

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Meeting Location: Highlands Elementary School, 360 Navesink Ave., Highlands

Mr. Fox called the meeting to order at 7:33 P.M.

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

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

ROLL CALL:

Present: Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. Knox, Mr. Braswell, Ms. Pezzullo

Absent: Mr. Fox, Mr. O'Neil, Ms. Maresca

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

**ZB#2013-9 Freeman – Review Subject to receipt of App fees & Escrow
45 Gravelly Point Road - Block 100 Lot 26.45**

Mr. Keady stated that he spoke with Dale Lubner earlier and that he was expecting to receive plans today, if it is in accordance with the discussion, then it would meet zoning requirements. He has not seen the plans. He suggested that if the applicant has another plan, maybe they don't want to set a date until they have a plan ready.

Mr. Braswell stated that if the plans are conforming then a variance would not be required.

Mr. Freeman - just need to know what the next step is, if its money, he will pay it. He just wants to get the ball rolling. He has had an empty lot since February.

The Board had a brief discussion with regard to the plans. This is the first time that some of them have seed the plans.

Mr. Gallagher explained the process to Mr. Freeman.

Matter has been scheduled for another review at the September meeting.

**ZB#2013-10 Hendrickson
61 Bay Ave. – Block 41 Lot 4
Application Review**

Applicant not present for application review.

Mr. Keady stated that he believed this is for a use variance, non-conforming use substantially damaged.

The Board reviewed the bid.

Carolyn Cummins stated that it is two (2) single family houses on one (1) lot.

The Board discussed the bid and determined that there was not enough information

Mr. Gallagher offered to a motion to carry to the September meeting since homeowner is not present. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: None

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

**ZB#2013-6 Steiner
6 King Street – Block 103 Lots 3 & 16
Approval of Resolution**

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

8/1/13

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR STEINER**

WHEREAS, PAUL and LISA STEINER are the owners of two lots with one residence each at 6 King St., Highlands, New Jersey (Block 103, Lots 3 and 16); and

WHEREAS, the applicants, because of "Sandy", seek to elevate their home, as a result of which steps will need to be added, requiring variance approval; 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 July 18, 2013; and

WHEREAS, the Board heard the testimony of PAUL STEINER, and

WHEREAS, 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 of 3 pages, plus a photograph
- A-2 6/14/13 survey by Jason Tarrantino
- A-3 Foundation repair by JT Engineering (2 pages)
- A-4 Elevation certificate dated 7/5/07
- A-5 Zoning Permit Application with Zoning Officer's comments dated 6/5/13
- A-6 Flood Plain review application dated 7/1/13
- A-7 Architectural plans by Hiland Hall Tower & Associates dated 6/13/13 (3 pages)
- A-8 Photo of building-2 views (1 Page)

AND, WHEREAS, the following exhibits were marked into evidence as Board exhibits:

- B-1 7/15/13 Board engineer's review letter

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 R-2.03 Zone.
2. The site currently contains the primary house fronting on King Street and a smaller cottage to the rear of the property which traverses the lot line between Lots 3 and 16. Both structures have been there for many years.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

3. The rear home sustained no damage during Superstorm Sandy; however, the front structure did sustain water damage, requiring repairs and that it be elevated.

4. By elevating the primary structure, steps will need to be added, but there is insufficient room to add steps to the front of the home without coming out into the municipal right-of-way. Accordingly, a small porch is needed, so that the steps can be installed off the left side (south side) of the home.

5. Aside from the installation of the steps and porch, there are no plans to undertake any repairs or improvements to the home.

6. There will be no roof over the new porch or steps.

7. The addition of steps to the south side of the home will not extend the non-conformity. In fact, the steps will not go out as far to the south side of the property as the existing home does at its rear.

8. No changes are proposed to any of the roof leaders or gutters.

9. The owner seeks bulk variances for the following preexisting conditions:

A. Minimum lot area of 3,075 square feet where 5,000 square feet are required.

B. Lot frontage of 25 feet where 50 feet are required.

C. Front yard setback of .59 feet.

D. Side yard setback of 3.54 feet/ 0 feet where 6/8 feet are required.

E. Rear yard setback of 0 feet where 20 feet are required.

F. Building coverage of 35% where 30% is allowed.

10. The adding of the front porch platform with no roof and steps to the south side of the house requires a new variance for the front yard setback. The porch 7 $\frac{3}{4}$ inches from the yard boundary line.

