

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

Mr. Mullen called the meeting to order at 7:32 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: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen**

Absent: Mr. Braswell, Mr. Anthony

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

Reorganization:

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

**BOROUGH OF HIGHLANDS
ZONING BOARD RESOLUTION
DESIGNATING CHAIRPERSON
FOR THE YEAR 2009**

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, 2009.

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

ROLL CALL:

**AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen**

NAYES: None

ABSTAIN: None

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

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT RESOLUTION
DESIGNATING VICE CHAIRPERSON
FOR THE YEAR 2009**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that **Kenneth Braswell** be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2009.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen
NAYES: None
ABSTAIN: None

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

**RESOLUTION APPOINTING ZONING BOARD ATTORNEY
FOR THE CALENDAR YEAR 2009
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN CONTRACT
FOR PROFESSIONAL LEGAL SERVICES**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Zoning Board for the calendar year 2009; 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).

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.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

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, 2009 through December 31, 2009 and said appointment is made as a non-fair and open contract.
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 Ms. Ryan and adopted on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen
NAYES: None
ABSTAIN: None

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

**RESOLUTION AWARDING CONTRACT
A NON-FAIR AND OPEN CONTRACT
FOR PROFESSIONAL LEGAL SERVICES
TO GREGORY BAXTER, ESQ. OF THE FIRM OF CARUSO & BAXTER
&
APPROVING 2009 CONTRACT**

WHEREAS, there exists the need for Professional Legal Services to be provided to the Zoning Board of Adjustment for the period of January 1, 2009 through June 30, 2009; 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, Gregory Baxter, Esq. of Caruso & Baxter was appointed as Zoning Board Attorney for the calendar year 2009 on January 15, 2009; and

WHEREAS, Gregory Baxter, Esq. of Caruso & Baxter has submitted the attached 2009 contract for approval; and

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

WHEREAS, the Zoning Board has reviewed and hereby approves 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 \$ 6,000.00

For Legal Services for the Period of January 1, 2009 through June 30, 2009.

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 non-fair and open contract for professional legal services to be provided to the Zoning Board for the period of January 1, 2009 through June 30, 2009 for an amount not to exceed \$6,000.00 and that the attached contract for 2009 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.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

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

ROLL CALL:

**AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen**

NAYES: None

ABSTAIN: None

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

**RESOLUTION APPOINTING ZONING BOARD ENGINEER FOR THE CALENDAR
YEAR 2009 &
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 2009 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. 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;

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

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 2009 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. Gallagher and adopted on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

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

**RESOLUTION AWARDING A NON-FAIR AND OPEN CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES
TO BE PROVIDED TO THE ZONING BOARD OF ADJUSTMENT
AND
APPROVING 2009 CONTRACT**

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 2009 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., 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

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

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 2009; and

WHEREAS, the Zoning Board has reviewed attached contract for Professional Engineering Services for 2009; 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, 2009 through June 30, 2009

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 Zoning Board as follows:

1. Joseph May, P.E. of CMX, Inc., is hereby appointed as Zoning Board Engineer for the calendar 2009 and contract is awarded for Professional Engineering Services to be provided to the Zoning Board for the period of January 1, 2009 through June 30, 2009 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.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

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

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
RESOLUTION APPOINTING BOARD SECRETARY
FOR THE YEAR 2009**

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, 2009.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

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 2009**

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 2009. The official meeting days shall be the first Thursday of each month unless otherwise noted.

February 5, 2009

March 5, 2009

April 2, 2009

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

May 7, 2009
June 4, 2009
July 2, 2009
August 6, 2009
September 3, 2009
October 1, 2009
November 5, 2009
December 3, 2009
January 7, 2010 Regular/Reorganization

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

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen
NAYES: None
ABSTAIN: None

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT RESOLUTION
DESIGNATING OFFICIAL NEWSPAPERS
FOR THE YEAR 2009**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that the **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, 2009.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton,
Mr. Kutosh, Mr. Mullen
NAYES: None
ABSTAIN: None

**ZB#2008-7 Domagala, Karol – Request to Postpone Public Hearing to February 5, 2009
Block 21 Lot 16.01 – 90 Highland Avenue**

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

The Board reviewed a written request from Mr. Domagala requesting a postponement of his public hearing to February 5th.

Ms. Ryan offered a motion to approve the applicants request for a postponement to the February 5th meeting, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton, Mr. Kutosh,
Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2007-7 231 Bay Avenue, LLC – Request to Postpone P.H. to March 5, 2009
Block 63 Lot 19.01 – 231 Bay Avenue**

Mr. Mullen explained that the 231 Bay Avenue has requested another postponement due to public notice defects.

