

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

Mr. Braswell called the meeting to order at 7:53 P.M.

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

Mrs. Cummins read the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Reorganization/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. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox, Mr. Kutosh, Mr. Cervantes

Absent: None

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Joseph May, P.E., Board Engineer
Marc Leber, P. P. Board Professional Planner

Reorganization:

Mayor Nolan swears in the following Board Members:

Arthur Gallagher, Regular Member
Bruce Kutosh, Alternate #1 Member
James Fox, Regular Member
Leo Cervantes, Alternate #2 Member
Robert Knox, Regular Meeting

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

**BOROUGH OF HIGHLANDS
ZONING BOARD RESOLUTION
DESIGNATING CHAIRPERSON
FOR THE YEAR 2011**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that Ken Braswell be appointed Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2011.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton,
Mr. Knox

NAYES: None

ABSTAIN: Mr. Braswell

Ms. Ryan 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 2011**

BE IT RESOLVED by the Borough of Highlands Zoning Board of Adjustment that Jim Fox be appointed Vice Chairperson of the Zoning Board for a term of one (1) year expiring December 31, 2011.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

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

ROLL CALL:

**AYES: Mr. Braswell, Ms. Ryan, Mr. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox**

NAYES: None

ABSTAIN: Mr. Fox

Mr. Gallagher offered a motion to table the appointment of the Board Attorney and the Board Engineer, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox**

Mr. Gallagher 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 2011**

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, 2011.

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

ROLL CALL:

**AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox**

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 2011**

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 2011. The official meeting days shall be the first Thursday of each month unless otherwise noted.

February 3, 2011
March 3, 2011
April 7, 2011
May 5, 2011
June 2, 2011
July 7, 2011
August 4, 2011
September 1, 2011
October 6, 2011
November 3, 2011
December 1, 2011
January 5, 2012 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.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

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

ROLL CALL:

**AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox**

NAYES: None

ABSTAIN: None

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT RESOLUTION
DESIGNATING OFFICIAL NEWSPAPERS
FOR THE YEAR 2011**

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, 2011.

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

ROLL CALL:

**AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Britton, Mr. Knox**

NAYES: Mr. Gallagher – Asbury Park Press

ABSTAIN: None

**ZB#2010-2 Metro PCS, New York , LLC
Block 108 Lot 2.01
Request for Postponement of Unfinished Public Hearing**

Present: Michael Beck, Esq., Applicants Attorney

Conflicts: Mr. Britton stepped down

Mr. Beck briefly discussed with the board the fact that the Quick Check Hearing may take up most of the meeting time this evening.

At 8:15 P.M. Mr. Beck requested that the board carry this hearing to the next meeting.

Mr. Gallagher offered a motion to carry this public hearing to the February 3, 2011 Meeting without any further notice, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

**AYESE: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Knox,
Mr. Kutosh**

**ZB#2010-3 Quick Chek Corp.
Block 108 Lots 1 & 2.01 440/450 Highway 36
Unfinished Public Hearing**

**Present: Ken Smith, Esq., Applicants Attorney
Charles Olivo, Traffic Engineer
Christine Cofone, Professional Planner
Paul Drobbin, Esq., Attorney for Highlander Dev. Group
Lawrence Luttrell, Esq., Attorney for 470 Bayside Partners, LLC**

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

The Exhibits marked into evidence this evening are as follows:

A-13: Technical Memo dated January 6, 2011

O-1 –O-12 – 11 Photographs of the site.

O-13 Board of view submitted by C. Kowalewski

Mr. Smith stated that this is the continued hearing for a bifurcated use variance. They are only seeking the use variance at this juncture from the board to permit Quick Chek to redevelop two existing parcels block 108 lots 1 and 2.01. These properties are developed and occupied by a restaurant “Dog House” and another restaurant “Stewarts Drive-in” on the second lot. At the last meeting they presented their witness who testified to the Quick Chek operation which was Frank Marciano. They also presented their site engineer Jeffrey Martell who testified and introduced the global site to the board and various site issues. However, because we are a bifurcated application they are not seeking site plan approval tonight. They are only seeking a vote on the use variance which means they would have to come back to this board with a fully engineered site plan for another review by this board. So anything that this board does tonight would be conditioned upon and subject to that subsequent site plan. He has his final two witnesses tonight to testify before the board they are Mr. Olivio, Traffic Engineer and Christine Cofone, Professional Planner.

