

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

Mr. Braswell called the meeting to order at 7:45p.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:

AYES: Mr. Fox, Mr. Britton, Mr. Kutosh, Mr. Braswell, Mr. Connelly

Late Arrival: Mr. Cervantes, Mr. Gallagher

Absent: Ms. Ryan, Mr. Knox

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

**ZB#2012-1 Perlman, Nadine
Block 52 Lot 13 – 38 Cornwall Street
Application Review & Set Public Hearing Date**

Mr. Cervantes arrived at 7:52 p.m.

Mr. Gallagher arrived at 7:53 p.m.

Present: Nadine Perlman

The Board reviewed the application with the applicant and the following was stated:

1. Applicant needs to redo the cover page of the variance application to indicate that the applicant is the owner of the subject property. Also need to correct item #2 to indicate the correct zone as R-2.02. Item #5, the Applicant must list all the variances for the application as per the zoning chart.
2. The applicant must serve proper public notice.
3. The applicant must provide the Board Secretary and Board Engineer with drawings to full scale.

Mr. Kutosh offered a motion to schedule this application for a public hearing on April 5, 2012, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Britton, Mr. Kutosh, Mr. Cervantes, Mr. Connelly

NAYES: None

ABSTAIN: None

**ZB# 2011-2 Louco, LLC
Block 63 Lot 19.01 – 231 Bay Avenue
Approval of Resolution**

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

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR LOUCO, LLC**

WHEREAS, the applicant, LOUCO, LLC, is the contract purchaser of the old Dr. Gimpi's Restaurant and rooming house at 231 Bay Avenue, Highlands, New Jersey (Block 63, Lot 19.01); and

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

WHEREAS, the applicant initially filed an appeal of the zoning officer's denial, claiming that the restaurant and residential uses had not been abandoned and that the proposed uses were prior non-conforming uses; and

WHEREAS, the applicant subsequently filed an application for use and bulk variance relief, seeking to use the property as a restaurant on the first floor and to use the second and third floors for one residential unit on each floor; 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 February 2, 2012; and

WHEREAS, the Board heard the testimony of LOU DAKOGLU, the principal member of the applicant LLC; and RICHARD STOCKTON, professional planner; and

WHEREAS, no one appeared in opposition, or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning Permit Application—denied 9/22/11;
- A-2 9/27/11 Handwritten letter by Mr. Dakoglu, appealing denial of zoning permit;
- A-3 Variance application (3 pages), plus a 4th page, which was a revision to the application;
- A-4 Architectural plans by William Doran dated 1/18/12;
- A-5 9/17/03 survey by William Doran;
- A-6 Photo – trash enclosure;
- A-7 Photo – rear of restaurant showing stockade fence adjacent to red ranch home;
- A-8 Picture – rear;
- A-9 Picture – front yard (Bay Avenue)
- A-10 Picture – Cedar Street side of property;
- A-11 Picture – Showing Bay and Cedar views with the main entrance;
- A-12 Old real estate listing showing old free-standing sign;

AND, WHEREAS, the following exhibits were marked into evidence as Board exhibits:

- B-1 6/4/09 Board resolution granting use and bulk variances, and preliminary and final site plan approval to 231 Bay Ave., LLC (same property);

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

1. The applicant is the owner of property located in the R-2.02 Zone.
2. The site currently contains a vacant restaurant (formerly known as Dr. Gimpi's) with vacant boarding rooms on the upper levels. It is currently a 3-story building, and has been vacant for approximately ten years.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

3. Though the property has remained vacant since its last use as Dr. Gimpi's Restaurant, with residential units above the first floor, and there has been no intervening use, the Board is constrained to find that the property is abandoned under the requirements of Borough Ordinance 21-98A-3(b), which states:

“A. Continuance. Except as otherwise provided herein, non-conforming uses or structures which lawfully existed at the time of passage of this chapter may be continued even though such uses or structures do not comply with the regulations of this chapter; provided, however, that:

3. Abandonment. A non-conforming use that has been abandoned shall not therefore be reinstated. A non-conforming use shall be adjudged to have been abandoned:

...b. In cases where such non-conforming use is a building or structure designed for such use, when it has been voluntarily discontinued for a period of twenty-four (24) consecutive months.”

