

**Borough of Highlands  
Zoning Board  
Regular Meeting  
May 1, 2014**

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

Mr. Gallagher called the meeting to order at 7:29.

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

Mrs. Cummins made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

**ROLL CALL:**

**Present: Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba**

**Absent: Mr. Fox, Mr. Braswell, Mr. Knox,**

**Late Arrival: None**

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

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**New Business**

**Review Application and set hearing date:**

**ZB#2013-15A5 Olivera, P & N  
14 Seadrift Ave., Block 77 Lot 4**

**Present: Armen McOmbler, Esq.  
Mr. & Mrs. Olivera**

Armen McOmbler, Esq. stated that there was a discrepancy with the plans and they will be resubmitting revised plans and would like to come back for the June Public Hearing.

He discussed items previously approved. He stated that there is presently a stop work order in place. They are requesting permission to put up plywood to secure the house until the June meeting.

The Board reviewed the application and the following was stated:

1. The Applicant must submit revised plans at least 10 days prior to hearing.
2. The public notice for tonight was deficient.
3. Tonight is only a completeness review.
4. They are requesting relief for setbacks.
5. The framing and foundation is up.
6. There is currently a stop work order in place.
7. Zoning Officer new letter is for front and rear setbacks.
8. The applicant must list all variances in the public notice.
9. Amend the application to R-2.01 Zone.

Mr. Kutosh offered a motion to put this matter on for the June meeting, seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba**

**NAYES: None**

**ABSTAIN: None**

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**ZB#2014-8 Gates, Gerald  
20 Cornwall St. Block 52 Lot 19  
Application Review & Set P.H. Date**

**Present: Gerald Gates**

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The Board reviewed the application and the following was stated:

1. Mr. Baxter stated that 1<sup>st</sup> quarter tax and sewer is not paid.
2. The Applicant will bring pictures to hearing of the site and the surrounding sites.
3. House will be on pilings.
4. Applicant has off street parking.
5. Must serve public notice.

Mr. O'Neil offered a motion to schedule application for the June meeting, seconded by Mr. Kutosh and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba  
**NAYES:** None  
**ABSTAIN:** None

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**ZB#2014-9 Colby, L.  
42 South Bay Ave. Block 8 Lot 1**

**Present: Larry Colby**

The Board discussed the conflict with regard to Mr. Keady and Mr. Leubner.

Mr. Colby expressed that there is a conflict with regard to Mr. Leubner. He is asking for an interpretation.

Mr. Baxter stated that there is a two page letter that sets forth three areas where there is concern by the zoning officer and could not issue a permit.

Mr. Colby feels that he is before the wrong board.

Mr. Baxter stated that the Zoning Officer letter talked about expansion setbacks and building height.

Mr. Colby stated that this is not a bungalow colony.

Mr. Baxter and Mr. Colby discussed use issue and plans and zoning officer findings.

Mr. \_\_\_\_\_ asked if the building is bigger than what was approved.

Mr. Colby stated no.

Mr. Baxter stated that when there is a hearing they will have the zoning officer file. He stated that there needs to be notice for interpretation and appeal of the zoning officer's denial. If variance is added, then that is a new application.

Mr. Baxter requested that Mr. Leubner be at the June meeting. He stated that there is a survey needed, location survey.

Mr. Colby stated that he will go back to zoning officer and come back in front of the Board in June for another completeness review.

Mr. Kutosh offered a motion to schedule the application for the June meeting, seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba  
**NAYES:** None  
**ABSTAIN:** None

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**ZB#2014-10 Gauthier, Florence  
1 Private Road Block 56 Lot 11**

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Parties present: Diane Grover, Chris Grover and Florence Gauthier.

Mr. Baxter stated that application needs to be amended regarding Zoning ordinance R-2.02. The Board has the zoning officer's denial letter. He stated that this bulk variance not a use variance. There is a plot plan and foundation plan. The applicant wants to build a smaller home than what was originally there, and comply with FEMA and raising the structure. The Board discussed the application.

The Board requested the applicant provide pictures and a survey. The applicant needs to notice the newspapers and the property owners within 200 feet.

