

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 3, 2008**

Mr. Mullen called the meeting to order at 7:48 P.M.

Mr. Mullen asked all to stand for the Pledge of Allegiance.

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted to the Courier, the Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Mullen, Mr. Gallagher

Absent: None

NOTE: Mr. Anthony and Mr. Britton both were present in the audience because there term has expired.

Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Francis Mullan, P.E. Board Engineer
Jamie Sunyak, P.P. of CMX Inc.

Reorganization Meeting

Chairperson

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

**BOROUGH OF HIGHLANDS
ZONING BOARD RESOLUTION
DESIGNATING CHAIRPERSON
FOR THE YEAR 2008**

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, 2008.

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. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

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Vice Chairperson

Mr. Gallagher 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 2008**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that **Ken Braswell** be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2008.

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

Board Attorney

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

**RESOLUTION APPOINTING ZONING BOARD ATTORNEY
FOR THE CALENDAR YEAR 2008**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Zoning Board for the calendar year 2008; and

WHEREAS, such Professional Legal Services can only be provided by licensed professionals and **Gregory Baxter, Esq.** of Caruso & Baxter 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, 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).

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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, 2008 through December 31, 2008.
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. Mullen and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox,
Mr. Gallagher, Mr. Mullen
NAYES: None
ABSTAIN: None

Board Attorney Contract

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

**RESOLUTION AWARDING CONTRACT
FOR PROFESSIONAL LEGAL SERVICES
TO GREGORY BAXTER, ESQ. OF THE FIRM 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, 2008 through June 30, 2008; and

WHEREAS, such Professional Engineering Services can only be provided by licensed professionals and Gregory Baxter, Esq. of Caruso & Baxter is so recognized; and

WHEREAS, Gregory Baxter, Esq. of Caruso & Baxter was appointed as Zoning Board Attorney for the calendar year 2008 on January 3, 2008; and

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WHEREAS, Gregory Baxter, Esq. of Caruso & Baxter has submitted the attached 2008 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 Caruso & Baxter has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year, 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 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 \$ 4,840.00

For Legal Services for the Period of January 1, 2008 through June 30, 2008.

Stephen Pfeffer, CFO

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

1. Gregory Baxter, Esq. 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, 2008 through June 30, 2008 for an amount not to exceed \$600.00 in addition to annual salary of \$9,680.00 and that the attached contract for 2008 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.

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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. Fox and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox,
Mr. Gallagher, Mr. Mullen
NAYES: None
ABSTAIN: None

Board Engineer

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

**RESOLUTION APPOINTING ZONING BOARD ENGINEER FOR THE CALENDAR
YEAR 2008
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 2008 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services can only be provided by licensed professionals and **Joseph May, P.E.** of the firm of **CMX, Inc.**, 200 State Hwy 9, P.O. Box 900, Manalapan, N.J. 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, CMX, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that CMX, Inc. has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year, and that the contract will prohibit CMX, Inc. from making any reportable contributions through the term of the contract; and

WHEREAS, CMX, Inc. 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;

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

1. Joseph May, P.E. of CMX, Inc. is hereby appointed as Zoning Board Engineer for the calendar 2008 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. Mintzer and adopted on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Board Engineer Contract

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

**RESOLUTION AWARDING 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 Zoning Board for the calendar year 2008 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services can only be provided by licensed professionals and Joseph May, P.E. of the firm of CMX, Inc., 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, CMX, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that CMX, Inc. has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year, and that

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the contract will prohibit CMX, Inc. from making any reportable contributions through the term of the contract; and

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

WHEREAS, CMX, Inc. has submitted that attached contract for Professional Engineering services for the calendar year 2008; and

WHEREAS, the Zoning Board has reviewed attached contract for Professional Engineering Services for 2008; and

WHEREAS, certification of the availability of funds is hereby provided by the Chief Financial Officer.