Mr. Baxter stated that the Board has a signed affidavit by Board Member Ken Braswell, Tara Ryan and Art Gallagher that they listed to the meeting tapes and are eligible to vote on this matter.

Mr. Smith stated that the following board members are eligible to vote on this matter: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Kutosh.

Charles Olivo, P.E., Licensed Traffic Engineer of 36 Aimes Avenue, Rutherford, New Jersey was sworn in.

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

1. He is a Principal of Stonefield Engineering and Design. He then described his professional qualifications as a Traffic Engineer.
2. He did take an analysis of the subject properties and the proposals before the board this evening. He prepared a Traffic Impact Letter Report with a submission date of November 5, 2010.
3. The scope of their analysis that they undertook was they undertook an existing base inventory of the roadway system which consisted of conducting counts at the principal signalized intersection which is located west of the site on Route 36, Navesink Avenue and Orchard Avenue as well as conducting a study of the proposed conditions with the Quick Chek built.
4. The Quick Check convenient store would be built on the subject sites along with a gasoline fueling service that would have six fuel pump islands or 12 fueling positions.
5. Their analysis also included the adjoining road system. He then referred to Exhibit A-6 and described the avenues of access to the site. He stated that an interesting thing about Ocean Blvd at this intersection is that in addition to providing access to the properties, it also provides for a near site jug handle movement onto Orchard, then providing you access down to Navesink, south of Route 36. So as part of the base condition that they prepared they looked at and conducted turning movement counts at the intersection as well as conducted counts along Ocean Blvd to quantify the traffic during 7 to 9AM morning week peak period during the week day and the 4-7PM week day evening period, which is considered to be the commuter rush periods.
6. So we looked at the existing conditions of the sites and the proposed Quick Check use. They have also considered the proposed Enclave at Mt. Mitchell Condo Development Project.
7. The Dog House Restaurant is located on block 108 lot 1 and lot 2.01 is the Stewarts Restaurant. So currently they operate as separate exclusive driveways in terms of access and circulation and upon review of the existing conditions and the access conditions. He is sure that everyone is familiar with is that these access points are generally dropped curb areas that are not signed very well and in some cases violate the design standards of the NJDOT. The NJDOT governs jurisdiction over highway 36. He then spoke about existing access violations conditions of the access to the sites.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

8. He explained that their traffic analysis and the impact was done in the most conservative fashion.
9. What is being proposed is to consolidate the properties and create access points that are in compliance with design standards of the NJDOT. He then described what is being proposed on the easterly curb cut is a right in only driveway that would draw in traffic out of the westerly flow of Route 36 and into the site and the area between the convenience store and the fueling pumps. The westerly driveway they propose a right in and right out driveway. Along Ocean Blvd, there are two driveways proposed, the first is a full movement driveway and the westerly driveway is a one-way ingress only driveway which will generally be utilized by employees that will be using the five parking stalls to the rear of the convenient store and a loading zone that would be provided for delivery trucks to the convenient store.
10. He explained the traffic analysis and that they found no significant impact to the operation of the signalized traffic intersection.
11. He stated that there is an existing Quick Chek that operates in line that is located between Ocean and Route 36. The access point of the existing Quick Chek is only provided on Orchard Avenue. He then spoke about the traffic friction points of the existing site because there is only one way in and one way out.
12. What happens as a result of the proposed development plan is that the trips that are generated to this driveway as a result of this convenient store will no longer complete their movements at this intersection. Now they would be completing their movements through the proposed access plan which is along Route 36 and is farther back from Ocean Blvd. So in his opinion it actually alleviates some of the congestion that is occurring under the existing conditions at the signalized intersection, which he further explained. There would be no significant adverse impact as a result of the proposed development.
13. There was a comment from the Board Engineer with regard to the operation of the intersection of Orchard and Ocean, which is an unsignalized intersection. As part of the supplemental analysis which we prepared and was marked as Exhibit A-13. This analyzed the stop intersection at Ocean Blvd and Orchard Avenue to understand if the proposed development would impact that intersection. What we found is that the levels of service in the future condition without the Quick Chek built would be the same level of service with the Quick Check being built.
14. He stated that convenient stores attract passer by traffic.
15. Summer Peak time if Friday evenings, Saturday and Sundays which he further explained.
16. This site was previously approved for a fitness center and this is more of a convenience and not the creation of new traffic like a fitness center.
17. They conducted an intersection capacity analysis if both driveways along Route 36 which would be subject to NJDOT approval and in addition they reviewed the access points along Ocean Blvd and all would operate under acceptable levels of service during the a.m. and p.m. peak hours.
18. The intersections levels of service would be maintained compared to the no built condition and the built condition.
19. He spoke about on site circulation patterns.
20. He stated that the parking stall sizes would be 10 by 20 feet.
21. A few months ago the Institute of Transportation Engineers published a new parking generation manual with updated information about the parking generation of this type of integrated convenient store with gas use. What that manual does is compile sample studies that have been conducted and prepared of actual real time sites that are experiencing parking demand. It's interesting to know that many of those studies are done out of state but many of the studies of this use were conducted within the State of New Jersey. That recent data shows that there is a general range that is recommended for this type of use that is between 38 and 47 stalls.
22. What is being proposed is 39 parking stalls plus 12 fueling positions for a total of 51 total spots on site which is within the I.T.E. recommended parking stalls. This proposal provides adequate parking for the site.
23. He spoke about the delivery vehicles and the turning templates that are being proposed. The fueling delivery is not near parking stalls.
24. The site has been designed to provide adequate and safe circulation both within the site and also at the driveways that are being proposed.
25. As a result of the findings of the Traffic Impact Analysis there would not be expected to be an adverse impact to the roadway network as a result of this development
26. Based on the study of Ocean and Orchard Avenues there would be an approximate addition of two vehicles during the evening peak hour at the left hand turn movement from

