

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 5, 2006**

Mr. Mullen called the meeting to order at 8:05 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,
Mr. Mullen, Mr. Fox, Mr. Anthony

Absent: Ms. Ryan

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

**ZB#2006-3 Gordon, G & P
Block 19 Lot 21.04 – S. Peak Street
Request for Postponement to December 7, 2006**

Mr. Mullen announced that the Board received a written letter from the applicants Attorney requesting an adjournment of the public hearing to the December meeting.

Mr. Baxter stated that he has reviewed the public notice on this matter and he finds that the newspaper notice and notice to the property owners is proper therefore the board can take jurisdiction and carry the hearing without the need for further notice.

Unidentified Woman questioned the legal procedure for changing public hearing dates and Mr. Mullen advised her that the board will be announcing the hearing date.

Mr. Francy offered a motion to reschedule the Gordon Public Hearing to the December 7, 2006 meeting without the need for further notice, seconded by Mr. Mintzer and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,
Mr. Fox, Mr. Mullen**
NAYES: None
ABSTAIN: None

Mr. Mullen advised the public that Gordon matter will not be heard this evening. The Board has decided to hear this matter on December 7, 2006 and that there would be no further public notice.

The Public questioned the fact that no further notice is required and Mr. Baxter explained the notice requirements to the public.

**ZB#2006-6 Bahrs, Craig
Block 66 Lot 8 – 52 Fifth Street
Request for Postponement to After New Year**

Mr. Mullen stated that board received a written request from the applicants Attorney requesting a postponement to a meeting date after the New Year.

The Board had a discussion on this adjournment request with the Board Attorney.

Mr. Duncan offered a motion to reschedule the public hearing on this matter to the February 1, 2007 meeting conditioned upon the applicant serving public notice and advertising the hearing. If the applicant does not serve public notice for the Feb. 1, 2007 Meeting then the board will dismiss the application without prejudice. Seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Miss Tierney, Mr. Fox,
Mr. Mullen**
NAYES: None
ABSTAIN: Mr. Francy

**ZB#2006-9 Shute, Eugene
Block 59 Lot 35 – 114 Shore Drive
Request for Postponement to November 2, 2006**

Mr. Mullen announced that the Zoning Board received a request for a postponement of this application to November 2, 2006.

Mr. Baxter stated that he reviewed the publication and the notice to the property owners and there are two problems. The first is there was no notice published in the newspaper and the second is one persons white mailing card for Danny and Audrey Sutton at 23 Second Street does not have a date stamp on it, so its not clear that it was sent. He suggested that one of the conditions for rescheduling this be that the applicant publish timely and provide proof of notice that the Sutton notice was sent or renotece them.

Mr. Duncan offered a motion to reschedule the Shute public hearing to November 2, 2006 conditioned upon the applicant providing the affidavit of publication for the newspaper and proof that the Sutton notice was served, seconded by Mr. Mintzer and approved on the following roll call vote:

Mr. Francy stated that he a customer of the applicants and questioned if he had a conflict.

Mr. Anthony stated that he was also a customer of the applicant.

Mr. Baxter advised both Mr. Francy and Mr. Anthony to rescues themselves from this matter.

Mr. Mullen advised the public that this application has been carried to November 2, 2006 condition upon the applicant publishing notice and providing proof that the Sutton notice was served, seconded by Mr. Mintzer and approved on the following roll call:

ROLL CALL:

AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Miss Tierney, Mr. Fox,
Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2006-5 Hamilton, Anne
Block 72 Lot 39 – 3 Seadrift Avenue
Approval of Resolution**

The Board reviewed the Hamilton Resolution and the revisions made.

Mr. Baxter then read the title of the following Resolution for approval:

10/5/06
Final

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

**RESOLUTION APPROVING BULK VARIANCES
FOR HAMILTON AT 3 SEA DRIFT AVENUE**

WHEREAS, the applicant, ANNE HAMILTON, is the owner of 3 Sea Drive Avenue, Highlands, New Jersey (Block 72, Lot 39); and

WHEREAS, the applicant initially filed an application to construct a rear deck on the first floor, an extension to the rear of the second floor, a third floor addition, a rear deck to the third floor, and a cable railing along the roof surface; however, the application was subsequently amended by the applicant to only propose a 220-square foot addition to the second floor and the adding of a 99-square foot deck at the rear of the second floor;

