

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

9/5/13

**RESOLUTION APPROVING BULK VARIANCES  
FOR LUCHNICK**

WHEREAS, the applicant, ALLISON LUCHNICK, is the owner of a residential property at 86 Washington Avenue in the Borough of Highlands (Block 82, Lot 3); and

WHEREAS, the applicant filed an application for bulk variance relief, seeking to raise her single-family home above the base flood elevation and add to her existing foundation, 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, ALLISON LUCHNICK; and

WHEREAS, no objectors appeared to either ask questions or voice any objection to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1 Variance application (3 pages);

- A-2 Zoning permit application dated 7/2/13
- A-3 Survey by Charles Surmonte dated 9/10/12;
- A-4 Architectural plans prepared by Tom Peterson (1 page);
- A-5 9 photographs (A through I);

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 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-2.01 Zone, which permits single-family homes.

2. The site currently contains a single-family home which is below the base flood elevation, and the property owner seeks to raise her home above the base flood elevation and put steps on the side of the house.

3. The newly raised home will have almost the same footprint as the existing home.

4. It would be an undue hardship to deny the applicant the ability to raise her home above the

flood elevation, especially considering the recent Super Storm Sandy and FEMA's pronouncements on base flood elevations and the insurance coverage and rates applicable to same.

5. The applicant seeks the following variance relief:

A. Lot area of 2,000 square feet where 3,750 square feet is required (pre-existing condition).

B. Lot frontage of 25 feet where 50 feet is required (pre-existing condition).

C. Front yard setback of 1.8 feet where 20 feet is required (pre-existing condition).

D. Side yard setback for principal structure of 1.2/4.3 feet where 6 feet/8 feet are required (pre-existing condition).

E. Side yard setback for stairs of .8 feet where 3 feet is required.

F. Building coverage of 48.4% where 33% is permitted (pre-existing condition).

6. This application was made as a result of damage caused by Super Storm Sandy, which devastated many properties within the borough. The applicant is seeking to raise her home above the base flood elevation. 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.

7. As to the negative criteria, the Board finds that most of the variance relief requested ( i.e., lot area, lot frontage, front yard setback, and building coverage) is for pre-existing conditions which are not changing by this application. The only other relief requested is for the side yard setback for stairs, the need for which is occasioned by the increased height of the building, above the base flood elevation. That relief, therefore, is *de minimus*.

8. There is insufficient area on the property to place any trees of any size, as a result of which the Board waives the requirement for any street trees, however the applicant will plant a shrub in lieu of the same.

9. The new driveway approaching the garage, with curb cut, needs to be shown on the plans.

10. The Board finds that, because the home needs to be increased above the base flood elevation, the applicant has complied with the positive criteria by demonstrating that the relief requested will promote a public purpose under the Municipal Land Use Law (N.J.S.A. 40:55-2), thereby providing improved community planning that benefits the public, and the benefits of this variance substantially outweigh any

detriment. In fact, the Board does not see any detriment.

11. As to the negative criteria, the variances requested, all but one of which are for preexisting conditions, and the remaining one being *de minimus* as to the side yard setback for the steps, can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. There is no deleterious impact in granting these variances on surrounding properties, and these variances will not cause damage to the character of the neighborhood, and certainly will not constitute a substantial detriment to the public good.

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 ALLISON LUCHNICK to raise her home out of the flood plain in accordance with the plans submitted is hereby granted. Variances are hereby granted for the preexisting conditions set forth above in paragraphs 5A, B, C, D and F; and a variance is also granted for the side yard setback for stairs of .8 feet, where 3 feet are required. 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, however the applicant shall plant a shrub in lieu of the same;

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

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

B. The new driveway, with curb cut, shall be shown on the plans before any permit is issued.

C. 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.

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

**ROLL CALL:**

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

**NAYES: None**

**ABSENT: None**

**DATE: September 5, 2013**

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**Carolyn Cummins, Borough Clerk**

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

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**Board Secretary**

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