

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
October 3, 2013**

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

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: Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. Braswell,
Ms. Maresca

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

Also Present: Carolyn Cummins, Borough Clerk
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer
Martin Truscott, P.P.

**ZB#2013-13 Korman, David
Block 101 Lot 28 – 19 Locust Street
Application Review & Schedule Public Hearing Date**

Present: David Korman

The Board reviewed the application and the following was stated:

1. The proposed will have new foundation.
2. The proposed side yard setbacks are 3 ft/2ft.
3. The front yard setback 2ft and rear is 20 ft.
4. Board Engineer stated that the application will require variances for front yard, rear yard and side yard.
5. The setback is the average of lots within 200 feet on same block.
6. The applicant will take pictures of the homes on same block to show average of front yard setbacks.
7. The applicant must serve public notice for the hearing.
8. Building coverage variance required for 50%.
9. Lot coverage is a possible variance.
10. Need to sketch proposed driveway on survey.
11. Steps, the board needs to know the location of the stairs.
12. The applicant must provide something to show the stairs.
13. Have you builder prepare plan on applicants survey.

Mr. Gallagher offered a motion to schedule this matter for a public hearing on November 7th.
Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2013-5 Ostermiller, Troy
Block 49 Lot 2 – 41 Shrewsbury Avenue
Resolution Denying Application**

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

10/3/13

**RESOLUTION DENYING USE VARIANCE
FOR OSTERMILLER AT
41 SHREWSBURY AVENUE**

WHEREAS, the applicants, Troy and Kerry Ostermiller, are the owners of property at 41 Shrewsbury Ave., Highlands, New Jersey (Block 49, Lot 2); and

WHEREAS, the applicants plan to demolish their existing one-family home, which suffered substantial damage during Superstorm Sandy, and construct a two-family home; 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 September 5, 2013; and

WHEREAS, the Board heard the testimony of TROY OSTERMILLER and CATHERINE FRANCO, Architect and Planner; and

WHEREAS, two neighbors, BARBARA IANUCCI and DOUG CARR, appeared to ask questions and to object to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (5 pages);
- A-2: Elevation certificate dated 1/14/13
- A-3: Zoning Officer's denial notice dated 5/20/13
- A-4: Architectural plans (3 pages), with survey, prepared by Catherine Franco dated 8/26/13
- A-5: Photos and rendering, in booklet, by Catherine Franco

WHEREAS, the Board marked into evidence the following exhibits:

- B-1 Board Engineer review letter dated 7/26/13

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

1. The applicants are the owners of a single family home in the R-2.02 Zone.
2. The applicants seek to demolish the existing structure, which was substantially damaged in Superstorm Sandy and construct a three-story two-family residence on the premises with parking, but no living space, on the ground level.
3. The application requires a use variance because two-family homes are not

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permitted in this zone. Only single-family detached dwellings are permitted.

4. The site is 4,000 square feet in size, which meets the lot area requirement in the zone.

5. The lot is 40 feet in width, where 50 feet are required for a single family home.

6. The depth of the lot is 100 feet, which meets the R-2.02 requirement of 75 feet.

7. The requirement for front yard setbacks in this zone is 20 feet. 22 feet are proposed.

8. The proposed rear yard is 30 feet, where 20 feet are required.

9. The proposed side-yard setbacks are 9 feet/9 feet, where 6/8 feet are required.

10. Lot coverage is proposed at 36.7%, where a maximum of 75% is permitted. Building coverage is proposed at 26%, where a maximum of 33% is permitted.

11. All of the setback requirements above are for a single-family home in the R-2.02 Zone.

12. The exhibit showing properties on Shrewsbury Avenue and nearby streets showed that there were no other two-family homes fronting on the street. There was one multi-family use fronting on Jackson Street, at its intersection with Shrewsbury Ave.

