

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
May 7, 2009**

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 read the following statements; 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. Anthony, Mr. Gallagher,  
Mr. Mullen, Mr. Kutosh

**Absent:** Mr. Fox, Mr. Britton, Ms. Tierney

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

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**ZB#2009-2 Dorau, Karl & Hala  
Block 115 lot 3 – 130 Linden Avenue  
Application Review & Set P.H. Date**

**Present:** Hala & Karl Dorau

**Conflict:** Mr. Gallagher stated that he has a conflict on this application.

The Board reviewed the application with the applicant and the following was stated:

1. Ms. Hala explained that they purchased the house with an existing deck and after the closing took place their insurance company sent them a notice that the deck was unsafe and that it must be repaired or they would cancel their insurance. So she wants to replace the existing deck which needs sufficient support of footings. The subject property sits on a top of a slope and they need a deck with hand rails for safety issues.
2. Mrs. Dorau stated that the existing deck has been removed.
3. The Board requested that the applicant provide a professional at the public hearing to discuss the stabilization of the hill and that it would support building on top of the slope.
4. The Board asked if her professional engineer did soil borings and she was not sure.
5. The Board suggested that the applicant have her engineer contact the Board Engineer.
6. The Board wants to know what they are putting the foundation on and if the slope can hold the load.
7. She is having an Architect do drawings of the deck with a hand rail.
8. The Board requested that the deck and foundation system must both agree.

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9. The Board requested that all footings be placed on the plan and that the entire deck be shown as well.
10. Mr. Baxter explained the public notice requirement to the applicant.
11. The applicant should bring photographs of the site.
12. The applicant was advised to check the side yard setbacks to see if a variance was needed and if so that it should be included in her public notice (possible side yard setbacks) along with relief from steep slope ordinance.
13. The Board informed the applicant that they can provide the requested material in less than 10-days prior to the meeting.
14. The applicant requested a June public hearing date.

Ms. Ryan offered a motion to schedule this matter for a public hearing on June 4, 2009, seconded by Mr. Braswell and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Braswell, Ms. Ryan, Mr. Anthony, Mr. Kutosh, Mr. Mullen**  
**NAYES: None**  
**ABSTAIN: None**

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**ZB#2007-7 231 Bay Avenue, LLC (8:07 P.M.)  
Block 63 Lot 19.01 – 231 Bay Avenue  
Unfinished Public Hearing**

**Present: Peter Vignuolo, Attorney  
Thomas Bogdan, Professional Planner  
William Doran, A.I.A.  
Mr. El-Hawatt, P.E.**

Mr. Vignuolo gave a recap of the application and previous hearing. He stated that this application was previously for three residential units with commercial in a raised structure and as a result of board comments they removed the previous height variance and reduced the residential component units from three units to two units. Additionally the applicant has reduced the building back to grade level. He stated that the previous use of the site was a restaurant/tavern, apartments and boarding house. They are seeking a use variance for the mixed use and a parking variance of 13 spaces ,where 15 is required.

Mr. Baxter then distributed a listing of previously marked exhibits.

The following new exhibits were marked into evidence:

- A-14: Proposed site improvement plans sheets Y-1 through Y-5 last Revised on 4/15/09 prepared by El-Hawatt, P.E. (This is a spinoff of A-9);

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- A-15: Architectural Plans prepared by Mr. Doran last revised 4/15/09, which Updates A-13;
- A-16: Page 3 of A-15 on large board.
- B-3: Revised Board Engineer Letter dated 5/7/2009;
- B-4: Email from Dale Leubner re: Flood Review dated 5/7/09;
- B-5: Fire Prevention letter dated 5/7/09 Site Plan Requirement Form.

Mr. May then identified the changes in his revised review letter marked B-3. Page One – changed from three two-bedroom units to two two-bedroom units. Page 2, the building height is 28.5 feet. Page 3 proposed variance for building height has been removed, the parking variances has been revised based on the new plans. Page 4, the note about parking has been removed and he deleted item 2.6 that does not apply because they did provide a revised detail. Item 4.1 has been added about complying with flood proofing requirements. He also stated that the requirement of providing a storm water management report can be waived because the applicant provided a drainage report.