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

Ocean Blvd onto Orchard. It's very likely that those vehicles traveling into the site on Ocean Blvd, are the same vehicles that are in there today. So there would be a minimal increase which he further explained.

27. The study of the traffic was done in September 2010 and did include the new condo development.

28. Based on the convenience of the site the right in and right out movement is generally the predominant movement of traffic into the site. Discussions continued about the ingress and egress of the site.

29. Based on review of historic traffic counts and seasonal counts that are provided on the NJDOT Database it appears that there is certainly that fluctuation in the weekend time period. So what is likely to happen is that the westerly flow of traffic would be higher during Saturday, mid-day time period and Sunday and as a result the right in and right out would draw more traffic than it might in January.

30. He has reviewed the site plan for the Mt. Mitchell project and it appears that the driveway aligns with this ingress only driveway here. During site plan they will evaluate the left onto Ocean.

31. He explained the trip generation comparison to today's traffic. He stated that today there is really two fast food restaurants, generally if you were to look at the I.T.E. Trip Generations Manual there are somewhat comparable. He will say that the trip generation of a convenient store has generally higher passerby rates but the parking for restaurants uses is usually longer than of a convenient store.

32. He did comment on the issue raised that during ferry commute traffic, this could potentially back up traffic further but if the commuters stop at the proposed site then it could help the traffic.

Paul Drobbin, Esq., Attorney for Highlander Development began his cross examination of Mr. Olivo.

Mr. Olivo stated the following during cross examination by Mr. Drobbin:

1. Referring to Exhibit A-7, there are 39 parking stalls on the site plus the 12 fueling stations. This calculation does include the five spots adjacent to the cell tower.

2. Quick Chek would not prevent anybody from coming onto the site to access the cell tower.

3. Designated left turn lane onto Ocean Blvd – Ocean Blvd is a town road. They made a preapplication inquiry to Monmouth County to request the jurisdiction of this roadway of Ocean Blvd and what they were provided with is a County straight line diagram which is their jurisdictional maps. We thought that this was a County Roadway initially and Monmouth County confirmed that this is not a Monmouth County Roadway, it's under the local jurisdiction.

4. They had a preapplication meeting with the NJDOT for the access points on the Route 36. They did not assert jurisdiction over the Ocean Blvd roadway. Their maps tells us that they don't have jurisdiction over this.

5. He spoke about the dimensions for the left hand turning movement onto Ocean Blvd. He does not believe that it's warranted here but they would do an analysis during site plan, which he further explained.

6. He continued to discuss the left hand turn with the board. There were discussions about making Ocean Blvd one-way from the point from the easterly driveway to Route 36.

7. In his report he did not account for Enclave Residents, but it would be a minimal traffic volume, which he further explained.

8. Pedestrian traffic – there was some discussion about having some sidewalk or even a cross walk opportunity which he thinks would be a smart design principal. It can be accommodated to have some pedestrian activity.

Lawrence Luttrell, Esq., Attorney for owner of 470 Bayside Partners, LLC. Block 108 lot 2.03 began his cross examination of Mr. Olivo.

