

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
July 7, 2011**

Mr. Braswell called the meeting to order at 7:34 p.m.

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

Mrs. Cummins 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: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox,
Mr. Kutosh, Mr. Braswell

Absent: Mr. Anthony, Mr. Cervantes

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Martin Truscott, P.P. of T & M Associates

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

Mr. Braswell stated that they have requested an adjournment until next month. We did not have a full voting board only six voting members present and they preferred to put this off for one month.

Mr. Kutosh offered a motion to approve the applicants request for a postponement to the next meeting which is August 4,2011, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Knox, M. Kutosh, Mr. Braswell
NAYES: None
ABSTAIN: None

**ZB#2010-3 Quick Chek Corp.
Block 108 Lots 1 & 2.01
Approval of Resolution**

Present: Dan Madrid, Esq., Applicants Attorney

Conflict: Mr. Britton stepped down

Mr. Baxter explained the changes to the Resolution he did since the first draft was prepared.

Dan Madrid spoke with the board about his requested changes to the resolution. He wants final site plan approval added to the Resolution. He then distributed a sample resolution with his proposed revisions to the revised #2 draft resolution. Change on page one adding final site plan approval, page 4 more detail to the fuel pumps, page 9 sign height revise to 10.5 feet, page 12 location of remediation equipment, page 15 to add final site plan approval and page 17 remove item 5.

Frank Marciano stated that Exxon is still doing their final testing and we can't dictate where there temporary mobile unit will be located. He did state that it will be located by the cell tower.

7/7/11 (Final)

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

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**RESOLUTION GRANTING PRELIMINARY AND FINAL SITE PLAN
APPROVAL FOR QUICK CHEK CORPORATION**

WHEREAS, the applicant, QUICK CHEK CORPORATION, previously obtained a use variance from this Board to construct a retail convenience store and gasoline station at 450 State Highway 36, Highlands, New Jersey (Block 108, Lots 1 and 2.01), which approval was subject to the applicant obtaining required bulk variances and site plan approval; and

WHEREAS, QUICK CHEK has applied for preliminary and final site plan approval, together with bulk variances and a design waiver; 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 2, 2011; and

WHEREAS, the Board heard the testimony of FRANK MARCIANO, Real Estate Manager for Quick Chek; KEITH CAHILL, Engineer with Bohler Engineering; CHARLES OLIVO, Traffic Engineer; EUGENE GALLAGHER, Engineer and environmental consultant; and CHRISTINE COFONE, applicant's planner; and

WHEREAS, no objectors appeared; and

WHEREAS, the applicant submitted the following documents in evidence during the use variance hearing, some of which were used and considered at this hearing (retaining their exhibit numbers):

- A-1 Variance Application (3 pages, plus disclosure statement)
- A-2 Rider to Application (3 pages), with background and legal analysis
- A-3 Certificate of Concurrence from both property owners
- A-4 Use variance plan set by Jeffrey Martell, of Bohler Engineering (3 sheets) dated 9/23/10
- A-5 11/5/10 Traffic assessment letter report by Charles Olivo and Matthew Welch, of Stonefield Engineering & Design, LLC
- A-6 Aerial photo on large board
- A-7 12/1/10 Site plan, in color, on large board
- A-8 Photo on board showing present conditions, looking northwest toward property
- A-8a Same view as A-8, with Quick Chek improvements superimposed

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- A-9 Large photo on board looking southeast toward property
- A-9a Same view as A-9, with Quick Chek improvements superimposed
- A-10 Large photo on board looking from Ocean Boulevard
- A-10a Same view as A-10, with Quick Check improvements superimposed.
- A-11 Truck turning drawing
- A-11a Other truck turning drawing
- A-12 11/4/10 Survey on board by Control Point Associates
- A-13 Supplemental traffic analysis by Charles Olivo dated 1/6/11

AND, WHEREAS, the applicant submitted the following additional documents in evidence during this hearing:

- A-14 Large aerial photo on board
- A-15 6/2/11 Drawing by Bohler Engineering depicting existing conditions with encroachments
- A-16 Colorized site plan prepared by Keith Cahill, of Bohler Engineering, dated 4/15/11 (sheet 4 of 15)
- A-17 Bohler Engineering truck turning drawing dated 4/15/11
- A-18 4/25/11 Letter of no interest from Monmouth County Planning Board
- A-19 Comments letter from Freehold Soil Conservation District
- A-20 Colorized site plan, modified for NJDOT
- A-21 11-4-10 Survey by Control Point Associates