Mr. Vignuolo stated that the building height is actually 33 feet 11 inches, currently on the architectural plans.

Mr. May explained the calculation of the height ordinance.

Mr. Vignuolo called Mr. Doran up to testify.

Mr. William Doran, A.I.A. of 26 Dundee Road, Kendal Park, New Jersey was sworn in and stated the following during his testimony and response to questions from the board:

1. He described his education and professional qualifications as a License Architect in New Jersey.
2. The site currently has an existing commercial space on the first floor, a residential unit on the second floor. The applicant previously proposed to construct an addition to this property and that addition would have incorporated a third apartment
3. The current plans eliminate the third floor apartment. They are proposing to finish off the third level or attic of the building. We are proposing a couple of dormers across the long side of the building to accommodate new windows in that unit, other than that that is the only additional space. There is no change in the footprint of the building.
4. The is existing ground sign will remain the same but it will get moved. The sign will meet the ordinance requirements. They have two façade signs on the building and they will also meet the sign ordinance.
5. The property is currently located in a flood zone and the applicant is no longer proposing to raise the structure. They will leave the building just the way it is and meet the ordinance requirements and comply with Exhibit B-4. The Cedar Street side of the building is wood construction and the other three sides are a block construction. So the first floor of the building

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will be constructed of block construction which will allow for a flood protection system which he further explained.

6. The applicant reduced the previously proposed building height which will be 33 feet 11 inches to peak. There is not an increase in existing ridge line.

Mr. May stated that the building height is 28.6feet which is under the height requirement.

Mr. Doran continued his testimony as follows;

7. The first floor exterior will be painted/stuccoed with color. The second and third floor will have cedar impression on it.

8. The AC condenser will be above flood plain.

9. Gas Meters, if the board wants them to move them they can only ask the Gas Company to do so. If they are to remain then they must be protected.

Mr. Mullen asked if there were any questions from the public but there were none so Mr. Doran was excused.

Mr. Vignuolo called Mr. El-Hawatt up to testify.

Mr. El-Hawatt, P.E. was previously sworn in at the last hearing and stated the following during his testimony and response to questions from the board:

1. They went back and tried to conform with fire requirements of dumpster to be 15 feet from the building so they lost a parking space. He referred to Exhibit A-14 sheet y-3 and stated that they now have 13 parking spaces, which requires a two parking space variance.

2. With regard to the letter marked as Exhibit B-5, the applicant can comply. He also stated that they are not proposing any fire hydrant and that the fire system will be maintained and retrofitted.

3. The existing paved parking lot is in really bad shape and what they are proposing to do is rearrange the layout of the parking lot and to put a new top on it.

4. There will be a handicapped designated parking.

5. There is no existing or proposed temporary loading area.

6. The first floor will be a retail store and the second floor will be residential.

Mr. Vignuolo stated that the first floor retail space is two stores but if one person wants to use all of the space he does not believe that the applicant would have a problem with that.

Mr. El-Hawatt continued his testimony as follows:

7. No, the commercial space would not be a restaurant or high impact use.

8. The applicant has received Monmouth County Planning Board approval and the applicant is required to provide the County with an easement for future road widening of Bay Avenue and that area is designated on the plan which he further described.

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9. He then reviewed the Board Engineers Report which was marked as Exhibit B-3 as follows:

Item 2.1 – they can satisfy this.

Item 2.2 – he described where the sign is and where its proposed to be moved to and stated that it will be a new ground standing sign that will conform to the ordinance.

Item 2.3 – they are requesting a waiver and Mr. May had no objection to this waiver. Bldg Lot coverage is 31.02 and Mr. May stated that this will require another parking space variance.

Item 2.4 – he described the handicapped accessible route to the building from the rear of the building. Mr. May stated that's acceptable.

Item 2.5 -They will comply with paying Parking Deficiency Fee.

