

**Borough of Highlands
Planning Board
Regular Meeting
November 8, 2007**

Mr. Stockton called the meeting to order at 7:39 P.M.

Mr. Stockton asked all to stand for the Pledge of Allegiance.

Mr. Stockton made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Planning Board and all requirements have been met. Notice has been transmitted to the Courier, The Two River Times and The Asbury Park Press. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Schoellner,
Mr. Nolan, Mr. Stockton, Mr. Harrison, Mr. Cefalo

Late Arrival: Mayor O'Neil arrived at 7:48 P.M.

Absent: Mr. Bahrs

Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Catherine Britell, P.E., Acting Board Engineer

**PB#2007-4 Knox 400, LLC – Request for Postponement to Dec. 13th
Without the Need for Further Public Notice RE: Block 108 Lot 2.01**

Mr. Stockton stated that the Board received a request for a postponement to the December 13th Meeting without the need for further public notice.

Mr. Manrodt offered a motion to carry this matter to the December 13th, 2007 Meeting without the need for further public notice, seconded by Mr. Nolan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Schoellner, Mr. Nolan,
Mr. Harrison, Mr. Cefalo

NAYES: None

ABSTAIN: None

Mr. Serpico advised the public that the Knox 400 Application has been carried to the December 13th Meeting without further public notice.

**PB#2007-5 Balland, Thomas - Request for Postponement to December 13th
Without the Need for Further Public Notice – RE: Block 91 Lot 1 – 14 Huddy Avenue**

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Mr. Serpico stated that he has received a letter from the Applicants Attorney today requesting an adjournment because his expert the Engineer was called out of town on a family emergency. So he is requesting to carry the matter to the December 13th meeting. He has reviewed the public notice and finds it to be proper therefore the board can take jurisdiction.

Mr. Manrodt offered a motion to carry the Balland Hearing to the December 13th Meeting without the need for further public notice, seconded by Mr. Nolan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Schoellner, Mr. Nolan,
Mr. Stockton, Mr. Harrison, Mr. Cefalo

NAYES: None

ABSTAIN: None

Mr. Stockton advised the public that the Balland Public Hearing has been carried to the December 13, 2007 Meeting without any further public notice.

**PB#2007-1 C. Scaturro Irrevocable Trust
Block 26 Lot 1 & Block 3 Lots 6 & 7 – Portland Road
Application Review & Set P.H. Date**

Present: Michael Letteri, Esq. of the Law Office of Martin McGann
James Kennedy, P.E. of Kennedy Consulting, LLC

Mr. Letteri stated that he wants to move the application to the January Meeting.

Mr. Kennedy stated that this is a one lot subdivision with lot depth variance. The lots are oversized for the zone, they are seeking no other bulk variances except for lot depth.

Mr. Letteri stated that the applicant is deeding some property to the Borough for public use and the Borough is vacating some unimproved right-of-ways. It has to be approved by the Council and should be resolved by the January Hearing.

Mr. Kovic stated that by looking at the survey it appears that there will be one piece of property is going to be cut off to the access to their property.

Mr. Mullen stated that the access problem is an appropriate concern and he also stated that the applicant should provide the easement for the hearing.

Mr. Kennedy – this is before the Council right now for the vacation of that right-of-way so if the Council sees fit and the property owner is agreeing to the right-of-way vacation then it gets recorded and becomes an existing easement.

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Mr. Serpico advised Mr. Kennedy to be prepared to address the board questions on these concerns.

Mayor O'Neil arrived to the meeting.

Mr. Manrodt offered a motion to deem the application complete and to schedule a public hearing date for January 10, 2008, seconded by Mr. Nolan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Schoellner, Mr. Nolan,
Mr. Cefalo, Mr. Harrison, Mr. Stockton

NAYES: None

ABSTAIN: None

**PB#2006-1 Fleming, Daniel
Block 26 Lot 12 – 127 Highland Avenue
Approval of Resolution**

Mr. Stockton read the title of the following Resolution for approval:

Mr. Serpico stated that on page three of the Resolution, paragraph number 4 should read that the that the Developer Agreement details will be created by the Borough Attorney.

