

**LAND USE BOARD
BOROUGH OF HIGHLANDS
NOVEMBER 1, 2018**

Regular Meeting: 7:35 pm

Location: Highlands Elementary School, 360 Navesink Avenue, Highlands, NJ

Mr. Stockton called the meeting to order by reading a procedural statement indicating 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. Nolan, Mr. Stockton, Mr. Lee, Mr. Kutosh

ABSENT: Mr. Montecalvo, Ms. Compagni

Gregory Baxter was present as Board Attorney. Robert Yuro was present as Board Engineer.

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

Other Business

Application 2018-03, 181 Bay Avenue, Polaris Retreat LLC – Mr. Stockton informed the public that the Polaris Application is being withdrawn.

MR. GALLAGHER OFFERED A MOTION TO APPROVE A RESOLUTION DISMISSING APPLICATION 2018-03, 181 BAY AVENUE, POLARIS RETREAT LLC WITHOUT PREJUDICE, SECONDED BY MR. NOLAN.

Ayes: Mayor O'Neil, Councilman Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Gallagher, Mr. Nolan, Mr. Lee, Mr. Kutosh

Nays: None

Abstain: Mr. Colby, Mr. Stockton

Absent: Mr. Montecalvo, Ms. Compagni

Resolution Amending By-Laws of the Highlands Land Use Board – Mr. Baxter stated that this Resolution is a result of Board discussions regarding the completeness process. The Board Engineer will do the Completeness Review and the Board Secretary will schedule Public Hearings while coordinating with the Board Chairman.

MR. KUTOSH OFFERED A MOTION TO AMEND THE LAND USE BY-LAWS, SECONDED BY MR. NOLAN.

Ayes: Mayor O'Neil, Councilman Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Nolan, Mr. Stockton, Mr. Lee, Mr. Kutosh

Nays: None

Abstain: None

Absent: Mr. Montecalvo, Ms. Compagni

Correction of Previously Adopted Resolution – Mr. Baxter explained this is a Resolution correcting a previously adopted Resolution that apparently had a typo. Mr. Gallagher asked if

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this has been confirmed by anyone. Ms. Uriarte indicated that Mr. Yuro had agreed it was simply a reversal of numbers and his email was included in the packet. Mr. Baxter added that the homeowner went to apply for permits and the error was found.

MR. NOLAN OFFERED A MOTION TO APPROVE THE RESOLUTION FOR SUSAN FLANNERY – 3 CENTRAL AVENUE, SECONDED BY MR. KNOX.

Ayes: Councilman Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Nolan, Mr. Lee, Mr. Kutosh

Nays: None

Abstain: Mayor O’Neil, Mr. Stockton

Absent: Mr. Montecalvo, Ms. Compagni

Resolution Approving Bulk Variances for Portland Road Associates, LLC at 112 Portland Road –

Mr. Baxter advised this Resolution is the Memorialization of the Approval Granted at the last Board meeting.

MR. GALLAGHER OFFERED A MOTION TO APPROVE THE RESOLUTION, SECONDED BY COUNCILMAN BRASWELL.

Ayes: Councilman Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Nolan, Mr. Lee, Mr. Kutosh

Nays: None

Abstain: Mayor O’Neil, Mr. Stockton

Absent: Mr. Montecalvo, Ms. Compagni

Consistency Reviews

Shadow Lawn Redevelopment Plan – Christopher Dochney, of CME Associates, introduced himself as the Planner retained by the Borough. Mr. Dochney discussed the history of this property and redevelopment designation that has been given. The Redevelopment Plan will supersede the zoning ordinance in this area. The property is located on Ocean Boulevard adjacent to the Eastpointe Condominium building. Currently the property is home to several mobile home trailers and a small apartment building. He then explained the Board’s role is to deem the Plan either consistent or inconsistent with the Master Plan as well as make any recommendations to that regard as well. Mr. Dochney began to review the different sections of the plan, starting with the objectives and goals.

Mr. Gallagher questioned objective #6 and asked why there is affordable housing language in the plan. Mr. Dochney replied that any developer will have to comply with any Affordable Housing Ordinances that may be in place at time of development. Mr. Baxter added that Affordable Housing is State Law. Mr. Dochney advised that although the Housing Plan has not been adopted by they are looking at 16 – 25 Affordable Housing units on this site.

A discussion was held regarding the ongoing Affordable Housing regulations coming down from the State and the Courts. Mr. Dochney advised that the negotiations are ongoing and confidential however the language in this plan was taken word-for-word on the recommendation of the Borough’s Affordable Housing Attorney, Andrew Bayer.