The Board briefly discussed this request.

Mr. May explained that there were some discrepancies on the plans and that he requested that amendments be submitted prior to him performing his review for the board..

Mr. Baxter explained that two people were not noticed from the property owners list and he recommends that the applicant be required to just renotice those two defects and not be required to renotice everyone and not be required to republish in the paper.

Mr. Fox offered a motion to grant the postponement to the March 5, 2009 meeting subject to the applicant renouncing the two people from the property owners list, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton, Mr. Kutosh,
Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB# 2008-2 Pace, Vincent – Request for Postponement to February 5, 2009.
Block 34 Lot 2 – 22 Prospect Street**

Mr. Mullen stated that the Board received a request from the applicant for a postponement of the public hearing to February 5, 2009.

The Board briefly discussed the postponement request.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

Ms. Ryan offered a motion to approve the postponement request to the February 5, 2009 meeting, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Kutosh,
Mr. Britton

NAYES: None

ABSTAIN: None

**ZB# 2008-6 Lentz, Douglas
Block 51 Lots 1 & 2 – 3 Cornwall Street
Approval of Resolution**

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

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

**RESOLUTION APPROVING VARIANCES
FOR LENTZ AT 3 CORNWALL STREET**

WHEREAS, the applicant, DOUGLAS LENTZ, is a member of the LLC (CORNWALL STREET, LLC), which owns the mixed-use property at 3 Cornwall Street, Highlands, New Jersey (Block 51, Lots 1 and 2); and

WHEREAS, the LLC filed an application to enclose the existing rear porch on the residential portion of the building; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at a public hearing on December 4, 2008; and

WHEREAS, the Board heard the testimony of the applicant, DOUGLAS LENTZ; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application and denial dated 11/8/08;
- A-3: Architectural plans by ANTHONY BUSCH, JR. dated 9/22/08 (3 pages);

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

A-4: Survey by RICHARD STOCKTON dated 9/15/08 and last revised 11/17/08; with handwritten calculations by MR. STOCKTON in upper right-hand corner;

A-5: Letter from ROBERT KEADY, JR., of T&M ASSOCIATES, to the Highlands Technical Assistant dated 12/1/08 advising that, as to flood plain review, the proposed construction is not a substantial improvement;

AND, WHEREAS, the following additional exhibits were marked into evidence as Board exhibits:

B-1: Email communication between DALE LEUBNER, of T&M, the Flood Plain Administrator, to RICHARD EINHORN, of FEMA;

B-2: Board Engineer's review letter dated 11/20/08;

AND, WHEREAS, no persons appeared in opposition or to ask questions about this application; and

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

1. The applicant is the owner of property located in the WC-1 Zone.
2. The site is on the Shrewsbury River and currently contains a one-story restaurant with covered patio (INLET CAFÉ) and a two-story residence, which is attached and to the immediate south of the restaurant portion.
3. The applicant seeks to enclose the open porch on the second floor, facing the river.
4. The applicant testified that he contacted the DEP (Department of Environmental Protection) and was advised by them that he was under the A-4 criteria, as a result of which his notification to DEP was sufficient, and there would be no written approval response by them (because this is, effectively, a "permit by rule").
5. By enclosing the porch, there will be a slight increase in the impervious coverage.
6. The applicant's proposal envisions total square footage, for zoning purposes, of 4,849 square feet, resulting in a proposed building coverage of 34.7%.
7. Cornwall Street, which is to the north of the structure, separates the subject property from the WINDANSEA RESTAURANT. Both restaurants face the water.
8. The subject was originally designed as a "mom and pop" operation, where the restaurant could operate downstairs, and the residence would be to the north, both upstairs and downstairs.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

9. Because of the age and condition of the structure, it is in critical need of improvements and living space.

10. The current structure houses three bedrooms. If approved, the structure will continue to have three bedrooms.

11. The applicant considers the river side of the building to be the front, and it is deteriorating.

12. There will be no change in the height of the structure.

13. The change in building coverage is *de minimus*.

14. Though the neighbor to the immediate north was present at the hearing, he did not ask any questions or voice any objection. Though not sworn, he did comment that he had "no problems" with the application.

15. The applicant seeks variances for the following preexisting conditions: Minimum lot frontage of 72.37 feet on Shrewsbury Avenue, where 100 feet is required; minimum lot width of approximately 87 feet, where 100 feet is required; minimum front yard setback on Cornwall Street of 8 feet, where 20 feet is required; and minimum side yard setback of .95 feet, where 8 feet is required.