11. Despite the raising of the structure, no height variance is needed.

12. The residential use, for one structure, is permitted in the zone. The secondary home, which has been there for years, requires a use variance for the preexisting condition. Neither home, however, contradicts the neighborhood character.

13. The applicant meets the alternative tests of the Municipal Land Use Law (N.J.S.A. 40:55D-2) as a result of his proof that, if the Board were to deny the grant of the variance, it would be an undue hardship. The two structures have been on this property for many years and, but for Superstorm Sandy, the primary structure would not have to be raised to comply with the flood regulations.

14. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), the Board is satisfied that, since the bulk of the relief requested is for preexisting conditions, there is no detriment to the subject property or the neighborhood. Actually, it is an improvement. In addition thereto, the variance requests here are *de minimus*.

15. The requested relief will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

WHEREAS, the application was heard by the Board at its meeting on July 18, 2013, 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 Paul and Lisa Steiner to add a small porch and steps to the front and left side of their home, respectively, at 6 King Street is hereby granted. Variances are hereby granted for the preexisting conditions recited in paragraph 9 above. A use variance is granted to continue the two homes on the two lots, as shown on the applicants' survey; and a bulk variance is granted to permit the installation of a porch platform at the front and steps on the left side of the home, as shown on the applicant's plans.

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

- A. There shall be no roof over the new porch and steps.
- B. The applicant shall be responsible to repair any damage caused to the borough's right of way as the result of the installation of the porch and steps.
- C. Flood review is deferred to the Flood Plain Administrator.
- D. Submission of a Permit-by-Rule Notice.

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

ROLL CALL:

AYES: Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Ms. Maresca

NAYES: None

ABSTAIN: None

ZB#2013-7 Jimenez

3 Private Rd – Block 56 Lot 7

Public Hearing

**Present: Betty Jimenez
April Jimenez
Constantinos Aravanitos, A.I.A.**

Mr. Baxter reviewed the public notice. Notice is okay.

The following items were marked into evidence:

- A-1: Variance Application (3 pages)
- A-2: Flood plain review application (1 page)
- A-3: Zoning denial dated 6/21/13
- A-4: Survey dated 6/1/13
- A-5: Elevation Certificate dated 4/25/13
- A-6: Architectural plans from Joseph Tinley, Jr., dated 7/2/13
- A-7: Power of Attorney dated 12/12/02, for her mother Betty Jimenez
- A-8: Photographs – (7 pages)
- A-9: Aerials
- A-10: Deed

- B-1: Board engineer review letter dated 7/26/13

- O-1: Survey – Mazen
- O-2: Title search
- O-3: Judgment of Foreclosure

April Jimenez was sworn in and stated the following:

1. Mother is trying to rebuild her home on the lot and to keep the garage separate.
2. The garage is presently over the property line for over fifty (50) years.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

3. Built in 1950 – garage has been there since.
4. According to architect, the best action is to demo the house and rebuild new.
5. The garage was underwater and needs to be repaired.

Mr. Baxter stated that the Board cannot give any relief for garage because part of it is not on the lot. He asked Ms. Jimenez if there was something that showed that the garage goes with Lot 7 as opposed to Lot 8. According to the survey, more of the garage is on Lot 8 than Lot 7.

April Jimenez continued testimony as follows:

6. Betty Jimenez just wants variance to rebuild home.
7. There is a side door on garage that goes to Betty's house.
8. The garage is a one (1) car garage.
9. The garage is used primarily for storage.

Betty Jimenez was sworn in and stated the following:

1. The last time there was a car in the garage was approximately five (5) years ago.
2. The garage is only used for her property.
3. Lot eight (8) is vacant.

April Jimenez stated that there are no plans for a new garage.

Constantinos Aravantinos, Architect, (337 Route 36, Port Monmouth), was sworn in and stated the following:

1. Under the house does qualify as parking space due to the height of the new structure.

Mr. Keady asked if it was 1 ½ spaces based on a two bedroom house.

