

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
May 7, 2015**

Meeting Location: Highlands Elementary School, 360 Navesink Avenue, Highlands, NJ 07732

Mr. Braswell called the meeting to order at 7:44 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. Mullen, Ms. Pezzullo, Ms. Ziemba, Mr. Braswell

Late Arrival: Mr. Knox, Mr. Booth and Mr. O'Neil arrived at 8:02 P.M.

Absent: Mr. Fox

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

**ZB#2015-4 Fitzpatrick, Andrew
30 Gravelly Point Road – Block 100 Lot 26.30
Review Application & Schedule Public Hearing Date**

Present: Mrs. Fitzpatrick

Mr. Baxter stated that there was previous application that was withdrawn after a partial hearing and that this is a new application.

The Board reviewed the application and the following was stated:

1. The applicant needs a letter from the Condo Association.
2. The applicant needs to bring photographs to the hearing.
3. This is an application for a height variance and that must be included in the public notice. The applicant was advised to also add “ any and all other variances as deemed necessary by the board” into the public notice.
4. The Zoning Officer and Board Engineer and Mr. Baxter had different opinions of Gravelly Point being one property or all separate lots. The board has treated the lots at Gravelly Point as individual lots.
5. The applicant stated that she is here for height variance and for the location of the stairs.

Mr. Mullen questioned the lot coverage and the parking issues.

Mr. Keady stated that he would need a full size plan to review.

Mr. Kutosh offered a motion to schedule this application for a public hearing on June 4th seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo, Mr. Braswell, Ms. Ziemba

NAY: None

ABSTAIN: None

**ZB#2015-1 O'Neil, Wayne
27 Ocean Avenue – Block 100 Lot 26.30
Approval of Resolution**

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

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

WHEREAS, the applicants, WAYNE and PATRICIA O'NEIL, are the owners of a single family residential property at 27 Ocean Avenue in the Borough of Highlands (Block 99, Lot 25); and

WHEREAS, the applicants filed an application for variance approval to elevate and relocate their dwelling to increase the front setback by 10 feet and allow for an access stairway and off-street parking; 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 2, 2015 and

WHEREAS, the Board heard the testimony of both owners, WAYNE O'NEIL and PATRICIA O'NEIL. No other persons appeared in opposition or to ask questions regarding this application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Zoning Officer denial dated 2/17/15 (2 pages);
- A-3 Elevation certificate by STEVEN D. PARENT dated 11/19/13 (4 pages);
- A-4 Portion of survey (no date or preparer shown);
- A-5 Foundation replacement plan by SALVATORE LA FRELITA dated 11/24/14;
- A-6 6 Photographs sub-lettered (a) through (f);

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

- B-1 Board Engineer, Robert Keady, review letter dated 3/26/15 (5 pages plus aerial photo);

AND, WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicants are the owners of property located in the R-2.03 Zone, in which single-family residences are permitted.
2. As a result of Superstorm Sandy and FEMA regulations, the applicants seek to elevate their home and relocate it 10 feet further back on the lot, with an access stairway and off-street parking.
3. Off-street parking for two vehicles will now be provided on the site, whereas no off-street parking was previously provided.
4. The footprint of the raised structure will be the same as the existing structure.
5. The applicant seeks the following relief:
 - A. Lot area variance for 2,500 square feet, where 5,000 square feet are required; a pre-existing condition.
 - B. Lot frontage of 25 feet where 50 feet are required; a pre-existing condition.
 - C. Side yard setbacks of 3.5/3.5 feet where 6/8 feet are required, a pre-existing condition.

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D. Building coverage of 38.9% when 30% is permitted. A pre-existing condition.

6. Lot depth, front and rear yard setbacks, building height and lot coverage all meet the requirements of the borough ordinance.

7. By moving the house further back on the lot, the home will be brought into compliance from the front yard setback, which will now be almost twice the setback as previously existed, an improvement to the property.

8. 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.

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

10. 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 2, 2015, 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 WAYNE and PATRICIA O'NEIL to elevate and relocate their home back 10 feet and allow for an access stairway and off-street parking, as shown on their plans, is hereby approved. Accordingly, bulk variances are granted as set forth in paragraph 5 above for lot area, lot frontage, side yard setback 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. Compliance with FEMA, NJDEP and all other outside agencies and departments.

