

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Mullen called the meeting to order at 7:42 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. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Gallagher, Mr. Mullen and Mr. Kovic, Planning Board Member**

Absent: Mr. Britton, Ms. Solomon

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

**ZB#2007-7 231 Bay Avenue – Request for Postponement to Nov. 6th without Further Notice
Block 63 Lot 19.01 – 231 Bay Avenue**

Mr. Mullen explained that there have been correspondences about this hearing and the applicant granted the board an extension of time though November. This was the desire of the board so that we could focus on the Knox application this evening.

Mr. Gallagher offered a motion to postpone the public hearing to November 6, 2008 without the need for further public notice, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Mullen advised the public that this hearing was carried to the November 6th meeting and that there would be no further public notice.

**ZB#2008-3 Knox 400, LLC
460 Highway 46 – Block 108 lot 2.01
Unfinished Public Hearing**

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Present: **Henry Wolff, Esq., Applicants Attorney**
 Eric Rupnarain, P.E., Applicants Engineer
 Michael Knox, Applicant
 Michael Leckstein, Esq., Objectors Attorney
 Paul Mazzella, Objector

Conflict: **Mr. Anthony, Mr. Braswell – both stepped down for this application**

The following Exhibits were marked into evidence:

A-9a-j: Photographs of the site

A-10: Larger Photo

A-11: 8th Revision of Site Plan with Fire Marshall Approval dated 12/7/07

Mr. Mullen – at the last meeting we left off on the cross examination of Mr. Rupnarain by Mr. Leckstein. He also stated that both Mr. Gallagher and Mr. Braswell both listened to the last meeting tape so that they are eligible to sit on this matter.

Mr. Baxter stated that there is an affidavit for Mr. Gallagher that he listened to the 9/25/08 meeting tape. He then spoke about the Braswell's conflict issue that was raised by the objector and at that time there was representation that there were comments from Mrs. Braswell taking a position on this matter at a Planning Board Hearing. There wasn't any contradictory statement about that made and based on that information he gave the opinion that Mr. Braswell had a conflict and should not sit. Later Mr. Braswell spoke with his wife who said the opposite. As a result of that the Board Secretary checked the October 11, 2007 Planning Board Minutes that had one statement in it that asked a question at that hearing. The Board Secretary listened to all of the meeting tapes of the Planning Board where the Knox Application was on the agenda, she listened to some and the Borough Clerk listened to some and there was only found that she asked the same question to another witness.

Mrs. Cummins – there were no comments from Mrs. Braswell only the questions.

Mr. Baxter – that being the case the basis that he gave his opinion at the last meeting no longer appears to exist and as a result of that it is his opinion that there no longer appears to be a conflict and Mr. Braswell may sit. Mr. Braswell did sign an affidavit that he listened to the meeting tape. It is now his opinion that he can now sit as a member of the board.

Mr. Leckstein still objected to Mr. Braswell on this application because the May 4, 2006 Zoning Board transcripts where Lori Ann Bodnar-Nolan on behalf of the Highlands Business Partnership spoke in support of this application. Mrs. Braswell is a member of the Highlands Business Partnership and possibly the President of the H.B.P. therefore he feels that Mr. Braswell as the husband of Mrs. Braswell does have a conflict on this matter which he further explained.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Wolff spoke about this and then agreed with Mr. Leckstein because he did not want to take a chance. He agreed that Mr. Braswell should step down on this matter.

Mr. Braswell responded and explained that his wife does not get paid for her activities from the HBP and that the businesses pay a tax to the HBP. He further explained that he does not have a conflict on this matter and that he can sit for this application.

Discussions continued about Mr. Braswell and the conflict issue.

Mr. Baxter stated that he does not see a conflict but it's up to Mr. Braswell.

Mr. Braswell – I will take the consensus of the Board.

Mr. Mullen advised Mr. Braswell that he is a valuable member of the board but in this case we know that this is going to be an issue and he does not want to have a conflict with the board.

Mr. Gallagher agreed with Mr. Mullen because there is no sense taking a chance on this issue.

Mrs. Ryan also agreed with Mr. Mullen that we shouldn't take any chances.

Mr. Mullen also noted that Mr. Anthony has a conflict and should step down for this matter.

Mr. Braswell and Mr. Anthony both stepped down for this matter.

Mr. Leckstein began his continuation of Cross Examination of Mr. Rupnarain.

