

Mr. Urbanski offered the following Ordinance pass third and final reading and moved on its adoption and authorized its publication according to law:

**ORDINANCE #O-09-33**

**AN ORDINANCE OF THE BOROUGH OF HIGHLANDS, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, AMENDING CHAPTER 21 (ZONING AND LAND USE REGULATIONS) OF THE BOROUGH OF HIGHLANDS CODE TO IMPLEMENT THE RECOMMENDATIONS OF THE 2009 AMENDMENT TO THE LAND USE PLAN ELEMENT OF THE MASTER PLAN**

**WHEREAS** the Highlands Borough Planning Board adopted a Master Plan Re-Examination Report on June 11, 2009; and

**WHEREAS** the Master Plan Re-Examination Report contained a series of recommendations concerning revisions to Chapter 21 (Zoning and Land Use Regulations) and the Highlands Borough Zoning Map addressing the Bay Avenue business districts and other zoning provisions; and

**WHEREAS** the Highlands Borough Planning Board adopted an amendment to the Land Use Plan Element of the Master Plan on June 11, 2009;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Borough of Highlands that Chapter 21 (Zoning and Land Use Regulations) of "The Revised General Ordinances of the Borough of the Highlands, 1975" is amended and supplemented as follows:

**SECTION ONE**

Chapter 21-8 (Definitions) is hereby amended and supplemented to delete the current definitions of "lot width" and "lot depth" in their entirety and substitute the following:

"Lot, width of – the straight line distance between points on opposite side lot lines measured at the front yard setback line. In the case of a corner lot, the lot width shall be the mean distance between the front and side lot lines.

Lot, depth of – the mean horizontal distance between the front and rear lot lines. In the case of a corner lot, the lot depth shall be the mean distance between the front and side lot lines."

Add the following definitions:

"Zone Overlay Area, Overlay District or Overlay Zone – an area designated by the Zoning and Land Use Regulations of the Borough which covers a portion of, or all of, one or more underlying zone districts. Within a zone overlay area, development is subject to the control of certain additional uniform regulations and requirements which supplement or supersede the underlying zone requirements.

Story That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it and including those basements used for the principal use. The first story or floor shall be the story or level that has the lowest grade and proximity to the pre-existing site grade."

## SECTION TWO

Chapter 21-69 (Zoning Districts) is hereby amended and supplemented to add the following Overlay Districts to the list of Zoning District:

<u>Symbol</u>	<u>Name</u>
B-1-O	B-1 Neighborhood Business Overlay zone district
B-2-O	B-2 Central Business District Overlay zone district

## SECTION THREE

Chapter 21-70 (Zoning Map and Schedule) is hereby amended and supplemented to delete Paragraph A of this section in its entirety and insert the following paragraph in its place and stead:

“A. The boundaries of the zone districts are hereby established as shown on the map entitled Zoning Map Borough of Highlands dated December 1, 2009, which map accompanies and is hereby declared to be part of this chapter.”

## SECTION FOUR

Chapter 21-77 (Principal Buildings and Structures) is hereby amended and supplemented to amend Paragraph A of this section as follows: (underlined text is added thus; text with strikethrough is deleted).

“A. Every principal building or structure shall be built upon a lot with frontage on a public street, ~~which shall be certified as suitably improved to the to the satisfaction of the governing body or for which the necessary performance guarantee has been posted to ensure such improvement.~~ The principal building shall have access from that public street.”

## SECTION FIVE

Chapter 21-84 (Waterfront uses and Districts) is hereby re-labeled as “Chapter 21-84.A” No further revisions are proposed.