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Mr. Baxter asked where the proposed Ordinance ends. Mr. Dochney stated that the whole Redevelopment Plan is the Ordinance. Mr. Baxter asked how it would be codified. Mr. Dochney stated that most likely the Ordinance adopting the plan will refer to the plan as an Exhibit.

A discussion was held regarding affordable housing requirements and different scenarios that could come from the negotiations.

Mr. Gallagher stated that there is ample affordable housing throughout the Borough that doesn't seem to be included in the numbers. He suggested striking the word "affordable" from item #6. Mr. Nolan indicated he would support that recommendation.

Mr. Dochney continued reviewing the Redevelopment Plan, summarizing the Permitted Uses and Conditional Uses. He went on to summarize the bulk standards as noted in the plan.

Mr. Gallagher questioned the bulk standards limiting the unit sizes for a hotel. Mr. Dochney explained they are trying to prevent a micro-loft or boarding house situation. Mr. Francy stated that he feels the unit sizes are too small. Mr. Dochney advised that from personal and professional experience, his opinion is that they provide ample space. Mr. Nolan agreed with Mr. Francy and suggested the square footage be increased. After a brief discussion, Mr. Nolan recommended the minimum unit floor area square footage range be increased to 600 to 1200 square feet for multifamily residential units. Mr. Knox indicated agreeance with this recommendation.

Mr. Dochney continued the Plan review stating that because of the steep slopes in the area and the possibility of slump lock, the plan contains a requirement that a Geotechnical Engineering Report be required with any application. There is also a provision that will allow the Board to retain a Geotechnical Expert to be paid out of applicant escrow. Mr. Baxter indicated concern that the Redevelopment Agreement comes after the application process. After a discussion, the Board recommended that they would like it to be a requirement that the Geotechnical Expert be paid for out of an escrow account.

Mr. Dochney went on to review the design standards of the plan and the relationships to other Plans, noting that the Board will not be able to grant any use variances for this site; any use variance situations would have to go back to Council to request an amendment to the Redevelopment Plan. He feels this plan is consistent with the Master Plan, as it is a direct out take from the direction given for the property in the 2016 Reexamination of the Master Plan.

Mr. Gallagher expressed concern with the language referring to the Housing Element and suggested taking out any Affordable Housing language.

Mr. Francy questioned any limitations from the Township of Middletown Sewerage Authority and how that would affect development. Mr. Baxter advised that would be something that would be reviewed during the site plan application process and the Board can deny the application if they find the proper infrastructure is not available.

Mr. Stockton asked for any questions from the public.

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A male audience member from Shore Drive expressed concern with slump locks and asked for clarification on the requirements regarding same. Mr. Dochney explained the requirement for a geotechnical engineering expert to be retained by both the applicant and the Board for the duration of the planning process and into and during the construction process.

A male audience member from 365 Shore Drive asked who is responsible for Bayside Drive that is a part of Atlantic Highlands. He is concerned with the slump locks. Mr. Dochney advised that it would be Atlantic Highlands. The audience member asked how high the building would be and how many units. Mr. Dochney replied that the number of units would be 30 per acre so essentially a maximum of about 300 units and the maximum height would be 152 feet or 10 stories. The adjacent condominium building is about 14 stories so this will be a little bit lower than that.

Mr. Baxter reviewed the recommendations that were discussed are as follows:

1. #6 should remove the word "affordable"; the Board prefers there be no affordable housing units on this site.
3. The minimum sizes for the different residential units shall be not less than 600 SF on the smallest units and not less than 1200 SF on the largest units, with the other size units to be adjusted accordingly.
4. On page 24, it should clearly state that the property applicant must pay the costs of the Board's independently hired geotechnical expert as part of the application process.

MR. GALLAGHER OFFERED A MOTION TO DEEM THE SHADOW LAWN REDEVELOPMENT PLAN CONSISTENT WITH THE MASTER PLAN, WITH RECOMMENDATIONS AS DISCUSSED, SECONDED BY MR. FRANCY.

Ayes: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Nolan, Mr. Stockton

Nays: None

Abstain: None

Absent: Mr. Montecalvo, Ms. Compagni

Ordinance O-18-21: Mr. Baxter explained this Ordinance was sent down from Council to be reviewed for Consistency and deals with the expiration of variances.

Mr. Francy indicated he has concerns with the limitations being too tight of a timeframe.