AND, WHEREAS, the Board also considered its Engineer's (Robert Keady, of T&M Associates) review letter dated May 27, 2011;

AND, WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. Both lots 1 and 2.01 in Block 108 are in the HO (Highway Oriented) Zone.
2. The applicant already obtained (February 3, 2011) use variance approval to construct a retail convenience store (Quick Chek), with an accompanying gasoline station. The retail convenience store will be approximately 4,543 square feet. The gas station will have 12 fueling positions, consisting of 6 multi-product dispensers and 2 diesel dispensers, for a total of 8

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pumps. The applicant has also proposed a maintenance shed and trash enclosure.

The existing cell phone tower and equipment shelter will remain.

3. The property (both lots) front on State Highway 36 westbound and on Ocean Boulevard (to the rear). There are, therefore, two front yards.

4. The ingress/egress from/to Route 36 is designed with better spacing than currently exists, and is not as wide an entry as currently exists, thereby coming into conformance with NJDOT Access Code design standards. The first highway access westbound on Route 36 will be an “enter only”, while the second access will be for both ingress and egress. On the Ocean Boulevard side of the property, an entrance only on the westernmost access is proposed, while the easterly access will be for both ingress and egress.

5. The applicant’s proposal will meet NJDOT access design management standards, while the current lots do not.

6. The current uses have approximately 91% impervious surface coverage, while the applicant’s proposal will be 72.8%.

7. There are numerous encroachment issues on the existing lots, which include the Stewart’s canopy, which is in excess of 2.5 feet over the DOT right-of-way; three parking spaces on the Stewart’s property and the trash enclosure are over the right-of-way; the existing retainer walls, walks and fences are in the right-of-way; and part of the Dawg House parking is in the right-of-way. In addition, the western portion of the site, fronting on Ocean Boulevard, has no curb or delineation of the property. It is also poorly lit, and it is easy to run over the parking stops. All of these situations will be cured by the new plan.

8. The storm water currently channels down the property, in an easterly direction.

9. There are 39 parking stalls, where 21 are required. This includes the 3 needed for the cell tower.

10. Though no sidewalks were proposed, the Board feels that sidewalks should be required at the western end of the site, both on the Route 36

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and Ocean Boulevard frontages. The particulars concerning the sidewalks are set forth in the conditions at the end of this resolution.

11. For informational purposes, the cell tower usage of the property is subject to a permanent easement, which is owned by T6 Unison Site Management, LLC.

12. There will be ADA-compliant parking stalls adjacent to the building.

13. A parking variance is required. Under the ordinance, parking must be set back 25 feet. The applicant proposes that it be 5 feet from Route 36 and 6.6 feet from the Ocean Boulevard right-of-way. Because of the narrowness of the lot, a parking configuration of this design is appropriate.

14. Front yard setback variances are required. Where 50 feet is required, there is 20.5 feet from Ocean Boulevard to the building; 25 feet from Ocean Boulevard to the canopy; and 1.5 feet from the Ocean Boulevard right-of-way to the trash enclosure.

15. The design proposed by the applicant will improve sight lines and remove many existing violations.

16. The loading zone has been designed to be at the rear of the building, which will keep the loading zone out of heavily-trafficked areas, both pedestrian and vehicle.

17. The applicant anticipates five fuel deliveries per week; four to five deliveries to the store per week; and five to six box trucks per day making deliveries five days per week.

18. The utilities will come in off of Highway 36, underground. The sewer connection will come in off of Ocean Boulevard.

19. There is no current storm water management. The plan proposes curbing, and also a substantial reduction in impervious coverage (going from about 90% to about 72.8%). As a result, there will be less water leaving the site.

20. There will be underground leaders from the building and the canopy to existing inlets in the roadways.

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21. The Board Engineer stated that, based on the information supplied by the applicant, there will be no increase in runoff downtown, because the runoff is being reduced.

22. A waiver has been requested for lighting. Applicant requests a 1 foot candle at the eastern entrance on Ocean Boulevard, where a .5 foot candle is permitted. There will be no foot candle spillage off site to the south or north.