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 August 3 and September 7, 2006; and

WHEREAS, the Board heard the testimony of the applicant, ANNE HAMILTON; her architect, MARK TEICHMAN; and CATHERINE FRANCO, her replacement architect and planner; and

WHEREAS, one neighbor, WALTER GUNTHER, of 2 Marine Place, appeared in support of the application, though he expressed concern with the elevation; and another neighbor, a different MR. GUNTHER, of 4 Marine Place, appeared in opposition to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Revised flood plain review application with MR. GILSON'S 7/27/06 letter attached;
- A-3: Elevation certificate indicating property is in the VE Zone, with a 12-foot requirement;
- A-4: Fire Prevention site plan requirement sheet dated 7/28/06;

- A-5: Architectural plans by MARK TEICHMAN dated 7/21/06 (3 pages);
- A-6: Zoning permit application dated 2/17/06, with additional fourth page;
- A-7: 10/5/05 survey by VINCENT LUNGARI;
- A-8: Four photographs;
- A-9: 8/30/06 flood review memo by MR. GILSON;
- A-10: 8/20/06 architectural drawings by CATHERINE FRANCO (replacing Exhibit A-5);
- A-11: Aerial photograph showing location of home; and

WHEREAS, the Board received and marked the following exhibits into evidence:

- B-1: Board Engineer review letter (revised) dated 8/1/06;
- B-2: Board Engineer revised review letter dated 9/7/06 (replacing Exhibit B-1);
- B-3: Revised zoning review chart by Zoning Officer dated 9/5/06;

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-2.01 Zone.
2. The current home is relatively small, as a result of which the owner is requesting approval to add living space.

3. As a result of the revised plans, the applicant requests variances for the following preexisting conditions: (A) minimum lot area of 1,750 square feet, where 3,750 square feet is required (or 2,500 square feet under the non-conforming lot standards); (B) minimum lot width of 25 feet, where 50 feet is required; (C) minimum lot depth of 70 feet, where 75 feet is required; (D) minimum front yard setback of 8.36 feet, where 20 feet is required; (E) minimum side yard setback of .62 feet and 1.84 feet, where 6 feet/8 feet are required; and (F) required parking stalls of zero, where 2 stalls are required.

4. The applicant also seeks a variance for minimum rear yard setback of 13 feet, where 20 feet is required; and maximum building coverage of 54%, where 33% is allowed.

5. Of the preexisting conditions for which variance relief is sought, the only dimensional requirement to be enlarged from the existing conditions is the minimum rear yard setback. Currently there is 25 feet, where 13 feet is proposed.

6. As a result of the change in the plans (Exhibit A-5 to new Exhibit A-10), the applicant is now keeping within the footprint of the existing building and its existing rear yard deck. No part of the new structure will be closer to the rear property line than the currently existing rear deck.

7. All building standards are being upgraded for the property, without raising the building or modifying its height. Utilities are being elevated above the flood plain elevation requirement.

8. The current basement will remain as is.

9. The rear extension of the main house on the second floor will be narrower than the existing house to provide a 2-foot greater side yard on each side of the addition and end at the same location as the existing first floor below (approximately in line with the neighbor's home to the south).

10. The second floor deck will extend 5 feet 6 inches further beyond the rear of the principal structure, but will not go beyond the subject's existing first floor deck below.

11. The deck area on the first floor will remain unchanged, as a result of which there will no longer be open decking in the rear yard (which had been proposed in the original application).

12. The second story deck will not extend further than the current ground-level deck below it, and all portions of the new structure will maintain a 13-foot setback from the rear property line.

13. The proposed changes to the structure fit the character of the existing neighborhood, and are a modest change to the current structure.

14. The Board was favorably impressed with the substantial changes made to the plans between the plans initially submitted by the applicant and the revised plans submitted for the second meeting. The intensity of the structure was scaled back considerably. All of this struck the Board as modest changes, which will have no detrimental effect on any of the neighbors.

15. The applicant has agreed to redo the curb, if damaged during construction. The sidewalk will also be redone.

15. The proposed addition will not be a substantial detriment to the public good. In fact, it will be in keeping with the character of the entire neighborhood. It also will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance, as the proposed changes are quite modest.

