

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

6/4/09

**RESOLUTION APPROVING USE AND BULK VARIANCES
AND GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
FOR 231 BAY AVENUE, LLC**

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

WHEREAS, the owner initially filed an application to renovate the structure by providing for parking on ground level, commercial space on the second level, and three apartments on the third and fourth levels; which application the owner modified, during the course of the hearings, to delete the parking on the ground level, and provide approximately 2,966 square feet of commercial space on the ground level, and two 2-bedroom apartments on a second and third level, thereby deleting the originally-proposed fourth level and one apartment; 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 on May 1, 2008, and April 2 and May 7, 2009, the delay between the initial filing and the first night of hearing, as well as between the first and second nights of

hearing having been as a result of the owner having requested multiple adjournments; and

WHEREAS, the Board heard the testimony of MOHAMMED EL-HAWWAT, applicant's engineer; PETER CAMAMIS, member of the owner-LLC; WILLIAM J. DORAN, applicant's architect; and THOMAS BOGDAN, applicant's planner; and

WHEREAS, no one appeared in opposition, or to support, the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning Board Application (3 pages)
- A-2 Zoning Permit Denial (2 pages)
- A-3 Site Plan Review Application (2 pages)
- A-4 11/13/07 Monmouth County Planning Board Conditional Approval
- A-5 8/3/06 Resolution Denying Palatial Homes Use Variance (10 pages)
- A-6 [Exhibit withdrawn]
- A-7 [Exhibit withdrawn]
- A-8 [Exhibit withdrawn]
- A-9 Proposed Site Improvement Plans dated 8/1/07, last revised 3/3/09, by Mr. El-Hawwat (2 pages) [Replaces Exhibits A-6 and A-8]
- A-9a Exhibit A-9 on board
- A-10 Letter from Robert Keady, of T&M Associates, Borough Engineer, approving application for flood plain review purposes

- A-11 12/16/08 Drainage Report by Mr. El-Hawwat
- A-12 9/17/03 Survey by William M. Doran
- A-13 Architectural Plans by William Doran (2 pages), replacing Exhibit A-7
- A-14 Proposed Site Improvement Plans by Mr. El-Hawwat, last revised on 4/15/09 (pages Y-1 through Y-5)
- A-15 Architectural plans by William M. Doran, last revised on 4/14/09 and updating Exhibit A-13
- A-16 Page 2 of Exhibit A-15, with color;

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

- B-1 3/5/08 Board Engineer review letter (6 pages) by Joe May
- B-2 Mr. May's 4th review letter dated 3/31/09
- B-3 Revised Board Engineer 5th review letter dated 5/5/09, revised 5/7/09
- B-4 Email from Dale Leubner dated 5/7/09 regarding flood plain review
- B-5 5/7/09 Fire Inspector Paul Murphy site plan completed requirements form;

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 about nine years.

3. The owner seeks to renovate the building by providing for approximately 2,966 square feet of commercial space on the ground level, and two 2-bedroom apartments on the second and third levels, respectively.

4. 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. The prior four (4) uses on the property were non-conforming uses.

5. 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.

6. The applicant also seeks a parking variance for 13 spaces, where 15 are required.

7. There will be a decrease in lot coverage from 85% to 80.5%. The building footprint will also be reduced by approximately 93 square feet.

8. 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.

9. The application proposes better access to the property than previously existed.

10. Railroad ties and fencing at the rear of the building will be removed.

11. The applicant proposes to finish the attic, which is the third level. There will also be a few dormers along the long side of the building, to accommodate windows.

12. The existing free-standing sign will be kept, but moved in order to meet the ordinance requirements. There will also be two façade signs, which shall meet the Borough ordinance requirements, both on the Bay Avenue side of the structure.

13. The applicant testified that they can and will meet the requirements set forth in Exhibit B-4 (Leubner email). The property is currently six feet above grade.

14. The Cedar Street side of the structure is wood construction. The other three sides are block construction. The Cedar Street side will be changed to block, non-permeable construction. It is being done with a new product, which seals the openings—which should also allow the owner to do the glazing he wants to. The building will have new siding added. The block will be painted on the first floor, which is actually a colored stucco. On the second and third levels there will be new cedar-impression siding and windows.

15. The average height of the proposed/existing structure is 28.5 feet, according to the Board Engineer. No variance is required for height.

16. There will be a flat roof over part of the building, with the air conditioning condensers.

17. If the gas meters stay in their current location, they will be protected with bollards, since they are so close to the street.

18. There will be no fire hydrant, and the sprinkler system will be retrofitted, repaired and maintained.

19. The parking lot will be reconstructed. The pavement thickness is to be 4" of base and 1.5" of

top. There will also be handicapped parking. Both of these will be significant improvements to the property.

20. The premises currently has no loading area. There will be a temporary loading area under the new plan.

21. The commercial area on the first level will have sufficient space for two stores (one, if a single tenant is willing to rent the entire space).

22. The applicant has testified that there will be no restaurant or tavern on the premises, which will be a condition of this approval.

23. The county has requested a five-foot easement for the potential widening of Bay Avenue. The applicant agrees to the same, and it is shown on Y-3 of Exhibit A-14.