## SECTION SIX

Chapter 21-84. B is hereby created and titled “Steep Slopes and Slump Blocks”. The entire text of Section 65.21 (Steep Slopes and Slump Blocks) of Chapter 21, (unrevised) as follows is hereby relocated to section 84.B of Chapter 21:

“Any increase in impervious areas disturbance of soil or redirection of storm water in areas of slopes from 20 to 35% must have a plot plan approved by the Borough Engineer prior to the issuance of any construction permits and the start of any construction activities. Such plan shall provide information on the extent of the disturbance, the stability of the soils, the existing topography and proposed grading, the temporary and permanent soil erosion and soil stability methods, and any other information required by the Borough Engineer to insure that proper construction techniques are used in the steep slopes areas. Where slopes exceed 35%, there shall be no disturbance of the steep slope areas. In addition there shall be no disturbance of the area within 15 feet of the top of slope and no structures located within 25 feet of the top of

slope; nor there be any disturbance within 10 feet of the toe of the slope or any structures located within 15 feet of the toes of the slope.

In and adjacent to areas indicated as slump blocks in the Boroughs Master Plan, the Board may require further study, including soils and other technical reports, on the stability of the soils and any special construction techniques or limitations to construction required to address the issues of the slump area."

## SECTION SEVEN

### Section 21-90

Section 21-90 (B-1 Neighborhood Business District) is hereby amended as follows: (underlined text is added **thus**; text with strikethrough is deleted).

#### "2. Permitted Accessory Uses

~~Residential use in commercial buildings provided that such use shall not be established on the first floor, that off street on site parking be provided and that the requirements of subsection 4.b be met.~~

**"Reserved."**

## SECTION EIGHT

Chapter 21-90 (B-1 Neighborhood Business District) is hereby amended to delete in its entirety the following text in section 90 Paragraph A. 1 (underlined text is added **thus**; text with strikethrough is deleted):

~~"In the overlay area only, uses will be limited to: Professional, administrative and businesses."~~

## SECTION NINE

Chapter 21-95 (WC-1 Waterfront Commercial), Paragraph A.1 is hereby amended and supplemented as follows: (underlined text is added **thus**; text with strikethrough is deleted).

"A. The following shall apply in all WC-1 Districts.

#### 1. Permitted Principal Uses.

All uses permitted in the WTC-1 Zone district **and the B-1 district**, except that residential uses shall be prohibited.

Restaurants

Bars and taverns

Marine Sales

Boat yards

Charter and excursion boats, off-shore uses."

## **SECTION TEN**

Chapter 21 (Zoning and Land Use Regulations) is hereby amended and supplemented to amend Article XVIII create two overlay zone districts, one within the B-1 Neighborhood Business Zone and one within the B-2 Central Business Zone districts, as follows:

**Delete: “Reserved”**

**Insert the following:**

### **Chapter 21 Section 96.02 B-1 Neighborhood Business Overlay Zone District**

“B-1 Zone Overlay Zone District. An overlay zone district is a district superimposed upon another district which supersedes, modifies or supplements the underlying regulations. The B-1 overlay district implements the recommendations of the 2009 Master Reexamination Report and amendment to the Land Use Plan Element of the Master Plan to encourage appropriate business development with the Bay Avenue commercial corridor.

#### **A. Purpose of the B-1 Neighborhood Business Overlay Zone District**

1. Strengthen the Bay Avenue commercial districts by encouraging a mix of uses that provides employment, retail opportunities, services and entertainment.
2. Expand mixed uses in the Bay Avenue commercial districts to increase the vitality of the downtown.
3. Enhance, retain and maintain existing commercial properties in the Bay Avenue commercial areas.
4. Encourage the upgrading of commercial properties along Bay Avenue.

#### **B. Permitted Principal Uses**

1. All principal uses permitted in the B-2 Zone.
2. Retail sales and service establishments (except tattoo/body piercing and massage parlors, shops which offer for retail sale or wholesale the firearms and/or ammunition).
3. Art galleries, artist studios and craft stores.
4. Live theater and museums
5. Medical offices.
6. Flower shops and retail plant stores
7. Gift and antique shops
8. Hobby stores
9. Pet stores
10. Clothing and apparel stores
11. Sporting goods sales
12. Home furnishing stores
13. Music, ballet and dance studios
14. Hardware, plumbing and electric supply sales
15. Health/fitness studios which shall mean private membership, limited size, health or exercise establishments which do not offer comprehensive athletic facilities nor contain a competitive sports area. This use will be modest in size and offer small or individualized fitness and may have a restricted number and type of exercise equipment.