Mr. O'Neil offered a motion to schedule the application for the June meeting, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba  
**NAYES:** None  
**ABSTAIN:** None

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**Approval of Resolutions:  
ZB#2013-A Sommer, Pete  
29 Ocean Ave. Block 99 Lot 26**

Mr. Kutosh moved to approve the resolution, seconded by Mr. O'Neil and approved on the following roll call vote:

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

5/1/14

**RESOLUTION APPROVING BULK VARIANCES  
FOR SOMMER  
AND SUPPLEMENTING RESOLUTION DATED DECEMBER 5, 2013**

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 previously filed an application to raise the existing one-story frame dwelling and relocate it further to the rear of the property, which application was approved by this board by resolution dated December 5, 2013; 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 this new application at a public hearing on April 3, 2014; 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 2/27/14;

A-3 "Field set" hand-drawings (2 pages)

A-4 This board's resolution dated 12/5/13 (5 pages)

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

B-1 Board Engineer review letter by ROBERT KEADY dated 3/27/14 (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 previously applied for variance relief to this board, seeking 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. The board approved the applicant's 2013 variance application by resolution dated 12/5/13 (Exhibit A-4), as a result of which the house was moved back 12 feet.

5. The applicant, during construction, jacked the house up, put a foundation underneath, and was planning to frame the underneath portion, when he decided that it made more sense, because of the small amount of living area in the home (only 884 square feet), to add another level. The additional level would be the first living level, making the existing living area the top floor.

6. Because the proposed additional level is 100% of the size of the existing level, a variance is required.

7. The ground level will permit parking for three cars, therefore no parking variance is required. There will be no living space on the ground level.

8. There will be no change in lot coverage to the plan approved on December 5, 2013 (A-4).

9. There are four (4) decks proposed. This was the primary issue discussed during the hearing. The two rear decks meet the ordinance requirements, so no variance is required for them.

10. The front deck on the second level (first living floor) will be 16 feet to the curb, and therefore will not require a variance.

11. The third level deck (top floor) is proposed at the same size and requires a variance because Ordinance 21-65.27 indicates that "any deck that extends above the elevation of the first floor of the principal structure shall meet the setback requirements for that principal structure."

12. The neighborhood homes have similar designs and decks. For instance, the house two lots over has the same 2-deck design. There is another similar situation across the street. Here, the subject house is further back from the street than the other homes, an improvement.

13. 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 approved 12/5/13).

B. Lot frontage of 25 feet where 50 feet is required (pre-existing condition approved 12/5/13).

C. Minimum side yard setback of 3.47 feet/3.47 feet where 6 feet/8 feet are required (pre-existing condition approved 12/5/13).

D. Accessory structure setback of 1.3 feet, where 3 feet are required (pre-existing condition approved 12/5/13).

E. Building coverage of approximately 40.27% where 30% is allowed (pre-existing is 40.27%; previously 43.74%).

F. A new variance for the deck above the first living floor (i.e., the top floor for front yard setback).

G. A new variance for building a vertical addition exceeding 80% of the original (previously approved) building footprint, as discussed above.

14. As a result of the Board Engineer's consideration of the documents submitted, it was determined that the applicant meets the requirements for height, so no variance for height is required.

15. All but two of the requested variances (items 14F and G above) are for preexisting conditions.

16. The Board finds that the requested variance relief seeks *de minimus* changes to the existing footprint and the plans approved on December 5, 2013. Though the applicant proposes to build the house higher than originally planned, the height requirements are not violated.

17. The Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) have been met.

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. In fact, the applicant's proposal is quite similar to other homes in the immediate neighborhood.

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WHEREAS, the application was heard by the Board at its meeting on April 3, 2014, 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 further elevate the dwelling to add an additional living area, effectively the first floor of living area, is hereby approved. This resolution shall be read in conjunction with this board's resolution dated December 5, 2013 and any differences herein shall take precedence over the board's earlier resolution. Variance relief for the preexisting conditions of minimum lot area, minimum lot frontage, minimum side yard setback, accessory structure setback and building coverage are all granted, as more fully set forth herein. New variances are hereby granted for the third level deck and from Ordinance 21-98.A.2 for the vertical addition exceeding 80% of the original building footprint.