Mr. Manrodt offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING THE MINOR SUBDIVISION, VARIANCES AND
WAIVER APPLICATION OF DANIEL J. FLEMING AND CECILIA A. FLEMING,
BLOCK 26, LOT 12**

WHEREAS, the applicants referred to above are the owners of the above mentioned lot, which is located in the R-1.01 Zone; and

WHEREAS, the applicants have applied for a two (2) lot Minor Subdivision with variances and a design waivers. The applicants propose to subdivide the above captioned lot into two new lots, one containing an existing single family residence which is going to be relocated on the lot in accordance with the plans submitted into evidence and one vacant for future use for a single family residence; and

WHEREAS, the variances and waivers required are as follows:

1. **Variances.** The minimum lot depth required for each of the proposed lots in the R-1.01 Zone is 100 feet. The lot depth of proposed Lot 12.01 is 91.55 feet and the lot depth of proposed Lot 12.02 is 93.42 feet.

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2. **Design Waivers.** Borough Ordinance 21-65(U) provides that there shall be no disturbance of an existing steep slope greater than 35%. A significant portion of proposed Lot 12.02 has an existing slope greater than 35%, therefore a Design Waiver is required. Additionally, the proposed relocation of the existing single family structure on proposed Lot 12.01 will result in the structure being located 15 feet from the top of a 50% slope on neighboring Lot 11.01. The above stated Ordinance provides that the structure cannot be located any closer than 25 feet from the top of the slope; therefore a Design Waiver is required.
3. The applicant has also requested that the proposed sanitary sewer easement for Lot 12.01 be 10 feet in width versus 20 feet as required by RSIS standards. The applicant at the urging of the Board agreed to a 15 foot wide easement; and

WHEREAS, all jurisdictional requirements have been met and proper notice has been given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board has jurisdiction to consider this application; and

WHEREAS, the Board considered this application at public hearings and decided the matter at the September 13, 2007, meeting of the Board; and

WHEREAS, there was extensive questioning of the applicant's witnesses by members of the public and the Board, as well as direct testimony on the engineering details of the project; and

WHEREAS, Victor Furmanic, a licensed Planner in the State of New Jersey testified on behalf of the applicant. Mr. Furmanic gave extensive testimony on the consistency of the proposed subdivision to the existing lot sizes and homes located thereon in the surrounding neighborhood. He also testified that the proposed subdivision was consistent with the Borough Master Plan by providing single family residences; and

WHEREAS, the Board after considering the evidence and testimony presented by the applicant and the interested citizens has made the following findings of fact and conclusions based thereon:

1. The property is located in the R-1.01 Zone.
2. The variances requested are due to the shape, size and topographical conditions at the subject property.
3. The new lots will be in compliance with the applicable bulk provisions of the Borough Zoning Ordinance with the exception of the variances and waivers requested above.
4. The testimony of Victor Furmanic is essentially accepted by the Board in support of the variances and waivers applied for as follows;
 - a. The proposed lots are not out of character with those presently existing in the neighborhood insofar as lot depth, shape and width. The other lots located on the hill are irregular in shape and do not fall into the rectangular requirements of the Ordinance. Additionally the proposed building coverage of 17% and 19% where

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30% is permitted will maintain the open characteristics of the site and the proposed lot sizes are consistent with the majority of the existing lots within 200 feet of the subject site.

b. The proposed setbacks for the homes are consistent with the majority of the homes within 200 feet of the subject site.

c. The granting of the Steep Slope Waivers will not result in the construction of a home that is out of character with those homes already existing in the immediate are so long as the applicant complies with the conditions of this approval which are hereinafter set forth.

5. The Board, with the advice of the Board Engineer (as per correspondence dated September 12, 2007, attached hereto and made a part hereof) hereby accepts as fact the opinion of Robert H. Barnes, P.E. and Robert B. Simpson, P.E. of Carlin, Simpson & Associates that the site is suitable for the proposed development as set forth in their slope stability and subsurface evaluation report dated July 25, 2007, which report is annexed hereto and made a part hereof and was submitted into evidence as Exhibit A-6 at the September 13, 2007 hearing in support of the application.
6. Since the subject site is not in a slump block area as per the testimony of the applicant's engineer, the Board finds that the disturbance of a slope of 38% which is only 3% more than the maximum permitted is acceptable based upon the Carlin, Simpson report referred to above.
7. The applicant has agreed to comply with the outstanding technical comments and requirements if any, set forth in the T&M letter dated May 9, 2007, which is incorporated herein in full.
8. The applicants have agreed to comply with additional conditions set forth hereinafter.
9. The Board finds as a matter of fact and law that the applicants have demonstrated or proved to the Board the positive criteria for the variances and waivers as set forth in the above findings of fact and the negative criteria as set forth hereinafter: and

