

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
May 1, 2008**

Mr. Braswell called the meeting to order at 7:31 p.m.

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

Mr. Braswell read 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 posted on the public bulletin board and transmitted to the Asbury Park Press, the Two River Times and the Courier.

ROLL CALL:

Present: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton

Absent: Mr. Mullen

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

**ZB# 2007-8 Morales, Peter – Applicant Withdraws Application
Block 108 Lot 1 – 440-B Navesink Avenue**

Mr. Braswell stated that the Board received a letter from the applicant withdrawing the application.

Mr. Baxter stated that the applicant is also requesting a refund of any remaining escrow funds.

Mr. Francy offered a motion to accept the letter of withdrawal of ZB#2007-8 Peter Morales and to authorize the refund of any remaining escrow funds, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton

NAYES: None

ABSTAIN: None

**ZB# 2007-7 231 Bay Avenue
Block 63 Lot 19.01 – 231 Bay Avenue
Hearing on New Business**

**Present: James Clarkin, Esq.
Moh El-Hawwat, P.E.
Peter Camanis, Applicant**

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Mr. Clarkin gave an Opening Statement. The application is to renovate an existing mixed use building at 231 Bay Avenue. The structure has been vacant for approximately 8 years. The existing uses are non-conforming which are restaurant/bar, rooming house and apartment. The applicant requests a use variance to continue mixed use of two retail uses on the first floor, residential use on the second and third floor. The applicant is aware of the residential application that the board denied two years ago for this site. They felt and recognize that the uses on the site are problematic and that use of a two-single family homes was too intense. They believe that this application is superior to the one that the board turned down a few years ago. The FAR for this application is .59 and the prior application was .77, building coverage for this application will remain at 31% and 33% is allowed the prior application sought 43%. There is no proposed change for the building height of 35-feet, it will remain. There is no F.A.R. (floor area ratio) in this residential zone. So they looked at the B-1 and B-2 Zones because they permit commercial on the first floor and residential on the upper floors and they permit a FAR up to .65 and they are .59. The building will remain largely untouched. The first floor entrance is to be removed which will provide a greater front yard setback. There will be some additional space added to the second floor but it will be within the building envelope and will not extend any further than the first floor. They are looking to see some input from the board and they all have to admit it's a difficult piece of property because it is surrounded on three sides by roadways and the location of the existing structure is non-conforming. They are not requesting any new variances but they are asking to continue the existing non-conformities. They have looked at the Board Engineer's report and most of what they see there they can address favorably. There are some things that they don't think that they can do because they would rather not sacrifice parking but that is something that they are willing to talk about. Some of the other non-conformities if they were to adhere to what he is requesting because they would have to lose part of the building. There are two sets of plans and he understands the board has only seen the first set but there is a second set that was given to the board engineer and they are going to go through both sets of the plans so that the board can see the changes that they have made to accommodate the Engineer's comments.

Mr. Francy stated that he is not comfortable with looking at plans that are not the real plans.

Mr. Baxter – the practice of the board is that plans be submitted at least 10-days prior to the meeting, so that people can look at them.

Mr. May stated that the changes to the plan are minor they added a fence and easement.

The Board felt that they could move forward with this application tonight but that they need to continue until the public has an opportunity to review the plans. The applicant was directed to submit 15-sets of the updated plans at least 10-days prior to the next hearing.

The following documents were marked into evidence:

A-1: Variance Application;

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- A-2: Zoning Permit Application Denial;
- A-3: Site Plan Review Application;
- A-4: Monmouth County Planning Board Conditional Approval Notice dated 11/13/07;
- A-5: Zoning Board Resolution dated 8/3/06 Denying Palatial Homes Application;
- A-6: Site Plan prepared by M. El-Hawwat, P.E. dated 8/1/07, 5-Pages;
- A-7: Architectural Plans dated 1/24/07 prepared by W. Dorin, 3-Pages;
- A-8: Site Plan Revised on 11/8/07, 5-Pages;

- B-1: Board Engineer Review letter dated 3/5/08 by J. May of CMX, Engineering.

