

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
NOVEMBER 2, 2006**

Mr. Mullen called the meeting to order at 7:59 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. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Mr. Mullen,
Mr. Fox, Mr. Anthony

Absent: Miss Tierney, Ms. Ryan

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

**ZB#2006-1 Duane Realty, LLC
Block 94 Lots 1 & 16 – 321 Bay Avenue
Request for Postponement of P.H. to December 7, 2006**

Mr. Mullen stated that the applicants Attorney has requested a postponement which has been recently amended to January 4, 2007.

The Board had a discussion with regard to the number of times that the applicant has requested a postponement.

Mr. Duncan offered a motion to approve the request for a postponement to the January 4, 2007 meeting with a stipulation that the application be tried at the January 4, 2007 meeting or it will be dismissed without prejudice, and if there are changes to the application that the applicant be requested to submit plans and amend application prior to the January 4, 2007 meeting. Seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

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

The Board directed the Board Secretary to send a memo to the applicants Attorney advising him of the conditions of the adjournment and also to advise them to submit new plans and an amended application if the application has changed and also to inform them to check the expiration date of the Certified List of Property Owners prior to sending out public notice.

**ZB#2006-10 Hall, George
Block 116 Lots 12 & 13 – 410 Navesink Avenue
Application Review and Set P.H. Date**

Present: Jennifer Krimko, Esq.

Ms. Krimko stated the following:

1. The owner of the property has been using this site as a private office with a private work out facility for himself.
2. The applicant is seeking approval to use this site for a non-profit organization called Opportunity Knoxs which is basically to provide a safe haven for children and the intent is to develop a boxing training facility. A shuttle system from an off site location would be created to deal with the parking issues.

The Board reviewed the application and stated the following:

1. The Board wants the applicant to provide some precedent of a similar operation.
2. The applicant will have a Professional Planner provide testimony with regard to granting a use variance.
3. Provide copy of Resolution for granting a use variance for Knox 400, LLC.
4. Provide copy of Resolution for previous use variance granted at this site (Sala, Frank).
5. The applicant must establish the Zone Boundary Line that runs through the subject property and should look into the buffering requirements.
6. The applicant must provide side yard dimensions on plot plan.
7. The applicant must provide the height on the zoning chart.
8. The applicant needs to address site lighting.

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9. The applicant must provide a Certificate of Incorporation.
10. The applicant must provide sign detail information.
11. The applicant should look into other municipalities with regard to parking standards for similar use.

Mr. Duncan offered a motion to schedule this matter for a public hearing on February 1, 2007, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2006-8 Kurtz, Robert & Doreen
Block 36 Lot 2 – 5 Woodland Street
Approval of Resolution**

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

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

**RESOLUTION APPROVING BULK VARIANCES
FOR KURTZ AT 5 WOODLAND STREET**

WHEREAS, the applicants, ROBERT & DOREEN KURTZ, are the owners of 5 Woodland Street, Highlands, New Jersey (Block 36, Lot 2); and

WHEREAS, the applicants originally filed an application to add a kitchen to the rear of the house, remove the existing rear deck, and install a new deck approximately 22 feet by 20 feet, all to the existing single-family home; and

WHEREAS, during the hearing process, the applicants amended their application to reduce the scope of the project. The amended application was to still seek approval for the kitchen to the rear, and to remove the existing deck and construct a new deck, but the new deck would be no closer to the rear property line than 10 feet (effectively 9 feet deeper than the current deck), with the maximum height from ground level to the bottom of the deck to be 2 feet lower than the finished floor area (which is the same level as the existing deck); 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 October 5, 2006; and

WHEREAS, the Board heard the testimony of the applicants, DOREEN and ROBERT KURTZ; their neighbor and builder, MICHAEL KOVIC; and their friend and architect, GABRIEL MASSA; and

WHEREAS, the following neighbors appeared to both ask questions and object to the size and scope of the application: MARK DRUCKER; WILLIAM WARD; and DIANE DUZAK (MR. DRUCKER'S wife); and

WHEREAS, the applicants submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit and denial form;
- A-3: Bulk area requirements list prepared by Zoning Officer, revised 6/27/06;
- A-4: 11/1/88 survey by Thomas A. Finnegan;
- A-5: Manila folder with 4 color photographs, each 4" X 6";
- A-6: Building plans prepared by MR. KURTZ;
- A-7: Photographs of property to rear (blue house);
- A-8: Photograph looking north from the property;
- A-9: Picture of existing rear deck;
- A-10: Photograph looking northeast, toward Lots 1 and 3;

