

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
April 2, 2009**

Mr. Mullen called the meeting to order at 7:35 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 Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Britton, Mr. Gallagher, Mr. Mullen, Mr. Kutosh

Late Arrival: Ms. Tierney arrived at 7:40 P.M.

Absent: Mr. Anthony

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

**ZB# Colby Plumbing & Mechanical, Inc. – Request for Interpretation
For Property Located at Block 64 Lot 1 – 196 Bay Avenue**

Present: Lawrence Colby

The Board reviewed the Request for Interpretation documents.

Ms. Tierney arrived to the meeting.

Mr. Colby – I was going to request an adjournment so I could submit a full package to the board. He stated that he does not want to apply for a variance.

Mr. Baxter explained that the board is not going to hear the case tonight.

Mr. Colby stated that he was going to close on the building and it's going to be held up. His intension is not to seek variance relief because he does not feel that it's needed.

The Board reviewed the application with Mr. Colby and the following was stated:

1. The Board will need a complete copy of the Zoning Officers File.
2. The applicant must submit a survey of the site.
3. The Zoning Officer needs to be present at the hearing.

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Mr. Baxter stated that he feels that the applicant must serve public notice of the hearing because it's a use issue, which he further explained.

Mr. Colby argued that he does not have serve public notice. He further explained his arguments that the Zoning Officer is incorrect and that this is not a use variance issue.

Mr. Baxter stated that it's not appropriate for Mr. Colby to discuss the facts of the case at this time.

Mr. Baxter stated that it is up to the board if they are going to require the applicant to serve public notice but it is his opinion that the applicant should be required to do so. He further explained his opinion for requiring public notice.

Mr. Colby stated that he is not willing to serve public notice because the cost of doing so is a burden. He also stated that he does not want to have to hire an attorney.

Mr. Baxter asked if he was the sole owner.

Mr. Colby stated that he is sole owner of the business.

Mr. Baxter – then you are not required to have an attorney.

Mr. Colby further argued against being required to serve public notice and stated that he would rather get a summons and go to Superior Court.

Mr. Mullen offered a motion to require Mr. Colby to serve public notice, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Fox, Mr. Gallagher, Ms. Tierney, Mr. Mullen

NAYES: Ms. Ryan, Mr. Britton

ABSTAIN: None

Mr. Mullen – motion carries.

Mr. Colby – then I would like to withdraw my request for an interpretation.

**ZB#2008-7 Domagala, Karol
Block 21 Lot 16.01 – 90 Highland Avenue
Approval of Resolution**

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

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

4/2/09

**RESOLUTION APPROVING VARIANCES
FOR DOMAGALA AT 90 HIGHLAND AVENUE**

WHEREAS, the applicant, KAROL DOMAGALA, is the owner of a single-family home at 90 Highland Avenue, Highlands, New Jersey (Block 21, Lot 16.01); and

WHEREAS, MR. DOMAGALA filed an application to add a second story deck at the rear of his home; 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 March 5, 2009; and

WHEREAS, the Board heard the testimony of the applicant, KAROL DOMAGALA; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application denial;
- A-3: Minor subdivision resolution of approval by Planning Board dated 3/11/04;
- A-4: Subdivision map by RICHARD STOCKTON dated 11/25/03;
- A-5a through f: Six 4" X 6" color photographs of home;
- A-6: Enlargement of Stockton survey with setback distances drawn thereon by applicant;

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

- B-1: Board Engineer's review letter dated 11/18/08;

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

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

1. The applicant is the owner of a single-family home located in the R-1.01 Zone.

2. This lot was the subject of a minor subdivision application before the Highlands Planning Board, which resulted in a resolution introduced as Exhibit A-3; which resolution had the effect of moving the lot line further to the rear of the applicant's property. In doing so, the applicant acquired ten feet of depth into his northerly neighbor's property, creating an irregularly-shaped lot.

3. The applicant has undertaken improvements to the home, creating a visually appealing appearance. In doing so, the windows and façade at the rear of the house are all relatively new. On the second floor, there are two glass doors, which currently do not exit onto any deck or platform.

4. There is no available land abutting the premises which the applicant can acquire.

5. If granted, the application will not result in the addition or loss of any parking spaces.

6. The applicant proposes to build a second-story deck running the width of the home and extending ten feet from the rear of the home. It will be a complete rectangle.

7. The proposed new deck will be immediately above the lower deck; however, the lower deck only extends off the westerly portion of the rear of the home.

8. The applicant testified that none of his neighbors had anything negative to say about his application. He further testified, and the Board accepts the same as true, that the additional deck will not impinge on any neighbor's property.

