

Ms. Ryan offered the following Resolution be memorialized and moved on its adoption:

4/2/09

**RESOLUTION APPROVING VARIANCES
FOR DOMAGALA AT 90 HIGHLAND AVENUE**

WHEREAS, the applicant, KAROL DOMAGALA, is the owner of a single-family home at 90 Highland Avenue, Highlands, New Jersey (Block 21, Lot 16.01); and

WHEREAS, MR. DOMAGALA filed an application to add a second story deck at the rear of his 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 hearing on March 5, 2009; and

WHEREAS, the Board heard the testimony of the applicant, KAROL DOMAGALA; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning permit application denial;
- A-3: Minor subdivision resolution of approval by Planning Board dated 3/11/04;
- A-4: Subdivision map by RICHARD STOCKTON dated 11/25/03;
- A-5a through f: Six 4" X 6" color photographs of home;

A-6: Enlargement of Stockton survey with setback distances drawn thereon by applicant;

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

B-1: Board Engineer's review letter dated 11/18/08;

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 a single-family home located in the R-1.01 Zone.

2. This lot was the subject of a minor subdivision application before the Highlands Planning Board, which resulted in a resolution introduced as Exhibit A-3; which resolution had the effect of moving the lot line further to the rear of the applicant's property. In doing so, the applicant acquired ten feet of depth into his northerly neighbor's property, creating an irregularly-shaped lot.

3. The applicant has undertaken improvements to the home, creating a visually appealing appearance. In doing so, the windows and façade at the rear of the house are all relatively new. On the second floor,

there are two glass doors, which currently do not exit onto any deck or platform.

4. There is no available land abutting the premises which the applicant can acquire.

5. If granted, the application will not result in the addition or loss of any parking spaces.

6. The applicant proposes to build a second-story deck running the width of the home and extending ten feet from the rear of the home. It will be a complete rectangle.

7. The proposed new deck will be immediately above the lower deck; however, the lower deck only extends off the westerly portion of the rear of the home.

8. The applicant testified that none of his neighbors had anything negative to say about his application. He further testified, and the Board accepts the same as true, that the additional deck will not impinge on any neighbor's property.

9. The house to the left of the applicant also has a deck on the second floor.

10. The ground floor at the rear of the house is one level below the ground floor at the front of the house, because of the slope. Accordingly, looking at

the house from the rear, the first living level is on the second story. The proposed deck will be off the third story at the rear of the home (which is the second story at the front of the home).

11. The property drops off to the north, and the home to the north is a one level ranch-style structure. The deck to be installed will give this homeowner a view of the water.

12. Though the applicant's plans (Exhibit A-6) show a distance of 15 feet from the corner of the proposed deck to the rear property line, the Board calculates the distance as closer to 10 feet.

13. If the applicant were to build a deck immediately above the existing deck, and no larger, the railings for the new deck would strike the glass windows on the second floor.

14. The applicant seeks variances for several preexisting conditions, as well as a rear yard setback variance of no more than 10 feet, where 25 feet is required.

15. The applicant seeks variances for the following preexisting conditions: Minimum lot area of 2,853 square feet, where 5,000 square feet is required; minimum lot frontage of 28.80 feet, where 50

feet is required; minimum lot width of 30 feet, where 50 feet is required; minimum lot depth of 90 feet, where 100 feet is required; minimum front yard setback of 17.6 feet, where 35 feet is required; and minimum side yard setbacks of 3.2 feet on the west and 7.7 feet on the east, where 8.5 feet is required.

16. The addition of an exterior unenclosed deck on the second living level at the rear will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant this bulk variance pursuant to N.J.S.A. 40:55d-70c(2), since the purposes of the M.L.U.L. would be advanced, and the benefits of these deviations substantially outweigh any detriments.

17. The Board finds no detriment to the property or neighborhood if this application is granted.

WHEREAS, the application was heard by the Board at its meeting on March 5, 2009, 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 KAROL DOMAGALA to add an unenclosed second-story porch of 10 feet in depth, running the width of the home, in accordance with the plans and testimony submitted, is hereby approved.

Variances are further granted for all of the preexisting conditions noted in #15. This approval is subject to the following conditions:

1. The distance between the rear property line and the closest portion of the new deck shall not be less than 10 feet.

2. The sides of the deck shall be in line with the existing home, so that the deck does not protrude beyond the easterly or westerly side lines of the house.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

DATE: April 2, 2009

CAROLYN CUMMINS, BOARD SECRETARY

I hereby certify this to be a true copy of the Resolution adopted by the Borough of Highlands Zoning Board at their meeting held on April 2, 2009.

BOARD SECRETARY