Zoning Board Budget
Account #1151-3757 - \$2,100.00
For the Period of January 1, 2008 through June 30, 2008

Stephen Pfeffer, Chief Financial Officer

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. Joseph May, P.E. of CMX, Inc. is hereby appointed as Zoning Board Engineer for the calendar 2008 and contract is awarded for Professional Engineering Services to be provided to the Zoning Board for the period of January 1, 2008 through June 30, 2008 for an amount not to exceed \$2,100.00.
2. The attached Professional Engineering Contract is hereby approved and the Board Chairman and Secretary are hereby authorized to sign the contract.
3. 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 as well as the contract shall be placed on file with the Board Secretary.

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5. The Board Secretary is hereby directed to publish notice of this award as required by law.

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. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

Board Secretary

Mr. Mullen 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 2008**

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, 2008.

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. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

ZB 2008 Meeting Schedule

Mr. Mullen 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 2008**

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 2008. The official meeting days shall be the first Thursday of each month unless otherwise noted.

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February 7, 2008

March 6, 2008

April 3, 2008

May 1, 2008

June 5, 2008

July 17, 2008 – Third Thursday

August 7, 2008

September 4, 2008

October 2, 2008

November 6, 2008

December 4, 2008

January 15, 2009 Regular/Reorganization – Third Thursday

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. Braswell, Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox,
Mr. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

Official Newspaper

Ms. Ryan 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 2008**

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, 2008.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Regular Meeting

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**ZB#2007-8 Morales, Peter
Block 108 Lot 1 – 440B Navesink Avenue
Request for Adjournment**

Mr. Mullen stated that the Board received a letter from Mr. Kenny the applicants Attorney requesting a postponement and granted the Board an extension of time through March 2008.

Mr. Fox offered a motion to carry ZB#2007-8 Morales, Peter to the March 6, 2008 Meeting, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

**Present: Rick Brodsky, Esq.
Andrew Janiw, P.P.
John Martinez, P.E.**

The following exhibits were marked into evidence:

- A-10: Color Aerial on large board;
- A-11: Large Site Plan Overlay with van turning movement.

Mr. Mullen explained to the public that is a continued hearing and that there has already been testimony given on this matter.

Mr. Brodsky stated that Mr. Hall could not be here this evening. He has reviewed the testimony given by Mr. Katich and Mr. Hall did indicate that his testimony would be similar to that. There was some discussion at the last meeting about limiting the types of individuals that could participate in the proposed facility but Opportunity Knox through the voice of Mr. Hall is not prepared and does not want to get in the situation where there is a preclusion of certain types of individuals so he wants to remain with the Mission Statement as submitted to the board as revised and clarified by testimony of Mr. Katich at the last meeting and limited by his testimony in terms of the conditions that had been agreed to, the limitation of the number of children using the facility to ten, limiting it to no spectator seating, also using the busing facilities so that parking issues would not become problematic at the site, posting of security at the site. So, Opportunity Knox, Mr. Hall does not want to get into limiting the types of children that can utilize the center and would prefer rather to have the application stand and focus on the use, not the users. So the only additional testimony that he wants the board to here tonight is from the Planner and then we would rest.

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Mr. Mullen – there were several questions having to do with the personnel that was going there, the possibility that there were felons as indicated in the statement. Then there was a borough ordinance that was adopted with regard to rehabilitation facilities and we needed to have some understanding of how this did or didn't fit into that specific ordinance.

Mr. Brodsky – the term rehabilitation facility that was used in the Mission Statement and was also mentioned in Mr. Katich's testimony was rehabilitation in the colloquial sense, it wasn't a defined, this is not to be denoted as a rehabilitation center, and it is really a facility to be utilized for the kids, non-profit. Opportunity Knox is not agreeable to precluding children who may have had issues in the past. He then described the intension of the Mission Statement was to be broad and not preclude any children. The testimony was for children up to the age of 16. Opportunity Knox is agreeable to any conditions imposed by the board in terms of numbers and ages but really doesn't want to get involved in discriminating against certain types of children.

Mr. Mullen – questioned if this operation is contrary to a new borough ordinance against rehabilitation facilities in that you are bringing people in to change or improve their life style.

Mr. Brodsky – we will have the Planner address that issue.

