

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

1/15/09

**RESOLUTION APPROVING VARIANCES
FOR LENTZ AT 3 CORNWALL STREET**

WHEREAS, the applicant, DOUGLAS LENTZ, is a member of the LLC (CORNWALL STREET, LLC), which owns the mixed-use property at 3 Cornwall Street, Highlands, New Jersey (Block 51, Lots 1 and 2); and

WHEREAS, the LLC filed an application to enclose the existing rear porch on the residential portion of the building; 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 December 4, 2008; and

WHEREAS, the Board heard the testimony of the applicant, DOUGLAS LENTZ; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1: Variance application (3 pages);

A-2: Zoning permit application and denial dated 11/8/08;

A-3: Architectural plans by ANTHONY BUSCH, JR. dated 9/22/08 (3 pages);

A-4: Survey by RICHARD STOCKTON dated 9/15/08 and last revised 11/17/08; with handwritten calculations by MR. STOCKTON in upper right-hand corner;

A-5: Letter from ROBERT KEADY, JR., of T&M ASSOCIATES, to the Highlands Technical Assistant dated 12/1/08 advising that, as to flood plain review, the proposed construction is not a substantial improvement;

AND, WHEREAS, the following additional exhibits were marked into evidence as Board exhibits:

B-1: Email communication between DALE LEUBNER, of T&M, the Flood Plain Administrator, to RICHARD EINHORN, of FEMA;

B-2: Board Engineer's review letter dated 11/20/08;

AND, WHEREAS, no persons appeared in opposition or to ask questions about this application; 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 WC-1 Zone.

2. The site is on the Shrewsbury River and currently contains a one-story restaurant with covered patio (INLET CAFÉ) and a two-story residence, which is attached and to the immediate south of the restaurant portion.

3. The applicant seeks to enclose the open porch on the second floor, facing the river.

4. The applicant testified that he contacted the DEP (Department of Environmental Protection) and was advised by them that he was under the A-4 criteria, as a result of which his notification to DEP was sufficient, and there would be no written approval response by them (because this is, effectively, a "permit by rule").

5. By enclosing the porch, there will be a slight increase in the impervious coverage.

6. The applicant's proposal envisions total square footage, for zoning purposes, of 4,849 square feet, resulting in a proposed building coverage of 34.7%.

7. Cornwall Street, which is to the north of the structure, separates the subject property from the WINDANSEA RESTAURANT. Both restaurants face the water.

8. The subject was originally designed as a "mom and pop" operation, where the restaurant could operate downstairs, and the residence would be to the north, both upstairs and downstairs.

9. Because of the age and condition of the structure, it is in critical need of improvements and living space.

10. The current structure houses three bedrooms. If approved, the structure will continue to have three bedrooms.

11. The applicant considers the river side of the building to be the front, and it is deteriorating.

12. There will be no change in the height of the structure.

13. The change in building coverage is *de minimus*.

14. Though the neighbor to the immediate north was present at the hearing, he did not ask any questions or voice any objection. Though not sworn, he did comment that he had "no problems" with the application.

15. The applicant seeks variances for the following preexisting conditions: Minimum lot frontage of 72.37 feet on Shrewsbury Avenue, where 100 feet is required; minimum lot width of approximately 87 feet, where 100 feet is required; minimum front yard setback on Cornwall Street of 8 feet, where 20

feet is required; and minimum side yard setback of .95 feet, where 8 feet is required.

16. The applicant also seeks variances for maximum building coverage of 34.7%, where 25% is permitted; maximum impervious coverage of 90.3%, where 65% is permitted (bearing in mind that the pre-application status was 88.3% impervious coverage); and the applicant also seeks a variance for expansion of a prior non-conforming use.

17. The enclosure of the front/river-side porch will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance and, based upon the testimony, the Board is empowered to grant the bulk variances pursuant to N.J.S.A. 40:55d-70c(2), since the purposes of the MLUL would be advanced and the benefits of these deviations substantially outweigh any detriments, as there are no detriments.

18. The Board further finds that this variance can be granted under N.J.S.A. 40:55D-70d(2) because of the special circumstances in upgrading an old home which is in need of the same, and for special reasons as defined in N.J.S.A. 40:55D-2(i).

19. The Board finds that the proposal will be both an improvement to the home and its appearance, and, therefore, to the area in general.

20. The applicant was unable to identify, and neither was the Board, any detrimental features or impacts of the proposal.

WHEREAS, the application was heard by the Board at its meeting on December 4, 2008, 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 DOUGLAS LENTZ, on behalf of CORNWALL STREET, LLC, to enclose the existing second-story porch on the river side of the residential portion of the structure, in accordance with the plans submitted, is hereby approved. Variances are hereby granted for the preexisting conditions noted in #15 above and for the building coverage and impervious coverage conditions enumerated in #16 above; and the use variance for expanding a non-conforming use, which is de minimus,, is also granted. This approval is subject to the following conditions:

1. Installation of flood vents, as recommended by the Flood Administrator.

2. The Construction Official shall satisfy himself that no further action or approval is required from the DEP.

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

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Mullen

NAYES: None

ABSTAIN: None

DATE: January 15, 2009

CAROLYN CUMMINS, BOARD SECRETARY

I hereby certify this to be a true copy of the Resolution adopted by the Governing Body of the Borough of Highlands on January 15, 2009.

BOARD SECRETARY