

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
September 5, 2013**

Meeting Location: Highlands Elementary School, 360 Navesink Ave, Highlands, NJ 07732

Mr. Braswell called the meeting to order at 7:34 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:** Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,  
Ms. Maresca, Mr. Braswell

**Late Arrival:** Ms. Pezzullo arrived at 7:17 p.m.

**Absent:** Mr. Kutosh

**Also Present:** Carolyn Cummins, Board Secretary  
Greg Baxter, Esq., Board Attorney  
Robert Keady, P.E., Board Engineer  
Richard Craemer, P.P. of T & M Associates

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**ZB#2013-3 Cierco, Stephen – Request for Postponement to Nov. 7<sup>th</sup>  
Block 54 Lot 3.01 – 146 Bay Avenue**

Mr. Braswell stated that the applicant requested a postponement to the November 7<sup>th</sup> meeting.

Mr. Gallagher stated that the applicant must serve public notice.

Mr. Baxter will contact the applicants Attorney.

Mr. Gallagher offered a motion to approve the postponement request to the Nov 7<sup>th</sup> meeting conditioned upon the applicant serving notice. Seconded by Mr. Fox and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Maresca,  
Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

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**ZB#2013-9 Freeman – Withdrawal of Application  
Block 100 Lot 26.45 – 45 Gravelly Point Road**

Mr. Braswell stated that the applicant has withdrawn his application.

Mr. Gallagher offered a motion to dismiss the application as a result of the withdrawal. Seconded by Mr. Knox and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,  
Ms. Maresca, Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

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**ZB#2012-5 Camco Resources  
Block 66 Lots 12-13.01 – 62 Fifth Street  
Resolution Dismissing Application**

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Mr. O'Neil offered the following Resolution and moved on its adoption:

**RESOLUTION DISMISSING USE VARIANCE APPLICATION  
OF CAMCO RESOURCES**

WHEREAS, CAMCO RESOURCES, INC. (hereafter "CAMCO"), a New Jersey corporation, was a contract purchaser of property located at 62 Fifth Street (Block 66, Lots 12, 12.01, 13 and 13.01 on the Highlands tax map); and

WHEREAS, CAMCO filed an application with the Highlands Zoning Board of Adjustment seeking a use variance to construct a 12-unit townhome on the aforementioned property; and

WHEREAS, the Zoning Board reviewed the application at its meeting on December 6, 2012, and set a hearing date for January 3, 2013; and

WHEREAS, on January 3, 2013, as a result of an error by the applicant in notification to certain property owners, the Zoning Board adjourned the hearing until February 7, 2013; and

WHEREAS, the February 7, 2013, meeting was held in the local elementary school as a result of Superstorm Sandy having incapacitated the municipal building, but the recording devices available for that evening did not work, as a result of which the matter was not able to be heard, but was rescheduled to be heard on March 7, 2013; and

WHEREAS, testimony was taken in the matter at the Board's meeting on March 7, 2013, with the case scheduled to continue the following month (April 4, 2013); and

WHEREAS, at the Board's meeting of April 4, 2013, the case was adjourned until May 2, 2013, at the request of the applicant; and

WHEREAS, at the May 2, 2013, meeting, at the request of the applicant, the case was further adjourned to the September 5, 2013, meeting; however, that adjournment request was granted on the following conditions:

1. The applicant must obtain an updated 200-foot property owner list, and re-serve notice to all property owners.
2. The applicant must republish notice of the hearing.
3. On or before July 31, 2013, the applicant must provide a transcript of the March 7, 2013, hearing to the Board Secretary (because of the 6-month passage of time, the board members needed to familiarize themselves with the testimony), so that the board could copy and distribute the transcripts to the board members at the August 1 meeting, thereby giving the members time to read the transcript before the September 5 meeting.
4. Failure to comply with the timely providing of the required transcript would result in the Board considering dismissal of the case at its August 1, 2013, meeting.

