

**LAND USE BOARD
BOROUGH OF HIGHLANDS
OCTOBER 4, 2018**

Regular Meeting: 7:48pm

Location: Henry Hudson Regional High School, 1 Grand Tour, Highlands, NJ

Mr. Stockton called the meeting to order by reading a procedural statement that the meeting is being held in compliance with the Open Public Meetings Act. Everyone in attendance stood for the Pledge of Allegiance.

ROLL CALL:

PRESENT: Mayor O'Neil, Chief Burton, Councilmember Braswell, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Stockton, Mr. Lee, Mr. Montecalvo, Mr. Kutosh, Ms. Compagni

ABSENT: Mr. Nolan

Mr. Stockton noted that Mr. Gallagher will sit as Vice-Chairman due to Mr. Nolan's absence.

Application 2018-03, 181 Bay Avenue, Polaris Retreat LLC – Mr. Stockton informed the public that Polaris will be carried to November 1, 2018 meeting.

MR. GALLAGHER OFFERED A MOTION TO CARRY THE HEARING FOR APPLICATION 2018-03, 181 BAY AVENUE, POLARIS RETREAT LLC WILL BE CARRIED TO NOVEMBER 1, 2018 AT 7:30 PM WITH NO FURTHER NOTICE REQUIRED, SECONDED BY MR. KNOX.

Board Members held a discussion regarding possible special meetings for future hearings on this application. Concerns were raised with finishing up the file by the end of the year. Mr. Baxter stated that the applicant has granted an extension of time for which the Board has to act until the end of December. The Board agreed to be prepared to discuss availability for special meetings at the next hearing. Mr. Baxter stated that he has sent a letter requesting the subpoenaed membership information but has not received anything back.

Ayes: Mr. Francy, Mr. Knox, Mr. Gallagher, Mr. Stockton, Mr. Lee, Mr. Kutosh, Ms. Compagni

Nays: None

Abstain: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Colby, Mr. Montecalvo

Absent: Mr. Nolan

Public Comment – Mr. Stockton opened the meeting for Public Comments for any general Land Use questions. No public comments were received.

Consistency Review: Captain's Cove Redevelopment Plan – Susan Gruel, of Heyer, Gruel and Associates, introduced herself as the Planner hired by the Borough of Highlands to prepare the Redevelopment Plan. Ms. Gruel gave a brief summary of the Redevelopment Plan process and background of this property. As required, the Plan must come to the Land Use Board to be reviewed for consistency with Master Plan. Ms. Gruel summarized the plan, noting that it will essentially create a new zoning district for the Captain's Cove Area, which will supersede existing zoning on the site, to be called Captains Cove Redevelopment District. The new proposed uses would be for a marina without boat service or fuel dispensary, retail, eating and drinking

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establishments and office. There are a number of bulk standards and design standards within the plan as well. In terms of consistency with Master Plan, it specifically addresses this site and recommends the creation of new water front commercial district encompassing block 84 lot 2.01 to allow for commercial boat basins, rentals and parking standards based on boat slips. It is Ms. Gruel's professional opinion that the plan is substantially consistent with Master Plan in regard to this site.

Mr. Stockton referred to Bulk Standards and asked if building height would apply to the vacant or former restaurant aka "the shack." Ms. Gruel replied that the former area will be reconstructed to the bulk standards and within the existing footprint with modifications. Height will 1 ½ stories or 18 feet.

Mr. Knox asked if the additional space is considered residential. Ms. Gruel explained it is not to be used for residential, but to be used for retail or office space or eating and drinking establishments permitted within plan.

Mr. Francy asked questions regarding parking. Ms. Gruel indicated it would depend on foot print of building. Mr. Francy suggested boat service at the marina. Ms. Gruel suggested the Board make that recommendation to the Mayor and Council however the site is limited; with parking it may pose an issue. Mr. Francy added that parking against bulk head should be addressed with Mayor and Council.