Mr. Mullen – there is a use variance for a portion of this site and it may be that a use variance is required for the entire site given that it isn't a traditional athletic club.

Mr. Brodsky – our testimony will be that it is not contrary to the ordinance and we can hear from the Planner on that. Mr. Hall wanted to come to the board to and get approval before setting in stone the specific parameters for the program which he further explained.

Mr. Baxter swears in Andrew Janiw, P.P. of Beacon Planning, 41 State Highway 34 South, Colts Neck, New Jersey.

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

1. He is a licensed Professional Planner in NJ and further described his professional background to the board.
2. He has reviewed the Borough of Highlands Master Plan and Zoning Ordinance.
3. He then described exhibit A-8 containing five photographs on both sides of the board all dated May 10, 2007 prepared by himself which indicates the surroundings of the property. He described the zone line that runs through the property so a portion of the property is located in the R-2.03 Zone and a portion located in the H-O Zone. He described a photo of the existing building that was currently utilized as the Exotica Car Dealership and Repair Shop. Nothing is physically changing to that building or to the site. The building interior has not been renovated beyond the point of strictly the use of the interior has changed. There was a garage associated with this that was used in auto process and that garage is suitable for holding four cars. He then described the second side of the board marked as exhibit A-8 which contains six pictures depicting the property itself which he further described. He stated that adjoining properties are also depicted in the pictures.
4. He then described Exhibit A-10 which is a colored aerial that is dated 2002-2003 and is depicted at the time of operation of Auto Exotica and you can see the parking lot is full of vehicles in excess of 12 to 15 cars. He further described the buildings that surround the site.

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5. He then stated that the given that the property is a split zone the property would require a use variance because of the split zone. A portion of the property, a 25-foot strip to the south portion of the property is located in the R-2.03 Zone. They are also looking for three bulk variance, a side yard setback, front yard setback and a minimum lot size which are all preexisting non-conformities. Parking- Health Clubs are really regulated by the intensity of use and here we are willing to accept restrictions on the occupancy and number of vehicles that will be allowed on the site. We are providing six exterior spaces and four interior spaces. The proposal is for the interior spaces to be utilized by staff and security. Based on the operation statement and testimony of the engineer we believe that we can comply with the parking standards and in fact have more parking than would be needed for the proposed operation. With the van service at any given point there would be four to five vehicles at the site at one time.
6. There is one bathroom at this site
7. The change in use as to the H-O Zone permitted Health Club establishments which the Zoning Officer stated in her letter. He then stated that the H-O Zone permits the following uses: Retail Businesses, Personal Service Establishments, Bakery's, Pharmacy's, Convenient Stores, Liquor Stores, Butcher Stores, Restaurants, Banks, Barber Shops, Bars. There are a variety of commercial uses in the H-O Zone.
8. The intent here is to be a private membership boxing gym. There will be instructional boxing, palate classes, yoga classes' even nutritional classes. The intent is not to restrict this and this is not solely for individuals that are in need of rehabilitation, they would not be excluded. It's a private membership club, membership to be established by the club.
9. This would be for children under the age of 16.
10. Think of it as a Police Athletic League Boxing Clubs which functions out of all kinds of gyms.
11. Mr. Hall sees the disciplinary actions of boxing as beneficial overall to children. The point here is to teach boxing and the discipline of boxing and to the benefit of the physical activity as well as to the discipline of that sport.
12. It's a small facility, it's only a 3200 square foot building including the four car garage. It only facilitates one boxing rink.
13. In the planning sense this site is very suitable for this site. Its proximity to the usage deems it appropriate for this use, it's a natural fit.
14. He explained how Mr. Hall currently uses this as his personal office and built a boxing rink for his use and it is installed and he has this great facility that is so underutilized.
15. Mr. Hall intends to hire professionals.
16. It is not a prerequisite to have a rehab problem to be accepted into the program.
17. He then described how Mr. Hall feels that teaching boxing and the positive effects that it can have.

Mr. Mullen questioned the suitability of this site for the proposed use and also the language used in the Mission Statement about a Rehabilitation Facility.