Moh El-Hawwat of 825 N. Field Ave, Suite 106, Verona, NJ 07044 and Joseph May, P.E., Board Engineer were both sworn in.

El-Hawwat stated the following during his testimony and response to questions from the board as follows:

1. He described his Professional background to the board and the board accepted his qualifications as an Engineer.
2. There is a three story existing structure on the site with pavement on west side. Basically it's an old structure located on the north east corner of the property fronting on Bay Ave and Cedar Street. The parking area is on the northwest side of the property on the corner of Second and along Cedar Street.
3. They are proposing to fix up the property and have better access to the building and a better layout of the parking area, a defined entrance of Cedar Street to the parking area. They kept the same access to Second Street. They are basically restriping the parking area to make it more defined and safer.
4. He then spoke about Exhibit A-6 sheet Y-3. They will provide a new sidewalk along Bay Ave & Cedar Street. In the back that they defined the entrance to property by striping parking area, defined the handicap space. They will provide curb along Cedar a 25-foot depressed curb then the rest is a full curb. The existing depressed curb on Second Street will stay. They will repave the parking lot and the applicant will adhere to the specifications of the engineer for the town.
5. They are proposing 15 parking spaces and one of them is a handicapped space.
6. Trash Receptacles – the residential part will be stored outside, they can have a space between the building and the parking lot because they are going to slide the whole parking lot to the west toward Second Street. The last row of parking spaces has five spaces and they are 9 by 18 ft, closest to the Second Street. So it's possible to pull the entire parking lot to the west to create an area next to the building for the storage of refuge.

Mr. Clarkin – we are not saying that there is enough space for a car to back out of this without going onto Second Street. They recognize that no matter what they do they would not have the isle width that one would normally have and that any of the vehicles using the last row of

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parking spaces would have to back into Second Street because this is a difficult site to work with.

Mr. El-Hawwat continued his testimony and response to questions from the board as follows:

7. They are proposing a handicap space with a handicap sign.
8. They are proposing a sidewalk to the rear of the structure.
9. There are some railroad ties and fencing that will be removed. The fencing that they are removing is located to the rear of the building.

Mr. Clarkin – by pulling the parking area back it will allow us to put a garbage refuge area with an enclosure.

Mr. Hawwat continued his testimony and response to questions from the board as follows:

10. The garbage area will be for both the apartments and commercial uses. It will be a 6 by 10 or 12 foot area and it will be shown on the revised plans.

The Board discussed the south side of the building door which opens into right of way.

Mr. Clarkin – we can redesign to eliminate the Cedar Street door and relocate it to the rear of the building.

The Board requested that the applicant check with the Fire Officials regarding the exits of the building.

Mr. El-Hawwat continued his testimony and response to questions from the board as follows:

11. They are not proposing an new signage other than the existing. They will dress up the free standing sign and use the existing sign post, same panel.
12. The isle between the two rows of parking spaces is a conforming 25-feet.
13. He cannot testify that the structure is sound.

Mr. Clarkin – renovations commenced and they were stopped because of the Palatial Homes Application and there was never any suggestion or noticed that would prevent the renovations from going forward.

Mr. May questioned the status of addressing the FEMA requirements for the building.

Mr. Clarkin – they never followed through or finished the Flood Application because they wanted to first come and see how they would be received by the board. Certainly when they come back the next time they will have that completed. He then stated that he is not sure that it makes much sense to go through the second set of plans since they know that they are going to submit new plans and coming back.

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Mr. Braswell – agreed. He then stated that he noticed a discrepancy between the variance application and on its description of the third floor and the plans for the third floor. On the application it states to renovate the existing boarding house into a one bedroom apartment.

Mr. Clarkin –each of the three bedroom apartments that are being proposed are two bedroom apartments. Two apartments on the second floor and one apartment on the third floor.

Mr. Francy – are we going to hear from Planner?

Mr. Clarkin – we do have a Planner to cover the use variance.

Mr. Francy – he is not clear as to what you consider the use that you need a variance for.

