

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
APRIL 5, 2007**

Mr. Mullen called the meeting to order at 7:38 P.M.

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

Mr. Mullen 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 Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted to the Courier, The Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Mullen, Mr. Gallagher, Mr. Britton

Absent: Mr. Braswell

Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Joseph May, P.E., Acting Board Engineer

Mr. Mullen welcomed Arthur Gallagher to the Board and stated that he was recently appointed as Alternate #1 Member of the Board and congratulated Mr. Anthony on being moved up to a Regular Member.

**ZB#2006-11 Monahan, Gary
Block 3 Lot 5 (74 Portland Road)
Request for Postponement of New Public Hearing Date**

Mr. Mullen stated that the Board received a letter from the applicants Attorney requesting a third postponement and granted the board an extension of time to act on this matter through June 2007.

Mr. Mintzer offered a motion to reschedule the public hearing on this matter to June 7, 2007, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Gallagher, Mr. Mullen

NAYES: None

ABSENT: None

Mr. Mullen announced to the public that the Monahan Public Hearing has been carried to the June 7, 2007 meeting and that there would be no further public notice.

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**ZB#2007-1 Maxson, Richard
Block 64 Lot 20 (222 Bay Avenue)
Approval of Resolution**

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

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

**RESOLUTION APPROVING BULK VARIANCES
FOR MAXSON AT 222 BAY AVENUE**

WHEREAS, the applicant, RICHARD MAXSON, is the owner of a one-story single-family home at 222 Bay Avenue, Highlands, New Jersey (Block 64, Lot 20); and

WHEREAS, the owner filed an application to add a second story to his garage, for storage purposes; and

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

WHEREAS, the Board considered the application at a public hearing on March 1, 2007; and

WHEREAS, the Board heard the testimony of the applicant, RICHARD MAXSON, and no one appeared in opposition or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application and denial, including Zoning Officer's bulk and area requirements chart;
- A-3: Hand-drawn plot plan by RICHARD MAXSON;
- A-4: Hand-drawn elevations (before and after) by RICHARD MAXSON;
- A-5: Calculations by applicant regarding lot coverage;
- A-6 (A through F) six 4" X 6" photographs;
- A-7: Polaroid photograph;

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicant is the owner of property located in the R-2.02 Zone.
2. The site currently contains a one-story single-family home, a detached garage with attached icehouse, and a shanty, all in the rear yard.

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3. The owner seeks to enlarge the garage to add a second level for storage only.
4. The applicant's father initially built the garage for use as a fish market, though it was never used for the same.
5. All of the current rear structures (garage, icehouse and shanty) are currently used for storage.
6. The house is quite small, and has little space for storage within it.
7. The applicant requested a variance to permit him to enlarge the garage, upward only, to a height of 21.5 feet, where the garage is currently 14 feet in height.
8. The ordinance limits the height of an accessory structure to 15 feet. The proposed addition to the garage will be 6.5 feet more than permitted by ordinance.
9. The height of the single-family home is 20 feet.
10. There will be no plumbing or plumbing facilities servicing the garage.
11. Though the garage formerly had heat, the heat source was removed 20 years ago and is not intended to be restored.
12. The applicant is a carpenter, mason and fisherman, and needs additional storage space to store his equipment. Also, if the application is granted, the applicant will remove the icehouse and shanty, both of which are currently used for storage and the boat locker, thereby cleaning and opening up the rear yard.
13. There are no buildings close to the applicant's property line on the Rosenblum, Johnson or Smock neighboring properties.
14. Neither the current nor the enlarged garage will be used for residential purposes.
15. The applicant testified at length regarding how much easier and cheaper construction would be if the variance were granted. The Board rejects that testimony as being irrelevant to the issues the Board must decide.
16. The garage floor is at ground level. The house is elevated 3 feet.
17. The Board was particularly concerned, and objected to, the height of the garage being greater than the height of the primary structure (i.e., the house).
18. There is also a 4' X 4' boat locker on the property, which belongs to LARRY COLBY. It will be removed, further cleaning up the rear yard, as part of the construction process.
19. Because the ground is relatively flat, the Board was perplexed in how to best deal with the water runoff from the new garage roof. The applicant intends to install gutters. Those gutters should direct the rainwater away from the neighboring properties and toward Bay Avenue, coming down the driveway.
20. The applicant proposes to put one regular-sized window in each of the two gables, on the north and south sides of the garage.
21. The applicant intends to put vinyl siding on the new addition, and leave the bottom in its current stucco condition, but repaint the same.
22. The current garage is large, by residential standards. In addition to the garage door, there is also another pedestrian door on the same side of the garage structure.