23. Building lights will be flush mounted, facing downward.

24. The Board Engineer has recommended the addition of shrubs to the western retaining wall. The applicant has accepted this change. Those shrubs will be installed on the top of the higher end of the retaining wall.

25. The Board Engineer requested a change to the type of trees being planted on the site. The applicant will comply with that request.

26. The applicant has requested a variance for its freestanding sign. It will be 7 feet 8 inches high, which includes the 3 foot height of the brick base. Where the ordinance permits a maximum of 24 square feet for a sign, this sign will be 50.4 square feet, on one side only. It will be an LED-type sign, showing fuel prices. The sign itself will be 4 feet 8 inches high and 10.5 feet wide. The design will be more aesthetic than a conventional gas station sign.

27. Though there are currently two lots, each entitled to a free-standing sign, the consolidated lots in this plan will provide only one free-standing sign.

28. Since the ordinance would currently allow more signs on the lots, and greater square footage, this application proposes less signage and, therefore, is an improvement.

29. There will be three canopy signs facing east, south and west. They will be 1.9 feet in height and 12 feet in length. In addition, there are three (3) proposed façade signs, while only two façade signs are permitted by ordinance. A variance, therefore, is required for the third façade sign. The Board Engineer has opined that four (4) signs are allowed under the ordinance (i.e., 3 canopy and the third façade). The board finds that all four of these signs are reasonable, and none of them will be an intrusion into the neighborhood, nor will they be a detriment to the neighborhood.

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30. The applicant has also requested a variance for the ingress/egress signs, which are to be one foot by three feet in size (ordinance allows up to four square feet) and will be internally illuminated. The illumination will not be dramatic nor brightly lit, as a result of which the Board finds this type of entry sign to be appropriate and non-intrusive.

31. The lettering on the building sign will be in green, not white, which will make it less obtrusive. The Board approves that type of signage.

32. The applicant has advised that they will comply with the recommendations of the Freehold Soil Conservation District in their letter of April 27, 2011 (Exhibit A-19).

33. The Board Engineer made several recommendations in his letter dated May 27, 2011. The applicant has indicated that he will comply with the same, as reflected in items C3, C4, D4-6, all of section E, F2,G2, G7, G8, H1-3, H4(will work with the board engineer), and sections I and J.

34. The lighting will be softened by the applicant, subject to the Engineer's approval. The applicant agrees.

35. The Board considered two different plans (A-20 and A-16 or submitted site plan). In order to avoid the expenditure of unnecessary time, the Board considered both plans, so that, in the event the NJ DOT approves one plan and not the other, the applicant will have an answer now as to the Board's ruling on both plans. The Board finds both plans to be acceptable and, therefore, approves either (A-20 and A-16 or submitted site plan).

36. The Board heard testimony from EUGENE GALLAGHER, a Civil Engineer with a specialty in environmental services. He gave the Board a history of the contamination problems on the Dawg House property (easternmost lot) and the requirements for remediation being placed on Exxon by the New Jersey Department of Environmental Protection. It will be Exxon's responsibility to remediate the water contamination problems, which are approximately 75 feet to 80 feet deep. The studies undertaken indicate that the contamination is not of the ground itself, but merely to the water, which will require Exxon to come up with a remediation plan and procedure for submission to the NJ DEP, for NJ DEP's

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approval. It is anticipated that the remediation will continue well after this project is built and operating.

37. An access agreement will be required between Quick Chek and Exxon, which agreement will be subject to NJ DEP approval.

38. As a result of the required remediation, the equipment for the remediation is planned to be placed on an undetermined location on the western portion of the combined lots. There will be landscaping placed around it, which landscaping will supplement any loss of trees or other landscaping needed for the equipment area.

39. The Board heard uncontroverted testimony from the applicant's planner regarding the irregular configuration of the property and the consequent need for C-1 hardship variances. The irregular configuration is compounded by the combined lots having frontage on two roads, as well as the shape of the properties themselves.

40. The Board views the bulk variance application in this case as one which could be considered as C-1 or C-2 variances. In either case, as this resolution recites, the Board approves the requested variances, which are attendant to the site plan.

41. With regard to the C2 variance, the following special reasons justify the granting of the variance: removing the canopy and trash which are now in the right-of-way will improve the setbacks, bringing the site into greater conformity with the setback requirements under the borough ordinance. There will also be aesthetic improvements. These items, therefore, are positive changes, and promote the purposes of the MLUL under N.J.S.A. 40:55D-2(a), (c) and (i).