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

ROLL CALL:

**AYE: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo,
Ms. Ziemba**

NAY: None

ABSTAIN: None

**ZB#2013-4(A) Allen, Beth & Christopher
5 Ocean Avenue – Block 99 Lot 16
Approval of Resolution**

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

**RESOLUTION APPROVING BULK VARIANCES
FOR ALLEN AT 5 OCEAN AVENUE**

WHEREAS, the applicants, CHRISTOPHER & BETH ALLEN, are the owners of a single-family home at 5 Ocean Avenue, Highlands, New Jersey (Block 99, Lot 16); and

WHEREAS, the property owners filed an application to extend their second floor deck;
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

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WHEREAS, the Board considered the application at a public hearing on April 2, 2015;
and

WHEREAS, testimony was provided by the applicant, CHRISTOPHER ALLEN;

WHEREAS, a neighbor, PATTY UBER appeared to ask questions and comment on the planned placement of an air conditioning unit and emergency generator on the rear deck; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application with designs and photos attached, with no comments by the zoning officer (7 pages);
- A-3: Site plan elevations by CHESTER DI LORENZO dated 5/6/05 (2 pages);
- A-4: Zoning Officer denial letter by DALE LEUBNER dated 2/20/15;
- A-5: Prior resolution of Highlands Zoning Board of Adjustment dated 7/18/13;
- A-6: 2 Photos of unfinished house;

AND, WHEREAS, the following exhibit was also marked into evidence:

- B-1: Board Engineer review letter dated 3/26/15 (4 pages with aerial photo attached);

WHEREAS, the Board, after considering the evidence, has made the following factual findings and conclusions:

1. The applicants are the owners of a single-family home located in the R-2.03 Zone.
2. This home was substantially damaged during Super Storm Sandy, and has since been raised and reconstructed.
3. The property is located on Ocean Avenue, where the surrounding properties are residential.
4. The applicants received approval from the Highlands Zoning Board of Adjustment on July 18, 2013, which approval permitted the applicant to construct a new dwelling in accordance with the plans submitted at that time. Several items of variance relief were granted in that resolution.
5. The applicants seek the following relief:
 - A. Lot area variance for 2,500 s.f., where 5,000 s.f. are required; a pre-existing condition.
 - B. Lot frontage of 25 feet, where 50 feet are required, a pre-existing condition.
 - C. Front yard setback of 9.1 feet, where 20 feet are required, a pre-existing condition.
 - D. Side yard setbacks of 3/3 feet, where 6/8 feet are required, a pre-existing condition.
6. The applicants also seek new variance relief for the following:
 - E. Building coverage of 47.35%, where 30% is required. The prior application approved building coverage of 37.58%. The additional coverage is as a result of the decks being added to the structure.

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F. Side yard setback for rear deck on second floor of 3/3 feet, where 6/8 feet are required. The prior approval, and existing situation, is 7/7 feet, where 6/8 feet are required.

7. Because the property is in compliance, variance relief for rear yard setbacks, building height, lot coverage and the setbacks for the rear deck on the first floor and for the front balcony meet the requirements of the zoning ordinance.

8. The variance relief sought here is *de minimus*, in that the enlargement of two decks is the only proposal that requires further board action.

9. The lower deck was previously 247 s.f. (13' X 19'); and the upper deck was 44 s.f. (11' X 4'); for a total square footage of decks of 291 s.f.

10. The applicants propose making both decks, upper and lower, 16' X 19', for a total of 304 s.f. each, or a total of the two decks of 608 s.f.

11. The reason for the need to enlarge the upper deck is to have a place to locate the air conditioning unit and emergency generator. Other options for location, such as in front of the house or on the roof, were rejected by the applicants because of their negative aesthetic impact. There is insufficient space in the front or side yards to install the same.

12. The damaged fencing, which was on the property prior to the 2013 application, has been removed.

13. The property owner acknowledged the requirement in the 2013 variance approval to install two trees, and will comply with that requirement.