AND, WHEREAS, the Board Attorney confirmed the conditions and adjournment from the May 2 meeting by letter to the applicant's attorney dated May 6, 2013; and

WHEREAS, the Board did not receive any transcript of the March 7, 2013, hearing, as a result of which, at its August 1, 2013, meeting a motion to dismiss the case without prejudice for failing to comply with the timely providing of the required transcript was passed; and

WHEREAS, this resolution shall memorialize the motion made and adopted at the Zoning Board's meeting on August 1, 2013.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of CAMCO RESOURCES, INC. be and the same is hereby dismissed without prejudice.

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AND BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded by the Board Secretary to the applicant's attorney, and notice of this dismissal shall be published in the newspaper by the Board.

AND BE IT FURTHER RESOLVED that any unused escrow funds of the applicant, after satisfying any outstanding invoices by the Board's professionals and any publication costs, shall be refunded to the applicant.

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

ROLL CALL:

AYES: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. O'Neil, Ms. Maresca, Mr. Braswell

NAYES: None

ABSTAIN: None

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**ZB#2013-10 Hendrickson, S.  
Block 41 Lot 4 – 61 Bay Ave  
Application Review & Set P.H. Date**

**Present: Mrs. Hendrickson**

The Board reviewed the application and the following was stated:

1. There are two single family structures and shed on property.
2. The applicant has a pre-existing non-conforming use which was damaged by storm.
3. The taxes are current.
4. The Secretary will provide copies of the application for the meeting.
5. The applicant will provide pictures of the house.
6. If this is a use variance she will need to have Professional Planner to provide testimony.
7. The applicant has architectural plans and will provide them to the board.
8. The application is for the same building footprint, two houses being elevated and will need steps which may require a variance.
9. The applicant needs to obtain survey and provide to board.
10. Applicant must provide dimensions of shed and setbacks.
11. Board Attorney explained notice requirements to applicant.
12. Applicant requested public hearing date be set in November.
13. Applicant must submit requested documents at least 10 days prior to hearing.

Mr. Gallagher offered a motion to schedule this matter for a public hearing at the November 7<sup>th</sup> meeting. Seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo,  
Mr. Braswell**

**NAYES: None**

**ABSTAIN: None**

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**ZB#2013-11 Davis, Patricia & James  
Block 46 Lot 5 – 139 Bay Avenue  
Application Review**

**Present: James & Patricia Davis**

The Board reviewed the application and the following was stated:

1. The variance application is amended to reflect that the applicant is the property owner.
2. Indicate property is in the B-2 on the variance application.
3. Four Family units currently exists and will remain 4 units.
4. This is a pre-existing non-conforming use.
5. The building footprint will remain the same.
6. The applicant will provide photographs.
7. The survey with dimensions from 1952 was submitted.
8. The applicants have owned the property for over 30 years.
9. The applicants do not reside at the site.

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10. Building permits have been issued and work is all done.
11. The applicant wants to raise the structure but needs to hire an engineer.
12. Discussion regarding BFE occurred.
13. Board questioned how building permits and certificates of occupancy were issued.
14. Applicant must serve public notice.
15. Applicant should wait until he has plans to raise structure.

Mr. O'Neil offered a motion to schedule this matter for a public hearing on October 3<sup>rd</sup>.  
Seconded by Mr. Fox and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Knox, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo,  
Mr. Braswell  
**NAYES:** Mr. Gallagher  
**ABSTAIN:** None

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**ZB#2013-12 O'Reilly, Michelle  
Block 78 Lot 1 – 20 Barberie Avenue  
Application Review & Schedule P.H. Date**

**Present:** Ms. O'Reilly

**Conflict:** Mr. Gallagher stated that he has to recuse himself.

The Board reviewed the application and the following was stated:

1. The applicant will provide photographs.
2. Cantilever front porch.
3. Garage not being demolished.
4. Application requires variance for lot coverage.
5. Applicant is squaring off front deck.
6. Applicant must serve public notice.

