrance to the borough and it has a significant mitigating factor of use for residential with the bridge traffic next to it which he further explained.

Mr. Owens continued as follows:

19. He believes that the bridge will be 30-feet away from the corner of the property.
20. He described exhibits A-19 and A-20.
21. A use variance is required for this application which requires special reasons. He believes that this application demonstrates a number of special reasons such as purpose A, G, I of the municipal land use law which he further explained to the board.
21. This site is particularly suited for this use based on the location of the adjacent residential properties, it is isolated from the rest of the business district and what the applicant is proposing is similar to what is surrounding to the site, the density is similar to other multi-family developments around this site, they are not seeking any coverage variances which means that this site is of sufficient size to accommodate the proposed.
22. The lot coverage is currently 52% and the permitted in this zone is 65% and the applicant is proposing 46%.
23. The maximum building coverage in this zone is 25% and they are proposing 20.9% and the FAR is below the requirement.
24. The MF-Zone has a permitted density of 14 units per acre and they are proposing 10 units per acre.
25. They are complying with the off-street parking but if there were a restaurant then there would be spillage onto the streets.
26. This site is on a ½ of acre which is too small for a restaurant use. This site is next to multi-family uses and residential uses and this proposal fits this site. The business district is on the other side of the bridge and this site is isolated from the businesses.
27. They comply with the Residential Improvement Parking Standards.

Mr. McGann stated that the owner has no offers for the sale of this property and that there are no liquor licenses available.

Mr. Owens continued his testimony as follows:

28. When you look at the Master Plan the application is consistent with a number of goals but there is one goal that its not consistent with which is to prevent non-residential uses from locating on residential street or in residential areas.

Mr. Mullen explained that there are also things in the Master Plan that say conversion of commercial uses along Bay Avenue continues to be a problem.

Mr. McGann explained that the owner never had any serious offers to purchase this property. The property did not come with a liquor license and the property has been dormant for six years.

John Cunningham stated that the liquor license was not part of the sale of the property. He also stated that Bahrs Restaurant currently uses his existing parking lot for overflow parking for his restaurant and if this site were of a commercial use then there would be overflow parking from two businesses.

Mr. Owens continued his testimony as follows:

29. He expressed his opinion that this site is suited for this use and described the special reasons for granting this use variance.

30. There is no restriction to make units owner occupied.

31. The variances can be granted with out substantial detriment to the public good or zone plan.

32. The proposed use is more appropriate for this site and is consistent with some of the goals of the master plan.

Ken Braswell expressed his opinion that he disagrees with Mr. Owens comments about the business signs and that this site is not part of the business district and stated that they are signs directing you from where you are. He stated that Highlands is the fifth dense town in Monmouth County. He questioned why a residential use at this site and not a commercial use and then expressed his objections to a residential use verses a commercial use at this site.

Mr. Francy stated that we want to use this business site to get people into the town.

Ms. Ryan stated that this application is not consistent with what the Master Plan suggests.

Mr. May – item six of the land use element of the Master Plan specifically designates this lot as an area for retail sale and service establishments (LU-27).

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

William Ward of Highland Avenue questioned if this application complied with the State Plan.

Mr. Owens stated that he is not familiar with the State Plan.

Donna O'Callaghan of S. Bay Avenue questioned the comments about a restaurant use nuisances. She then explained that for her it would be better to have some sort of retail commercial use rather than a residential uses that never close like a business. She then expressed her concerns with parking for residential units and stated that the required parking spaces are not realistic.

Mr. Owens stated that the proposed parking meets the requirements.

There were no further questions from the public.

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

Jim Parla of 16 Portland Road explained that when the restaurant was open at this site it was like a circus and he would not like to see another restaurant opened at this site and stated that this site should be of some sort of residential use.

Helen Kwiatek of 27 S. Bay Avenue was sworn in and stated that she does not feel that the on-site parking is not adequate for the proposed units and expressed her concerns with overflow parking .

