

9/5/13

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

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

WHEREAS, the applicant, BETTY JIMINEZ, is the owner of a residential property at 3 Private Road in the Borough of Highlands (Block 56, Lot 7); and

WHEREAS, the applicant filed an application for bulk variance relief, seeking to replace her storm-damaged home and construct a new home raised out of the flood plain, 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 August 1, 2013; and

WHEREAS, the Board heard the testimony of the applicant, BETTY JIMINEZ; her daughter, APRIL JIMENEZ MURDOCK; and her architect, CONSTANTINOS ARAVANTINOS; and

WHEREAS, two neighbors, CAROLYN BROULLON and THOMAS WALZEWSKI appeared and spoke in favor of the application; and

WHEREAS, another neighbor, WAYNE MACKINRODT testified in opposition, though his opposition dealt primarily with title questions which the board could not address; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Flood plain review application (1 page);
- A-3 Zoning Officer denial dated 6/21/13;
- A-4 6/1/13 survey by Richard Stockton;
- A-5 Elevation certificate dated 4/25/13 by Richard Stockton (2 pages);
- A-6 Architectural plans by Joseph Tinley, Jr. dated 7/2/13;
- A-7 Power of Attorney from Betty Jimenez to April Jimenez Murdock dated 12/12/12;
- A-8 package of photos, two to a page (7 pages);
- A-9 aerials from Google Earth (1 page);
- A-10 January 1986 deed into Jimenez for lot 7 in block 56;

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 7/26/13 (5 pages);

AND, WHEREAS, the following objector exhibits were marked into evidence:

- O-1 6/1/12 survey of Lot 7 by William Zieman;

O-2 Information regarding title from Data Trace, inclusive of 12/27/74 deed from foreclosing bank to the Estate of Parker;

O-3 Judgment granting title as a result of foreclosure of tax sale certificate on Lot 7;

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 R-2.02 Zone, which permits single-family homes.

2. The site currently contains a single-family home which was damaged during Super Storm Sandy, together with a detached garage which straddles the property line, the bulk of the garage being on lot 8. Though the home sustained substantial damage during the storm, the garage sustained little if any damage.

3. Based upon advice the applicant received from architects and builders, the applicant has decided that it makes more sense to demolish the existing home and rebuild a similarly-sized home on virtually the identical foundation/footprint having similar structural dimensions, rather than try to repair it.

4. A substantial portion of the hearing was spent discussing the garage, which straddles the westerly lot line separating the JIMINEZ property (Lot 7) from Lot 8. The bulk of the garage, including the bulk of the vehicle entrance to the garage, is on Lot 8, and the only reasonable vehicular access to enter the garage is on Lot 8.

5. BETTY JIMINEZ testified, and the Board accepts her testimony as accurate, that the garage was built by her father, to go with the house on Lot 7, and belongs to her. Unfortunately, most of the garage sits on the adjoining lot to the west. There is no recorded agreement regarding the ownership of the garage or the use of or access to it.

6. The Board made it clear that it has no jurisdiction to grant relief regarding any improvements to that garage, since the garage is not fully contained on the applicant's lot.

7. The garage has been there since at least 1950. MRS. JIMINEZ uses the garage, primarily for storage. A car has not been in the garage for at least five or six years. The neighbor on Lot 8 has never used the garage or been inside it.

8. This home has been the lifetime home of the applicant's daughter, APRIL JIMINEZ MURDOCK, and has been in BETTY JIMINEZ'S family since at least 1950.

9. The new home will have essentially the same footprint as the old home, the only exception being the squaring off of two corners of the home.

10. It would be an undue hardship to deny the applicant the use of her property for a home in which she has lived for approximately 50 years.

11. The applicant seeks the following variance relief:

A. Construction of a new dwelling on an unimproved road, which is not permitted by Section 21-77 of the borough ordinances.

B. Lot area of 2,340 square feet where 4,000 square feet is required (the proposal is the same as the existing dimension).

C. Lot frontage of 45 feet where 50 feet is required (the proposal is the same as the existing dimension).

D. Lot depth of 52 feet where 75 feet is required (the proposal is the same as the existing dimension).

E. Front yard setback of 12 feet where 20 feet is required (the proposal is the same as the existing dimension).

F. Side yard setback of 4.9 feet/4.9 feet where 6 feet/8 feet is required (the proposal is the same as the existing dimension).

G. Side yard setback on western side of property of 1.8 feet where 3 feet is required. This variance is requested for a new condition, not a preexisting one.

H. Rear yard setback of 8.3 feet where 25 feet is required (the proposal is the same as the existing dimension).

I. Building coverage of 38% where 33% is permitted. The existing structure is 37.7% building coverage, which is virtually the same as the proposal.

12. The new structure will have space under the structure for two cars in a stacked configuration, thereby meeting the RSIS standard. There will be gravel in front of the house, which can be used for access to the under-structure parking.

13. The white fence on the Private Way side of the home will be removed.

14. 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 residential 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.

15. 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 her storm-damaged home with a newly constructed one. As a result, the Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) has been met.

16. As to the negative criteria, the Board finds that some of the variance relief requested (i.e., side yard setback for stairs of 1.8 feet where 3 feet are required and building coverage of 38%, where it was 37.7% and 33% is required) is *de minimus*. All other relief, except the variance to construct a new home on an unimproved road, is for conditions which exist with the current home. The new home will be using the same footprint, but for the squaring off of a very small portion of the side yard, where the current side yard setback will not be further exacerbated.

17. The Board specifically takes no action with respect to the garage straddling the property line between Lots 7 and 8. The Board takes no action with respect to the garage because it does not have jurisdiction to permit any improvement to that structure, as the applicant had planned, because the

structure is not fully contained on the subject lot. The Board's decision not to take any formal action with respect to the garage shall not, however, be construed as an approval of the garage remaining in its current condition.

WHEREAS, the application was heard by the Board at its meeting on August 1, 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 BETTY JIMENEZ to replace her existing storm-damaged home and construct a new home to be raised out of the flood plain, 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 11 above. A waiver is also granted from the requirements of Ordinance 21-65.10B, as there is insufficient area on the property in which to place any new trees;

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

A. The white fence on the Private Road side of the residence shall be removed.

B. A parking area shall be provided underneath the structure, with access, in a stacked configuration which will accommodate two cars.

C. The Construction Official is to note that the garage is not fully contained on the subject lot but, rather, for the most part, is on the neighboring Lot 7, as a result of which the Construction Official should not entertain any building permit regarding that garage.

D. Any damage caused to curbing, sidewalk or pavement during construction shall be repaired or replaced to the satisfaction of the borough.

E. Prior to construction, a grading plan shall be submitted for review and approval.

F. A letter documenting the basis for the relief under N.J.A.C. 7:7-7.2(a)(8) regarding permit by rule shall be submitted. A permit by rule notice shall be supplied.

G. All improvements shall be subject to compliance with FEMA, NJDEP, and the Borough of Highlands Land Use Ordinance, and the Board defers to the Flood Plain Officer and Construction Official for further review of elevations and type of construction.

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

ROLL CALL:

AYES: Mr. Knox, Mr. Mullen, Ms. Pezzullo, Mr. Braswell

NAYES: None

ABSTAIN: None

DATE: September 5, 2013

Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of the Resolution adopted by the Zoning Board of the Borough of Highlands on September 5, 2013.

Board Secretary