

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
April 2, 2015**

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

Mr. Kutosh called the meeting to order at 7:34 P.M.

Mr. Kutosh 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 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. Mullen, Ms. Pezzullo, Ms. Ziemba

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

Late: Mr. O'Neil arrived to the meeting at 8:01 P.M.

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

**ZB#2015-3 Digaletos, John
2 Seadrift Avenue
Block 77 Lot 9.01
Application Review & Set Public Hearing Date**

Present: John Digaletos

The Board reviewed the application and the following was stated:

1. The Application is correct.
2. The second floor deck in the front is the reason for the application.
3. There is an increase in coverage, front yard setback and building coverage variances are required and must be included in the public notice. Also add language in notice about any and all other variances as deemed permitted by the board.
4. The applicant must apply for a 200 foot list.
5. The applicant must bring photographs to the hearing of the subject site and surrounding sites.
6. The applicant is building on same front yard setback.
7. The applicant must provide a zoning chart on the plans or on a piece of paper.
8. The curb cut must be added to the plan.

Ms. Pezzullo offered a motion to schedule the public hearing for this application on May 7th.
Seconded by Mr. Mullen and approved on the following roll call vote;

ROLL CALL:

Aye: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo, Ms. Ziemba

Nay: None

Abstain: None

**ZB#2015-1 O'Neil, Wayne
27 Ocean Avenue
Block 99 Lot 25
Hearing on New Business**

Present: Patricia O'Neil
Wayne O'Neil

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Mr. Baxter stated that he has reviewed the mailing receipts and public notice and finds it to be proper so the board has jurisdiction to proceed.

Mr. Baxter swears in Patricia O'Neil, Wayne O'Neil and Robert Keady.

The following exhibits were marked into evidence:

- A-1: Variance Application;
- A-2: Zoning Denial;
- A-3: Elevation Certificate, 2 pages;
- A-4: Portion of the survey;
- A-5: Foundation Replacement Plan;
- A-6: A-F – photographs
- B-1: Board Engineer Review Letter dated 3/26/15.

Patricia O'Neil stated the following during testimony and response to questions from the board:

1. They are elevating their house and moving it back 10 feet.
2. A-6 Photos she described the front of the house, the house to the left and house at 29 Ocean Avenue.
3. She did receive the Board Engineers Letter.
4. The new front yard setback is 20.25 feet no variance needed.
5. The front porch is not being covered.

Board discussed the variances that are pre-existing such as lot area, lot frontage, side yards. A new variance is needed for front yard and building coverage.

Mr. Mullen stated that they are making situation better.

Mr. Kutosh asked if there were any questions from the public but there were none.

Mr. Kutosh asked if any member of the public wished to make a comment and there were none.

Brief discussion.

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

Roll Call:

Aye: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo, Ms. Ziemba

Nay: None

Abstain: None

Mr. O'Neil arrived at 8:01 P.M.

**ZB2015-2 Flynn, Colleen
9 Seadrift Avenue
Block 72 Lot 36
Hearing on New Business**

**Present: Colleen Flynn, 44 Swartzel Drive, Middletown, NJ 07748
Mike Flynn, 44 Swartzel Drive, Middletown, NJ 07748**

Conflicts: Mr. O'Neil stepped down

Mr. Baxter swears in both Colleen and Mike Flynn.

Mr. Baxter stated that he has reviewed the public notice and finds it acceptable even though the three mailing receipts were missing from the Post Office.

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Colleen Flynn stated that she dropped off all the letters off at the Post Office and when she went back to pick up the certified mailing receipts there were three receipts missing. She has a sworn affidavit that she did mail the letters.

The following exhibits were marked into evidence:

- A-1: Variance Application;
- A-2: Zoning Denial;
- A-3: Letter dated 2/3/15 from Dale Leubner;
- A-4: Survey dated 11/1/2013;
- A-5: Survey Report;
- A-6: Raised Foundation Plan;
- B-1: T & M Letter

Mr. Flynn stated that they need a height variance.

Mr. Baxter read through the board engineer letter marked as exhibit B-1. Pre-existing variances are for lot area, lot frontage, lot depth, front yard setback, rear yard setback, side yards, building coverage, first floor deck in rear side yard and rear yard setback and first front deck side yard. Building height is the issue 32.5 feet is permitted and the existing is 35.3 first floor.

Mr. Keady explained height of 2.8 feet variance and that it's not a "d" variance it's a "c" variance.

Mr. Baxter stated that the Leubner letter got permits started work then got letter to stop.

Mr. Flynn stated that they were lifting the existing house and added on.

Mr. Mullen – then he should have come to the board.

Mrs. Flynn – we added two rooms on top of the house.

Mr. Flynn explained that he went with the builder's recommendation and did not go to the town with the changes to the plans. There were communication problems with builder for the roof and pitch of the roof.

Mr. Kutosh – you would have to have been inspected on the frame inspection. How did this not fail inspection? The Construction Official should have failed the inspection.

Mr. Baxter read both Dale Leubner letters. 37.3 feet height is going down by two feet because of flood maps so its 35.3 feet.

