

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
August 7, 2014**

Meeting Location: Highlands Elementary School, 360 Navesink Avenue, Highlands, NJ.

Mr. Braswell called the meeting to order at 7:41 P.M.

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

Open Public Meeting 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 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. Braswell,
Ms. Ziembra

Absent: Mr. Kutosh, Ms. Pezzullo

Also Present: Debbie Dailey, Secretary
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer

**ZB#2014-13 Shanagan, Francis
Block 69 Lot 15.20 – 15 Cedar Street #20
Request for Adjournment**

Mr. Braswell stated that the applicant has submitted a request to postpone his hearing and to carry it to the September 4th meeting.

Mr. O'Neil offered a motion to carry the public hearing to the September 4th meeting. Seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Ms. Ziembra, Mr. Braswell

NAY: None

ABSTAIN: None

**ZB# 2014-9 Colby, Larry
Block 8 Lot 1 – 42 South Bay Ave
Review of Application**

Present: None

Mr. Baxter was contacted by Mr. Colby and he said that based on the Zoning Officers letter he was withdrawing his application.

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

ROLL CALL:

AYE: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Ms. Ziembra

NAY: None

ABSTAIN: Mr. Braswell

**ZB#2014-14 Hamilton, Anne
Block 72 Lot 39 – 3 Seadrift Avenue
Application Review & Set P.H. Date**

Present: Joseph Tinley, A.I.A.

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Mr. Baxter spoke about the Zoning Denial and about three inaccuracies.

The Board reviewed the application and the following was stated:

1. Applicant wants to extend second floor deck which creates rear yard variance.
2. Applicant wants to build second floor deck over first floor deck.
3. Applicant must provide photographs of site.
4. Applicant must provide survey to scale.
5. Applicant must serve public notice.

Mr. Gallagher offered a motion to schedule this matter for a public hearing on September 4th.
Seconded by Mr. O'Neil and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Mr. Braswell
NAY: None
ABSTAIN: None

**ZB#2014-15 Grover, Chris
Block 88 Lot 5 – 321 Shore Drive
Application Review & Set P.H. Date**

Present: Chris Grover
Keith Mazureka, A.I.A.

Mr. Baxter explained this application is for mixed uses and is currently a mixed use building.
There is commercial on the first floor and two floors of residential is proposed.

Board reviewed the application and the following was stated:

1. This is a use variance because it does not meet the conditions of a conditional use.
2. The applicant should have a Professional Planner to the hearing.
3. Applicant must serve public notice.

Mr. Gallagher offered a motion to schedule this matter for a public hearing on September 4th.
Seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen, Mr. O'Neil,
Ms. Ziemba, Mr. Braswell
NAY: None
ABSTAIN: None

**ZB#2013-15A Oliveira, Paul & N.
Block 77 Lot 4 – 14 Seadrift Avenue
Adoption of Resolution**

Mr. Gallagher offered the following Resolution and moved on its adoption:
8/7/14

**RESOLUTION AMENDING RESOLUTION DATED JANUARY 2, 2014 AND
APPROVING BULK VARIANCES FOR OLIVEIRA**

WHEREAS, the applicants, PAUL and NICOLE OLIVEIRA are the owners of a residential property at 14 Sea Drift Avenue in the Borough of Highlands (Block 77, Lot 4); and

WHEREAS, the applicants filed an application to amend the board's resolution of January 2, 2014, which permitted the applicants to construct a new single-family dwelling on their vacant lot which had previously contained a single-family structure; and

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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 public hearings on June 5 and July 3, 2014; and

WHEREAS, the Board heard the testimony of the applicant, PAUL OLIVEIRA; his architect, GREGORY WAGA; together with two neighbors, CLAUDETTE D'ARRIGO and BARBARA IANUCCI; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (7 pages);
- A-2 Foundation location survey by Valery Braginsky dated 1/14/14 (2 pages: one existing and one proposed)
- A-3 Letter from Zoning Officer Dale Leubner dated 4/7/14;
- A-4 Architectural plans by Gregory Waga dated 7/31/13, last revised 5/22/14 (4 pages)
- A-5 Architectural plans by Gregory Waga last revised 6/19/14 (4 pages)

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 5/29/14 (4 pages);
- B-2 Zoning Board resolution dated 1/2/14 (7 pages)
- B-3 Revised board engineer review letter dated 6/26/14 (5 pages with aerial photo and file memo dated 6/24/14).

