

Mayor O'Neil offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING THE MINOR SUBDIVISION  
AND VARIANCE APPLICATION OF  
WILLIAM H. JOHNSON, BLOCK 40, LOT 5**

**WHEREAS**, the applicant William H. Johnson, hereinafter referred to as the applicant is the owner of the property known as Block 40, Lot 5 on the Highlands Borough Tax Map, which property is located in the R-B Zone; and

**WHEREAS**, the applicant has applied for a two lot, Minor Subdivision with variances. The applicant proposes to subdivide the above captioned property into two lots and ultimately construct on proposed lot 5.02 a single family residence. A single family residence exists on proposed lot 5.01. The variances required were as follows;

1. Lot 5.01. A front yard setback of 7.1 feet whereas 35 feet is required. A side yard setback of 7.6 feet whereas 8 feet is required. A building height of 30.7 feet whereas 30 feet is the maximum permitted. All of these conditions are pre-existing in nature. This lot has frontage on New Jersey State Highway Route 36.
2. Lot 5.02. A variance or waiver from N.J.S. 40:55D-35, which prohibits the issuance of any permit for the construction of any building unless the lot upon which the building is to be located abuts a street giving access to the building. Due to the proposed lot being located on a "steep slope" as that term is defined in the Borough Ordinances access from Shore Drive is physically impractical. Therefore the applicant proposed an easement for access over lot 5.01 to lot 5.02; and

**WHEREAS**, all jurisdictional requirements were met and proper notice was given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board had jurisdiction to consider the application; and

**WHEREAS**, the Board considered this application at a number of public hearings and voted to deny the application at the June 8, 2006, meeting of the Board; and

**WHEREAS**, the Board heard the testimony of the applicant, William Johnson, his engineer Richard E. Stockton and the arguments of Counsel; and

**WHEREAS**, property owners within 200 feet of the subject property voice their objections to the application on the record; and

**WHEREAS**, the applicants submitted into evidence a number of documents including a Subdivision Map prepared by Richard E. Stockton dated February 24, 2005 which was entered into evidence; and

**WHEREAS**, the Board after considering the evidence and testimony presented on behalf of the applicants and the interested made the findings of fact and conclusions based thereon; and

**WHEREAS**, the Board determined that the relief requested by the applicant could not 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 for the aforementioned reasons; and

**WHEREAS**, the Board adopted a resolution memorializing the actions of the Board; and

**WHEREAS**, the applicant filed an Action in Lieu of Prerogative Writ in the Superior Court of New Jersey challenging the denial of the application by the Board bearing Docket Number MON-L-4246-06; and

**WHEREAS**, the matter was tried before the Honorable Alexander D. Lehrer, P.J.Ch. on March 30, 2007, at which trial the decision of the Board was reversed and the applicant was granted his subdivision as applied for with the variances and waivers requested, subject to the imposition of all of the normal administrative conditions attached to approved subdivisions. A true copy of the Judgment and Order for Reversal is annexed hereto and made a part hereof.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of the Borough of Highlands that the application for the two-lot subdivision and variances and waivers by William H. Johnson for the above captioned property is hereby approved for the reasons aforementioned herein subject to the applicant complying with the following conditions:

1. Approval by any other governmental agency of the subdivision application if required by law.
2. All taxes for the subject property and escrows for legal and engineering fees must be current.
3. The subdivision Deeds must be filed on a timely basis.
4. The applicant entering into a Developers Agreement and/or the posting of performance bond and/or inspection fees customarily required for this type of subdivision.
5. The subdivision plan must indicate the number of trees to be removed as requested in the T & M letter dated March 7, 2006.
6. As recommended by the Board Engineers T & M Associates the retaining wall must have a fence or other approved barrier on top of it for safety purposes.
7. As recommended by the Board Engineer T & M Associates, since they do not know the "load amount" proposed on top of the retaining wall the applicant must do either of the following; submit wall design calculations for a surcharge load of 240 pounds per square foot or put a restriction in the Deed for Lot 5.02, restricting the building or structures from parking within 6 feet from the back of the wall.

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

**ROLL CALL:**

**AYES:** Mayor O'Neil, Mr. Bahrs, Mr. Harrison, Mr. Cefalo

**NAYES:** None

**ABSTAIN:** Mr. Manrodt, Mr. Nolan

**DATE:** June 14, 2007

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**CAROLYN CUMMINS, BOARD SECRETARY**

I certify this to be a true copy of a Resolution adopted by the Borough of Highlands Planning Board on June 14, 2007.

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**BOARD SECRETARY**