A-11: Combination of 9/16/03 quitclaim deed from Kurtz to Kurtz; and 8/18/86 deed of easement from Kovpac Associates to Kovic; and

WHEREAS, the following exhibits were marked into evidence by the objectors:

- O-1: Color photograph of rear of existing deck
- O-2: Photograph taken from DRUCKER property looking at rear of subject;
- O-3: Google Earth aerial photograph with lots superimposed thereon;
- O2-1: Photo looking west from WARD rear yard;
- O2-2: 11/13/97 survey of WARD property by THOMAS FINNEGAN; and

WHEREAS, the Board received a review letter dated September 29, 2006, from JOSEPH MAY, Board Engineer; and

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

1. The applicants are the owners of a two-and-a-half story single-family home in the R-1.01 Zone.
2. The applicants seek variance approval for the following preexisting conditions: (a) Minimum lot size of 5,000 square feet, where 4,957 square feet is existing; (b) minimum lot depth of 100 feet, where 71.5 feet is existing; (c) minimum front yard setback of 35 feet, where 20.7 feet is existing.
3. The applicants also seek a variance for rear yard setback. After amending their application, the requested setback is 10 feet from the rear property line, where 25 feet is required.
4. The applicants testified that there will be no further encroachment on either side yard, as a result of which no variance relief is needed.
5. Since the plans and testimony provided by the applicants were not as informative as the Board would have liked, much of the testimony centered on the dimensional aspects of the rear deck, its height, and its distance from both the rear and side property lines.
6. The property is on a slope, which generally runs from left to right (i.e., northeast to southwest).

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7. The current home is over 2 stories in height, and contains a bedroom, workout area, living room, kitchen and small bath on the first level; and a master bedroom, master bath and recreation room on the second level.

8. Because of the small size of the kitchen, the applicant plans to expand the current kitchen, so that they will have a dining area in the area of the existing kitchen, and the new kitchen will expand out the rear of the property. The expansion, however, will be no closer to the side yard than currently exists.

9. There will also be a deck area on the level above the kitchen roof.

10. The plans drawn by the applicant do not accurately depict the application. For instance, the cover page does not accurately depict the way the deck is to be built. The Construction Department should not use that page as reference. Similarly, the approval being given herein will not be consistent with the plans submitted, as a result of which, the Construction Department should require new plans to accurately set forth what is being constructed.

11. Because of the slope of the property, it is difficult to even put chairs in the rear property, since people would tend to fall over, because of the pitch of the land.

12. The slope of the rear portion of the lot requires that the applicants seek alternatives for outdoor living space. They have, therefore, requested the removal of their existing deck and its replacement with a larger deck.

13. The current main deck at the rear of the house is approximately 34 feet in length and is 6 feet off the rear of the home. The proposed new deck will be 15 feet off the rear of the home, but will be no closer than 10 feet to any point of the rear property line.

14. The configuration of the new deck shall be in accordance with the design on page 2 of Exhibit A-6. That means that the rear of the new deck will not be squared off in the right rear corner; but, rather, the right rear triangle will be removed.

15. The current property has an existing patio in the northern rear corner. That patio will remain, but will decrease in size as a result of the kitchen addition.

16. The Board was not favorably disposed toward the original application because of the proposed size of the new deck and its affect on the neighbors, as well as the significant encroachment on the rear yard setback. The Board was much more favorably disposed toward the amended request of the applicants, which reduced both the size and the height of the deck.

17. The applicants testified that the entire area below the new deck will have latticework, similar to what is currently there.

18. The applicants testified that there will be no exterior lighting of the rear deck.

19. The Board was favorably disposed toward the enlargement of the kitchen and having a useful area for the same, both inside and outside, similar to other homes in the area.

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20. The reduction in height of the proposed new deck will alleviate some of the concerns raised by the neighbors regarding air and light.

21. For the reasons expressed earlier herein, the Board finds that the applicant has met the requirements of N.J.S.A. 40:55D-70c(1)(b) for the obtaining of a bulk variance by reason of the exceptional topographic conditions or physical features uniquely affecting this property.