Mr. Rupnarain stated the following during the Leckstein Cross Examination:

1. He answered questions about the parking spots and traffic circulation of the site.
2. He spoke about pedestrian movement and of the site after parking in the parallel spot. They would step down onto the pavement, there is no barrier by this area but there are lights that would light this area up. He said that they could put a barrier along the property line in response to Leckstein question.
3. Emergency Entrance – that is only an exit, not an entrance. He did not put any templates on the site to see if the fire truck could exit. The Fire Department has specific requirements which they asked us to provide.
4. Drainage – he spoke about a 12 inch pipe and stated that a 15 inch pipe is an over design. The 12 inch pipe meets all the requirements that we need for this property.
5. He does not recall a revision request for topography. What you see is what we have.
6. According to the topography that we have the property drains in a southerly direction. He has not noticed any high spots in the area that Mr. Leckstein questioned.

Mr. Leckstein stated that he had no further questions.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Mullen asked if Mr. Wolff had the Fire Department Approval.

Mr. Wolff – we do have it and he then submitted it.

Mr. Leckstein reviewed the document and then objected to it being marked into evidence on the basis that the date of this original sending dated 12/21/2005, then it's marked with another fax date of 10/11/2007. There is no actual date of the document. This may be the approval for the first application that goes back to 2005 and this is not for this application therefore he objects to it.

Mr. Knox stated that the Board Secretary should have a recent approval from about a month ago.

Mrs. Cummins stated that she did not have a recent Fire Department approval.

Mr. Wolff – the only thing that he can think of is that if this application were approved that this could be subject to him providing a more recent Fire Approval. He then represented to the board that there was a previous approval and that Fire Marshall Murphy did testify before the Planning Board and at that time there was no access to the site from Highway 36. So that approval would have been the same as the site plan that is being presented here.

Mr. Leckstein would like the opportunity to have the Fire Marshal or any person who approved this under oath to explain if they approved this how a fire truck could maneuver a fire engine in that site.

Mr. Baxter – hypothetically, if we don't finish tonight and you bring something the board is going to want to hear from the writer of that document.

Mr. Kovic questioned Mr. Rupnarain about curbing by the parallel parking spots and how people when they get out of the car will step into a puddle of water. He also questioned snow plowing on the site.

Mr. Rupnarain – that curb will prevent water from running onto adjoining property. The westerly property is open to put snow that has been plowed. They could install an inlet to rear of building and tie into drainage. He also stated that typically snow is plowed into parking spots or piled on various spots in the parking lot.

Mr. Mullen then asked the public if they had any questions for Mr. Rupnarain.

Donna O'Callaghan of 29 S. Bay Avenue questioned Mr. Rupnarain.

Mr. Rupnarain responded as follows: The compact parking spots are 16 feet deep by 9 feet wide. They are providing two handicapped parking spaces which is required for this site and they are both van accessible. The second floor of the building is not accessible for wheel chairs.

Jim Parla of 16 Portland Road questioned Mr. Rupnarain.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Rupnarain responded - the handicapped spots are not directly in front of the building.

Mr. Leckstein questioned Mr. Rupnarain.

Mr. Rupnarain responded – if the snow were shoveled you could put it behind the building. The parking spots by the door are the compact spots. This building is accessible from two entrances. This plan does not have a handicapped parking space by the door.

Mr. May questioned Mr. Rupnarain about the soil type of the site and if it were changed would it impact the drainage system.

Mr. Rupnarain responded – if we were to change the curb number from a “b” to a “c” it would increase the amount of runoff.

Mr. May – we will need to verify the buried manhole.

Mr. Rupnarain – I don’t think it’s going to effect the on-site because the amount of pervious area is so limited to the amount of non-pervious area on the site but what it will effect is the amount of water that gets into the drainage system.

Mr. May explained why you would change the soil classification because it varies to be conservative you wouldn’t use the best classification. It should be revised to verify that the downstream system is _____.

Mr. Rupnarain – that is something that we can do.

Mr. Baxter then spoke about the exhibit A-6 from the 1998 Resolution and he stated that he does not have copy of it.

Mr. Rupnarain stated that this plan has two parking spaces adjacent to the cell tower.

Mr. Leckstein cross examined Mr. Rupnarain about the two cell tower parking spots and where the amount came from and how they came about to be stacked spaces.