Mr. Aravantinos stated that two (2) cars stacked could fit.

Betty Jimenez stated that it would be difficult to pull in and out of the space.

Mr. Aravantinos asked if they do nothing with the garage, can they move forward on the house.

Mr. Baxter stated that in terms of the house, there is a variance needed to construct the house on an unapproved road. It's not pre-existing, because the house is going to be knocked down. The pre-existing conditions are not approved by anyone. The factors that fall under that category are the lot area, which is 2340 square feet where 4000 square feet is required, lot frontage of 45 feet where 50 feet is required, lot depth of 52 feet where 75 feet is required, minimum front yard setback of 12 feet where 20 feet is required, side yard setback of 4.9 and 4.9 feet, respectively, where 6 and eight feet are required. These are conditions that are going to be continued as a result of the new construction because the foundation is staying in the same place.

April Jimenez stated that the foot print is staying the same except for the stairs.

Mr. Baxter stated that the stairs will be 1.8 feet, where 3 feet are required.

Mr. Keady stated that the stairs are on the side yard.

April Jimenez stated that there will be gravel under the house to drive on.

The Board had a brief discussion with regard to the application.

Mr. Gallagher stated that the garage is bothering him because it could have been going on for fifty (50) years and he does not know if the Board has any jurisdiction.

April Jimenez stated that although the garage is partially on another property, it has been a continued use by her family for over fifty (50) years.

With regard to required trees, April Jimenez stated that they will put in trees that are required.

Mr. Keady stated that two (2) trees would be required according to ordinance.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Arvantinos stated that the new structure would be 723 square feet, proposed.

The Board had a brief discussion with regard to the size of the structure.

Mr. Arvantinos stated that in order to be in conformance the structure would be the size of a bedroom. This is an undersized lot.

April Jimenez stated that they cannot move the garage so that both structures are on the same lot.

The Board opened the discussion to the public for questions.

Carolyn Broym asked when was the last time there was a structure on lot eight (8).

April Jimenez stated that it was over twenty (20) years.

The Board closed the discussion to the public for questions.

The Board opened the discussion to the public for comments.

Wayne Macinrod was sworn in and stated the following:

1. He is the owner of Lot 8.
2. He objects to the garage. Both are claiming ownership of the garage. He is not sure that that the property surveys match. He does agree that the garage is on both lots.

O-1: Survey, June 1, 2012

3. Concerned that the lot is undersized. He submitted minutes from September 6, 2012.

The Board had a discussion with regard to the legal title of ownership.

O-2: Title search

Mr. Baxter stated that O-2 is not a title search, it is a document search.

4. When purchased property, there was no title search, it was a foreclosure.

O-3: Judgment of foreclosure

5. Paid taxes on Lot 8 since he foreclosed. There were two (2) deeds, one (1) for his lot.

The Board had a discussion with Mr. Macinrod with regard to the documents.

Mr. Baxter stated that the survey is not certified. He also stated that the Deed did not have a block and lot number on them.

Mr. Baxter stated that it appears both surveys matched.

Mr. Macinrod stated that the town sold him tax sale certificate on Lot 8.

Mr. Macinrod asked for a postponement of this hearing so he can have an attorney present.

The Board continued discussion.

Mr. Arvantinos asked for a condition in the resolution that if anything is to happen with the garage, it should be resolved before any permits are issued.

Mr. Macinrod asked going forward with his application, would he need a subdivision.

The Board discussed previous similar cases with Mr. Macinrod.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Baxter asked Mr. Macinrod if he had objection to the house being built and why.

Mr. Macinrod stated he did not know if the property lines were correct.

Mr. Gallagher stated that based on Mr. Macinrod's certified survey, it matches the neighbor's certified survey.

Mr. Baxter asked Ms. Jimenez what year is her deed.

Ms. Jimenez produced a deed dated January 1986, it has two (2) tracts, Block 56, Lot 7.

The Board reviewed the deed dimensions.

Ms. Pezzullo asked Mr. Macinrod when he received the Tax Sale Certificate.

Mr. Macinrod stated he took assignment of the original certificate in 2003.

