

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
December 3, 2009**

Mr. Mullen called the meeting to order at 7:46 p.m.

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

Mr. Mullen read the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board 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, Mr. Anthony, Mr. Mullen, Mr. Kutosh

Late Arrival: Mr. Gallagher and Mr. Britton both arrived at 7:56 p.m.

Absent: Ms. Ryan, Mr. Fox, Ms. Tierney

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

Review of the ZB 2009 Annual Report

The Zoning Board reviewed the following report:

2009 ZONING BOARD ANNUAL REPORT

Prepared by Carolyn Cummins, Board Secretary
Date: November 23, 2009

**ZB#2007-7 231 Bay Avenue, LLC
Block 63 Lot 19.01, 231 Bay Avenue
Approved 6/4/2009**

Application to renovate existing former Dr. Gimpi's Restaurant structure. Variances were granted for the following pre-existing condition: maximum lot coverage 80.5%, where 75% is permitted; setback of 1.8 ft/14.3 ft where 20 feet is required, side yard of 4.4 feet where 6 ft is required. A use variance was also granted to permit requested uses of commercial on the first floor, residential on the 2nd and 3rd floors. Preliminary and final site plan approvals were also granted.

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ZB#2008-6 Lentz, D.

Block 51 Lots 1 & 2, 3 Cornwell Street

Approved 1/15/2009

The Board approved application to enclose the existing second story porch on the riverside of the residential portion of the structure. Variances were granted for pre-existing conditions of minimum lot frontage of 72.37 ft, where 100 feet is required; min. lot width of approximately 87 ft, where 100 ft are required, min. front yard setback on Cornwell Street of 8 ft, where 20 ft is required; min. side yard of .96 ft where 8 ft is required. Variances were also granted for maximum building coverage of 34.7 %, where 25% is permitted; maximum building coverage of 34.7%, where 25% is permitted; maximum impervious coverage of 90.3%, where 65% is permitted; variance for expansion of a prior non-conforming use.

ZB#2008-7 Domagala, C.

Block 21 Lot 16.01, 90 Highland Avenue

Approved 4/2/2009

The Board approved the application to add an unclosed second-story porch of 10 feet in depth, running the width of the home. Variances were granted for pre-existing minimum lot area of 2853 square feet, where 5,000 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 of 17.6 feet, where 35 feet is required and side yards of 3.2/7.7, where 8.5 feet is required.

**ZB#2009-1 Colby Plumbing
Block 64 Lot 1, 196 Bay Avenue
APPLIATION WITHDRAWN**

**ZB#2009-2 Dorau, H.
Block 115 Lot 3, 130 Linden Avenue
Approved 7/2/09**

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The Board approved application to reconstruct an attached elevated deck based on the plans submitted. Variances granted for pre-existing conditions for deficiency of minimum side yard 5.8/19.2 feet, where 6/8 feet are required. A variance was also granted for Section 21-65 steep slope & Slump block to construct deck.

**ZB#2009-3 Pittsburgh Chili Kings, LLC
 Block 69 Lot 9, 21 Atlantic Street
 Approved 9/3/2009**

The Board approved the application to demolish and thereafter construct a single family home. Variances were granted for pre-existing conditions of minimum lot area of 2,700 square feet, where 4000 is required; minimum lot frontage of 30 feet, where 50 feet is permitted; lot coverage for building of 37%, where 33% is permitted. Variances were also granted for side yard setbacks of 5.1 feet on each side where 6/8 feet are required, rear yard setbacks of 12 feet as to 2nd floor and 17 feet as to 3rd floor, where 20 feet is required.

**ZB#2009-4 Sarosy, Marie
 Block 110 Lot 10, 224 Linden Avenue
 Approved on 10/15/2009**

The Board approved the application to construct a 24-foot by 24 foot detached garage at the rear of single-family home. A variance was granted to construct the garage that will have a greater percentage of the ground floor area of the principal structure that is permitted by ordinance.

**ZB#2009-5 Bay Nine, LLC
 Block 38.01 Lot 13, 19 Bay Avenue
 PENDING**

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Mr. Mullen spoke about time limits so that variances would expire if not developed.

The Board had a discussion about making a recommendation to the Council to consider establishing a time limit on approvals. It was the consensus of the Board to make this a recommendation to the Council to Consider.

Mr. Gallagher arrived to the meeting.

The Board Secretary was directed to add comments to ZB Case 2009-5 to show the comments of the application and to list it on the January Agenda for final review along with letter of recommendation to Council.

**ZB#2009-5 Bay One Nine, LLC
Block 38.01 Lot 13 – 19 Bay Avenue**

**Present: Jeffrey Rosen, Esq., Applicants Attorney
Richard Stockton, Land Surveyor and Professional Planner
Robert Dempsey, Co-Applicant**

Mr. Baxter stated that he has reviewed the public notice and finds it to be proper; therefore the Board has jurisdiction to proceed.