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23. The applicant testified that he spoke to several of his neighbors, none of whom had any objection to his request. None of those persons, however, testified at the hearing.

24. The proposed garage enlargement will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance and, based upon the testimony, the Board is empowered to grant this variance pursuant to N.J.S.A. 40:55d-70c(2).

25. All variances requested by the applicant, except for height, are for preexisting conditions. Those variances are for minimum lot size (3,750 square feet, where 4,000 square feet is required); minimum lot width (37.5 feet, where 50 feet is required); front yard setback (16.5 feet, where 20 feet is required); and side yard setback (18.5 feet/2.5 feet, where 6 feet/8 feet are required).

WHEREAS, the application was heard by the Board at its meeting on March 1, 2007, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of RICHARD MAXSON to enlarge his existing garage by building a second floor to be used for storage only be and the same is hereby approved, but not for the height requested. Rather, the Board hereby gives permission to enlarge the garage on the condition that the sidewall height be no more than 5 feet above the existing top plate, and the maximum height of the ridge of the new garage shall be no more than 19.5 feet. Variances are hereby also granted for the preexisting conditions referred to above, those being for lot size, lot width, front setback and side setback.

AND BE IT FURTHER RESOLVED that these variances are granted upon the following additional conditions:

1. The icehouse, shanty and boat locker shall all be removed from the property.
2. The rainwater discharge shall be designed to keep the water runoff from the neighboring properties, and shall be directed toward Bay Avenue.
3. There shall be no more than two windows installed in the second level of the garage, those being standard-sized windows, one on the north side and one on the south side.
4. The garage structure shall not be converted to residential use, nor shall it be used as living space.

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

ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Mullen

NAYES: None

ABSTAIN: None

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**ZB#2007-2 Alvator, Donna
Block 35 Lots 6 & 7 (10 N. Peak Street)
Hearing on New Business**

**Present: Donna Alvator
Reggie Sears**

Mr. Baxter stated that he has reviewed the public notice and finds that all requirements have been met; therefore the board can take jurisdiction on this matter.

The following documents were marked into evidence:

- A-1: Variance Application consisting of 3 pages;
- A-2: Zoning Permit and Denial;
- A-3: Survey dated 1/13/06;
- A-4: Two pages of Architectural Plans prepared by Anthony Ercolino, A.I.A.;
- A-5: Portion of Municipal Tax Map with green highlights of Neighbor's properties;
- A-6 a-f: Six 8 ½ by 11 color photographs.

Ms. Alvator and Mr. Sears stated the following during their testimony and response to questions from the board:

Mr. Baxter swears in Donna Alvator of 10 N. Peak Street, Highlands, NJ and Reggie Sears of 47 Trinity Place, Oceanport, NJ.

Mr. Sears – she is adding a second floor with a master bathroom, master bedroom, another bedroom, another bedroom with a sharing bathroom. The reason that she is doing this is for her parents who are elderly and she has a teenage daughter with an existing bedroom size of 8 by 10 and she needs more space and privacy. The porch that she is asking for is a screened in porch.

Ms. Alvator – she wants to have room if her parents need to move in when they can no longer take care of themselves. The house today is only 1,000 square feet and it will become 2,000 square feet.

Mr. Sears – this is what she needs and wants and yes they are aware of the 80% vertical addition regulation but 80% is just not enough.

Ms. Alvator – this is a small house which she further described by identifying the rooms as a small kitchen, two small bedrooms (8 x9 and 8 x11) , no closets, then it goes into a living room, there is a master bedroom and one bathroom. She stated that this is like a bungalow she then showed the board Exhibit A-6e which was a photograph of her house.

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In the basement there is just a washer and dryer and some storage and it is intended to be just storage. The proposal is to get rid of the bedroom to make the kitchen bigger and knock out the wall between the master bedroom and living room to make that a larger great room. So of the existing three bedrooms two will no longer be bedrooms and the other one will become an office.

Mr. Sears – stated that the Architect made a mistake with the building height. The front building height is 26-feet, the rear is 33.3 feet and he has an average of 29.8 feet.

Mr. May – stated that the height of the rear of the house is 23 feet. The proposed building height plus or minus is 27 feet which is below the allowance. He also stated that the elevations are accurate.

Ms. Alvator – the only addition to the footprint is the rear porch and the deck. She does not feel that the proposed would have a negative impact on any neighboring structures. She thinks that building this would be an enhancement to the property. They will be doing all new exteriors to the property. The existing shed on the sight will be removed. There is no intent to convert the porch or the basement into living space. She stated that there is a retaining wall at the rear of the property and it's been there for a very long time.