Seconded by Mr. O'Neil and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Mullen, Mr. O'Neil, Ms. Ziemba

NAYES: None

ABSTAIN: None

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**ZB#2014-4 Gelpin, Prince  
1 Locust Street Block 101 Lot 19**

Mr. O'Neil offered the following Resolution and moved on its adoption:  
5/1/14

**RESOLUTION APPROVING BULK VARIANCES  
FOR GELPIN**

WHEREAS, the applicant, PRINCE GELPIN, is the owner of a single family residential property at 1 Locust Street in the Borough of Highlands (Block 101, Lot 19); and

WHEREAS, the applicant filed an application for variance approval to rebuild his home that was substantially damaged during Superstorm Sandy and which was destroyed during the process of raising it out of the flood plain; 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 April 3, 2014; and

WHEREAS, the Board heard the testimony of the applicant, PRINCE GELPIN and his neighbor, JOE HOHERCHAK, who appeared to both ask questions and object to the side yard proposals where they abut his property; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Zoning Officer denial dated 3/3/14 (2 pages);
- A-3 "Plot Plan with Variance" by Donna Bullock of Engineering Group, LLC dated 2/20/14
- A-4 Architectural drawing by Emmanuel Ubiora of ECO Architects LLC dated 3/23/14.

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

- B-1 Board Engineer, Robert Keady, review letter dated 3/27/14 (4 pages with aerial

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photo attached);

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, in which single-family residences are permitted.

2. The site previously contained a single family residence, which home was substantially damaged during Superstorm Sandy in October 2012.

3. The property owner hired a contractor who was in the process of raising the house when it fell and was destroyed, requiring the owner to rebuild the entire house.

4. The applicant's lot has frontage on two streets, Locust Street (front door) and Willow Street.

5. Off-street parking for two vehicles will now be provided, which change was made by the applicant during the hearing. He will either add a garage door to the other frontage, or widen the newly planned garage door to permit access for another vehicle. No parking variance, therefore, will be required.

6. The applicant seeks to raise the structure in order to comply with the new flood zone requirements.

7. The footprint of the new structure will be virtually the same as the prior home.

8. The applicant seeks the following variance relief:

A. Lot area of 1,220.78 square feet, where 14,000 square feet are required (a pre-existing condition).

B. Lot frontage of 27.15 feet where 75 feet are required (a pre-existing condition).

C. Lot depth of 44.21 feet where 200 feet are required (a pre-existing condition).

D. Front yard setback of 8.6 feet from Locust Street and 2.6 feet from Willow Street where 20 feet are required. The prior setbacks were 4.3 feet from Locust and 2.5 feet from Willow, so both new setbacks are an improvement over the prior condition.

D. Side yard setbacks of 2.1/3.36 feet where 8/12 feet are required. The prior setbacks were 2.1/4.49, so one setback will remain the same and the other is being reduced by 1.54 feet.

E. Front steps setback of 2.1 feet where 3 feet are required. This variance is required because of the side of the steps.

F. Building coverage of 58.7% where 25% is permitted. The prior coverage was 60.2%, so this is an improvement over the prior condition.

9. Building height and lot coverage are both within the requirements of the borough ordinance. In fact, the lot coverage will now be 58.7%, which is an improvement over the prior lot coverage of 85.9%.

10. By raising the home, there will now be parking availability for 2 cars on the ground level, where none previously existed.

11. The attic will house the mechanicals, thereby placing them above the flood plain level. There will be no living space on the attic level. Neither will there be a deck on the attic level.

12. The plans submitted by the applicant referred to the attic level as "Family". That is in error and shall be corrected to comply with paragraph 11 above.

13. There was some confusion during the hearing about the height of the structure and whether a variance would be required. The board is satisfied that a

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variance will not be required, however, in order to avoid such a situation, the board will place a maximum height on the structure. The home will be built in accordance with the plans submitted, with the understanding that the distance from grade to the peak of the roof may not exceed 40 feet 1 inch, or the maximum height permitted by ordinance, whichever is greater.

14. The applicant's proposal is to use the same footprint as the prior home, but just make the home higher.

15. The concerns raised by the neighbor regarding his chimney and the proximity of the applicant's deck to his house/chimney are construction and/or fire code issues which shall be reviewed by the Construction Official when issuing any building permits.

16. The raising of this residential structure in accordance with the new flood zone requirements will improve the subject property, make it safer, and also improve the neighborhood. The application will also preserve the neighborhood character.

17. 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 his storm-damaged dwelling as a result of his contractor having demolished his home during its being raised. 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.

18. This application will not cause any substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zone plan and zoning ordinance. Further, it will not have any negative impact on the surrounding properties.

WHEREAS, the application was heard by the Board at its meeting on April 3, 2014, 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 PRINCE GELPIN to rebuild his single family home as set forth on the plans submitted is hereby approved. Accordingly, bulk variances are granted as set forth in paragraph 8 above for lot area, lot frontage, lot depth, front and side yard setbacks, setback for front steps and building coverage.