Mr. Olivo stated the following during cross examination by Mr. Luttrell:

1. His study did take into account the traffic to the Dog House and the Stewarts Restaurant. The traffic volume and turning movement were conducted at the respected intersections included all of that volume.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

2. He does not have the number of visitors to the Dog House and the Stewarts Restaurant. He based his report on the I.T.E. generation for those types of uses.

3. The real numbers of the counts are in the turning counts but you can certainly utilize the I.T.E. as a means to estimate. Visitors, three people can arrive from one vehicle so with regard to the number of vehicles they looked very specifically at how many cars are traveling through the intersections.

4. No, there was no personal observation of the number of people visiting Stewarts or the Dog House.

5. He spoke about projected vehicles of the proposed site in the a.m. peak hours would be 100 vehicles and the evening peak hours would be 136 vehicles into and out of the site. A very large majority of that traffic, those vehicles are already on the roadway system today. He further described his calculations.

6. He does not reside in Highlands and disagrees with a comment that a resident understands the traffic better than a Traffic Engineer.

7. He did review the Enclave at Mt. Mitchel plans. The analysis incorporating that data is in accordance with the I.T.E.

8. NJDOT requires trip generation analysis. Trip generations are more conservative.

9. He answered hypothetical questions of traffic from Mr. Luttrell.

Mr. Braswell then asked if there were any questions from the public for Mr. Olivo but there were none.

Mr. Braswell called for a brief recess at 9:31 p.m.

Mr. Braswell called the meeting back to order at 9:40 p.m.

ROLL CALL:

Present: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Knox, Mr. Kutosh, Mr. Cervantes

Absent: Mr. Britton

Mr. Olivo stated that the NJDOT access code mandates the analysis of the existing uses based upon their I.T.E. trip generation and not the actual number of cars that come in and out of that particular use. Often times the I.T.E rates are more conservative and error on the side of caution so to speak in terms of estimating more traffic than what is actually being generated by the existing uses.

Mr. Braswell asked if there were any further questions from the public for Mr. Olivo; there were none.

Christine Cofone of 125 Half Mile Road, Red Bank, NJ was sworn in.

Ms. Cofone stated the following during her testimony and response to questions from the board:

1. She described her educational and professional background as a Professional Licensed Planner and how she owns her own firm. She was accepted as an expert Planner.

2. She reviewed the Borough's Master Plan and Zoning Ordinance.

3. She visited the site and reviewed all documents and reports.

4. The subject property is located in the H-O Zone. It is about 1.5 acres consisting of two lots both fronting on Highway 36 and Ocean Blvd. The lot is irregularly shaped.

5. She described the site referring to Exhibit A-6 which shows the improvements that exist today which are the Dog House Restaurant, Sounds Impossible and Stewarts Restaurant and Monopole, which she further described. She stated that the existing structures maintain nonconforming setbacks and that the site is covered by a significant amount of impervious coverage approximately 88%. The uses that are on the site today are permitted in the H-O Zone. However there are a number of existing nonconformities that will be cured.

6. The application is for a D-1 Use Variance for a proposed 4,500 square foot convenient store with the indoor and outdoor seating. They are also proposing the fueling pumps. The convenient store portion would be permitted in the H-O Zone but the fueling pumps are not. The fueling pumps are not permitted anywhere in the Borough even though the ordinance defines motor vehicle service station but then it does not permit it anywhere in the borough.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

7. The site is particularly suited for this proposed use because of its location on Highway 36 renders it appropriate for this use. Eight to Ninety percent of their trips will come from traffic that is already on the road today. In her opinion a convenient store with gas is probably one of the most appropriately highway oriented uses that she could think of. This is a Highway Oriented Zone and she thinks that there is an undisputable fact that a convenient store with gasoline is highway oriented use. For that fact, she feels that this is a particularly suitable site for this proposed use.

8. The other reason that she feels that the site is particularly suitable is because one of the things that she looks at is when we do this is what is the nearest distance to the subject property of a similar opportunity that would be following in the same traffic pattern. So evening though the WaWa is under construction in Middletown, it's over three miles away but it also pulls away a different traffic pattern, the eastbound traffic. This is a westbound oriented traffic site. Going westbound it's another 1.6 miles to get to another gas station.

9. We will have a coffee bar, made to order sandwiches on multi grain rolls, a healthy fast food concept is available at this site that are not available within several miles of this site in either direction. In her opinion that speaks directly to the particular suitability of this property for this use.