Daniel Kwiatek of 27 S. Bay Avenue was sworn in and stated that the Careless Navigator was a bar/restaurant and he does not have a problem with the noise of a commercial business at this site.

Fran Benson of 30 S. Bay Avenue was sworn in and stated that she would not prefer to have a bar at this site and she does not support this application.

Donna O'Callaghan of S. Bay Avenue was sworn in and stated that a restaurant use is the nature of the community and the noise is part of the nature of the community and stated that this application is too dense and that she would prefer a restaurant at this site rather than five residential units.

Daniel Kwiatek stated that the existing parking lot is never full.

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William Ward of 155 Highland Avenue was sworn in and stated that she does not support this application and advised the board to following the Master Plan and to keep this site commercial and requested that the application be denied.

Dan Ryan of Gateway Villas was sworn in and stated that he moved here for the excitement of the commercial restaurant/bars and that he would prefer for this site to remain commercial.

There were no further comments from the public; therefore the public portion was closed.

The Board then began deliberations on this application.

Mr. Mullen stated that this is a modest proposal but he disagrees with the Planner that this is an appropriate location for this project. He believes that this is a gateway to our commercial district. He also commented on the grade change and that this is a good break to residential uses. The Master Plan clearly says that we should be careful with expanding multi-family residential uses. The 10% that is commercial property has to be preserved for business and he feels that we can't give up a prime piece of business property for residential use.

Mr. Francy stated that he does not want to see residences so close to the road and he is not going to be part of it.

Mr. Fox stated that this is an important piece of property and it serves as the gateway to our community and that he does not support this project.

Miss Tierney stated that with the upcoming fishing pier this property would be good for a commercial use.

Mr. Francy offered a motion to deny this application based on the Master Plan and the fact that the applicant did not prove special reasons, seconded by Mr. Braswell 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

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Mr. Duncan arrived to the meeting – 9:42 P.M.

**ZB#2006-5 Hamilton, Anne – 9:42 P.M.
Block 72 Lot 39 0 3 Seadrift Avenue
Unfinished Public Hearing**

**Present: Katherine Franco, A.I.A. & P.P.
Anne Hamilton**

The following documents were marked into evidence during this hearing:

- B-2: Board Engineer Revised Letter dated 9/7/06;
- B-3: Revised Zoning Review Chart prepared by Zoning Officer dated 9/5/06;
- A-9: Flood Review Memo dated 8/30/06;
- A-10: Architectural Drawings, 4 Sheets prepared by Katherine Franco dated 8/20/06. NOTE this exhibit replaces Exhibit A-5;
- A-11: Large Aerial which shows the neighboring properties.

Katherine Franco of 150 Monmouth Avenue, Atlantic Highlands was sworn in.

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

1. They will not be going any closure to the existing side yards. She then described sheet two of four of Exhibit A-10 stating that they are adding 39 square feet to the first floor, adding 216 square feet on the second floor with a deck beyond that and that there would be an open deck not enclosed.
2. They eliminated the third floor from the original plan.
3. The existing lot coverage is 47% and the proposed is 54%.
4. They have drastically changed the scope of the project. They eliminated the third floor, the roof deck and going out the back and encroaching more into the and they are not raising the house.
5. She described the location of the front door and stated that the small window seats will not go beyond the existing bay window.
6. They are not changing the framing of the house or roof just a little in the rear as shown on Sheet 3 of 4.
7. They will be using the existing utilities.
8. They will be redoing the sidewalk because they are relocating the front steps and if the curb is damaged then they will redo the curb.
9. They need relief for maximum building lot and side yards and they will meet the height ordinance.

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Mr. Mullen and Ms. Franco discussed the section in the ordinance that pertains to undersized lots.

Mr. Baxter explained that if the applicant does not meet the requirement of the ordinance for undersized lots then the applicant must obtain relief from the original bulk standards.

