

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
June 7, 2012**

Mr. Braswell called the meeting to order at 7:46 P.M.

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

Mr. Braswell read the following statement: As per requirement of P.L. 1975, Chapter 236. 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. Britton, Mr. Kutosh, Mr. Knox, Mr. Gallagher,
Mr. Braswell, Mr. Cervantes**

Absent: Mr. Fox, Mr. Connelly

**Also Present: Debby Dailey, Deputy Clerk
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E. Board Engineer**

**ZB#2012-2 Ohliger, Eileen
Block 76 Lot 1 – 47 Barberie Avenue
Application Withdrawn**

Mr. Baxter recommended that the board make a motion to grant the dismissal without prejudice and refund any unused escrow funds.

Ms. Ryan made that motion, seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2010-3 Quick Chek
Block 108 Lots 1 & 2.01 – Hwy 36
Unfinished Hearing**

Present: Henry Kent Smith, Esq.

Mr. Smith stated that he is here tonight to discuss with the board the satisfaction of the site plan resolution condition which related to the location of the remediation equipment that Exxon is installing on the property. The board will recall that at the time of the application there was an ongoing investigation on the property related to an environmental discharge that occurred previously on the site. The condition of them moving forward was that at the time that Exxon finalized their DEP permit they would then know where they would be putting the remediation equipment on the site. Once they knew where they were putting the equipment they would come back before this board and review the location of the remediation equipment. They have submitted to the board the location plans for the remediation equipment and provided the schematics that show the piping and how it will work. He has all of the representatives from Exxon here if there are any questions. They will be locating the equipment on two parking stalls but the application provided more than the required number of parking spaces. He then stated that there was a mistake with the publication of this hearing in the newspaper but he is here tonight to request that the board allow them to proceed with their building permits so that they can continue with the construction process, subject to the board then holding the certificate of occupancy. What that does is allow them to continue with the construction and moves the process forward. So he asked the board not to delay this because of the Asbury Park Press mess-up with the publication of the hearing.

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He wants the board to consider condition number six of the resolution to not delay the issuing of the building permits, which he further explained.

Mr. Braswell – the reason for the meeting tonight was to approve the location of the remediation equipment. We have already approved the site plan withstanding the remediation equipment. So the only thing we were going to do was look at the location of the remediation equipment. The use of the two parking spaces for the equipment is not an issue because the applicant has provided more than adequate parking.

Mr. Gallagher – the construction official will not issue a permit because of that condition of the resolution.

Discussions continued about the issue of releasing the building permits.

Mr. Baxter explained that the board approval was dated last July and this is the final site plan, prior to that we did the Use Variance application. The condition number six talks about a future date, that was an open item at the time of the site plan hearing because no one knew where they were going to place the remediation equipment, so we told them when they find out to come back to the board so we can finish the site plan. For those that are here for the applicant, he does not want there to be any mistake about what has taken so long from July until now this board has had no involvement in this case. He then read from condition number six “approval by the Zoning Board will be required at a future date”, so the future date is to this board. He continued to read “to locate the above ground environmental remediation equipment by Exxon the location of that equipment shall not conflict with the site operations”, so in other words they had to come back here and we had to look at it and say okay or not okay and that would be the end of this boards involvement in this case. Now in the intermeeting months the applicant had requested the demolition permit for the existing material and both he and the Board Engineer agreed that this item number six should not hold up the demolition permit. So that permit was issued and everything is gone. The next step is this step and the condition from his standpoint has not been met. They are supposed to come here and ask the board for this approval and we are supposed to act on that. We will not act on it tonight because the notice to properties was satisfactory but the notice to the newspaper was defective it did not meet the ten day requirement. So in his view the Board cannot proceed tonight with the plans. They don’t need to renote to the property owners, they only need to republish in the newspaper at least ten days prior to the next meeting date.

Mr. Smith is asking that the board define “ a future date” as prior to the issuance of a Certificate of Occupancy that will enable the building permit to be issued.

Discussions continued.

Mr. Baxter – it’s been over a year since we approved the site plan.

Mr. Smith explained that the NJDEP held them up.

Mr. Baxter – a future date meant when the applicant came back.

Mr. Smith explained that he disagrees with Mr. Baxter about the notice requirement.

Mr. Baxter explained that the applicant must renote for a hearing.

Mr. Kutosh offered a motion to carry the hearing on the remediation equipment location until the July 5th meeting and only require republication, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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Discussions continued about the request to release the building permits and the remediation equipment.

Mr. Braswell – so what we need to resolve now is whether or not you can get your building permits so you can pour the foundation of the building.

Mr. Baxter – yes you can do it by offering a motion to instruct the Building Official accordingly but again he does not think it's appropriate or proper to issue a building permit before a case is finished. The case is not finished.

Mr. Smith commented that this should be allowed.

The Board has discussion about releasing permits.

Mr. Gallagher spoke about the request amend the resolution to state that we are going to approve the location of the remediation equipment prior to the issuance of a C/O.

Mr. Baxter stated that he has a real problem discussing the Certificate of Occupancy. We are really talking about the building permit and the approval of the location of the remediation equipment.

Discussions continued.

Mr. Smith – the performance bond has been posted.

Mr. Gallagher offered a motion to authorize the construction official to issue the building permit exclusive of remediation installation now with a stop work order date of August 3rd if the board has not approved the location of the remediation equipment. Seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Mr. Braswell informed the public that this hearing will be held on July 5, 2012.

Approval of Minutes:

Ms. Ryan offered a motion to approve the May 3, 2012 Zoning Board Minutes, seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: Mr. Gallagher

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

The Meeting adjourned at 8:26 P.M.

Carolyn Cummins, Board Secretary