Mr. Rupnarain – explained that it was understood that the spots actually existed. The parking spaces adjacent to the cell tower will not change as a result of this application.

Mr. Leckstein spoke about the suspected A-6 shows one parking spot for the cell tower and now its two spots.

Mr. Wolff – we do not know the answer to this question.

Mr. Kovic questioned Mr. Rupnarain about the parking layout.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Rupnarain – he did the layout for the parking of this site and he did not study other gyms.

Mr. Leckstein questioned Mr. Rupnarain about the parking standards.

Mr. Rupnarain responded – he has been the engineer for this application since the first plan. He does recall some testimony about other towns having parking standards for this type of facility. Five spaces per 1,000 square feet is what was adopted here. He is not aware of a site that is functioning alone with these parking requirements in this area.

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

Mr. Wolff called Mr. Thomas up to testify.

Thomas Thomas, P.P. of Brielle, New Jersey was sworn in and described his education and professional background to the board.

Mr. Leckstein did not object to Mr. Thomas being accepted as a Professional Planner.

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

1. He has reviewed the application, the ordinance, some testimony and some reports including the report from T & M Associates and the other engineer.
2. The site in question is currently a Stewarts Root Beer Stand. Its sits on a triangular piece of property which on the south side would be Route 36 and on the north side is Ocean Blvd. It's basically a triangular piece of property in which it's located. The property itself is trapezoidal in that the eastern side is smaller in length. Currently it has a Stewarts drive in and is covered predominantly by asphalt and there is a cell tower at the northwest corner.
3. He has visited the site and the condition of the existing Stewarts is that its older and basically in need of repair and should be upgraded. It's not a particularly attractive Stewarts and is a 1960's type Stewarts.
4. He understands that the applicant proposes to renovate the property, build an additional new structure connected to the old structure for the proposed use.
5. He has sat through all of the testimony of the applicant and the engineer and he has reviewed the new site plan.
6. The new building proposed is two stories to be located on the westerly side of the two story structure.
7. Lot coverage required is not more than 80% and the proposed is 85% and the existing is 99 %. The reduction of the lot coverage will be an improvement to the site and result in additional landscaping will be provided which is an enhancement to the site. He then described some landscaping to the site.
8. He reviewed portions of the Master Plan and read the review by Martin Truscott, P.P. Borough Planner. He spoke about a goal in the Master Plan to improve the gateways coming

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

into Highlands and this is certainly a gateway coming from the west which he further explained and stated that this would certainly do that.

9. There will be some landscaping along Route 36, some shrubs which will be designed to keep the traffic headlights off of Route 36.

10. Currently there is entrance and exit of the site off of Route 36 and Ocean Blvd. With the new site plan it will simply be one entrance in and out on Ocean Blvd. There will be emergency access point at the southwest corner of the site off of Route 36.

11. One of the goals of the NJDOT is to separate the entrance and the exits approximately 300 feet apart. This would help achieve separation goal and is a positive things and Ocean Blvd is predominantly a one way.

12. The new ordinance requires 3 cell tower spaces. He contacted Tom Brunelly who works for and is the manager of cell tower operation from Union County south to Cape May New Jersey and he basically indicates that what they need.

Mr. Leckstein objected to getting into hear say.

Mr. Wolff asked the board to relax the rules of evidence and to permit the testimony.

Mr. Mullen explained that in the past the board likes to have direct testimony.

Mr. Francy wants to hear the testimony and feels that the professional opinion would be valid.

Mr. Thomas continued his testimony as follows:

13. He has not testified in connection with applications for the construction of cell towers but he had heard as a result of being a Municipal Planner in several municipalities. He heard testimony of applications that came before boards where he sat as a Planner for the town.

Mr. Leckstein objected to hearing what Mr. Thomas heard.

Mr. Baxter agreed Mr. Leckstein about hear say testimony.

Mr. Mullen explained that as far as we can tell parking of one spot was approved for the cell tower with an undetermined size and the cell tower ordinance requires 3 spaces.

Mr. Thomas continued his testimony as follows:

14. The cell tower itself does not require parking it's the vehicles for maintenance and that's what they would be used for visits to the site.

15. As long as the gate to the cell tower fence is open and free the parking for the gym should not interfere with the maintenance at all.