The discussion continued with regard to the Tax Sale Certificate.

Mr. Macinrod stated that all he wants is a buildable lot.

Mr. Baxter stated that it is only a buildable lot if he gets a variance.

Mr. Gallagher stated that there is evidence of two (2) lots and that the issue is the garage.

The Board continued discussions with regard to the garage.

Ms. Pezzullo questioned Mr. Macinrod.

Mr. Braswell stated that Lot 7 is its own lot.

Mr. Macinrod has an objection to the garage.

Mr. Braswell stated that the application is not for the garage.

Ms. April Jimenez said that her mom just wants to go home. She is not asking to repair the garage, she just wants to rebuild her home.

Ms. Pezzullo asked Mr. Macinrod if he had a problem with the applicant building the house.

Ms. Jimenez stated that Mr. Macinrod is not sure exactly what he owns. He thinks he may own part of Lot 7. He needs to figure that out before someone builds a structure.

Mr. Gallagher stated that Mr. Macinrod has not given any evidence towards that.

April Jimenez stated that she has an appointment with an attorney for adverse possession. She stated that her mom wants to go back home and that the garage issue will be resolved.

Ms. Pezzullo stated that they said they were not going to touch the garage at all.

Ms. Jimenez said that they will leave the garage alone.

Mr. Gallagher said that she stated earlier that the garage was going to be repaired. The garage looks like it is ready to fall down based on the evidence.

April Jimenez stated that they had a contractor look at it and that it can be repaired.

Ms. Jimenez said they will leave the garage alone, if it collapses, it's no longer an issue.

Ms. April Jimenez asked Mr. Macinrod when was the last time the garage was used.

Mr. Macinrod – never.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Braswell asked if the garage does fall over, can the owner of Lot 8 have a claim against you for hazardous structure. He stated the best bet is to get rid of the garage because it is a liability.

Betty Jimenez stated that she is emotionally attached to the garage because her father built it. She stated that this was one lot that was split during will.

April Jimenez discussed moving forward with an attorney.

Mr. Macinrod stated that he wants the garage removed.

The Board discussed the application and resolution.

Mr. Kutosh suggested a condition in resolution with regard to no work on the garage.

Mr. Braswell asked if there were any questions with regard to Mr. Macinrod's testimony.

April Jimenez again asked Mr. Macinrod when the last time the garage was used.

Mr. Macinrod stated he never used the garage or entered the garage.

The Board opened the discussion for public comments.

Carolyn Brojan-12 Miller St. She stated that she has lived next door for eleven (11) years and that the garage looks the same as when she bought her house in 2002.

Mr. Tom Walzewski was sworn in. He has no problem with regard to the application.

There were nor further comments from the public.

Mr. Baxter stated that the Board cannot grant any relief with regard to the garage. He suggested a note in the resolution that if any applications are made to do work on the garage, they should be aware that more of it is on the neighboring property.

The Board discussed the application with regard to parking.

Mr. Baxter stated that the motion is to approve the rebuilding of the home in conformance with the plans, such that the five (5) conditions on the old footprint will be the same, contained in the Board Engineer's review letter. Also that the variance be granted for constructing a new dwelling on an unapproved road. That the minimum setback for the stairs is 1.8 feet where 3 feet are required, on the west side. The building coverage is approved at 38% where 33% is permitted. Other than the conditions spoken about earlier that appear in Sections C through G of the And to permit parking underneath for two (2) cars in a stacked configuration. The Board is not ruling on the garage because it does not have jurisdiction because it straddles the line between the two (2) lots. The fact that the Board is doing so, is not to be interpreted either as permission or any direction as to what is to be done with the garage. The construction official is to be aware of the fact that the garage straddles the line and therefore will take that into account if any permit is required with regard to that. The building permit will be for the house only.

Mr. Kutosh offered a motion to approve the application, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Mullen, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: Mr. Gallagher

The Board took a five minute break.

**ZB#2013-5 Ostermiller
41 Shrewsbury Ave Block 49 Lot 2**

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Baxter stated that he has reviewed the publication and the notice to the property owners and they are all in order. It is his opinion that the Board has jurisdiction to proceed. Mr. Ostermiller has asked to carry the application to the September meeting.

