

10/5/06

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

**RESOLUTION DENYING USE VARIANCE  
FOR WORTHINGTON CAPITAL, LLC, AT  
1 SOUTH BAY AVENUE (BLOCK 9, LOTS 6 & 7)**

WHEREAS, the applicant, WORTHINGTON CAPITAL, LLC, is the owner of property known as 1 South Bay Avenue, Highlands, New Jersey (Block 9, Lots 6 & 7); and

WHEREAS, the applicant filed an application for use and associated bulk variances to construct a 5-unit 2-story townhouse complex on the old Careless Navigator property; 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 15 and September 7, 2006; and

WHEREAS, the Board heard the testimony of the following witnesses for the applicant: JAMES KENNEDY (Engineer); RICHARD VILLANO (Architect); JOHN CUNNINGHAM (Owner); and STEPHEN OWENS (Planner); and

WHEREAS, the Board heard comments from the following witnesses who live in the neighborhood: JIM PARLA (who neither testified for nor against the application, but was opposed to restaurants); HELEN KWIATEK (opposed); DANIEL KWIATEK (neither

in favor nor opposed); FRAN BENSON (opposed); DONNA O'CALLAHAN (opposed); WILLIAM WARD (opposed); and DAN RYAN (opposed); and

WHEREAS, the Board also had the benefit of the testimony of JOE MAY, the Board Engineer; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (5 pages);
- A-2 Highlands Fire Prevention form letter dated 3/20/06 (2 pages);
- A-3 Site plan application (7 pages);
- A-4 Zoning permit application (denied);
- A-5 Site plan by JAMES A. KENNEDY, last revised 5/12/06 (7 pages);
- A-6 Architectural renderings and floor plan by RICHARD VILLANO last revised 5/17/06;
- A-7 Colored rendering on board;
- A-8 Copy of Ordinance O-5-08 dated 6/23/05, vacating pathway;
- A-9 Smaller rendering;
- A-10 Floor plan on board (page 2 of Exhibit A-6);
- A-11 Aerial photograph;
- A-12 Photograph of neighboring lot;
- A-13 Photograph of neighboring lot;
- A-14 Photograph of Gateway Villas;
- A-15 Photograph of neighboring lot;

A-16 Photograph of Twin Light Terrace  
Condominiums;

A-17 Photographs of neighboring lot;

A-18 Photograph;

A-19 Photograph of Gateway Apartments;

A-20 Photograph of Gateway Apartments; and

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

B-1 Board Engineer review letter dated  
6/15/06 (7 pages); 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 is approximately .56  
acres in size, and is located within the WC-1  
(waterfront commercial) district.

2. The property currently contains an  
abandoned 1-story masonry building, which is  
the former Careless Navigator bar and  
restaurant.

3. The applicant proposes to demolish  
the existing building and construct five 2-

story townhouse units with associated parking, which parking will include ten garage spaces (one inside the garage, and one out for each unit) and an additional four angled parking spaces.

4. Multi-family dwellings are not permitted in the WC-1 Zone.

5. If a use variance were to be granted, bulk variances would also be required for minimum lot width (63 feet, where 100 feet is required; though 150 feet is required in the MF Zone); and lot depth (60 feet, where 150 feet is required; though 200 feet is required in the MF Zone). Additionally, and by way of comparison, if the property were in an MF Zone, allowing for multi-family uses, the applicant would also require variances for front yard setback (23.8 feet proposed, where 35 feet is required); rear yard setback (27.4 feet, where 50 feet is required); and side yard setback (24.7 feet, where 25 feet is required).

6. This property is located on one of the gateway entrances from State Highway 36 to the Borough. The entire property is on a

general westerly slope going from the top of the hill, near Portland Road (just off of Highway 36), down the hill to South Bay Avenue. The applicant's planner testified that this property was particularly suitable for this use and, therefore, met the "special reasons" requirements of the statute. The Board rejects that testimony as not being credible.

7. The October 2004 land use element of the approved Highlands Master Plan specifically refers to this property. Item 6 on page LU-27 states:

"This plan specifically recommends rezoning Block 199, Lots 4-7, which includes the vacant Careless Navigator and surrounding properties, from waterfront commercial to the resort business district. The continued use of this property for commercial purposes is appropriate, as the construction and relocation of the Highlands Bridge sixty (60) feet to the south will increase ambient noise surrounding the property. However, the

uses of Lots 4-7 are inappropriate for hotels and motels. This plan recommends removing hotels and motels as principal permitted uses in the B-3 District. Bars and taverns and retail sales and service establishments should be included as principal permitted uses in the district."

8. It is clear, therefore, from the Borough's master plan that the Highlands Planning Board gave specific attention to this specific property, and directed that it be used for commercial purposes. Both the WC-1 District (in which the property is currently sited) and the business districts would both allow commercial uses, but neither would allow multi-family residential uses.

9. The applicant's proposed use is in direct contravention of the zoning ordinance and the master plan; and, therefore, any testimony by the applicant's witnesses to the effect that the proposal would not be a detriment to the zone plan or zoning ordinance is completely rejected by the Board.

10. The density of the proposed project was also a major concern in both the questioning by the Board and by residents. The density issue, however, paled in light of the borough master plan directives. Some members of the Board additionally felt that the proposed structures were too close to the road and that the plan was not well organized.

11. In simple terms, the applicant proposed a non-permitted use, which was not only too dense for the property, but in direct contravention of the zoning ordinance and master plan.

12. The Board does not find any "special reasons", which would be required to be proven by an applicant seeking a use variance under N.J.S.A. 40:55D-70(d).

13. Accordingly, the Board finds that the granting of the requested use variance, and its attendant bulk variances, 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.

14. The Board further finds that the proposed use would impair the intent and purpose of the master plan and the zoning ordinances 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 September 7, 2006;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of WORTHINGTON CAPITAL, LLC for a use variance to construct five townhomes, with attendant bulk variances and site plan approval, at 1 South Bay Avenue (Block 9, Lots 6 & 7), in Highlands, New Jersey is denied.

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

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Mintzer, Mr. Francy, Miss Tierney, Mr. Fox,  
Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

**Date:** October 5, 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 of adjustment on October 5, 2006.

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**BOARD SECRETARY**