The Board held a discussion regarding marine servicing as a business and the impact on the area. The proposed plan does not have the room for it.

Mr. Baxter asked if minor boat service be against master plan. Ms. Gruel replied there is no mention in the plan. It would not make it inconsistent, it would be a matter of policy as use or accessory use.

Mr. Stockton stated that parking is more of a site plan issue then rather than a Master Plan issue.

Mr. Francy questioned this plan and how it affects the rights of the current owner. Ms. Gruel replied that for this area the Council designated it a "non-condemnation." The owner will remain the owner. The owner can be the redeveloper, but that is ultimately up to the Borough Council. The purpose of designating the developer by Council is to ensure there is no deviation from the plan.

Mr. Knox questioned penalties if nothing is done by the current owner if this plan is adopted. Ms. Gruel replied that ultimately, it would go in front of the Mayor and Council.

Mr. Braswell noted that this is area is presently zoned as a residential area. This would open many doors for the owner.

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Mr. Francy asked if the Redevelopment Plan is consistent with the Master Plan. Ms. Gruel replied yes.

Mr. Stockton added that the Board may deem it consistent with the Master Plan and make recommendations to go along with it. He would suggest principal uses clarification in that no heavy marine construction, however mechanic and light maintenance can be covered. Elimination and prohibition of off street parking if that is the issue. After a brief Board discussion, it was clarified that there shall be no boat maintenance on the land side but can be permitted on the boat side.

Mr. Stockton opened to the public for comments or questions.

Allison Washnik, 86 Washington Avenue, asked questions regarding parking which were answered by Ms. Gruel.

MR. GALLAGHER OFFERED A MOTION TO DEEM THE CAPTAIN'S COVE REDEVELOPMENT PLAN CONSISTENT WITH THE MASTER PLAN, WITH A RECOMMENDATION FOR NO BOAT MAINTENANCE AND ELIMINATION OF PARKING LIMITATIONS ALONG THE BULKHEAD, SECONDED BY MR. FRANCY.

Ayes: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Lee, Mr. Stockton
Nays: None
Abstain: None
Absent: Mr. Nolan

Mr. Stockton directed the Board Secretary to take care of letter to Council.

New Business

Application 2018-05, 353 Shore Drive, Maier, Application for Bulk Variance for New Single Family Home – Mr. Stockton advised he is conflicted out of hearing this application and noted that Mr. Gallagher will be Chairperson for this hearing.

Erica Edwards ESQ, introduced herself as Counsel representing objecting neighbor Neal Taber, 4 Fay Street, she added that she is a Land Use Attorney in New Jersey. She is hereby objecting to application and intends to put in affirmative testimony to that regard, however the engineer retained is not able to be present because he had not been able to prepare. Ms. Edwards stated that she was unable to access plan and was only able to have pictures taken of the plan. She asked that the application be adjourned to the next meeting to obtain files and for them to be viewed.

Mr. Baxter advised that notices were sent out for the September 6th meeting so property owners were aware. Owners had to re-notice for this hearing and files have been available at Borough

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Hall. Ms. Uriarte indicated that she had emailed with Mr. Taber advising that the plans were available for review and he had replied that either he or a neighbor would be in to review. Ms. Edwards upheld her position that the application should be held for her expert. She added that the neighbor did review the files and was ultimately able to take photos of the plan.

Mr. Gallagher advised that the Board will allow for start of application to proceed and will carry to the next meeting for cross-examination. The Board Secretary was directed to prepare a copy of video recording of this meeting, a copy of the plans to be available for Ms. Edwards to pick up tomorrow at Borough Hall. The objecting attorney will be able to cross examine at this meeting.

Ms. Edwards indicated that she prefers to hold cross exam until the expert and the client are present. Objectors Email, dated October 4, 2018 to Greg Baxter was marked as Exhibit O-1.