Mr. Fox offered a motion to schedule the public hearing for this application for the October 3<sup>rd</sup> meeting. Seconded by Ms. Pezzullo and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo,  
Mr. Braswell  
**NAYES:** None  
**ABSTAIN:** None

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**ZB#2013-7 Jimenez, Betty  
Block 56 Lot 7 – 3 Private Road  
Approval of Resolution**

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

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

WHEREAS, the applicant, BETTY JIMINEZ, is the owner of a residential property at 3 Private Road in the Borough of Highlands (Block 56, Lot 7); and

WHEREAS, the applicant filed an application for bulk variance relief, seeking to replace her storm-damaged home and construct a new home raised out of the flood plain, and for related bulk variance relief; 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 1, 2013;  
and

WHEREAS, the Board heard the testimony of the applicant, BETTY JIMINEZ; her daughter, APRIL JIMENEZ MURDOCK; and her architect, CONSTANTINOS ARAVANTINOS; and

WHEREAS, two neighbors, CAROLYN BROULLON and THOMAS WALZEWSKI appeared and spoke in favor of the application; and

WHEREAS, another neighbor, WAYNE MACKINRODT testified in opposition, though his opposition dealt primarily with title questions which the board could not address; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Flood plain review application (1 page);
- A-3 Zoning Officer denial dated 6/21/13;
- A-4 6/1/13 survey by Richard Stockton;
- A-5 Elevation certificate dated 4/25/13 by Richard Stockton (2 pages);
- A-6 Architectural plans by Joseph Tinley, Jr. dated 7/2/13;
- A-7 Power of Attorney from Betty Jimenez to April Jimenez Murdock dated 12/12/12;
- A-8 package of photos, two to a page (7 pages);
- A-9 aerials from Google Earth (1 page);
- A-10 January 1986 deed into Jimenez for lot 7 in block 56;

AND, WHEREAS, the following exhibit was marked into evidence as a Board exhibit:

- B-1 Board Engineer review letter by ROBERT KEADY dated 7/26/13 (5 pages);

AND, WHEREAS, the following objector exhibits were marked into evidence:

- O-1 6/1/12 survey of Lot 7 by William Zieman;
- O-2 Information regarding title from Data Trace, inclusive of 12/27/74 deed from foreclosing bank to the Estate of Parker;
- O-3 Judgment granting title as a result of foreclosure of tax sale certificate on Lot 7;

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-2.02 Zone, which permits single-family homes.
2. The site currently contains a single-family home which was damaged during Super Storm Sandy, together with a detached garage which straddles the property line, the bulk of the garage being on lot 8. Though the home sustained substantial damage during the storm, the garage sustained little if any damage.
3. Based upon advice the applicant received from architects and builders, the applicant has decided that it makes more sense to demolish the existing home and rebuild a similarly-sized home on virtually the identical foundation/footprint having similar structural dimensions, rather than try to repair it.
4. A substantial portion of the hearing was spent discussing the garage, which straddles the westerly lot line separating the JIMINEZ property (Lot 7) from Lot 8. The bulk of the garage, including the bulk of the vehicle entrance to the garage, is on Lot 8, and the only reasonable vehicular access to enter the garage is on Lot 8.
5. BETTY JIMINEZ testified, and the Board accepts her testimony as accurate, that the garage was built by her father, to go with the house on Lot 7, and belongs to her. Unfortunately, most of the garage sits on the adjoining lot to the west. There is no recorded agreement regarding the ownership of the garage or the use of or access to it.