Mr. Stockton agreed and recommended that they follow the Municipal Land Use Law as it relates to the expiration of variances and approvals.

MR. NOLAN OFFERED A MOTION TO DEEM THE ORDINANCE INCONSISTENT WITH THE MASER PLAN, WITH RECOMMENDATIONS THAT THE LIMITATIONS ARE TOO TIGHT AND SHOULD CONTAIN CRITERIA RELATING TO THE LEVEL OF ACTIVITY ON THE SITE AS WELL AS A SEPARATE CRITERIA FOR COMMERCIAL AND RESIDENTIAL DEVELOPMENT, SECONDED BY MR. FRANCY.

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

Ordinance O-18-22: Mr. Stockton advised this Ordinance amends the Zoning Ordinance to Update the Zoning Map.

MR. FRANCY OFFERED A MOTION TO DEEM THE ORDINANCE CONSITENT WITH THE MASTER PLAN, SECONDED BY MR. NOLAN.

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

At this time, Mr. Stockton stepped down as he is conflicted out on the next application. The Board took a brief recess and reconvened at 9:18 pm.

Roll Call upon Reconvening:

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

New Business

Application 2018-05, 353 Shore Drive, Maier, Application for Bulk Variance for New Single Family Home – Mr. Nolan confirmed he has listened to the recordings and is eligible to vote, however Mr. Gallagher will continue as Chair on this hearing.

Mr. Gallagher stated that the times is about 9:15 and the Board usually likes to wrap up around 10:00 pm. He asked the Board if there is anyone opposed to extending the time until 11:00 pm; no objections were received.

Evan Zimmerman, Esq. of Giordano, Halleran and Ciesla appeared on behalf of the applicant, noting that they will be relying on the applicant's testimony given at the last hearing as well as entering testimony of an expert Planning Professional.

Mr. Baxter added that there were seven exhibits marked at the last hearing. He has since marked two more exhibits. The Buy/Sell letters sent by Mr. Zimmerman were marked as Exhibit A-8. The Buy/Sell response from Mr. Taber, dated October 31, 2018 was marked as Exhibit O-2.

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Erica Edwards, Esq. appeared on behalf of the objecting neighbor, Neil Taber. She requested to hold her cross examine of the applicants until after the Planning testimony is complete.

Mr. Gallagher asked for any questions of the applicant's based on the testimony given at the last hearing. No questions were received.

Mr. Zimmerman recapped the last hearing, noting that his client is requesting variances associated with the proposal for a 3-story single family residence on an undersized lot.

Mr. Baxter confirmed the notice was published for the change in location for this meeting and was correct.

James Higgins was sworn in and accepted as an expert Planner. An enlarged plot plan was marked as Exhibit A-9. An aerial photo of the neighborhood was marked as Exhibit A-10. A wider scope aerial view of the neighborhood with zone map was marked as Exhibit A-11.

Mr. Higgins stated that the subject property is 3,759 square feet in lot area, it is irregular in shape as it narrows towards the rear of the property. A lot area variance is being requested; where 5,000 square feet is required they are proposing 3,759 square feet by joining two small lots. There is a lot frontage variance required; where 50 feet is required, 41.5 feet is existing. Maximum Building Coverage is 30% and they are proposing 41.5% so a variance is required for that as well as for front yard setback. The front yard setback variance is a little confusing because the ordinance requires 20 feet setback but it also allows for the applicant to use the prevailing setback of the area, which is 11.8 feet. This application exceeds the prevailing setback so his opinion is that the variance is not necessary. There is a variance required for the setback of the deck, which is an accessory structure and is setback only 4.5 feet. The Ordinance is a little ambiguous here because it also allows for accessory structures to be setback 3 feet from any property line. The T&M report doesn't call out the variance but logically he thinks the variance may be required. The prevailing setback was on the plan itself. Mr. Yuro agreed that the prevailing setback would be 11.8 feet and also agrees that there is no variance required for the deck.