WHEREAS, the application was heard by the Board at its meetings on August 3 and September 7, 2006, and this resolution shall memorialize the Board's action taken at the September 7, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of ANNE HAMILTON to add 220 Square feet to the second floor of the existing dwelling, and an additional 99 square feet to the deck at the rear of the second floor of her home at 3 Sea Drift Avenue Block 72, Lot 39), as more fully set forth on the revised plans submitted and referenced herein, be and is hereby approved, and variances are hereby granted for the preexisting conditions described herein regarding lot area, lot width, lot depth, front yard setback, side yard setback and parking; and variances are further granted for rear yard setback and building coverage, as defined above;

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

- (1) Proposed roof runoff shall be directed toward the street, and not onto adjoining properties;
- (2) The sidewalk will be redone. If the curb is damaged during construction, it will be redone as well.
- (3) The rear extension on the second floor shall extend no further than the imaginary rear line of the southerly neighbor's home.
- (4) The second story deck will not extend further than the current ground level deck below it.
- (5) As to the bay windows, the one in the front of the house will not project further into the required front yard than the existing house.

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,
Mr. Mullen**
NAYES: None
ABSTAIN: None

**ZB#2006-7 Dorin, Joseph
Block 35 Lots 10 & 11 – 102 Valley Avenue
Approval of Resolution**

The Board reviewed and discussed the Dorin Resolution.

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

10/5/06
Final

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

**RESOLUTION APPROVING BULK VARIANCES
FOR DORIN AT 102 VALLEY AVENUE**

WHEREAS, the applicant, JOSEPH DORIN, is the owner of 102 Valley Avenue, Highlands, New Jersey (Block 35, Lots 10 & 11); and

WHEREAS, the applicant has filed an application to construct a 12-foot by 20-foot one-car garage to the existing single-family home; 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 a public hearing on September 7, 2006; and

WHEREAS, the Board heard the testimony of JOSEPH DORIN, the applicant;
and

WHEREAS, a neighbor (JERRY FELICIANO) appeared to inquire as to removal of any trees; and MICHAEL KOVIC appeared to support the application and explain certain features of it; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application;
- A-2: Zoning application and denial by Zoning Officer with additional bulk and area requirements chart dated 4/25/06;
- A-3: Project plan with 4/6/89 survey by ZIEMINSKI (4 pages);
- A-4: Portion of zoning map indicating a personal survey of neighboring properties with less than the required setback;
- A-5: 3" X 5" photograph showing existing carport;

WHEREAS, the Board received a review letter dated September 1, 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-1.01 Zone.
2. The new garage will be attached to the existing house.
3. Unless the garage was a detached garage, there would be no other place to locate it on the property.
4. This particular property is a very odd configuration and steeply sloped, which factors do not leave room for much movement as to location of any additional structure on the lot. The driveway, for instance, is on a slope now.
5. The home is in the hill, and not at street level.

6. The proposed garage floor will be approximately four inches below the basement floor. For reference purposes, the front of the home is already an entrance to the ground floor basement.

7. As part of this plan, the driveway will have to be widened, and any runoff down the driveway will be directed onto Valley Avenue.

8. The applicant seeks an 11-foot front yard setback, where 35 feet is required in this zone. There is currently a setback of 22.09 feet.

9. The applicant also seeks variances for the preexisting conditions of lot depth (95 feet, where 100 feet is required) and side yard setback (6 feet/73 feet, where 8 feet/12 feet are required).

10. The Board was concerned with the structural integrity of the proposed retaining wall along the driveway, and leaves the review of that matter to the appropriate Borough officials.

11. The new driveway will be of the same material (asphalt) when widened.

12. The applicant testified and agreed that no large trees (defined as no more than six inches in diameter) will be removed from the property.

13. The subject property is over 10,000 square feet in area, where the zone requires 5,000 square feet. This property, therefore, is more than double the zoning ordinance requirements. For reference purposes, the lot width is over 125 feet, where only 50 feet are required.

14. The location of the house and topography of the land dictate that any proposed garage, such as requested, has limited alternatives from which to choose in siting such a structure.

15. The Board finds that the proposed garage will have no adverse affect on the neighbors. In fact, the applicant's request seeks very minimal relief. There will not, therefore, be any substantial detriment to the public good.

