

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
November 7, 2013**

Meeting Location: Henry Hudson Regional High School, 1 Grand Tour, Highlands, NJ

Mr. Braswell called the meeting to order at 7:35 pm.

Mr. Braswell 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. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. Braswell,
Ms. Mezzullo, Ms. Maresca

Late Arrival: Mr. O'Neil arrived at 7:37 pm

Absent: None

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

**ZB#2013-2 Hennessey, E. – Request to Postpone P.H. to Dec. 5th
75 Bay Ave. – Block 41 Lot 8**

Mr. Baxter stated that this will be the fourth adjournment. He spoke to Mr. Kennedy and they are going back to Court for new summonses. There was a conflict with Judge Locascio, matter was sent to Rumson, awaiting a new court date. He stated that with regard to Kennedy's letter of October 3rd, 2013, asking for a three (3) prong approach. He discussed the Use Variance. The letter stated that they will be amending the application, and that the matter before the Board is use variance, not yet noticed. An October 22nd letter requested a December Public Hearing date.

Mr. Gallagher stated that with regard to the Kennedy letter, he is not sure of the Board's jurisdiction. Should not keep carrying on the calendar. He stated that he is sympathetic to the situation, however, the escrow must be paid up. He suggested putting on for January or February.

The Board had a brief discussion.

Mr. Gallagher again stated to put matter on the February calendar, pay escrow and that new escrow be posted.

The Board had further discussion.

Mr. Baxter will send a letter of conditions and legal opinion.

Mr. Gallagher offered a motion to approve postponement request to the February meeting subject to conditions as discussed. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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**ZB#2013-3 Cireco, Stephen – Application Withdrawn
146 Bay Ave., Block 54 Lot 3.01**

Mr. Gallagher offered a motion to dismiss the application. Seconded by Mr. O’Neil and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O’Neil,
Mr. Braswell

NAYES: None

ABSTAIN: None

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NEW BUSINESS

Application Review & Set P.H. Date

ZB#2013-14 Sommers, Pete

29 Ocean Ave. – Block 99 Lot 26

The Board reviewed the Application and the following was stated:

1. Two variances on side yard and building coverage are pre-existing
2. Staircase inside into house
3. The proposal shows actual footprint of 20 feet
4. Driveway dimensions are needed
5. There is no need for lot coverage variance
6. The application is approved and can be set for Public Hearing

Mr. Gallagher offered a motion to hear the application this evening. Seconded by Mr. O’Neil and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O’Neil

NAYES: None

ABSTAIN: None

ZB#2013-5 Oliveira, Paul & Nicole

14 Seadrift Ave. – Block 77 Lot 4

Application Review & Set P.H. Date

Present: Paul Oliveira
Nicole Oliveira
Claude Owens, Contractor

The Board reviewed the Application and the following was stated:

1. R-2.01 is the current zone and the application needs to be amended
2. There are flood elevation discrepancies between the flood height; not enough information to calculate properly; height variance needed
3. Seven variances plus two pre-existing
4. Depending on the notice this can be heard this evening

Mr. Gallagher offered a motion to schedule public hearing this evening if notice is okay. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O’Neil,
Mr. Braswell

NAYES: None

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ABSTAIN: None

**APPROVAL OF RESOLUTIONS:
ZB#2013-12 O'Reilly, Michele
20 Barberie Ave. – Block 78 Lot 1**

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

**RESOLUTION APPROVING BULK VARIANCES
FOR O'REILLY**

WHEREAS, the applicant, MICHELLE O'REILLY, is the owner of a residential property at 20 Barberie Avenue in the Borough of Highlands (Block 78, Lot 1); and

WHEREAS, the applicant filed an application for bulk variance relief, seeking extend her front porch to the full width of the dwelling and add an additional 48 square feet of porch area; 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 3, 2013; and

WHEREAS, the Board heard the testimony of the applicant, MICHELLE O'REILLY; her builder, LARRY MACPHEE; and the board's engineer, ROBERT KEADY; 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 8/22/13
- A-3 enlargement of survey and tax map (4 pages)
- A-4 2 photos on one page

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 9/27/13 (4 pages plus photo);

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 and detached garage.
3. The existing porch was severely damaged during Superstorm Sandy and needs to be rebuilt. The foundation, however, was not damaged.
4. As a result of the storm tide, the floor buckled and the roof was raised.
5. The applicant plans to square off the corner, so that the home is uniformly 20 feet wide, and retain the one-story structure.
6. It would be an undue hardship to deny the applicant the ability to extend her porch since it was damaged in the storm and needs to be replaced anyway.
7. The applicant seeks the following variance relief:

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A. Lot area of 2,812.5 square feet where 3,750 square feet is required (pre-existing condition).