Mr. Baxter stated that he has reviewed the second notice and finds it satisfactory, therefore the board is able to proceed with jurisdiction. He noted that some exhibit have been previously marked. The Zoning Permit denial letter of Ed Hermann, dated May 10, 2018 was marked as Exhibit A-1. A 2-page Variance Application was marked as Exhibit A-2. A photo of the front of the demolished home was marked as Exhibit A-3. A photo of the rear of the demolished home was marked as Exhibit A-4. A plot plan by Richard Stockton, dated September 5, 2017 was marked as Exhibit A-5. Architectural Drawings prepared by Catherine Franco, dated August 20, 2018 was marked as Exhibit A-7. The Review Letter prepared by Robert Yuro, Board Engineer, dated August 28, 2018 was marked as Exhibit B-1.

William and Danielle Maier were sworn in as the applicants.

Mr. Maier stated they are looking to move to Highlands and become part of the community there. They purchased the dilapidated home in January 2017, however it took some time to get moving on plans for the home. In 2018 they filed a zoning application to build a single family home to become their primary residence. Highlands is where they would like to set their roots. Mr. Maier added that some neighboring properties have exceeded lot coverage based on visuals of the neighborhood and a review of the tax map. The variances being requested are for building coverage and side and front yard setbacks. There are some pre-existing variances due to lot size as well:

- Minimum lot area - 5000 square feet required, 3059 square feet is proposed
- Lot frontage - 50 feet required 31.5 feet existing 41.5 proposed.

In regard to the three new variances being proposed they are as follows:

- Front yard set-back: 20 feet required, 15.6 feet proposed and 8.7 feet was previously existing on the old house
- Side yard set-back: 6 and 8 feet required, 7 and 3.1 feet are proposed
- Building coverage 30% maximum required and 41.5% proposed

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Mr. Baxter asked for the reasons for deviation. Mr. Maier replied there are two undersized, irregularly shaped lots. He will only have one chance to build a home and he would like to maximize the size of his home. Mrs. Maier added that there will still be plenty of space between the neighboring homes. It is about 6 feet to one of the neighboring homes and about 11 to the other. Mr. Maier added that one of the neighbor's homes only has a 3 foot setback.

Chief Burton asked if the proposed setbacks are in conformance with neighbors' homes. Mr. Maier replied yes, they are all narrow lots. Mr. Gallagher asked about the previous home. Mr. Maier indicated it was 2 separate lots, lot 6 and 15; lot 6 had a large garage and both lots had single-story bungalow dwellings. He added that rear lot, lot 15, is land locked. They were told the alleyway would give access to a garage that was used for motorcycles.

Mr. Baxter asked about the proposed first floor use. Mr. Maier stated that the first floor would be off street parking and not livable space.

Mr. Francy asked about the front yard setback from Shore Drive which is shown at 15.6 feet and how the deck and stairs are calculated into that setback. Mr. Yuro added that it is not a covered deck so it is considered an accessory use and does not count when calculating the setbacks on an elevated home.

Chief Burton asked if this is on piers or block foundation. Mrs. Maier stated the deck would be piers and the home will be block foundation.

Mr. Knox asked where the objector is located on the plan. Mr. Maier replied that it is the rear home on lot 12.01.

Mr. Francy expressed concern with lot coverage on a small lot size. He feels the Board is pushing the envelope. He acknowledge the lot coverage request is not deminimous. Chief Burton stated that there is no running tally of what has been approved previously. Mr. Gallagher explained the lot is undersized and irregularly shaped, which creates a hardship. Mr. Francy stated that 41% would be the largest structure of the area and asked if the applicant would consider downsizing the home. Mrs. Maier reminded the Board that they are not requesting a height variance and if they were to come in with a one-story home, the coverage would be the same because of the footprint they are proposing. At this point, they have not paid for an Architect to prepare detailed plans until they know whether or not they are approved. They are trying to maximize the space so that they can grow roots and raise their family here.

