

**BOROUGH OF HIGHLANDS
ZONING BOARD MEETING
JANUARY 4 , 2007**

Mr. Mullen called the meeting to order at 7:38 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 Zoning Board of Adjustment of the Borough of Highlands 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, Mr. Britton

Late Arrival: Mr. Duncan arrived at 7:41 P.M.

Absent: None

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

REORGANIZATION:

Mr. Mullen welcomed the newly appointed member to the board Ryan Britton, Alternate #2 Member and welcomed the reappointed members back to the board.

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

**BOROUGH OF HIGHLANDS
ZONING BOARD RESOLUTION
DESIGNATING CHAIRPERSON
FOR THE YEAR 2007**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that **PETER MULLEN** be appointed Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2007.

Seconded by Mr. Mintzer and adopted 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**

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT RESOLUTION
DESIGNATING VICE CHAIRPERSON
FOR THE YEAR 2007**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that **William Duncan** be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2007.

Seconded by Mr. Mintzer and adopted 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**

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

**RESOLUTION APPOINTING ZONING BOARD ATTORNEY
FOR THE CALENDAR YEAR 2007**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Zoning Board for the calendar year 2007; and

WHEREAS, such Professional Legal Services can only be provided by licensed professionals and Gregory Baxter, Esq. of Caruso & Baxter, P.O. Box 420, Eatontown, NJ 07724 is so recognized; and

WHEREAS, the law office of Caruso & Baxter has completed and submitted a Business Entity Disclosure Certification which certifies that the law office of Caruso & Baxter has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year (Reportable contributions made prior to January 1, 2006 are not considered for the purposes of determining whether a contractor is prohibited from being awarded a contract.) , and that the contract will prohibit Caruso & Baxter from making any reportable contributions through the term of the contract, and

WHEREAS, the determination of value has been placed on file with this resolution with the Board Secretary; and

WHEREAS, Caruso & Baxter has submitted the C.271 Political Contribution Disclosure Form in accordance with N.J.S.A. 19:44A-20.26 (P.L. 2005,c271, s2).

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq., requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment of the following:

1. Gregory Baxter, Esq. of the law office of Caruso & Baxter is hereby appointed as Zoning Board Attorney for the period of January 1, 2007 through December 31, 2007.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by person authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Zoning Board Secretary of the Borough of Highlands.
4. The Board Secretary is hereby directed to publish notice of this award as required by law.

Seconded by Mr. Francy and adopted 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**

Mr. Duncan arrived to the meeting.

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

**RESOLUTION AWARDING CONTRACT
FOR PROFESSIONAL LEGAL SERVICES
TO GREGORY BAXTER, ESQ. OF CARUSO & BAXTER**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Zoning Board of Adjustment for the period of January 1, 2007 through June 30, 2007; and

WHEREAS, such Professional Engineering Services can only be provided by licensed professionals and Gregory Baxter, Esq. of Caruso & Baxter, P.O. Box 420, Eatontown, NJ 07724 is so recognized; and

WHEREAS, Gregory Baxter, Esq. of Caruso & Baxter was appointed as Zoning Board Attorney for the calendar year 2007 on January 4, 2007; and

WHEREAS, Gregory Baxter, Esq. of Caruso & Baxter has submitted the attached 2007 contract for approval; and

WHEREAS, the Zoning Board has reviewed and hereby approved of the attached contract.

WHEREAS, the law office of Caruso & Baxter has completed and submitted a Business Entity Disclosure Certification which certifies that T&M Associates has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year (Reportable contributions made prior to January 1, 2006 are not considered for the purposes of determining whether a contractor is prohibited from being awarded a contract.) , and that the contract will prohibit T&M Associates from making any reportable contributions through the term of the contract, and

WHEREAS, the determination of value has been placed on file with this resolution with the Borough Clerk; and

WHEREAS, the law office of Caruso & Baxter has submitted the C.271 Political Contribution Disclosure Form in accordance with N.J.S.A. 19:44A-20.26 (P.L. 2005,c271, s2).