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 is currently under construction, though a stop work order has been issued because, among other problems, no building permit(s) had been obtained, plus the construction official did not believe the foundation was located in the position approved by the board in its January 2, 2014 resolution.
3. The applicant proposes to build a new home, essentially maintaining the footprint of the former home, except for the depth.
4. Once construction began, putting aside the issue of no building permits having been obtained (that issue to be dealt with by other departments and officials within the borough), it appeared that the home was closer to the side yard than had been previously approved.
5. In the initial application (2013), the applicant proposed to center the dwelling on the property as much as possible. The revised proposal seeks to do the same.
6. The applicant seeks the following variance relief, thereby seeking to amend the January 2, 2014 approval:

CONTINUING JANUARY 2, 2014 APPROVALS FOR:

- A. Lot area of 1,750 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).

NEW APPROVALS SOUGHT IN THIS APPLICATION:

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C. Front yard setback of 8.0 feet where 20 feet are required (prior resolution approved 9.25 feet).

D. Side yard setbacks of 4.0/4.33 feet where 6/8 feet are required (prior resolution approved 3.08/5.37 feet). This request seeks a net change of .12 feet, the equivalent of less than one and a half inches.

E. Rear yard setback of 14.01 feet where 20 feet are required (prior resolution approved 12.75 feet, so this is an improvement over the prior approval).

F. Building coverage of 45.3% where 33% is allowed (prior resolution approved 48.8% coverage, so this is an improvement over the prior approval).

G. Lot coverage of 79.5% where 75% is permitted (prior resolution approved 82.6% coverage, so this is an improvement over the prior approval).

7. The height of the new structure will be approximately 32.39 feet. Since parking is provided below the structured, no height variance is required.

8. This application and its predecessor were prompted by Superstorm Sandy and the damage it caused.

9. The changes requested by the applicant to the Board's January 2, 2014, resolution are *de minimus*. One, the side yard setback, is a change of less than two inches total and a more centering of the house on the lot. Two, the rear yard setback is larger than the distance approved by the Board in January. Three, the building coverage is less than the Board approved in January. The front yard setback is only 1.25 feet more than approved in January; however, many houses on the street have similar front yard setbacks.

10. The changes to the January 2014 resolution with the variance relief sought here falls under N.J.S.A. 40:55D-70c(2). The purposes of the Municipal Land Use law will be advanced by deviation from the zoning ordinance requirements because three of the four new items of relief are actually improvements to the setbacks for which the applicant sought relief in January, with the remaining one being only 1.25 feet different. As a result, the benefits of the deviation substantially outweigh any detriment.

11. The Board heard testimony from the neighbor, CLAUDETTE D'ARRIGO, who stated that her homeowners insurance company told her that she might be denied continued coverage because of the nearness of the Oliviera home and fire rating issues. Between the June 5 and July 3 meetings those issues were addressed between the applicant and MS. D'ARRIGO, and it appears that those issues have been resolved. To the extent that they have not been resolved, the applicant agrees to work with MS. D'ARRIGO in resolving them, so that she does not find herself without homeowners insurance coverage caused by the construction of the OLIVIERA home. In addition, the Board has dealt with those issues by way of conditions of approval to this resolution.

12. Constructing this home above the flood elevation and providing off-street parking are also significant improvements to the property and to the neighborhood.

13. 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.

14. The Board further 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 meetings on June 5 and July 3, 2014, and this resolution shall memorialize the Board's action taken at the last of those meetings;

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NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of PAUL and NICOLE OLIVEIRA to construct a new home on their lot in accordance with their application and plans, is granted. Variances are hereby granted for the previously approved conditions of lot area and lot frontage as stated in paragraphs 6A, and B above; and for front yard setback, side yard setback, rear yard setback, building coverage and lot coverage as set forth above in paragraphs 6C, D, E, F and G;

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

C. No replacement shed shall be constructed on the property.

D. The building height shall conform with the borough ordinance, and proof of the building height shall be supplied to the Construction Department (note that 32.5 feet is allowed).

E. A certification regarding fire code compliance shall be provided prior to any building permit being issued.

F. A certification of continued homeowners insurance being available to the neighbor, CLAUDETTE D'ARRIGO, shall be provided prior to the issuance of any Certificate of Occupancy.

G. The builder, its agents and employees, together with any other persons undertaking any work on the subject premises, shall not go on to the neighbors' property.

H. The applicant will work with the neighbor, CLAUDETTE D'ARRIGO, to resolve any fire rating issues and satisfy her and her insurance company that the structure is fully compliant with fire safety regulations and the building code.

I. The structure shall be fully compliant with the fire safety regulations. This matter is further deferred to the Construction Official, PAUL VITALE.

