

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
September 4, 2008**

Mr. Mullen called the meeting to order at 7:09 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 Planning Board 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. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Anthony,
Mr. Mullen**

Late Arrival: Mr. Gallagher arrived at 7:14 P.M.

Absent: Mr. Britton, Ms. Solomon

**Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Joe May, P.E., Board Engineer**

**ZB#2008-4 Wood, T & M
Block 26 Lot 9.02 – 3 South Peak Street
Approval of Resolution**

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

Ms. Ryan offered the following Resolution be memorialized and moved on its adoption:

**RESOLUTION APPROVING BULK VARIANCE
FOR WOOD AT 3 SOUTH PEAK STREET**

WHEREAS, the applicant, THOMAS H. WOOD, JR., is the owner of a single-family home at 3 South Peak Street, Highlands, New Jersey (Block 26, Lot 9.02); and

WHEREAS, the owner filed an application to remove his current small front porch and add a larger open front porch; 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

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WHEREAS, the Board considered the application at a public hearing on August 7, 2008;
and

WHEREAS, the Board heard the testimony of the applicant, THOMAS H. WOOD, JR.,
and his builder, MARTIN BRITTON; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (4 pages);
- A-2: Zoning permit application and denial;
- A-3: 1/14/97 Survey by Thomas Stuart;
- A-4: 1-Page schematic of proposed porch;
- A-5: 6 Photographs of structure sub-lettered (a) through (f);

AND, WHEREAS, no persons appeared in opposition or to ask questions about this
application; and

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 B-1.01 Zone.
2. The site currently contains a single-family home with a very small front porch landing.
3. The applicant seeks to remove the current front porch landing and construct a front porch 10 feet wide and 6 feet deep (from the home), which will not be enclosed.
4. The current front porch landing is made of brick and mortar and requires constant repair. You have to step off the landing in order to open the front door. There is also no protection from bad weather.
5. The property owner has made other improvements to his home, such as the roof, gutters and soffits, and he now wants to complete the exterior projects by installing a front porch that you can stand on, open the door to get in the house, and also be protected from the elements while on the porch. It will not be enclosed.
6. The existing garage already extends 2 feet from the house. As a result, the 6-foot projection of the proposed new porch will extend 4 feet further from the house than the garage.
7. The proposed 10 feet in width of the new porch will still make it less than one-fourth of the width of the home.

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8. The new porch will not be closer to the street than the front edge of the current sidewalk, which runs from the driveway to the front door.

9. The applicant requires a front yard setback variance to permit construction within 27 feet, where 35 feet is required.

10. The Board determined that this was a *de minimus* application, in that the variance requested is very minor.

11. Though no neighbors testified, the applicant testified that he spoke to at least 21 of the 40 neighbors, and all of them had positive comments regarding his planned new porch.

12. The proposed front porch 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).

13. The Board finds that the change from a small porch landing to the proposed front porch will be an enhancement to the property and to the neighborhood. It will also be an improvement to the appearance of the home.

WHEREAS, the application was heard by the Board at its meeting on August 7, 2008, 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 THOMAS H. WOOD, JR. to remove his existing front porch landing and construct a new front porch of 10 feet by six feet is hereby approved. A variance is hereby granted for the front yard setback of 27 feet, where 35 feet is required by ordinance.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2008-2 Pace, Vincent
Block 34 Lot 2 – 22 Prospect Street
Public Hearing**

**Present: Vincent Pace
Michael Kovic, Contractor**

Mr. Baxter described the previously marked exhibits and stated that he has reviewed the public notice and finds it to be in order therefore the Board has jurisdiction to proceed.

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Mr. Mullen reviewed the variances that are being requested for this application. No accessory structure maybe located within the front within the 35 foot setback and the proposal is within a 9-foot setback. It also needs a variance with regard to its proximity to a steep slope. The ordinance states no structures within 25-feet of the slope and no disturbance within 15-feet and the proposed is to be within both of those.

Mr. Gallagher arrived to the meeting.

The following documents were marked into evidence:

A-5 a-r: Photographs 8 by 11;

A-6: Alternate Plan drawn on Finnegan Survey.

Mr. Pace and Mr. Kovic stated the following during their testimony and response to questions by the board:

Mr. Pace – with the pictures marked into evidence he was trying to show the slope on the right side of the house and stated that's why he did not propose the garage on the right side of the house which he further explained. He also stated that there is a large tree on the right side of the property that he does not want to lose. If he puts the garage on the proposed side he will not lose any trees and he gets to use part of the existing driveway.

