

Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
December 5, 2013

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

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

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

Late Arrival: None

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

Approvals of Resolutions

**ZB#2013-10 Hendrickson, S.
61 Bay Ave., Block 41 Lot 4**

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

12/5/13

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

WHEREAS, the applicant, SUSAN HENDRICKSON, is the owner of a two-family residential property at 61 Bay Avenue in the Borough of Highlands (Block 41, Lot 4); and

WHEREAS, the applicant filed an application for use variance approval to restore two existing residences which were substantially damaged during Superstorm Sandy 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 November 7, 2013; and

WHEREAS, the Board heard the testimony of the applicant, SUSAN HENDRICKSON. No other persons appeared to ask questions or object to the application; and

WHEREAS, the Borough Planner, Martin Truscott, also testified; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1 Variance application (3 pages);

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- A-2 Zoning Officer denial dated 6/26/13;
- A-3 Letter from Dale Leubner dated 7/1/13 forwarding zoning denial form;
- A-4 Survey by James Goddard, of Jeffrey Brauer Associates, Inc., dated 2/23/04;
- A-4 Photograph of front cottage at 61 Bay Avenue, facing south.
- A-6 Photograph of rear cottage, which faces the 61 Bay Avenue unit and has access to South 2nd Street;
- A-7 Photo looking north toward Veteran Memorial Park;
- A-8 Photo of rear cottage;
- A-9 Photo of neighboring property to the right (east) of the subject;
- A-10 Photo of the apartments next door;

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

- B-1 Board Planner, Martin Truscott, review memo dated 10/31/13 (4 pages with aerial map);

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 B-2 Overlay Zone, in which single-family residences are not permitted.
2. The site currently contains two residences, both of which were substantially damaged during Superstorm Sandy in October 2012. Both dwellings are on the same lot, an existing non-conforming condition.
3. The applicant's lot is on the south side of Bay Avenue, to the west of South Street. The property actually fronts on two streets (Bay Avenue and South 2nd Street), and is approximately 6,000 square feet in area.
4. The residential unit facing Bay Avenue has a substantial setback from the street and is a one-story frame dwelling. The residence to the rear, on South 2nd Street, is also a one-story frame dwelling.
5. No off-street parking currently exists on the property.
6. The property sustained approximately 6 feet of water damage in each cottage during Superstorm Sandy.
7. The applicant seeks to raise each structure, the front cottage to be raised approximately 8 feet, and the rear cottage to be raised approximately 7 feet.
8. There is no proposed change in the footprint of either structure, nor any change in the square footage of either residential unit.

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9. The neighborhood uses are mixed, with a business across the street, apartments next door, a private home, and a two-family to the right (east).

10. The applicant's husband's family has owned the property since 1925, during all of which time the property contained both cottages.

11. There are two bedrooms in each residential unit.

12. There is substantial public parking immediately to the rear of the property.

13. The Board Planner testified that, in his opinion, special reasons as required by the Municipal Land Use Law have been met, considering the reason for the requested relief (i.e., raising the house above the flood plain), opining that the long-term land use was appropriate and that there was no detriment to the subject property or the neighboring properties.

14. The applicant seeks the following relief:

A. A use variance to permit the two residential dwellings to remain on the subject property.

B. A use variance to allow the non-conforming single-family uses and the two principal (single-family) structures on one lot.

C. A waiver from the parking requirement of 2.5 spaces per unit.

15. The raising of these residential structures will improve the subject property, make it safer, and also improve the neighborhood. The application will both preserve the neighborhood character.

16. This application was made as a result of damage caused by Superstorm Sandy, which devastated many properties within the borough. The applicant is, basically, seeking to raise her storm-damaged dwellings without reconstructing them or changing their footprints or their dimensions. 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.

17. The Board concurs with the Board Planner's testimony as to the plaintiff meeting the special reasons requirements of the Municipal Land Use Law.

WHEREAS, the application was heard by the Board at its meeting on November 7, 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 SUSAN HENDRICKSON to raise her two existing storm-damaged dwellings out of the flood plain, all as set forth on the applicant's application and further described in her testimony is hereby approved. Accordingly, use variances are granted to allow two single-family dwelling units in the B-2 Zone and to permit those non-conforming uses to remain. A waiver is also granted from the parking requirement;

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

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A. Any restoration must be in compliance with the borough flood hazard regulations.

