

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
December 1, 2011**

Mr. Braswell called the meeting to order at 7:32 p.m.

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

Mrs. Cummins read 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 Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

**Present: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Britton, Mr. Knox,
Mr. Braswell, Mr. Kutosh, Mr. Cervantes**

Absent: Mr. Fox

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

ZB#2011-2 SJD Design, LLC

Block 40 Lots 18.19 & 20 – Shore Drive

Request for Postponement of Public Hearing

Mr. Baxter explained that this is an application with property owner issue with a sliver of the property. He then stated that at the October ZB Meeting the applicant served notice for the October meeting but there was a defect with the service the applicant did not serve notice to one property owner Pippin so we found the notice to be proper but applicant was required to renotice the missing receipt for Pippin for a November hearing. The November meeting didn't take place for a lack of a quorum. The applicant needs to contact owner of sliver of land. This is the third postponement. The Board can adjourn this to the next meeting subject to further discussion.

Ms. Ryan offered a motion to postpone public hearing to the January 5, 2012 meeting subject to the applicant republishing notice, seconded by Mr. Anthony and approved on the following roll call vote:

ROLL CALL:

**AYES: Ms. Ryan, Mr. Anthony, Mr. Britton, Mr. Knox, Mr. Kutosh,
Mr. Braswell**

NAYES: Mr. Gallagher

ABSTAIN: None

ZB#2011-4 Dokoglou, L.

Block 63 Lot 19.01 – 231 Bay Avenue

Request to Postpone Public Hearing to the January 5, 2011 Mtg

Mr. Baxter explained that this is an application of an appeal of the Zoning Officers decision. He suggested a dual application of an appeal and a use variance, which he further explained. The attorney for the applicant has also changed the name of the applicant and if he is not the contract purchaser then there could be a problem.

Mr. Gallagher – we should dismiss until they get their act together.

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Mr. Baxter – we can't dismiss without hearing the application.

Board continued discussion on status of application.

Ms. Ryan offered a motion postpone hearing to January 5, 2012 meeting without the need for further public notice, seconded by Mr. Kutosh and approved on the following roll call:

ROLL CALL:

AYES: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Kutosh, Mr. Cervantes,
Mr. Braswell

NAYES: None

ABSTAIN: Mr. Knox, Mr. Britton

**ZB# 2011-1 Compagni, J.
Block 28 Lot 16 – 21 Prospect Street
Approval of Resolution**

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

**RESOLUTION APPROVING BULK VARIANCE AND DESIGN WAIVER
FOR COMPAGNI AT 21 PROSPECT STREET**

WHEREAS, the applicants, JOSEPH & JENNIFER COMPAGNI, are the owners of a single-family home at 21 Prospect Street, Highlands, New Jersey (Block 28, Lot 16); and

WHEREAS, the property owners filed an application to lower their driveway and construct a new single-car garage with a balcony over top; 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 October 6, 2011; and

WHEREAS, the Board heard the testimony of JOSEPH COMPAGNI, JOSEPH SACCO (draftsman), and RICHARD STOCKTON (licensed surveyor and professional planner); and

WHEREAS, the Board also heard supporting testimony from a neighbor, ANTHONY MARCELLO, 23 Prospect Street; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1: Variance application (4 pages), including the Zoning Officer denial notice;

A-2: 6/9/11 survey by RICHARD STOCKTON;

A-3: Uncertified architectural drawings (2 pages);

A-4: Photo of house and driveway;

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- A-5 Close-up photo of driveway;
- A-6 Photo of driveway from the street;
- A-7 Photo of driveway from the garage;
- A-8 Photo of driveway apron, showing where cars bottom out;
- A-9 Photo of right-of-way, showing cars on both sides;
- A-10 Architectural plans on large board;
- A-11 Front view of proposed change on large board;
- A-12 Elevation drawings on large board;
- A-13 Photo of house to the east, showing detached garage;
- A-14 Photo of neighbor one lot away with garage closer to street than applicants’;

AND, WHEREAS, the following exhibit was also marked into evidence:

- B-1: Board Engineer review letter dated 9/30/11;

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 applicants are the owner of a single-family home located in the R-1.02 Zone.
2. The home sits on a relatively steep slope, with the driveway sloping to the street. At the point at which the driveway hits the street, the angle is such that cars “bottom out” and are unable to access the driveway.
3. The current slope is dangerous to maneuver as a pedestrian, plus you cannot currently get a car into the garage because of the angle of the driveway apron.

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4. The street is narrow and crowded. Though parking is allowed on both sides, it makes it difficult for vehicles to pass on the street, and even more difficult for emergency service vehicles to navigate.

5. This proposal will permit two cars to be parked off the street, where currently none are able to park off the street.

6. The property owners propose to lessen the slope of the driveway, which will facilitate a vehicle being able to enter the driveway and also to park in the garage. It will also make it easier for snow removal, since sometimes the town can't even get its vehicles down the street for snow removal.