4. The building has been neglected for at least the last 10 years and is in a state of disrepair. It has become an eyesore on the main street in the downtown area.

5. The applicant testified that the first floor needs walls, plumbing and electrical work, though there are no structural changes anticipated. The changes are all cosmetic. The applicant intends to add booths, as well as a sprinkler system. On one side of the restaurant, there will be nothing above the first floor. The hood system for the kitchen will be in that area, but will not be near windows or the upper floors.

6. The applicant testified that there are currently 16 spots for parking. The trash area will not reduce that number. According to the borough's ordinances, as advised by the Board's Engineer, a total of 29 spaces are required (2 for each residential unit = 4 spaces; plus either 1 space for every 4 seats or 8 spaces per 1,000 square feet, whichever is greater). The applicant testified that he plans on having 100 seats. If that is the case, he will need 29 spaces. If the seating is less than 100, the required parking spaces is less. In either case, however, the difference between the number of spaces required and the 16 spaces provided equals the parking shortage, which figure shall be used to compute the applicant's parking contribution under Ordinance 21-65-14.

7. A parking variance is needed for the shortage in parking, which variance the Board approves, subject to the applicant making the required contribution.

8. The applicant has no plans to obtain a liquor license, as a result of which, this will not be a club, bar or tavern. It will be a BYOB restaurant. The applicant's responses to these questions contrast with item 22 in this Board's resolution of June 4, 2009 (Exhibit B-1), which approved a commercial and residential use on the property with the condition that there be no restaurant or tavern.

9. On the Cedar Street side of the property, there will be a doorway and entrance to a staircase leading to the apartment units upstairs.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

10. Restaurant use is a niche industry in Highlands. The proposed use will simply replace a prior restaurant use, though the new use will be far less intense than the prior use.

11. The stockade fence will stay, and will be painted.

12. As to signage, the applicant will comply with the borough ordinances, the Appendix A design criteria in particular. The applicant does intend to construct a free-standing sign similar in dimension to the sign which was previously on the property, on the Bay Avenue side (see Exhibit A-12).

13. The owner seeks to reopen the building by providing for approximately 2,966 square feet of commercial space on the ground level as a restaurant, and have one apartment unit on the second floor and one apartment unit on the third floor.

14. This zone does not permit multiple uses, nor does it permit commercial uses, nor does it permit expansion of non-conforming uses or changes to other non-conforming uses. As a result, applicant seeks a use variance.

15. The owner seeks bulk variances for the following preexisting conditions:

A. Maximum lot coverage of 80.5%, where 75% is permitted (note that the property currently has 85% of lot coverage).

B. 1.8 foot front yard setback on Cedar Street, and 14.3 foot setback on Bay Avenue, where 20 feet is required.

C. 4.4 foot side yard setback, where 6 feet is required.

16. The property fronts on three streets (Bay Avenue, Cedar Street and Second Street). As a result, there are three front yards and one side yard.

17. The average height of the proposed/existing structure is 28.5 feet. No variance is required for height.

18. The area in which the property is situated is predominantly residential (approximately 85.7% of the properties within 200 feet, accordingly to the applicant's planner). There are some commercial uses, so it is mixed.

19. This application will take a dilapidated building, dress it up, and improve the appearance of both the building and the streetscape.

20. The proposed use will also preserve the neighborhood character, but clean it up, and improve both the property and the neighborhood.

21. If the property were to be used for residential purposes only, the structure would have to be removed and one unit put in its place. That would be totally out of character with the neighborhood.

22. The applicant's planner testified that the zoning change, such that the continuation of the old uses would not be permitted, has caused a hardship to the property owner, and also created a situation where it would be highly unlikely that the property would ever be used only for the purposes permitted in the zoning ordinance.

