

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

3/1/12

**RESOLUTION APPROVING USE AND BULK VARIANCES  
FOR LOUCO, LLC**

WHEREAS, the applicant, LOUCO, LLC, is the contract purchaser 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 applicant initially filed an appeal of the zoning officer's denial, claiming that the restaurant and residential uses had not been abandoned and that the proposed uses were prior non-conforming uses; and

WHEREAS, the applicant subsequently filed an application for use and bulk variance relief, seeking to use the property as a restaurant on the first floor and to use the second and third floors for one residential unit on each floor; 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 a public hearing on February 2, 2012; and

WHEREAS, the Board heard the testimony of LOU DAKOGLU, the principal member of the applicant LLC; and RICHARD STOCKTON, professional planner; and

WHEREAS, no one appeared in opposition, or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning Permit Application—denied 9/22/11;
- A-2 9/27/11 Handwritten letter by Mr. Dakoglu, appealing denial of zoning permit;
- A-3 Variance application (3 pages), plus a 4<sup>th</sup> page, which was a revision to the application;
- A-4 Architectural plans by William Doran dated 1/18/12;
- A-5 9/17/03 survey by William Doran;
- A-6 Photo - trash enclosure;
- A-7 Photo - rear of restaurant showing stockade fence adjacent to red ranch home;
- A-8 Picture - rear;
- A-9 Picture - front yard (Bay Avenue)
- A-10 Picture - Cedar Street side of property;
- A-11 Picture - Showing Bay and Cedar views with the main entrance;
- A-12 Old real estate listing showing old free-standing sign;

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

B-1            6/4/09    Board resolution granting use and bulk variances, and preliminary and final site plan approval to 231 Bay Ave., LLC (same property);

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 approximately ten years.

3.    Though the property has remained vacant since its last use as Dr. Gimpi's Restaurant, with residential units above the first floor, and there has been no intervening use, the Board is constrained to find that the property is abandoned under the requirements of Borough Ordinance 21-98A-3(b), which states:

        "A. Continuance. Except as otherwise provided herein, non-conforming uses or structures which lawfully existed at the time of passage of this chapter may be continued even though such uses or structures do not comply with the regulations of this chapter; provided, however, that:

3. Abandonment. A non-conforming use that has been abandoned shall not therefore be reinstated. A non-conforming use shall be adjudged to have been abandoned:

...b. In cases where such non-conforming use is a building or structure designed for such use, when it has been voluntarily discontinued for a period of twenty-four (24) consecutive months."

4. The building has been neglected for at least the last 10 years and is in a state of disrepair. It has become an eyesore on the main street in the downtown area.

5. The applicant testified that the first floor needs walls, plumbing and electrical work, though there are no structural changes anticipated. The changes are all cosmetic. The applicant intends to add booths, as well as a sprinkler system. On one side of the restaurant, there will be nothing above the first floor. The hood system for the kitchen will be in that area, but will not be near windows or the upper floors.

6. The applicant testified that there are currently 16 spots for parking. The trash area will

not reduce that number. According to the borough's ordinances, as advised by the Board's Engineer, a total of 29 spaces are required (2 for each residential unit = 4 spaces; plus either 1 space for every 4 seats or 8 spaces per 1,000 square feet, whichever is greater). The applicant testified that he plans on having 100 seats. If that is the case, he will need 29 spaces. If the seating is less than 100, the required parking spaces is less. In either case, however, the difference between the number of spaces required and the 16 spaces provided equals the parking shortage, which figure shall be used to compute the applicant's parking contribution under Ordinance 21-65-14.

7. A parking variance is needed for the shortage in parking, which variance the Board approves, subject to the applicant making the required contribution.

8. The applicant has no plans to obtain a liquor license, as a result of which, this will not be a club, bar or tavern. It will be a BYOB restaurant. The applicant's responses to these questions contrast with item 22 in this Board's resolution of June 4, 2009 (Exhibit B-1), which approved a commercial and

residential use on the property with the condition that there be no restaurant or tavern.

9. On the Cedar Street side of the property, there will be a doorway and entrance to a staircase leading to the apartment units upstairs.

10. Restaurant use is a niche industry in Highlands. The proposed use will simply replace a prior restaurant use, though the new use will be far less intense than the prior use.

11. The stockade fence will stay, and will be painted.

12. As to signage, the applicant will comply with the borough ordinances, the Appendix A design criteria in particular. The applicant does intend to construct a free-standing sign similar in dimension to the sign which was previously on the property, on the Bay Avenue side (see Exhibit A-12).

13. The owner seeks to reopen the building by providing for approximately 2,966 square feet of commercial space on the ground level as a restaurant, and have one apartment unit on the second floor and one apartment unit on the third floor.

14. 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.

15. 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.

16. 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.

17. The average height of the proposed/existing structure is 28.5 feet. No variance is required for height.

18. The area in which the property is situated is predominantly residential (approximately 85.7% of the properties within 200 feet, accordingly to the applicant's planner). There are some commercial uses, so it is mixed.

19. This application will take a dilapidated building, dress it up, and improve the appearance of both the building and the streetscape.

20. The proposed use will also preserve the neighborhood character, but clean it up, and improve both the property and the neighborhood.

21. If the property were to be used for residential purposes only, the structure would have to be removed and one unit put in its place. That would be totally out of character with the neighborhood.

22. The applicant's planner testified that the zoning change, such that the continuation of the old uses would not be permitted, has caused a hardship to the property owner, and also created a situation where it would be highly unlikely that the property would ever be used only for the purposes permitted in the zoning ordinance.

23. The application meets the following goals set forth in the master plan: #2/Commercial. Continue the improvement of commercial properties in the borough; #8/Commercial. Encourage redevelopment of commercial properties that need rehabilitation or improvement; and #10/Strengths of the Borough. Excellent restaurants.



24. 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 N.J.S.A. 40:55D-2(a) (the property is particularly suitable to the proposed use and exists today, promotes the public welfare, and is maintaining the mixed use of the property); subsection (b) (secure safety from fire, flood, panic and other natural and manmade disasters by making the property much safer for neighbors and tenants); and subsection (i) (because a desirable visual environment will be created by the refurbishing of an old building in great need of repair, an eyesore will, therefore be removed).

25. The application meets the Medici criteria, in that the property is particularly suitable for the intended use. That is the case primarily because that has historically been the use of the property, but for its vacancy over the past several years. The residential uses are compatible with the neighborhood which, as stated earlier, is primarily residential. The BYOB restaurant use is compatible with the area, and the town in particular, since restaurants are a niche industry in Highlands.

26. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), 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 and the same uses as were previously in existence the last time the building was occupied.

27. The Board finds that the proposal is still compatible with the uses in the neighborhood.

28. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on February 2, 2012, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of LOUCO, LLC to reopen the existing former DR. GIMPI'S restaurant structure at 231 Bay Avenue, as a restaurant on the first floor and one apartment each on the second and third floors 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.

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

A. Prior to any building permit or certificate of occupancy issuing, the applicant shall make the required contribution to the borough's parking fund (Ordinance 21-65.14).

B. Clearance from the Monmouth County Planning Board.

C. Adherence to flood zone requirements, if applicable.

D. Applicant's plans and construction shall meet all state and borough codes, with special attention to lighting, signage and housing codes.

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

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Kutosh, Mr. Gallagher, Mr. Cervantes,  
Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

**DATE:** March 1, 2012

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Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of a Resolution adopted by the Borough of Highlands Zoning Board of Adjustment at a meeting held on March 1, 2012.

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Board Secretary