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq., requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised; and

WHEREAS, certification of the availability of funds is hereby made as follows:

Account #1151 -3755 \$ 600.00

Account #1151 – 3010 \$ 4,810.00

For Legal Services for the Period of January 1, 2007 through June 30, 2007.

Stephen Pfeffer, CFO

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of the Borough of Highlands of the following:

1. Gregory Baxter of the law office of Caruso & Baxter is hereby awarded a contract for professional legal services to be provided to the Zoning Board for the period of January 1, 2007 through June 30, 2007 for an amount not to exceed \$600.00 in addition to annual salary of \$9,260.00 and that the attached contract for 2007 is hereby approved.
2. This contract is awarded without competitive bidding as a “Professional Service” in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by person authorized by law to practice a recognized profession.
3. A copy of this Resolution as well as the contract shall be placed on file with the Board Secretary of the Borough of Highlands.
4. The Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

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

NAYES: **None**

ABSTAIN: **None**

Appointment of Board Engineer

Mrs. Cummins stated that at this time we should table this matter.

Mr. Baxter explained that the board can appoint the board engineer but the contract will have to wait because the BEDC forms were not on file.

Mr. Mullen offered the following Resolution and moved in its adoption:

**RESOLUTION APPOINTING ZONING BOARD ENGINEER FOR THE
CALENDAR YEAR 2007
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES**

WHEREAS, the Borough of Highlands Zoning Board has a need for professional engineering services as a non-fair and open contract to be provided to the Board for the calendar year 2007 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services services can only be provided by licensed professionals and **Francis Mullan, P.E.** of the firm of **Schoor DePalma, P.O. Box 900, Manalapan, NJ 07726** is so recognized;

WHEREAS, the Board Secretary has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, Schoor DePalma Engineers has completed and submitted a Business Entity Disclosure Certification which certifies that Schoor DePalma Engineers has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year (reportable contributions made prior to January 1, 2006 are not considered for the purpose of determining whether a contractor is prohibited from being awarded a contract), and that the contract will prohibit Schoor DePalma from making any reportable contributions through the term of the contract; and

WHEREAS, Schoor DePalma has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq. requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised;

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Planning Board as follows:

1. Francis Mullan, P.E. of Schoor DePalma is hereby appointed as Zoning Board Engineer for the calendar 2007 and said appointment is made as a non-fair and open contract.
2. This contract is awarded without competitive bidding as “Professional Service” in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession.
4. A copy of the Resolution shall be placed on file with the Board Secretary.
5. The Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
RESOLUTION APPOINTING BOARD SECRETARY
FOR THE YEAR 2007**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that **CAROLYN CUMMINS** be appointed Secretary of the Zoning Board of Adjustment for a term of one (1) year expiring December 31, 2007.

Seconded by Mr. Fox and adopted on the following Roll Call Vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

1/4/07

RESOLUTION ACKNOWLEDGING CAROLYN CUMMINS

WHEREAS, CAROLYN CUMMINS has been the Secretary to the Highlands Zoning Board of Adjustment for the past nine years; and

WHEREAS, CAROLYN has done an exemplary job in organizing the meeting agendas; circulating the meeting packets well in advance of the meetings, so the Board members will have ample time to review the same; has been very responsive to applicants and their experts who have called with questions; has put together various charts showing the Board's actions on all matters over the past ten years; and has also put together the annual reports for the Board's consideration and approval; and

WHEREAS, CAROLYN'S demeanor, both with respect to the Board members and with respect to the public has been exceptionally good, thereby making everyone's job easier;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that CAROLYN CUMMINS be recognized and thanked for her years of service, especially in the way in which she has performed her duties as Secretary to the Zoning Board of Adjustment. We all appreciate the service she has given.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Ms. Ryan offered the following Resolution be memorialized and moved its adoption:

**RESOLUTION SETTING THE SCHEDULE FOR REGULAR
MEETINGS OF THE
BOROUGH OF HIGHLANDS ZONING BOARD OF ADJUSTMENT
FOR THE CALENDAR YEAR 2007**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that the following schedule is hereby designated as the official Regular Meeting Calendar of the Zoning Board of Adjustment for the year 2007. The official meeting days shall be the first Thursday of each month unless otherwise noted.