16. Based on the numerous cell tower applications that he has heard the maintenance for the cell tower is periodic.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Leckstein objected to this comment and Mr. Wolff withdrew his question.

Mr. Thomas continued his testimony as follows:

17. Under the Municipal Land Use Law the cell tower is a permitted use and yes this site is suitable because the cell tower has existed for several years and it does not adversely affect the Stewarts or the neighborhood.

18. Quick Check lot has a similar arrangement that is similar to this parking configuration.

Mr. Wolff asked if five compact spaces is an inappropriate set up.

Mr. Leckstein objected to this question and stated that there is no foundation that the witness has some background in traffic and parking. He then withdrew his objection.

Mr. Thomas continued his testimony as follows:

19. A lot of ordinances do provide for compact parking spaces and he has worked on applications before numerous boards where compact spaces are provided. It is appropriate in situations where you have an opportunity to provide for the compact car spaces to utilize them and particularly in this site because of the configuration of the building itself. Again because of this site, it's a little bit narrower on the easterly side than the westerly side. So it is possible and obviously providing compact car spaces is an appropriate design feature of this site. He does not think that there is an overutilization of compact spaces on this site.

20. The use of compact cars goes up and down due to the fuel cost but he cannot guess what is going to happen in the future.

21. The sign is a pre-existing sign located on the south east corner and there would be no changes other than the name on the sign and it is appropriate that the sign be located where it is and it's in a good location.

22. There is a pre-existing apartment that is on the second floor and it's been there and there is a waiver or a variance for the outdoor living space and that would be appropriate.

23. From his opinion the lack of one space will not adversely impact the site. As with any kind of business if there is a lack of parking which results in people not being able to get in the business it could adversely affect the business. There is a turn over and in the event that every parking space were filled people would tend to leave the site, it's sort of a self regulating thing. In the event that you have a special event at a business that would exceed the parking capacity it doesn't require that you have every space for every use.

24. The overall benefit that is going to be achieved for the municipality is that it's going to be an improvement to the site so an enhancement or aesthetic improvement is one of the provisions of the municipal land use law. It's also a provision of several court cases. With the improvement it would also achieve some of the goals of the Borough of Highlands in terms of providing for gateway aesthetics for the Borough. It would provide a recreation activity that is not currently provided for. It will enhance the site in terms of landscaping and aesthetics and it will also enhance the function of Route 36 as a result of eliminating one of the cuts on the Highway. So

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

there are some positive benefits that are going to be achieved in terms as a result of this application.

25. The variances in some cases specifically as a result of the existing building have some impact on some of the variances. The fact is the size of the structure that is being proposed is dependent upon a half court situation for a basketball court that he must provide for. In that regard the building is sized for a specific function as a result of that there is a need for parking.

26. The apartment only requires two parking spaces and they are being provided.

27. He does not feel that there is a use variance attached with this application.

28. He is familiar with the case _____-vs. _____. He then described this court case and compared it to this where we do not have to guess if the cell tower functions because it's existing and has functioned so we don't need special proof.

29. As a Planner he would encourage the development of sidewalks but the problem with sidewalks is the question comes up with sidewalks that go nowhere. The applicant has already indicated that he would contribute to a sidewalk fund in the event that sidewalks are provided. Typically sidewalks should be provided in his opinion so it would be ideal to have them on Ocean Blvd. The reason for that is that hopefully in the future sidewalks can be provided all the way up the intersection. In his opinion sidewalks are helpful but it's a question of when do you put them in which he further explained. It's easier for the board to require a sidewalk contribution so that they can be built at one time. In order for the sidewalks to work you would have to have the Borough Engineer provide a design.

Mr. Leckstein then began his cross examination of Mr. Thomas. He asked if he were aware that there was no appeal made of the courts overturning of the approval.

Mr. Wolff objected and stated that there was an appeal taken and it's beyond the scope of direct testimony.

Mr. Thomas stated the following in response to cross examination by Mr. Leckstein:

1. He is not aware that an appeal was not pursued.

Mr. Leckstein spoke about the factual findings that were made in the courts over turning of this board approval.

Mr. Wolff objected which he explained.

Mr. Baxter – no other findings are relevant.

Mr. Leckstein – there is no question that after the court said that this is an inappropriate spot for this location that the applicant was able to convince the Governing Body to change the ordinance.