13. The borough's Master Plan does not allow or recommend two-family homes on Shrewsbury Avenue in this block.

14. Testimony was received, and some of the board members concurred from their observations, that Shrewsbury Avenue is becoming a single-family area, and that the borough is moving away from two-family homes. One resident, DOUG CARR, testified that he had checked the permits issued recently for that area, and all of them in that area were for single-family custom homes. The applicant's expert testified that she had not reviewed or seen any permits regarding construction on Shrewsbury Avenue.

15. The subject home was damaged by more than 50%. The applicant had planned to reconstruct the building, rather than improve it; but, for financial reasons, determined it would be more financially feasible to have two rental units, rather than one. For the past many years the applicant/owner has rented the property and has not resided in it. He had no plans to reside in the property if it was approved for a two-family.

16. The applicant's expert testified that Shrewsbury Avenue was not a prime street in the borough. The Board rejects that testimony.

17. In order to obtain a use variance, the applicant must prove special reasons as part of

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the positive criteria necessary under N.J.S.A. 40:55D-70d. The fact that the applicant would be able to generate more rental revenue if there were two units, rather than one, is not a special reason.

18. No proofs were presented that the refusal by the Board to grant the use variance would result in undue hardship.

19. Under the negative criteria required to be proved by the applicant for a use variance, there must be proof that the variance would not substantially impair the intent and purpose of the zoning plan and ordinance. As previously stated, the granting of the requested variance would conflict with the borough's Master Plan. Additionally, it would be in direct conflict with the zoning ordinance, where only one-family homes are permitted.

20. When seeking a use variance, an applicant must also prove that the property is particularly suited to the proposed use, in conformance with the doctrines of Medici. No such proofs were provided. Additionally, the Board does not find that this property is particularly suited for a two-family home, rather than the permitted use of a one-family home.

21. The Board does not find that the proposed variance would not cause damage to the character of the neighborhood or constitute a substantial detriment to the public good, both of which findings would be required as part of the negative criteria necessary to obtain a use variance.

22. Though the motion made following the hearing was to grant the requested use variance, the vote was 4 in favor and 3 against, the effect of which is, according to statute, a denial of the use variance, since use variances require 5 affirmative votes

WHEREAS, the application was heard by the Board at its meeting on September 5, 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 TROY and KERRY OSTERMILLER for a use variance to demolish their existing one-family residence and construct a two-family residence at 41 Shrewsbury Avenue (Block 49, Lot 2) be and is hereby denied for the reasons set forth above.

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

ROLL CALL:
AYES: Mr. Gallagher, Mr. Mullen
NAYES: None
ABSTAIN: None

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

Present: None

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Mr. Baxter explained that the applicant didn't notice so the board has no jurisdiction. A summons was issued for operating without a mercantile license. The summons was withdrawn but since then a new summons has been issued with a new court date of next Tuesday. Question is do the interterm uses negate the use variance that was previously granted. If the Board

The Board had brief discussion regarding abandoned use issue.

Mr. Gallagher offered a motion to carry the public hearing to the November 7th meeting. Seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

**ZB#2013-11 Davis, P & J.
Block 46 Lot 5 – 139 Bay Avenue
Hearing on New Business**

Present: Patricia Davis
James Davis

Mr. Baxter reviewed the public notice and mailing receipts. He stated that three notices sent to wrong street address and so the applicant must provide proof that the those three property owners received the notice.

Ms. Davis stated that she will go home and printout the receipts and come back tonight.

**ZB#2013-12 O'Reilly, Michele
Block 78 Lot 1 – 20 Barberie Ave
Hearing on New Business**

Present: Michelle O'Reilly

Mr. Baxter stated that he has reviewed the public notice and mail receipts and finds them to be in order; therefore the board has jurisdiction to proceed.

The following documents were marked into evidence:

- A-1: Variance Application
- A-2: Zoning Denial
- A-3: Blowup of survey
- A-4: Two pictures on one sheet

B-1: Board Engineers Review Letter dated 9/27/13.

