

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

Mr. Braswell called the meeting to order at 7:39 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 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:** Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Britton, Mr. Knox,  
Mr. Braswell, Mr. Kutosh, Mr. Cervantes

**Absent:** Mr. Fox

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

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**ZB#2010-2 Metro PCS, New York, LLC  
Block 108 Lot 2.01  
Unfinished Business**

Mr. Gallagher requested additional time to review both the board and applicant's attorney's memos on this application.

Mr. Braswell and Ms. Ryan agreed.

Mr. Gallagher offered a motion to postpone the deliberation and vote on this matter for one month so the Board can review the attorney's memos on this matter, seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Anthony, Mr. Britton, Mr. Knox, Mr. Kutosh, Mr. Braswell  
**N AYES:** None  
**ABSTAIN:** None

Mrs. Cummins – motion carries.

Michael Beck, Esq., asked when the next meeting is.

Mr. Baxter – July 7<sup>th</sup>.

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**ZB#2010-3 Quick Chek Corp.  
Block 108 Lots 1 & 2.01  
Hearing on New Business**

**Present:** Dan Madrid, Esq., Applicants Attorney  
Keith Cahill, P.E.  
Charles O'Livo, Traffic Engineer  
Eugene Gallagher, P.E. Environmental Engineer  
Martin Truscott, Board Planner

Mr. Britton had a conflict on this matter and left the meeting.

Mr. Madrid – they are here for preliminary and final site plan approval for property located on block 108 lots 1 & 2.01. The property is located in the H-O Zone and this is not a permitted use. They have received use variance approval subject to site plan approval and other agency approvals.

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

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 documents were marked into evidence this evening:

- A-14: Aerial;
- A-15 Existing conditions;
- A-16 Colored Version of the Plan;
- A-17 Truck Routes;
- A-18: MCPB Letter dated 4/25/11;
- A-19: Freehold Soil Letter dated 4/27/11;
- A-20: Site Plan Sheet;
- A-21: Survey;

Keith Cahill of Buller Engineering, 25 Technology Drive, Matawan, NJ was sworn in and stated the following during his testimony and response to questions from the board:

1. He described his professional and educational background as a Professional Engineer to the board and stated that he is a licensed engineer in the State of New Jersey. He also stated that he has been qualified as an expert engineer in many other towns. There were no objections to his qualifications.
2. He gave overview of the site and project and stated that they were previously here for a use variance for lot 1 and 2.01 in Block 108. The property consists of .324 acres of land he referred to Exhibit A-16. He spoke of existing uses on the sites as being the Dog House and Stewarts Restaurants.
3. Exhibit A-5 existing conditions and survey of the site dated June 9<sup>th</sup>, 2011 he described.
4. He spoke of existing contamination issues they have and they have an Environmental Consultant here to provide testimony.
5. The site is 90% impervious coverage that exists today and there is no storm water management system on it everything sheet flows off onto Ocean Blvd and Route 36.
6. Ocean Blvd is under the jurisdiction of the NJDOT even though it's a County Road. The County has no interest in this application. Subsequently they have had a meeting with NJDOT and they acknowledge that they have jurisdiction.
7. The storm water will go to NJDOT system and they will review the application.
8. Stewarts has existing canopy that is overhanging into the NJDOT right of way which he further explained Stewart's site parking spaces that overhang into the right of way. The Dog House site, the trash enclosure is in the right of way and he spoke of retaining walls and fence that are overhanging into the right of way and also onto Hwy 36 right of way. There parking as well encroaches into the right of way on Route 36.
9. The existing access points on Route 36 he described its poor conditions.
9. He spoke about the existing parking which is in poor conditions and that it has a poor line of site.
10. Route 36 entrance driveway and exit driveway do not meet the NJDOT standards and the same goes for Orchard Avenue.
11. West to East there is a 20 foot grade chance and the storm water would travel to the east.
12. They are looking to make the proposed improvements to the site to improve the site aesthetics and function of the site.
13. He referred to Exhibit A-7 and A-16 and compared the two plans that have a minimum change. The size of the building is 4543 square feet, 41 parking stalls, 90 by 47 foot canopy, driveway circulation and access points and cell tower to remain. There is one difference the location of the underground storage tank which is now to the east side of the canopy. The tanks have been relocated to the east side of canopy 20 feet to nearest tank.
14. The tanks are still the same make and model just a change in location for safety reasons.
15. Exhibit A-16 4543 square foot convenient store with access off of Route 36 and exit onto Route 36 in accordance with the NJDOT standards. Ocean Blvd access point is entrance only.
16. Spoke of two ways circulating on the site which he described.
17. He described the proposed width of the drive isles on the site.
18. There are 41 parking stalls that will be 10 by 20. Three will be dedicated to the cell tower.
20. 41 Parking spaces exceeds ordinance requirements.