9. The house to the left of the applicant also has a deck on the second floor.

10. The ground floor at the rear of the house is one level below the ground floor at the front of the house, because of the slope. Accordingly, looking at the house from the rear, the first living level is on the second story. The proposed deck will be off the third story at the rear of the home (which is the second story at the front of the home).

11. The property drops off to the north, and the home to the north is a one level ranch-style structure. The deck to be installed will give this homeowner a view of the water.

12. Though the applicant's plans (Exhibit A-6) show a distance of 15 feet from the corner of the proposed deck to the rear property line, the Board calculates the distance as closer to 10 feet.

13. If the applicant were to build a deck immediately above the existing deck, and no larger, the railings for the new deck would strike the glass windows on the second floor.

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14. The applicant seeks variances for several preexisting conditions, as well as a rear yard setback variance of no more than 10 feet, where 25 feet is required.

15. The applicant seeks variances for the following preexisting conditions: Minimum lot area of 2,853 square feet, where 5,000 square feet is required; minimum lot frontage of 28.80 feet, where 50 feet is required; minimum lot width of 30 feet, where 50 feet is required; minimum lot depth of 90 feet, where 100 feet is required; minimum front yard setback of 17.6 feet, where 35 feet is required; and minimum side yard setbacks of 3.2 feet on the west and 7.7 feet on the east, where 8.5 feet is required.

16. The addition of an exterior unenclosed deck on the second living level at the rear will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant this bulk variance pursuant to N.J.S.A. 40:55d-70c(2), since the purposes of the M.L.U.L. would be advanced, and the benefits of these deviations substantially outweigh any detriments.

17. The Board finds no detriment to the property or neighborhood if this application is granted.

WHEREAS, the application was heard by the Board at its meeting on March 5, 2009, 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 KAROL DOMAGALA to add an unenclosed second-story porch of 10 feet in depth, running the width of the home, in accordance with the plans and testimony submitted, is hereby approved. Variances are further granted for all of the preexisting conditions noted in #15. This approval is subject to the following conditions:

1. The distance between the rear property line and the closest portion of the new deck shall not be less than 10 feet.
2. The sides of the deck shall be in line with the existing home, so that the deck does not protrude beyond the easterly or westerly side lines of the house.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2008-2 Pace, Vincent
Block 34 Lot 2 – 22 Prospect Street
Unfinished Hearing – Request for Postponement**

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**Present: Vincent Pace
Michael Kovic, Builder**

Mr. Mullen – the Board did not receive any more information with regard to this application and that is what the board was anticipating getting. He then asked if the applicant was going to proceed this evening.

Mr. Kovic – do we have enough members to proceed this evening.

Mr. Mullen stated that there were Affidavits from board members stating that they have listened to meeting tapes so they are eligible to vote on this matter.

Mr. Kovic explained that they don't have any further information with regard to the issues that were raised at the last hearing. He explained that three engineers that he contacted failed to come through with the information.

Mr. Mullen – would you prefer to postpone so that you can obtain that information.

Mr. Pace – could I be on the next meeting.

Mr. Mullen – sure

Mr. Kovic – he was given two engineer names that he feels would be able to provide the information.

Mr. Mullen – the board felt that the information was important given that the property is on a steep slope and it would be difficult to proceed tonight without that information.

Mr. Pace stated that the engineer pulled out two days ago but did give him two other engineer names to contact.

Mr. Mullen – so if we postpone this case to the May meeting that would work for you.

Mr. Pace – that would work.

Mr. Mullen offered a motion to move the public hearing to the May 7th meeting, seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

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

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Mr. Baxter stated that the Board has certifications from Mr. Braswell, Mr. Kutosh and Tara Ryan that they have listened to meeting tapes for this matter.

Mr. Mullen advised the public that this matter has been adjourned to the May 7th meeting and that there would be no further public notice.

**ZB#2007-7 231 Bay Avenue, LLC
Block 63 Lot 19.01 – 231 Bay Avenue
Unfinished Hearing**

Present: James Clarkin Esq.
Peter Comanis, Applicant
Mr. El-Hawwat, Engineer

Mr. Baxter recapped the history of this application and stated that there has been one hearing on this matter that was on May 1, 2008 and exhibits were marked into evidence that evening.

Mrs. Cummins stated that Affidavits from Board Members are on file and that every board member is eligible to vote on this application except for Ms. Tierney.

Mr. Baxter stated that there is an Affidavit from Mr. Kutosh and Mr. Mullen stating that they have listened to the May 1, 2008 Meeting tapes. He stated that Mr. El-Hawwat, P.E. and Mr. Comanis both testified at the May 1, 2008 hearing and that was based on plans that have since been revised.

Mr. Mullen – are we going to be actually starting this case over or are we going to be relying on previous testimony?