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6. The Board made it clear that it has no jurisdiction to grant relief regarding any improvements to that garage, since the garage is not fully contained on the applicant's lot.
7. The garage has been there since at least 1950. MRS. JIMINEZ uses the garage, primarily for storage. A car has not been in the garage for at least five or six years. The neighbor on Lot 8 has never used the garage or been inside it.
8. This home has been the lifetime home of the applicant's daughter, APRIL JIMINEZ MURDOCK, and has been in BETTY JIMINEZ'S family since at least 1950.
9. The new home will have essentially the same footprint as the old home, the only exception being the squaring off of two corners of the home.
10. It would be an undue hardship to deny the applicant the use of her property for a home in which she has lived for approximately 50 years.
11. The applicant seeks the following variance relief:
  - A. Construction of a new dwelling on an unimproved road, which is not permitted by Section 21-77 of the borough ordinances.
  - B. Lot area of 2,340 square feet where 4,000 square feet is required (the proposal is the same as the existing dimension).
  - C. Lot frontage of 45 feet where 50 feet is required (the proposal is the same as the existing dimension).
  - D. Lot depth of 52 feet where 75 feet is required (the proposal is the same as the existing dimension).
  - E. Front yard setback of 12 feet where 20 feet is required (the proposal is the same as the existing dimension).
  - F. Side yard setback of 4.9 feet/4.9 feet where 6 feet/8 feet is required (the proposal is the same as the existing dimension).
  - G. Side yard setback on western side of property of 1.8 feet where 3 feet is required. This variance is requested for a new condition, not a preexisting one.
  - H. Rear yard setback of 8.3 feet where 25 feet is required (the proposal is the same as the existing dimension).
  - I. Building coverage of 38% where 33% is permitted. The existing structure is 37.7% building coverage, which is virtually the same as the proposal.
12. The new structure will have space under the structure for two cars in a stacked configuration, thereby meeting the RSIS standard. There will be gravel in front of the house, which can be used for access to the under-structure parking.
13. The white fence on the Private Way side of the home will be removed.
14. The rebuilding of this home with a new home will improve the subject property, as well as the neighborhood, which finding is supported by the residential neighbors who appeared. The application, therefore, will both preserve the neighborhood character, but also clean up the property and improve both the subject property and the neighborhood.
15. This application was made as a result of damage caused by Super Storm Sandy, which devastated many properties within the borough. The applicant is, basically, seeking to replace her storm-damaged home with a newly constructed one. As a result, the Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) has been met.
16. As to the negative criteria, the Board finds that some of the variance relief requested ( i.e., side yard setback for stairs of 1.8 feet where 3 feet are required and building coverage of 38%, where it was 37.7% and 33% is required) is *de minimus*. All

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other relief, except the variance to construct a new home on an unimproved road, is for conditions which exist with the current home. The new home will be using the same footprint, but for the squaring off of a very small portion of the side yard, where the current side yard setback will not be further exacerbated.

17. The Board specifically takes no action with respect to the garage straddling the property line between Lots 7 and 8. The Board takes no action with respect to the garage because it does not have jurisdiction to permit any improvement to that structure, as the applicant had planned, because the structure is not fully contained on the subject lot. The Board's decision not to take any formal action with respect to the garage shall not, however, be construed as an approval of the garage remaining in its current condition.

WHEREAS, the application was heard by the Board at its meeting on August 1, 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 BETTY JIMENEZ to replace her existing storm-damaged home and construct a new home to be raised out of the flood plain, all as set forth on the applicant's plans be and the same is hereby approved. Variances are hereby granted for the enumerated bulk variances set forth in paragraph 11 above. A waiver is also granted from the requirements of Ordinance 21-65.10B, as there is insufficient area on the property in which to place any new trees;

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

- A. The white fence on the Private Road side of the residence shall be removed.
- B. A parking area shall be provided underneath the structure, with access, in a stacked configuration which will accommodate two cars.
- C. The Construction Official is to note that the garage is not fully contained on the subject lot but, rather, for the most part, is on the neighboring Lot 7, as a result of which the Construction Official should not entertain any building permit regarding that garage.
- D. Any damage caused to curbing, sidewalk or pavement during construction shall be repaired or replaced to the satisfaction of the borough.
- E. Prior to construction, a grading plan shall be submitted for review and approval.
- F. A letter documenting the basis for the relief under N.J.A.C. 7:7-7.2(a)(8) regarding permit by rule shall be submitted. A permit by rule notice shall be supplied.
- G. All improvements shall be subject to compliance with FEMA, NJDEP, and the Borough of Highlands Land Use Ordinance, and the Board defers to the Flood Plain Officer and Construction Official for further review of elevations and type of construction.