B. Applicant shall provide the borough with an elevation certificate.

C. Any improvements shall be subject to compliance with FEMA, NJ DEP, and the Borough of Highlands Land Use Ordinance.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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**ZB#2013-13 Korman, D.
19 Locust St., Block 41 Lot 4**

Mr. Kutosh offered the following Resolution and moved on its adoption:
12/5/13

**RESOLUTION APPROVING BULK VARIANCES
FOR KORMAN**

WHEREAS, the applicant, DAVID KORMAN, is the owner of a residential property at 19 Locust Street in the Borough of Highlands (Block 101, Lot 28); and

WHEREAS, the applicant filed an application to demolish the existing one-story frame dwelling and construct a new single-family dwelling to comply with the new flood zone requirements;

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 November 7, 2013; and

WHEREAS, the Board heard the testimony of the applicant, DAVID KORMAN, and the Board 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 denial form dated 8/13/13;
- A-3 Flood elevation certificate dated 8/2/13 by Richard Stockton (2 pages);
- A-4 Survey by Richard Stockton dated 8/2/13, showing existing conditions;
- A-5 Footprint of proposed building superimposed onto Stockton survey;
- A-6 Sketch of foundation;

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- A-7 Sketch of exterior of house;
- A-8 3 pages of color photos;
- A-9 3 pages of black and white photos 8.5" x 11";
- A-10 Sketch of layout of home (later withdrawn by applicant);

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 10/31/13 (4 pages plus aerial 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-1.03 Zone, which permits single-family homes.

2. The site currently contains a single-family home, which was damaged during Superstorm Sandy. The applicant testified, as an example, that the floors are buckling throughout the home.

3. The applicant proposes to demolish the existing structure and build a new home, larger than the prior home, but substantially further back on the lot from Locust Street.

4. The current house has a front yard setback of 9.6 feet, where 20 feet are proposed. This particular proposed dimension is a significant improvement, though still less than the 35-foot setback required by ordinance.

5. The applicant proposed to center the dwelling on the property.

7. There is currently no off-street parking. If the applicant's plans are approved, there will be sufficient parking for at least two vehicles, one inside (under the structure), and one in the driveway.

8. The driveway will be of an impervious surface (not dirt).

9. The current structure is substandard. The property has been in the applicant's family's ownership since the early 1970's.

10. The lot has only 25 feet of frontage, which, therefore restricts the size of the home that can be constructed on this lot.

11. The applicant seeks the following variance relief:

A. Lot area of 25,000 square feet where 14,000 square feet is required (pre-existing condition).

B. Lot frontage of 25 feet where 75 feet is required (pre-existing condition).

C. Lot depth of 100 feet where 200 feet is required (pre-existing condition).

D. Minimum front yard setback of 20 feet where 35 feet is required. This, however, is an

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improvement from the existing 9.6 feet of front yard setback.

E. Minimum side yard setback of 2 feet/3 feet where 8 feet/12 feet are required. This request would be an exacerbation of the violation of the existing ordinance, since the existing structure has side yard setbacks of 2 feet/8 feet.

F. Minimum rear yard setback of 20 feet where 25 feet is required. The existing home has an approximate 45-foot rear yard setback, thereby creating the need for a variance where no previous one was required.

G. Minimum setback for the porch of 3 feet where 8 feet is required, because it has a roof.

H. Building coverage of approximately 48% where 25% is required. The existing home had building coverage of 23.3% and met the ordinance. This is both a new variance and a substantial violation of the current zone requirements.

12. The porch will be covered in the front.

13. The Board took testimony regarding the height of the structure and was satisfied that, because of the underground parking, there is not likely to be any need for a height variance. Since the applicant did not have exact dimensions available, the Board will be satisfied to limit the height of the structure to the borough ordinance. The specifics, however, shall be given to the Construction Official and Zoning Officer prior to the issuance of any zoning permit or construction permit.

14. The proposed structure will be a modular home. The dimensions were not made available to the Board, as a result of which the Board will require that signed and sealed drawings, confirming the measurements, be provided to the borough officials before the issuance of any construction permits.

15. The Board feels that the applicant is entitled to keep his existing home or put a replacement home on the property. The issues presented to the Board were the degree of deviation from the zoning ordinance which should be permitted.

16. This application was prompted by Superstorm Sandy.

17. 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.

18. 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.

19. The Board determines that the requested relief, as modified by the Board's decision, will not cause any damage to the character of the neighborhood or constitute a substantial detriment to the public good.

