

5/2/13

Mr. Kutosh offered the following resolution be memorialized and moved on its adoption:

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR MARKOU**

WHEREAS, the applicant, GEORGE MARKOU, is the owner of a residential property at 38 Shrewsbury Avenue (Block 43, Lots 10 and 10.01); and

WHEREAS, the applicant filed an application for use and bulk variance relief, seeking to replace his storm-damaged home and construct a new home raised out of the flood plain, retain the free-standing garage and its apartment, and for related bulk variance relief; 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 4, 2013; and

WHEREAS, the Board heard the testimony of the applicant, GEORGE MARKOU, and his architect and planner, KENNETH FOX; and

WHEREAS, three neighbors, ARNOLD FUOG, DOUGLAS CARD and BARBARA IANUCCI, all residents of Shrewsbury Ave., appeared and spoke in favor of the application; and

WHEREAS, no one appeared in opposition, or to ask questions about the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning permit application and denial;
- A-2 Variance application (4 pages);
- A-3 Survey by Frank DeSantis dated 8/7/12;
- A-4 Site plan by Kenneth Fox, of Fox Architectural Design, dated 12/21/12 and last revised 3/18/13 (3 pages);
- A-5 Colored enlargement of Sheet #3 of Exhibit A-4, on board;

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

- B-1 Board Engineer second review letter by both ROBERT KEADY and MARTIN TRUSCOTT dated 4/3/13 (9 pages);

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 WT-R (Waterfront Transitional Residential) Zone, which does not allow two homes on the same lot.

2. The site currently contains a single-family home which was damaged during Super Storm Sandy, together with a detached garage with an apartment on

the second floor. The garage and apartment did not sustain any damage as a result of the storm.

3. The single-family home on the property was both damaged and flooded during Super Storm Sandy, requiring substantial repairs or replacement. The applicant has decided to demolish the existing home and rebuild a similarly-sized home having similar structural dimensions.

4. The home is currently approximately 14.8 feet from the seawall and 11.7 feet from the rear property line. The proposed deck for the new house will be set back the same 11.7 feet from the rear property line.

5. The home is currently approximately .64 feet over the property line on the northerly neighbor's side (all directional references in this resolution shall be considered with Shrewsbury Avenue being the western boundary of the property and the Shrewsbury River being the eastern boundary of the property).

6. The proposed new structure will be inside the property line, with a side yard setback of 3 feet from its northerly property line.

7. The new home will have essentially the same footprint as the old home, being a few feet wider.

8. The river side of the house will, after new construction, have the same setback---not to the structure, but to the deck on the second level. The new structure itself, exclusive of the deck, will be further away from the water than the current home.

9. The front door to the home will be on the south side of the home.

10. There are single-family homes on each of the two lots to the north of the subject property, and one single-family home on the lot to the south of the property.

11. The proposed living space in the new home is approximately 4 feet wider than in the existing home. The new home, however, will fit better on the site than does the existing home.

12. The applicant was not certain of the elevation of the garage apartment. However the applicant indicated that the apartment did not receive any water from "Sandy". The applicant also indicated that it was not damaged.

13. The depth (front to back) of the new home will be similar to the old home, without the deck.

14. The deck on the water side of the home will be 14 feet in depth. The deck, therefore, rather than

the structure itself, is causing the need for the bulk variance relief.

15. The front setback from Shrewsbury Avenue is proposed to be 51.7 feet. No variance relief is needed for the front yard.

16. The layout of the new home on the property will provide more usable green space than would the centering of the house on the lot.

17. The retention of the detached garage and apartment is consistent with other properties in the neighborhood, as confirmed by the two neighbors. Having the additional apartment will provide for a caretaker for the property for purposes of avoiding vandalism and being there for any emergencies, weather or otherwise.

18. There is a dock which runs into the Shrewsbury River. The dock is on a riparian grant owned by the applicant. The dock, however, at its easterly-most end, extends (north and south) beyond the property line of the riparian grant. The Board specifically takes no action with respect to the dock, noting that the Board does not have jurisdiction to grant any variance relief for any structure outside the boundary lines of the property. The Board notes,

however, that the dock, pursuant to the applicant's testimony, withstood the storm; and though it has been repaired (less than 50% of its value), it is in the same location.

19. The originally-proposed staircase on the east/water side of the property has been removed from the plans.

20. It would be an undue hardship to deny the applicant the use of both structures, as the property has had for many years in the past.

21. The garage and apartment building will be resurfaced to look similar to the new home.

22. In addition to the use variance (two homes on one lot), the applicant also seeks the following variance relief:

A. Side yard setbacks of 3 feet on the north and 9 feet on the south, where 8 feet and 12 feet are required.

B. Variance from Section 21-78.A.3, which requires that no accessory structure be permitted closer to the property line than the front setback requirement or the front face of the principal structure.

C. Maximum height of accessory structure of 18 feet, where 15 feet is permitted. This is a prior non-conforming structure.

D. Rear yard setback of 11.7 feet, where 25 feet is required (note that the

rear yard setback will be the same as the prior home).

E. Building coverage of 70% is allowed, where 73.8% is proposed.

F. Design waiver to allow two driveways, where only one is permitted, and a total width (of both) of 38 feet with a full-faced curb for the balance of the frontage, where no more than 18 feet in width is permitted.

23. The rebuilding of this home with a new home will improve the subject property, as well as the neighborhood, which finding is supported by the neighbors who appeared. The application, therefore, will both preserve the neighborhood character, but also clean up the property and improve both the subject property and the neighborhood.

24. This application was made as a result of damage caused by Super Storm Sandy, which devastated many properties within the borough. The applicant is, basically, seeking to replace his storm-damaged home with another home and keep the detached garage and apartment---effectively replacing the storm-damaged structure with new construction. As a result, the Board finds that the positive criteria required for both use and bulk variance relief under N.J.S.A. 40:55D-70(c) and (d) have been met.

25. As to the negative criteria, the Board finds that some of the variance relief requested (i.e., lot coverage and driveway width) are *de minimus*; the accessory structure and rear yard variances are prior non-conforming, understanding that the old home is being demolished and rebuilt; and that the new structure will be compatible with the neighborhood and, therefore, will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on April 4, 2013, 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 GEORGE MARKOU to replace his existing storm-damaged home and construct a new home to be raised out of the flood plain, and retain the detached garage and apartment, thereby needing a use variance in order to have two homes on one lot, all as set forth on the applicant's plans be and the same is hereby approved. Variances are hereby granted for the enumerated bulk variances set forth in paragraph 22 above;

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

A. There shall be no staircase on the east/water side of the property.

B. The Board takes no action with respect to the dock, which extends into the riparian grant.

C. All details requested in the Board Engineer's review letter dated April 3, 2013, will be complied with, as agreed to by the applicant.

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

ROLL CALL:

AYES: Mr. Fox, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. O'Neil,
Ms. Pezzullo

NAYES: None

ABSTAIN: None

DATE: May 2, 2013

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 at a meeting held on May 2, 2013.

Board Secretary