10. So in her opinion the highway oriented nature of the use, the pass by traffic that exists on Highway 36 and the fact that this use will capture customers already on the road, together with the fact that there really are no other convenient opportunities that offer the same type of services that this use will for at least a couple of miles up and down the highway.

11. Yes, the proximity to the jug handle also renders this site suitable for this use.

12. There are multiply access points which makes this a unique and attractive structure for this use.

13. Midichi vs. VPR Case Law 103 NJ1 – she evaluated this site under the case law and there is no way that this could qualify as an inherently beneficial use. This is a noninherently beneficial use, so we are subject to the Midichi Standards where we have an enhanced level of proof to reconcile the borough's omission of this use from its zoning plan. So yes, this is certainly a noninherently beneficial use.

14. Special Reasons for Granting Variance they exist in the Municipal Land Use Law under 40:52 and there are 15 of them. The Midichi Case identified that aesthetics alone can be the justification of a use variance. She looked at the prior approval of the history of this property and we know in 2006 a use variance was granted by this board for a fitness center and in the Resolution it indicated that aesthetic improvement was found to be important. She feels that that condition still prevails today, this site will be upgraded aesthetically. There are other positive criteria for the granting of this variance. Criteria "c" is to provide adequate air, light and open space. The site has 88% coverage today and its nonconforming they are taking it down to about 70% which would eliminate that nonconformity. Criteria "g" Sufficient Space & Appropriate Location for a variety of uses. She thinks from a planning point of view that's important here because she does feel that this is an appropriate space and an appropriate location for this type of use. It makes perfect sense to locate a highway oriented convenient store with gas on the Highway 36 boarder. Criteria "h" is to promote the free flow of traffic. We have some existing conditions on the site today that are nonconforming with the State Access Code which will be cured as a result of this proposed application. Criteria "m" which talks about efficient use of the land and in her opinion this is an efficient use of this property, it redevelops it and it captures a lot of goals that are in the Master Plan.

15. She then spoke about existing bulk nonconformities of the existing site and how the elimination of those deficiencies is also a special reason to grant the variance, which she further described.

16. Negative Criteria has two things one is the impact on the zone plan and the second is the impact on the public good. If you start with the zone plan and you look at the H-O Zone which allows liquor stores, grocery stores, restaurants, bars and taverns and banks. So this is a commercial use. This site is located on Highway 36 zoned for commercial uses. In her opinion the application will not have more of a negative impact by the proposed verses the permitted uses in this zone. The other thing she looked at is that the borough's zone plan which does not allow for a service station in any zones but section 21-74 which prohibits certain uses and this is not specifically listed as a prohibited use. She read the definition of the a motor vehicle station in the ordinance. Gasoline fueling stations were contemplated with service stations that repair vehicles. If they offered vehicle repairs on this site this would be a different application. From a planning point of view the only thing that we are doing is pumping the gas, we are not repairing anything, so it's a retail use. Her conclusion with the negative criteria is that if the board were to grant this

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

variance she does not see a detriment to your zone plan or public good, which she further explained.

17. She then spoke about the borough's Master Plan which she reviewed both the 2004 and the 2009 Reexamination. The 2009 Master Plan has a vision plan for 2020 where the borough made some great findings. Some of the language spoke about a thriving village with a more diversified economy, significant employment and an expanded tax base. This application accomplishes all of those things and will help the Borough get to its 2020 vision. There are a number of goals and objections in the Master Plan she then read five of them which were goal numbers 9, 8, 10, 1 and 3 and further explained reasons for granting variance.

Mr. Braswell asked if there were any public questions.

Mr. Luttrell began his cross examination of Ms. Cofone.

Ms Cofone stated the following:

1. She stated that the proposed would eliminate nonconformities of the access code.
2. It's a commercial zoned property and she believes that their Traffic Engineers testimony was accurate. If the amount of visitors that would visit this site were to delay traffic down to Waterwitch how would it affect the traffic flow. She stated that he did not give her enough facts to respond to that question.

Mr. Smith objected to Mr. Luttrell's question.

Paul Drobbin then cross examined Ms. Cofone.

Ms. Cofone then explained to Mr. Luttrell that hypothetically if he were correct about traffic flow item "h" not being a special reason for granting a variance she laid out several other special reasons for the granting of the variance. She then stated that her reason for "h" was not referring to the traffic flow but rather the dealt with the access points.