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

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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**ZB#3013-8 Luchnick, Allison  
Block 82 Lot 3 – 86 Washington Ave  
Approval of Resolution**

**RESOLUTION APPROVING BULK VARIANCES  
FOR LUCHNICK**

WHEREAS, the applicant, ALLISON LUCHNICK, is the owner of a residential property at 86 Washington Avenue in the Borough of Highlands (Block 82, Lot 3); and

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WHEREAS, the applicant filed an application for bulk variance relief, seeking to raise her single-family home above the base flood elevation and add to her existing foundation, and for related bulk variance relief; 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 August 1, 2013; and

WHEREAS, the Board heard the testimony of the applicant, ALLISON LUCHNICK; and

WHEREAS, no objectors appeared to either ask questions or voice any objection to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Zoning permit application dated 7/2/13
- A-3 Survey by Charles Surmonte dated 9/10/12;
- A-4 Architectural plans prepared by Tom Peterson (1 page);
- A-5 9 photographs (A through I);

AND, WHEREAS, the following exhibit was marked into evidence as a Board exhibit:

- B-1 Board Engineer review letter by ROBERT KEADY dated 7/26/13 (5 pages);

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-2.01 Zone, which permits single-family homes.
2. The site currently contains a single-family home which is below the base flood elevation, and the property owner seeks to raise her home above the base flood elevation and put steps on the side of the house.
3. The newly raised home will have almost the same footprint as the existing home.
4. It would be an undue hardship to deny the applicant the ability to raise her home above the flood elevation, especially considering the recent Super Storm Sandy and FEMA's pronouncements on base flood elevations and the insurance coverage and rates applicable to same.
5. The applicant seeks the following variance relief:
  - A. Lot area of 2,000 square feet where 3,750 square feet is required (pre-existing condition).
  - B. Lot frontage of 25 feet where 50 feet is required (pre-existing condition).
  - C. Front yard setback of 1.8 feet where 20 feet is required (pre-existing condition).
  - D. Side yard setback for principal structure of 1.2/4.3 feet where 6 feet/8 feet are required (pre-existing condition).
  - E. Side yard setback for stairs of .8 feet where 3 feet is required.



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F. Building coverage of 48.4% where 33% is permitted (pre-existing condition).

6. This application was made as a result of damage caused by Super Storm Sandy, which devastated many properties within the borough. The applicant is seeking to raise her home above the base flood elevation. As a result, the Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) has been met.

7. As to the negative criteria, the Board finds that most of the variance relief requested ( i.e., lot area, lot frontage, front yard setback, and building coverage) is for pre-existing conditions which are not changing by this application. The only other relief requested is for the side yard setback for stairs, the need for which is occasioned by the increased height of the building, above the base flood elevation. That relief, therefore, is *de minimus*.

8. There is insufficient area on the property to place any trees of any size, as a result of which the Board waives the requirement for any street trees, however the applicant will plant a shrub in lieu of the same.

9. The new driveway approaching the garage, with curb cut, needs to be shown on the plans.

10. The Board finds that, because the home needs to be increased above the base flood elevation, the applicant has complied with the positive criteria by demonstrating that the relief requested will promote a public purpose under the Municipal Land Use Law (N.J.S.A. 40:55-2), thereby providing improved community planning that benefits the public, and the benefits of this variance substantially outweigh any detriment. In fact, the Board does not see any detriment.

11. As to the negative criteria, the variances requested, all but one of which are for preexisting conditions, and the remaining one being *de minimus* as to the side yard setback for the steps, can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. There is no deleterious impact in granting these variances on surrounding properties, and these variances will not cause damage to the character of the neighborhood, and certainly will not constitute a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on August 1, 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 ALLISON LUCHNICK to raise her home out of the flood plain in accordance with the plans submitted is hereby granted. Variances are hereby granted for the preexisting conditions set forth above in paragraphs 5A, B, C, D and F; and a variance is also granted for the side yard setback for stairs of .8 feet, where 3 feet are required. A waiver is also granted from the requirements of Ordinance 21-65.10B, as there is insufficient area on the property in which to place any new trees, however the applicant shall plant a shrub in lieu of the same;

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

A. Any damage caused to curbing, sidewalk or pavement during construction shall be repaired or replaced to the satisfaction of the borough.

B. The new driveway, with curb cut, shall be shown on the plans before any permit is issued.

C. A letter documenting the basis for the relief under N.J.A.C. 7:7-7.2(a)(8) regarding permit by rule shall be submitted. A permit by rule notice shall be supplied.