14. The Board felt that most homes in the area have air conditioning units, and many also have emergency generators, which are only used when necessary, other than to run them for a brief period of time once per week. The Board does not feel that placement of the air conditioning unit and emergency generator on the upper deck at the rear of the home will have any substantial impact on any of the neighbors.

15. Other than the decks, there is no change to the footprint of the building previously approved.

16. There will be no cover on the upper deck.

17. The Board finds that this application satisfies the positive criteria, in that the proposed decks will promote a public purpose, as set forth in the Municipal Land Use Law, be far more aesthetic for the placement of the air conditioner and generator than in the front of the house or on the roof, and thereby provide improved community planning that benefits the public. The benefits of this variance, to the extent they may exist, substantially outweigh any detriment.

18. This application has been approved upon the Board finding that most of the variance relief requested is for pre-existing conditions, and that the two new variances are for *de minimus* changes. As a result, the Board finds that this relief can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. Additionally, this relief will not cause damage to the character of the neighborhood, nor will it constitute a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on April 2, 2015, 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 CHRISTOPHER & BETH ALLEN to install two decks in the rear of their property, each 16' X 19', be and the same is hereby approved; and variances for the pre-existing conditions of lot area, lot frontage, front yard setback and side yard

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setback, as set forth in paragraph 5 are hereby approved; and additional variance relief as set forth in paragraph 6 is hereby granted for building coverage and for the side yard setback for the second floor rear deck;

AND BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

- A. Conditions placed on the variance approval by this Board on July 18, 2013, shall continue.
- B. Specifically, the property owner will install two trees.
- C. There will be no cover on the upper deck.

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

ROLL CALL:

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

NAY: None

ABSTAIN: None

**ZB#2015-3 Digaletos, John
2 Seadrift Avenue – Block 77 Lot 9.01
Hearing on New Business**

Present: John Digaletos

Mr. Baxter stated that the notice in the newspaper was a day late so the applicant must republish. Service of the public notice to properties within 200 feet, four properties need to be renoticed for the June meeting.

Mr. Digaletos asked the engineer to clarify the questions he had in his report.

Mr. Keady stated that he will talk on the phone with him to clarify questions.

Mr. Mullen offered a motion to reschedule the public hearing on this application to the June 4th meeting. Seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Mullen, Ms. Pezzullo, Ms. Ziembra, Mr. Braswell

NAY: None

ABSTAIN: None

**ZB#2015-2 Flynn, Colleen
9 Seadrift Avenue – Block 72 Lot 9.01
Hearing on Unfinished Business**

Present: Colleen & Mike Flynn

Conflicted: Mr. O’Neil

Height is a “c” variance as per the board engineer letter

The following was marked into evidence:

A-7: Foundation & Renovation Plan by Joseph Tinly dated 4/28/15

8:02 P.M. Mr. Knox, Mr. Booth and Mr. O’Neil arrived.

It was stated that both Mr. Knox and Mr. Braswell listened to the April Zoning Board Meeting recording and are eligible to vote on the Flynn application.

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Mr. Braswell stated that the Board just received today exhibit A-7 and that the board is not sure if they are any clearer about the building height.

Mr. Keady stated that based on A-7 the height to the midrise is 45.8 feet. He stated that the property is located in the A-E 12 Flood Zone and the rule is to take the more restricted elevation of 12 feet which he further explained. According to the plans this does not agree with Stockton Elevation Certificate based on the different height. He further explained the Stockton report and the fact that there are discrepancies between the Architect and the Stockton report. He believes the height is 36 feet and if you use the Stockton report then the height is a "d" variance. The architect has the height at 32.8 feet and the Stockton report has the height at 36 feet. The restrictive of the tow flood maps would be AE-12 Zone which makes it 35.5 feet for the building height which would make this a "c" variance.

Mr. Baxter and Mr. Braswell stated that the Surveyor is the person to establish height not the Architect.

Mike Flynn stated the Architect came to the house to measure with a measuring tape.

Mr. Baxter advised the board to either reject everything or accept the Stockton report.

The Board had discussion about what the correct building height is.