Mr. Clarkin – the only testimony that we are not going to repeat was the very limited testimony of Mr. Comanis who is the sole owner of the LLC. However, we are starting fresh with the engineer.

Mr. Baxter read through a list of previously marked exhibits.

Mr. Clarkin – at this point he would stick with exhibits A-1 through A-5 and get rid of exhibits A-6 through A-8 because they are no longer current.

Mr. Baxter – Exhibit A-6, A-7 and A-8 are now being removed from evidence.

The following documents were marked into evidence this evening:

B-2: Board Engineer Fourth Review Letter dated 3/31/09;

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- A-9: Proposed Site Improvement Plans last revised on 3/3/09 by Mr. El-Hawwat;
- A-10: Flood Letter prepared by T & M Associates dated 1/6/2009;
- A-11: Drainage Report prepared by Mr. El-Hawwat dated 12/16/08;
- A-12: Survey prepared by W. Doran dated 9/17/2003;
- A-13: Architectural Plans prepared by W. Doran consisting of two pages
- A-9a: Same as A-9 but on large board.

Mr. Mullen – the review letter made by the Zoning Officer hasn't been updated since the original application made to the Borough.

Mr. Clarkin – I will do that.

Mr. Mullen then explained the public hearing process to the public.

Mr. Baxter then stated that the last public notice did contain building height language.

Mr. Clarkin stated that the subject property is located at 231 Bay Avenue in the R-2.02 Zone. This is the fourth plan revision. The property has been vacant for nine years. The last uses when the building was occupied were a restaurant tavern and a boarding house and an office; all of which were non-conforming. The principal feature is to raise the building and provide parking on the first floor. Eighteen parking spaces are required and eighteen spaces are proposed.

Joseph May, P.E., Board Engineer of CMX, Inc. was sworn in.

Mr. Clarkin called Mr. El-Hawwat up to testify (sworn in at previous hearing).

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

1. He stated that he is a licensed engineer in the State of New Jersey.
2. Basically the same building will be raised above the flood.

Mr. Clarkin then stated that this application required the following Variances: use variance for commercial use, use variance for residential use, use variance for height, lot coverage of 80% plus a number of non-conforming existing conditions which are proposed to be continued. They have not been informed of a density issue.

Mr. Mullen explained that it's a single family zone and the density is set by lot area.

Mr. Clarkin explained that the proposed density is less than the previously denied application. The density to him is not really an issue because its single family permitted and multi-family is proposed. He then stated that they are expanding the building and getting rid of the old uses and keeping the building and lifting it up.

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

1. He described the portion of the front of the building that will be demolished.
2. He then referred to Exhibit A-9a and stated that the footprint gets smaller than the last plan but the building gets higher.
3. There is also an addition that is being proposed for the upper floors.
4. He described the site layout and stated that they are raising the building up and it's basically in the same location and they added two walkways to access the first floor. They were able to put seven parking spaces at the end of the building and push southern five parking spaces away from Second Street which was an issue at the last meeting. They have enhanced the property to control the two year storm and provide more landscaping and better access to the site.
5. He described the location of the employee parking spaces.
The board questioned how someone can get into those parking spaces and how they can get out of the parking spaces. Mr. El-Hawwat stated that parking is a tight fit.
6. He stated that fire sprinklers are not required according to the Architect.

Mr. Clarkin – we tried to give you a plan that conformed with the parking and there is no question, it's tight. Do we want to eliminate a parking space or two and go for a parking variance in order to make the spaces work a little better, we are agreeable to that.

Mr. Mullen questioned the reason for raising the building versus flood proofing the building and having the commercial spaces on the first floor and requiring a height variance.

Mr. El-Hawwat continued his testimony as follow:

7. The property owner wants to raise the building out of the flood plain which also provides for parking under the structure.

Mr. Clarkin – what it comes down to is what is more important? If we don't raise the building off of the ground then we are extremely short on the parking. We have a tough site because the building is where it is and the site is constrained the way it is with roadways on three sides. If someone has a better idea they would certainly listen to it.

Mr. Mullen is concerned that this is a residential community and this is a larger structure and it's a multi-family building and the applicant is elevating it to get parking to satisfy the expansion of the building. You probably wouldn't need this extra parking that you are putting under the building if you weren't expanding the building to create that pressure on the site. By adding that additional floor area on the third floor you have created that demand to parking. You were close to meeting the parking requirement for both the commercial and residential without doing any additional residential area.