Mr. Wolff objected.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Leckstein – the ordinance was changed and this is now a permitted use. In that case there were certain findings about how many parking spaces would be required and all of which are more than what are being provided today. Those facts and the courts determination that they would not be self limited. The ordinance does not say or change the law of the findings on this case that the concept that a limited or small parking lot would be self limiting was found by the court to be unacceptable and untrue. He continued to speak about the court findings and the parking deficiency of this site.

The Attorneys argued about the court findings being argued by Mr. Leckstein.

Mr. Leckstein continued his cross examination.

Mr. Thomas stated the following during his response to Leckstein Cross Examination:

2. Yes, his testimony is that this parking is self limiting.
3. If people can't park they will leave or wait for a space to become available.
4. He did not say that six cars could be stacked while they sit and wait.

Mr. Leckstein argued that the Board has to approve a site plan that does not function and then spoke about allowing prior application testimony on this site and prior parking space information.

The Attorneys and Board Chairman argued about this issue.

Mr. Leckstein continued his cross examination of Mr. Thomas.

Mr. Thomas stated the following during his response to questions Mr. Leckstein:

5. He has not testified as a traffic expert.
6. Enhancement of the site itself is a positive criteria for the granting of the variance.
7. He did read the Zoning Officers Letter about this being an expansion of a nonconforming use.
8. He is familiar with the Municipal Land Use Act and an appeal of a Zoning Officers decision must be made within 20-days. He is not aware of an appeal for this case.

Mr. Leckstein – so this case is clear that this is an expansion of a non conforming use because no appeal was made of that decision.

Mr. Wolff objected – this is really a legal opinion.

Mr. Baxter – variances are from ordinances not Zoning Officers. The applicant is not bound by the decision of the Zoning Officer.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Leckstein continued his cross examination of Mr. Thomas.

Mr. Thomas stated the following during his response to questions Mr. Leckstein:

9. He responded to a scenario that was given by Leckstein and stated that he understood it.

Mr. Leckstein spoke about an expansion of a non-conforming use.

Mr. Wolff stated that it's the applicant's position that this is not an expansion of a non-conforming use. We rely on the Coventry vs. West Wood Case which he further explained.

Mr. Leckstein continued his cross examination of Mr. Thomas.

Mr. Thomas stated the following during his response to questions Mr. Leckstein:

10. The positive criteria was the enhancement of the site.

11. Any development on this property that would be new and modernized would enhance the property.

12. Yes, in terms of development it would be better to have 85% impervious coverage but the specific use that is being proposed because of the requirements of the building the 85% is appropriate. The parking spaces are part of what is driving the lot coverage.

13. He answered questions about a court case Montvale vs. _____ and in that case there was a junk yard and he continued to answer questions about that case.

14. Basically if there is a use variance involved in this it would be the fact that there is existing cell tower on a site that is less than one acre. The cell tower is not going to expand; we are not intensifying the cell tower function. Basically what the applicant is asking for is a variance for size of the site, not the use that is on the site.

15. The applicant is intensifying the size of the building which still meets the ordinance requirements and reducing impervious surface so he is not sure that he is intensifying the overall site itself.

16. If you were to build a 4,000 foot base and a 4,000 foot base top then you would exceed the height requirement and back before the board.

17. He stated that he was not involved in prior application.

18. The only suggestion that he would have if there were to be a modification of the site plan would be obviously something going out onto Highway 36. That would be the only change that would probably occur. Incidentally the entrance and exit off of Ocean Blvd is probably safer overall then going from Highway 36.

19. There is currently a restaurant on the site and he really can't answer if the proposed is a greater intensity of the site because he has not been at the Stewarts in the Summer time.

20. This could improve the traffic concerns raised by Mr. Kovic which he further explained. He stated that whatever use you put on the site will have some impact and then the question is whether it's going peak impact or not.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

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

Mr. Thomas then stepped down.

Mr. Leckstein requested that the board take a recess.

Mr. Mullen called the meeting back to order at 10:11 P.M.

Mr. Wolff called Mr. Natalie up to testify.

Joseph Natalie of 175 Club House Road, Middletown, NJ was sworn in.