Mr. Kutosh stated that he was on the Zoning Board when larger homes were approved. Mayor O'Neil added that the lot coverage of 30% doesn't seem to work in this area. This applicant purchased two lots and is still struggling to comply in a neighborhood when "yes" has been said all along. Mr. Knox stated that a majority of the town does not conform so it is hard to tell new construction to comply. Mr. Gallagher added that the Master Plan addresses that there is a need to make the town consistent with how the town in.

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Mr. Gallagher asked for questions from the public, noting that comments will be accepted later in the hearing.

Mary Ryan, 363 Shore Drive, asked if it is common to go over what is allowable by 35%. After discussing building envelope versus livable space, Mr. Maier advised that his proposed footprint is only 1,400 square feet. Ms. Ryan asked if the applicant has considered the impact of building a large home like this would have on neighbors. Mr. Maier replied that it will improve the values of the homes, compared to what was previously existing on this site. Ms. Ryan asked questions relating to setbacks which were answered by Mr. Maier. Mrs. Maier added that if Ms. Ryan wanted to rebuild her home, she would have to come before the Board as well.

Scott Presslow, 24 Lighthouse Road, stated that he owns a small bungalow on this block. He questioned the noticing process because he did not receive a letter. Mr. Baxter explained the applicant receives a list from the Borough and that is who they are required to serve, exactly as stated on the list. If the town makes a mistake, it does not fall on the applicant. Mr. Maier stated that the letter was sent to 355 Shore Drive. Mr. Presslow asked various questions regarding the setbacks, which were answered by Mr. Maier by using the plot plan as reference.

Seeing no further questions from the public, Mr. Gallagher stated that they will not have public comment and cross examination until the next meeting, at the request of the objecting attorney. It will be carried to the November 1st meeting and will be first on the Agenda, ahead of the Polaris hearing.

MR. KNOX OFFERED A MOTION TO CARRY THIS APPLICATION TO NOVEMBER 1, 2018 AT 7:30 WITH NO FURTHER NOTICE REQUIRED, SECONDED BY MR. KUTOSH.

Ayes: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby,
Mr. Gallagher, Mr. Lee, Mr. Montecalvo, Mr. Kutosh
Nays: None
Abstain: None
Absent: Mr. Nolan

At this time, Mr. Stockton took his seat as Chairman of the Board and called for a short recess.

Roll Call upon Reconvening:

Present: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby,
Mr. Gallagher, Mr. Lee, Mr. Montecalvo, Mr. Kutosh
Absent: Mr. Nolan

Mr. Montecalvo stepped down and recused himself from the following application.

Application 2018-06, 112 Portland Road, Portland Road Associates – Application for Site Plan Approval with Variances for New Single Family Home – Armen McOmber introduced himself as

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the Attorney for the applicant. The application calls for plans to demolish the existing structure and construct a new home. This property was subject of a previous subdivision back in 1987, which created this flag lot. They are seeking approval of two variances, one is a preexisting lot frontage variance, 29.28 feet is proposed where 75 feet is required and the other is for front yard setback where 35 feet is required, where only 1 foot is proposed however that is technical due to the configuration of the lot. The lot is essentially 100 feet off of Portland Road, but they will get in to that later. The applicant is looking to replace an older, obsolete structure that meets all parameters of the ordinance. The Engineer with him this evening is also a licensed Planner and will testify to that regard as well. The plan also calls for elimination of easements and they have a fire expert present to testify on that. In regard to the Board Engineer's letter dated September 24, 2018, the applicant agrees to comply with all outstanding comments.

Mr. Baxter advised that he has reviewed the notices and the Board has jurisdiction to hear this application. He added that a number of exhibits have been previously marked. A Zoning officer denial, dated August 6, 2018 with Permit Application form attached was marked as Exhibit A-1. The Variance Application was marked as Exhibit A-2. A Subdivision Resolution of the Highlands Planning Board, dated September 8, 1987 was marked as Exhibit A-3. A Variance Plan prepared by Walter J. Hopkin, dated July 6, 2018 was marked as Exhibit A-4. A Building Drawing prepared by Robert Rich Associates, dated September 11, 2018 was marked as Exhibit A-5. The review letter of Robert Yuro, Board Engineer, was marked as Exhibit B-1.