16. Since the relief sought is minimal, the Board further finds that there will not be any 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 September 7, 2006, and this resolution shall memorialize the Board's action taken at the September 7, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of JOSEPH DORIN to construct a 12-foot by 20-foot one-car garage addition to the existing home at 102 Valley Avenue (Block 35, Lots 10 and 11), 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 depth and side yard setback; and for front yard setback, all as set forth earlier in this resolution;

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

- (1) The appropriate Borough officials shall determine whether there is sufficient structural integrity of the retaining wall.
- (2) No large trees (meaning over 6 inches in diameter) shall be removed from the property;
- (3) Any trees over 3 inches in diameter, however, shall not be removed unless approved by the appropriate Shade Tree officials.

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, Mr. Mullen**

NAYES: None

ABSTAIN: None

**ZB#2006-8 Kurtz, R & D
Block 36 Lot 2 – 5 Woodland Street
Hearing on New Business**

**Present: Robert Kurtz
Doreen Kurtz
Gabrielle Massa, A.I.A.**

Mr. Baxter asked if there were any conflicts on this matter but there were none.

Mr. Baxter stated that the board took jurisdiction on this matter at the last meeting.

Mr. Baxter swore in the following people:

Robert Kurtz of 3 Woodland Street, Highlands, NJ 07732
Doreen Kurtz of 3 Woodland Street, Highlands, NJ 07732
Joseph May of Schoor DePalma, Manalapan, NJ 07726

The Board marked the following documents into evidence:

- A-1: Variance Application dated 3/1/2006;
- A-2: Zoning Permit Application and Denial
- A-3: Revised Bulk & Area Requirements List dated 6/27/06;
- A-4: Survey by Thomas Finnegan dated 11/1/1988;
- A-5: Folder with Four Photographs;
- A-6: Building Plans prepared by Mr. Kurtz;

- A-7: Photograph;
- A-8: Photograph looking northern behind the house;
- A-9: Photograph of Existing Rear Deck;
- A-10: Photograph of View Looking North at lot 3;
- A-11: Quick Claim Deed 9/16/03 with Deed of Easement dated 8/18/86.

B-1: Board Engineer Review Letter dated 9/29/06.

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

1. They need a variance for the kitchen which is an extension off the existing kitchen that would infringe on the rear yard setback. They are looking for a bulk variance for a deck adjacent to the new kitchen.
2. The existing house is a two-story dwelling. On the first floor there is one bedroom, a work out room, living room, kitchen and a bathroom. On the second floor there is a Master Bedroom, Master Bath and another Recreation Room.
3. With regard to the Survey that was marked as Exhibit A-4 the footprint of the house is the same. In the backyard there is a retaining wall along the west edge of the property but everything else is the same.
4. With regard to Ordinance 63-9 which vacated this Paper Street he believes that his property and property to the other side adjoin.

Mr. May stated that he does have a copy of the Vacation Ordinance and the Paper Street was split between the property owners and there is a driveway easement on the property. It was a forty foot right-of-way that was vacated and it was split at twenty.

Michael Kovic of 3 Woodland Street, Highlands was sworn in.

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

1. He is the next door neighbor and he built this house.
2. He described the old vacation of the road and stated that he received the up hill portion of the vacancy.
3. He described the driveway and the reason for the applicant's easement to the Kovic driveway.

Mr. Kurtz continued his testimony as follows:

5. If the application is granted the kitchen would be larger and more usable.

6. The existing kitchen is 9 by 15-feet and it would be roughly 10-feet by 15-feet.
7. The deck would be elevated and will rise as you go east to about 6-feet above grade which he further described.
8. He described the photographs that were marked as Exhibits A-7 through A-11.
9. The approximate setback of the house on lot 4 is approximately 45-50-feet from his property line.
10. Some of the existing deck will disappear where the kitchen goes out but then the new deck will extend.

Mr. Mullen stated that the requirement for the rear yard setback is going to have to include the deck because it is elevated above the grade and has to be counted as part of the primary structure. So instead of asking for a variance of 14-feet where 25-feet is required, it may be 4-feet less than that. He then stated that he is trying to correlate the plans and there seems to be a difference in the deck.

Mrs. Kurtz stated the following:

1. The two decks shown on the survey no longer exist, so the front yard setback is actually larger than shown on the survey.