WHEREAS, the Board determined that the relief requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Borough of Highlands and that the variances are necessitated by the site conditions consistent with the criteria set forth in NJSA 40:55D-70c; and

WHEREAS, the Board after considering the testimony and exhibits has found the proposed subdivision plan, variances and design waivers to be acceptable with conditions.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands that the application for a two lot minor subdivision, variances and design waivers is hereby approved contingent upon the following conditions being met;

1. All testimony, evidence and representations made by the applicants and their witnesses are incorporated herein.

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2. Taxes, fees and escrow accounts shall be current.
3. The applicants will adhere to the findings of fact set forth above.
4. The applicants agree to post inspection fees and enter into a Developers Agreement with the Borough, if required to do so by the Borough. The Developers Agreement details will be created by the Borough Attorney.
5. If required by law, the approval of the application by the Monmouth County Planning Board and any other governmental agency having jurisdiction over the subject property and compliance with any conditions imposed by said Board and/or agencies. The applicants shall also file the appropriate application documentation with the Freehold Soil Conservation District for the project in addition to any other agency having jurisdiction over the project. Erosion control at the site is of paramount importance to the Board and the Borough; therefore additional conditions may be imposed by the Board and the Borough during the site improvement process.
6. Expiration or removal of any moratorium imposed on the construction of the project by any County or State Agencies if any.
7. The applicants agree to perfect this subdivision by Deeds. Said Deeds must be submitted to the Board Engineer and Attorney for review and approval. The applicants agree not to record the Deeds until the conditions of this approval are met with the exception of those conditions that will continue such as conditions 1 and 6. The intent of the Board is not to cause the applicants any unnecessary delay, however due to the sensitive nature of the site the Board will retain jurisdiction of this application in order to insure compliance with these conditions. In the event it becomes necessary for the applicants to record their subdivision Deeds the Attorney for the applicants will meet with the Board Attorney and Board Engineer if necessary and create Deed conditions that will enable the recording of the Deeds and provide the Board with assurances that these conditions will be met by the applicants and/or any successor in title to the lots. In the event the applicants need additional time to record the Deeds beyond 190 days from the date of the adoption of this resolution the Board will grant any necessary extension.
8. Since the Carlin, Simpson report indicates that the proposed structure on Lot 12.02 plays a significant role in the stability of the upland portion of the site located on Bay Street, the size and location of the proposed structure, the elevation of it's lowest floor and the structural system employed for that portion of the foundation wall below grade and the number of stories (therefore the weight) are critical to the analysis of the site stability. For the aforementioned reasons the Board will maintain control of the review process in order to insure that these conditions are properly addressed by the applicant during the site improvement process, especially if the structure is modified in size and/or height. The applicants will comply with the recommendation in the report that temporary shoring will be installed along Bay Street during construction until the foundation of the new structure is prepared to take the lateral loads of the extensive fill on three sides of the structure. The details of this shoring system or method along with the foundation design must be submitted to the Board Engineer and the

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Board in order to determine that proper consideration has been given to the stability of the surrounding grade (drilling vs. driving piles) and that the Borough right-of-way is safe and secure. Additionally site grading and Stormwater management control measures shall be installed according to the approved plan and in accordance with the recommendations of the Board Engineer which are set forth in her reports for this project.