Walter J. Hopkins was sworn in and accepted as an expert Engineer and Planner. Mr. Hopkins added to his list of credentials, that he was the previous Borough Engineer for the Zoning Board of Highlands back in the late 1990's.

A colored rendering of the site plan was marked as Exhibit A-6. Mr. Hopkins described the existing property and reviewed the proposed development.

Mr. Hopkins stated that the lot is 23,375 square foot lot on the east side of Portland Road with frontage on the river. Lot 4.01 is also included because of an easement on that lot. The proposed use is permitted and the surrounding lots are similar in nature. Currently there is a 3600 square foot home, a driveway and a pool. There is an existing lot frontage variance and a side yard non-conformity; there is 7.9 feet where the Ordinance requires 8 feet. The applicant is proposing to remove all existing site amenities and structures, with only the driveway stem to remain. They are proposing to build a 4500 square foot footprint home with parking area, garage and pool. They comply with all bulk requirements except for the existing lot frontage non-conformity, which cannot be cured. There is also a technical front yard setback due to the garage being proposed at 1 foot front the front property line, however it sits almost 100 feet back from Portland Road. The applicant is also proposing an easement to allow for construction of the driveway. They will keep and reconfigure the Stormwater management system, the grading patterns will remain the same. The home plan has not been finalized yet, but they are requesting that they be able to submit the grading and drainage plan at the time of construction permits. There is an easement with lot 4.01 to allow for the driveway and ample parking in the area. All other bulk standards are complied with, specifically lot and building coverage. The existing side yard setback is also being removed.

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Mr. Stockton questioned the gate at the northern part of the property. Mr. McOmber stated that the property is owned by Mr. Montecalvo and this home is being built for his son, the gate is simply for access between families.

Discussion was held regarding the possibility of moving the lot line rather than having an easement for the driveway. Mr. Braswell asked if it would remove the setback variance. Mr. McOmber stated there would still be a setback variance.

A discussion was held regarding an easement with lot 4.01, which traverses on to the subject property. The easement was put in place to allow for access to a drainage pipe and the applicant will be vacating that easement. Mr. Baxter indicated that he is uncomfortable extinguishing an easement they have not seen. Mr. McOmber stated that lot 4.01 is an oversized lot and the easement will not create any variance situations for lot 4.01. The access easement was done in 1987 but the Resolution is unclear as to why it was required. It doesn't seem to benefit lot 4.01, however the drainage pipe located in the easement is owned by the LLC and they do not see any need for the easement in the future. Mr. Hopkins noted that the pipe doesn't connect to any municipal systems, it is more of a yard inlet.

Mr. Gallagher asked what the benefit of extinguishing the easement is. Mr. McOmber stated that a portion of the home would encroach on the easement partially, however it would not affect the pipe. Mr. Stockton added that there appears to be some walkways and landscaping in the easement as well.

Mayor O'Neil left the meeting at 10:09 pm.

Frank Montecalvo, owner of Portland Road Associates, LLC was sworn in and explained that the pipe will still be there and will still be accessible. The pipe was put in place to control the water that was coming down this lot's driveway bringing it to the side of the home, down the property, turning north on to the adjoining property, which is his home. He stated that the easement on his property should stay in place to give the new owner of the new home, which happens to be his son, access to the pipe should it ever become clogged to ensure proper drainage in the future.

Mr. Yuro suggested reducing the southern easement from 11 feet to 7 feet. The applicant agreed to this condition.

Mr. Stockton referred to a concrete driveway on lot 3 that comes very close or even encroaches onto this lot. Mr. McOmber advised that the neighbor built a road without approval and the DEP has since made him remove it. The plan will be updated to eliminate the neighbor's concrete driveway.

Mr. Yuro asked if any work is proposed below the pool and the retaining wall. Mr. McOmber replied no there is not.