22. The Board finds that the amended proposal will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. Neither will it be a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on October 5, 2006, and this resolution shall memorialize the Board's action taken at the October 5, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of ROBERT & DOREEN KURTZ to add a kitchen to the rear of their home, remove the large existing deck, and replace it with a new deck, and add a deck above the kitchen, at their home at 5 Woodland Street (Block 36, Lot 2), as initially depicted on the plans submitted by the application, as amended herein, be and is hereby approved, and variances are hereby granted for the afore-described preexisting conditions of front yard setback, size of lot and depth of lot; and a variance is further granted for the rear yard setback, such that no part of the new deck is any closer to the rear property line than 10 feet;

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

- (1) There shall be no further encroachment on either side of the home;
- (2) The area below the new deck will be entirely latticed, similar to the current design;
- (3) There will be no exterior lighting on or directed to the new deck;
- (4) The height of the new deck shall be 2 feet below the existing deck. The level of the current deck is the same level as the first living floor of the home;
- (5) The cutout design of the new deck, as shown on Exhibit A-6, shall be employed.

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

ROLL CALL:

AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy,
Mr. Fox

NAYES: None

ABSTAIN: None

**ZB#2006-9 Shute, Eugene
Block 59 Lot 35 – 114 Shore Drive
Hearing on New Business**

**Present: Eugene Shute
Richard Stockton, Land Surveyor, P.P.
Mike Colby, Licensed Plumber**

Conflicts: Mr. Francy and Mr. Anthony both stepped down for this matter.

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

Mr. Mullen advised the applicant that there are five affirmative votes required for a use variance and there are only five members available this evening.

The following documents were marked into evidence:

- A-1: Variance Application;
 - A-2: Elevation Certificate prepared by R. Stockton dated 9/21/06;
 - A-3: Flood Review Memo by Dave Gilson dated 8/30/06;
 - A-4: Zoning Application with Zoning Chart attached dated 1/9/06;
 - A-5: Sketch Plat prepared by R. Stockton dated 9/20/06;
 - A-6: Certificate of Occupancy dated 6/14/00 with Fire Certification for the left unit;
 - A-7: Survey dated 9/30/05 prepared by R. Stockton;
 - A-8: Four photographs on one sheet;
 - A-9: Five pages of Architectural Plans prepared by Mr. Shute.
 - A-10: Certificate of Occupancy for Right Unit dated 8/1/2000;
 - A-11: Copy of Sewer Bill for Two Units.
- B-1: Board Engineer Review Letter dated 9/29/06.

Mr. Mullen stated that this is an application for a building addition on top of the house that exceeds 80% of the original footprint on the ground level and expanding a non-conforming use.

Mr. Baxter swears in the following people:

1. Eugene Shute, Jr. of 114-B Shore Drive, Highlands.
2. Richard Stockton, P.P., Land Surveyor of 17-Avenue D, Atl. Highlands, NJ
3. Joseph May, Board Engineer of Schoor DePalma.

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

1. He wants to raise the house out of the flood zone, replace the foundation, make a two-car garage under the structure. The two bedroom apartment that is presently there now that he lives in will stay the same. The one bedroom apartment will be have the upstairs addition added to it, instead of being a bedroom, living room and kitchen it will just be a kitchen and living room down stairs.
2. The existing structure is currently a single story building and will be a three story building. Unit One is a two-bedroom apartment with a front and back entrance.
3. At the grade level is a garage fully enclosed.
4. The full footprint of the house is 54 by 20-feet 6 at grade.

Richard Stockton stated the following:

1. At the second floor which is the first living level above grade is at elevation 15.2 feet.

Mr. Shute continued his testimony as follows:

5. The first living level will be as follows: unit one will remain the same and his mother and sister will live there. Unit Two will have the family room and a living level above it and will have a front entrance added to it, there is currently only a rear entrance. On the third level of the structure it will be expanded and is no longer on the footprint of the building, it is expanded to the south by 4 foot 6 by the full width of the building which is 54, there will be three bedrooms, two bathrooms and a deck.

The Board Engineer discussed with the board the addition dimensions and Mr. May stated that the total second floor is 1350 and the deck is 250. Mr. Mullen explained that in terms of the area of the house the application is substantially greater in area than 80% of the original floor area of the house. Mr. May stated that the top floor is 11194 over the 1090 existing first floor.

Mr. Shute continued as follows:

6. He can't see any negative impact in the area because he is providing the required off-street parking. Two parking spaces will be provided in the garage and two parking spaces on side of house on the subject property for a total of four off-street parking spaces.

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Mr. Mullen stated that with this particular lot there are two front yards and two side yards.