C. Permitted Accessory Uses

1. All accessory uses permitted in the B-1 Zone.

D. Permitted Conditional Uses

1. All conditional uses permitted in the B-1 Zone.
2. Hotels, as defined in this chapter and subject to the standards as set forth in Section 21-97.
3. Inns and Bed and Breakfasts, subject to the standards set forth in Section 21-97.
4. Residences above the first (ground) level, subject to the standards as set forth in Section 21-97.

E. Prohibited Uses.

1. Drive through and drive-in uses.

F. Bulk Yard Area Requirements

The bulk, yard and area requirements in the B-1 Overlay Zone are the same as the requirements in the B-1 Zone District with the exception of the following:

1. Floor Area Ratio (FAR)
  - a. Maximum FAR of 1.5 when the entire structure is non-residential use.
  - b. Maximum FAR of 1.0 when the structure consists of both residential and non-residential uses (i.e. mixed use building)
2. Impervious or Lot Coverage: 100% unless an on-site loading berth is required by the Planning or Zoning Board.
3. In the case of any conflict between the bulk requirements of the B-2 Zone district and that of the B-2 Overlay zone, the more stringent regulations shall apply.

G. Off-street Parking Requirements. Each use shall comply with the minimum off-street parking requirements of section 65.14 of Chapter 21. However, The Planning or Zoning Board may reduce or eliminate the off-street parking requirement for non-residential uses in the B-1 Overlay zone district provided the applicant can show evidence of available and sufficient municipal parking spaces within 1,000 feet of the front entrance of the commercial establishment. If the Board reduces or eliminates the parking requirement of the non-commercial portion of the building, then the applicant shall address the one-time fee to the Borough of Highlands Municipal Parking Capital Improvements Fund as outlined in Section 21-65-14E.2.c.

H. On-site parking shall be sufficiently screened with fences, vegetation or similar materials. Parking beneath structures shall be screened from adjoining lots using building material and architectural elements consistent with the subject site and architectural features appropriate for the Bay Avenue downtown area.

Parking, provided underneath a structure, shall not abut the front property line or sidewalk area to minimize the disruption of the commercial street wall and maintain the retail and commercial character of Bay Avenue.

- I. Design Standards The following design standards shall be considered as bulk requirements of the conditional use. Relief for the requirements of this section shall be addressed under 40:55D-970.c.
  1. All new construction alterations and renovations should strive to be consistent with the "Highlands Central Business District Design Manual", Appendix A of Chapter XXI. The design guidelines in the Manual are not mandatory but should guide applicants, the Planning and Zoning Boards and their professionals during the design phase of improvements to structures in the overlay zone.
  2. Transparency. A minimum of 50 percent of the street facing building façade between two feet and eight feet in height must comprise clear windows that allow views of the of indoor space or product display area.
  3. The bottom of any window or product display window used to satisfy the transparency standards (paragraph a. above must not be more than 4. feet above the grade of the adjacent sidewalk.
  4. Product display windows used to satisfy these requirements must have a minimum height of four (4) feet and be internally lighted.
  5. Curb cuts are discouraged unless deemed necessary for adequate and appropriate access to a property or use. Shared driveway access or rear entry to the lot shall be encouraged.

#### **21-96.03 B-2 Central Business Overlay Zone District**

##### **A. Purpose of the B-2 Central Business Overlay zone district**

1. Strengthen the Bay Avenue commercial districts by encouraging a mix of uses that provides employment, retail opportunities, services and entertainment.
2. Expand mixed uses in the Bay Avenue commercial districts to increase the vitality of the downtown.
3. Enhance, retain and maintain existing commercial properties in the Bay Avenue commercial areas.
4. Encourage the upgrading of commercial properties along Bay Avenue.