Mr. Clarkin – the R-2.02 Zone only allows for residential single-family homes or religious institutions or existing bungalow colonies which is not appropriate, public uses operated by the Borough, the Borough hasn't knocked on our door for use of our property. Public and Private Schools, he can't see that being appropriate considering the size of the lot and the limitation of the parking. They think that that the scheme that they bring tonight while it doesn't conform totally to the 18 parking spaces required, they get as close as they can and the only feasible use is a mixed use. This structure in no way lends itself to a single-family home. It is not laid out that way, it's not maintainable, no one is going to be able to heat a house like this. What they are asking you to do is substitute one non-conforming use for another. The non-conforming use is retail which they are proposing for the first floor. They think the trade off is beneficial to the town because they are getting rid of a bar and restaurant that are problematic and a getting rid of a boarding house.

Mr. Francy questioned if this was ever a boarding house and questioned if the apartments on the second floor were ever legal. He asked about proof that it was a boarding house.

Mr. Clarkin – the documentation that we will bring back to you is that this structure still has an annual approval from the State of New Jersey.

Mr. Francy assumed that the witness would come back with the new plans and provide more testimony.

Mr. Braswell asked the public if they had any questions for Mr. El-Hawwatt but there were none.

Peter Camanis of 3 Angelo Court, _____, New Jersey was sworn in.

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

1. He is the sole owner of 231 Bay Ave, LLC.

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2. He spoke about the old heaters that were located upstairs when he purchased the building. He then stated that a State Inspector came by the property one day and informed him that this was a registered rooming house. He knows that this hasn't been used for many years. The rooms were laid out for a rooming house and all of the rooms had heaters in them.

Mr. Baxter – in the absence of proof that it's a currently permitted rooming house, the board is going to have no choice but to assume that it is not, so if you present proof that it is then fine. Secondly, if you are going to rely on the rooming house argument as part of the use variance application then it has to be that but if it's not then make your pitch without that.

Mr. Gallagher – looking at the minutes of the October 4th meeting the applicant stated that a rooming house was not part of his case. Since the applicant is not seeking to use grandfather status

Mr. Clarkin – our point is that the troublesome uses that they had in the past can be replaced with something that is more compatible to the way that that strip of Bay Avenue is being utilized today.

Mr. Clarkin stated that they will make 15 sets of the revised plan and submit them to the board.

Mr. Francy – you are seeking an expansion of the residential use and seeking the commercial use as a mixed use. So you will still have a class “d” application for the use that is the commercial use .

Mr. Clarkin – it's still a “d” because of the retail commercial and because it's more than a single-family.

Mr. Gallagher – so there is going to be three two-bedroom apartments in the plan and two retail stores.

Mr. Camanis continued his testimony as follows:

3. There was about six to eight rooms upstairs with one common bathroom, no kitchen facilities and there were individual unit heaters for each room.
4. He has never rented out the second or third floor residential units.
5. He was hoping for something like a florist and a good deli for the two commercial units.
6. Yes, he is adding on to the second floor space (expansion of a non-conforming use).

Mr. Baxter thinks that all three floors would be use variances.

Mr. Braswell asked if there were any questions from the public for the applicant Mr. Camanis but there were none.

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Mr. Clarkin requested a five minute recess.

The Board called for a recess at 8:34 p.m.

Mr. Braswell called the meeting back to order at 8:39 p.m.

Mr. Clarkin – in view of the fact that we have to return anyway he would rather not put the Planner on tonight and would rather put the Planner on after they bring back the amended plans. He would like to adjourn the hearing and would like to come back at the July 17, 2008 meeting. He granted the board an extension of time to act until that date and he asked that no further public notice be required.

Mr. Gallagher offered a motion to carry this matter to the July 17, 2008 meeting and that no further public notice be required, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton

NAYES: None

ABSTAIN: None

Mr. Baxter advised the public that there would be no further public notice on this matter and that it has been carried to the July 17th meeting date at 7:30 p.m.

Mr. Clarkin stated that they will submit the amended plans to the board.

Mr. Baxter advised Mr. Clarkin to submit the amended plans to the board at least 10-days prior to the meeting date.