Mr. Stockton stated the following:

2. That the adjoining lot 27 separates this property from Shore Drive so its not a corner lot.

Mr. Shute continues as follows:

7. He currently enters the house on Shore Drive but originally when he bought the house the entrances were in the back for both units.

Mr. Mullen discussed the issue of averaging of front yards and stated that the applicant is also looking for a front yard of 12 feet 6 inches where 20-feet is required. The side yards for this application are 6 and 8 feet are required and it appears that its 11.9 and 12 feet on the other side. He believes that the front yard setback of 12.6 feet where 20-feet is required with no indication as to averaging of other properties.

Mr. Shute continues as follows:

8. The front yard for next door is 6-feet from the curb.
9. With regard to averaging the board needs to remember that when you go down Shore Drive towards Miller the next five houses front on Second Street and his is the only one that fronts on Shore Drive. Mr. Mullen acknowledged that the applicant's lot is the only lot that is not a through lot from Second Street to Shore Drive and that the other houses are fronting on Second Street. So its clear that the applicants is asking for a variance and that it does not fall within the average setback.

Mr. Stockton continued as follows:

3. They are asking for lot coverage of 39% where 33% is permitted and the existing structure has 31.6% lot coverage.

Mr. Baxter stated that it's a 23.4% increase over the allowed coverage.

Mr. Shute continues as follows:

10. There is no hardship reason for granting this variance he has a girlfriend and two children that need to move in with him and he needs more room. He also has an elderly mother and his sister who will also be moving in, so he needs more room.

11. The lot coverage that he is proposing is not out of character with the neighborhood. This house will not be substantially different with regard to the amount of building on a lot, only in relation to the surrounding back yards but he would have to investigate that further. The houses on Valley exceed the lot coverage .

Mr. Mullen stated that with regard to Mr. Shutes comment regarding lot coverage on Valley Street that is evidence that the board would like to see. He stated that lot coverage is a critical issue.

Mr. Mintzer advised the applicant that he must provide zoning reasons to approve this.

Mr. Mullen stated that the applicant might have a hard time finding comparable lot coverage and its something that you should definitely look into. He also advised the applicant to provide any information with regard to why the board should let him increase the building above its original footprint.

Mr. May clarified that its building coverage not lot coverage that has been referred to.

Mr. Shute continued as follows:

12. There is no change to the existing curb cut. There will be a minor asphalt change by the garage doors and where the present driveway stops.

Mr. Shute requested that Michael Colby be sworn in.

Mr. Baxter swears in Michael Colby, Master Plumber of 41 S. Bay Avenue, Highlands.

Michael Colby stated the following:

1. He is a licensed Master Plumber.
2. The existing sewer pipe and the water main are more than sufficient to handle the proposed.

There were no questions from the public.

Mr. Duncan offered a motion to carry this public hearing to the December 7th meeting without the need to renotice, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Fox, Mr. Mullen
NAYES: None
ABSTAIN: None

Mr. Mullen announced that this application has been moved to the December 7, 2006 meeting and no further public notice will be given.

Mr. Baxter advised the applicant to bring the original Certificates of Occupancies to the next meeting.

The Board also requested that the applicant provide a copy of his Property Record Card to see if this property is being taxed as a two-family residence.

Both Mr. Francy and Mr. Anthony returned to the meeting table.

Discuss Request for Proposals for Board Professionals

Mr. Baxter explained that this is on for discussion because depending on what the Borough has enacted there may be a requirement to request for quotes for services and there is a Political Disclosure Statement that has to be completed. The Board Secretary has informed me that the Borough did not adopt any such ordinance.

Approval of Minutes

Mr. Mintzer offered a motion to approve the October 5, 2006 meeting minutes, seconded by Mr. Francy and all eligible members were in favor.

Communications

The Board reviewed the following documents which no formal action was required:

1. Mandatory Classes for Board Members
2. Letter fro G. Baxter dated 10/16/06 RE: 234 Bay Avenue, Block 69 Lot 1
3. Letter from K. Kennedy dated 10/9/06 RE: 234 Bay Avenue, Block 69 Lot 1

**ZB#2006-10 Hall, George
Block 116 Lots 12 & 13 – 410 Navesink Avenue**

The Board requested that Board obtain a Professional Planner from Schoor DePalma for the Hall Application.

The Meeting adjourned at 10:27 P.M.

CAROLYN CUMMINS, BOARD SECRETARY