7. Testimony from the neighbor was to the effect that the road is very narrow, to the point where he cannot even get his 4X4 in position to get on his own property. According to him, the street is an emergency service nightmare, and he is a former NYPD employee. He also testified to the difficulty on bulk pickup days, and having to coordinate parking with neighbors, just so the borough vehicles can get down the street. He also supports the idea of getting more cars off the street, and is very much in favor of this proposal.

8. Though hearsay, MR. MARCELLO testified that he spoke to several neighbors about this application, and that all of them were in agreement with the proposal.

9. In addition to lessening the angle of the driveway, the applicants also propose to put new stairs with a railing in the front of the house and new stairs to the rear yard. There will also be a new front porch constructed.

10. All of the proposed changes by the applicants will make it safer and easier for pedestrians to access the driveway, garage and house.

11. The applicants also propose to install siding on the entire house, which will be a desirable visual improvement.

12. Though some shrubbery will be removed as part of this project, most will remain.

13. The retaining wall proposed by the applicants will stop water from going on the neighboring property to the right.

14. The difference in elevation between the existing garage door and the gutter of the street is in excess of 11 feet. This differential will change to approximately 4 feet as a result of the applicants' proposal, which will be a significant improvement.

15. All of the properties along the street are encumbered by the hill, as a result of which the property owners' driveways are quite steep. At least two of the properties have detached garages closer to the street, because of this problem.

16. The applicants' planner testified regarding the setbacks of other properties on the street from the right-of-way line to their garages. In one case (A-13) it was 10.6 feet. In another (A-14) it was 5.1 feet.

17. The applicants' planner testified that the property is unique, as are the houses to the east. He testified that the ordinance requirement of a 35-foot setback is impractical, because of the steepness of the hill and trying to get a driveway in to the house and, thereby, move vehicles off the street. His opinion was that the proposal of this property owner would be much safer than the current situation, and the garage would now be able to be used as intended.

18. The proposal will permit 2 cars to park on the property---one in the garage, and one to the side.

19. The application will further provide for a safe parking area, both for the vehicles and for pedestrians. In addition, the current older steps have a wider tread spacing. The new ones will be much safer.

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20. According to the planner, this is a good improvement with a minimal disturbance of property.

21. In addition to the variance for the front yard setback (9.4 feet, where 35 feet is required), the property owners also seek a design waiver for the driveway width (23 feet, where 18 feet is permitted). The Board finds both of these requests to be reasonable and, as set forth above, a significant improvement to the property and a safer layout than currently exists. This is so both visually and by accomplishing the moving of vehicles off the street in an area where parking on the street is both a problem and a hazard.

22. The Board finds that the applicant has met the positive and negative criteria required under the Municipal Land Use Law. The proposed new garage, driveway widening, front steps and porch will not be a substantial detriment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant this bulk variance pursuant to both N.J.S.A. 40:55d-70c(1) and -70c(2). As to subsection c(1), the property has an exceptional topographic condition and physical feature that supports the relief requested by the applicants. As to subsection c(2), the purposes of the Municipal Land Use Law will be advanced, in that the benefit of the deviations requested substantially outweigh any detriment. In fact, the Board sees no detriment.

WHEREAS, the application was heard by the Board at its meeting on October 6, 2011, 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 JOSEPH & JENNIFER COMPAGNI to construct a 220 square foot single-car garage with new balcony over top connecting to the existing master bedroom and to demolish the existing front steps and construct a new front porch is hereby approved; and a variance is hereby granted for the front yard setback of 9.4 feet, where 35 feet is required and for a design waiver for the driveway width of 23 feet where 18 feet is permitted.

AND BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

A. Applicants shall comply with the provisions in paragraphs 1, 4 and 5 in the Board Engineer's review letter (Exhibit B-1).

B. All water runoff shall be toward the street, though it is left to the property owners' discretion whether to undertake the same above or below ground.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox,
Mr. Kutosh, Mr. Braswell

NAYES: None

ABSTAIN: None

Approval of Minutes

Mr. Kutosh offered a motion to approve the October 6, 2011 Zoning Board Meeting Minutes, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Britton, Mr. Knox,
Mr. Kutosh, Mr. Cervantes, Mr. Braswell

NAYES: None

ABSTAIN: None

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**ZB#2011-3 McGavin, P . & T.
Block 35 Lot 1 – 18 Valley Avenue
Unfinished Public Hearing**

Present: Tracy McGavin

Mr. Baxter stated that the applicants notice deficiency has been corrected and the board has jurisdiction to proceed with hearing.

The following documents were marked into evidence this evening:

- A-1: Variance Application;
- A-2: Zoning Officer Denial Letter;
- A-3: Survey by T. Finnegan dated 11/10/94;
- A-4: Pool Grading Plan by Michael P. Cannon dated 7/14/11;
- A-5: Pool Specs dated 4/28/03;
- A-6: Allan Block Landscape Newsletter;
- A-7: Guide & design detail booklet;
- B-1: Board Engineer Review Letter.

