

Ms. Ryan offered the following Resolution and moved on its adoption:

2/3/11

**RESOLUTION APPROVING USE VARIANCE
FOR QUICK CHEK CORPORATION**

WHEREAS, the applicant, QUICK CHEK CORPORATION, is the contract purchaser of 450 State Highway 36, Highlands, New Jersey (Block 108, Lots 1 and 2.01), which are the existing Dawg House and Stewart's properties, respectively; and

WHEREAS, the applicant seeks to consolidate the two lots and construct a retail convenience store and gasoline station; 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 December 2, 2010, and January 6, 2011; and

WHEREAS, the Board heard the testimony of FRANK MARCIANO, Real Estate Manager for Quick Chek; JEFFREY MARTELL, Engineer with Bohler Engineering; CHARLES OLIVO, Traffic Engineer; and CHRISTINE COFONE, applicant's planner; and

WHEREAS, PAUL DROBBIN, ESQ. represented an interested party, The Enclave, an approved high rise condominium project

immediately north of the subject, on the old mobile home park property, though no witnesses were presented by them; and

WHEREAS, LAWRENCE LUTRELL, ESQ. appeared at the second hearing on behalf of 470 Bayside Partners, LLC, the owner of the existing shopping center located at 470 Navesink Avenue, two properties to the west of the subject, in the same block, where Quick Chek is currently leasing space; and

WHEREAS, the following persons appeared and testified in opposition to the application: DINA WOLFE, owner of the Dawg House; GEORGE KOWALEWSKI, who lives directly across the highway from the subject; his daughter, CANDICE KOWALEWSKI, who also lives directly across Highway 36; and DAVID BANE, a representative of 470 Bayside Partners, LLC, which owns the existing shopping center (with Quick Chek as a tenant) to the immediate west of the subject; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance Application (3 pages, plus disclosure statement)
- A-2 Rider to Application (3 pages), with background and legal analysis
- A-3 Certificate of Concurrence from both property owners
- A-4 Use variance plan set by Jeffrey Martell, of Bohler Engineering (3 sheets) dated 9/23/10
- A-5 11/5/10 Traffic assessment letter report by Charles Olivo and Matthew Welch, of Stonefield Engineering & Design, LLC

- A-6 Aerial photo on large board
- A-7 12/1/10 Site plan, in color, on large board
- A-8 Photo on board showing present conditions, looking northwest toward property
- A-8a Same view as A-8, with Quick Chek improvements superimposed
- A-9 Large photo on board looking southeast toward property
- A-9a Same view as A-9, with Quick Chek improvements superimposed
- A-10 Large photo on board looking from Ocean Boulevard
- A-10a Same view as A-10, with Quick Check improvements superimposed.
- A-11 Truck turning drawing
- A-11a Other truck turning drawing
- A-12 11/4/10 Survey on board by Control Point Associates
- A-13 Supplemental traffic analysis by Charles Olivo dated 1/6/11

AND, WHEREAS, the following exhibit was marked into evidence as a Board exhibit:

- B-1 Board Engineer Joe May's 11/30/10 review letter

AND, WHEREAS, the following exhibits by the objectors were marked into evidence:

- O-1 thru O-12 4" X 6" Photographs by Dina Wolfe
- O-13 2 dark pictures on black background by Candice Kowalewski

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

1. The applicant is the contract purchaser of Lots 1 and 2.01 in Block 108, and seeks to consolidate those lots for purposes of the relief requested in this application. Both lots are in the HO (Highway Oriented) Zone.

2. The westerly lot (Lot 1) currently houses the Stewart's Root Beer operation and a monopole cell phone tower and equipment shelter. Lot 2.01 currently contains the Dawg House, a restaurant tenant of its property.

3. The applicant seeks to consolidate the two lots and construct a retail convenience store (Quick Chek), with an accompanying gasoline station. The applicant proposes a retail convenience store of approximately 4,543 square feet, with six indoor seats and eight outdoor seats; and a gas station comprised of 12 fueling positions in 8 pumps. A proposed maintenance shed and trash enclosure are also requested. The existing cell phone tower and equipment shelter are to remain.

4. Though convenience stores are permitted uses in the HO Zone, gasoline stations are not.

5. This matter was submitted to the Board as a bifurcated application. The Board first considered the use variance application alone. If approved, the matter would proceed further for preliminary and final site plan approval and any required bulk variances.

6. The property (both lots) front on State Highway 36 westbound and on Ocean Boulevard (to the rear). There are, therefore, two front yards.

7. Route 36, upon which highway the subject lots front, is a four-lane state highway with, shoulders in each direction. The eastbound and westbound lanes are separated by an island. To the immediate west of the subject lots is a car wash, and then the existing shopping center with the Quick Chek store and restaurant, the latter two of which front on Orchard Avenue.