Mr. Higgins advised that the lot frontage variance condition cannot be improved because of the existing homes on either sides. In regard to side yard setback, the ordinance requires 6 feet and 8 feet. The applicant is proposing 7 feet on one side and 3.1 feet on the other. The proposed building coverage is at 41.5% where only 30% is allowed. In this case, there is a hardship with regard to width, as this lot narrows towards the rear and that drives the side yard setback variances. It is also undersized with regard to lot area. The applicant has offered to purchase additional land or to sell his property to make this lot more conforming, which is known as the Donmire criteria. The intent of that is make the whole situation more conforming and to have it make sense from a Planning and Zoning standpoint. The applicant offered to buy or sell property and the only response received was from a neighbor, Mr. Taber, who is located diagonally behind

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the property so it would result in a highly irregular shaped property, essentially a Z-shape. In addition, it would make the neighbor's property non-conforming for lot frontage on Shore Drive. If you look at the character of the area, block 103, with the exception of the subject property, has 11 lots on it; 7 of those lots are smaller than the subject site and are below 3,700 square feet. The largest lot is lot 2 and is 7,790 square feet and is located on the southern side of the block. The character of the neighborhood is small lots, with small frontages, with houses on them. If you merged the subject property with Mr. Taber's property, it would create a lot that is 9,350 square feet, which is well over the other lots in this zone and completely irregular in shape. So when he looks at selling this property to the adjacent owner, it would create more problems from a planning and zoning standpoint than it would have benefits. It makes no sense from a planning and zoning standpoint to sell to that adjacent owner.

Mr. Higgins stated that in addition to hardship, the applicant's request for the variances is justified under the flexible C-2 variance. Elements of both criteria could be applied to this application. There is no question there is a hardship however what is being proposed is essentially consistent with what is in the area. He has three resolutions from homes on the block that have homes with side yard setbacks less than what is being proposed here. He is not saying it has to be granted, but it is to show the character of the neighborhood. What is being proposed here gives reasonable consideration to the character of the neighborhood. Referring to A-10, Mr. Higgins pointed out the subject property and lot 12.01, which is owned by Mr. Taber.

With regard to the side yard setbacks, Mr. Higgins definitely feels there is a hardship there and he doesn't see any substantial detriment in granting that variance. In regard to the lot coverage variance, if the lot size was conforming, the applicant would be entitled to a footprint of about 1500 square feet, what they are proposing is about 1560 square feet for the footprint. Clearly there is a hardship created by the undersized lot. What is being proposed is similar to the coverage of many lots in the area. He has three Resolutions which permit lot coverages at 35% for lots 3 & 16, lot 8 has 48.59%, lot 9 has 36% and lot 11 has 36%. Mr. Higgins also conducted a physical inspection of the area, inspected the aerial maps and tax maps. In doing that review he found that lot 4 has approximately 30% coverage, lot 5 has 26.5%, lot 7 has 43.75%, lot 2 has 14%, lot 1 has 33% and Mr. Taber's lot has approximately 20% coverage. Predominately, the character of the neighborhood is oversized building coverages on undersized lot areas with undersized setbacks. This area and this property are in a flood zone so the elevation must be raised above the BFE and that costs a lot of money. As an incentive to reinvest and rebuild in this area, it makes sense to get "more bang for the buck." One of the purposes of the MLUL is to lessen the cost of development and allow for more efficient use of the land. By allowing a larger footprint so that an applicant can spread out and reduce the average cost of raising the building, it provides an incentive to build a nicer home on the lot and reduces the relative cost of construction. The alternative would be to have the lot remain vacant because it is adjoined to a lot that is already developed, is an inefficient use of the land. Another purpose of the MLUL is to

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provide appropriate and sufficient space for a variety of uses, one of which is residential. This applicant is proposing to build a residence which is permitted in the zone and is being constructed above the BFE, in line with current environmental requirements. It is a use that is in character with the area and this block. Reducing any of these variances, wouldn't really gain anything. Even if they cut 20 feet off the rear of the house, the view from the street would be the same, and the view from Mr. Taber's house would be the same.

Mr. Higgins professional planning opinion is that the benefits of granting the variances outweigh any detriments and he also feels there is substantial hardship justifications to grant the variance.

Mr. Baxter asked Mr. Higgins to speak of the sizes of the homes in the neighborhood in relation to this plan. Specifically, most of the homes are ranch style homes and this is a 3 story home. Mr. Higgins replied that he didn't factor in the height of the building because the zone permits the height. There are other homes that have been elevated and exceed one story and they have had no detriment to the surrounding homes.

Mr. Lee asked if the cost effectiveness of raising a larger home can be considered a sufficient hardship. Mr. Baxter stated that if you can build a conforming home it would eliminate the hardship but in this case the lot is undersized. Mr. Zimmerman added that the property as it exists does have a building envelope but it is extremely small. When you factor in just framing the house, it would be an extremely small living space.