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WHEREAS, the application was heard by the Board at its meeting on November 7, 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 DAVID KORMAN to demolish his existing single-family home and rebuild a home in accordance with his application is granted in part and modified in part. Variances are hereby granted for the preexisting conditions set forth above in paragraphs 11A, 11B and 11C; and variances are also granted for minimum front yard setback of 20 feet where 35 feet is required; rear yard setback of 20 feet where 25 feet is required; setback for the porch of 3 feet where 8 feet is required; and building coverage of approximately 48% where 25% is required;

AND BE IT FURTHER RESOLVED that the Board grants a variance for side yard setbacks of 3 feet/4 feet, for a total of 7 feet in side yard setbacks. This dimension is different from the request made by applicant or as shown on his drawings. Any final plans shall be in conformance with this dimensional approval by the Board; 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 height of the new home shall not exceed the height requirements of borough ordinance, which dimension shall be verified with both the Zoning Officer and the Construction Official prior to the issuance of any permits.

C. Signed and sealed drawings confirming all measurements shall be supplied to the Construction Official prior to the issuance of any permits.

D. Lot coverage must comply with the borough ordinance (at the hearing, the Board was unable to determine the same, as a result of which that determination shall be made by the Construction Department).

E. The driveway shall be an impervious surface (i.e., not dirt, as an example).

F. Since the applicant is not eligible for NJ DEP permit-by-rule approvals, further review is deferred to the NJ DEP.

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

ROLL CALL:

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

Mr. Braswell

NAYES: None

ABSTAIN: None

**ZB#2013-14 Somers, P.
29 Ocean Ave., Block 99 Lot 26**

Mr. Gallagher offered the following Resolution and moved on its adoption:
12/5/13

**RESOLUTION APPROVING BULK VARIANCES
FOR SOMMER**

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WHEREAS, the applicant, **PETER JOHN SOMMER**, is the owner of a residential property at 29 Ocean Avenue in the Borough of Highlands (Block 99, Lot 26); and

WHEREAS, the applicant filed an application to raise the existing one-story frame dwelling and relocate it further to the rear of the property and comply with the new flood zone requirements;

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 November 7, 2013; and

WHEREAS, the Board heard the testimony of the applicant, **PETER JOHN SOMMER**, and the Board 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 denial form dated 10/18/13;
- A-3 Survey by Thomas Finnegan dated 11/7/97;
- A-4 The same survey with the proposed building shown thereon;
- A-5 Foundation plan

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

- B-1 Board Engineer review letter by **ROBERT KEADY** dated 10/31/13 (4 pages plus aerial 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-2.03 Zone, which permits single-family homes.
2. The site currently contains a single-family home, which was damaged during Superstorm Sandy.
3. The applicant proposes to elevate and relocate the existing structure by moving it deeper into the lot, thereby allowing for an access stairway and off-street parking.
4. There is currently no off-street parking. If the applicant's plans are approved, there will be sufficient parking for at least four vehicles, one under the structure, and three in the driveway.
5. The current front yard setback is 10.3 feet. The applicant's plans propose to significantly enlarge the front yard setback to a total of 22 feet.
6. The home was damaged by Superstorm Sandy in October 2012.
7. The applicant proposes to raise the home 6 feet, and move it back, further into the lot, 12 feet.
8. There will be no change in the size of the footprint of the building. It will just move deeper into the lot.
9. The stairway will be inside the garage.
10. The home currently violates the front yard setback requirements. Once moved, there will be no violation of the front yard setback requirements.
11. The existing shed is proposed to stay.
12. The applicant seeks the following variance relief:

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A. Lot area of 2,500 square feet where 5,000 square feet is required (pre-existing condition).

B. Lot frontage of 25 feet where 50 feet is required (pre-existing condition).

C. Minimum side yard setback of 3.47 feet/3.47 feet where 6 feet/8 feet are required (pre-existing condition).

D. Accessory structure setback of 1.3 feet, where 3 feet are required (pre-existing condition).

13. As a result of the Board Engineer's consideration of the documents submitted, it was determined that the applicant meets the requirements for lot coverage and building coverage.

14. All of the requested variance relief is for preexisting conditions, one of which (minimum front yard setback) is a significant improvement to the existing setback.

15. Moving the home deeper into the lot and more than doubling the front yard setback is a significant improvement to the property and to the neighborhood.