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

**ROLL CALL:**

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

**NAYES: None**

**ABSENT: None**

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**ZB#2013-2 Hennessey, E.  
Block 41 Lot 8 – 75 Bay Avenue  
Hearing on New Business**

**Present:       None**

Mr. Baxter explained the letters he received. This was originally scheduled then carried to tonight. In 1990 Zoning Board granted a use variance and both he and the applicants attorney thought that the use was never abandoned. There was a different use for 10 years on this site. Abandoned use is the issue and they are both not sure. They had not planned on proceeding this evening. A summons that was issued has been withdrawn for operating without a mercantile license. A mercantile license was not issued.

Mr. O'Neil spoke of previous uses on this site.

Mr. Baxter stated that we need to hear testimony. Need to figure out if use variance is needed because automotive use is prohibited. Does the 1990 variance die if use was abandoned? He then spoke about case law. He stated that he would do legal research on this matter.

Mr. Gallagher offered a motion to carry the hearing on this application to the October 3<sup>rd</sup> meeting. Seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

**AYES:           Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,  
                  Ms. Pezullo, Mr. Braswell**

**NAYES:       None**

**ABSTAIN:     None**

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**ZB#2013-5 Ostermiller, Troy  
Block 49 Lot 2 – 41 Shrewsbury Ave  
Hearing on New Business**

**Present:       Troy Ostermiller  
                  Catherine Franco, A.I.A, P.P.**

Note: Notice was reviewed and approved at the last meeting.

The following documents were marked into evidence this evening:

- A-1: Variance Application, 5 pages;
- A-2: Elevation Certificate;
- A-3: Zoning Denial dated 5/20/2013;
- A-4: Architectural Plans with survey by C. Franco dated 8/26/2013;
- A-5: Drawing/photo/tax map.

B-1: Board Engineer letter dated 7/26/2013.

Troy Ostermiller of 117 Poricy Lane, Red Bank, NJ was sworn in.

Catherine Franco of 150 Monmouth Ave, Atlantic Highlands, NJ was sworn in.

Richard Craemer, P.P of T & M Associates was sworn in.

Ms. Franco stated that currently there is a single-family storm damaged structure on the property. The applicant wants to demolish the existing single-family structure and construct a new two-family structure. There is a pre-existing bulk variance for lot width. They will be within the setbacks. This is a use variance because going from a single-family to a two-family use.

Mr. Mullen stated that density is an issue.

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Mr. Craemer stated this does not require density variance.

Ms. Franco explained that because the house was substantially damaged by the hurricane if they don't raise out of flood zone it's not economically feasible. If they raise it's a more positive criteria. There is no bulk and no parking variance required. The negative is if they don't raise the structure will never conform to FEMA requirements.

Mr. Ostermiller stated that the structure was more than fifty percent damaged.

Mr. Gallagher questioned why a two-family is proposed.

Mr. Ostermiller explained that it's a rental property and want to rent two units to meet the numbers for project.

Mr. O'Neil stated that Shrewsbury Avenue is coming along and the proposed is better than what exists. There are other two-family's in that area.

Ms. Franco stated that on the last page of Exhibit A-5 colored in orange show multi-families in the area. She described the block and lots with more than a single-family use. Shrewsbury is not a prime street.

Mr. Mullen disagreed and stated that the lot area is only sufficient for a single-family.

Ms. Franco stated that they are meeting all the bulk requirements. Lot coverage is 75% and going to 40% and that the proposed two-family will look like a single-family. Building coverage is 30.3% and will be 30.2%. Parking will be provided under the structure. Four parking spaces will be under structure and two will be in driveway. Each unit is a one bedroom unit.

Mr. Ostermiller does not want any two bedrooms.

Ms. Franco explained that they are actually two bedroom units.

Mr. O'Neil – look what we get meaning the propose new structure.

The Board has a discussion about the application.

Ms. Franco explained the negative criteria as not having any negative impact to the neighborhood. This will actually enhance and will comply with flood regulations. There are other multi-family units in the area. This will not impair the intent of the zone plan. The positive by promoting D-Variance does not conflict. Section 2e, will contribute to conform to regulations. Section 3i, this variance promotes visual environmental. It will keep in character with the neighborhood. If we keep what is there it will not conform to FEMA. This is suited for a two family.