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

1. He is one of the owners of the subject property.
2. There is one residential apartment that is located on the second floor.
3. He described the windows for the apartment as being on the right side of the building as illustrated in the pictures there are two windows and he they are bump outs.
4. He purchased the property in 2002 and the apartment is in the same condition as when purchased, same for the sign and the cell tower.
5. He works on the site 5 days a week and the summer time is his busier time. He is personally on the site Monday, Tuesday, Friday, Saturday and Sundays from 6:30am to about 4pm and then on another day he will come in at noon time and work till closing.
6. He never monitored the cell tower visits and he can't say how often they come or don't come but he will say that it's never interfered with his business.
7. He has on occasion seen the vehicle for the cell tower but he hasn't monitored it. Several times that he seen it's been like a cargo van type, like a small van vehicle that comes for the cell tower. Maybe once or twice a cell tower maintenance person came into his business for a drink but he did not engage in conversation.
8. The maintenance of the cell tower has never interfered with his parking at the restaurant.
9. He does not know of any cell tower malfunction emergencies, it's been a self operating unit.
10. There is no such storage room upstairs on the second floor as shown on the Architectural plans.
11. The apartment tenant was absorbed with the purchase of the property and one of the bedrooms in the apartment has been used as a second bedroom. His tenant has a son that is their all of the time.
12. He then reviewed and described the photographs marked A-9 a-j and A-10 and stated that the photos are of the way the building is now.
13. He thinks that there is between 48 and 50 parking spots on the site.
14. The cell tower has been there since maybe 1994.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

15. He has a lease with Crown Castle Company for the cell tower and the lease was extended for another 25 years. The rent for the cell tower escalates every five years. There is a cell tower clause that they can disconnect the cell tower whenever they want but they have to give a fair amount of notice.

Mr. Leckstein then began his cross examination of Mr. Natalie.

Mr. Natalie stated the following during cross examination by Mr. Leckstein:

1. He does operate his business in the winter too and it's much slower in the winter.
2. His contract to sell the site to Knox is contingent upon variances being granted.
3. People walk in all the time to look at property and he does not now of their proposed uses.
4. There has been interest in the property by other people such as the objector Paul Mazzella to also put in a gym at this site.
5. Mr. Mazzella wanted to try to buy the two properties and put up a big gym but he could not finance it.

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

Donna O'Callaghan of 29 South Bay Avenue questioned the apartment.

Mr. Natalie – we have a lease with the apartment tenant and its up in about three years.

There were no further questions from the public for Mr. Natalie so he stepped down.

Mr. Wolff then stated that he would like to recall Mr. Rupnarain.

Mr. Baxter advised Mr. Rupnarain that he is still under oath.

Mr. Rupnarain made the following statements during his testimony:

1. He has a copy of what the Fire Department provided to them and it's a sketch of the parking lot a reduced size of the site plan that we have here and the highlighting in yellow is the fire lane and it shows the exit that the Fire Department requested us to have which is 18-foot wide onto Route 36. Mr. Rupnarain then submitted the fire approval.

Mr. Leckstein reviewed the document and questioned Mr. Rupnarain.

Mr. Rupnarain responded – the date of the last revision of the plan that is before the board is 5/19/08.

Mr. Leckstein objected to the 12/2/07 Fire Approval because it's an approval dated 12/7/07 which is many months prior to the plan that is before you.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Rupnarain stated the following:

1. This approval does have a date of 12/7/07 and note that the prior revisions on this site plan is 12/5/07 and the ninth revision is 5/19/08 and the eighth revision is 12/5/07 so there is no revision in-between.
2. When this application were before the Planning Board that is what the Fire Department had approved which is the same layout. What we have done since coming to the Zoning Board is we had some board engineer comments at the point and the revisions were done to address whatever revision they were asking us to with regard to the lighting, landscaping and it had no effect on the layout of the property. There is no change to ingress or egress; there is no change to the parking stalls or their configuration. The location of the building and the expansions stays the same and the exit onto Route 36 is the same.
3. He believes that the applicant submitted this to the Fire Marshall but he provided a faxed copy of what we had originally which showed a 9-foot wide exit onto Route 36 and then the Fire Marshall came back and said that that is not accurate for us and ordered it to be 18-foot wide and then they also requested that he provide the two bollards and they indicated that they would provide the chain and lock.

Mr. Leckstein stated that he does not object to the document being entered into evidence but he may want to have the Fire Marshall appear because he has serious questions about what he approved.

Mr. Wolff – the applicant rests.

Mr. Leckstein asked Mr. Rupnarain about the fire approval.