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

21. Sidewalks, there are no existing sidewalks on Ocean Blvd on either two sides. If board requires they would take to NJDOT for permit.
22. Employee parking, they don't designate but we encourage them to take six spaces furthest from the site.
23. 10-12 employees would be maximum per shift.
24. Cell Tower is an easement, they would have rights as per the easement.
25. T6 Unison Site Management, LLC owns the easement to cell tower.
26. Have designed site around easement of cell tower and improved the site on how it operates today.
27. Have two ADA compliant parking stalls.
28. 50 Foot Front Yard required proposed on Ocean Blvd is 25 feet. Canopy to be 25 feet from Ocean Blvd. Trash will be 1 ½ feet from property line. They have pulled out existing encroachments from right of ways. They have pulled the structures away from right of ways and eliminated the line of site issues. Any redevelopment of this site due to the land would require relief from the front yard setbacks which they are requesting variances for the building and the trash enclosure.
29. Loading Zone will be in the rear of the building.
30. They will be open 24 hours per day seven days per week with 10-12 employees peak hours of operation. They have five drop off deliveries per week for fueling. Store deliveries four to five per week.
31. Truck routes he referred to A-17 truck turning template. He described the circulation of the site.
32. They encourage deliveries to enter the site off from the rear entrance.
33. Gas components will be in compliance which exceeds the requirements and everything is monitored with alarm system.
34. Utilities – off of Route 36, Sewer off of Ocean Blvd. Storm water existing 90% impervious with no system and they proposed curbing system and reducing impervious coverage to 72.8%. That reduces the volume of water that leaves this site.
35. Pole to west will take from pole to building underground.
36. Roof runoff will be discharged to Ocean Blvd and Route 36. The rest of the site will be collected in an underground water collection system which he further described.

Robert Keady, P.E., Board Engineer was sworn in.

Mr. Keady commented – by reducing impervious coverage they are reducing run off from the site. He further described the water runoff direction.

Mr. Cahill continued testimony as follows:

37. Light – LED Lighting provided 15 ft in height lighting which meet .2 ft candle foot off NJDOT right of way. Warmer .5 ft property line candle foot requires waiver. There is no negative impact of excess lighting. He is requesting waivers on these items.
38. He described the lighting plan shown on Sheet 9 he described no foot candles leaving site to residential property, which he further explained.
39. Engineer Report requests more landscaping to high point and they agree. He wants on high side not low side and to put on top of wall.
40. They will comply with Board Engineer comments on landscaping.
41. Exhibit A-8 (a) photo rendering of proposed development are slight modification is the location of the tanks. He further described the proposed site.
42. Signage – freestanding sign. They have chosen monument sign on eastern most side of the site shown on A-16. 50.4 square feet, 7 ft 8 inches tall. Variance needed for the sign.
43. Three signs proposed ordinance allows two signs because of triangular shape of land need three. A variance is required for the signage.
44. Three signs on canopy which he described needs variance for three “Quick Chek” signs on canopy.
45. Enter & exits signs six signs need variance because they are internally illuminated.
46. A-2 drawing, A-9a is coloring of sign and illumination of the Quick Chek letterings on building.
47. He described need for illumination entrance signs.

