

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. **Variiances.** 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.
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 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.
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 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

DATE: November 8, 2007

CAROLYN CUMMINS, Board Secretary

I certify this to be a true copy of a Resolution adopted by the Borough of Highlands Planning Board on November 8, 2007.

BOARD SECRETARY