Mr. Brodsky stated that when Mr. Katich used the term rehabilitation in the statement is not using it in a clinical sense, he is using it a colloquial sense, to make someone better, to improve. Mr. Hall intends to hire paid employees.

Mr. Baxter – the portion of this Mission Statement that goes to rehabilitation implies that there is something wrong that needs to be rehabilitated. Not that your taking a child off the street to teach them boxing, he does not fit into the rehabilitative category. Someone who has a problem fits into the rehab category.

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Mr. Janiew continued as follows:

18. He thinks that Mr. Brodsky's intended to indicate that was Mr. Katich's poor choice of words. That was not the way rehabilitation was intended to be used Mr. Baxter.

Mr. Brodsky stated that Mr. Katich when they were putting the Mission Statement together and were trying figure out the types of children who would be the most likely to take advantage from a facility like this is odds are it's not going to be the three varsity letter player. So the thought was statically speaking the odds are it's not going to be those types of people. It's going to be other people who are not involved in school activities.

Mr. Janiew continued as follows:

19. His understanding of the selection process was that at the last meeting where a Representative from the Red Bank YMCA indicated that they had a willingness to participate on the selection committee. He was here to testify at the last meeting but did not testify before the board. As well we would look to the local community to point out people that would benefit from the membership.
20. He stated there are Fencing places that are located in Monmouth County and Coaches that he spoke to and the coach explained how the preparation and training and that's the discipline that they hope to instill in the sport.
21. The site is a split zone and does have frontage and is accessed from the highway via an existing curb cut that does not seek to be altered.
22. The type of use that is being proposed here will use the existing facility, there would be limitations on the parking use and the variances are preexisting. This becomes a classic hardship from a planning perspective in terms of not only the "d" aspect but the bulk. In looking at the "d" aspect, the property has previously functioned in its entirety as Auto Exotica. The facility has been previously approved in its entirety as a commercial use by variance which is very similar to the Stop and Shop case which is a base line for split zoning cases which he further explained. He stated that the lots are technically merged although they show as individual lots on the tax map. He does not know that the DOT would grant a curb cut for a single family home and it does not meet the zone requirements for lot 2.03. He stated that when you look at this in terms of use it's the text book hardship in terms of slit zoning.
23. He looked at the goals and objectives of the Master Plan and then read the ones he feels that this application meets. He feels that this is right in line with the goal of upgrading the commercial properties and their surroundings and encouraging the development of this small scale commercial. The past uses Auto Exotica has demonstrated in that aerial the number of vehicles going in and out certainly many more traffic motions this use is less.
24. For the past three to four years the site has been functioning as Mr. Hall's office.
25. The change of use upgrades the property by changing the intensity of use. The upgrade refers to the level of operation comparative to the formal commercial use. It will certainly be less intense, very limited in terms of hours of operation and restricted to membership with maximum occupancy set by this board.
26. There would be a maximum of ten children and two employees and one security guard on the site which is a less intense of any of the permitted uses in this zone and less than what the property previously operated as that operated at normal business hours where the proposed would operate at limited hours after school and certainly not during peak traffic hours.

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Mr. Baxter explained that Auto Exotica was like a broker and recalls that it was an appointment thing.

Mr. Mullen explains that given to the range of people that can be members of this club he has specific concerns with regard to the proximity to the Elementary School and as to suitability to this site for that use.

Mr. Janiew continued his testimony as follows:

27. Responded to Mr. Mullen by asking if Liquor Stores are more suitable for this site.

Mr. Brodsky – if there were students or children who did not follow the rules there membership would be discontinued.

Mr. Mullen expressed his concern with bringing people into a zone where you have vulnerable population. He feels that the site has to be particularly well suited for this use and he has serious doubts about whether this site is particularly well suited given the population.

Mr. Janiew continued:

28. He stated that he disagreed with burden of proof that Mr. Mullen is sighting in terms of suitability. Given the congruent and operation of the property in the past this is truly a hardship in terms of the use. The hardship is that it's unreasonable to restrict that residential portion of the property to any of the permitted uses in adjacent zone.