23. The application meets the following goals set forth in the master plan: #2/Commercial. Continue the improvement of commercial properties in the borough; #8/Commercial. Encourage redevelopment of commercial properties

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

that need rehabilitation or improvement; and #10/Strengths of the Borough. Excellent restaurants.

24. The applicant's planner opined, and the Board so finds, that the applicant met the special reasons required by N.J.S.A. 40:55D-70(d) by meeting the special reasons set forth in N.J.S.A. 40:55D-2(a) (the property is particularly suitable to the proposed use and exists today, promotes the public welfare, and is maintaining the mixed use of the property); subsection (b) (secure safety from fire, flood, panic and other natural and manmade disasters by making the property much safer for neighbors and tenants); and subsection (i) (because a desirable visual environment will be created by the refurbishing of an old building in great need of repair, an eyesore will, therefore be removed).

25. The application meets the Medici criteria, in that the property is particularly suitable for the intended use. That is the case primarily because that has historically been the use of the property, but for its vacancy over the past several years. The residential uses are compatible with the neighborhood which, as stated earlier, is primarily residential. The BYOB restaurant use is compatible with the area, and the town in particular, since restaurants are a niche industry in Highlands.

26. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), the Board heard, at great length, a prior application by a different applicant, which it denied, and is well aware of the particular problems posed by this property. This applicant is keeping the current structure and the same uses as were previously in existence the last time the building was occupied.

27. The Board finds that the proposal is still compatible with the uses in the neighborhood.

28. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on February 2, 2012, 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 LOUCO, LLC to reopen the existing former DR. GIMPI'S restaurant structure at 231 Bay Avenue, as a restaurant on the first floor and one apartment each on the second and third floors be and the same is hereby approved. Variances are hereby granted for the preexisting conditions of maximum lot coverage (80.5%, where 75% is permitted); 1.8 foot setback on Cedar Avenue, and 14.3 feet on Bay Avenue as front yard setbacks, where a minimum of 20 feet is required; and a side yard setback of 4.4 feet, where 6 feet is required.

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

- A. Prior to any building permit or certificate of occupancy issuing, the applicant shall make the required contribution to the borough's parking fund (Ordinance 21-65.14).
- B. Clearance from the Monmouth County Planning Board.
- C. Adherence to flood zone requirements, if applicable.
- D. Applicant's plans and construction shall meet all state and borough codes, with special attention to lighting, signage and housing codes.

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

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Gallagher, Mr. Cervantes,
Mr. Braswell
NAYES: None
ABSTAIN: None

Resolution Authorizing Professional Engineering Services

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

**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**RESOLUTION AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
T & M ASSOCIATES**

WHEREAS, the Borough of Highlands Zoning Board has a need for professional engineering services as a non-fair and open contract 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 Robert Keady, P.E. of the firm of T & M Associates, Eleven Tindall Road, Middletown, N.J. 07748-2792 is so recognized; and

WHEREAS, the Chief Financial Officer has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, this contract is to be awarded for an amount not to exceed **\$1,800.00** plus reimbursable expenses for Professional Engineering Services provided to the Borough of Highlands Zoning Board for the period January 1, 2012 through June 30, 2012; and

WHEREAS, T&M Associates has completed and submitted a Business Entity Disclosure Certification which certifies that T&M Associates 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 T&M Associates from making any reportable contributions through the term of the contract, and

WHEREAS, T & M Associates has completed and submitted a Political Contribution Disclosure form in accordance with P.L. 2005, c 271; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer of the Borough of Highlands as follows:

I hereby certify funds are available in the SFY 2012 municipal budget:

Current Fund:
1151-3757

Stephen Pfeffer, Chief Financial Officer

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

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 Council of the Borough of Highlands as follows:

1. T & M Associates are hereby retained to provide professional engineering services as described above for an amount not to exceed **\$1,800** plus reimbursable expenses.
2. The contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession. The Zoning Board Chairman and Board Secretary are hereby authorized to sign the attached 2012 Contract said contract.
3. A copy of the Resolution as well as the attached approved contract shall be placed on file with the Borough Clerk of the Borough of Highlands.
4. The Borough Clerk 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. Fox, Mr. Britton, Mr. Kutosh, Mr. Gallagher, Mr. Cervantes,
Mr. Connelly, Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2011-2 SJD Design, LLC
Block 40 Lots 18.19 and 20 – Shore Drive
Hearing on New Business**

Present: Henry Wolff, Esq., Applicants Attorney
Robert Susier, Builder
Charles Surmonte, Land Surveyor
Kristine Nazzar-Cofone, P.P.