February 1, 2007
March 1, 2007
April 5, 2007
May 3, 2007
June 7, 2007
July 5, 2007
August 2, 2007
September 6, 2007
October 4, 2007
November 1, 2007
December 6, 2007
January 3, 2008 Regular/Reorganization

BE IT FURTHER RESOLVED that all meetings will be held at the Highlands Municipal Building, Council Chambers, 171 Bay Avenue, Highlands, NJ, at 7:30 p.m.

Seconded by Mr. Fox and adopted by the following Roll Call Vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT RESOLUTION
DESIGNATING OFFICIAL NEWSPAPERS
FOR THE YEAR 2007**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that the **COURIER, THE ASBURY PARK PRESS, and THE TWO RIVER TIMES**, are hereby designated as the official Newspapers for the Borough of Highlands Zoning Board for publications which are required by law for a term of one (1) year, expiring December 31, 2007.

Seconded by Ms. Ryan and adopted on the following Roll Call Vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2006-11 Monahan, Gary – Request for Postponement
Block 3 Lot 5 – 74-B Portland Road**

Mr. Mullen stated that the Board received a request for a postponement in this matter.

Mr. Francy offered a motion to carry the public hearing on the Monahan matter to the February 1, 2007 meeting, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Mullen advised the public that the Monahan matter has been carried to the February 1, 2007 meeting and that there would be no further public notice on this matter.

**ZB#2007-1 Maxson, Richard
Block 64 Lot 20 – 222 Bay Avenue
Application Review & Set P.H. Date**

Present: Richard Maxson

Mr. Maxson stated that he wants to add an attic to his garage for storage. He wants to go up seven feet for the storage.

The Board reviewed the application and the following was stated:

1. Survey – the Board requested that the applicant make an effort to locate a survey of this property. Mr. Baxter advised the applicant to look in the deed to see if it references a survey and if so then Mr. Maxson could contact the person who prepared the survey.
2. The applicant must provide photographs of the subject site and the surrounding properties.
3. The board wants the applicant to find out how close are the adjacent property structures. The applicant can use a tax map to help identify other structures in the vicinity of the proposed structure.
4. Use (height) variance may be required because the height exceeds the permitted of 15 feet by more than 10% which would require five affirmative votes.
5. Provide missing information to the zoning chart on plot plan such as lot coverage and height and correct the maximum building coverage.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Mullen advised the applicant to submit any new documentation to the board at least 10-days prior to the hearing and also advised him about the public notice requirements.

**ZB#2006-9 Shute, Eugene
Block 59 Lot 35 – 114 Shore Drive
Approval of Resolution**

Mr. Baxter read the title of the following Resolution for approval:
Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 12

Mr. Mintzer offered the following Resolution and moved on its adoption:
1/4/07

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR SHUTE AT 114 SHORE DRIVE**

WHEREAS, the applicant, EUGENE N. SHUTE, JR., is the owner of a 2-family home at 114 Shore Drive, Highlands, New Jersey (Block 59, Lot 35); and

WHEREAS, the owner filed an application to construct a second story addition consisting of three bedrooms, two baths, one laundry room and a 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 public hearings on November 2 and December 7, 2006; and

WHEREAS, the Board heard the testimony of the applicant, EUGENE N. SHUTE, JR.; RICHARD STOCKTON, Engineer and Planner; and MICHAEL COLBY; all on behalf of the applicant; and

WHEREAS, no one appeared in opposition or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Elevation certificate by MR. STOCKTON;
- A-3: Flood review memorandum by MR. GILSON dated 8/30/06;
- A-4: Zoning permit application with denial by Zoning Officer, with zoning chart attached;
- A-5: Sketch plat by RICHARD STOCKTON dated 9/20/06;
- A-6: Copy of 6/14/00 C.O. and Fire Prevention Certificate No. 12512 for unit on left side;

**Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 13**

- A-7: 9/30/05 survey by RICHARD STOCKTON;
- A-8: 4 photographs on 1 sheet;
- A-9: 5 pages of architectural plans prepared by MR. SHUTE;
- A-10: Copy of C.O. and Fire Prevention Certificate No. 12513 for unit on right side;
- A-11: Sewer bills for both units;
- A-12: Original of A-6;
- A-13: Original of A-10;
- A-14: Property record card from Tax Assessor dated 10/1/89;
- A-15: Property record card from Tax Assessor dated 10/1/03;
- A-16: Radius map of properties within 200 feet prepared by MR. STOCKTON;
- A-17: 12 photos (on 3 pages) of homes in the neighborhood;
- A-18: 8 photographs with drawing and 2 maps, all on board;

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

1. The applicant is the owner of property located in the R-2.02 Zone.
2. The site currently contains a 2-family home in a 1-story residence.
3. The Borough's property record cards maintained by the Tax Assessor, the Certificates of Occupancy issued for both units, and the sewer bills for both units establish that there are two legal, yet non-conforming, residential units on the property.
4. The owner seeks to enlarge the structure, which enlargement will be an expansion of the prior non-conforming use.
5. The owner seeks to construct a second-story addition consisting of 3 bedrooms, 2 baths, 1 laundry room, and a 258 square foot deck on a .08 acre parcel.
6. This zone does not permit 2-family uses.
7. The owner seeks bulk variances for the following preexisting conditions:

- A. Minimum lot area of 4,000 square feet, where 3,500 square feet is provided.

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 14

- B. Minimum lot depth of 75 feet, where 70 feet is provided.

8. The applicant also seeks variances for the following:

- A. Minimum front yard setback of 20 feet, where 12.5 feet is provided on the Shore Drive side.

- B. Maximum building coverage of 33%, where somewhere between 36% and 39% (according to the Board Engineer) is provided.

- C. Expansion of the non-conforming use.

- D. Constructing a vertical addition of more than 80% of the original footprint. In this case, the addition is 100%.

9. The uppermost floor will be cantilevered. Most of it will be enclosed for living space; however, the easternmost portion will be an outside balcony/deck.

10. The stormwater runoff drains to the north (Valley Avenue).

11. There will be no further encroachment from the foundation to Shore Drive. The setback will be 17.5 feet from the foundation to the lot line, and 12.5 feet to the second-story overhang. When you add the 14-foot Borough-owned property in front, it gives a visual perception of 26.5 feet from the curb to the second-story overhang.

12. Visually, the property appears to have a more open front yard, which is because of the sliver of land owned by the Borough in front of the property on the Shore Drive side.

13. The existing foundation has been damaged, which will require the entire foundation to be replaced. The footprint, however, will remain the same.

14. There are no footings to this home.

15. Because of the property being raised out of the flood zone, the owner meets one of the special reasons set forth in N.J.S.A. 40:55D-2(b).

16. The other properties along the street do not have as much of a front yard setback from Shore Drive as the subject.

17. This proposal will promote the visual environment and be a good civic design, and a substantial improvement to the existing home, all in conformance with N.J.S.A. 40:55D-2(i). The new siding being added to the property will give it the look of a new home, which will be a credit to both the neighborhood and the Borough.

18. The proposed new structure is an “architectural fit” within the neighborhood. There are several other newer homes in the neighborhood, and this one will fit well with that streetscape.

19. The current structure has a footprint of 1,107 square feet. The addition will be 1,350 share feet, bringing the total to 2,457 square feet.

**Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 15**

20. The size of the existing rooms, and the size of rooms requested and required by residents in this day and age, dictate that the rooms be enlarged so that the occupants have sufficient living space.