Item 3.1 –Concerning Street Trees will comply as shown on plans.

Item 3.2 – Lighting Plan – Mr. Mullen stated that the lights mounted on building should be shielded and the fixtures should be reviewed by the Board Engineer so that no light is going off of the subject property.

Mr. Vignuolo stated the following:

Item 4.2 – The applicant request this to be condition of approval.

Item 4.3 – The applicant would request that this be a condition of approval.

Item 4.1 – The applicant would accept this as a condition of approval.

Mr. Mullen asked if there were any questions from the public for Mr. El-Hawatt.

Arnie Fuog of 50 Valley Street questioned the required easement for the County.

Mr. El-Hawatt explained that the County is requiring a 5-foot easement on Bay Avenue.

There were no further questions from the public for Mr. El-Hawatt.

Mr. Bogdan was called up to testify.

Mr. Baxter swears in Thomas Bogdan of New Brunswick, NJ.

Mr. Bogdan then stated the following during his testimony and response to questions from the Board:

1. He described his educational and professional background as a Licensed Architect in the State of New Jersey.

2. He did familiarize himself with the Borough's Zone Plan and Zoning Ordinance of the Borough and has recently visited the subject site.

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3. He described the surrounding uses of the site as being predominantly of residential uses, there are some commercial uses going in either direction on Bay Avenue. It's really very much mixed in this area.
4. The condition of the property today is in the condition that is probably better than you that of what you would expect for a building that has been vacant for eight years but it's not in great shape. The parking lot and grounds and remainder of the exterior of the site is in bad shape and in needs some work.
5. The property was previously a mixed use building used as a restaurant and tavern on the first floor and a boarding house up stairs.
6. The applicant's proposal for the uses is also mixed use commercial or retail on the first floor, one apartment on each on the second or third floors. Two bedroom apartments for each one.
7. The property is located in the R-2.02 Zone and the applicants proposed use is not permitted in this zone therefore the applicant is seeking a use variance.
8. He then explained that purpose 2.A of the Municipal Land Use Law promotion of the general safety and public welfare requires a proof that a property is particularly suited for the proposed use, so yes that is correct in this case. There are a number of special reasons that exist for the granting of this variances which he further explained each special reason. He believes that the application can be granted without impairing the zone plan and intent of the Zoning Ordinance which he explained. He does not see any negative impact for granting this variance. He then stated that he does not believe that when the Planning board and the Municipal Council adopted this zoning ordinance he does not believe that they considered this particular building, this singular site when they looked at the zoning for this area which he further explained.
9. He then spoke about the parking requirements of the residential code and that under the Residential Site Improvement Standards that application would fall under the definition of a garden apartment so the actual requirement for parking spaces for the residential would be two spaces for each unit under table 4.4. He believes that they need a variance for either one or two spaces and then spoke about the reasons for granting the parking variance. He then stated that the proposed uses have a less impact from a parking perspective versus a restaurant/tavern use.

Mr. May then stated that he wanted a better description of the proposed commercial uses because let's say it was a nail salon then there would be venting involved that might affect the neighborhood.

Mr. Mullen – yes, since there are uses prescribed in a zone that doesn't permit commercial uses so this is an appropriate question. So would the uses be those that would occur in another part of the borough like a B-1 or B-2 District.

Mr. Bogdan – we are requesting a use variance and the board can most likely put a list of commercial uses that they thought would be acceptable but it's extremely difficult to do that. It's extremely difficult for his client to say I definitely want a specific use.

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Mr. Mullen – it's not the intension of the board to restrict the use of the property. Its only to ensure that an appropriate use that is consistent with the relief that we are granting is established.

Mr. Bogdan – if there are uses that the board feels are unacceptable for that then I think we would rather that.

Mr. Mullen – I would think that any use that is permitted in the B-1 and B-2 District would be permitted to be a permitted to be an establishment.

Mr. Gallagher – it's not going to be a bar or restaurant.

Mr. Mullen – yes, with the exception that there are restaurants in the B-2 Zone and it can't be a restaurant.