Mr. Sears – the proposed deck is 9.34 feet to the rear yard. Below the wall is a ten foot easement that belongs to the borough and it runs laterally across the rear of the property.

Mr. Mullen stated that by looking at the applicant's survey it appears that substantial portions of your improvements are out into Peak Street and onto the lot next to you, lot 4.01, the wood fence, the driveway and some sort of paved surface.

There was a discussion pertaining to the applicants existing improvements that are out of her property line.

Mr. Sears stated that they are working on an easement.

Mr. Mullen – the porch could easily be put on the south side of the building with no variances being required. There is no justification for the rear yard variance.

Ms. Alvator stated that the reason for the location of the porch is for the view.

Mr. Sears stated that he understands Mr. Mullen's comment about the relocation of the porch to the south side.

Mr. Mullen asked if there were any members of the public who had any questions for the Ms. Alvator or Mr. Sears.

Jerald Nicholson of 44 S. Bay Avenue stated that he represents his girlfriend who lives at 2 North Peak Street. If this application is approved that they would appreciate courtesy

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with the contractors and the fence. He does not want trucks to use their property. He is not here to restrict the application but they are just looking for some common courtesy. He wants them to be liable for any damage to their property.

Mr. Baxter – this board can not deal with any civil claims. He then asked how a vender could get to the applicants property without crossing his.

Jerald Nicholson – they can't. He does not want people parking on his property.

Mr. Sears explained that part of the driveway is on the neighbor's property and we both have had surveys and this is being pursued through an easement.

Mr. Mullen asked if the applicant could rectify the encroachment during construction.

Mr. Sears – no, which he further explained and stated that this will be settled in Freehold.

There was a discussion with regard to the driveway and encroachment issues.

Mr. May – if the applicant wished to pursue the rear yard structure that it would require two additional variances. One for the disturbance of within 15-feet of the top of the slope and no structure can be located within 25-feet of the top of the slope which would trigger a soils reports and the examination of the retaining wall. Considering the conversations with the neighbor he would ask that the construction techniques be addressed at this time.

Mr. Sears – this will not be a pre-fabricated second story, it will be assembled on site.

Mr. May – with regard to the driveway there is a potential that they could potentially fill that area in adjacent to the home and raise that driveway. We would probably need to see a more detailed survey with elevations to see if the grades would make sense. His site examination did not consider driveway relocation at that time. He then described the location as the problem being that it would be to steep and the road is so narrow its more conducive to pulling in than pulling out, you can not turn around on N. Peak Street.

Ms. Alvator – stated that she does have two on-site parking spaces.

There was a discussion about the sloping grades of the site with regard to the driveway and it was established that relocating the driveway was not an easy issue.

There were no further questions from the public.

Mr. Mullen asked if there were any comments from the public.

Gerald Nicholson of 44 S. Bay Avenue, Apt. #6, Highlands was sworn in and stated that he represents Janet Hubert of 2 N. Peak Street.

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Mr. Baxter explained to Mr. Nicholson that he could testify as a resident but that he could not represent Ms. Hubert because he does not have written authorization from her to do so.

Mr. Hubert then submitted the following into evidence:

O-1: Survey prepared by William Furey dated 6/6/05.

Mr. Nicholson stated that the driveway issues need to be rectified

Mr. Sears – the applicant has been using this driveway for twenty something years.

Mr. Baxter – that is irrelevant to the board because we can not grant easements, a court would have to make that determination.

Mr. Mullen stated that the driveway issue needs more studying because of the change in grade between the applicant's house and Peak Street.

Mr. Nicholson – they have no objection to the addition but they or future homeowner will have to address the driveway situation.

Robert Burton of 22 Atlantic Street, Highlands asked if the proposed addition would have an impact on the driveway.

Ms. Alvator – no impact.

Jerry Feliciano of 14 North Peak Street was sworn in and stated that he has lived here since 1969 and described the history of the paving of N. Peak Street and right of way.

Mr. Burton questioned Ms. Alvator about any proposed changes to the driveway or fence.

Ms. Alvator stated that she is not proposing any changes to the driveway or fence.

There were no further questions or comments from the public.

Mr. Francy offered a motion to close the public portion, seconded by Ms. Ryan and all were in favor so the public portion was closed.

The board discussed the application and the following comments were made:

Mr. Mintzer explained that he does not have a problem with granting the variance for second floor addition but he does feel that the rear yard variance is unnecessary.

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Mr. Mullen stated that he feels the same as Mr. Mintzer and explained his reason for not being in favor of granting the rear yard variance.