The following exhibits were marked into evidence this evening:

- A-1: Variance Application;
- A-2: Zoning Permit Letter;
- A-3: Flood Review Application;
- A-4: Survey dated 6/13/07 prepared by R. Stockton;
- A-5: Elevation Drawing;
- A-6: Site Plan dated 11/19/09 prepared by R. Stockton;
- B-1: Board Engineer Letter dated 12/3/09.

Mr. Mullen recapped the variances. He stated that this property fronts on two streets therefore there are two front yards and two side yards and no rear yard. Variance needed for retail service because it's not a permitted use. Also need bulk variances for lot coverage and front yard setback.

Mr. Baxter stated that variances were needed for maximum lot coverage, front yard on Shore Drive and use, minimum lot width and possible parking depending on the proposed use.

Robert Dempsey of 12 Rosalie Ave, Rumson, NJ was sworn in and stated the following during his testimony and response to questions from the board:

1. He is a member of the Bay One Nine, LLC which owns the subject property.

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2. There is a block refrigeration unit that exists currently on the site.
3. They will keep the existing structure with modifications and do a partial second floor addition.
4. The first proposed second floor addition is 364 square feet and the first floor is 18 by 12.
5. A proposed retail would be on the first floor and an office would be located on the second floor.
6. He currently owns a contracting business and the proposed second floor office would be for an office for his business. There are two Employees for his business.
7. First floor they propose a retail use, possibly a bike rental shop and/or an ice cream store with one to two employees.
8. The permitted uses are not feasible or suitable for this site.
9. There are five parking spaces being provided.
10. To the west of the subject property is the Sugar Shack Bar/Restaurant. To the east of the subject property there is an office and across the street is a marina and apartments.
11. There is no waterfront access from the subject site.
12. There is enough square footage to operate either use of a bike shop or ice cream parlor. There would be some tables outside.
13. They would start off with 20 bikes then see how it goes.
14. He then described how the bike shop customers could park in the public parking lot down the street while they are renting bike from bike rental shop.
15. He would try to start bike or ice cream parlor but if someone down the road wanted they could run the bike shop.
16. They are planning on a bike rental shop and/or ice cream parlor. The businesses would function under one business but the customers would enter through two separate stores.
17. He has a Mason Contracting Business that he would use the upstairs office for. He stores his equipment associated with the contracting business on a lot in Long Branch.
18. He does currently park his dump truck at the site but he won't once the business is open.
19. They would use the office to prepare to take work to different location.
20. They would not have sign for contracting office only for the retail businesses.

Mr. May stated that he calculated the parking based on retail space not for both uses. With the combined uses you would need six spaces so it's a one parking space variance.

Mr. Dempsey continued his testimony as follows:

21. It is proposed as one retail but down the road who know what's going to happen.
22. It is his intension to conduct one retail business on the first floor.

The Board had a discussion about the proposed bike and ice cream combined uses and the parking requirements.

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Mr. May stated that two parking spaces are required for the office space and four spaces are required for the retail use.

Mr. Dempsey continued as follows:

23. Access to the second floor is via stairs on the outside from the parking area, which he further described.

24. He does not anticipate traffic for the proposed second floor office.

25. The retail would be full-time.

26. He described the handicap space that is a 12.5 and will walk to concrete deck to building.

Mr. Mullen stated that handicap access to the front of the building may be an issue.

The applicant must make application to the Monmouth County Planning Board.

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

Christian Lee of 2 Navesink Avenue questioned if the architectural plan fit on the survey.

Mr. Mullen stated that he does notice that on the Architectural elevation roof over hangs and it appears that the block house is .6 feet away from the property line and the overhang of that roof would actually extend beyond the property line.

Mr. Dempsey replied, no – this is the front elevation that faces Bay Avenue so this roof overhang would not impede onto the rear.

Mr. Braswell wanted to know if the uses are being limited to recreational use of bike and ice cream parlor or any retail use.

Mr. Baxter stated that the applicant is limiting it to one of the two.

Mr. Braswell, but if either of those uses don't make it or if the applicant sells the property, then what?

Mr. Baxter – then someone would need to come back to the board.

Mr. Baxter explained that this is use sensitive as to the variance that you are given. You are not giving a broad based retail store approval, that's not the application and that's not the relief that's going to be granted if approved.

Discussions continued about limiting the retail use to the proposed.

Mr. Baxter explained that if the permitted uses are changed via an ordinance amendment in the future then what ever is permitted would be allowed.

