

**Borough of Highlands  
Zoning Board of Adjustment  
Reorganization/Regular Meeting  
January 7, 2010**

Mr. Mullen called the meeting to order at 7:38 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. Gallagher, Mr. Britton, Mr. Kutosh, Mr. Mullen**

**Absent: Mr. Anthony, Ms. Tierney**

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

Mr. Mullen welcomed back both Mr. Braswell and Mr. Kutosh

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**REORGANIZATION RESOLUTIONS:**

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

**BOROUGH OF HIGHLANDS  
ZONING BOARD RESOLUTION  
DESIGNATING CHAIRPERSON  
FOR THE YEAR 2010**

**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, 2010.

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

**ROLL CALL:**

**AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Gallagher, 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 VICE CHAIRPERSON  
FOR THE YEAR 2010**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that **Ken Braswell** be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2010.

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

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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

**RESOLUTION APPOINTING ZONING BOARD ATTORNEY  
FOR THE CALENDAR YEAR 2010  
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 2010; 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**, 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.

**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, 2010 through December 31, 2010 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 Mr. Mullen and adopted on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

Mr. Mullen 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 2010 CONTRACT**

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**WHEREAS**, there exists the need for Professional Legal Services to be provided to the Zoning Board of Adjustment for the period of January 1, 2010 through June 30, 2010; 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 2010 on January 7, 2010; and

**WHEREAS, Gregory Baxter**, Esq. of Caruso & Baxter has submitted the attached 2010 contract for approval; and

**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                      \$ 5,205.00

For Legal Services for the Period of January 1, 2010 through June 30, 2010.

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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, 2010 through June 30, 2010 for an amount not to exceed \$5,205.00 and that the attached contract for 2010 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.
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 Mr. Kutosh and adopted on the following roll call vote:

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**ROLL CALL:**

**AYES:** Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Gallagher, 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 2010 &  
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 2010 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;

**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 2010 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. Fox and adopted on the following roll call vote:

**ROLL CALL:**

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

**Board Engineer Contract**

Mr. Mullen stated that this item will be carried to the next meeting.

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Mr. Baxter stated that he has reviewed the engineers contract and it's the same as last year's except there were two expense items removed.

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 2010**

**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, 2010.

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

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

Ms. Ryan 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 2010**

**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 2010. The official meeting days shall be the first Thursday of each month unless otherwise noted.

February 4, 2010  
March 4, 2010  
April 1, 2010  
May 6, 2010  
June 3, 2010  
July 1, 2010  
August 5, 2010  
September 2, 2010  
October 7, 2010  
November 4, 2010  
December 2, 2009  
January 6, 2011 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 Mr. Kutosh and adopted by the following Roll Call Vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

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

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**BOROUGH OF HIGHLANDS  
ZONING BOARD OF ADJUSTMENT RESOLUTION  
DESIGNATING OFFICIAL NEWSPAPERS  
FOR THE YEAR 2010**

**BE IT RESOLVED** by the Borough of Highlands Zoning Board of Adjustment that 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, 2010.

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

**ROLL CALL:**

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

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**ZB#2009-5 Bay One Nine, LLC – Request to Carry P.H. to Feb. 4<sup>th</sup>, 2010  
Block 38.01 Lot 13, 19 Bay Avenue**

Mr. Mullen stated that the applicant has requested that their public hearing be carried to February 4, 2010. He stated that an ordinance change for this site was recently adopted in December 2009. The biggest change was that the block that this property is in has been changed to a B-1 Zone instead of Water Front Commercial – 1 Zone, which he further explained. He asked that the Board Members familiarize themselves with the newly adopted ordinance.

The board had a brief discussion on effects of the ordinance amendment on this application.

Mr. Baxter stated that he has written a letter to the applicants Attorney with regard to the effect of the zoning ordinance change while the case is in progress. So in his opinion this board can maintain jurisdiction on this application which he further explained. He will communicate a letter to the applicant's attorney to go back to the Zoning Officer and obtain an updated determination.

Mr. Kutosh offered a motion to carry the public hearing date for Bay One Nine, LLC to the February 4<sup>th</sup>, 2010, seconded by Mr. Braswell and approved on the following roll call vote:

**ROLL CALL:**

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

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**ZB#2009-6 Sendowski, Oren – Request to Carry Completeness Review to Feb. 4<sup>th</sup>  
Block 43, Lot 6 – 30 Shrewsbury Avenue**

Mr. Mullen stated that the board received a request to carry the completeness review of this application to the February 4<sup>th</sup> meeting. He then stated he has reviewed the application and it appears that they may need a use – height variance.

The Board discussed this zoning ordinance with regard to this application.

Mr. Braswell offered a motion to carry the completeness review of this application to the February 4, 2010 meeting, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Britton, Mr. Gallagher, Mr. Kutosh, Mr. Mullen  
**NAYES:** None  
**ABSTAIN:** None

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**Review Board Letter of Recommendations to Governing Body**

Ms. Ryan requested that a type be corrected in the 2009 Zoning Board Annual report with regard to the correcting the name of the applicant for Bay One Nine, LLC

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Ms. Ryan offered a motion to move on the approval of the Zoning Boards letter of Recommendations to the Council, seconded by Mr. Kutosh and the following letter was and all were in favor.

January 7, 2010

To: Mayor & Council  
Borough of Highlands

**RE: 2009 Zoning Board Annual Report  
and List of Recommendations**

Dear Mayor & Council:

Attached is a copy of the 2009 Zoning Board Annual Report which is a summary of all of the applications heard in 2009 calendar year and the board decisions made on those applications.

The Zoning Board makes the following recommendations for amendments to the Zoning Ordinance:

1. With the intent of encouraging applicants to pursue the approvals which they receive at the Board of Adjustment, the Council should consider imposing the same "expiration" of approvals as those imposed by the Planning Board in their review and approval process, including any request for time extensions, currently within our ordinance.

On behalf of the Zoning Board we thank you for your attention in this matter.

Sincerely,

Peter Mullen  
Zoning Board Chairman

**2009 ZONING BOARD ANNUAL REPORT**

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

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**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 2<sup>nd</sup> and 3<sup>rd</sup> floors. Preliminary and final site plan approval 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

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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.

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**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.

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

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

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.

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**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 2<sup>nd</sup> floor and 17 feet as to 3<sup>rd</sup> floor, where 20 feet is required.

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**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.

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

Application for bulk variances for construction of addition and proposed use. Variances needed for maximum lot coverage, front yard on Shore Drive and use variance, minimum lot width and possible parking variance. Proposed uses retail on first floor of bike rental shop and ice cream parlor and an office on the second floor.

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**Approval of Minutes:**



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Mr. Braswell offered a motion to approve the December 3, 2009 Zoning Board Minutes, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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

The Meeting adjourned at 8:13 p.m.

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**CAROLYN CUMMINS, BOARD SECRETARY**