Mr. Mullen stated that he is taking issue with this falling into the pure athletic club. It isn't an athletic club in the sense that anyone can come, that it's a commercial entity.

Mr. Janiew continued;

29. The Zoning Ordinance says that 80% of that site is suitable for an athletic club.

30. Other gyms in the town operate on membership usually payment but it is a membership facility.

31. This is a not for profit it is functioning as a training athletic club that is specific to a sport.

32. The goal here is to teach the discipline of boxing.

Ms. Sunyak questioned Mr. Janiew about the proposed use and stated that there really has not been any testimony from the person who wrote the statement of operations. There are a lot of assumptions being made on what is being proposed.

Mr. Janiew continued as follows:

33. He agrees with Ms. Sunyak but he can only offer his understanding of the situation but he has had long discussions with Mr. Katich and what he is offering the board this evening is the results of that understanding.

34. His testimony tonight is that this is a classic hardship in terms of use and it's a split lot.

Mr. Mullen stated that previous testimony to the board was that the Zoning Officer was not given the Mission Statement so the applicant was to submit that to the Zoning Officer for a determination from the Zoning Officer.

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Mr. Janiew continued:

35. My understanding is that the focus should be on the use not the user.

The Board and Ms. Sunyak spoke with Mr. Brodsky and Mr. Janiew about the issue of what is relevant the use or the user.

Mr. Janiew continued his testimony as follows:

36. The three bulk variances would qualify under the c-1 hardship criteria which he further described and stated that this satisfies the positive criteria for a c-1. With regard to a negative impact when you look at the use factor. He is stating that light and air will not change and the proposed use is not as intense as those permitted uses. In terms of the Master Plan and Zoning Ordinance the majority of the site does permit the Athletic Club. He stated that it is more suitable to have the commercial portion of the zone to be expanded onto the residential verses the residential expanding onto the commercial area. It is his testimony that the proposed use is an Athletic Facility. He feels that he has satisfied the burden or the variances for both use and bulk.

Mr. Baxter stated that he is concerned with regard to Ordinance O-07-22 and he feels that there was no testimony tonight about this.

Mr. Janiew continued as follows:

37. He stated that he has read ordinance O-07-22 and has a copy of it in front of him. His initial reaction is that this pertains to rehabilitation oriented. The orientation here is the sport of boxing and he would stand by that this is an Athletic Club teaching the sport of boxing.

38. Mr. Hall certainly thinks that teaching the sport of boxing has some positive influence to some of the members but beyond that it's not intended to have any therapeutic or rehabilitative type of goal or purpose other than discipline of the sport of boxing.

Mr. Baxter swears in Francis Mullan, P.E, Board Engineer of CMX, Inc.

Mr. Mullan – it would be expected that an additional rest room would be required if the use were approved.

Ms. Sunyak – stated that her main concern is dealing with the use of the site and how it is being defined and how the appropriateness of it conforming underneath what is considered to be athletic clubs as a principal use in the H-O Zone. The second issue really deals with the parking and if you define it as an athletic club then and there specific requirements and whether the site is well suited for the athletic club is also an issue. It is a tight sight no matter how you look at it. The third issue is the intensification of the use of the facility in comparison to what is there currently and what was previously approved by a use variance application. There is a lot of unknowns she is unclear on a lot of issues dealing with the type of facility and how it is going to be marketed, the regulations, security. How is the parking and on site circulation going to be addressed? How are potential members going to be ranked and whether that is going to be a discrimination issue. The intent of the Master Plan when it looked at this area identified it as a gateway to the Borough and as a result made a recommendation to look at this particular site

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For inclusion into a new highway oriented business zone with specific design guidelines and restriction on dealing with signage and on site circulation and she does not see besides and attractive looking façade an improvement to the site with respect to a number of existing problems such as the parking problems and the site distance problems there wasn't really any discussion from the Planner dealing with the proximity to the residential neighborhood and how that is being addressed. So she has a number of concerns with the application.

Mr. Mullen – if this is approved as an athletic club and Mr. Hall says that he is out of here then we have an athletic club at this location that has insufficient parking, insufficient circulation for a traditional athletic club because Mr. Halls application is not.