16. The applicant also seeks variances for maximum building coverage of 34.7%, where 25% is permitted; maximum impervious coverage of 90.3%, where 65% is permitted (bearing in mind that the pre-application status was 88.3% impervious coverage); and the applicant also seeks a variance for expansion of a prior non-conforming use.

17. The enclosure of the front/river-side porch will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance and, based upon the testimony, the Board is empowered to grant the bulk variances pursuant to N.J.S.A. 40:55d-70c(2), since the purposes of the MLUL would be advanced and the benefits of these deviations substantially outweigh any detriments, as there are no detriments.

18. The Board further finds that this variance can be granted under N.J.S.A. 40:55D-70d(2) because of the special circumstances in upgrading an old home which is in need of the same, and for special reasons as defined in N.J.S.A. 40:55D-2(i).

19. The Board finds that the proposal will be both an improvement to the home and its appearance, and, therefore, to the area in general.

20. The applicant was unable to identify, and neither was the Board, any detrimental features or impacts of the proposal.

WHEREAS, the application was heard by the Board at its meeting on December 4, 2008, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of DOUGLAS LENTZ, on behalf of CORNWALL STREET, LLC, to enclose the existing second-story porch on the river side of the residential portion of the structure, in accordance with the plans submitted, is hereby approved. Variances are hereby granted for the preexisting conditions noted in #15 above and for the building

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

coverage and impervious coverage conditions enumerated in #16 above; and the use variance for expanding a non-conforming use, which is de minimus,, is also granted. This approval is subject to the following conditions:

1. Installation of flood vents, as recommended by the Flood Administrator.
2. The Construction Official shall satisfy himself that no further action or approval is required from the DEP.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Mullen

NAYES: None

ABSTAIN: None

Review of ZB 20008 Annual Report

The Board reviewed the following report:

2008 ZONING BOARD ANNUAL REPORT

Prepared by: Carolyn Cummins, Board Secretary

Date: December 9, 2008

**ZB#2006-10 Hall, George
Block 116 Lots 12 & 14, 410 Highway 36 (B-1 & R-2.03 Zones)
Denied 2-7-2008**

The Board denied the application for a use variance, bulk variances and site plan approval to construct/establish a rehabilitative boxing school for "at risk" youth.

**ZB#2007-7 231 Bay Avenue, LLC
Block 63 Lot 19.01, 231 Bay Avenue (R-2.02 Zone)
PENDING**

Application to renovate existing building to contain retail on the first floor, office and storage space, two (2) two bedroom apartments on the second floor.

**ZB#2007-8 Morales, Peter
Block 108 Lot 1, 440B Highway 36 (B-1 Zone)
Withdrawn – May 2008**

This was an application for a use variance to operate a marine mobile repair business at the site.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

**ZB#2007-9 Magrans, Michael
Block 46 Lots 2 & 3, 111/123 Bay Avenue (B-2 Zone)
Withdrawn – August 2008**

This was an application to construct a mixed use structure. The applicant was seeking use and bulk variances and site plan approval.

**ZB#2008-1 Blaskovich, Matthew
Block 100 Lot 26.42, 42 Gravelly Point Road (R-2.03 Zone)
Approved 4-3-2008**

The Board approved the application to add a second story addition and for the keeping of an existing shed and granted the following:

Variances Granted:

Front Yard - 2-feet, where 3 feet is required
Rear Yard - .3 feet, where 3 feet is required
Building Coverage - 39.6%, where 35% is allowed
Height Variance - 21.5 feet

**ZB#2008-2 Pace, Vincent
Block 34 Lot 2, 22 Prospect Street (R-1.01)
PENDING**

Application to construct a new garage. A variance is needed to permit an accessory structure to be located in the front yard.

**ZB#2008-3 Knox 400, LLC
Block 108 Lot 2.01, 460 Highway 36 (H-O Zone)
Withdrawn Nov. 2008**

This was an application for a two story addition to the existing building. The application proposed that the entire first floor and a portion of the second floor be used as a Health Fitness Club and that the second floor existing residential apartment remain. The applicant was seeking use variance for an expansion of a non-conforming use, site plan approval and variances for lot coverage and possibly parking.

**ZB#2008-4 Wood, Thomas
Block 26 Lot 9.02, 3. South Peak Street (R-1.01 Zone)
Approved 9-4-2008**

The Board approved the application to remove existing front porch landing and to construct a new front porch of 10 feet by six feet.