21. There will be 4 parking spaces on site (2 of which will be in the garage), which meets the requirements of the zone.

22. The owner intends for his mother and sister to take the first level unit, and for him to take the newer (upstairs) unit.

23. Considering the number of years for which this property has been a 2-family use, the Board does not find the proposed expanded use to be inconsistent with the intent and purpose of the Master Plan or the zoning ordinance.

24. Based on the current use, the Board finds that the property is particularly suited to continue that use as a 2-family home.

25. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. To the contrary, the proposed addition and re-siding will fit in well with the character of the neighborhood and improve the streetscape in that area. The raising of the structure to take it out of the flood zone is also a substantial improvement, and the violation of the "80% Rule" has a very minimal impact.

WHEREAS, the application was heard by the Board at its meetings on November 2 and December 7, and this resolution shall memorialize the Board's action taken at the meeting on December 7, 2006;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of EUGENE N. SHUTE, JR. to expand the current 2-family home by constructing the addition shown on his plans marked in evidence be and the same is hereby approved. Variances are hereby granted for the preexisting conditions of lot area and lot depth, as more fully described earlier in this resolution. Variances are also granted for the uses (2-family and expansion of the prior non-conforming 2-family use). Variances are also granted for lot depth and building coverage, as more specifically defined earlier in this resolution.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**Block 94 Lots 1 & 16 – 321 Bay Avenue
Hearing on New Business**

**Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 16**

**Present: Mike Letteri, Esq.
 Randy Takian
 Margot Krikorian
 Robert Gorski, A.I.A.
 Brian Wolma, Engineer**

Mr. Mullen stated that the Board received a packet with a rendering of the outside of the building and building plans which came yesterday, so our Board Engineer has not had time to review said plans.

Mr. Letteri stated that there will be an introduction presentation made by Mr. Takian to give the board an overview of the application. Subsequent to Mr. Takian's presentation we do anticipate taking testimony from Robert Gorski the Architect and Brian Wolma the Engineer. Before we take testimony this evening Mr. Baxter and he and Mr. McGann have discussed the need for certain variances both use and bulk both as noticed for and mentioned in Mr. Baxter's opinion letter of 12/26/2006. He believes that they all agree that it is necessary that both the applicant and the board members understand exactly what variances the applicant is requesting and are necessary and that the board is going to be considering should they approve this application. In that way expert testimony can be directed specifically toward those variances and the board may concentrate their attention on those aspects of the variances.

Mr. Baxter reviewed the public notice on this matter and stated that it is in order therefore the board has jurisdiction to proceed on this matter.

The following Exhibits were marked into evidence:

- A-1: Variance Application consisting of four pages dated 3/1/06;
It was stated by Mr. Takian that this variance application is not correct so the board directed the applicant to submit an amended variance application prior to the next meeting.
- A-2: Zoning Application dated 12/11/06 consisting of four pages;
- A-3: Pre & Final Site Plan drawings prepared by Bryan E. Luoma last revised on 11/17/06 consisting of eight pages;
- A-4: Stormwater Management Report prepared by Bryan Luoma dated 1/16/07;
- A-5: Outbound & Topographic Survey prepared by Vincent Creevy dated 11/1/05;
- A-6: Site Plan Requirements Report prepared by the Fire Marshal P. Murphy dated 1/3/07;

A-7: Memo from Borough Clerk to Board Secretary dated 1/4/07 RE: block 96 Lot 2 Central Avenue Parking Lot;

A-8: Letter from NJDEP dated 2/17/06 stating CAFRA Permit not required;

A-9: Photograph of interior of extended stay unit - Living Room;

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 17

A-10: Photograph of interior of extended stay unit – Bedroom:

A-11: Photograph of interior of extended stay unit – Bathroom.

B-1: Board Engineer Letter dated 12/26/06.

Mr. Letteri explained that the application is considering the commercial space to be the first floor (second level), the extended stay use on the second floor (third level).

The Board had a discussion to use the term levels verses floors during the hearing process.