B. Lot frontage of 37.5 feet where 50 feet is required (pre-existing condition).

C. Front yard setback on Barberie Avenue of 5.9 feet and on Recreation Place of 3.7 feet, where 20 feet is required (pre-existing condition).

D. Accessory structure setback of 13.3/2.7 feet where 3 feet/3 feet are required (pre-existing condition).

F. Building coverage of 40.2% where 33% is permitted. The pre-existing condition was 38.5% coverage.

8. The change in building coverage over the prior condition is de minimus.

9. 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 repair her storm-damaged porch, which requires variance relief, almost all of which is for pre-existing conditions.

10. The Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) has been met, both because of the extraordinary and exceptional situation of the storm damage as it affected the lawful pre-existing structure.

11. As to the negative criteria, the Board finds that most of the variance relief requested is for pre-existing conditions which are not changing by this application. The only other relief requested is for the de minimus increase in building coverage. Additionally, this relief can be granted without any substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan. The board finds no detriment as to either.

12. The board further finds that there will be no adverse impact, and in fact no impact at all, on surrounding properties.

WHEREAS, the application was heard by the Board at its meeting on October 3, 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 MICHELLE O'REILLY to extend her front porch to the full width of her home in accordance with her application is hereby granted. Variances are hereby granted for the preexisting conditions set forth above in paragraphs 7A, B, C, and D; and a variance is also granted for building coverage as set forth in paragraph 7E. AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following, all of which are set forth in the board engineer's review letter:

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

B. The applicant shall submit signed/sealed plans showing the proposed improvements and existing conditions.

C. Approvals shall be obtained from the flood plain officer, the construction official and any other departments or agencies having jurisdiction.

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

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ROLL CALL:

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

NAYES: None

ABSTAIN: None

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PUBLIC HEARINGS ON UNFINISHED BUSINESS

ZB2013-11 Davis, James & Patricia

139 Bay Ave. – Block 46 Lot 5

Rob explained use variance application but that the governing body has introduced and ordinance for nonconforming uses which he further explained.

The Board discussed voting and proposed ordinance and that five affirmative votes are needed. Mr. Kutosh offered a motion to table the vote to the December 5th meeting. Seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O’Neil

NAYES: None

ABSTAIN: Mr. Braswell

HEARINGS ON NEW BUSINESS

ZB#2013-10 Hendrickson, S.

61 Bay Ave. – Block 41 Lot 4

Present: Susan Hendrickson

Mr. Baxter stated that the notice was okay and board has jurisdiction to proceed.

The following exhibits were marked into evidence this evening:

- A-1 Variance Application
- A-2 Zoning Denial
- A-3 Zoning letter Cover Sheet dated 7/1/13
- A-4 2 drawings 2/20/04-J. Goddao
- A-5 Photo of front cottage
- B-1 Board engineer letter 10/31/13
- A-6 Photo of cottage
- A-7 Photo of Across veteran park
- A-8 Photo of rear cottage
- A-9 Photo of neighbor’s house-raised two dwellings
- A-10 Photo of apartments next door

The following were sworn in:

- Susan Hendrickson - 30 Portland Rd, A-2
- Rob Keady, P.E. – T&M PE
- Martin Thescott - T&M PE

Ms. Hendrickson stated the following:

- She has owned the house since 2007
- Moved out February of 2012
- House damaged by Super Storm Sandy
- Six feet of water in each unit
- She wants to raise the units
- The front 8 feet the rear is 7 feet
- No expansion on footprint
- Wants to comply with flood requirements

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She described the photos marked as A-5 thru A-10
She described the neighboring properties with multi-family uses
The rear deck is not on the survey
The survey represents the property except for the rear deck
Husband family owned the property 1925-2 cottages

Mr. Baxter asked how many bedrooms.

Ms. Hendrickson stated that there are two bedrooms in each unit.

Public Hearing – None
Public Comments - None

Mr. Truscott stated that the may have off street parking under houses when raised. The applicant meets special reasons for the use variance and that this is not a detriment.

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

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2013-13 Korman, D.
19 Locust St. – Block 101 Lot 28
Hearing on New Business**

Present: Don Korman

Mr. Baxter stated the public notice is okay and Board has jurisdiction to proceed.