Variances Granted:

Front Yard - 27 feet, where 35 feet is required

**ZB#2008-5 Sendowski, Oren
Block 43 Lot 6 – 30 Shrewsbury Avenue (WT-R Zone)
Withdrawn 8-7-08**

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

Application to demolish existing dwelling and construct a new one-family home. The application was seeking a use (height) variance.

**ZB#2008-6 Lentz, Douglas
 Block 51 Lots 1 & 2, 3 Cornwall Street (WC-1 Zone)
 APPROVED 1-19-2009**

The Board approved the application to enclose the existing rear porch on the residential portion of the building to increase the interior living space. A use variance was granted for the expansion of a non-conforming use. Variances were granted for pre-existing conditions for lot coverage, lot width, lot depth, front yard, side yard. The following new variances were granted:

Variances Granted:

Building Coverage -	34.2%, where 25% is allowed
Impervious Coverage -	90.3%, where 65% is allowed
Use -	Expansion of non-conforming use

**ZB#2008-7 Domagala, Karol
 Block 21 Lot 16.01, 90 Highland Avenue (R-1.01 Zone)
 PENDING**

Application to construct bi-level deck attached to the rear of the existing structure.

The Board then discussed possible zoning ordinance amendment recommendations.

Mr. Mullen spoke about the following:

1. He spoke about last years request to the Council to put in some definitions and move that part of the law regarding athletic clubs and adult businesses into the zoning ordinance.

2. He suggested that something should be put in the ordinance to recognize the requirement for approval from NJDEP.

The Board Secretary indicated that the applicant is informed of this requirement when they receive a zoning determination by the Zoning Officer.

3. We need more direction of housing in the business zone, need limitations of number of units. Council should refer to the Planning Board to look into how to address density requirements in business zones which he further explained and the board discussed.

The Board briefly discussed if it was possible to limit the amount of time a witness could testify referring to the Opportunity Knox application and the amount of testimony that was given.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

Mr. Gallagher offered the approval of the 2008 Zoning Board Annual Report with the addition of Mr. Mullen's comments, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

**AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Britton, Mr. Kutosh,
Mr. Mullen**

Change Meeting Start Time Discussion

The Board then spoke about possibly changing the meeting start time and it was then decided that more were in favor of leaving the meeting start time as is at 7:30 P.M.

Amendment of By-Laws

Mr. Baxter read the proposed amendment in Section 9 for approval.

The Board then spoke about consented to allowing the applicants the option of submitting 7 large full sets of plans and 10 sets of half scale plans verses submitting 17 large full sets.

Mr. Mullen offered the approval of the following amendment to the By-Laws:

**BY-LAWS
OF THE ZONING BOARD OF ADJUSTMENT**

OF THE BOROUGH OF HIGHLANDS

(Last Amended 1/15/2009)

1. The Zoning Board Secretary or his/her designee shall advise each applicant of the opportunity to appear at the next scheduled meeting of the Board (whether a Regular Meeting Night or a Work Session) in order to set a hearing date, but the applicant need not be present. This shall be done before the applicant publishes or serves notices pursuant to State Law.

1A. Each applicant shall furnish to the Zoning Board Secretary at least 48 hours prior to their scheduled hearing date proof of service and proof of newspaper publication.

1B. In all instances where the submission of plans is necessary, the applicant will submit to the Zoning Board Secretary 10 days prior to their scheduled hearing date 17 sets of folded plans. Failure to do so shall result in applicant's case being scheduled to another date.

1C. The Zoning Board Secretary shall supply the applicant with a receipt setting forth the date and the list of documents submitted.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

2. A recommendation shall be made by the Board to the Governing Body for removal of any Board Member who misses five (5) or more meetings in one calendar year. In addition, the Board Secretary or Board Chairman shall be notified by any Board Member who will be absent for any duly scheduled meeting of the Board (Section 2. Amended November 4, 1993)

3. At the conclusion of all testimony and public comment, voting on the application will occur at the next meeting of the Board provided that all taxes and sewer bills are paid to date. It is expected that every Board Member will inspect the property prior to voting. In particular cases where time is a factor or application is not complex, the Board, in its discretion, may waive this delay.

4. All meetings shall commence at 7:30 P.M. or as soon thereafter as possible, and the public portion shall end at 10:00 P.M. or at the discretion of the Chairperson, at the conclusion of the testimony being given by the witness testifying at the time. Each applicant shall have at least one (1) hour of time for testimony including questions and statements from the public in one meeting date. In any event, a meeting will not proceed past 11:00 P.M.