42. The board heard testimony regarding the lighting both under the canopy and elsewhere on the site and finds the same to be reasonable and nonintrusive. In fact, the board does not find there will be any negative impact on the surrounding properties, including those to the south, across State Highway 36.

43. To the extent there is any negative impact of this plan, though the Board sees little or no negative impact, those impacts are more than offset by the positive changes and removal of the many current encroachments. The

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applicant's proposal is a better plan than currently exists. To the extent that there is any detriment in the plan submitted, that detriment certainly is not substantial.

44. The fact that the property fronts on a major state highway is a supporting reason for granting the variance for the free-standing sign elevation. Further, the sign variances will promote the free flow of traffic and promote the public health, safety and welfare by allowing travelers on State Hwy. 36 to easily identify the site. These reasons promote the purposes of the MLUL under N.J.S.A. 40:55D-2(a) and (h).

45. The applicant, therefore has proven a hardship in developing the site (both lots) in conformance with the zone standards because of the shape of the property. The applicant has also shown that the variance relief requested will promote a public purpose, as set forth in the Municipal Land Use Law (N.J.S.A. 40:55D-2), as more specifically detailed in the testimony of the applicant's planner, CHRISTINE COFONE, and its engineer, KEITH CAHILL, because the proposal provides benefits to the public that substantially outweigh any detriment. As indicated herein, the Board finds minimal or no detriment in this proposal.

46. The bulk variances requested here can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. The impact of the requested variances on surrounding properties will be positive, rather than negative; and, therefore, the requested variances will not damage the character of the neighborhood or constitute a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on June 2, 2011, 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 QUICK CHEK CORPORATION for preliminary and final site plan approval for its convenience store and gas station operation on Lots 1 and 2.01 in Block 108 is hereby approved; variances for minimum front yard setback on Ocean Boulevard regarding the building, canopy and trash enclosure are hereby granted, consistent with the plans; the sign variances (canopy, eastern side of the building, and ingress/egress signs) referred to in the body of this resolution are hereby approved; the lighting

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waiver of 1 foot candle where .5 foot candles is required is hereby approved; all subject to the following conditions:

1. The two lots shall be consolidated and, thereafter, the property will be prohibited from subsequent subdivision.

2. This approval is subject to letters of approval or no interest being obtained as follows:

A. Construction code approval.

B. Local fire district approval.

C. NJ DOT approval, for access permits.

D. Freehold Soil Conservation District approval.

E. Middletown Sewerage Authority approval.

F. Atlantic Highlands Highlands Sewerage Authority approval.

3. Concrete sidewalks shall be installed on the Ocean Boulevard side of the property running from the westernmost property line to the western edge of the easternmost access/entrance point.

4. Concrete sidewalks shall also be installed on the Route 36 side of the property running from the westernmost property line to the edge of the westernmost access driveway. In addition, the property will be designed in such a way as to allow for pedestrian traffic coming easterly on the site, along Route 36, and then entering the site to a pavement-marked walkway to the building in order to provide for easy pedestrian access. The precise design and location shall be fixed by the Board/Borough Engineer.

5. Compliance with Board Engineer's review letter dated May 27, 2011.

6. Approval by the Zoning Board will be required at a future date to locate the above-ground environmental remediation equipment by Exxon. The location of that equipment shall not conflict with the site operations.

7. The Borough of Highlands shall be provided with all documentation, on a timely basis, regarding the status and details of the environmental remediation work and permits.

8. The applicant's engineer shall work with the Board Engineer to reduce the excessive lighting levels at the Ocean Boulevard driveways.

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9. Fuel deliveries will be restricted, so that they shall not enter from State Highway 36.

10. This approval acknowledges that the NJ DOT may require revisions to the proposed driveway configuration. The applicant does not have to request amended site plan approval for the alternative NJ DOT driveway exhibit (A-20), as presented at the public hearing, if the same is required by the NJ DOT.

11. All improvements shall be in accordance with ADA regulations and all applicable codes.

Seconded by Mr. Kutosh and adopted on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Approval of Minutes:

Ms. Ryan offered a motion and moved on the approval of the June 2, 2011 Zoning Board Meeting Minutes, seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 8:08 p.m.

Carolyn Cummins, Board Secretary