Mr. Francy referred to the 1987 Resolution that has a requirement that the roofline stay below Portland Road. Mr. McOmber replied that the applicant intends to comply with the height Ordinance. Mr. Francy asked if that condition would apply to this applicant. Mr. Baxter's reply was unclear.

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Ms. Compagni left the meeting at 10:28 pm.

A discussion was held regarding the roofline in relation to the condition in the 1987 Resolution. Mr. McOmber advised that he feels that condition would apply to the home that was built at the time of that application in 1987 and he would request relief from that condition if it does in fact apply to this resolution. Mr. Montecalvo added that a neighbor contested that condition and brought him to court, where it was confirmed the roofline was within inches, but not over Portland Road.

Mr. McOmber stated that the applicant understands the concern, but they are complying with the Ordinance. If they need to request relief from that condition, then they are requesting that relief. After a lengthy discussion, the Board determined that the plans and evidence submitted, no height variance will be required.

Mr. McOmber advised that the applicant will comply with any outstanding requirements of T&M's report. He asked that Mr. Hopkins go through his planning testimony.

Mr. Hopkins reviewed the variances noting the positive and negative criteria of relief being requested. His planning opinion is that there is no negative criteria and there is no detriment to the zone plan.

Mr. Francy began reading a letter he received from a resident. Mr. Baxter stated that is not permissible for this application. If a member of the public wishes to make a comment, they must be present at the public hearing. Mr. Stockton added that that letter was sent in response to a different subdivision.

Paul A. Murphy was sworn in and accepted as an expert fire safety witness. Mr. Murphy advised that he conducted a site visit, reviewed the plans and applied various fire codes. Based on the standard firefighting practices, the removal of the emergency access easement would not create a detriment to any fire suppression activities. In the event that there were a fire event, the Fire Department would access the site from Portland Road and would not pull their equipment down the slope into the site. The 12 foot wide driveway is more than enough space and the 128 foot length is not a problem because they can go approximately 250 feet with a pre-connect. There are other hose loads that make the 128 foot length easy to overcome with today's technology. He added that there are two hydrants right at the top of the driveway of this home. The original homeowner actually put one of them in as a condition of the previous resolution. In regard to the collapse zone, the Fire Department does not typically bring the equipment that close to a building.

Mr. Stockton asked for any questions from the public based on the testimony given. No questions were received. Mr. Stockton opened the hearing for any comments or statements from the public however none were received.

MR. KNOX OFFERED A MOTION TO APPROVE THE APPLICATION, WITH CONDITIONS AS DISCUSSED, SECONDED BY MR. GALLAGHER.

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Ayes: Mr. Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby,
Mr. Lee, Mr. Kutosh, Mr. Gallagher, Mr. Stockton
Nays: None
Abstain: None
Absent: Mr. Nolan, Mayor O'Neil, Ms. Compagni

Minutes for Approval

Mr. Gallagher noted that he had offered a change to the minutes as a roll call vote had the ayes and nays reversed. The Board Secretary indicated the change has been made.

MR. GALLAGHER OFFERED A MOTION TO APPROVE THE MINUTES OF SEPTEMBER 6, 2018, SECONDED BY MR. KNOX. ALL PRESENT, ELIGIBLE MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Other Business

Mr. Baxter stated that the Board has previously indicated that they would like the Engineer to conduct the completeness review. He questioned the Board's intent for who would make the decision to schedule the applicant for a public hearing. The Board agreed that the Board Secretary can use discretion and work with the Chairman to schedule the applications in order to streamline the application process. Mr. Stockton stated that they can remove the completeness section of the Agenda. Mr. Baxter will prepare a Resolution to amend the bylaws.

Adjournment

Seeing no further business, Mr. Stockton asked for a motion to adjourn.

MR. GALLAGHER OFFERED A MOTION TO ADJOURN THE MEETING AT 11:57 PM, SECONDED BY MR. KUTOSH. ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Respectfully submitted,

Erin Uriarte
Land Use Board Secretary