Conflict: Mr. Fox and Mr. Cervantes both stepped down.

Mr. Baxter explained that there are 7 eligible board members but only five are present this evening. He then spoke about a title issue with regard to lot 20. This needs to be clarified and Mr. Wolff will state that he has contact the correct property owner.

Mr. Wolff stated that he believes it is owned by Ofiodo, Jr. He found the estate and they will do a quick claim deed to SJD Design.

Mr. Baxter stated that if a title company officer will say once you have the deed from Aires that means you know own the entire property but he wants that in writing prior to adoption of any resolution and prior to board voting.

The following documents were marked into evidence this evening:

- A-1: Variance Application;
- A-2: Site Plan Review Application;
- A-3: Zoning Officers Denial
- A-4: Site Plan;
- A-5: Architectural Plan;

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

- A-6: Enlarged Exhibit A-5;
- A-7: Enlargement of Page four of five of A-4;
- A-8: Aerial on 8 ½ by 11;
- B-1: Board Engineers Letter dated 9/29/11.

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

Robert Susier of 7 Pompamor Road, Rumson, NJ was then sworn in.

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

1. He is a Builder Advanced Developer.
2. He is familiar with the project and will be the builder.
3. He explained that A-5 shows the elevations of proposed structure.
4. The application is for five attached townhouse units. Each unit will have its own driveway and landscaping. The structure will be a three story building. Each unit will have three bedrooms and two baths.
5. Exterior of proposed will be a cedar shake siding, timber roof and copper overhangs.
6. Each unit will have a two car garage.
7. The driveways are enlarged driveways to 18 feet to allow for four cars each, which will be made of cobblestone.
8. Site Lighting he spoke of briefly.
9. Each unit will have parking for six vehicles. Two in the garage and four spots.
10. The seven foot right of way will vacate to borough.
11. They are proposing the demolition of the existing old water plant building. He also spoke about clearing the site.
12. Nine by eighteen is required parking space, so they are just short of actually having six parking spots per unit. He referred to Exhibit A-7 when speaking about this.

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

Charles Surmonte of 301 Main Street, Allenhurst, NJ was sworn in and stated the following during his testimony and response to questions from the board:

1. He spoke of his professional and educational qualifications as a license land surveyor.
2. He prepared the site plan for this project.
3. The application is for a five unit townhouse building fronting on Shore Drive.
4. He reviewed the Board Engineers letter and stated the following:
 - Item A-1 – no lighting on Shore drive existing so they are proposing in six locations on the edge of driveway to install arch lighting. There will also be light above each entry and garage doors. All lighting will meet ordinance requirements for light levels.
 - Item A-2 – he spoke of location of existing manholes and stated that he believes that the main is running inside the curb line.
 - Page Five Item A-3 – Will not have active sewer under structure.
 - Item A-3 – will provide.
 - Item A-4 – will replace depressed curb.
 - Item A-5 – 18 inch existing wall on Shore Drive will be removed but the wall on Miller and back walls will remain.
 - Item B-1 – will provide a demo plan.
 - Item B-2 – Parking, they will narrow stairs so each driveway can be 18 ft. wide. The depth of 34 feet is not technically deep enough so anticipate two cars in garage and two cars in the driveway for a total of four spaces per unit.
 - Item B-3 – he spoke of walls and stated he hasn't detailed them yet.
 - Item B-4 – Traffic, the RSIS anticipated six trips per day for a total of 30 trips each day to be generated.
 - Item B-5 – Refuse Area, will be 3 x 3 or 4 x 4 pad for each driveway to bring garbage out for pick up.
 - Item B-6 – the existing chain link fence will be removed and any fence keeping will be repaired.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