##### **B. Permitted Principal Uses**

1. All principal uses permitted in the B-2 Central Business Zone.
2. Retail sales and service establishments (except tattoo/body piercing and massage parlors, shops which offer for retail sale or wholesale the firearms and/or ammunition).
3. Art Galleries, artist studios and craft stores.
4. Medical offices.
5. Garden and flower shops
6. Gift and antique shops
7. Hobby stores
8. Pet stores
9. Clothing and apparel stores
10. Sporting goods sales

11. Home furnishing stores
12. Music and dance studios
13. Hardware, plumbing and electric supply sales
14. Health/fitness studios which shall mean private membership, limited size, health or exercise establishments which do not offer comprehensive athletic facilities nor contain a competitive sports area. This use will be modest in size and offer small or individualized fitness and may have a restricted number and type of exercise equipment.

C. Permitted Accessory Uses

1. All accessory uses permitted in the B-2 Zone.

D. Permitted Conditional Uses

1. All conditional uses permitted in the B-2 Zone.
2. Hotels, as defined in this chapter and subject to the standards as set forth in Section 21-97.
3. Inns and Bed and Breakfasts, subject to the standards set forth in Section 21-97.
4. Residences above the first (ground) level, subject to the standards as set forth in Section 21-97.

E. Prohibited Uses

1. Drive through and drive-in uses.

F. Bulk Yard Area Requirements

1. The bulk, yard and area requirements in the B-2 Overlay Zone are the same as the requirements in the B-2 Zone District , with the exception of the following:
  - a. Front Setback. The front setback in the overlay area shall abut the front property line or be located within ten (10) feet of the property line.
  - b. Building height: A maximum of forty-two (42) feet/ three stories is permitted.
  - c. Impervious/Lot coverage: A maximum of one hundred percent (100%) except for business establishments which, in the opinion of the Planning or Zoning Board require an on-site loading berth. In the latter case, the maximum lot coverage shall be reduced to reflect the area of the on-site loading berth.
  - d. Floor Area Ratio (FAR)
    - Maximum FAR of 1.5 when the entire structure is non-residential use.
    - Maximum FAR of 1.0 when the structure consists of both residential and non-residential uses (i.e. mixed use building)
2. In the case of any conflict between the bulk requirements of the B-2 Zone district and that of the B-2 Overlay zone, the more stringent regulations shall apply.

G. Surface parking area below a building structure shall not be included in the floor area for floor area ratio (FAR) computations.

H. Off-street Parking Requirements.

Each use shall comply with the minimum off-street parking requirements of section 65.14 of Chapter 21. However, The Planning or Zoning Board may reduce or eliminate the off-street parking requirement for non-residential uses in the B-2 Overlay zone district for lots less than 10,000 square feet in area provided the applicant can show evidence of available and sufficient municipal parking spaces within 1,000 feet of the front entrance of the commercial establishment. If the Board reduces or eliminates the parking requirement of the non-commercial portion of the building, then the applicant shall address the one-time fee to the Borough of Highlands Municipal Parking Capital Improvements Fund as outlines in Section 21-65-14E.2.c.

On-site parking shall be sufficiently screened with fences, vegetation or similar materials. Parking beneath structures shall be screened from adjoining lots using building material and architectural elements consistent with the subject site and architectural features appropriate for the Bay Avenue downtown area.

Parking, provided underneath a structure, shall not abut the front property line or sidewalk area to minimize the disruption of the commercial street wall and maintain the retail and commercial character of Bay Avenue.

N. Design Standards. The following design standards shall be considered as bulk requirements of the conditional use. Relief for the requirements of this section shall be addressed under NJSA 40:55D-970.c.

1. All new construction alterations and renovations should strive to be consistent with the "Highlands Central Business District Design Manual", Appendix A of Chapter XXI. The design guidelines in the manual are not mandatory but should guide applicants, the Planning and Zoning Boards and their professionals during the design phase of improvements to structures in the overlay zone.
2. Transparency. A minimum of 50 percent of the street facing building façade between two feet and eight feet in height must comprise clear windows that allow views of the of indoor space or product display area.
3. The bottom of any window or product display window used to satisfy the transparency standards (paragraph a. above must not be more than 4. feet above the grade of the adjacent sidewalk.
4. Product display windows used to satisfy these requirements must have a minimum height of four (4) feet and be internally lighted
5. Curb cuts are discouraged unless deemed necessary for adequate and appropriate access to a property or use. Shared driveway access or rear entry to the lot shall be encouraged.