Mr. Janiew replied that Mr. Hall is willing to accept restrictions that would run with the property in terms of the hours of operation.

Mr. Brodsky - they could be restrictions of the resolutions and if need be a deed restriction.

Ms. Sunyak – if it were approved as an athletic club and then it went to an athletic club that was open to membership not limited to children where it was open to the general public there would be an intensification of use.

Mr. Brodsky – no, because that operator would not be able to comply with the conditions of this approval and the conditions would run with the land which he further explained.

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

Connor Jennings of 27 Ralph Street questioned Mr. Janiew about his professional licenses and questioned if limiting the membership is considered to be discrimination.

Elaine Hoffman of 19 Laurel Drive – questioned juvenile crime and the security on the site.

Donald Manrodt of 268 Bayside Drive questioned the hours of operation and the parking plan and turning radius of the site and the number of bathrooms.

Mr. Janiew – the anticipation of this is to be an afterschool program with the instructors and security arriving before its open and then the van and his understanding is that there will be two bathrooms.

Pauline Jennings of 27 Ralph Street questioned the term of being an athletic club and if this was on the original application.

Mr. Janiew stated that it was on the original application.

Brian Cobb of 27 Recreation Place stated that the variance application does not state that this is an athletic club and wanted to know if the mission statement was provided to the Zoning Officer. He stated that this use does not fall under the definition of athletic club.

Mr. Janiew stated that he didn't know if the statement of operation went to the Zoning Officer but there was a letter from the Zoning Officer which stated that Athletic Clubs were permitted and as such we did no need a use variance.

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Mr. Baxter stated that Exhibit A-2 the Zoning Permit Application under the description of work to be performed states “boxing training center/school for use by a non-profit charitable organization”.

Jim Parla of 16 Portland Road stated questioned the testimony as this being an upgrade and stated that he visited the business Auto Exotica and stated very rarely were there any people there. He stated that there was a conflict of the statement of operations. He questioned if the age restriction of the membership.

Councilwoman Nancy Burton tried to ask a question and Mr. Baxter informed her that she could not testify before the boards because you voted on all of the appointment of the board members so it could be considered direct or indirect pressure on the board.

Elaine Hoffman stated that she is concerned about the security and wanted to know why Mr. Hall couldn't do this in some other town.

Mr. Janiew stated that there will be a security on the site.

Jane Horan of 212 Linden Avenue wanted to know who will verify the age of the kids and compliance of the age restriction and who from the Borough will select the children. Who is going to make sure that the restrictions are complied with?

Mr. Janiew stated that there will be paid professional instructors by Mr. Hall at the facility and the trustee Mr. Hall will make sure conditions are satisfied.

Arnie Fuog of 50 Valley Street asked Mr. Baxter to repeat what was written on the Zoning Application and Mr. Baxter did so.

George Cornwell of 25 Ralph Street questioned the suitability of this site for this use and questioned at risk children and the safety of our children. He then read from the statement of operations of the type of children that will participate in this program.

Don Manrodt of 268 Bayside Drive questioned the number of set of 10 children per day.

Mr. Janiew – its one set of children per evening and no weekend hours. The limit of the membership would be 50.

Jane Horan of 212 Linden Avenue questioned the summer operation hours.

Mr. Janiew stated that it would be the same hours during the summer.

Mr. Mullen stated that Mr. Janiew is testifying as if he were the operator of this facility and we received the testimony but he senses a little uneasiness from Mr. Janiew with regard to his testimony.

Diana _____ of Ralph Street stated that Mr. Hall should have shown up.

Mr. Brodsky stated that Mr. Hall has a difficult schedule.

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Brian Cobb questioned why we are here tonight and he then read from the Zoning Officers Letter. He stated that the residential portion does not permit the proposed use. He stated that the Zoning Officer did not have the statement of operations.

Mr. Janiew explained that this is a split zone hardship.

Joan Wicklund of 82 Valley Avenue asked who is qualified to answer operation questions.