9. Due to the fact that the height of the proposed structure to be located on Lot 12.02 is unknown at this time the applicant is required to submit a post-framing survey prepared by a licensed engineer to the Borough Construction official and the Board certifying compliance with the Borough height Ordinance for the Zone. The height of the existing structure that is being relocated on Lot 12.01 shall be confirmed when it is relocated the same as the structure on Lot 12.02 in order to insure compliance with the height Ordinance applicable to the lot.
10. Due to the significance of trees on the site to the stability of the slope the applicant will comply with the current or successor Borough Tree Ordinance in existence when the subject property is developed.
11. The applicants have proposed 3 angled parking spaces along Bay Street that will project into Borough property (although they do not project into the roadway). The applicants must provide proof to the Board that this is acceptable to the Borough. The applicants must also provide the 2 required spaces on their property parallel to Bay Street in the event the Borough decides to widen the roadway on Bay Street. This condition shall be incorporated in the subdivision Deed for Lot 12.02.
12. The applicants are not relieved from the requirement of curb installation at the front of each lot unless the Board Engineer deems the curbs to be detrimental to the area. In the event curbs are not being installed the applicants will contribute to the Borough curb fund in accordance with the Borough Curb Ordinance.
13. As indicated above the Board will maintain jurisdiction over this project during the development stage for the reasons aforementioned. Therefore it may be necessary for the applicant to appear before the Board to address compliance issues and the conditions of this approval in the future.

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

ROLL CALL:

AYES: Mr. Manrodt, Mr. Mullen, Mr. Schoellner, Mr. Nolan, Mr. Stockton,
Mr. Cefalo

NAYES: None

ABSTAIN: None

Professional Legal Services Resolution

Mr. Stockton read the title of the following Resolution for approval:

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

**RESOLUTION AMENDING
PROFESSIONAL LEGAL SERVICES
RESOLUTION**

WHEREAS, on July 12, 2007 the Borough of Highlands Planning Board adopted a Resolution for Professional Legal Services for Jack Serpico, Esq.: and

WHEREAS, the professional services amount that was approved was \$3,375.00 for the period of July 1, 2007 through December 31, 2007; and

WHEREAS, due to the amount of professional services needed for this period an increase in the amount is needed: and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer:

Planning Board Budget
Account #1141-3755 - \$2,500.00

Stephen Pfeffer, Chief Financial Officer

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Planning Board that the professional legal services contract with Jack Serpico, Esq., in the amount of \$3,375.00 is hereby increased an additional \$2,500.00 for a total contract amount of \$5,875.00 for the period of July 1, 2007 through December 31, 2007.

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

ROLL CALL:

AYES: **Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Schoellner,
 Mr. Harrison, Mr. Cefalo, Mr. Stockton**

NAYES: **None**

ABSTAIN: **None**

Review of Steep Slope Ordinance

Mr. Manrodt stated that he liked the Atlantic Highlands Steep Slope Ordinance and with a couple of changes he feels that we could use their ordinance but he feels that we should put this matter off until the January Meeting.

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Mr. Mullen stated that there was another sample ordinance from Denville and it appears that they have two different objectives in controlling steep slopes and feels that it would be appropriate for this board to establish what our objectives are so that we can use what portions of either ordinances that are appropriate to our objectives. He feels that the Atlantic Highlands Ordinance controls density and the Denville Ordinance does not control density. He believes that this issue came about because of a site on Shore Drive and he doesn't know if we are addressing that issue with these ordinances.

Ms. Britell stated that she read the Denville Ordinance and she wanted to know if that ever held up in court and Mr. Serpico stated that he is not aware if it has or hasn't.

Ms. Britell stated that the Highlands Ordinance did not hold up in court and she feels that the Denville ordinance seems to be vague, it gives less criteria than the existing Highlands Ordinance.

The Board continued to discuss the Atlantic Highlands and Denville Steep Slope Ordinances.

Mr. Manrodt offered a motion to continue the Steep Slope Ordinance Review Discussion at the January Meeting, seconded by Mr. Nolan and approved on the following roll call vote;

ROLL CALL:

AYES: **Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mayor O'Neil, Mr. Schoellner,
Mr. Nolan, Mr. Harrison, Mr. Cefalo, Mr. Stockton**

NAYES: **None**

ABSTAIN: **None**

Mr. Serpico requested authorization for him to contact Ms. Brittel to work up some specific examples to see how this works out.

Mr. Stockton agreed.

Mr. Manrodt offered a motion to adjourn the meeting, seconded by Mr. Kovic and all were in favor.

The Meeting adjourned at 8:00 P.M.

CAROLYN CUMMINS, BOARD SECRETARY

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