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Mr. Mullen mentioned that ordinances in this area are going changing and the uses are going to be broadened, not restricted in this area

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

Richard Stockton of 614 Avenue D, Atlantic Highlands was sworn in and stated the following during his testimony:

1. He is a licensed Land Surveyor and a Professional Planner
2. He prepared Exhibit A-6.
3. The proposed use is a suitable use for this site. The Bicycle Rental is suitable because the bike trail is behind the subject property. The second floor office is for the owner's office and storage of records. The adjacent property is also an office property.
4. The adjacent property is an office and this proposed is within the character of the neighborhood.
5. The area within a 200 foot circle is basically a commercial neighborhood and that is why the Planning Board has recommended extending the B-2 Zone into this zone.
6. He stated that the property is not suited for the permitted waterfront uses because the property is not actually fronting on water. He stated that many of the permitted uses in the WC-1 Zone are for restaurants, bars, tavern and marina sales which would be extremely difficult to conduct on a piece of property that is only 3,500 square feet.
7. The proposed bike use is an exceptional low impact use, the ice cream parlor would be slightly different.
8. The proposed use would not impair the zone or neighborhood. The property is in close proximity to the bike path.
9. There would be no detriment to the public good.
10. Parking Element with uses – each of the four front spaces are 9 by 18.
11. The existing concrete deck is to be removed.

Mr. Mullen stated that he is particularly concerned about the parking element of this and those uses and how this operates. He wonders if it does work, can the people get in and out of this parking lot adequately. Are all of the spaces actually accessible?

Mr. Stockton continued his testimony as follows:

12. He explained that the front spaces are 9 by 18 in size and there is adequate space of 24 feet behind them to back up and exit.
13. He explained that that what is shown on the plan is the existing concrete deck that exists on the building today and that is to be removed. The edge of the closest parking spot to the deck will be parallel with the deck.
14. Yes, that parking spot dose take that one accesses the stair to get into the facility. So if a car is parked there you would have to walk along the side.

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Mr. Mullen stated that the public ingress into the building needs to be studied further. He also requested a floor plan.

Discussions occurred regarding the location of the stairs for building ingress and the need to relocate them.

Mr. Kutosh mentioned that the Monmouth County Planning Board may ask for an easement which could also affect parking area.

Mr. Stockton stated that he will talk to the applicant to get better access to the first level of the building.

Mr. Mullen also questioned where the location of the refuge and stated that this is something that needs to be addressed.

Mr. Rosen stated that the Board has raised questions that need to be addressed with revised plans.

Mr. Stockton stated that the garbage could be located under the steps.

Mr. Mullen questioned the lighting plan.

Mr. Stockton continued his testimony as follows:

15. He stated that there would be one light on the front and one on the other side of the building.

16. He explained that the creation of an office on the second floor is for the applicants use.

17. He stated that there aren't a lot of uses that this site is suitable for because it's a small site.

Mr. Mullen then read from the June 11, 2009 Amended to the Master Plan Land Use Element Plan Amendment. He spoke about uses in this area being expanded.

Mr. Baxter stated that the board needs additional testimony on the record to base a use variance on. He then spoke about the pending zoning ordinance amendments and stated if the ordinance does get adopted in December and the applicant is no longer required to get a use variance then it becomes a planning issue.

Mr. Rosen stated that there are a lot of pre-existing nonconforming conditions that also limit the uses on this site.

Mr. Mullen stated that alternatively, this application can be bifurcated and they could seek relief for use and deal with the site plan issues subsequently.

Mr. Rosen stated that he wants to wait and see what happens with the zoning ordinance amendment, then see if the board can retain jurisdiction.

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Mr. Rosen then requested a brief recess.

Approval of Minutes:

Mr. Kutosh offered a motion to approve the November 5, 2009 Zoning Board Minutes, seconded by Mr. Mr. Anthony and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Anthony, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen then called for a brief recess at 9:36 p.m.

Mr. Mullen called the meeting back to order at 9:46 p.m.

ROLL CALL:

**Present: Mr. Braswell, Mr. Anthony, Mr. Britton, Mr. Gallagher, Mr. Kutosh,
Mr. Mullen**

Absent: Ms. Ryan, Mr. Fox, Ms. Tierney

**ZB#2009-5 Bay One Nine, LLC
Block 38.01 Lot 13 – 19 Bay Ave**

Mr. Rosen requested that this matter be carried so that we can see what happens with the pending Zoning Ordinance and we need plan amendments so request to carry this to the January Meeting.

Mr. Gallagher offered a motion to carry this hearing to the January 7th Meeting without the need for further notice, seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Braswell, Mr. Anthony, Mr. Britton, Mr. Gallagher, Mr. Kutosh,
Mr. Mullen**

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 9:48 p.m.

CAROLYN CUMMINS, BOARD SECRETARY