Mr. Kovic described Exhibit A-6 and described that it was an overlay for if the garage were to be put on the other side of the house. The elevation is approximately 8-feet from the top of the slope to where the finished floor of the garage would be. He also stated that the ordinance only permits one driveway on the site and if the garage were to be placed on the right side then the existing driveway would have to be removed and the other side is already black top.

Mr. Baxter stated that Mr. Pace was previously sworn in at the last meeting.

Michael Kovic of 3 Woodland Street, Highlands, NJ was sworn in.

Mr. Kovic described the existing site condition and stated that A-6 shows that if the garage were to go on the easterly side of the house other variances would be required for impervious coverage. The driveway would be approximately 45 feet long by 12 wide, plus the garage would cover the grass area, so we would have to just about remove all of the greenery on this site.

Mr. Mullen – this lot is 18,520 square feet which greater than the lot area required in this zone. The impervious coverage permitted in this zone is 70% so you would be will under that.

Mr. Pace stated that he does not want to lose his Evergreen tree as shown in A-5a.

Mr. Kovic described application as removing 50% of the existing black top area to get the garage in. So they are not disturbing the full 22 by 22 footprint of the garage. Leaving the garage in the

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proposed location they are maintaining approximately 12-feet from the corner point of the garage to the end of the _____ so if the owners cars are in the garage there is off street parking for two guest vehicles. He stated that Prospect Street has a problem with parking.

Mr. Pace and Mr. Kovic both described neighboring off street parking amounts and lack of off street parking.

Mr. Pace stated that he bought his house 12-years ago. He stated that the existing stone pavers use to lead to a garage but the previous owners changed garage, they extended the kitchen and made a shop area. He does not want to put a garage on the stone surface area because everyone that visits his home comes to his rear entrance, the never use the front door.

Mr. Kovic – if you make the garage on the other side the owner would lose the widow for the living room and dining room. On the other side you have to build away because of the fireplace and air conditioning unit. He further explained why it was better to build the garage on the proposed located verses the right side as the board is questioning.

Mr. Francy stated that the steep slope is about 60 degrees.

Mr. Francy – it's not that steep at the top it gets steeper at the bottom.

Mr. Pace stated that on that side that the board is talking about he would have to move the generator and air condition system that would have to be moved and the gas lines to the generator would have to be moved. He does not think that the proposed structure would have a negative impact on the value of the neighborhood. The roof line and siding of the proposed garage would be identical to the house. He also stated that he spends a lot of time in Florida and he does not want to leave his cars outside and wants to park them in the garage.

Mr. Pace explained that aesthetically the right side would not work and he would just not build it. He described the existing rooms on the right side of the house as being a bar room and a family room on the lower floor and on the upper floor of the right side of the house there are bedrooms. He then described how he would enter and exit the home.

Mr. Kovic explained how they would protect the slope and that they would not disturb any trees and that they would correct water runoff which he further described.

Mr. Pace explained that the main entrance to the house is to have people walk on the stone surface on the west side of the house and that goes to a deck into the rear.

Mr. May stated that this is not a de minimus slope. The loading on the slope would require a structural analysis of the slope and the impact of the garage on slope. The slope is 66 to 70% immediately behind the proposed garage.

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Mr. Francy – I was just at the site ten minutes ago and he was shocked at how steep the slope was.

Mr. Kovic spoke about the steep slope ordinance.

The board discussed the driveway location being moved.

Mr. Kovic continued to explain why the garage should be located at the proposed location.

Mr. Gallagher stated that he cannot make a decision on this application without an engineer's analysis.

Mr. Mullen – he is trying to get a feel from the Board and the Applicant whether it is worth while for the applicant to provide this report and come back because the implication would be that the board didn't have a problem with the applicant putting the structure in the front yard if he meets the structural criteria. He is trying to get a sense that that is a threshold that this board is willing to accept. Mr. Mullen stated that the street line is well maintained and there is another location on this site to put the garage without variances. Someone would have to give him a lot of evidence that would indicate that he should allow them to do this somewhere else.

Mr. Pace – aesthetically it won't work and the service of it absolutely won't work.