Ms. Franco continued her testimony as follows:

10. They need relief for maximum building coverage of 54%, minimum side yards of .62 and 1.84.

Mr. Baxter reviewed the board engineer letter and stated that the following relief is needed: minimum lot area, lot depth, lot width and front yard setback which are all for pre-existing conditions, minimum rear yard and side yard, maximum building coverage and parking.

Ms. Franco continued her testimony as follows:

11. The existing house is so small for today's standards of living and they are only going to have a two bedroom home with an open plan. There are currently two tiny bedrooms and it will stay two bedrooms. They are upgrading all building standards without raising the building. This will be a more structurally sound structure with flood proofing mechanical systems.

12. This project was reduced and does fit within the character of the neighborhood.

13. She then described Exhibit A-11 which is an aerial and described the surrounding building locations and stated that all of the houses are pretty much in line with the existing house and that they are not going any further than the deck that is already there which she further explained.

14. There is a first floor deck as well as a second floor deck.

15. The property owner does not own the bulkhead.

16. The rear yard is 25-feet existing and 13-feet to the second floor proposed.

17. They are not going any further into the rear than the existing deck.

18. The previous plan to deck the backyard is no longer being proposed.

19. The existing house is u-shaped in the back and they are just enclosing that little space there and then they are leaving the existing deck. On the second floor they are coming out with living space over the deck. The rear second floor living space does not extend beyond the southerly building, the second floor deck does extend beyond the southerly neighbors house line.

20. A reason for the relief for the rear deck is because they are facing open water in the rear and not a structure.

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

_____ of 1 Seadrift Avenue wanted clarification on the 10-foot rear setback.

Mrs. Hamilton explained that her rear yard property line does not go all the way to the bulkhead, it's about five feet from the bulkhead.

Ms. Franco stated that the second story rear deck will not go beyond the existing first floor deck.

There were no further questions from the public.

Mr. Mullen asked if there were any comments from the public with regard to this application but there were none.

The Public portion was closed on the Hamilton Hearing.

Mr. Mintzer stated that he felt that this is a modest addition to a tight space and he is sorry that they are not raising the house out of the flood zone.

Mr. Duncan stated that the application has been scaled back and he does not feel that this will be a detriment to the neighbors.

Mr. Mullen stated that this is in alignment with the other houses and because the house does not back up to another residential lot, it backs up to the water.

Mr. Baxter reviewed the conditions for this application as discussed during the hearing. The conditions would be as follows: (1) The sidewalk will be redone and if the curb is damaged it will be redone. (2) The rear extension on the second floor will not go any further than the existing ground deck on the first floor.

Mr. Francy offered a motion to approve the application subject to the conditions as discussed, seconded by Miss Tierney and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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Mr. Francy offered a motion to continue the meeting beyond 10:00 P.M., seconded by Ms. Ryan and all were in favor.

Mr. Mullen advised Mr. & Mrs. Kurtz of 5 Woodland Street that due to the late hour there is a very good chance that they will not be reached this evening.

Mr. & Mrs. Kurtz advised the board that they would prefer to wait and take a chance on being reached this evening.

**ZB#2006-7 Dorin, Joseph (10:30 PM)
Block 35 Lots 10 & 11 – 102 Valley Avenue
Hearing on New Business**

Present: Joseph Dorin

Mr. Baxter announced that he has reviewed the public notice and receipts and finds it to be in order therefore the board has jurisdiction to proceed.

The following documents were marked into evidence during the hearing:

- A-1: Variance Application;
- A-2: Zoning Officers Denial letter with chart dated 4/25/06;
- A-3: Project Plans consisting of 4 sheets with survey attached dated 4/6/89;
- A-4: An 8 by 10 portion of the Zoning Map;
- A-5: A 3 by 5 Photo of Existing Car Port ;
- B-1: Board Engineers Review Letter dated 9/1/06.

Joseph Dorin of 102 Valley Avenue, Highlands was sworn in.