8. The proposed development (i.e., convenience store and gas station) is the type of operation which is becoming more common, and is representative of the new industry standard for the convenience store use. It is not the type of operation, however, that was common when the borough ordinances were adopted

through and including 2004. The applicant's engineer testified with regard to a number of design standards employed by the applicant to ensure the site's safe operation, including the following: double-walled steel tanks with monitoring both on-site and at the applicant's corporate office; vapor capture and recharge devices that comply with the State's current regulations, and wide driving lanes between the pumps to allow traffic to circulate safely and efficiently through the site from any fueling position.

9. The applicant's planner's testimony was that this type of combined use was not likely one that was considered when the ordinance was last addressed. Though the existing borough ordinances defines "motor vehicle service stations", there are no provisions anywhere in the ordinances for such uses. The language of the ordinance contemplates that such facilities would have automobile repair and service components, whereas the proposed application does not. The proposed gasoline station use will be for fueling only.

10. The applicant's planner testified that there were numerous zoning principals which would be met if the applicant's use variance request was approved.

The Board accepts that testimony, and agrees with the following "special reasons", which appear in N.J.S.A.

40:55D-2:

(c) Adequate light, air and open space will be provided. Actually, the proposal will give a more open feel than the existing uses.

(g) Sufficient space for a variety of uses. By permitting the proposed uses on Highway 36, the applicant would be constructing uses that are well-suited to highway locations, especially a State Highway, such as Route 36, on which there are no convenience stores with gas stations in Highlands.

(h) Promote the flow of traffic, which will be accomplished by bringing the access locations to the property in line with DOT Access Code design standards. Currently, neither lot conforms to NJDOT Access Code design standards.

(i) Desirable visual environment and Aesthetics. As indicated by the planner, the Board previously approved a use variance on the Stewarts' property for a fitness center. The current Stewart's building is old and not well maintained. A complete refurbishing of the property would provide an enhanced aesthetic appearance, as well as being at an entry point (albeit in the westbound direction) to the borough.

(m) Efficient use of land. Here, the bulk requirements of the ordinance are currently violated on both lots. The proposed use will increase the set back from the highway, thereby reducing the non-conformity. Also, both the buildings and refuse areas on the existing lots are non-conforming to borough ordinance, which non-conformities will also be reduced.

11. In addition, the first purpose of the Municipal Land Use Law is "to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare." Though a generalized statement, the proposed improvement to the subject lots, considering their location and the uses themselves, are certainly appropriate uses and appropriate development of this land. The other specifically-enumerated benefits in paragraph 10 of this resolution and its subsections above indicate that the applicant's proposal will promote safety (i.e., the access locations and widths, the aisle widths, and the size of parking stalls) and the general welfare, as set forth also in items (c), (g), (h), (i) and (m) above.

12. In order to approve a use variance application such as this, where the proposed use is not inherently beneficial, the Board must find that the proposed site is "particularly suitable for the proposed use". See Medici v. BPR Company, 107 NJ 1 (1987). The applicant's planner testified, and the Board accepts such testimony as true, that the

following factors make the subject property "particularly suitable" for the convenience store and gas station:

(a) The property is located on State Highway 36, which is a major artery, both for the state and the borough.

(b) As the traffic expert testified, between 80% and 90% of the vehicular traffic to this site will already be on the road and, therefore, this will not substantially increase the traffic to/from the site.

(c) The proposed use is one of the most highway-oriented uses one could imagine.

(d) The nearest similar opportunity for convenience store/gas station services is the Wawa in Middletown, which is over three miles away and on the opposite side of the state highway. Also, the next gas station is 1.6 miles to the west, which is a small, one island gas station (the Sunoco station in Atlantic Highlands). Then you have to continue until you reach the Shell station at First Avenue and State Highway 36 in Atlantic Highlands in order to find a property with similar uses (i.e., convenience store component and gas station).

(e) The proposed use will have a coffee bar and sell healthy fast food, which items are not available for several miles.

(f) The proximity to the jug handle at a signalized intersection makes this location a preferred one.

(g) There are two street access points to the site---State Highway 36 and Ocean Boulevard.

13. The proposed layout of the property, though the same will still need to be finalized in a site plan application process, provides for larger parking stalls and wider aisle widths.

14. The ingress/egress from/to Route 36 is designed with better spacing than is existing, and not as wide an entry as currently exists, thereby coming into conformance with NJDOT Access Code design standards. The first highway entry westbound will be an "enter only", while the second access is for both ingress and egress. On the Ocean Boulevard side of the property, the current design provides for entrance only on the westernmost entry and ingress and egress on the easterly entry.