Mr. Francy – the board engineer says that it's not a de minimus slope and since the applicant agrees to provide a report perhaps we should wait until we get the report.

Mr. Kovic spoke about an ongoing construction project that is currently digging out the toe of the slope.

Mr. Mullen spoke with the board about taking a straw vote about if the applicant were to spend the money for this work that the board has no problem granting relief for granting an accessory structure in the front yard, then the next issue is the steep slope and if they can overcome that with a Geotechnical Report and a Structural Analysis and a Structural System to do that, then the board may look favorably on the application.

Mr. Braswell wants a study that shows that this is not compromising the slope because he is concerned with disturbing the slope.

Mr. May – they would have to do soil samples and weights and their Engineer would provide a report and he would have his Geotechnical Engineer review it.

Mr. Braswell – if it is proven that there would be no slope compromise then he wouldn't mind the proposed location.

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Ms. Ryan stated that she would consider the proposed location after reviewing the report.

Mr. Francy – the applicant has stated that he intends to build the garage such that it matches the architectural characteristics of the house.

Mr. Mullen asked if there were any questions from the board for the witnesses but there were none.

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

Mr. Mullen explained that the board could carry this hearing subject to them giving us information on the structural system.

Mr. Francy - I want it to be clear that this is not just a geotechnical report but a plan as to how to build the garage structure so that the steep slope is not an issue, really it's a foundation plan.

Mr. Mullen advised the applicant that he needs to get something developed by an engineer signed and sealed, a document that states that he knows what the forces are involved with putting this there and he is making whatever calculations he needs and modifications to the structure to counter act that and then it will be reviewed by our engineer.

Mr. Pace – this is going to cost money and he is willing to do it but wants to know if there will be any further objections after that?

Mr. Mullen – that's what I was trying to get to. I think that I get a sense from the board that they are willing to proceed with this application and grant the variances for the front yard subject to reviewing the steep slope report.

Mr. Francy – the applicant needs to understand that his footings could be 15-feet down or on pilings.

Mr. Fox offered a motion to carry this hearing to November 6th, 2008 and that no further public notice is required, seconded by Ms. Ryan and approved on the following roll call vote:

Mr. Braswell – I want the only issue to be remaining is the slope.

Mr. Baxter explained that the board is not voting on the variance.

Mr. Mullen – I think it's clear on the record.

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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**ZB#2008-3 Knox 400, LLC
Block 108 Lot 2.01 – 460 Highway 36
Hearing on New Business**

**Present: Henry Wolff, Esq., Applicants Attorney
Mike Leckstein, Esq., Objectors Attorney
Paul Mazzella, Objector**

Mr. Wolff explained to the Board that it was brought to his attention that Mr. Leckstein considered the public notice to be defective. He has reviewed his notice and although it complied with all of the major aspects the State Statute states that the intent of the application must be set forth in the notice and his public notice did not state the intent of the application. He believes that he has to renotice. He then requested that a Special Meeting be scheduled at his client's expense.

Mr. Leckstein stated that he has his witnesses scheduled for October 2, 2008 and that he does not mind a special meeting and he agreed to September 25th, 2008 at 7:30 P.M.

The Board spoke with both Mr. Leckstein and Mr. Wolff about the issue of members being absent at the Special Meeting and that they could listen to the Sept. 25th Meeting tapes prior to the continuation of this hearing at the October Meeting and both of them had no objections.

Mr. Baxter spoke about the Zoning Board borrowing a Planning Board Member for this hearing and that it would be Mike Kovic. He said it appears that there are four members available and two maybe available so that would be six members.

Mr. Francy offered a motion to schedule a special meeting for September 25, 2008 at 7:30 P.M. and to carry the Knox matter to that date and that the applicant be required to post fees for special meeting, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Fox, Mr. Gallagher,
Mr. Mullen**
NAYES: None
ABSTAIN: None

Approval of Minutes:

Mr. Fox offered a motion to approve the August 7th, 2008 Minutes, seconded by Mr. Francy and all were in favor.

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**ZB#2008-5 Sendowski, Oren
Block 43 Lot 6**

Mr. Mullen stated that the board received a letter of withdrawal from Mr. Sendowski.

Mr. Mullen offered a motion to grant the withdrawal of the Sendowski application to authorize the refund of any unused escrow money, seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

The Meeting adjourned at 8:13 P.M.

CAROLYN CUMMINS, BOARD SECRETARY