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

1. He described Exhibit A-4 and identified the front yard setbacks of the houses in the area. The yellow are the other houses and his house is marked in red. In some cases the other houses are closer to the front yard than his.
2. The proposed garage facility will be attached to the house.
3. The side of his house faces the street.
4. He can't put the proposed addition in a different location because of the ground floor basement entrance location and also because the property is located on a slope and the proposed location of the addition is on flat land.
5. He then described the location of his existing car port on the survey.

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6. He explained that the proposed roof deck is going to be connected to the doorway in the front of the house so he can walk out onto the front of the house onto the roof deck.
7. This new structure will allow for him to go from the garage into the house and the roof of the structure will be used for outdoor purposes and the garage will be used for automobile storage.
8. There will be a doorway from the living room to go onto the roof deck.
9. The garage floor will be 4 inches below the basement floor that is there now, so the garage has to be dug into the ground to be at 4 inches below.

Mr. May stated that variances required are for front yard set back. He stated that he has some concerns with the grading. The driveway will have to be modified and widened and he has some concerns with water runoff.

Mr. Dorin continued his testimony as follows:

10. The runoff from the roof of the house will be in the same down the driveway and will be rerouted. The new structure will have a roof collection system and will be diverted to a driveway system that will take it down the driveway to Valley.
11. The required front yard setback is 35-feet and he is requesting 11-feet.
13. The proposed will have a positive impact, not a negative impact on the neighborhood.
14. He could provide for both off street parking spaces on the site if garage is approved. There would be one parking space in the garage and another on the site on the other side of the garage.
15. There is a stairway on his property from the street to his back door and that will not be impacted at all and will be left in place.
16. The existing driveway is made of asphalt and it will remain asphalt.
17. A retaining wall will be put in.

Mr. May advised him that the wall plans would have to be reviewed by the borough.

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

Jerry Feliciano of 14 North Peak Street questioned the slope ordinance and stated that he is concerned with the number of trees that will be removed as a result of the proposed addition.

Mr. Dorin stated that there are a few small trees that will be removed which are closest to the home which he further described.

Jerry Feliciano stated that he believes that there are more trees that will have to be removed than what has been implied by the applicant and he is very concerned about that and the slope and water runoff.

The board went over the photographs and survey with Mr. Feliciano to try and explain the location of the proposed and the location of trees.

Mr. Dorin stated that he disagrees with Mr. Feliciano and stated that he is not removing any large trees.

There were no further questions from the public.

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

Mike Kovic of 3 Woodland Street stated that if the proposed garage were located any further then access to the back of the house would be lost. He also stated that the trees being removed are not large and do not exceed six inches in diameter. Part of the garage will be under the ground, will be into that planter area only which he further explained.

There were no further comments from the public therefore the public portion was closed on this matter.

Mr. Mintzer offered a motion to approve the application subject to engineer review of retaining wall and that any trees removed that exceed 3 inches in diameter be approved by the Shade Tree Commission, 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#2006-8 Kurtz, R & D.
Block 36 Lot 2 – 5 Woodland Street
Application on New Business**

Mr. Mullen stated that due to the late hour the board will not be able to hear this matter this evening.

Mr. Duncan offered a motion to carry the Kurtz public hearing to the October 5, 2006 meeting without the need for any further public notice, seconded by Mr. Mullen and all were in favor.

Mr. Mullen advised the public that this hearing has been carried to the October 5, 2006 meeting and no further public notice will be given.

Approval of Minutes:

Mr. Mintzer offered a motion to approve the August 3, 2006 Meeting Minutes, seconded by Ms. Ryan and all eligible members were in favor.

Executive Session Resolution:

Mr. Baxter read the following resolution for approval:

Mr. Mullen offered the following Resolution and moved its adoption and offered that the board not return from the Executive Session and adjourn the entire meeting at the conclusion of the Executive Session:

**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:

1. **Mazzella vs. Highlands Zoning Board Litigation**

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.

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Zoning Board Meeting
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Seconded by Mr. Duncan and adopted on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

The Zoning Board then entered into Executive Session and adjourned at the conclusion of the Executive Session.

CAROLYN CUMMINS, BOARD SECRETARY