Colleen Flynn questioned the height difference.

Mr. Keady explained the finished first floor is 13.7 feet.

Ms. Pezzullo stated the old drawings show it as 12.7 feet.

Mr. Keady stated that on the Stockton report, the top of concrete is 15 ft which is a 1.3 foot difference.

Mike Flynn stated it's a block foundation.

Mr. Baxter – back to a "c" variance of 35.3 feet which would be a 2.8 foot variance.

Mr. Keady continued to total heights based on the new plan exhibit A-7 and said that it should not be that hard to interpret the height. He said to consider 3.8 or 2.8 foot variance and that there is confusion and that A-7 doesn't scale right.

The Board continued discussions about the confusion of the building height.

Mr. Braswell stated that we can't rely of A-___ and that we are going with the 2.8 foot variance.

Mr. Keady said based on engineer opinion its 35.3 feet for height.

Mr. Knox stated that we went from 37 ft to 36 ft to 35 feet.

The Board continued discussions about the height.

Mrs. Flynn explained that this should have been in the V Zone and hoping FEMA changes maps to AE Zone and that her neighbors are in the V Zone.

Mr. Braswell wants the board to agree on the required variance needed.

Mr. Knox questions how the board would get clarity.

Mr. Braswell responded that we get clarity by using the Surveyor report, its 2.8 foot above the permitted height.

The Board continued discussions about the building height confusion.

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Mr. Kutosh offered a motion to use a 2.8 foot variance for height, seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Knox, Mr. Mullen, Ms. Pezzullo, Ms. Ziemba, Mr. Braswell

NAY: None

ABSTAIN: None

Mr. Braswell then asked if the soil issue was resolved.

Mr. Baxter stated that if the application were to be approved that the applicant would need to submit a grading plan and that the deck would have to be removed off the neighboring property.

Mr. Braswell asked if the board could get height verification of the completed work.

Mr. Baxter – yes, the board can place a cap on the height not to exceed blank. He stated that the other variances are preexisting.

Mr. Braswell asked the applicant what was added to the building.

Mike Flynn replied that a few extra block pads were added and the upper level is new and the lower level was made larger and changed..

Mr. Kutosh stated that the back deck is over the property line and must be moved.

Mr. Braswell asked if there were any question from the public.

There were none.

Mr. Braswell asked if there were any comments from the public.

Claudette D'Arrigo of 12 Seadrift Avenue was sworn in and stated that she lives across the street and wants house to get finished and that she is in favor of this application. She stated that she is going to Trenton to testify about the \$34,000 insurance bill she received after she lifted her home.

Ms. Pezzullo questioned if 11 Seadrift was a HUD house.

Claudette D'Arrigo explained that it must be a lower income rental.

Terrance King of 11 Seadrift Avenue was sworn in and explained that part of the money he received as a Landlord had to rent to lower income and that its not Section 8 housing.

Ms. Pezzullo wanted clarification on the low rental income.

Mr. Baxter informed Ms. Pezzullo that this issue was irrelevant.

Patricia Scarano of 1 Seadrift Avenue was sworn in and stated tha pre Sandy Mr. King rented out by the night and that there were always trouble with the tenants. She does support this application.

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

Mr. Keady suggested that the applicant have Stockton prepare an asbuilt for the height. He then questioned if Stockton's interpretation of the height is correct or not.

Mr. Baxter suggested to have the documents submitted and reviewed by the Board Engineer.

Mr. Kutosh offered a motion to approve the application with the conditions as discussed, seconded by Mr. Knox and NOT approved on the following roll call vote:

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ROLL CALL:

AYE: Mr. Kutosh, Mr. Knox, Mr. Braswell

NAY: Mr. Mullen, Ms. Pezzullo, Ms. Ziemba

ABSTAIN: None

Mr. Baxter advised the applicant that the application was not approved because it was a tie vote. He then informed the applicants that they could appeal this or reduce the height to 32.5 feet.

Minutes

The April Minutes were not completed yet.

Ms. Pezzullo offered a motion to adjourn the meeting seconded by Mr. Kutosh and all were in favor.

The meeting adjourned at 9:19 P.M.