Approval of Minutes:

Mr. Francy offered a motion to approve the April 3, 2008 Zoning Board Meeting Minutes, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Anthony

NAYES: None

ABSTAIN: None

Executive Session Resolution:

Mr. Braswell read the following Resolution for approval:

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

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**RESOLUTION
EXECUTIVE SESSION**

BE IT RESOLVED that the following portion of this meeting dealing with the following generally described matters shall not be open to the public:

1. **Zoning Board Attorney Amended Contract**
- 2.
- 3.

BE IT FURTHER RESOLVED that it is anticipated that the matters to be considered in private may be disclosed to the public at a later date when the need for privacy no longer exists; and

BE IT FURTHER RESOLVED that no portion of this meeting shall be electronically recorded unless otherwise stated; and

BE IT FURTHER RESOLVED that the private consideration is deemed required and is permitted because of the following noted exceptions set forth in the Act:

1. Rendered confidential by Federal law or that if disclosed would impair receipt of Federal funds.
2. Rendered confidential by State Statute or Court Rule.
3. Would constitute an unwarranted invasion of individual privacy.
4. Deals with collective bargaining, including negotiation positions.
5. Deals with purchase, lease or acquisition of real property with public funds.
6. Related to setting of bank rates or the investment of public funds and disclosure could adversely affect the public interest.
7. Related to tactics and techniques utilized in protecting the safety and property of the public disclosure may adversely affect the public interest.
8. Related to investigation of violations or possible violations of the law.
9. Related to pending or anticipated litigation or contract negotiations in which the public body is or may be a party.
10. Falls within the attorney-client privilege and confidentiality is required.

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11. Deals with personnel matters of public employees and employee has not requested that the matter be made public.

12. Quasi-judicial deliberation after public hearing that may result in imposition of a civil penalty or suspension or loss of a license or permit.

Seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton

NAYES: None

ABSTAIN: None

The Zoning Board then entered into Executive Session at 8:49 p.m.

Mr. Braswell called the meeting back to order at 9:09 p.m.

Resolution Approving Resolution for Amendment to Board Attorney Contract

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

Mr. Baxter stated that the resolution is for an amount of \$9,680.00.

Mr. Braswell added that this amount excludes federal, state, pension and life insurance.

Mr. Gallagher offered the following Resolution and moved on its adoption;

**RESOLUTION AMENDING CONTRACT FOR
PROFESSIONAL LEGAL SERVICES WITH
GREGORY S. BAXTER, ESQ., OF CARUSO & BAXTER, P.A.**

WHEREAS, this Board appointed GREGORY S. BAXTER, ESQ., of Caruso & Baxter, P.A., as the 2008 attorney to the Highlands Zoning Board of Adjustment, and approved his form of contract, all of which actions were taken at the reorganization meeting on January 3, 2008; and

WHEREAS, the State of New Jersey has since directed that attorneys serving governmental entities who are not full-time employees are no longer to be treated as employees for payroll purposes, but rather as independent contractors, as a result of which no deductions (i.e., federal tax, state tax, unemployment, life insurance, pension contribution, or deferred compensation payments) shall be made from the attorneys' salary;

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NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the attached AMENDMENT TO 2008 ZONING BOARD

ATTORNEY CONTRACT be and the same is hereby approved, and the Chairman and Board Secretary are hereby authorized to sign the same;

AND BE IT FURTHER RESOLVED that a copy of this resolution and the attached contract amendment shall be forwarded to the Borough Administrator and CFO to take action in conformance with its terms, effective May 1, 2008.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton

NAYES: None

ABSTAIN: None

Communications:

Mr. Baxter informed the Board that the Knox 400 application will be coming back before this board due to a jurisdictional issue that came up before the Planning Board.

The Board had a brief discussion about this matter.

The Board then spoke about the upcoming meeting agenda.

Mr. Francy offered a motion to adjourn the meeting, seconded by Ms. Ryan and all were in favor.

The Meeting adjourned at 9:16 P.M.

CAROLYN CUMMINS, BOARD SECRETARY