Mr. Korman was sworn in.

The following exhibits were marked into evidence this evening:

- A-1 Variance application
- A-2 Denial
- A-3 Flood Certificate – two pages
- A-4 Survey – Stockton – 8/2/2013
- A-5 Survey with proposed footprint
- A-6 Sketch of foundation
- A-7 Sketch of house
- A-8 Color photos – 3 pages
- A-9 Black and white photos – 3 pages
- A-10 Sketch of house
- B-1 Engineer letter

Mr. Korman stated the following:

Propose to demo the existing structure
Build new 2 floor structure
Current house is 9.6 feet off front yard. Propose to move house another 11 feet
Total 20 feet front yard to house.
Off street parking – there is none currently
Westside currently is 2.0 feet sideyard – propose 2 feet stone
Right side is currently 8 feet – propose 3 feet
Total side yard – 5 feet

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Neighbor paved 2 feet onto his lot
The house is 20 feet wide
Rear yard is currently 45 feet – proposal is 20 feet
Building coverage – 23.3 feet % where 25% permitted
Proposal is to go to 48%
There is a deck setback on porch
Porch is covered in front – stays the same, just changing stairs

Mr. Keady asked if the porch extends beyond rectangle.

Mr. Korman stated that it was within the rectangle

Mr. Keady stated that the numbers were fine.

Mr. Korman continued:

The steps are the only thing that extends from the foundation
Scrap A-10
Described steps – need variance
Height – under max height 32 ½ -parking is underneath
Modular home

The Board had a discussion with regard to height.

Mr. Keady stated that applicant needed sealed drawings.

Mr. Mullen questioned height and width.

Mr. Mullen suggested 50% of smallest setback 6 ft/8ft.

Mr. Korman stated none of the homes meet the 6/8ft.

Mr. Mullen no, 3 /4ft equals 50% vs 2/3ft.

Mr. O'Neil stated the lot next to is designated as a fire road with no structures.

Mr. Korman – 18 ft house seems narrow.

Mr. Mullen continued to quested the applicant about the size.

Discussion continued with regard to height and width of house.

Mr. Mullen and Mr. O'Neil express concerns with setbacks

There were no questions or comments from the public.

The Board briefly discussed the application and setbacks.

Mr. Gallagher offered a motion to approve the application with change in side yards of 3 ft and 4 ft. and a 18 ft width of the home. Seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Mr. Braswell

NAYES: None

ABSTAIN: None

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Board adjourned for a short break

**ZB#2013-5 Oliveira, Paul & Nicole
14 Seadrift Ave. – Block 77 Lot 4
Hearing on New Business**

Mr. Baxter stated that the publication was not published in time therefor the Board can't take jurisdiction – it must be re-noticed in newspaper only.

Mr. Gallagher offered a motion to carry this public hearing to the December 5th meeting and that the applicant must republish. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2013-14 Sommers, Pete
29 Ocean Ave. – Block 99 Lot 26
Hearing on New Business**

Conflicts: Mr. Braswell and Ms. Maresca both stepped down.

Mr. O'Neil did not return to the meeting after recess.

Mr. Baxter stated that public notice was okay and that the Board has jurisdiction.

The following exhibits were marked into evidence this evening:

- A-1 Variance Application
- A-2 Zoning Denial
- A-3 Survey of Existing
- A-4 Survey of Proposed
- A-5 Foundation plan
- B-1 Board Engineer letter

Mr. Somer was sworn in.

Mr. Somer stated the following:

There is an existing single family which was damaged by storm
He wants to lift building
Move building back 12 feet to create off street parking
Three cars under and one driveway – currently none exists
He wants to save the maple tree

Mr. Keady stated that the minimum front yard 22 ft so no variance. Minimum rear 25.5 ft so no variance. Lot coverage is no variance and that the building coverage is the same as existing. Minimum lot area 2500, lot frontage of 50 feet, side yards of 3 ft/3.47 ft where 6 ft and 8 ft are required and accessory structure setback of 1.3 feet are variances.

Mr. Sommer stated that stairs are inside of garage. The shed in the rear may stay. The Board discussed the dimensions.

There were no Public questions or comments.

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

ROLL CALL:

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

APPROVAL OF MINUTES:

October Zoning Board Minutes not ready for approval

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

The meeting adjourned at 10:13 p.m.

Carolyn Cummins, Board Secretary