

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

11/2/06

**RESOLUTION APPROVING BULK VARIANCES  
FOR KURTZ AT 5 WOODLAND STREET**

WHEREAS, the applicants, ROBERT & DOREEN KURTZ, are the owners of 5 Woodland Street, Highlands, New Jersey (Block 36, Lot 2); and

WHEREAS, the applicants originally filed an application to add a kitchen to the rear of the house, remove the existing rear deck, and install a new deck approximately 22 feet by 20 feet, all to the existing single-family home; and

WHEREAS, during the hearing process, the applicants amended their application to reduce the scope of the project. The amended application was to still seek approval for the kitchen to the rear, and to remove the existing deck and construct a new deck, but the new deck would be no closer to the rear property line than 10 feet (effectively 9 feet deeper than the current deck), with the maximum height from ground level to the bottom of the deck to be 2 feet lower than the finished floor area (which is the same level as the existing 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

WHEREAS, the Board considered the application at a public hearing on October 5, 2006; and

WHEREAS, the Board heard the testimony of the applicants, DOREEN and ROBERT KURTZ; their neighbor and builder, MICHAEL KOVIC; and their friend and architect, GABRIEL MASSA; and

WHEREAS, the following neighbors appeared to both ask questions and object to the size and scope of the application: MARK DRUCKER; WILLIAM WARD; and DIANE DUZAK (MR. DRUCKER'S wife); and

WHEREAS, the applicants submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit and denial form;
- A-3: Bulk area requirements list prepared by Zoning Officer, revised 6/27/06;
- A-4: 11/1/88 survey by Thomas A. Finnegan;
- A-5: Manila folder with 4 color photographs, each 4" X 6";
- A-6: Building plans prepared by MR. KURTZ;
- A-7: Photographs of property to rear (blue house);
- A-8: Photograph looking north from the property;
- A-9: Picture of existing rear deck;
- A-10: Photograph looking northeast, toward Lots 1 and 3;

A-11: Combination of 9/16/03 quitclaim deed from Kurtz to Kurtz; and 8/18/86 deed of easement from Kovpac Associates to Kovic; and

WHEREAS, the following exhibits were marked into evidence by the objectors:

O-1: Color photograph of rear of existing deck

O-2: Photograph taken from DRUCKER property looking at rear of subject;

O-3: Google Earth aerial photograph with lots superimposed thereon;

O2-1: Photo looking west from WARD rear yard;

O2-2: 11/13/97 survey of WARD property by THOMAS FINNEGAN; and

WHEREAS, the Board received a review letter dated September 29, 2006, from JOSEPH MAY, Board Engineer; 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 a two-and-a-half story single-family home in the R-1.01 Zone.

2. The applicants seek variance approval for the following preexisting conditions: (a) Minimum lot size of 5,000 square feet, where 4,957 square feet is existing; (b) minimum lot depth of 100 feet, where 71.5 feet is existing; (c) minimum

front yard setback of 35 feet, where 20.7 feet is existing.

3. The applicants also seek a variance for rear yard setback. After amending their application, the requested setback is 10 feet from the rear property line, where 25 feet is required.

4. The applicants testified that there will be no further encroachment on either side yard, as a result of which no variance relief is needed.

5. Since the plans and testimony provided by the applicants were not as informative as the Board would have liked, much of the testimony centered on the dimensional aspects of the rear deck, its height, and its distance from both the rear and side property lines.

6. The property is on a slope, which generally runs from left to right (i.e., northeast to southwest).

7. The current home is over 2 stories in height, and contains a bedroom, workout area, living room, kitchen and small bath on the first level; and a master bedroom,

master bath and recreation room on the second level.

8. Because of the small size of the kitchen, the applicant plans to expand the current kitchen, so that they will have a dining area in the area of the existing kitchen, and the new kitchen will expand out the rear of the property. The expansion, however, will be no closer to the side yard than currently exists.

9. There will also be a deck area on the level above the kitchen roof.

10. The plans drawn by the applicant do not accurately depict the application. For instance, the cover page does not accurately depict the way the deck is to be built. The Construction Department should not use that page as reference. Similarly, the approval being given herein will not be consistent with the plans submitted, as a result of which, the Construction Department should require new plans to accurately set forth what is being constructed.

11. Because of the slope of the property, it is difficult to even put chairs

in the rear property, since people would tend to fall over, because of the pitch of the land.

12. The slope of the rear portion of the lot requires that the applicants seek alternatives for outdoor living space. They have, therefore, requested the removal of their existing deck and its replacement with a larger deck.

13. The current main deck at the rear of the house is approximately 34 feet in length and is 6 feet off the rear of the home. The proposed new deck will be 15 feet off the rear of the home, but will be no closer than 10 feet to any point of the rear property line.

14. The configuration of the new deck shall be in accordance with the design on page 2 of Exhibit A-6. That means that the rear of the new deck will not be squared off in the right rear corner; but, rather, the right rear triangle will be removed.

15. The current property has an existing patio in the northern rear corner.

That patio will remain, but will decrease in size as a result of the kitchen addition.

16. The Board was not favorably disposed toward the original application because of the proposed size of the new deck and its affect on the neighbors, as well as the significant encroachment on the rear yard setback. The Board was much more favorably disposed toward the amended request of the applicants, which reduced both the size and the height of the deck.

17. The applicants testified that the entire area below the new deck will have latticework, similar to what is currently there.

18. The applicants testified that there will be no exterior lighting of the rear deck.

19. The Board was favorably disposed toward the enlargement of the kitchen and having a useful area for the same, both inside and outside, similar to other homes in the area.

20. The reduction in height of the proposed new deck will alleviate some of the

concerns raised by the neighbors regarding air and light.

21. For the reasons expressed earlier herein, the Board finds that the applicant has met the requirements of N.J.S.A. 40:55D-70c(1)(b) for the obtaining of a bulk variance by reason of the exceptional topographic conditions or physical features uniquely affecting this property.

22. The Board finds that the amended proposal will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. Neither will it be a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on October 5, 2006, and this resolution shall memorialize the Board's action taken at the October 5, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of ROBERT & DOREEN KURTZ to add a kitchen to the rear of their home, remove the large existing deck, and replace it with a new deck, and add a deck above the kitchen, at their home at 5 Woodland Street (Block 36, Lot 2), as initially depicted on the



plans submitted by the application, as amended herein, be and is hereby approved, and variances are hereby granted for the afore-described preexisting conditions of front yard setback, size of lot and depth of lot; and a variance is further granted for the rear yard setback, such that no part of the new deck is any closer to the rear property line than 10 feet;

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

(1) There shall be no further encroachment on either side of the home;

(2) The area below the new deck will be entirely latticed, similar to the current design;

(3) There will be no exterior lighting on or directed to the new deck;

(4) The height of the new deck shall be 2 feet below the existing deck. The level of the current deck is the same level as the first living floor of the home;

(5) The cutout design of the new deck, as shown on Exhibit A-6, shall be employed.

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

**ROLL CALL:**

**AYES:** Mr. Duncan, Mr. Braswell, Mr. Mintzer, Mr. Francy,  
Mr. Fox

**NAYES:** None

**ABSTAIN:** None

**DATE:** November 2, 2006

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**CAROLYN CUMMINS, BOARD SECRETARY**

I hereby certify this to be a true copy of the Resolution Adopted by the Borough of Highlands Zoning Board of Adjustment on November 2, 2006.

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**BOARD SECRETARY**