Mr. Bogdan – it's not going to be a restaurant but if it were to be something like a nail salon it would have to be according to all applicable codes with regard to vents.

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

The Board had a discussion about the commercial uses.

Mr. Vignuolo stated that the applicant would have no objection with a restaurant being a use that is prohibited at this site.

Mr. Mullen – I think that part of the reason that this is ideal is one that they are changing the use from a restaurant which has a much higher parking requirement than a store or retail store does. So he would definitely not want this to go to a restaurant use.

Mr. Mullen asked if there were any comments from the public but there were none; therefore Mr. Mullen closed the public hearing on this application.

Mr. Mullen – I think that this applicant has done an excellent job here. He thinks it's a great reuse of this existing structure and he thinks by not elevating the building and creating more parking and putting the other units in here would have made Mr. Bogdan's testimony impossible because he was creating so many more requests for intense use of this case. He thinks that his summary that this is a less intense use, it's been there for years and years and is compatible with the neighborhood and he thinks that it will remain to be compatible. Even more compatible as a retail establishment or office verses a restaurant So he would support this application.

Mr. Braswell stated that he believes that by successfully demonstrating the flood proofing of the first floor that this will be a Highlands milestone.

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Mr. Baxter gave a recap of the conditions of approval as discussed throughout the hearing as follows:

1. That items 2.1, 2.2, 2.5 of the Board Engineers Review Letter be retained as conditions. Items 2.3, 2.4 and 2.6 would be omitted. Items 3.1, 3.2 stay in as conditions. Under the Miscellaneous Items everything stays in as a condition.

Mr. Mullen – Item 4.1 flood proofing should be a condition.

Mr. Baxter then continued to recap the variances for this application and conditions as follows:

1. Variances for Pre-Existing Conditions – lot depth, front yard setback on both on Cedar & Bay Ave, side yard of 4.4 feet where 6 feet is required.
2. The Board is approving the existing height although they do not feel that a variances is needed.
3. Use variance for use with a condition of a non-restaurant/non-tavern condition or adult commercial use.
4. Variance for lot coverage
5. Gas Meters move or protect.
6. Parking Variance of 13 spaces where 15 spaces are required. Contribution to Parking Deficiency ordinance be made.
7. The requirements of Exhibit B-5 must be met.
8. The five foot easement to the County be granted for Bay Avenue.
9. The omission of 2.3 is a waiver.
10. Lights – must be submitted to the board engineer for approval, no direct light can go off the property and the pole mounted lights and deck lights will be shielded.

Mr. Gallagher offered a motion to approve the application with the above referenced conditions, seconded by Mr. Kutosh and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES: NONE**

**ABSTAIN: NONE**

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

**The applicant was not present for this hearing.**

Mr. Baxter – I suggest that the Board put this on for the next meeting with as a try or dismiss. He does not understand why the applicant did not contact the board about tonight's hearing.



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The Board had a discussion about the history of this application and the number of postponements granted to the applicant and the requested information that the board is still waiting for.

Mr. Mullen offered a motion to carry this to the June 4<sup>th</sup> meeting as a try or dismiss, seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Kutosh,  
Mr. Mullen  
**NAYS:** None  
**ABSTAIN:** None

The Board Attorney will send the applicant a letter informing the applicant of the June 4<sup>th</sup> Meeting date and that it's a try or dismiss.

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**Approval of Minutes:**

Ms. Ryan offered a motion to approve the April 2, 2009 Zoning Board Meeting Minutes, seconded by Mr. Braswell and all were in favor except Mr. Mullen and Mr. Anthony who both abstained.

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**Communications:**

**ZB# 2009-2 Dorau Application**

The Board authorized the Board Engineer to do a Review Letter on this application.

Mr. May stated that he would contact the applicants engineer to let him know exactly what we are looking for and tell them that he will need the report at least 10-days prior to the meeting.

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

The Meeting adjourned at 9:40 P.M.

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**CAROLYN CUMMINS, BOARD SECRETARY**