5. He then stated that he wants a fence on top of wall for safety reasons.
6. Item B-7 – all existing caps and meters will be removed and will be indicated on plan.
Item B-8 – existing utility poles, one will stay and one will be removed.
Item B-9 – will remove.
Item B-10 – Already testified to and agree.
Item B-11
Item C-2 – was addressed will provide street calculations and fence as required.
Item C-3 – will put protective devices on top of wall.
Item C-4 – he described drainage pipes. The proposed demolition will result in a net deduction of run off. They will provide drainage report.
Item C-6 – will provide construction details and it will be ADA compliant.
Item D-1 – he explained landscaping.
Item D-2 – will comply.
Item D-3 – will comply.
Item D-4 – will comply.
Item D-5 – will comply.
Item D-6 – okay
Item D-7 – will provide.
Item D-8 – will provide.
Item D-9 – he described and stated that they are working on this and will put in about five to seven trees.

Mr. Susier stated that he has not decided yet on rear decks.

Mr. Keady – if uncovered deck then not considered in calculations of lot coverage.

Kristin Nazzar-Cofone, P.P. was sworn in and stated the following during her testimony and response to questions from the board:

1. She is a license Professional Planner.
2. The deck if uncovered does not count for building or coverage.

Mr. Susier stated that they have not decided yet.

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

Ms. Cofone continued her testimony as follows:

3. She reviewed all applications submissions and plans as well as the borough's Master Plan and Zoning Ordinance.
4. The application requires a D-1 use variance for the use, D-5 density variance for 11.6 units per acre, C-variances for 19.7 ft. to Miller St where 20 ft. is required and 30.3 where 30 is allowed for coverage.
5. The "D" Use Variance – this site is suitable for this proposed application. She then referred to Exhibit A-8 the aerial photo and described the similar uses in the area.
6. Special Reason – criteria "g" there is sufficient space. "C", adequate air and open space – the coverage will have less than the existing. "I" desirable visual environment is better than the existing.
7. The application meets the positive criteria and special reasons exists.
8. Negative Criteria – does not impair the zone plan or public good. Will not have negative impact on the area. The proposed use fits and will not have negative impact. She spoke of population impact and the proposed verses a three single family homes and stated that no impact on population on trip impact.
9. "D-5" density variance, 11.6 proposed - less impervious coverage.
10. "C" Variance, no hardship – the board can conclude that variances are appropriate because proposed is a better alternative than permitted.
11. Master Plan goals and objectives, this improves aesthetics of community and conforms to the neighborhood. She then stated that two kids are generated out of a five unit townhouse verses three kids out of three single homes.

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

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

John Urbanski of 2 North Street asked if other surrounding lots have two family homes.

There were no further questions from the public.

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

John Urbanski was sworn in and spoke favorably about the proposed development.

There were no further comments from the public.

Mr. Braswell closed the public portion.

Mr. Wolff then requested that the board vote on this application this evening.

Mr. Britton spoke favorably about the application.

Mr. Kutosh stated that he was concerned with water runoff.

Mr. Keady explained that the rear yard has swales and the water is directed around the houses toward Shore Drive.

Mr. Gallagher offered a motion to approve the application and all required variances subject to all conditions discussed during hearing. Seconded by Mr. Britton and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Britton, Mr. Kutosh, Mr. Gallagher, Mr. Braswell, Mr. Connelly

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Cervantes and Mr. Fox both returned to the meeting table.

Mr. Gallagher offered the approval of the February 2, 2012 Zoning Board Meeting Minutes, seconded by Mr. Kutosh and approved on the following roll call vote:

**AYES: Mr. Fox, Mr. Britton, Mr. Kutosh, Mr. Gallagher, Mr. Cervantes,
Mr. Braswell**

NAYES: None

ABSTAIN: None

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

The meeting adjourned at 9:30 p.m.

**CAROLYN CUMMINS
BOARD SECRETARY**

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 1, 2012**

HIGHLANDS.NJ.US