Mr. Mullen stated that our engineer actually did a calculation and according to his calculations its actually 5-feet from the rear of this deck to the northerly adjacent property line lot 4 and Mr. Kurtz agreed with that statement.

Mr. Kurtz stated the following:

11. The original deck is 34-feet wide and it projects 6-feet out.

Mr. Mullen - the indication on your drawing is that your side yard is 14-feet and actually since the building where you measure it, it is 14 but the property line is going closer and actually gets to be at 12-feet. From the deck to the rear property line its five feet. The primary structure is 25-feet away from the rear property line. There is an existing deck which is 6-feet away from the principal structure towards the rear line. They are proposing a 20-foot deck from the principal structure towards the rear line that would leave a five foot space between the property line and the deck.

Mr. Kurtz continued his testimony as follows:

12. There is a half basement and its half underground.

The Board questioned and discussed the building coverage and lot coverage figures that were provided on the Zoning Officers Chart.

Mr. Mullen stated that based on the board engineers calculation it appears that the building coverage is 32% which is 2% above the requirement of this zone. That's with the new addition and deck.

Mr. Kurtz continued as follows:

13. He does not believe that there will be any negative impacts from the proposed on the property or the neighborhood.
14. This would not be infringing on any neighbors.

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

Bill Moore owner of Lot 4 stated that the right-of-way vacation deeded him a 20-foot portion of the vacation. He complained about the conflict between the plans and the survey.

Mark Drucker of Block 36 Lot 3 – He also commented about the inconsistencies between the plans and questioned the dimensions of the deck and the elevation of the deck.

Mike Kovic – how many steps are there from the grade to the existing deck.

Mr. Kurtz – two steps on the west side.

Mike Kovic – is your basement fully out of the ground in the rear yard or is half of it buried in the rear grade.

Mr. Kurtz – it's fifty percent buried. He then tried to describe the height of his existing rear yard deck and stated that he can walk under it.

Mrs. Kurtz requested that Mr. Massa be sworn in as one of her witnesses.

Gabriele Massa, A.I.A. of 329 Route 66, Neptune, NJ was sworn in on behalf of the applicants.

Gabriele Massa stated the following during his testimony:

1. He walked through the subject property and has been there a few times. He knows that the where the house is now is consistent with the survey.
2. He believes that the dimensions as drawn by Mr. Kurtz represent what his intentions are for the proposed project which is for a 10-foot addition and a 20 by 22 foot deck.

3. The grade of the property drops considerably from one end of the property. There is about a six to seven foot drop from the right rear to the left rear which he further described.

The Board discussed the elevation of the deck with Mr. Kurtz and Mr. Massa.

Mr. Massa continued his testimony as follows:

4. He stated that the kitchen is on the main living level and because of the grade their lower grass area never really worked for them because it required too many steps down to that lower level. They really want their deck right off of their kitchen so that they could utilize their kitchen and outdoor space.

5. The applicants are not changing the grade of the deck they just want to extend it.

Mr. Duncan expressed his frustration with the plans that have been provided by the applicant and the inconsistencies with the survey.

Mr. Massa continued as follows:

6. When the deck is extended the degree that the deck will be visible above the six foot fence facing lots 1 & 3 is basically the same as is shown in the photograph. He then explained how the applicant has clipped the end of the deck to minimize the impact on that end. The deck will probably be about two feet above the stockade fence to the bottom of the deck not the rail.

7. He agrees that there appears to be about 11-feet from the existing house to the six foot high stockade fence. The new deck will proceed 14-feet into the back yard which means that from the edge of the deck to the fence boarding lot 4 would be 5-feet. The square footage of the proposed deck is about 400 square feet. The square footage of the first floor of the house is approximately 850 square feet.

8. The utilization of the deck is that they can't even use their rear yard because of the grade change. This allows them to be able to utilize the rear yard efficiently.

The Board discussed with Mr. Massa the possibility of reducing the height of the deck by coming down the deck by a couple of steps.

Mr. Mullen explained that the proposed deck has an impact on the other people in the neighborhood and your basically building a primary structure that is five feet from the property line. Your using the entire rear yard but there isn't a real basis for the board to grant this variance.

Discussions continued with the applicants and Mr. Massa about the height and size of the proposed deck.