Mr. Rupnarain responded – he did not meet with the Fire Department. He did provide to the Fire Department a fax of the original of what he had submitted to the Fire Department. He did not have any one on one contact with the Fire Department aside from the fax.

Mr. Mullen asked the public if they had any questions for Mr. Rupnarain.

Donna O’Callaghan of 29 South Bay Avenue – wanted to know the name of the Fire Marshall.

Mr. Mullen – its Paul Murphy.

Mr. Wolff – there is no further testimony the applicant rests.

Mr. Leckstein called Mr. Litwornia up to testify.

Alex Litwornia of P.O. Box 2300 Medford Lakes, NJ was sworn in. He then described his education and professional background to the board describing his Civil Engineering and Traffic Engineering and Professional Planning expertise.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

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

1. He is familiar with this site and has testified before this board on this use.
2. He did a study of what he believes the parking generation that will be required under certain national standards. The standards are known as the I.T.E. standards. I.T.E. stands for Institute of Transportation Engineer.
3. He then described the parking generation requirements for different uses that is in the ITE.
4. Basically this type of use would mostly closest fit into the Land Use 492 which is Health/Fitness Club.
5. Based on the uses for the first and second floor that this fits as a Health Fitness Club. He then explained the definition of a Health and Fitness Club. He does not think that this is an athletic club.
6. Under the I.T.E. standards there are two things that would impact the amount of parking spaces. One of the things that they deal with is the average amount of parking spaces that are being required during the peak period of demand and the peak hour of demand comes out to be 5.19 vehicles per 1,000 square feet which he further explained. There is another thing in the table that is not often used and that the 33rd percentile and the 85th percentile. Basically what they have done is statistical analysis with this and that means that 33 percentile means that 33% of the time that is how many parking spaces that you will need. So 33% of the time you will need 3.85 vehicles per 1,000 square foot. And for the 85th percentile means that 85% of the time you will have enough parking on site if you have 8.27 vehicles per 1,000 square foot. The 85th percentile is more stringent than the average and the average that is used often for shopping plaza's those areas have shared parking and the average usually works out pretty well. When you have a use like this because a standalone use and you have two highways you really want the parking to stand alone and not go over and not have enough parking on this site what will happen is people will clog the driveway isles or park in the turnaround areas. The worst thing is that they will park along the State Highway or on Ocean Avenue and wait for someone to leave. So he recommends that 85th percentile as the minimum parking standards for this site.
7. He then described another project that he was involved in located in Hazlet, NJ and it was for a White Castle.

Mr. Wolff objected to what happened in Hazlet on the White Castle because it's irrelevant to this application.

Mr. Litwornia continued his testimony as follows:

8. The relevancy was the fact that there was no off street parking except along the State Highway. He then stated that the Board Engineer for this municipality also represented the board there.

Mr. Baxter – no, that's too far.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

Mr. Leckstein – the issue here is that he is trying to make an analogy of another situation where you have a standalone use in a very near area and he wants to talk about it as an example of using 85% versus another percent.

Mr. Baxter – the board understands the concept.

Mr. Litwornia continued his testimony as follows:

9. In this facility using the 85th percentile its 67 spaces needed which he further explained.
10. There is no shared area for overflow parking.
11. Most of the clubs that he knows are in shared areas except one in Vorhees.

Mr. Mullen spoke about the Borough's Parking Deficiency Ordinance.

Mr. Litwornia continued his testimony as follows:

12. He discussed parking ordinances with the board.
13. He does not think that the parking will work here because there is no place to have additional parking to go. Fifty percent of the time could be exceeding the minimum parking.

Mr. Leckstein advised the board that there is still a lot of testimony to cover and it so late perhaps this is a good time to break.

The Board did not have any objection and then discussed scheduling the continuation of this hearing.

Mr. Francy offered a motion to carry this hearing to November 6, 2008 without the need for further notice and that the meeting time be changed from 7:30 P.M. to 7:00 P.M., seconded by Ms. Ryan and approved on the following roll call vote:

Roll Call:

AYES: Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Kovic, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen advised the public that this application hearing will be carried to the November 6, 2008 meeting and that no further public notice will be given and that the meeting time for the November 6th meeting will be at 7:00pm.

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

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 2, 2008**

The Meeting adjourned at 11:10 P.M.

CAROLYN CUMMINS, BOARD SECRETARY