The Board advised the applicant that the board never received the architectural plans, the board only received renderings via email today. So the applicant was directed to submit 15-sets of Architectural drawings to the Board Secretary at least 10-days prior to the next meeting date.

Mr. Baxter stated that he does not feel that it would be appropriate to hear any testimony from the Architect tonight because the plans were not made available.

Mr. Baxter advised the applicant that the board will need more specifics with regard to the Borough Parking lot lease.

Randy Takian of 14 Center Ave, Atlantic Highlands, NJ 07716 was sworn in.

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

1. He is a managing member of Duane Realty, LLC.
2. The proposed is a mixed use building with on the ground level parking, two floors of commercial space with and additional two floors of four apartments on each of those floors.
3. The main floor (first level) of commercial space is about 5,000 square feet of commercial with an additional 2,500 square feet of patio space on the first level. The second level of commercial space is configured as six extended stay units.
4. The concept of extended stay is very similar to a project that they have in Atlantic Highlands. They are units that are rented mostly by the week or the month, or long weekend and they are fully furnished, they have a maid service. There is management, it depends if its going to be onsite managed directly in the building or managed through the

Atlantic Highlands property. He would like to characterize it has extended stay units verses a hotel but in terms of uses it's more of a hotel use.

Mr. Mullen – a hotel is not a permitted use in this area so the applicant will be seeking a use variance.

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 18

5. There is a floor of four two-bedroom, two-bathroom luxury apartments and would be rented out probably on a 24-month basis. On the next floor above it would be identical.

6. There is patio and balcony space on all four inhabitable floors of the building. Every unit whether it's commercial or commercial hotel or residential they all have either patio or deck space.

7. He would characterize the use on the top two floors as an accessory residential use that is permitted in the B-1 Zone.

There was a discussion between the board and Mr. Letteri with regard to the appropriate title of the proposed uses.

Mr. Takian continued his testimony as follows:

8. It is his intention to use the balcony's to satisfy the outdoor living space.

9. He does not currently have a tenant for the first floor commercial space and they were going to leave it open for restaurant, retail or professional commercial uses but after spending time with the abutting neighbors he is withdrawing the restaurant option. He is willing to take the restaurant use off the table and if at some later point they can't get a tenant for retail or professional commercial use then they will come back to the board at that time and ask for a use change for that. He is agreeable to having language put in the resolution that restaurants would not be a permitted use and that he would have to come back to the board if he changed his mind and it would be subject to a public hearing.

Mr. Mullen stated that restaurants are a permitted use in the area and over the life of the building someone else could come in and occupy the site as a restaurant.

10. He is making a commitment to not have a restaurant at the site.

Mr. Baxter read the definitions of hotel and motel and stated that the proposed use would fall under the motel use definition.

Mr. Takian continued his testimony as follows:

11. The proposed commercial could be a conference center.

12. He is not intending to have the extended stay use use the level below for some purpose.

Mr. Mullen stated that a use variance for extended stay use on second floor and a use variance for the height will be required.

Mr. Letteri – we will have two floors of commercial and two floors of residential,

Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 19

which will affect the balance of residential to commercial primary to accessory and we will have the Architect Mr. Gorski identify the percentage of use with regard to residential to commercial. They will present testimony that adequate parking will be provided.

Robert Gorski, A.I.A. of Lori Road, Atlantic Highlands, NJ was sworn in.

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

1. He is a licensed Architect in the State of New Jersey and further explained his professional background.
2. The two top floors of apartment uses occupies 46% of the total living area of the building therefore the commercial aspect occupies 54%.
3. The square footage for each level is as follows which includes the decked areas: First floor (second level) is 7,550 square feet, Second floor (third level) 7,830, Third floor (apartments) is 6,990, the Fourth floor (apartments) 6,230. The total Gross area is 28,600.
4. The difference between the third and fourth floor size is because of the slope in the roof design.
5. He read the definition of building height to the board and described how he calculated the building height.