Mr. Higgins stated that a hardship doesn't mean you can't build, it means that the hardship may inhibit the extent to which the property can be used. That is based on the peculiar shape and unique physical features and the size of the lot.

Mr. Baxter stated that the old house had a side yard setback of 10 and 5 foot setback so it was off by one foot. Mr. Knox added that the previously existing home was only a table and a half wide.

Mr. Francy stated that the 41.5% being requested seems to be well above the previous variances granted, which were in the range of 30-34%. Mr. Higgins clarified there were lot coverage variances that were 35 – 36% as well as one that was 48.5% right on this block. Mr. Francy stated that wasn't approved recently.

Mayor O'Neil asked if the parcel in question is two lots. Mr. Higgins confirmed yes, it is two lots. Mayor O'Neil stated that if they had one lot they would have to comply with even tighter requirements but because they acquired the additional lot, the applicant wants to extend the footprint, is that correct? Mr. Higgins replied yes.

Mr. Baxter stated that the average of the larger lot coverages would be 37%.

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Mr. Knox stated that he was on the Zoning Board and the lot was small so in order for the home to be feasible, it made sense to grant the variances. Mr. Zimmerman stated that is exactly the issue here.

Mayor O'Neil stated that he feels this home fits in where it is. Mr. Knox stated that when people raise their home, they do not tend to use their yards because of the elevations, people use their decks.

Erica Edwards, Esq. on behalf of Neal Taber asked Mr. Higgins for Case Law to support his opinion regarding the Donmire criteria. Mr. Higgins replied not that he is aware of. Mr. Zimmerman stated that Mr. Higgins was entered as an expert Planning professional, not an attorney. Ms. Edwards stated that the testimony was that if the applicants had a conforming lot, they could put a footprint of 1,500 square feet and she asked what the total square footage of that home would be. Mr. Higgins replied that it would still be a 3-story home, so it would be about 4,500 square feet.

Ms. Edwards asked for an elaboration on the testimony that it would be no detriment to the public good. Mr. Higgins stated that what is being proposed is in line with the character of the neighborhood, and none of the other homes have had a detrimental impact thus far. Ms. Edwards asked how the applicant's request is justified if the lot coverage in the zone is generally no higher than 36%. Mr. Higgins reiterated that it is justified based on the character of the area. If the home were scaled down to the 30% coverage, it would still be a three story home and will affect his view no matter where it is placed on the property. Ms. Edwards asked if it is Mr. Higgins testimony that her client's view will be obstructed. Mr. Higgins replied that if any home, even a compliant one, is built, the view will be obstructed.

Ms. Edwards referred to the buy sell letters and asked if Mr. Higgins is aware there was an offer made. Mr. Higgins replied yes. Ms. Edwards asked if the applicant built a home compliant with the 30% requirement, what the size of the footprint would be. Mr. Higgins replied the footprint would be 1,073 square feet.

Ms. Edwards stated that she would like to question the applicants.

Mr. Maier stated that he would like to clarify that the multiplying the footprint isn't an accurate calculation for living space because it doesn't account for walls, framing, cabinets, staircases, etc.

Ms. Edwards referred to the buy sell letters that were sent and stated that he client responded with an offer to buy the lot for \$75,000. Mr. Maier indicated that he had concerns with the appraisal Mr. Taber provided being inaccurate. Either way, his appraisal said \$122,000. Ms. Edwards advised that her client asked for a copy of Mr. Maier's appraisal but was denied access. Mr. Maier responded they only asked for it yesterday.

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Mr. Zimmerman clarified that what Mr. Higgins has testified to was that the letters were sent in an attempt to bring the lot into conformance. The offer received does not help bring this property into conformance so he asks that the Board to disregard any offer to purchase the lot. As to the appraisal itself, the Case Law shows that in order to show a hardship, they cannot have received an offer for fair market value. The offer received was not for fair market value. The appraisal received from Mr. Taber stated that the property is worth \$50,000 and an offer was made for \$75,000. The subject property is worth well more than \$75,000 due to the costs incurred by his client in purchasing the property and trying to obtain this approval.

A discussion was held regarding fair market value and the appraisal of the property. Mr. Zimmerman has an appraisal that shows the property is worth \$122,000 and he will enter it into evidence. The client has already expended well over \$75,000 on this property. Ms. Edwards stated that the applicant's costs or money put in to the property does not count towards fair market value.

Mr. Gallagher asked about the inaccuracies of Mr. Taber's appraisal. Ms. Edwards stated that they did find some discrepancies but it is based on the dimensions of two lots. The bottom line is that they offered a premium offer and they are considering an additional offer once they see the applicant's appraisal.

