

6/7/07

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

**RESOLUTION APPROVING BULK VARIANCES
FOR GORDON ON SOUTH PEAK STREET**

WHEREAS, the applicants, GARRY & PATRICIA GORDON, are the owners of a vacant lot on South Peak Street in Highlands, New Jersey (Block 19, Lot 21.04); and

WHEREAS, the owners filed an application to construct a one-family home; 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 hearings on December 7, 2006, and May 3, 2007; and

WHEREAS, the Board heard the testimony of JEFFREY MC ENTEE, Architect; and DANIEL BUSCH, Engineer & Planner; and

WHEREAS, several neighbors appeared to ask questions about the application, but only one (JOSEPH MC FADDEN) testified in opposition to the application; and

WHEREAS, the applicants submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application with denial (3 pages), and including bulk and area requirement chart and copy of steep slope ordinance;
- A-3: 4/7/06 Survey by Thomas Finnegan;

- A-4: Highlands Planning Board resolution regarding the property dated 4/23/87 (3 pages);
- A-5: Subdivision plan dated 7/31/86 by Richard Stockton, with 6 revisions, latest being 10/12/87;
- A-6: Architectural plans by Jeffrey McEntee dated 6/19/06 (5 pages);
- A-7: 4/23/07 Reply letter by Daniel Busch, of Mazur Consulting (6 pages);
- A-8: 3/9/07 Report of Preliminary Subsurface Exploration—Slope and Foundation Evaluation by James Serpico, of Mazur Consulting;
- A-9: Layout and grading plan by Daniel Busch, of Mazur Consulting (2 pages);
- A-10: Architectural plans by Jeffrey McEntee revised 3/30/07 (2 pages), showing changes to part of Exhibit A-6;
- A-11: Deed into the Gordons dated 3/14/91;
- A-12: Deed of easement for driveway access dated 8/11/03.

WHEREAS, the following exhibits were also marked into evidence:

- B-1: 3/26/87 Letter from John Truhan to Planning Board with subdivision review chart attachment;
- B-2: Zoning Board Engineer's review letter dated 7/27/06;
- B-3: Board Engineer revised review letter dated 4/26/07.

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-1.01 Zone.
2. The site is currently vacant.

3. The subject parcel is an irregularly-shaped piece of approximately .137 acres.

4. There is an 8-foot wide paved driveway, subject to a driveway easement (Exhibit A-12), running along the easterly property line and serving the McFadden home to the east.

5. The Planning Board previously approved a subdivision regarding this property on April 23, 1987 (Exhibit A-4), which subdivision has the effect of permitting a single-family home to be built on the subject parcel.

6. The zoning ordinances have changed since 1987. For instance, the zoning ordinance in effect at the time of the subdivision required a minimum lot size of 7,500 square feet in this zone, where the current zoning ordinance permits lot sizes of 5,000 square feet.

7. Since the Planning Board previously approved this parcel for subdivision, the Board unanimously finds that the applicants are permitted to build a single-family home on the lot. The only questions remaining are as to the size and placement of the home on the lot.

8. The property slopes east to west, with the primary slope occurring approximately 10 to 12 feet

from the westerly boundary. The slope on the balance of the lot (to the east) is not anywhere near as dramatic. The slope at the western end implicates the borough's steep slope ordinance.

9. When the applicants appeared at the first hearing, the driveway and garage were proposed to be on the left (easterly) side of the property. As a result of concerns expressed during that hearing, the plans were redrawn, with the house basically mirroring the original plan, but placing the driveway and garage on the westerly portion of the lot. The footprint of the proposed house, however, did not change.

10. The applicants propose to construct a home 40 feet by 30 feet, as reflected on their plans.

11. The placement of the driveway on the western portion of the property provides more separation on the east side, between the house and the driveway and easement.

12. The applicants' engineer and planner, Daniel Busch, testified at some length regarding the slope stability, the test borings taken, the slope's stability analysis, and the procedures to be employed in construction.

13. The ordinance requires that the structure be at least 25 feet from the top of the slope. The

applicants propose a distance of 12.5 plus/minus feet. They also propose disturbance of the property within 10 feet of the top of the slope, where 15 feet is required.

14. The applicants' expert, Daniel Busch, testified that, because of the type of development being undertaken here, there should be no concern that the stability of the slope would be impaired or that any neighboring property would suffer any damage as a result of construction of the proposed home.

15. The applicants' engineer recommended footings of at least 3 feet below grade, which is the minimum allowed.

16. The Board and neighbors were concerned with possible erosion coming down the hill, either from adjoining properties or this property. The Board, however, was very favorably impressed by the testimony of Mr. Busch regarding the dry well which will be placed behind the home and the improvement that the dry well will make to the avoidance of surface water running down the property into the street. The proposed dry well will be an improvement to the subject lot, as well as to the neighboring lots and street, and is something that does not appear to have been employed by other properties in the neighborhood.

17. Mr. Busch testified that there should be a reduction in runoff, when the project is complete, and the Board accepted that testimony as persuasive and convincing.

18. The applicants request variances for minimum lot depth (75 feet, where 100 feet is required), which is a preexisting condition; for a front yard setback of 20 feet, where 35 feet or the local average (with a minimum of 17.5 feet) is required; a rear yard setback of 15.6 feet, where 25 feet is required; and waivers from the steep slope ordinance, referred to above.

19. Because of the configuration of the lot, and keeping in mind that the applicants, by right, are entitled to build a single-family home, it would be almost impossible to construct a home on the site without obtaining some variance relief. The application, therefore, was considered by the Board for a hardship variance under N.J.S.A. 40:55D-70c(1).

20. The Board finds that the "(c)1" hardship criteria have been met by the applicants, entitling the applicants to the variance relief requested.

21. The only person who testified in opposition objected by stating that the nature of his and his neighbors' objection is that they did not want another

house built on the street. They were, therefore, opposed to any house being constructed.

22. The Board found that the rear yard setback variance requested was deminimus, and that the steep slope concerns were addressed quite well by the applicants' engineer. In fact, the procedures recommended by Mr. Busch were considered by the Board to be better than the way in which other property owners have handled similar situations.

23. The Board also finds that the added burden of a house on this lot will not compromise the slope, and that there will be less runoff after construction than there is today.

24. The proposed single-family home will not, therefore, be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant this variance pursuant to N.J.S.A. 40:55d-70c(1).

WHEREAS, the application was heard by the Board at its meetings on December 7, 2006 and May 3, 2007, 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 GARRY & PATRICOA GORDON to construct a single-family home on the

lot is hereby approved, and that variances for lot depth of 75 feet, where 100 feet is required (a preexisting condition); front yard setback of 20 feet, where 35 feet is required; rear yard setback of 15.6 feet, where 25 feet is required; and a waiver from the steep slope ordinance permitting the home to be constructed in the location on the applicants' plans, with the drainage system proposed by the applicants' engineer, be and the same are hereby granted.

AND BE IT FURTHER RESOLVED that these variances are granted upon the following conditions:

1. The plans shall be amended to indicate the overflow from the dry well.

2. The applicants will provide the Borough Engineer with verification of the height of the house.

3. An "as built" survey will be provided prior to the issuance of any Certificate of Occupancy.

4. The drawings will be revised to show that utilities do not compromise the driveway easement.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Mintzer, Mr. Anthony, Mr. Mullen

NAYES: None

ABSTAIN: None

DATE: June 7, 2007

CAROLYN CUMMINS, BOARD SECRETARY

I hereby certify this to be a true copy of the Resolution adopted by the Borough of Highlands Zoning Board on June 7, 2007.

BOARD SECRETARY