Mr. Mullen – I think that the board would not use the same interpretation that you have with regard to height. Clearly sloped roofs and flat roofs are two different categories and this is a flat roof and the height of this building is established by the predominant level of the upper most level. He believes that a use variance may be needed for the building height.

6. He described the proposed structure as being a level of parking at the ground and then four floors above that. We have a commercial use, hotel use and then two levels of apartments.

Mr. Letteri stated that they noticed for two use variances. One for floor area ration where we are presenting 280% where 65% is permitted and for the six hotel extended stay units. As far as the height, he asked the board to keep an open mind and when Mr. Gorski has an opportunity to testify regarding his Architectural Drawings he will explain the position and it may be more clearly understood and if the board still feels that use variance is

needed for the height obviously we requested any and all other design waiver as deemed necessary in our public notice, so we have covered it in the notice.

Mr. Gorski continued to testify as follows:

7. The height to the flat roof is 45-feet.

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 20

Mr. Baxter – so if the board found that the flat part was the peak and a use variance was needed for the height, he does not see any problem with the public notice on that.

Mr. Francy questioned the density in this application.

Mr. Mullen stated that there are no density requirements but advised Mr. Letteri that the board is very concerned with density in the borough and that the mostly densely permitted zone which is the multi-family zone only permits 14 units per acre, so keep that in mind when you are making your presentation.

Mr. Letteri stated that they also notice for four bulk variances which are (a) building lot coverage of 75.62%, where 35% is permitted; (b) maximum lot coverage of 95%, where 80% is permitted; (c) they noticed for parking, they are providing 24 spaces onsite and 38 spaces offsite (parking lot lease agreement with borough). The most parking spaces that may have been necessary had a restaurant been used in the commercial space would be 62 and he does not believe that a variance will be necessary for parking; (d) outdoor living space, they are providing eight residential unit outdoor living spaces in the form of balconies which does not comply with the minimum square footage requirement of 250 square feet of outdoor living space per unit.

The Board had a discussion with regard to the building height definition with Mr. Gorski.

Randy Takian stated the following:

1. He apologized to the board for the confusion of not having the architectural plans.
2. He then explained why this application took about a year and a half which was due to resolving the parking requirements. The parking requirement held up this application because of the bidding process with the borough and errors in the public notice for the bidding which delayed the parking lot lease. He then had to get new parking and traffic studies based on the parking lot lease.
3. He explained that this application includes three parcels, the first is an empty lot on the corner of Bay & Waterwitch Avenue, the second parcel is a condemned two family house that is on one of the lots which had some interesting characters living their, the third parcel is the Central Avenue borough parking lot that they are leasing.

4. He sold the liquor license for this property to Neil's Original Oyster.
5. He described why he and his wife purchased these two properties and why they are so eager to develop the property at this site.
6. They feel that Huddy Park is a central location and is a gateway and focal point. They are going to brick pave all of the walkways around their property and hopefully

**Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 21**

other projects will follow. They also created a new version of Huddy Park and actually developed all the building around the park to spark what could be a retail traffic village.

7. We are adding on the corner a clock tower on the site.
8. They want to create a business in this town for them to run and manage and to create hopefully more jobs in the town and more places for people to live.
9. This project is similar to another one of their family properties known as the Copper Canyon, which is located in Atlantic Highlands on 51-53 First Avenue. He then described the photographs of the existing extended stay units that are located in Atlantic Highlands which were marked as exhibits A-9, A-10 and A-11.
10. They are proposing three uses: (a) 1800 square foot of commercial space at 10-foot off of the ground; (b) six extended stay units and they rent from upwards from \$3,000 on a monthly basis; (3) eight true luxury rental units.
11. This project is a benefit to the town, it's a beautiful building and a focal point. This project will also create jobs and would not be a strain on the local schools.

Mr. Mullen stated that he appreciates Mr. Takians presentation and he thinks that the applicant has an intriguing vision. Mr. Mullen has two issues with this. It does not seem to mesh very well with the borough vision in terms of the Borough Master Plan and the densities that they are trying to create and the height restriction variances they are asking for are significant use variances which he further explained. He also asked the applicant if they have made any attempt to consider requesting a zone change from the Governing Body rather than going through with this zoning process but the applicant stated that they would prefer to proceed with their application before the board.