## SECTION ELEVEN

Section 21-97 is hereby amended and supplemented to create the following new subsection entitled "Hotels" as follows:

" I. Hotels in the B-1 and B-2 Overlay District.

Where specifically permitted pursuant to this chapter, the following minimum standards shall be met:



- i. Definition: *Hotel* shall mean a facility offering accommodations to the general public for limited tenure lodging and which may include additional facilities and services, such as restaurants, meeting rooms and personal services. The hotel facility shall include a public lobby or guest registration area. A dining room area for guests and/or general public may be provided. The hotel facility shall have –full time on-site management. *Limited tenure* shall mean occupancy of fourteen (14) days or less. In addition occupancy of no more than fourteen (14) days of any period of thirty (30) successive days.

## 2. Standards

- a. The minimum floor area per unit shall be 250 square feet.
- b. A hotel as defined herein may have a maximum building height of thirty six (36) feet or three (3) stories. If the ground level of the hotel primarily consists of an off-site parking area, the building height may be forty seven (47) feet or four stories.
- c. All solid waste containers for storage and pickup shall be centrally located and easily accessible within a screened enclosure.
- d. All hotel uses shall be provided with adequate fire safety and evacuation provisions and sprinkler systems. Regardless of the number of rooms, such facilities shall be approved by the municipal Fire Sub code Official and shall incorporate all applicable requirements of the National Fire Protection Association Code and the NJ Uniform Construction Code.
- d. Each unit of accommodation shall contain a minimum of two rooms, a bedroom, and a separate bathroom which affords privacy to a person within the room and is equipped with a toilet, a wash basin and bathtub/shower. Kitchen facilities are prohibited.
- e. The first floor area of a hotel may be used for offices, permitted non-residential uses, coffee shop or restaurant. The first floor use does not have to be related to the hotel use.
- f. The hotel shall contain a main lobby, a central reservation/ guest registration desk and a specified area for the pick up and drop off of guests and luggage .
- g. Each hotel shall provide parking at a ratio of one space per unit of accommodation. The parking may be provided on-site or within 1,000 feet of the hotel property. A minimum of 50% of the required parking shall be provided on the same lot, parcel, tract of the hotel use.
- h. The hotel use may provide some of the required parking on another parcel, which may or may not be contiguous to the hotel parcel, provided that the property line of the off-site parking lot is within one thousand (1,000) feet from the front entrance of the hotel structure. In addition the applicant shall provide written assurances acceptable to the appropriate Board that the parking will remain available in the future. Such assurances shall be in the form of lease agreements or deed restrictions which will be reviewed by the Attorney of the Board of jurisdiction.
- i. The Planning /Zoning Board shall adopt findings that the intensity of the proposed hotel use is consistent with the goals and objectives of the Highlands Borough Master Plan, the policies and character of the of the B-1 or NB-2 Zone District and the economic goals of Highlands Borough.

- j. The buffer zone between the rear setback of a hotel and a residential use shall comply with the requirements of this chapter but shall not be less than ten (10) feet in width.
- k. The structure shall not be a “rooming house” or “boarding house” as defined by current New Jersey statute.

## **SECTION TWELVE**

Chapter 21-97 is hereby amended and supplemented to create the following new subsection entitled “Mixed Use buildings” as follows:

### **“ J. Mixed Use buildings in the B-1 and B-2 Overlay Districts**

Residential dwelling units shall be permitted above non-residential uses, as a conditional use in the B-1 and B-2 Overlay Zones, subject to the following conditions:

1. In the B-1 Overlay Zone, no more than one story, floor or level shall be used for residential purposes. The density of the residential dwellings in mixed use buildings in the B-1 Overlay shall not exceed eight (8) units to the acre. In the B-2 Overlay Zone, the density of the residential dwelling units may not exceed a density of ten (10) units per acre.
2. The floor area of the residential dwelling unit(s) may not exceed thirty-three percent (33%) of the floor area of the structure. If the structure is limited to two stories, the permitted limit of floor area may be up to fifty percent (50%). For purposes of this section, the floor area used to compute the allowable limits shall not include parking area underneath a building, storage areas, basements/cellars or garage areas.
3. Maximum building height: forty-two (42) feet or three (3) stories, whichever is less. If the ground level of the mixed use building primarily consists of an off-site parking area, the building height may be forty seven (47) feet or four stories (one parking level and three building levels)
4. The first floor must contain a permitted non-residential use or area for on-site parking.
5. All residential units shall have an entry separate from the the non-residential use and the residences shall have a common street entry.
6. The residential dwelling(s) must be on the second or third floor. If the first or ground level consists of on-site parking, the residence must be above a non-residential use. Residences shall not be located on a story below a non-residential use.
7. Notwithstanding other provisions of this chapter, the parking requirements for the residential dwellings of mixed use buildings shall be addressed on the same lot, site, parcel as the mixed use building.
8. Minimum Dwelling Unit Requirements. Each dwelling unit shall contain complete kitchen facilities, toilet , bathing and sleeping facilities as well as living space, and shall have a minimum gross floor area of one thousand (1,000) square feet provided that dwelling units in excess of two bedrooms per unit shall not be permitted.
9. Storage space. In addition to any storage space contained inside the individual dwelling units, there shall be provided for each dwelling unit three hundred fifty cubic feet (350 c.f.) of storage space in a convenient, centrally located area, possibly the

- ground floor for use of the residents .The area should be secured and locked without creating a safety hazard.
10. Site Appearance. Adequate provisions and facilities shall be provided for maintenance of the property for trash and garbage.
  11. Heating, ventilation and air conditioning equipment shall be located in an enclosed area above the base flood elevation or on the roof, in the attic or other adequately screened area.
  13. Residences in mixed use buildings in the B-1 and B-2 Overlay zone districts are exempt from the outdoor living space requirement of Section 21-90.A. 4.b (B-1 Zone) and 21-91 A.4.b (B-2 Zone)."

### **SECTION THIRTEEN Severability**

*The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.*

### **SECTION FOURTEEN Repealer**

All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency.

### **SECTION FIFTEEN Certified Copy**

A certified copy of the within Ordinance shall be forwarded by the Borough Clerk to the clerks of all adjoining municipalities, the Monmouth County Planning Board and the following:

1. Borough Administrator
2. Borough Engineer
3. Planning Board
4. Zoning Board
5. Borough Attorney
6. Tax Assessor
7. Zoning Official

BE IT FURTHER ORDAINED that this ordinance shall take effect upon final passage and publication in accordance with law.

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

#### **ROLL CALL:**

**AYES:** Mr. Francy, Ms. Kane, Mr. Caizza, Mr. Urbanski, Mayor Little  
**NAYES:** None  
**ABSENT:** None  
**ABSTAIN:** None

**DATE:** December 16, 2009

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**CAROLYN CUMMINS, BOROUGH CLERK**

**Introduced: December 2, 2009**  
**Published: December 5, 2009, Asbury Park Press**  
**PH/Adoption: December 16, 2009**  
**Publication:**

I hereby certify this to be a true copy of the ordinance introduced by the Borough of Highlands Mayor and Council at a meeting held on December 16, 2009.

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**BOROUGH CLERK/DEPUTY CLERK**

### **NOTICE**

PUBLIC NOTICE is hereby given that the foregoing ordinance was introduced at a meeting of the Borough of Highlands, in the County of Monmouth, State of New Jersey, on the 2nd day of December, 2009 and was then read for the first time. The said ordinance will be further considered for final passage by the Borough Council in the Municipal Building, 171 Bay Avenue, Highlands, NJ at 8:00 p.m. on December 16, 2009. At such time and place or any time or place to which said meeting may be adjourned; all persons interested will be given an opportunity to be heard concerning said ordinance.

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BOROUGH CLERK

I HEREBY CERTIFY THE ABOVE TO BE A TRUE  
AND REAL COPY OF AN ORDINANCE ADOPTED  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_  
2009 BY THE HIGHLANDS BOROUGH COUNCIL.