Mr. Baxter swears in Tracy McGavin of 18 Valley Avenue, Highlands.

Ms. McGavin stated the following during her testimony and response to questions from the board:

1. The proposed pool will not comply with one of the two front yard setback requirements. .
2. The subject lot is a corner lot and it's on a hillside, it's a triangular shaped property.
3. The wall will slope down.
4. The pool is on the North Peak Street side.
5. The block wall is on her property.

Mr. Keady – the wall requires support which will go onto borough right of way.

Ms. McGavin continued her testimony as follows:

6. They are not doing concrete walls because any shift in the land will result in a shift in the wall.
7. She spoke with Mr. Leubner of T & M Associates and his concern was with drainage.

Mr. Keady stated that this wall will require geo grid onto right of way.

Mr. Baxter – we can't give approval for the right of way.

Mr. Keady – we just need to see something for the Allan Block Wall engineering to show nothing will go onto borough right of way.

Ms. McGavin continued her testimony as follows:

8. Currently there are six inch wide French drains and she has lived there for 17 years and they have never had any problems and there is an Allan Block wall up by the property.
9. No road will be closed off during construction.
10. She can shorten patio side to give 2 feet. The geo grid will still be on her property.

Mr. Keady – the top of the wall and curb line need some sort of fence.

Ms. McGavin continued her testimony as follows:

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11. 7.8 foot variance for the pool and a foot variance is needed for the wall. Also need to meet fence requirements for top of wall.

Mr. Baxter – subject to Allan block certification to board engineer, applicant will need to come back.

Mr. Keady – slopes, he would suggest her professional provide notation as to slope being 35% or less.

Ms. McGavin continued testimony:

12. We were not in percentage of steep slope.

The Board informed Ms. McGavin that she needs to provide the revised plans at least 10-days prior to the January 5th, 2012 meeting.

Ms. Ryan offered a motion to carry this public hearing to the January 5, 2012 meeting, seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Britton, Mr. Knox,
Mr. Kutosh, Mr. Braswell

NAYES: None

ABSTAIN: None

Executive Session Resolution:

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

**RESOLUTION
EXECUTIVE SESSION**

BE IT RESOLVED that the following portion of this meeting dealing with the following generally described matters shall not be open to the public:

1.Litigation: Metro PC vs. Highlands Zoning Board

2.Contract:

3.Real Estate:

4. Personnel Matters:

5. Attorney-Client Privilege:

BE IT FURTHER RESOLVED that it is anticipated that the matters to be considered in private may be disclosed to the public at a later date when the need for privacy no longer exists; and

BE IT FURTHER RESOLVED that no portion of this meeting shall be electronically recorded unless otherwise stated; and

BE IT FURTHER RESOLVED that the private consideration is deemed required and is permitted because of the following noted exceptions set forth in the Act:

1. Rendered confidential by Federal law or that if disclosed would impair receipt of Federal funds.

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2. Rendered confidential by State Statute or Court Rule.
3. Would constitute an unwarranted invasion of individual privacy.
4. Deals with collective bargaining, including negotiation positions.
5. Deals with purchase, lease or acquisition of real property with public funds.
6. Related to setting of bank rates or the investment of public funds and disclosure could adversely affect the public interest.
7. Related to tactics and techniques utilized in protecting the safety and property of the public disclosure may adversely affect the public interest.
8. Related to investigation of violations or possible violations of the law.
9. **Related to pending or anticipated litigation or contract negotiations in which the public body is or may be a party.**
10. Falls within the attorney-client privilege and confidentiality is required.
11. **Deals with personnel matters of public employees and employee has not requested that the matter be made public.**
12. Quasi-judicial deliberation after public hearing that may result in imposition of a civil penalty or suspension or loss of a license or permit.

BE IT FURTHER RESOLVED that action may be taken after the executive session.

Seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Anthony, Mr. Gallagher, Mr. Britton, Mr. Knox, Mr. Kutosh,
Mr. Braswell

NAYES: None

ABSENT: None

ABSTAIN: None

The Zoning board then entered into Executive Session at 8:23 P.M.

Mr. Braswell called the Regular Meeting back to order at 8:38 p.m.

Communications:

Meeting Agenda Order for January 5th Meeting

The board had a discussion with Mr. Baxter about the order of business for the next meeting.

McGavin Unfinished Public hearing – first

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Dokaglou would then have application review, then Metro maybe if they file application, then SJD would go.

The Board had brief discussion about what they want from metro application at Eastpointe.

Mr. Gallagher offered a motion to adjourn the meeting, seconded by Ms. Ryan and all were favor.

The Meeting adjourned at 8:44 P.M.

Carolyn Cummins, Board Secretary