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

48. Positive Criteria for variances – there is existing encroachment, the site is narrow and of a unique triangular shape. It's difficult to redevelop the site without encroaching on the front yard setback. They are reducing the existing non-conformities.
49. Parking stalls are pulled back but need variance to have room for building. The unique shape of property caused variance.
50. There is no detriment to neighborhood.
51. Monmouth County Planning Board, Freehold Soil applied for. Monmouth County Planning Board issued a no interest letter.
52. Board Engineer Letter dated 5/27/11 section "c", item 3 sidewalks.

Mr. Keady - The ordinance required sidewalk on frontage and he believes sidewalk could be warranted here along frontage.

Dan Madrid – Quick Chek is agreeable to sidewalks but it would need NJDOT approval.

Mr. Gallagher has safety concerns with sidewalks on Route 36.

The board had a discussion on sidewalks on the eastern most driveway sections of the site and on Orchard Ave.

Mr. Cahill continued:

- 53 He spoke of his concerns with sidewalks. They are willing to provide a cross walk onto site and sidewalks and he can work on that with the board engineer.
54. C-4 of engineer letter agreed to. D-1 will identify all tower parking spaces - agreed. They agreed to all signage and grading & drainage section. Lighting Board Engineer suggest softing lighting with understanding .45 ft candles can be exceeded. Sections I through J can be addressed.
55. T-6 Unison, P.O. Box 1951, Frederick, Maryland 21702 is the owner of the cell tower easement.

Mr. Braswell asked if there were any questions from the public for Mr. Cahill.

Jim Parla of Portland Road stated that putting sidewalks on the north side would be prudent because of foot traffic.

There were no further questions from the public.

The Board took a brief recess at 9:23 p.m. and returned at 9:32 p.m.

Mr. Braswell called the meeting back to order at 9:32 P.M.

Charles Olivo of Stonefield Engineering & Design, Rutherford, NJ was sworn in and stated the following during his testimony and response to questions from the board:

1. His office prepared the traffic impact study for this application.
2. The proposed project draws traffic off existing roadway traffic.
3. Met with NJDOT RE: access off of Ocean Blvd because its under DOT jurisdiction. Ocean Blvd is not under Monmouth County jurisdiction. So all access points to site are under NJDOT jurisdiction. They will file next week for a major access application with NJDOT.
4. Along Route 36 the only options are right in and right out. Along Ocean Blvd they are proposing a full movement driveway which will be the easterly access point which will be an ingress only driveway at that point.
5. Left turn analysis for ingress at Ocean Blvd. The traffic volume flow in the easterly direction is minimal so the opposing traffic to the left hand movement into the site is virtually nothing and for that reason a warrant is not met. The movement into that site would be expected to flow in a free flow fashion so a left turn bay would not be warranted or required.
6. Access off of Route 36 the DOT wants right in and right out driveway to limit the number of curb cuts on Route 36 which he further described.
7. He described Exhibit A-20 and the change is the second driveway on Route 36 is an egress only, not an in and out.

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

Mr. Madrid asked if the board could approve both plans because the NJDOT may change access and ingress driveway on Route 36.

Mr. Baxter – the board could if that were the only change and the board is satisfied with both drawings it could be stated in the Resolution.

Mr. Olivo continued his testimony as follows:

8. He feels comfortable with traffic circulation pattern.
9. He then spoke about the shoulder areas on Route 36.

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

Eugene Gallagher of 117 Canal Road, South Boundbrook, NJ was sworn in and stated the following during his testimony and response to questions from the board:

