

6/7/07

(Final)

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

**RESOLUTION DISMISSING DUANE REALTY
APPLICATION WITHOUT PREJUDICE**

WHEREAS, DUANE REALTY, LLC, has filed an application for variance relief and site plan approval, which application was filed in February 2006, bearing Application No. ZB-2006-1; and

WHEREAS, the Board reviewed the application at its meeting of March 2, 2006, and scheduled the matter for hearing on May 4, 2006; and

WHEREAS, the applicant was not ready to proceed, and requested an adjournment from the May 4, 2006, meeting, which was granted and carried to July 6, 2006 for hearing. The applicant thereafter made a second request for an adjournment from the July 6, 2006, meeting, which was granted and scheduled for hearing on October 5, 2006. Thereafter, the applicant made a third request for an adjournment at the August 3 meeting for an extension to the November 2, 2006, meeting, which was granted. Thereafter, the applicant made a fourth request for an adjournment at the November 2, 2006, meeting, which was granted, and the hearing was scheduled for January 4, 2007, with a "try or dismiss" designation; and

WHEREAS, the applicant began its case at the Board's meeting of January 4, 2007, at which time three witnesses

testified; and the matter was thereafter continued to the February 1, 2007, meeting; and

WHEREAS, the applicant thereafter made its fifth request for an adjournment, from the February 1, 2007, meeting, which was granted and scheduled for the March 1, 2007, meeting. Thereafter, the applicant made a sixth request for an adjournment from the March 1, 2007, meeting, which was granted and scheduled for hearing on June 7, 2007, with the requirement that the applicant or its attorney advise the Board of its intentions no later than April 30, 2007; and

WHEREAS, neither the applicant nor anyone on its behalf advised the Board on or before April 30, 2007, of its intentions and whether or not it intended to proceed; and

WHEREAS, this application has had a detrimental effect on the Board's calendaring of cases to be heard, because of the time needed for this hearing, followed by the applicant canceling dates and requesting adjournments; and

WHEREAS, the Board finds that the six adjournment requests granted were more than sufficient, and that the applicant should either proceed or have its application dismissed without prejudice; and

WHEREAS, the applicant has not produced any testimony in support of the primary use variance relief requested; and

WHEREAS, the Board has now received a letter from the applicant's attorney dated May 9, 2007, requesting a seventh adjournment;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of DUANE REALTY, LLC (Case No. ZB 2006-1) be and is hereby dismissed without prejudice, since the applicant has not timely proceeded with its case, nor has it advised the Board of its intentions by the date required. The applicant's request for an adjournment is, therefore, denied. If the applicant refiles an application for variance and/or site plan approval before this Board, seeking the same or substantially the same relief as in this application, and does so prior to December 1, 2007, the Board will waive the filing fee. If the application is filed on or after December 1, 2007, a new application and new filing fee will be required;

AND BE IT FURTHER RESOLVED that any unused funds posted by the applicant, after payment of the Board's professionals' fees, shall be returned to it.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Francy, Mr. Fox, Mr. Anthony,
Mr. Mullen
NAYES: None
ABSTAIN: None

DATE: June 7, 2007

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 and all requirements have been met.

BOARD SECRETARY