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

A. Any damage during construction which is caused to the existing pavement, sidewalk and curb shall be repaired or replaced to the satisfaction of the borough.

B. Elevation plans shall be submitted with the applicant's building permit application.

C. The applicant's plans shall be revised to remove the "family" designation and replace it with "attic".

D. The applicant's plans shall be revised to reflect either a wider garage entry to permit two cars, or an additional garage entry on Willow Street.

E. The height of the structure shall be limited to the greater of 40 feet 1 inch from grade to the peak of the roof or the maximum height permitted by ordinance.

F. The Construction Department is advised to review the plans submitted on the issue of the proximity of the neighbor's chimney to the applicant's deck and the proximity of the neighbor's structure to the applicants.

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

**ROLL CALL:**

**AYES: Mr. Kutosh, Mr. Mullen, Mr. O'Neil, Ms. Ziemba**

**NAYS: None**

**ABSTAIN: None**



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**Hearings on New Business**

**ZB#2014-15 Davis, Robert & Cynthia  
7 Seadrift Ave. Block 72 Lot 37**

Mr. Baxter stated that he spoke to Mrs. Davis, when they sent the notices out to the property owners, they sent by two day delivery. He stated that the Board will not be able to proceed on this case. The notice, by statute, must be given either by personal delivery to the homeowner or by certified mail.

Mr. Baxter noted some discrepancies in names, address and zip codes on some of the notices.

Mrs. Davis stated that she used the format electronically. She stated that two day priority mail is the same as first class mail except the post office puts a two day guarantee on it.

Board discussed notice issues.

Mr. Baxter read the State statute regarding notice into the record, in particular:

*Notice shall be given 1: serving a copy thereof on the property owner as shown on the said current tax duplicate or his Agent in charge of the property. Or 2: mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.*

Mr. Baxter suggested that the applicant get something from the post office stating that the format she used is equal to certified mail.

The Board discussed the State law regarding certified mail.

Mr. Gallagher suggested getting something from the post office that says two-day priority mail is certified mail, they will accept that.

Mr. Baxter stated that applicant will only have to resend notice to the addresses that were problems. There appears to be approximately seven addresses.

Mr. Keady stated that the Board asked for site plan with improvements and setbacks, and never received those documents.

The Board discussed and reviewed the documents.

Mr. Keady stated that he will do an updated letter.

Mr. Gallagher suggested adding email addresses to variance applications moving forward.

Mr. Mullen offered a motion to carry the public hearing to the June meeting. Seconded by Mr. Kutosh and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Kutosh, Mr. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo,  
Ms. Ziemba

**NAYES:** None

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**ZB#2014-7 Ernst, Michael  
40 Jackson St./120 Bay Ave. Block 47 Lot 12**

**Present: Michael Ernst**

Mr. Baxter reviewed the notices and all are in order.

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The following exhibits were marked into evidence this evening:

- A-1 Variance application
- A-2 Zoning officer denial letter
- A-3 Survey by James Kuhn dated 12/13/13-revised 12/19/13
- A-4 Elevation certificate by James Kuhn dated 12/12/13
- A-5 Architect plans
- B-1 Board engineer letter

Michael Ernst was sworn in.

Robert Keady was sworn in.

Mr. Keady stated that the applicant is adding a 2<sup>nd</sup> story and converting the 1<sup>st</sup> story to a garage area. Being that there is a pre-existing, non-conforming use, Ordinance 13.5 applies, an applicant can elevate a house without having to seek a use variance on a pre-existing, non-conforming use. The second issue is there is an Ordinance requirement that if a resident builds an addition that exceeds 80% they have to seek relief from the Board.

In this case, it's the same as elevating the house, they are adding a 2<sup>nd</sup> story, however, they are converting the 1<sup>st</sup> story to a garage, effectively raising the house. He does not think that it applies in this case.

The only relief they are seeking is with regard to a 2<sup>nd</sup> driveway. The Ordinance requires one driveway per 400 feet, they have less than 400 feet. This relief is a design waiver, not a variance.

Mr. O'Neil 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. Gallagher, Mr. Mullen, Mr. O'Neil, Ms. Pezullo, Ms. Ziemba  
**NAYES:** None  
**ABSTAIN:** None

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**Approval of Minutes:**

Mr. Kutosh offered a motion to approve the April 3, 2014 meeting minutes. Seconded by Mr. O'Neil and all were in favor.

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

The Meeting adjourned at 9:06 P.M.

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Carolyn Cummins, Board Secretary

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