Mr. Takian continued his testimony as follows:

12. He stated that he believes that the Master Plan is silent and stops short on really going through on what should happen on sites like this one but this is with keeping of the resonance, the village. He agrees that there is an intensity of use but we are trying to solve that through providing parking for all four floors. They are trying to really make this something special and spectacular.
13. A request was not made to the Governing Body or Planning Board for a zone change.

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

Margot Takian of 14 Center Avenue, Atlantic Highlands, NJ was sworn in.

Mrs. Takian stated the following during her testimony to the board:

1. She described how she and her husband have such strong convictions about the future growth of this town.

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 22

10 She asked the board to think about giving them an opportunity to really make a difference and to take these risks and asked the board to keep an open mind.

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

Mr. Mullen stated that there may be another small variance needed with regard to the parking abutting residential zones and advised the applicant to look into that.

Mr. Francy offered a motion to carry this public hearing to the February 1, 2007 meeting, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Mullen advised the public that this hearing will continue at the February 1, 2007 meeting and that no further public notice will be given.

Approval of Minutes

Mr. Francy offered a motion to approve the December 7, 2006 meeting minutes, 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

Mr. Duncan left the meeting.

Communications:

AHHRSA Rules & Regulations dated 9/21/06

Mr. Francy stated that the Atlantic Highlands/Highlands Regional Sewerage Authority has reduced the multi-family criteria from four to three, increased the fees and made it more stringent in terms of who is approving what. He also stated that they are not going to approve any more development in Highlands exceeding residential uses unless the

Borough of Highlands

Zoning Board Meeting

January 4, 2007 Page 23

applicants contribute and or fix the capacity issues which he further explained.

Review Letter to Governing Body from Zoning Board RE: Annual Report & Recommendations

The Board reviewed the following letter to the Governing Body:

To: Mayor & Council
Borough of Highlands

January 5, 2007

**RE: 2006 Zoning Board Annual Report &
List of Recommendations**

Dear Mayor & Council:

Attached is a copy of the 2006 Zoning Board Annual Report which is a summary of all of the applications heard in 2006 and the board decisions on applications.

Below is a listing of recommendations for amendments to the Zoning Ordinance:

1. Review permitted uses in the B-1 (H-0) Zone to permit Health & Fitness, Athletic Club and other associated uses in these zones.
2. Establish appropriate parking requirements in the H-0 Zone.
3. Require appropriate setback primarily for highway businesses in the B-1 Zones on Route 36 because currently a 0-foot front setback is permitted.
4. Update permitted uses in the Borough to be more up to date with current business uses, and avoid the need to seek a use variance.
5. Update permitted uses in the B-3 Zone adjacent to the bridge to establish more appropriate uses and eliminate the inappropriate uses.

6. Move the zone boundary line in the B-1 zone at Linden Ave and Route 36 to fall entirely outside of the easternmost commercial property.

On behalf of the Zoning Board we thank you for your attention in this matter.

**Borough of Highlands
Zoning Board Meeting
January 4, 2007 Page 24**

Sincerely,

Peter Mullen
Zoning Board Chairman

cc: Planning Board

Mr. Francy discussed adding a requirement for applicants to provide copies of Certificates of Occupancies.

The Board had a discussion on this matter with regard to proving a two-family use.

Ms. Ryan left the meeting.

Mr. Baxter stated that the level of proofs with regard to certificates of occupancies shouldn't be codified, he understands the reasons for the suggestion.

Mr. Mullen stated that it is a legitimate concern to raise at a meeting and asked the applicant to provide us with the documentation.

Mr. Francy offered a motion to send this letter of recommendations to the Governing Body, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 10:39 P.M.

CAROLYN CUMMINS, Board Secretary

HIGHLANDS.NJ.US