24. The applicant's professionals testified that the property owner will comply with Section 2 of the Board Engineer's review letter (Exhibit B-3), with the exception of items 2.3, 2.4 and 2.6. The three items to which the applicant agrees, and testifies he can comply with, will be conditions of this approval.

25. The applicant requested a waiver of the request by the Engineer to dig a test pit and take

soil samples. Since the property has been designed for a dry well for a two-year storm, that is sufficient, according to the Board Engineer.

26. As to Section 3 in the Board Engineer review letter (Exhibit B-3), the applicant's plans comply with item 3.1. As to item 3.2, there will be shields on the lights, both the pole and wall-mounted lights. There will be no direct lighting going off of the property.

27. As to flood management, the applicant will comply with item 4.1 of the Board Engineer's review letter (Exhibit B-3), and he so testified.

28. Access to the upstairs apartments will be from the rear only.

29. As previously stated, this property previously housed a restaurant/tavern and boarding rooms. It was not in conformance with the Borough's zone requirements.

30. The area in which the property is situated is predominantly residential. There are some commercial uses, so it is mixed.

31. This application proposes a mixed use (commercial and residential), with commercial space on the first floor, a two-bedroom apartment on the second

floor, and a two-bedroom apartment on the third floor).

32. The proposed use is far less intrusive than the prior use, and will be a substantial upgrade to the property and the neighborhood.

33. 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 40:55D-2(a) (the property is particularly suitable to the proposed use, promotes the public welfare, and is maintaining the mixed use of the property); subsection (b) (because the building will be flood-protected, where it currently is not); subsection (i) (because a desirable visual environment will be created by the refurbishing of an old building in great need of repair, and by putting on the type of siding proposed; an eyesore will, therefore be removed); and subsection (m), because the public and private procedures will be coordinated by granting the requested 5-foot easement, which the county would not otherwise receive, in the absence of condemnation.

34. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), one

of the negative criterion is that there is not much else you can do with this building. 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. There will be no more noise or exacerbation of traffic. In sum, the proposed uses will have much less impact than the previous use.

35. The applicant's planner testified that he did not believe the governing body considered this particular site when last revisiting the Master Plan and zoning ordinance. Though it might be a plus for the Borough if the property was adapted to residential use, the size of the property dictates against that, and the floor plan further dictates against that. At a minimum, this property would best be suited for a multi-family type of residential use, and this application is for only two apartments.

36. The Board spent some time discussing the parking variance and how many spaces are required under the ordinance. Based upon the RSIS (Residential Site Improvement Standard) tables, it appears that there are two ways to calculate the number of spaces

required. The Board determines that 15 spaces are required for the proposed uses, and that 13 are provided for in the plans.

37. The Board finds that there is no negative effect on the area or on the zone plan by having 13 parking spaces on this site. The site is maxed out now. The proposed uses here actually require less parking than the parking that should have been required for the previous uses. When considering the times of day for the proposed uses, the parking issue is even less of a concern.

38. The applicant is, in the Board's view, putting the maximum number of spaces possible on the premises.

39. The Board finds that the proposal is still compatible with the uses in the neighborhood. The flood-proofing of this building will be a "Highlands milestone".

40. The Board was particularly pleased with the applicant's modification to its original plans in submitting a proposal that was more in line, both in degree and height, with the other uses in the neighborhood.

41. As previously stated, the proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. To the contrary, the proposed addition and re-siding will fit in well with the character of the neighborhood and improve the streetscape in that area.

WHEREAS, the application was heard by the Board at its meetings on May 1, 2008, April 2, 2009, and May 7, 2009, and this resolution shall memorialize the Board's action taken at the meeting on May 7, 2009;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of 231 BAY AVENUE, LLC to renovate the existing former DR. GIMPI'S restaurant structure at 231 Bay Avenue, as shown on the applicant's most recent plans (Exhibits A-14 and A-15 in evidence) 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. A parking variance is hereby approved for 13 spaces, where 15 are required. In addition thereto, a use variance is hereby

approved to permit the requested uses (commercial on the first floor, and residential on the second and third floors).

AND BE IT FURTHER RESOLVED that preliminary and final site plan approval are hereby granted, on condition that the applicant comply with the terms of the Keady letter referred to in item A below.

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

A. The applicant shall meet the requirements set forth in the Leubner (flood review) email (Exhibit B-4), which was supplemented in accordance with the email, after the last hearing date, with a formal letter dated May 12, 2009 from Robert R. Keady, Jr., Highlands Borough engineer (same office as Mr. Leubner).

B. The applicant will comply with the following requirements set forth in the Board Engineer's review letter dated May 5 (revised May 7), 2009, together with any modifications thereto as set forth in the findings and conclusions of the Board: 2.1, 2.2, 2.5, 3.1, 3.2, 4.1 and 4.2.

C. There will be no restaurant or tavern permitted on the premises.

D. If the gas meters remain in their current location, they will be protected. Otherwise, they will be moved to a more protected location.

E. The 5-foot easement requested by the county on Bay Avenue shall be given by the owner to Monmouth County, the recording of which shall be a condition precedent to any building permit issuing.

F. No direct lighting will go off of the property. The lights, whether pole or wall-mounted will be shielded, including the deck lighting.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Anthony, Mr. Gallagher, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

DATE: JUNE 4, 2009

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 June 4, 2009.

BOARD SECRETARY