Mr. Mullen – he does not think that there is a qualified person this evening to testify on the operation.

There were no further questions from the public for Mr. Janiew.

Mr. Brodsky called Mr. Martinez up to testify and stated that Mr. Martinez was previously sworn in at a prior meeting.

Mr. Martinez gave the following testimony and response to questions from the board:

1. He described Exhibit A-11 stated that it was prepared after his original testimony and what it is it's the site plan that has been over layed with a van turning movement plan that was prepared under my direction and what it shows is a 20.3 foot long passenger van. It shows it coming from Route 36 and entering the property which he further described. He stated that they could dedicate one space to be used for a K-turn.
2. Emergency Vehicles and fire trucks – he did not look into them on the site.
3. If two vans were on the site it would be able to use another vacant space.
4. With regard to ingress and egress if there is a car parked in the spot closest to Route 36 there is enough room for a car to come in and out with the car parked there as long as the vehicle is existing on the correct side.
5. The State has not reviewed this application and it wouldn't be required for them to review this application because we are not changing the curb cut and secondly the DOT only requires a new access permit if there is a significant increase in traffic and that is defined as an additional 100 trips within peak hours. If the Board has a desire the traffic engineer will be able to make the determination and issue a letter that there is no significant increase in traffic is required here and that letter can be sent to the NJDOT and to the board. If the NJDOT disagrees then they would pick that up.
6. He spoke about the curbed area on the southwest corner of the property that they want to landscape, it's not a parking spot it's a black top area.
7. He then described the 20.3 foot passenger van to the board.

Mr. Gallagher stated that he believes that this van would have to be a school bus and Mrs. Ryan stated that if a school bus is required for transporting children that there are state laws that regulate the use of a school bus.

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

Mr. Mullan stated that the Board Engineer Review letter dated 5/2/07 was previously addressed at a prior meeting.

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Mr. Mullen asked if there were any questions from the Public for Mr. Martinez.

Don Manrodt of 268 Bayside Drive stated that a van won't be able to exit the site safely.

Jane Horan of 212 Linden Avenue stated that buses are not allowed to stop at Linden Avenue and Highway 36.

Mr. Mullen stated that they are not stopping on the highway they are dropping off on the site.

Mr. Mullen stated that there is no plan on the site for a dumpster.

Mr. Martinez stated that there is no exterior dumpster that the trash is stored inside the garage and on wheels and it's not a large garbage generator and that has a private pick up and will continue to do that. He feels that the trash amount may be a slight increase but the amount of pick-ups will not change.

Mr. Mullen questioned the garbage truck circulation for the site and questioned the garbage generation. He stated that the nature of the waist that would be generated may change and we may need to understand if there are going to be bandages, tapes, spit, sweat and perhaps blood and he wants to know how those waist are going to be handled inside the building and then disposed of.

Mr. Martinez stated that he would anticipate more recyclables from water bottles but as far as bandages he does not know.

George Cornwall of 25 Ralph Street questioned the ability of the van circulation and if there is a larger vehicle required then the drawings are not correct.

Mr. Martinez stated that the intended vehicles is a van and that what the drawings shows.

Jane Horan of 212 Linden Avenue stated that with regard to garbage amounts the children will have to eat twice which will generate more garbage.

Marybeth Conte of 398 Navesink Avenue questioned if it was safe to do a k-turn after dropping off children.

Mr. Martinez stated that they are not stating that the van will do a k-turn while the kids are in the parking area.

Mr. Francy questioned if traffic circulation considered spectator parking.

Mr. Brodsky – there was testimony the last time that there is no spectator seating and that it will be made clear to the parents that there will be no spectators. The parents will be discouraged from visiting the site.

There were no further questions from the public for Mr. Martinez.

Mr. Brodsky – there are no further witnesses.

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

Mr. Baxter swears in Elbert Gallagher.

Elbert Gallagher of 221 Linden Avenue read a portion from the statement of operations and then read a letter of his concerns to the board that spoke against the approval of this application.

Mr. Baxter swears in Brian Cobb.

Brian Cobb of 11 Recreation Place spoke against the application.