Mr. Baxter questioned soil.

Mr. Flynn stated that the house was raised and they took footings out and took out dirt and leveled it out. Most of the dirt was put on neighbor's property, then they pushed the dirt back and then the dirt froze. Then pilings were done and neighbors dug and threw their dirt onto his pile of dirt. The dirt was moved and pounded down.

Mr. Baxter said the grading plan goes to the Borough Engineer. So a grading plan is still needed based on the Zoning Officers letters.

Mr. Flynn – the bulkhead blows out when the tide comes in and goes back out taking the soil with it. A stop work order was issued but he was told he could continue at his own risk. Paul Vitale did not do a rough inspection yet and no framing inspections yet.

Mr. Mullen asked why should the board grant the height variance.

Mr. Flynn stated that the lots are narrow and that they need to go high and build up to flood zone. The Mason did the footings and said it would be lower than the road so he came up with higher block. The then stated that all the surrounding homes are going up.

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Mr. Mullen – you're in excess of building height. When you have small lots you need to not build a big house.

Mr. Flynn stated he still needs roof, siding and interior work.

Mr. Kutosh asked why the builder couldn't drop the roof down.

Mr. Flynn stated that he takes full responsibility and did not do this intentionally.

Mr. Kutosh questioned reason for not redoing the roof.

Mr. Flynn stated it was a high expense.

Mr. Kutosh – you changed the plans from what was approved.

Mr. Flynn – Paul Vitale, Construction Official said it was okay.

Mr. Kutosh – you are asking us to allow something that you did without approval. Ask the Contractor to drop the roof down.

Mr. Mullen questioned the floor to floor heights.

Mr. Flynn stated that the floor to floor height is 8 1/2 feet. He will testify the garage is 8 ft to floor joist.

Mr. Mullen asked are these the plans that were approved by the Building Official?

Mrs. Flynn – yes

Discussions and questions regarding the discrepancies in the height continued.

Mr. Mullen stated that the applicant lifted the slab and ceiling height then added the top and that there is a 10 foot discrepancy. He stated that the applicant makes it very difficult for him. He stated that he does want to see people back in their homes. If you came here prior we may have told you to move the house back.

Board continued questioning the applicant.

Mr. Kutosh – 10 feet discrepancy is more than just adding the block.

Mr. Keady stated it was hard to say where the differences came from.

Public Questions

Terrance King of 11 Seadrift Ave questioned the builder.

Mr. Flynn stated the he is the General Contractor.

Chris Francy of 36 Fifth Street – if Mr. Keady is correct then you don't know what this is and Mr. Flynn's testimony is very hard to understand.

There were no further questions from the public.

Public Comments

Chris Francy of 36 Fifth Street stated that the board does not know what its approving or disapproving and so he does not know how the board can move on this until they know.

Mr. Mullen – we asked the applicant to provide the floor to floor information and they did not.

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Mr. Keady stated that we know the building height, don't know the differences.

Bob Davis of 7 Seadrift Ave stated that he got a height variance and that this will be similar to what the board approved for him. He continued to speak favorably about the application.

A discussion occurred between Mr. Davis and the board.

Mr. Davis stated he is a neighbor and that he supports this application.

Pat Scarano of 1 Seadrift stated her house is 31 feet and that the applicant added a level. She does not have to lift now and if she is to raise she won't be at 48 feet. She then stated that on the marina side of Seadrift the bulkhead is eroding.

Mr. Baxter then swore in Ms. Scarano, Mr. Davis and Mr. King.

Terrance King of 11 Seadrift Ave handed out elevation certificates and 14 photos which is were marked into evidence as O-1. Mr. King stated the following whiling describing Exhibit O-1

1. The two properties on page five are on the same grade.
2. The grade plain is up to the boro officials.
3. He is very suspect about Mr. Flynn's testimony. He stated that the applicant has a wood burning stone and was told not to use it and now uses in the back of the house.
4. The photos on page 16 are of his house on the right. The Flynn house in on the left and this shows how much higher the Flynn house actually is.
5. He spoke about the pictures and the bulkhead.
6. The property record card shows a one story structure.
7. The deck on the water side is proposed, it's on the grade and was not raised yet.

Mrs. Flynn – we are raising the deck.

Mr. King stated that deck is laying on his property.

Mr. Flynn said it won't be on his property when it's finished.

Mr. King stated that on page 18 of O-1 it shows the rear of his house and the Flynn's house and shows the height difference. He stated that with regard to the height it didn't have to be this way. When does it stop that people build first then ask for variances after.

Ms. Ziemba stated that on page 19 of O-1 the property record card it says that the property is a one story home. How did it get to three stories?

Mr. & Mrs. Flynn stated it's the same as shown on page 18. It wasn't a one story when they bought the house.

Mr. King on page 15 of O-1 is the house before it was lifted. The applicant added a story and a half to the structure.

Mr. Mullen stated it was a one and a half story house.

Mr. King continued to describe his photographs to the board.

Mrs. Flynn stated that they had a permit for this.

Mr. Flynn stated that no one asked for a foundation survey.

Mr. Kutosh asked why a foundation survey was ever requested.