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

Mark Drucker of 153 Highland Avenue, Highlands was sworn in. He submitted the following Exhibits which were marked into evidence:

- O-1-1: Photograph of rear of house with existing deck;
- O-1-2: Photograph taken from lot 3 looking at rear yard of subject lot;
- O-1-3: Aerial Photo from Google Earth

Mr. Drucker then describes his photographs and spoke unfavorably about the proposed deck and stated that it would take away from his light and air and also have an impact on noise therefore he opposes the proposed deck. If the deck were lower perhaps there would be less of an impact to him.

Robert Kurtz stated that they will have lattice underneath the proposed deck and there would be no spot lights on the deck.

William Ward of 155 Highland Avenue, Highlands was sworn in and submitted the following Exhibits which were marked into evidence:

- O-2-1: An 8 by 10 Photograph;
- O-2-2: Current Survey of his house dated 11/3/97.

Mr. Ward stated the he is in the process of building a garage in his rear yard. The applicants have a patio that is encroaching onto his property right now. He then described how the proposed addition would impact the neighborhood atmosphere negatively. He also feels that it is an offensive structure. He also spoke about the pre-existing non-conformities of the property. He has seen the applicants have parties in their rear yard, so to say that the rear yard is not useable is inaccurate.

Mr. Kurtz stated that it would be impossible to have the deck at grade level because of the grade.

Mike Kovic of 3 Woodland Street stated that he is a neighbor of the applicants and he spoke favorably about the proposed addition. He stated that they can make two steps down to the deck to help reduce the appearance to the other neighbors. He also stated that he has seen chairs collapse in the applicant's yard at party because of the ground.

Diane Duszak of 153 Highland Avenue was sworn in and spoke unfavorably about the proposed deck and stated that it would impact her air and light and quality of life. She stated that property owners should be able to rely on the zoning that is in place to protect the quality of life in her neighborhood.

Mr. Massa – what if the applicants were to reduce it another 3 ½ feet and terrace it down so that it comes down.

Mr. Mullen stated that this board needs some serious reasons for granting this and he has not heard anything this evening that would persuade him to that. This is something that is going to be a benefit and would out weigh the perceived detriment that has been raised by the neighbors.

Mr. Mintzer disagreed with Mr. Mullen and stated that people falling off of angles of chairs is a hardship to the land.

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

Mr. Ward stated that the size of the proposed deck is the same footprint of his house.

Mr. Kovic stated that the two people that have testified against this application both have non-conforming properties.

Mr. Massa stated that the reason for granting the variance is because the property is on a slope. The deck is almost like an extension to the outdoor living space but they are willing to drop it down.

Miss Tierney asked about how much further the deck will come out from the kitchen addition.

Mr. Kurtz it would be another ten feet.

Miss Tierney - if we limited you to building your deck where your kitchen is would that be sufficient?

Mrs. Kurtz – I would still need that 10-feet to put a table in and to have some extra room.

Mr. Baxter advised the applicants that the board does not come up with suggestions, they vote on what has been requested. If you are modifying the request and you want the board to vote on that modified request that would be fine.

Mr. Duncan asked the applicants if they needed a few minutes to come up with a conclusion.

Mr. Kurtz asked for a few minutes to come up with a final proposal and the board granted this request.

Mr. Mullen stated that board is now going to get an amended application.

Mr. Kurtz described the new revision is as follows:

1. The deck is going to be 10-feet from the rear property line. The existing deck comes out from the house 6-feet and they are adding 9-feet.

Mr. Baxter stated that it's 25-feet from the current rear of the house to the rear property line and the current deck is 6-feet deep, so it's currently 19-feet from the end of the deck to the property line. So if they are making it 10-feet from the property line then they are adding 9-feet more to the deck.

Mr. Kurtz stated that the elevation of the deck will be 2-feet lower than the first floor/existing deck. There will be three steps down to get to the deck from the kitchen. The entire rear deck will be built below the first floor.

Mr. Mullen asked if there were any comments from the public as a result of these changes.

Mr. Ward stated that he wanted to see new drawings reflecting the changes before he makes any comments.

Mr. Baxter explained that if there is an approval of anything then the applicant will have to take the approval to the Construction Department and seek a building permit and provide plans which plans will be part of the public record.

