

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
July 1, 2010**

Mr. Mullen called the meeting to order at 7:34 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 and all requirements have been met. Notice has been transmitted to the Two River Times and the Asbury Park Press. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Mullen, Mr. Kutosh

Late Arrival: Mr. Fox arrived at 7:35 p.m.
Mr. Braswell arrived at 7:36 p.m.

Absent: Mr. Britton, Ms. Tierney

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Board Engineer was not present

**ZB#2009-6 Sendowski, Oren, Block 43 Lot 6, 30 Shrewsbury Avenue
Request for Postponement to August 5, 2010**

Mr. Mullen stated that the Board received a letter from the applicants Attorney requesting another postponement of the public hearing to the August 5th meeting.

The board briefly discussed the request.

Mr. Gallagher offered a motion to approve the request to postpone the Sendowski public hearing to the August 5th meeting, seconded by Mr. Mullen and all were in favor.

**ZB#2010-1 Parzych, Edna Ann, Block 61 Lot 13.011, 216 Navesink Avenue
Approval of Resolution**

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

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

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR PARZYCH AT 216 NAVESINK AVENUE**

WHEREAS, the applicant, EDNA PARZYCH is the owner of property at 216 Navesink Avenue, Highlands, New Jersey (Block 61, Lot 13.011); and

WHEREAS, the property currently contains a 2-family home with frontage on the state highway, and the applicant has requested approval to remove an existing second-story deck and replace it, and also to expand the deck to the west of the existing structure; 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 June 3, 2010; and

WHEREAS, the Board heard the testimony of ROBERT GORSKI, the applicant's architect; the applicant herself; and her neighbor, JEROME ELSON; and

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WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning Officer's denial dated 4/22/10;
- A-3: Architectural plans by ROBERT GORSKI dated 4/27/10, revised 5/20/10 (2 sheets);
- A-4 (a through e) 5 photographs of subject property;
- A-5: 8 1/2" X 11" color aerial photo of area;
- A-6: Property record card, which shows 2 living units;
- A-7: 2-pages of Certificate of Occupancy (dated 4/25/01), with 2 pages of undated Fire Certificate;
- A-8: Photograph of side of house, sidewalk and broken wall;

WHEREAS, the Board also marked into evidence the following exhibits:

- B-1 Board Engineer review letter dated 5/31/10;
- O-1 Picture of sidewalk area, which proposed deck would cover;

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 2-family home in the R-2.03 District, which is located on State Highway 36.
2. The site currently contains a deck which is in significant disrepair and dangerous to use. It needs to be removed.
3. The applicant seeks to remove the existing deck and replace that second-story deck with a deck of 8 feet by 16 feet; and further expand the deck to the west of the structure at a size of 24 feet by 16 feet.
4. The applicant requires a use variance because 2-family homes are not permitted in the zone, so this application is to expand a pre-existing non-conforming use. The premises were a 2-family use when the applicant purchased from Mr. Elson in 2001, and there has been no change in use since.
5. The applicant also seeks bulk variances for preexisting conditions: Lot depth of 76.2 feet, where 100 feet is required; front yard setback of 19.58 feet, where 20 feet is required; and side yard setbacks of 5 feet and 5.5 feet, where 6 feet and 8 feet are required.
6. The preexisting deck is 1.16 feet from the rear property line, which is a preexisting non-comformity. A 20-foot rear yard setback is required in this zone. The applicant also seeks a variance for rear yard setback of 5.16 feet for the deck addition, where 20 feet is also required.
7. The home sits on a sloped property, which is approximately 75 feet in depth.
8. The lot exceeds the minimum lot area required by ordinance, as does the frontage/width exceed the minimum required by ordinance.
9. The lot coverage is substantially less than the maximum permitted by ordinance, and the building coverage is also less than the maximum permitted by ordinance.
10. The current deck is structurally unsound. The joists/frame are rotted, the connections are not up to current standards, and there are many rotted portions in the deck. For safety reasons alone, the deck needs to be removed.
11. There are approximately 7 structures along the highway in the vicinity of the subject, all of which have decks. Property owners obviously attempt to capture the view of the water, as a result of which the decks are raised, and not at ground level. The home to the rear of the subject also has a deck.

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12. The rear yard of the subject property is about 9 feet in depth, though the existing deck covers the bulk of that dimension.

13. Though the side yard is available for recreation, the slope of that yard diminishes the utility of that area for recreation. The deck, therefore, will serve as a recreational area, and be level.

14. The front yard setback, which is preexisting, is only about 5 inches short of the requirement, as a result of which this preexisting condition is de minimus.

15. The proposed new deck, as with the existing deck, will only serve one unit, that being the second level of the structure.

16. The applicant does not propose any change to the building's footprint or the exterior or height of the structure. Neither is there any application regarding any fencing or driveway.

17. The deck is proposed to be made of a composite and contemporary material.

18. The deck will not be enclosed.

19. The electric meters will need to be moved from their current location---probably raised on the wall of the structure; and, in all probability, below the window.