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

ROLL CALL:

**AYES: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen,
Mr. Braswell**

NAYS: None

ABSTAIN: None

**ZB#2014-11 Williams, Ellen
Block 103 Lot 9 -359 Shore Drive
Adoption of Resolution**

Mr. Mullen offered the following Resolution and moved on its adoption:
8/7/14

**RESOLUTION APPROVING BULK VARIANCES
FOR WILLIAMS**

WHEREAS, the applicant, ELLEN WILLIAMS, is the owner of a single family residential property at 359 Shore Drive in the Borough of Highlands (Block 103, Lot 9); and

WHEREAS, the applicant filed an application for variance approval to rebuild her home that was substantially damaged during Superstorm Sandy and was demolished; 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 July 3, 2014; and

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WHEREAS, the Board heard the testimony of the applicant, ELLEN WILLIAMS and her builder, CHRIS DELUCCA; and her neighbors, ANTHONY CASTELLITTO and NEAL TABER; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Zoning Officer denial dated 5/14/14 (2 pages);
- A-3 Survey by Charles C. Widdis dated 5/12/03
- A-4 Plot Plan by Matthew R. Martin of Scope Engineering dated 6/25/14
- A-5 Architectural renderings by Fanelli Group Inc. (3 pages)
- A-6 Additional architecturals by Fanelli Group Inc. (34 pages)

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

- B-1 Board Engineer, Robert Keady, review letter dated 6/26/14 (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, 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, and subsequently demolished.

3. The applicant seeks to construct a new modular dwelling on wood pilings within the same general footprint as the prior dwelling, and comply with the new flood zone requirements.

4. Off-street parking for two vehicles under the structure will be provided, so no parking variance is required.

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

6. The applicant seeks the following relief:

A. Lot area variance for 3,329.7 square feet, where 5,000 square feet are required; a pre-existing condition.

B. Lot frontage of 28.35 feet where 50 feet are required; a pre-existing condition.

C. Front yard setback of 10 feet where 20 feet are required. The prior dwelling had a 9.1 foot setback, so this is an improvement.

D. Side yard setbacks of 2.91/3.0 feet where 6/8 feet are required (the previous setbacks were -.85/3.5 feet, so the proposal is a significant improvement over the past).

E. Building coverage of 36% when 30% is permitted. The prior dwelling had a 39% coverage, so this is an improvement.

F. Setback for stairs on the side of .74 feet where 3 feet are required. There were no prior side yard stairs.

7. Lot depth, rear yard setback, building height and lot coverage all meet the requirements of the borough ordinance.

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8. Because of the narrowness of the lot (28.35 feet), the house, of necessity, must also be narrow. In this case, the proposed structure is only 15.5 feet wide.

9. The old structure encroached on the left side. That encroachment will disappear as a result of the reconstruction.

10. The prior dwelling was a ranch with stone steps. It was not elevated. It had two bedrooms. The entire structure sustained four feet of water during Superstorm Sandy, as a result of which all of the utilities and contents were destroyed.

11. The property previously contained a shed, which has been removed.

12. This house sits back about the same distance from the street as the other homes on the block.

13. One of the neighbors, ANTHONY CASTELLITO, drew to the Board's attention the length of the home as it affected his home. In his questions and testimony it became apparent that he was not familiar with the dimensions, which were very little different from the old structure. He had no major issue with the setbacks, and testified that he was neither for nor against the application.

14. Another neighbor, NEIL TABER, was concerned with his views. Though that is not a reason to deny an application, the Board explored his concerns and determined that if the applicant had simply raised her prior home, next to the CASTELLITO home, the TABERS would not be able to see through those homes in that direction anyway.

15. MR. TABER seemed particularly concerned with the fact that the applicant had voluntarily demolished her home. The Board found such a matter to be irrelevant, since, as with many properties in that area, the home was destroyed during Superstorm Sandy, requiring either substantial renovation or rebuilding.

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. The changes being made to this structure from what previously existed is an improvement to the neighborhood.

18. This is a very narrow lot, and the applicant has presented a plan which is sensible, considering the dimensional difficulties.

19. The Board feels that the applicant has every right to replace her home.

20. 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 rebuild her storm-damaged dwelling as a result of her contractor having advised that it was not prudent to attempt to repair the significant damage. 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.

21. 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 July 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 ELLEN WILLIAMS to rebuild her single family home as set forth on the plans submitted is hereby approved. Accordingly, bulk variances are granted as set forth in paragraph 6 above for lot area, lot frontage, front yard setback, side yard setback, building coverage and the setback for the stairs on the side.

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

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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. Compliance with FEMA, NJDEP and all other outside agencies and departments.