The Board briefly discussed the agenda.

Mr. Kutosh offered a motion to approve postponement request to carry hearing to the September meeting. Seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Mr. Braswell
NAYES: None
ABSTAIN: None

**ZB#2013-8 Luchnick
86 Washington Ave. Block 82 Lot 3**

Mr. Baxter stated that the Notice is proper with two (2) exceptions, Proof of Service, which has been corrected. The other, which is the name on the service list, Bay Avenue Developers, the certified mailing receipt shows a different address, and there is no proof that they have received it. It is up to the Board whether to proceed.

Mr. Gallagher moved to take jurisdiction and stated that the service is not defective.

Mr. Gallagher asked the applicant if she agrees with the decision to accept jurisdiction and that the service is not defective.

Mr. Baxter stated that if someone appeals and says there is a mistake...

Ms. Luchnick stated that she will take her chances on appeal.

Mr. Braswell seconded the motion and it was approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Mr. Braswell
NAYES: None
ABSTAIN: None

The following documents were marked into evidence this evening.

- A-1 Variance application
- A-2 Zoning permit application (denied 7/2/13)
- A-3 Survey by Charles Surmonte dated 9/10/12
- A-4 Architect plans
- A-5 a thru l photos

- B-1 Board Engineer letter

Ms. Luchnick was sworn in.

Mr. Baxter stated that the variance requested a lot area of 2,000 square feet where 3,750 is required, lot frontage of 25 feet where 50 feet is required, front yard setback of 1.8 feet where 20 feet is required, side yard setback of 1.2 and 4.3 feet where 6 and 8 feet are required and building coverage of 48.4% where 33% is permitted. There is a new variance for side yard setback of .8 feet where 3 feet is required, and that is for the stairs.

The Board discussed the application with Ms. Luchnick.

Mr. Gallagher stated that there is no requirement to change the plans to show the driveway.

The Board discussed the driveway with Ms. Luchnick.

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Baxter asked to put language in Resolution with regard to driveway.

Ms. Luchnick stated that she will show the driveway on the plans, it is a one (1) car garage.

Mr. Keady stated that the grading is part of the construction process.

Ms. Luchnick stated there will be 12 inches of gravel with a bush in front.

The Board waived requirement for street trees.

Mr. Keady asked Ms. Luchnick if the steps would be on the side of the house.

Ms. Luchnick stated that this correct. She described the stairway entrance with deck.

Mr. Maresca stated that this property is in a transition zone, no setback requirements in the business district on her side yard. There is no real issue.

Mr. Kutosh offered a motion to approve the application seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Gallagher offered a motion to approve the July Zoning Board Meeting Minutes, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo,

NAYES: None

ABSTAIN: None

**ZB#2012-5 Camco Resources, Inc.
Block 66 Lots 12-13.01 – 62 Fifth Street
Communications**

Mr. Baxter stated that there is a letter dated July 19th from Martin McGann, Esq. to the Board. Mr. McGann represents the seller to Camco. This is a case that was partially heard in February. The case was not finished due to the fact that the public did not have a chance to ask questions nor did the public have a chance to testify.

At the May 2nd meeting, there was a Motion to adjourn the matter to September 5th. There was a re-notice and re-publish. Part of the Motion was to provide the Board with transcripts by July 31st. Failure to comply with that requirement would result in the Board considering dismissal of the case at the August meeting. The letter from Mr. McGann stated that the sellers are withdrawing their consent for the applicant to proceed.

Mr. Baxter stated that the Board cannot act on Mr. McGann's letter.

Mr. Gallagher asked if the applicant received the Notice asking for the transcript by July 31st.

Mr. Baxter stated that he dictated and sent a letter to the applicant.

Mr. Gallagher offered a motion to dismiss the case, seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: Mr. Mullen

**Borough of Highlands
Zoning Board
Regular Meeting
August 1, 2013**

Mr. Baxter will prepare a resolution for adoption at the next meeting.

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

ROLL CALL:

AYES: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN:

The Meeting adjourned at 10:21 P.M.

Carolyn Cummins, Board Secretary