Mr. Baxter swears in Connor Jennings.

Connor Jennings of 27 Ralph Street spoke against the application.

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

The Board discussed the application and testimony given.

Mr. Gallagher stated that he feels that this is a boxing/rehabilitation facility and not an athletic facility.

Ms. Ryan stated that she has a problem with the operator of the facility not being here to testify about the operation after the board requested that he testify and feels that she did not get the information that she needs.

Mr. Francy stated that the restrictions conveyed are not practical and he feels that it would have been better to hear from the operator Mr. Hall as to his intentions.

Mr. Gallagher expressed his frustration with the mission statement and Mr. Katich's testimony as to what Mr. Hall would say if he were here.

Mr. Mullen – he feels that the applicant put forth the case that they needed to put forth for this application. He does not think that they pulled away from the mission statement. The mission statement indicates that they will service a broad range of people unfortunately in that range there would be people that he thinks are possible inappropriately located adjacent to an elementary school. He thinks that the fact that they have stayed with their mission statement has so many detrimental characters that could be part of this. He does not characterize this as an athletic club and believes that the Zoning Officer either through a mistake or misinterpretation of this application saw this as an athletic club and he thinks that we have to correct the mistake of the Zoning Officer and to consider this because of the testimony an athletic club. He does not think that one can justify this use because by saying that there is a hardship because the lot is subdivided. He does not accept the Professional Planners testimony that this is sufficient to say there is a hardship. He thinks that this kicks in the ordinance that the town recently passed with regard to rehabilitation facilities and obviously the Mayor and Council have some feeling with regard to the location of these types of facilities and the board needs to take that into consideration. There wasn't any testimony to substantiate the clinical

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benefit of boxing to people getting well. The facility that they are planning to use is not set up for these things, it's so opportunistic in the sense, we have this space let's see what we can do with it. If there plan was to have a boxing facility for men and women then there would be two bathrooms. There has been no testimony from the people from the community as to the need. This is not a hardship application to him it's a pure use application.

Mr. Gallagher stated that the applicant has not looked into the requirement of a school bus.

Mr. Fox stated that the site is not appropriate for the program. The turning radius is not going to work out and will cause a hazard as far as children being in the parking. There is no provision for extra parking for parents. The whole security issue to him is a potential nightmare. There was no consideration of trash. He feels that too many of Mr. Halls consultants are just interpreting what Mr. Hall wants to have.

Mr. Braswell feels that the original statement of operations was written for a reason. He was disappointed that there was no testimony from local officials about there being a need for this. He does not feel that the security would be enforced and feels that it's unfair for the neighbors to wonder who is in the property next to theirs.

Mr. Gallagher offered a motion to deny the application for reasons discussed by the board, seconded by Mr. Fox and the application was denied on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Mintzer then left the meeting for the night.

Review of ZB Annual Report for 2007

The Zoning Board reviewed the ZB 2007 Annual Report.

Mr. Mullen suggested the following:

1. Move the Steep Slope Ordinance to the Zoning Section instead of it being in the design standards so that it becomes a variance instead of a design waiver.
2. Move the Regulations of Sexually Oriented Business & Rehabilitation Facilities to the Zoning Ordinance. The Board understands the reasons behind these ordinances but there needs to be more meat to it so that the board knows the intension of the ordinance.
3. Define Athletic Club, Sexually Oriented Business, Fitness Center and Rehabilitation Facility. The Council needs to look at the definition wording and see if they are open to interpretation and if so be more specific.

Mr. Mullen spoke about the Planning Boards ongoing review of the Steep Slope Ordinance.

The Board reviewed last year's recommendations to the Council.

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Mr. Mullen advised the board that the Secretary will take tonight's comments and prepare a letter which the board will review at the next meeting.

Approval of Minutes

Mr. Francy offered a motion to approve the December 6, 2007 minutes, seconded by Ms. Ryan and all were in favor except Mr. Fox and Mr. Gallagher who abstained.

The Meeting adjourned at 11:15 P.M.

CAROLYN CUMMINS, BOARD SECRETARY