

8/3/06  
R2 (rev'd)

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

**RESOLUTION DENYING USE AND BULK VARIANCES  
FOR PALATIAL HOMES, INC. AT  
231 BAY AVENUE**

WHEREAS, the applicant, PALATIAL HOMES, INC., is the owner of property known as 231 Bay Avenue, Highlands, New Jersey (Block 63, Lot 19.01); and

WHEREAS, the applicant filed an application for use variances, associated bulk variances, various waivers and for site plan approval to construct a five-unit multi-family dwelling in which the application was subsequently amended to request approval to construct a four-unit multi-family development consisting of two (2) two-family dwellings; 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 public hearings held on June 1 and July 6, 2006; and

WHEREAS, the Board heard the testimony of the following witnesses for the applicant: JAMES KENNEDY (Engineer); ANTHONY ERCOLINO (Architect); and CREIGH RAHENCAMP (Planner); and

WHEREAS, the Board heard questions from the public and also testimony from CATHERINE LUSTIG, an objector speaking on behalf of the Highlands Business Partnership; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (4 pages);
- A-2 Application for zoning permit dated 11/16/05;
- A-3 12/1/05 letter from Freehold Soil and Conservation District;
- A-4 Site plan application (7 pages);
- A-5 Stormwater management report by Kennedy Consulting Engineers dated 10/27/05;
- A-6 Conditional approval letter from Monmouth County Planning Board dated 12/12/05;
- A-7 Site plan by JAMES KENNEDY dated 10/26/05, revised 1/25/06 (7 sheets);
- A-8 Architectural plans by ANTHONY ERCOLINO dated 11/16/05;
- A-9 Certified letter from Freehold Soil and Conservation District dated 2/16/06;
- A-10 Landscape plan, with color, on board;
- A-11 Aerial photograph on board (1000-foot radius);
- A-12 200-foot radius aerial map;
- A-13 8 ½" X 11" color photographs of property;
- A-14 8 ½" X 11" color photographs of property;

- A-15 8 ½" X 11" color photographs of existing fence;
- A-16 Photographs of Cedar Street;
- A-17 Photographs of Cedar Street;
- A-18 Cedar Street elevation;
- A-19 Bay Avenue elevation;
- A-20 Architectural renderings by ANTHONY ERCOLINO;
- A-21 Sheet 2 of 7 of revised site plan, last revised 6/21/06 by MR. KENNEDY;
- A-22 Revised colored site plan, on board, dated 6/29/06 by MR. ERCOLINO;
- A-23 2-page revised architectural plans dated 6/20/06 by MR. ERCOLINO;
- A-24 Colored rendering of new building;
- A-25 8 ½" X 11" aerial photograph; and

WHEREAS, the Board also marked the following exhibits into evidence:

- B-1 Board Planner review letter dated 4/5/06 (5 pages);
- B-2 Board Engineer review letter dated 3/2/06 (7 pages);
- B-3 Board Engineer review letter dated 7/6/06 (redone table on page 3, plus sidewalk comments);
- B-4 Fire Marshal's requirement form dated 6/2/06; and

WHEREAS, the Board had input and testimony from JAMIE SUNYAK, Board Planner; and

WHEREAS, the Board has jurisdiction to hear this matter pursuant to N.J.S.A. 40:55D-70(d); and

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

1. The property previously housed a tavern and restaurant, which facility has been closed for many months.

2. The property is in the R-2.02 Zone.

3. Multi-family dwellings (i.e., a building which contains three or more dwelling units) are not permitted in the R-2.02 Zone. Two-family dwellings are also not permitted in the R-2.02 Zone.

4. The property is approximately 10,000 square feet in size. The minimum lot area required for permitted uses in the R-2.02 Zone is 4,000 square feet. The minimum lot area required in the MF Zone is one acre.

5. The minimum front yard setback in this zone is 20 feet. The minimum requirement in the MF Zone is 35 feet. The applicant proposes setbacks of 15 feet on Bay Avenue and Second Street, and 16 feet on Cedar Street.

6. The minimum side yard setback required in the zone is 6 feet, which the applicant will meet. The minimum side yard set

back in the MF Zone, for comparison purposes, is 25 feet.