Mr. Gallagher asked if the applicant wants to sell the property. Mr. & Mrs. Maier indicated they do not want to sell the property. Mr. Gallagher stated that the purpose of the buy sell letters was to create a conforming lot. Mr. Baxter agreed that Mr. Higgin's testimony makes sense however there is no case law to support it. He has been doing this a long time, and he has never seen a case like this, where they are getting down to discussing the merits of actual offer. The Board is not bound to listen to a bidding war. Ms. Edwards stated that the objector may make an additional offer.

Mr. Zimmerman stated he will provide the appraisal if the Board wishes him to do so. His concern, as an attorney, is that the hearing is turning in to something it's not supposed to be. They provided letters to the neighbors in order to make the property more conforming and that intent is not met here so he doesn't feel that this conversation is productive to the issues at hand. The appraisal report says the property is worth \$122,000. There was an offer made and they applicant didn't accept it because they feel the property is worth significantly more and it is not the applicant's responsibility to prove how much the property is worth.

Mr. Taber's appraisal of the subject property, prepared by Gerald McDermott, dated 10/30/2018 was marked as an Exhibit O-3.

A discussion was held regarding the merger of lots if Mr. Taber was to purchase the lot. Mr. Higgins stated that if the two lots are owned by the same owner and one is not conforming, so it would automatically merge because it is vacant and under common ownership. Mr. Baxter stated

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that he doesn't know if that would apply here because they are on two streets and it is not a conventional merger. The only person who can determine that would be the court.

The appraisal ordered by the Maier's, issued on October 30, 2018 was marked as Exhibit A-12.

Mr. Zimmerman asked that the Board to summarily conclude that the offer was not for fair market value so the applicant can still go forward with their hardship argument. This procedure is only focused on the hardship criteria of the MLUL. The applicant has present a whole host of testimony supporting the flexible standard so even if the objector offered a million dollars, the applicant doesn't have to accept it. It just precludes the applicant from using the hardship argument. He would ask that the Board not consider the offer and allow them to continue with the plan and not be held up unnecessarily for another meeting based on an offer that is yet to come.

Ms. Edwards indicated that she has a whole case to present and it is close to the 11:00 cut off. They will review the applicant's appraisal and will come back with an increased offer.

Mr. Gallagher asked if any Board members have any further questions, none were received. He then opened the hearing up to any members of the public who have questions of the testimony given.

A male audience member from 351 Shore Drive asked for clarification of the setbacks which was given by Mr. Higgins.

Mary Ryan, 363 Shore Drive, asked how the calculations were done when they discussed the average lot coverage. Mr. Higgins advised he had reviewed previously adopted Resolutions. Ms. Ryan asked what the lot coverage is for several surrounding lots.

Mr. Zimmerman stated that they are not entering the Resolutions into the record to say it is binding case law, they are being entered to show the character of the neighborhood and to show how Mr. Higgins came to his findings.

A Resolution for 357 Shore Drive, approved in October 2015 was marked as Exhibit A-13. A Resolution for Ellen Williams at 359 Shore Drive, adopted August 2014 was marked as Exhibit A-14. A Resolution for Paul & Lisa Steiner at 6 King Street, adopted August 2013 was marked as Exhibit A-15.

Ms. Ryan asked about the coverage approved for a specific lot and stated that even though it is high coverage, it is a "teeny, tiny lot." Mr. Zimmerman replied that was approved at 48.5% lot coverage.

Mr. Gallagher asked for any other questions from the public for the testimony given; none were received.

Ms. Edwards indicated that she would like to wait until the next hearing until the next meeting.

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Mr. Gallagher stated that the public questions portion is now closed. Public Statements will be given at the next meeting and the opportunity to cross-examine any objectors will also be given.

Mr. Baxter announced this application will be carried to the December 6, 2018 meeting at 7:30 pm and will be held at the Community Center on Snug Harbor Road, Highlands. No further notice will be given.

Mr. Gallagher directed the Board Secretary to schedule the Maier application first on the December 6th agenda.

Minutes for Approval

Ms. Uriarte stated that the minutes are not ready for approval at this time and will be carried to the next meeting.

Adjournment

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

MR. NOLAN OFFEFRED A MOTION TO ADJOURN THE MEETING AT 11:00 PM, SECONDED BY MR. KUTOSH. ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Respectfully submitted,

Erin Uriarte
Land Use Board Secretary