Michele O'Reilly was sworn in.

Larry MacPhee of 10 Nautilus Drive, Leonardo, NJ was sworn in.

Robert Keady, P.E., Board Engineer was also sworn in.

Mr. MacPhee stated that he wants to square off corner cantilever so he can do 10 ft. by 10 ft. living room addition. The porch was destroyed during Sandy. They will eventually raise home.

Mr. Keady stated that the front yard is same setback. Lot coverage is reduced slightly but because of the porch it goes up to 40.2 where 33% is permitted.

Mr. Baxter variances required for lot area, frontage, front yard (2), accessory structure is prior nonconforming and building coverage variance.

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Public Portion

No questions or comments from public.

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

ROLL CALL:

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

Approval of Minutes

Mr. Gallagher offered the approval of the August 1, 2013 Zoning Board Minutes. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

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

Mr. Gallagher offered the approval of the September 5, 2013 Zoning Board Minutes. Seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

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

Public Portion

Arnie Fuog asked if a previous approval for his property located on Bay Ave is still valid.

Mrs. Cummins explained that the previous approval was never followed up with Resolution Compliance.

Mr. Baxter – not sure but it may be under the Permit Extension Act.

**ZB#2013-11 Davis, Patricia & James
Block 46 Lot 5 – 139 Bay Ave
Public Hearing**

Present: Patricia Davis
James Davis

Ms. Davis presented proof that the three property owners did in fact receive the public notice.

The following documents were marked into evidence:

- A-1: Variance Application
- A-2: Zoning Denial dated with cover letter
- A-3: Survey dated 11/6/1952
- A-4: Certificate of Occupancy for 139 Bay Ave - Rear
- A-5: Certificate of Occupancy for 139 Bay Ave #C
- A-6: Certificate of Occupancy for 139 Bay Unit A
- B-1: Board Professional Planner Letter

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Mr. Braswell stated that he has a conflict and stepped down.

Mr. Kutosh chaired the hearing.

Mr. Mullen stated that there are only five board members present.

Mr. Baxter stated notice reviewed and shows delivery which is proof that notice errors were corrected. He then explained the applicant that a use variance requires five affirmative votes and there are members absent this evening. He explained that we could have the public hearing then carry the vote if the applicant so desires. He explained use variance required for multi-family uses. There are also bulk variance for minimum side yard of 4.6 ft & 2.9 ft.

Mr. Truscott stated that the houses were substantially damaged and this is a pre-existing nonconforming use.

Mr. Mullen questioned why building permits were issued and certificates of occupancy issued.

Mrs. Davis stated that the C/O's were issued after work done. She then presented the Certificates of Occupancy.

Mr. Davis stated that the top unit was not damaged so there was no need for a new certificate of occupancy.

Mrs. Davis stated that the construction official issued 50% damage letter and they accepted the letter because they were not aware we would lose the use is 50% damaged.

Mr. Gallagher stated that it seems that the fifty percent damage letter is not accurate or c/o and permits should not have been issued.

Mr. Davis stated eventually they will raise structures.

Mr. Truscott explained that the Church is next door to property, then to the right is apartment house and across the street is business uses.

Mrs. Davis stated that next door is a three to four unit property.

Mr. Davis stated second property over has four units.

Mr. Mullen stated that his project proceeded as if not substantial letter issued. This is difficult to hear this case because this is a multi-family and they should appeal the damage letter.

Mr. Davis stated that the structure is assessed at \$200,000 and the repairs cost \$95,000.

Mr. Davis requested that the vote be carried.

Public Portion – no members of the public were present.

Mr. Gallagher offered motion to carry to November 7th meeting without the need for further public notice. Seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

Communications:

Board reminded about Mandatory Training requirements.

Mr. Braswell offered motion to adjourn the meeting. Seconded by Mr. Gallagher and all were in favor.

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Meeting adjourned.

Carolyn Cummins, Board Secretary

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