Mr. Ward suggested that we use a benchmark that the lowest grade (the side closes to him) where the deck begins, that it not exceed 4-feet at that level. What happens to the spiral staircase that is shown in this design that goes up to the next deck? It will have to steeper.

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Mr. Duncan – the deck above the kitchen is at the same height as proposed so two more feet will have to be added on to the spiral staircase.

Mr. Ward asked if the board has calculated the deck area above the kitchen in conjunction with this.

Mr. Mullen explained that there is no zoning ordinance with regard to areas of decks. The relief here is the projection into the rear yard.

Mr. Baxter stated that it's already included in the building coverage computation.

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

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

The Public portion was then closed on this matter.

The Board then discussed the application.

Mr. Duncan – the only new variance that is being requested with this application is the rear yard. The requirement is for 25-feet and they are requesting a 10-foot setback. The new deck is not protruding beyond the existing footprint of the home therefore they are maintaining a minimal of an 11-foot side yard setback on the one side and on the Kovic side it's remaining the same. The proposal of the table as amended is that the new deck will be two-feet lower than both the existing deck and the first floor of the home. The lattice work would have to be completely surrounding the face of the new deck and that there be no exterior flood lights.

Mr. Mullen stated that his problem with this application is that there was absolutely no testimony that would indicate that there is some substantial reason or any hardship for granting this variance.

Miss Tierney stated that she is sympathetic to the applicant's desire for outdoor use and she is happy with the reduction of the deck.

Mr. Mintzer stated that the reduction to 10-feet in the rear is fine and he feels that at the present time the distance between neighbors is not a problem and the step down he hopes will alleviate some of the site difficulties from the adjoining neighbor.

Mr. Mintzer offered a motion to approve the application as outlined by Mr. Duncan, 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,
Mr. Fox**
NAYES: Mr. Mullen
ABSTAIN: None

**ZB#2006-2 Worthington Capital
Block 9 Lots 6 & 7 – S. Bay Avenue
Approval of Resolution Denying Application**

Mr. Baxter read the following Resolution for approval:

10/5/06

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

**RESOLUTION DENYING USE VARIANCE
FOR WORTHINGTON CAPITAL, LLC, AT
1 SOUTH BAY AVENUE (BLOCK 9, LOTS 6 & 7)**

WHEREAS, the applicant, WORTHINGTON CAPITAL, LLC, is the owner of property known as 1 South Bay Avenue, Highlands, New Jersey (Block 9, Lots 6 & 7); and

WHEREAS, the applicant filed an application for use and associated bulk variances to construct a 5-unit 2-story townhouse complex on the old Careless Navigator property; 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 15 and September 7, 2006; and

WHEREAS, the Board heard the testimony of the following witnesses for the applicant: JAMES KENNEDY (Engineer); RICHARD VILLANO (Architect); JOHN CUNNINGHAM (Owner); and STEPHEN OWENS (Planner); and

WHEREAS, the Board heard comments from the following witnesses who live in the neighborhood: JIM PARLA (who neither testified for nor against the application, but was opposed to restaurants); HELEN KWIATEK (opposed); DANIEL KWIATEK (neither in favor nor opposed); FRAN BENSON (opposed); DONNA O'CALLAHAN (opposed); WILLIAM WARD (opposed); and DAN RYAN (opposed); and

WHEREAS, the Board also had the benefit of the testimony of JOE MAY, the Board Engineer; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (5 pages);
- A-2 Highlands Fire Prevention form letter dated 3/20/06 (2 pages);
- A-3 Site plan application (7 pages);
- A-4 Zoning permit application (denied);
- A-5 Site plan by JAMES A. KENNEDY, last revised 5/12/06 (7 pages);
- A-6 Architectural renderings and floor plan by RICHARD VILLANO last revised 5/17/06;
- A-7 Colored rendering on board;
- A-8 Copy of Ordinance O-5-08 dated 6/23/05, vacating pathway;
- A-9 Smaller rendering;
- A-10 Floor plan on board (page 2 of Exhibit A-6);
- A-11 Aerial photograph;
- A-12 Photograph of neighboring lot;
- A-13 Photograph of neighboring lot;