Ms. Cofone stated the following:

1. This Quick Check application does not materially impact the cell tower.

Mr. Smith stated that this concludes his case before the board as it relates to the use variance.

Mr. Drobbin then stated that he has no witnesses.

Mr. Luttrell stated that he is not going to be presenting any witness, his client will speak at the public comment portion.

Mr. Braswell asked if there were any questions from the public but there were none.

Mr. Braswell asked if there were any comments from the public.

Dina Wolfe of 677 Main Street, Belford, New Jersey was sworn in and stated that she is the owner of the Dog House Restaurant located on the subject property. She gave a lengthy statement about her opening the restaurant and how she made improvements to the site. She has four employees that work for her. Her husband used all of his annuity money to open up this restaurant. She continued to speak about her restaurant and how it's thriving and she does not want to lose her business. She then submitted 11 photos to the board of her site which were marked into evidence as Exhibits O-1 through O-12. She then spoke about the lighting of the proposed which will be a lot brighter, noise it will be noisier than it is now and it will back up the traffic.

She said that there is no justification for the board to grant this variance.

Mr. Luttrell then questioned Ms. Wolfe about the statement regarding seeing the traffic back up. She described her observation of the traffic problems.

Mr. Smith then cross examined Ms. Wolfe about her lease with the property owner.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

Mr. Wolfe interjected that his wife is too upset to continue.

Mrs. Wolfe stated that under the lease the owner can do whatever he wants with the building and she understands that. She then stated that she has four years left on her lease and she will fight this. She is aware that this property was formally a gas station.

Paul Drobbin then questioned Ms. Wolfe about her lease. She stated that she has four years left on her lease and that she has only been opened for 10 months.

The applicant's attorney stated that there is an out of the lease and it's not relevant to this application.

There were no further questions for Mrs. Wolfe.

Mr. Braswell asked if there were any more public comments.

Candice and George Kowalewski of 1106 Hwy 36, Middletown, NJ were both sworn in.

George Kowalewski spoke against the application and how the lights and this big place would impact the quality of life.

Mr. Braswell asked if there were any questions for Mr. Kowalewski and there were none.

Candice Kowalewski submitted an exhibit to the board which was marked as exhibit O-13, which she described as showing lighting views from her house. She spoke against the approval of this application and further expressed reasons such as the lighting, environmental issues and the impact of neighboring residential properties. She then stated that she would want the Quick Chek closed from the hours of 10pm through 6am.

Mr. Braswell asked if there were any questions from the public for Ms. Kowalewski but there were none.

Dave Bane, owner of 470, LLC was sworn in and stated that he is the property owner of the building where the Quick Check is currently located. He stated that a Seven Eleven Convenient Store would be moving into Quick Cheks existing location. He wanted to know how many convenient stores do we need. He then spoke about how he disagrees with the traffic engineer testimony.

Mr. Luttrell then questioned Mr. Bane.

Mr. Bane explained that he has observed only three cars at most on the Stewarts Root Beer site.

Mr. Kutosh then questioned Mr. Bane. He then stated that he disagreed with Mr. Bane's comment regarding the traffic increase.

Paul Drobbin then questioned Mr. Bane.

Mr. Bane stated that he does not own the Car Wash. He also stated that Quick Chek is already operating 24 hours per day.

There were no further comments from the public.

Ken Smith then gave his summation for approval of the use variance.

The Board then deliberated and discussed the application and testimony.

Mr. Gallagher offered a motion to approve the use variance subject to the following conditions:

1. The lots would have to be consolidated into one lot and not to subsequently severed.
2. This approval would be subject to site plan approval.

**Borough of Highlands
Zoning Board of Adjustment
Reorganization/Regular Meeting
January 6, 2011**

3. Items 4-1 a-e of the Board Engineers letter be complied with.
4. Bulk variances will be held as part of the site plan application.

Scott Wolfe owner of the Dog House spoke against the application and said he was going to fight an approval.

Mr. Braswell stated that the public portion is closed.

Ms. Ryan seconded the approval and it was approved on the following roll call vote:

ROLL CALL:

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

Mr. Smith stated that he would be in contact with the Board Engineer to start the site plan application.

Approval of Minutes:

Mr. Kutosh offered a motion to approve the December 2, 2010 Zoning Board Minutes, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

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

The Meeting adjourned at 11:15 P.M.

CAROLYN CUMMINS, BOARD SECRETARY