1. He described his professional and educational background as a Civil Engineer to the board and stated that he is a license Professional Engineer in the State of New Jersey. There were no objections to him qualifying as an expert witness.
2. His office provided environmental consultant services to Quick Check for this particular project. They did initial due diligence studies, a phase one environmental site assessment and they did a site investigation of soil for the proposed development. They have been providing ongoing consultation to Quick Check with respect to Exxon's investigation.
3. The site has big history of environmental issues. He spoke of offsite seep that DEP is now involved. Exxon has done extension investigation on and off site which he further explained.
4. They determined ground water is very deep and it was impacted by gasoline.
5. Remediation, Exxon is still doing investigation they are in the process of a PILOT Study which will determine just how to remediate the site. He then spoke of different methods of treatment.
6. He does not believe any digging up will be needed for the remediation.
7. The tank for Quick Chek will only be 16 feet deep.
8. We are coordinating with Exxon to make sure no impact with construction.
9. He spoke of Exxon PILOT System for Exxon.
10. Remediation will continue after we are in place.
11. He spoke of the wells and the locations and that its Exxon's goal to reduce the source of contamination.
12. Exxon is talking about an air \_\_\_\_\_ component system which he further described.
13. He spoke about an access agreement with Exxon for the site.

Mr. Keady – once the PILOT Study is done it needs to be provided to the board to determine impact and that there is no conflict.

Henry Kent Smith- on that point we already negotiated with Exxon Mobile on an agreement. Once that agreement is in place there is going to be an exchange of information between Exxon and Mr. Gallagher as it relates to what their proposal is, how they are going to design the system and where there pipes are going to go. At that point then Exxon Mobile will be in front of the board with our site plan to say “ here is where everything is going” . We will be here with them because it's our site to ensure that his board has all of the information.

Keith Cahill spoke in concept only because the design has not been completed but a 20 by 30 foot area Exxon will probably be needed, there would be a trailer or container on site which will contain the generator and to blower for the air.

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

Frank Marciano of Quick Chek was sworn in and stated the following during his testimony and response to questions from the board:

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

1. Car Wash Site is not needed for this project.
2. We currently don't have control of maintenance at the site. We will now own it and maintain it.
3. Currently they have 35-55 employees.
4. Deliveries – they worked out and they can control the time of deliveries to the site. He then further explained the control of the deliveries.

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

Christine Capone, P.P. was sworn in and stated the following during her testimony and response to questions from the board:

1. The variances requested for this application are listed on page three of the T & M letter dated May 27, 2011. The relief that is being requested can be granted by this board under the C-1 hardship variances. She then referred to exhibit A-16 and spoke about the irregular configuration of the property plus the property is encumbered by two front yard setbacks on Route 36 and Ocean Blvd. These are specific property encumbrances that are unique to this property. The size and shape of a piece of property are in the Land Use Law for reasons to grant a C-1 variance.
2. As site exists today, the trash enclosure encroaches into the right of way. So we are improving the conditions of the setbacks. They are also providing a landscaping plan so the combination of the improved setback along together with the aesthetic improvements are going to have a substantial positive impact on the zone.
3. Negative Impact, she feels any negative impact is offset by the fact that we are improving the conditions and we are also providing a landscaping plan.
4. Visual – aesthetics is a criteria under the land use law to grant variance.
5. It is her opinion that the benefits will outweigh the detriment and that can be supported by the MLUL.
6. Sign variance is also being requested for the eastern elevation of the property, they are asking for additional \_\_\_\_\_ for that. Given the fact that they are located at point of Ocean Blvd and State Highway 36 and with the dual frontages and the fact that one is such a major state thorough fair she feels that lends support for the additional sign.

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

Mr. Madrid gave a brief summation to support the application and approval for preliminary and final site plan with bulk variances.

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

Ms. Ryan offered a motion to close the public hearing, seconded by Mr. Gallagher and all were in favor.

The Public hearing on this application was closed.

The Board discussed the application.

Mr. Gallagher offered a motion to authorize the Borough Attorney to prepare a positive Resolution for the next meeting and the conditions can be discussed, seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Gallagher, Mr. Anthony, Mr. Knox, Mr. Kutosh,  
Mr. Cervantes, Mr. Braswell  
**NAYES:** None  
**ABSTAIN:** None

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**Approval of Minutes:**

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
June 2, 2011**

Ms. Ryan offered a motion to approve the May 5, 2011 Zoning Board Minutes, seconded by Mr. Gallagher and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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

The Meeting adjourned at 10:28 P.M.

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**Carolyn Cummins, Board Secretary**