Mr. Mintzer offered a motion to approve the variances for lot depth (pre-existing), front yard (pre-existing), side yard (continuous), the 80% vertical addition variance and to deny the rear yard setback variance. This approval is conditioned upon the following: (1) Removal of the shed; (2) The basement will not be converted into habitable space; (3) Construction vehicles will not encroach onto lot 4.01 other than existing driveway entrance. No rear yard variances was approved. Seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Baxter advised the applicant that the board will adopt a Resolution for this approval at the next meeting.

**ZB#2007-3 Maxson, Richard
Block 72 Lot 4 (22 Atlantic Street)
Hearing on New Business**

Present: Robert Burton

The following documents were marked into evidence:

- A-1: Variance Application consisting of three pages;
- A-2: Zoning Application;
- A-3: Survey prepared by Thomas Finnegan dated 7/10/06;
- A-4: First Floor Plan and Front Elevation Plan consisting of two sheets prepared by the applicant.

Mr. Baxter stated that he has reviewed the public notice and finds it to be acceptable therefore the board can take jurisdiction on this matter.

Mr. Mullen stated that the following variances requested for this application: lot size (pre-existing), lot width (pre-existing), side yard setbacks (continuing variance) because they would like to extend the porch and it will leave a side yard of .05 and 3.5, rear yard setback (pre-existing) and building coverage which is a new variance request (40% where 33% is required).

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Robert Burton of 22 Atlantic Street, Highlands was sworn in and stated the following during his testimony and response to questions from the board:

1. He is asking the board to approve a first floor covered porch.
2. The house is 29 feet 4 inches high and roughly 26 feet wide.
2. If you look at the front of the house on the drawing, it's flat and wide and with a covered front porch it would make it more aesthetically pleasing to the eye and it conforms to the construction of the neighborhood.
3. There is no detriment to the coverage of lot because his house is one of the only houses on the block that is set back, every other house is set forward.
4. He does not believe that there would be any adverse effect on the neighborhood.
5. He will do maintenance on his house standing on the neighbor's property.
6. This distance of the south side neighboring structure to the property line is 4 ½ ft. He has heard that they neighboring structure is going to be torn down.

Mr. May – I did do a site visit and the house does sit to the back of the property with respect to the other properties. He then questioned the applicant about the driveway and curbing.

Mr. Burton continued his testimony as follows:

7. No driveway, the curb has been like this forever and he has no intension of parking in the yard.

Mr. Mullen asked if there were any questions from the public but there were none.

Mr. Mullen asked if there were any comments from the public but there were none; therefore the public portion was closed.

The Board then discussed the application and the following comments were made:

Mr. Francy stated that he wishes the rules were not as such to make this application come before the board.

Mr. Mullen agreed with Mr. Francy and stated that it's a great improvement to the house.

Mr. Burton stated that he has no intension to enclose the porch.

Mr. Francy offered a motion to approve the application as presented and to grant the following variances: minimum lot size (pre-existing 2700 square feet where 4,000 is required), lot width (pre-existing 30 ft, where 50ft is required), side yard setback (.5 ft and 3.5 ft, where 6/8 ft are required), rear yard setback (6.4 ft, where 20ft. is required) and the new variance for maximum building coverage (40%, where 33% is permitted), seconded by Mr. Mintzer and approved on the following roll call vote:

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ROLL CALL:

AYES: Mr. Mintzer, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Gallagher, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen advised the applicant that a Resolution will be memorialized at the next meeting.

Approval of Minutes:

Mr. Mintzer offered a motion to approve the March 1, 2007 meeting minutes, seconded by Ms. Ryan and all eligible members were in favor, Mr. Gallagher abstained.

Communications:

Memo from Board Attorney dated 3/1/07 RE: Standards of Review for Density Variances

Mr. Baxter gave an explanation of his memo regarding recent case law decisions pertaining to standards of review for density variances.

Atlantic Highlands/Highlands Regional Sewerage Authority Memo dated 2/5/07

Mr. Baxter stated that if we approve applications, that the approvals need to be subject to their approval.

Mr. Mintzer stated that there connections fees have increased.

Mr. Francy explained that approvals are required for units of three or more and compliance to rules applies to under three.

Zoning Ordinance Amendments Ordinance O-07-06

Mr. Baxter explained that once the notice of adoption is published the appeal period runs for 45-days from the date of publication.

The Board briefly spoke about some of the zone changes in ordinance O-07-06.

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

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The Meeting adjourned at 9:32 P.M.

CAROLYN CUMMINS, BOARD SECRETARY