- A-14 Photograph of Gateway Villas;
- A-15 Photograph of neighboring lot;
- A-16 Photograph of Twin Light Terrace Condominiums;
- A-17 Photographs of neighboring lot;
- A-18 Photograph;
- A-19 Photograph of Gateway Apartments;
- A-20 Photograph of Gateway Apartments; and

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

- B-1 Board Engineer review letter dated 6/15/06 (7 pages); 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 is approximately .56 acres in size, and is located within the WC-1 (waterfront commercial) district.
2. The property currently contains an abandoned 1-story masonry building, which is the former Careless Navigator bar and restaurant.
3. The applicant proposes to demolish the existing building and construct five 2-story townhouse units with associated parking, which parking will include ten garage spaces (one inside the garage, and one out for each unit) and an additional four angled parking spaces.
4. Multi-family dwellings are not permitted in the WC-1 Zone.
5. If a use variance were to be granted, bulk variances would also be required for minimum lot width (63 feet, where 100 feet is required; though 150 feet is required in the MF Zone); and lot depth (60 feet, where 150 feet is required; though 200 feet is required in the MF Zone). Additionally, and by way of comparison, if the property were in an MF Zone, allowing for multi-family uses, the applicant would also require variances for front yard setback (23.8 feet proposed, where 35 feet is required); rear yard setback (27.4 feet, where 50 feet is required); and side yard setback (24.7 feet, where 25 feet is required).

6. This property is located on one of the gateway entrances from State Highway 36 to the Borough. The entire property is on a general westerly slope going from the top of the hill, near Portland Road (just off of Highway 36), down the hill to South Bay Avenue. The applicant's planner testified that this property was particularly suitable for this use and, therefore, met the "special reasons" requirements of the statute. The Board rejects that testimony as not being credible.

7. The October 2004 land use element of the approved Highlands Master Plan specifically refers to this property. Item 6 on page LU-27 states:

"This plan specifically recommends rezoning Block 199, Lots 4-7, which includes the vacant Careless Navigator and surrounding properties, from waterfront commercial to the resort business district. The continued use of this property for commercial purposes is appropriate, as the construction and relocation of the Highlands Bridge sixty (60) feet to the south will increase ambient noise surrounding the property. However, the uses of Lots 4-7 are inappropriate for hotels and motels. This plan recommends removing hotels and motels as principal permitted uses in the B-3 District. Bars and taverns and retail sales and service establishments should be included as principal permitted uses in the district."

8. It is clear, therefore, from the Borough's master plan that the Highlands Planning Board gave specific attention to this specific property, and directed that it be used for commercial purposes. Both the WC-1 District (in which the property is currently sited) and the business districts would both allow commercial uses, but neither would allow multi-family residential uses.

9. The applicant's proposed use is in direct contravention of the zoning ordinance and the master plan; and, therefore, any testimony by the applicant's witnesses to the effect that the proposal would not be a detriment to the zone plan or zoning ordinance is completely rejected by the Board.

10. The density of the proposed project was also a major concern in both the questioning by the Board and by residents. The density issue, however, paled in light of the borough master plan directives. Some members of the Board additionally felt that the proposed structures were too close to the road and that the plan was not well organized.

11. In simple terms, the applicant proposed a non-permitted use, which was not only too dense for the property, but in direct contravention of the zoning ordinance and master plan.

12. The Board does not find any "special reasons", which would be required to be proven by an applicant seeking a use variance under N.J.S.A. 40:55D-70(d).

13. Accordingly, the Board finds that the granting of the requested use variance, and its attendant bulk variances, 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.

14. The Board further finds that the proposed use would impair the intent and purpose of the master plan and the zoning ordinances 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 September 7, 2006;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of WORTHINGTON CAPITAL, LLC for a use variance to construct five town homes, with attendant bulk variances and site plan approval, at 1 South Bay Avenue (Block 9, Lots 6 & 7), in Highlands, New Jersey is denied.

Seconded by Miss Tierney and adopted on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Mullen requested that a change be made on page 11 in the fifth paragraph in the last line. That it be changed to say that we don't want to give up commercial properties.

Mr. Mintzer offered a motion to approve the September 7, 2006 Minutes with a correction on page 11, seconded by Miss Tierney and all eligible members were in favor.

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

The Meeting adjourned at 11:04 P.M.

CAROLYN CUMMINS, BOARD SECRETARY