20. As a result of the neighbor's questions, the Board inquired as to drainage. The Board is of the opinion, however, that rainwater will not have any effect in the future, as opposed to the effect it has now, which apparently does result in some runoff to the west. The applicant proposes to build a slotted type of deck, so that rainwater will pass through the deck to the ground below. The applicant proposes to put landscaping stone below the deck, which will have the area remain pervious. The Board is satisfied that the proposed deck will not change the existing condition, nor worsen the storm water runoff.

21. The Board Engineer testified that, should there be any increase in rainwater runoff, it would be de minimus, at most, and would pass along the stone driveway.

22. There is an existing sidewalk and wall on the premises; however, the wall is broken in sections, which may or may not have an effect on storm water runoff. The applicant agrees to repair that wall in the area where it is broken.

23. The Board feels that the setback on the west side is extremely minor and that removal of the dilapidated and unsafe deck and replacement with a new, albeit larger, one would be a significant improvement to the home and, therefore, to the area.

24. The special reasons relied upon by the applicant are found in N.J.S.A. 40:55D-2, which includes the promotion of safety and general welfare [subsection (a)], providing adequate light, air and open space [subsection (c)], and making a significant aesthetic positive change to the property [subsection (i)].

25. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance; and, in fact, will be an improvement to the same.

WHEREAS, the application was heard by the Board at its meeting on June 3, 2010, 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 EDNA PARZYCH for use and bulk variances to remove the existing deck and replace and enlarge the same at 216 Navesink Avenue (Block 61, Lot 13.011) be and is hereby approved, subject to the following conditions:

1. The deck will not be enclosed.
2. The deck will be slotted, with openings for water to pass through.

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3. The wall, where broken, will be repaired.
4. Landscaping stone will be placed below the deck, making the area pervious.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Professional Service Resolutions:

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

Mr. Baxter explained reason for the need to do this resolution every July.

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

**RESOLUTION
BOROUGH OF HIGHLANDS ZONING BOARD
APPROVING PROFESSIONAL LEGAL SERVICES FOR THE PERIOD OF JULY 1,
2010 THROUGH DECEMBER 31, 2010**

WHEREAS, the Borough of Highlands Zoning Board has a need for Professional Legal Services; 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 Borough of Highlands Zoning Board memorialized a Resolution on January 7, 2010 appointing Gregory Baxter, Esq., of the firm of Caruso & Baxter as Zoning Board Attorney for a (1) one year term expiring December 31, 2010; and

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 them from making any reportable contributions through the term of the contract; and

WHEREAS, the determination of the value has been placed on file with the resolution of appointment with the Board Secretary; and

WHEREAS, the law office of Caruso & Baxter has submitted the C.271 Political Contribution Disclosure form in accordance with the NJSA 19:44A-20.26 (P.L. 2005,c271,s2).

WHEREAS, a certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2011 Budget:

Zoning Board Budget
Account #1151-3755 \$5,205.00
July 1, 2010 through December 31, 2010

Stephen Pfeffer, CFO

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WHEREAS, the Local Public Contracts Law, NJSA:11-1 et. Seq., requires that notice with respect to contract 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. That Gregory Baxter, Esq., from the firm of Caruso & Baxter is hereby retained to provide Professional Legal Services as described above for an amount not to exceed \$5,205.00 for the period of July 1, 2010 through December 31, 2010.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, NJSA 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 Board Secretary.
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:

ROLL CALL:

AYES: Mr. Baxter, Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen then read the title of the Professional Engineering Resolution for approval.

Mr. Baxter requested that the title of the Resolution be corrected and adopted as follows:

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

**RESOLUTION APPROVING PROFESSIONAL ENGINEERING SERVICES
TO BE PROVIDED TO THE ZONING BOARD OF ADJUSTMENT
FOR THE PERIOD OF JULY 1, 2010 THROUGH DECEMBER 31, 2010**

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 period of July 1, 2010 through December 31, 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 Eastpointe Engineering, 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, Eastpointe Engineering has completed and submitted a Business Entity Disclosure Certification which certifies that Eastpointe Engineering, 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 Eastpointe Engineering from making any reportable contributions through the term of the contract; and

WHEREAS, Eastpointe Engineering has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, certification of the availability of funds is hereby provided by the Chief Financial Officer contingent upon the adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2011 Budget:

Zoning Board Budget
Account #1151-3757 - \$2,100.00

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For the Period of July 1, 2010 through December 31, 2010

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 Eastpointe Engineering is hereby authorized to provide professional engineering services to the Zoning Board for the period of July 1, 2010 through December 31, 2010.
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.
3. A copy of the Resolution as well as the contract shall be placed on file with the Board Secretary.
4. 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. Kutosh,
Mr. Mullen

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Kutosh offered a motion and moved that the June 3, 2010 Zoning Board Minutes be approved, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Communications:

Mr. Baxter explained his June 23, 2010 Memo RE: "Time of Application" Law Replaces "Time of Decision" Rule.

Board briefly had discussion on this topic.

Mr. Mullen then stated that the Zoning Map has been recently updated to now include block numbers and that the Secretary will forward copies to members.

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

The Meeting adjourned at 7:44 p.m.

CAROLYN CUMMINS, BOARD SECRETARY

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