Mr. Ostermiller stated that he rents to year round tenant. If the application is not approved it will stay. The structure can be lifted will have to demolish.

Ms. Franco stated the property is located in the A Zone and their issues with construction so new construction would be better. The only option for client is a two-family. He is taking a loan out because he did not receive any assistance from FEMA because it's not his primary residence.

Mr. Ostermiller stated that he grew up in Highlands. He has owned this house for 17 years. He currently lives in Red Bank.

Mr. O'Neil stated that this is a positive thing in that neighborhood.

#### Public Questions

Barbara Ianucci of 28 Shrewsbury Ave stated that she had a two-family and built it for a 1 unit. She then questioned zone boundary line.

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Ms. Franco stated that the zone changes at South Street.

Barbara Ianucci asked where does it change to a two-family.

Ms. Franco said no it does not.

Barbara Ianucci stated that the block and lots that were testified are all occupied except one.

Ms. Franco further explained that block 44 lot 8 looks occupied.

Unidentified Man agreed that it was occupied.

Doug Card of 28 Shrewsbury questioned asked if Ms. Franco reviewed all building permits for Shrewsbury Avenue.

Ms. Franco – no

Doug Card stated that they are all one families.

There were no further questions from the public.

#### Public Comments

Doug Card was sworn in and stated that the Master Plan does not allow two-families. Shrewsbury Avenue is slowly becoming one families. This is a hindrance to the neighborhood. He spoke against the application.

Mr. O'Neil disagreed.

Ms. Pezzullo stated that she has problem with rentals not owner occupied.

Mr. O'Neil stated that Mr. Ostermiller is not an absentee landlord.

Ms. Pezzullo stated that the neighborhood looks like one family homes. This would also create double traffic.

Mr. Fox stated that the large houses are on water side of street. It's clear difference in economics for homes on waterside. What is going to happen if the applicant can't build two-family?

Mr. Ostermiller said he could just rent out the existing by fixing it up.

Mr. Fox stated that the applicant should be allowed.

Barbara Ianucci stated she converted a two-family into a single-family because they didn't want a two-family.

Mr. O'Neil stated that Ms. Ianucci didn't ask the Zoning Board to make decision.

Doug Card agrees with Mr. O'Neil

Mr. Mullen is not in favor of the application. Small lots support small density. The Master Plan thinks as a single-family community. This is not owner occupied and is not appropriate.

Mr. Gallagher agreed with Mr. Mullen. There are a handful of two-families in area. He questioned if approved would this set a precedent. He is not satisfied that this site is suited for a two-family.

Mr. O'Neil stated that this town is in need of housing stock. People are displaced. If you leave house as is it's like a smile with a missing tooth. There are multi-family units in the area. This

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is a good project and the applicant is only short on lot frontage. This application should be approved.

Mr. Braswell stated that ordinarily he opposes multi-family but looking at this it looks like an improvement and will attract better tenants. He asked if there structure can be designed to make easy conversion to single-family.

Ms. Franco – yes

Mr. Baxter stated that a variance runs with land.

Mr. Knox stated that if we don't approve the property will go downhill. The application looks like other houses and fits the character of the street.

Mr. Ostermiller rents through realtors.

Mr. O'Neil offered a motion to approve the application. Seconded by Mr. Fox and failed approval on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Fox, Mr. Knox, Mr. O'Neil, Mr. Braswell,**

**NAYES: Mr. Gallagher, Mr. Mullen, Ms. Pezzullo**

**ABSTAIN: None**

Motion for approval failed because a use variance requires five affirmative votes.

Ms. Maresca stated that Ms. Ianucci purchased her house as a two-family and further spoke of other multi-family in the neighborhood. She is a licensed Relator and stated that the proposed is an improvement.

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Approval of Minutes

Mrs. Cummins stated that the August Minutes were not complete.

Mr. O'Neil offered a motion to adjourn the meeting. Seconded by Mr. Fox and all were in favor.

The meeting adjourned at 9:37 p.m.

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Carolyn Cummins, Borough Clerk