15. The Board accepts the testimony of the traffic engineer that the design of the property will dictate against driver hesitation and frustration by the way in which the access areas have been located and sized, which is an improvement over the existing access configuration. In particular, vehicles entering from Route 36 and Ocean Boulevard will have better and safer access to the site, but no adverse impact to neighboring properties.

16. The proposed uses are not likely to have any negative effect on the Ocean Boulevard traffic, as it approaches the Orchard Road intersection, for left turns onto Orchard Road and crossing back over Route 36.

17. The applicant's proposal will meet NJDOT access design management standards, while the current lots do not.

18. The current proposal, subject to site plan review and approval, provides for 51 vehicle positions (39 parking and 12 fueling positions). This includes parking for the monopole equipment shelter, which is accessed infrequently.

19. The proposal provides for a good balance between vegetative areas and impervious surfaces, which are far superior to the existing uses, and will substantially decrease the impervious surface area. The current uses have approximately 88% impervious surface, while the proposed use will be under 70%.

20. The fuel delivery area will not be adjacent to the parking stalls, which is a superior design to many similar gas station sites.

21. The circulation within the site and at the access points is both adequately and safely designed.

22. There was much testimony regarding this site's impact on traffic on Route 36, Ocean Boulevard and Orchard Road, the major inquiries concerning Ocean Boulevard and those vehicles which would be turning left from there, onto Orchard Road. The Board is satisfied that the proposal will not add any significant traffic to the area, and may well mitigate the traffic at high peak/congestion periods (i.e., when the ferry lands) by spreading out the timing that vehicles will be on Ocean Boulevard. That will be because some of those vehicles will, undoubtedly, use the Quick Chek convenience store and/or gas pumps.

23. The applicant's planner also addressed the planning goals, with specific reference to the borough's most recent (2009) Master Plan. Highlighted were the Master Plan's goals of having diversified uses, providing significant employment, an expanded tax base, and a thriving village. The applicant's planner specifically referred to several goals set forth in the Master Plan which the borough adopted, those being #'s 8 (encouraging redevelopment of properties that need rehabilitation and improvement), #9 (encouraging the upgrading of commercial uses), and #10 (circulation: improving Route 36 and Bay Avenue).

The Real Estate Manager also testified that approximately 35 to 50 jobs would be created at this location.

24. The applicant's planner further testified, and the board accepts, two of the economic development goals, those being #1 (providing a diversified economic base, including tax ratables and reusing underutilized properties) and #3 (capitalizing on the borough's assets, such as taking advantage of the highway traffic on Route 36).

25. In summary, the board finds that the applicant has met the requirement of showing special reasons for the granting of a use variance, as more specifically set forth above. In doing so, the applicant has met its obligation of satisfying the positive criteria. The applicant has proven that the property is particularly suitable for the proposed use and promotes the public welfare (see specific references earlier in this resolution).

26. The applicant has also met the negative criteria test under N.J.S.A. 40:50D-70(d) by proving to the Board's satisfaction that there will be no substantial impairment to the intent and purpose of the zone plan and zoning ordinance. Naturally, any

use variance, by definition, allows for a use which is not currently permitted by the ordinance, but that is not the issue. The lack of availability of the services which the proposed uses will meet, the removal of the existing violations of access management standards, the adding of vegetation, the openness and easy access and egress to the site, and the meeting of so many goals set forth in the Master Plan combine to indicate that the applicant's proposal will actually be an improvement, rather than an impairment, to the borough's zoning plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meetings on December 2, 2010, and January 6, 2011, and this resolution shall memorialize the Board's action taken at the meeting on January 6, 2011.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of QUICK CHEK CORPORATION to consolidate Lots 1 and 2.01 in Block 108 into one lot, to remove the existing structures (except for the existing cell phone tower and equipment shelter), and construct a retail convenience store (QUICK CHEK) with six indoor seats and eight outdoor seats, and gasoline station with

8 pumps be and the same is hereby approved, subject to the following conditions:

1. Once consolidated, the property will be prohibited from subsequent subdivision.

2. Final approval is conditioned upon the applicant obtaining preliminary and final site plan approval.

3. This approval is subject to letters of approval or no interest being obtained as follows:

A. Construction code approval.

B. Local fire district approval.

C. NJ DOT approval.

D. Freehold Soil Conservation District approval.

E. Middletown Sewerage Authority approval.

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

ROLL CALL:

AYES: Mr. Braswell, Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Kutosh

NAYES: None

ABSTAIN: None

DATE: February 3, 2011

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 February 3, 2011.

HIGHLANDS.NJ.US