16. The Board finds that the requested variance relief seeks *de minimus* changes. In fact, none of the four dimensional requirements for which variance relief is sought are changing from their existing conditions.

17. 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.

18. 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.

19. The Board determines that the requested relief will not cause any damage to the character of the neighborhood or constitute a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on November 7, 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 PETER JOHN SOMMER to raise and relocate his existing dwelling in accordance with his plans and the terms set forth earlier in this resolution is hereby approved. Variance relief for the preexisting conditions of minimum lot area, minimum lot frontage, minimum side yard setback and accessory structure setback are all granted, as more fully set forth in paragraph 12A through D, inclusively.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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Public Hearings on Unfinished Business

ZB#2013-11 Davis, James & Patricia

139 Bay Ave., Block 46 Lot 5

Mr. Baxter explained new zoning ordinances for non-conforming uses.

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Mrs. Cummins stated that the applicant is requesting a two month postponement.

Mr. Gallagher offered a motion to carry this matter to February, 2014, 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

New Business

ZB#2013-15 Oliveira, P.
14 Seadrift Ave., Block 77 Lot 4

Mr. Baxter stated that he has reviewed the public notice and finds it to be proper therefore the Board has jurisdiction to proceed.

The following documents were marked into evidence:

- A-1 Variance application;
- A-2 Zoning Denial dated October, 2013
- A-3 Architectural plan-7/13/13, revised 8/19/13
- A-4 Flood elevation certificate-5/3/13
- B-1 Board Engineer letter dated 11/4/13

Paul Oliveira was sworn in and stated the following during his testimony and response to questions from the Board:

1. Proposing to rebuild the storm damaged home.
2. It will be a three level home.
3. Planning to keep the home within the same footprint in terms of width.
4. Needs a variance on the length of the house.
5. He has owned the property since 2006 and that it is his permanent residence.

Claude Owen was sworn in and stated the following during his testimony and response to questions from the Board:

1. Looking for relief on lot coverage.
2. It was determined that the height was allowable.

The Board discussed flood elevation. Mr. Baxter and Mr. Keady did elevation calculation – 30.66 building height. Height is okay and no variance is needed.

Mr. Baxter read through the variance needed as per the Board Engineer letter.

The Board discussed the application with regard to if variance is needed.

Robert Keady questioned the side set-backs, if they are going to remain the same, and that they do no match the zoning table or the plans.

Mr. Owen stated that they will match existing. He stated that it would be difficult to make the house narrower and that there are homes on both sides of the property. He stated that the house is 48 feet in length.

The Board discussed the length of the house.

Mr. Owen stated that the house is deeper into the lot.

Mr. Oliviera stated that it was a 2 bedroom home and they are proposing a 3 bedroom home. They are trying to keep side yard and front yard similar to neighbor. He stated that the width of the house will remain the same and is only extended off the back to add the extra bedroom. The house is 10 feet longer.

The Board continued to discuss the width of the house and size of lot.

Public Questions and Statements

Joanne Owen stated that this will be better for the town.

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

ROLL CALL:

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

Approval of Minutes:

Mr. Mullen offered a motion to approve the October 3rd and November 7th meeting minutes. Seconded by Mr. Gallagher 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

Communications:

Engineers Bills

Mr. Braswell explained that he has spoken with the Board Engineer about engineer bills for the review of application.

Mr. Keady explained that most of the applications don't provide zoning chart, surveys and plot plans which requires him to spend more time on the application reviews. He also suggested that resolution compliance be approved by borough official rather than the board engineer to cut cost for applicants.

Ms. Cummins and Mr. Keady spoke of an example with regard to the O'Reilly application which has a condition on the approval to submit signed sealed plans which until are submitted the applicant can't get building permits.

Board had discussion on the O'Reilly condition of approval.

Mr. Mullen offered a motion to remove that condition from the O'Reilly resolution. Seconded by Mr. Gallagher and approved on following roll call vote:

ROLL CALL

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

Mr. Baxter will send a letter to the board secretary regarding this discussion and will also prepare a resolution for adoption at the next meeting.

Board went back to discussion on engineer bills how to reduce costs to applicants. The Board discussed that during an application review the board determine if an engineers review letter will be required. Also discussed having applicants provide proper paperwork to the board.

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

The Meeting adjourned at 8:53 P.M.

Carolyn Cummins, Board Secretary

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Carolyn Cummins, Board Secretary

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