Mr. El-Hawwat continued his testimony as follows:

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8. They will have fencing around building to buffer parking area under building.
9. The cars that are parked under the structure will exit the site by going through the parking lot and leave from the driveway onto Cedar Street.
10. There are 11 parking spaces in the back and seven spaces under the building.
11. He then described how the cars would circulate through the site.
12. The size of the parking spaces are 9 1.2 by 24 and the isle is _____.
13. There will be pillars and maybe we can have the Architect revisit where the pillars are located so that they don't interfere with cars circulating.

Mr. Mullen and Ms. Ryan both expressed their concerns with the proposed parking plan and turning radius.

Mr. Mullen – by elevating the building it makes it not in character with the neighborhood because there are no elevating structures in the neighborhood. It may also make the commercial area suffer because he does not think that second floor commercial can be used for the same things that first floor commercials can be used for.

Mr. El-Hawwat continued his testimony as follows:

14. The building is where it is and is just being raised.

Mr. Mullen – I think that when you think about doing a new foundation for a building I would think that the building should be set parallel to the eastern property line.

Mr. Mullen explained that there are two ways to deal with the flood issue. One is to elevate the structure so you are out of the flood zone. The other which he thinks might be more appropriate is to change the structure on the ground floor of the building so it can be flood proofed. Right now the type of structure may be difficult to flood proof. Then you would have a walk in level commercial area and residences above it.

Mrs. Clarkin stated that it appears that the board does not like the idea of raising the building. We are on our fourth review and we would desperately like to have some input so that we can get something that the board is comfortable with and to only have to come back to the board one more time.

Mr. Mullen – I think that you should make a proposal that uses the grade level floor for commercial purposes flood proofed which he further explained. The second floor would be the first floor residential. He feels that the applicant is creating a parking problem by creating by putting another unit on the top there that's in a space that is not part of the original building its now sitting on top of the addition of the building and if it weren't there then there would probably be a dominium parking issue and you would be building within the existing structure.

Mr. Braswell agrees with Mr. Mullen and further added that he would like to see the building stay the same making the first floor commercial and not expanding the residential spaces.

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Mr. Mullen – by getting rid of the front bit of the building is a big improvement to the building and he thinks that the building has some character. He feels that the residential layouts are excellent and if there were two residential units it would then fit into the residential requirement there. The bonus there would be the commercial that no one else has there.

Mr. Gallagher – the biggest objection that he had at the last hearing was the exit onto Cedar Street.

Mr. Mullen – they got rid of that.

Mr. Braswell questioned if they are not raising the building then would they still remove the front bump out because architecturally he likes that.

Mr. May – I think the board touched on the parking issue, that the driveway isle is not big enough. He wants to compare the previous parking layout so they could perhaps give them some thoughts on their previous parking layout verses this layout.

Ms. Tierney wanted to know if the Fire Official reviewed the plans for compliance. She requested that he review this.

Mr. Clarkin requested a brief recess at 8:56 and the board granted the applicant a recess.

Approval of Minutes:

Mr. Gallagher offered a motion to approve the March 5, 2009 Zoning Board Minutes, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2007-7 231 Bay Ave, LLC
Block 63 Lot 19.01 – 231 Bay Avenue
Unfinished Hearing**

Mr. Clarkin returned at 9:00 P.M.

Mr. Clarkin stated that they are amendable to leaving the building at grade level putting two retail stores on the first floor and putting two residential units upstairs. His client would like to address the board and was sworn at the last hearing and remains sworn.

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Mr. Mullen asked if there were any questions from the public for Mr. El-Hawwat but there were none.

Peter Comanis stated the following during his testimony and response to questions from the board:

1. He is happy with the board giving him direction and explained his reason for raising the building. He stated that he does mind leaving the building where it is and having two retail stores and two residential but what he would really prefer is the way it looks, the addition part – put the second residential there and just don't do the third one, leave the third floor empty. This way it would look better outside, because the building would match the way that the architect did it, so it doesn't have a peak and then a flat roof. So both residential uses would be on the second floor and nothing would be on the third floor.
2. Three sides of the foundation are on block foundation.
3. If the board wants the front notch out then he will do that.
4. He explained that the building can't be moved.

Mr. Mullen – with regard to the addition or no addition on the floor above he thought by not putting the addition there he thought you could have a wonderful outdoor space for that unit which you don't have for these units.

The Board had a discussion with Mr. Clarkin and the applicant about another hearing date.

Mr. Clarkin – let's take the May 7th meeting date.

Mr. Baxter reminded Mr. Clarkin that any amendments must be submitted to the board at least 10-days prior to the hearing date.

Mr. Clarkin granted the board an extension of time to act on this matter to May 7, 2009.

Mr. Fox offered a motion to carry this hearing to the May 7, 2009 meeting, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 9:11 P.M.

CAROLYN CUMMINS, BOARD SECRETARY