5. The Secretary shall keep all records, conduct all correspondence of the Board and supervise the clerical work of the Board. The Secretary shall keep a Minute Book of the proceedings of each meeting and each hearing which shall include the vote of each member on each question, or if absent or failing to vote, indicating such fact; the names and addresses of all witnesses, and other official actions of the Board. The Board Secretary shall provide all Board Members with Minutes of the past previous meeting at the time that he/she distributes the agenda to the Board Members.

6A. A tape recording shall be made by the Board Secretary of all testimony and all official actions and deliberations of the Board. Said recordings shall be preserved in accordance with applicable law.

6B. Request to hear tape recordings or to read transcripts if only (1) copy is available must be made by the Zoning Board Secretary at least 48 hours in advance. No reviewing of same will be permitted on the same date as a meeting, except in cases of emergency.

6C. Executive Sessions will be recorded on separate tapes from the Regular Meeting's Minutes Tapes and will be maintained separately and will be released only pursuant to law.

7. Special meetings may be called by the Chairperson at any time provided that at least 48 hours notice shall be given to each member. The Chairperson shall call a Special Meeting within ten (10) days of receipt of a written request from any two members of the Board. All such Special Meetings shall comply with the Open Public Meetings Act ("Sunshine Law").

8. Whenever there are no variances or other pertinent business to be considered at a Regular Meeting, the Chairperson may dispense with such meeting by so notifying each member, the attorney and engineer at least 48 hours prior to the time set for the meeting. The Chairperson at his/her discretion will notify the engineer within 48 hours if their presence is not required for a meeting.

9. At Regular Meetings, the order of business shall be:

- (A) Call to Order
- (B) Pledge to Flag
- (C) Open Public Meeting Statement/Roll Call
- (D) Motions For Adjournment of Scheduled Cases and Other Motions

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

- (E) Approval of Minutes of Previous Meetings
- (F) Approval of Resolutions
- (G) Unfinished or Adjourned Hearings: Shall proceed in chronological order based on filing date of a complete application. Applicant shall retain its hearing position, even after one adjournment requested by the applicant and approved by the Board. If the applicant requests a second adjournment, and the Board approves the same, that application shall go to the end of the line, in hearing order. This procedure shall apply to all applications, unless the Board shall override the same for cause. (Amended 10/6/04)
- (H) Hearings on New Business
- (I) Action on Any Other Business
- (J) Communications and Vouchers
- (K) Adjournment

The Chair shall have the authority to change the order of business if, in his/her discretion, there is good cause to do so. The order of business may also be changed at a particular meeting by majority vote of the quorum.

10. Each year, at the Re-Organization Meeting, there will be established a voting order for the coming year. In all cases the Chairman shall have the privilege of voting last. Other Regular Members shall vote in order of Seniority with the person having the greater number of consecutive years served on the board voting first. In cases where there is more than one member with the same amount of consecutive years served, the Chairman will decide the order. Alternate Members, when voting, will vote at the end of the voting order, but before the Chairman. (Amended 3/5/98)

11. Regular Members will sit at the Meeting Table, Alternate Members will sit to the rear. When a Regular Member is absent or disqualifies themselves from a case, Alternate #1 (if available) will assume that Regular Members seat and voting position. To the extent possible, all members will direct their request to the Chairperson to ask a question of an applicant, witness, etc. The Chairperson will recognize the individual member by name so the record will be clear as to which Board Member is speaking.

12. Procedural or routine matters may be decided by voice vote. All other decisions or where the voice vote does not indicate unanimity, shall be decided by roll call vote.

13. These rules may be amended at any regular meeting by affirmative vote of a majority of the members of the Board, provided that such amendments have been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.

14. In the event that less than a quorum shall be in attendance at the time for which a meeting shall have been called, the meeting may, after the lapse of at least 15 minutes, be adjourned to a date and time to be fixed by a majority vote of those board members present at any adjourned meeting which might have been transacted if the meeting had been held as originally called.

15. In the event that any of the aforementioned Rules, Regulations, or By-Laws conflict with State Law or local Ordinance, the provisions of such Law or Ordinance shall control.

Approval of Minutes:

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
January 15, 2009**

Ms. Ryan offered a motion and moved on the approval of the December 4, 2008 Zoning Board Minutes, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Mullen

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 8:35 P.M.

CAROLYN CUMMINS, BOARD SECRETARY