C. Building elevation is deferred to the Flood Plain Officer.

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

ROLL CALL:

**AYES: Mr. Fox, Mr. Gallagher, Mr. Mullen,
Mr. Braswell**

NAYS: None

ABSTAIN: None

**ZB#2014-12 Markou, George
Block 43 Lot 9 & 9.01 – 36 Shrewsbury Ave
Hearing on New Business**

**Present: George Markou, Applicant
Ken Fox, A.I.A., P.P.**

Mr. Baxter stated that he has reviewed the public notices and finds them to be in proper order therefore the board has jurisdiction to proceed.

The following people were sworn in:

1. Ken Fox, Professional Planner
2. George Markou
3. Robert Keady, P.E., Board Engineer

The following exhibits were marked into evidence this evening:

A-1: Variance Application;
A-2: Zoning Officers Denial
A-3: Freehold Soil letter dated 5/20/14;
A-4: Elevation Certificate dated 2/25/14;
A-5: Survey dated 10/31/13;
A-6: Architectural Plans by Kenneth Fox last revised 5/13/14;
A-7: Colorized enlargement of Sheet SD3 of A-6;
B-1 Board Engineer Letter dated 7/31/14.

Mr. Keady discussed location of being in A-E Zone but documents say VE Zone.

Mr. Gallagher – it's built higher.

Mr. Fox stated the following during his testimony and response to questions from the public:

1. The applicant proposes to demolish the existing home and construct a new raised single-family dwelling to comply with new flood zone requirements.
2. The existing structure is a two story house with no garage.
3. Next door to the property is another home.
4. They propose to maintain setbacks toward the water.
5. The applicant plans to bump out on the left/north side toward Shrewsbury Avenue, and do the same in the right/south side to the rear of the home.
6. The current structure has a 4.48 foot setback from south side.
7. He described the proposed floor plan.

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8. He explained that the subject site is an undersized lot and an irregularly shaped lot.
9. Discussed distance from neighboring property.
10. Property Owners are here to voice their concerns and ask questions.
11. The property owner is willing to modify the width of the new home from 28 feet to 27 feet.
12. Impervious coverage plans indicate existing at 29.13% which was incorrect. The correct is 42.28%.
13. The front porch will hide the a/c unit which will result in additional lot coverage.
14. The proposed home will be about 300 square feet larger than existing.
15. The asphalt at the street line is proposed to be narrower to 18 feet for a driveway.
16. First Floor elevation will be 15.4 feet.
17. Roof drainage will go toward Shrewsbury River to the east.
18. The will not be a detriment to the neighborhood.

Public Questions & Public Portion

_____ of 34 Shrewsbury Ave spoke of fire wall.

Mr. Fox explained its within 5 feet and yes additional sheetrock and fire wall will be needed.

_____ of 15 Center Street questioned what the purpose of the tower room.

Mr. Fox explained to benefit views.

_____ of 15 Center Street questioned the tallness of the tower.

_____ stated it will cover his view

Mr. Braswell explained that the height is within the regulations.

Doug Card of 28 Shrewsbury Avenue questioned curb cut reducing to 18 feet.

Mr. Fox – no problem to help with driveway.

Mr. Keady – need survey of that area 18 feet driveway

Mr. O’Neil spoke about parking problems.

Mr. Keady if curb is not creating drain problems he will work with applicant but will need survey.

Mr. Baxter – we can put that in a resolution.

Mr. Gallagher – curbs possible to change driveway.

Mr. Fox is open to change if needed .

Mr. Braswell spoke of amendments on an approval.

Tom _____ of 34 Shrewsbury Avenue was concerned with house being so close. He would be fine with 8 feet but not 4 ½ feet. He also expressed safety concerns.

Mr. Fox responded – propose to shift house 2 ½ fee to left and make structure 1 foot smaller to 5.5 ft. setback on left. He will provide revised drawings to the board.

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Mr. Keady – left setback tower is 5.5 feet previously 8 ft. now 2 ½ feet less.

Mr. Fox can shift the tower down whichever side the board needs for setbacks.
He can have the revised drawings at next meeting and the revised survey for curb.

Mr. Keady – it's easy to reviewed as long as he gets the paperwork.

Mr. Fox – we will not need firewall now.

Mr. Baxter when over all the necessary variances and possible conditions.

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

ROLL CALL:

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

NAY: None

ABSTAIN: None

Approval of Minutes

Mr. Gallagher offered a motion to approve the June 5th Minutes. Seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Braswell

NAY: None

ABSTAIN: Mr. Mullen, Ms. Ziemba

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

The meeting adjourned at 9:07 P.M.

Carolyn Cummins, Board Secretary