7. The maximum height permitted in the zone is 30 feet, and in the MF Zone is 35 feet. The Borough's bulk and area requirements schedule indicates that where a dwelling is constructed or reconstructed to provide the required parking under a structure, the maximum height is increased by 2.5 feet. The applicant proposes a height of 36.1 feet, with parking below the structure. Height approval for the proposed application would require a "D" variance.

8. The maximum building coverage permitted in the zone is 33% (22% in the MF Zone). The applicant proposes building coverage of 43%.

9. This zone does not have a maximum floor area ratio requirement. The FAR in the MF Zone is .45, while the applicant proposes .77.

10. The maximum density allowed in this zone calculates at 10.9 dwelling units per acre. In the MF Zone, the maximum dwelling units per acre is 14. This applicant proposes

17.4 dwelling units per acre (on the four-unit application).

11. The Borough's Master Plan, which sets forth land use policy, speaks against the concept of permitting more multi-family housing in areas that are not zoned for such uses, and further speaks against more dense housing than permitted by the zoning ordinance. The Master Plan recommends revisiting the zoning ordinance to limit the number of consecutive attached townhouses. Furthermore, the Master Plan recommends creating specific regulations for townhouses, which will encourage heights and architectural features that are compatible with surrounding properties.

12. This application proposes a greater density than permitted within any of the residential zones, including the multi-family zone.

13. While the prior use of the property as a tavern and restaurant may not be attractive to the town or the neighbors to the property, the proposed use is far too much construction on too small a property.

14. The Board rejects the testimony of the applicant's witnesses regarding the

economic feasibility of constructing less than the number of units requested, such issue not being relevant to the Board's consideration of this application.

15. During the hearing process, the applicant removed one of the originally-requested units, and divided the building in half, with two units on either side of an open area. That was an improvement to the plan, but still does not resolve the density problem, which most Board members commented negatively on.

16. The Master Plan talks about the need to preserve the primary uses allowed in each zone and preserve the integrity of single-family neighborhoods; and also to avoid encroachment of commercial and multi-family uses within the single-family residential zones.

17. Though the proposed construction was felt, by some, to have a desirable visual effect, most Board members felt that did not justify the density requested by the applicant.

18. The testimony by the applicant's Planner as to the possible benefits of the proposed project would also be addressed by any

other new development on the premises. Accordingly, the Board rejects that testimony as not supporting the special reasons requirements necessary to be proven by a use variance applicant.

19. The close proximity from the rear of the 3-story structure, or structures, to the residential neighbors to the south limits the amount of open space provided. The overall massing of the buildings gave the appearance of a warehouse-type looking building towering over the residential homes in the neighborhood.

20. In simple terms, the applicant proposed a non-permitted use which was far too large for the property, and which, because of its density, would not even have been permitted in the borough's multi-family zone.

21. "Special reasons" are required to be proven by an applicant seeking a use variance under N.J.S.A. 40:55D-70(d).

22. The Board finds that the proposed 4-unit residential development does not meet any of the special reasons that would justify approval of a multi-family use, at a density of approximately 17.4 units per acre, in this single-family zone.



23. Accordingly, the Board finds that the granting of the requested use variances for multi-family, height, set backs, building coverage, and density would cause a substantial detriment to the public good, as a result of which the applicant has not been able to satisfy the negative criteria of the statute.

24. The Board further finds that the proposed multi-family use with the density requested would violate the purpose of the zone plan and zoning ordinance, as well as impair the intent of the Master Plan of the Borough of Highlands; and

WHEREAS, the application was heard by the Board on the meeting dates set forth earlier in this resolution, and this resolution shall memorialize the Board's action taken at its meeting on July 6, 2006;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of PALATIAL HOMES, INC. for use variances, height, set backs, building coverage, and density, as well as site plan approval to construct a 4-unit residential development at 231 Bay Avenue (Block 63, Lot 19.01), in Highlands, New Jersey is denied.

Seconded by Miss Tierney and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney,  
Ms. Ryan, Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

**DATE:** August 3, 2006

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**CAROLYN CUMMINS, BOARD SECRETARY**

I hereby certify this to be a true copy of the Resolution adopted by the Borough of Highlands Zoning Board on August 3, 2006.

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**CAROYN CUMMINS, BOARD SECRETARY**