Mr. Flynn stated that the second level was the old first and that the new level is the fourth level. He stated that the front deck is an open porch.

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Claudette D'Arrigo of 12 Seadrift Avenue was sworn in. She stated that since she is the only one who lives on Street she has serious concerns when dirt was dropped onto 11 Seadrift Ave. She called CAFRA, they said the fill was boarder line but proper. The builder filled the property and is a rental property for the applicants. The applicant wasn't lower no dirt was ever put in like the Kings house. The applicant is building a nice house so why argue. She then stated that the Olivera house is finished but is not occupied.

Mr. King stated that the applicant bought the house after Sandy and that it's not the applicant's primary address.

There were no further comments from the public so the public portion was closed.

Mr. Mullen asked if the board had enough information to make a decision. The board did not get the information from the applicant that was requested and that there are discrepancies.

Mr. _____ commented on the application

There were no further comments from the public so the public portion was closed

Mr. Baxter explained that the board has the ability to fix the height in a Resolution if they so desire.

Mr. Mullen will not make a motion to approve the application and neither will Ms. Pezzullo or Ms. Ziemba.

Mr. Kutosh stated that they need to have Surveyor take shots to see what the height is. He then explained to the applicants that they can choose to postpone to the next meeting so they can have time to provide the height information or they could take a shot tonight to see if it gets approved or not.

The Flynn's do not wish to proceed this evening.

Mr. Mullen stated that the board wasn't given the information by the applicant that was requested by the board.

The Board had discussions they want sheet two of three to show the elevations it must show the height from grade to peak. The board wants actual floor elevations an as built compared to what is on the plans. Need to determine why there is a 10 foot discrepancy. The need to know what the pitch of the roof. The board wants floor to floor heights and an as built. They want the floor to floor dimensions.

Mr. Mullen explained the need for additional information for the height.

Mr. Mullen offered a motion to carry this public hearing to the May 6th meeting so the Applicant can provide the requested information seconded by Ms. Pezzullo and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo, Ms. Ziemba
NAY: None
ABSTAIN: None

Mr. Kutosh announced that the board would be taking a brief recess at 9:36 p.m.
The board returned from the recess.

ROLL CALL:

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

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

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

**ZB#2013-4A Allen, Beth & Christopher
Block 99 Lot 16, 5 Ocean Avenue
Hearing on New Business**

Present: Christopher Allen

Mr. Baxter reviewed the public notice and found it to be acceptable.

Mr. Baxter swears in Christopher Allen.

The following exhibits were marked into evidence:

- A-1: Variance Application
- A-2: Zoning Permit Application
- A-3: Site Plan Elevation, five pages dated 5/6/2005
- A-5: Zoning Board Resolution from July
- A-6: Photographs, black and white consisting of two
- B-1: T & M Letter dated 3/26/16

Mr. Baxter stated that coverage variance is needed as a result of the application. There are preexisting variances for lot area, lot frontage, front yard and side yards. New building coverage and rear deck second floor side yards.

Mr. Allen stated the following during his testimony and response to questions from the board.

1. The shed is there and will remain.
2. Damaged fence all new at side.
3. Street trees , where would he possibly put a tree ? He is willing to put two trees on his lot to comply.
4. He has a problem with aesthetics of house with regard to a/c and generator location. The idea is to put them on the deck in the back which takes up space. Balcony above will put the a/c and generator on.
5. He wants to put a full 16 x 19 deck on both decks.
6. The top deck does not have a cover but the bottom deck is covered by top deck.
7. Both decks will be same size.
8. A 13.x 19 deck was previously approved and the old balcony was 11 x 4.
9. If they put the utility units on the roof it will make it ugly.

Mr. Mullen expanding lower deck, second floor seems logical to place the utilities and relief for lot coverage is a good thing.

Public Questions

Patty Uber of 15 Beach Blvd questioned her concerns about the second floor deck. She lives on the rear of the property and is concerned with height and the fact that her bedroom is there and the noise might be disruptive to the neighbors.

Mr. O'Neil stated that when the house next to this builds up it won't too be different.

Mr. Allen stated that the house has two air conditioner units so they will be quiet.

Ms. Uber continued to complain about the noise and asked the applicant to move it.

Mr. Allen answered no, there is nowhere to place the units must be above the flood level which is set at 15 feet.

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Discussions about original approval from the board and the fact that the utilities have to be above the 15 feet.

Mr. Mullen stated that they are vertical units and that the noise goes vertically.

There were no further questions or comments from the public.

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

ROLL CALL:

AYE: Mr. Kutosh, Mr. Mullen, Mr. O'Neil, Ms. Pezzullo, Ms. Ziembra

NAY: None

ABSTAIN: None

Minutes

Mr. Mullen offered a motion to approve the March 12 minutes seconded by Mr. Kutosh and approved on the following:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Mullen, Ms. Ziembra

NAY: None

ABSTAIN: None

Mr. O'Neil offered a motion to adjourn seconded by Ms. Ziembra and all were in favor.

The meeting adjourned at 10:18 p.m.

Carolyn Cummins, Board Secretary