

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

10/3/13

**RESOLUTION DENYING USE VARIANCE  
FOR OSTERMILLER AT  
41 SHREWSBURY AVENUE**

WHEREAS, the applicants, Troy and Kerry Ostermiller, are the owners of property at 41 Shrewsbury Ave., Highlands, New Jersey (Block 49, Lot 2); and

WHEREAS, the applicants plan to demolish their existing one-family home, which suffered substantial damage during Superstorm Sandy, and construct a two-family 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 September 5, 2013; and

WHEREAS, the Board heard the testimony of TROY OSTERMILLER and CATHERINE FRANCO, Architect and Planner; and

WHEREAS, two neighbors, BARBARA IANUCCI and DOUG CARR, appeared to ask questions and to object to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1: Variance application (5 pages);

- A-2: Elevation certificate dated 1/14/13
- A-3: Zoning Officer's denial notice dated 5/20/13
- A-4: Architectural plans (3 pages), with survey, prepared by Catherine Franco dated 8/26/13
- A-5: Photos and rendering, in booklet, by Catherine Franco

WHEREAS, the Board marked into evidence the following exhibits:

- B-1 Board Engineer review letter dated 7/26/13

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicants are the owners of a single family home in the R-2.02 Zone.
2. The applicants seek to demolish the existing structure, which was substantially damaged in Superstorm Sandy and construct a three-story two-family residence on the premises with parking, but no living space, on the ground level.
3. The application requires a use variance because two-family homes are not permitted in this zone. Only single-family detached dwellings are permitted.

4. The site is 4,000 square feet in size, which meets the lot area requirement in the zone.

5. The lot is 40 feet in width, where 50 feet are required for a single family home.

6. The depth of the lot is 100 feet, which meets the R-2.02 requirement of 75 feet.

7. The requirement for front yard setbacks in this zone is 20 feet. 22 feet are proposed.

8. The proposed rear yard is 30 feet, where 20 feet are required.

9. The proposed side-yard setbacks are 9 feet/9 feet, where 6/8 feet are required.

10. Lot coverage is proposed at 36.7%, where a maximum of 75% is permitted. Building coverage is proposed at 26%, where a maximum of 33% is permitted.

11. All of the setback requirements above are for a single-family home in the R-2.02 Zone.

12. The exhibit showing properties on Shrewsbury Avenue and nearby streets showed that there were no other two-family homes fronting on the street. There was one multi-family use fronting on Jackson Street, at its intersection with Shrewsbury Ave.

13. The borough's Master Plan does not allow or recommend two-family homes on Shrewsbury Avenue in this block.

14. Testimony was received, and some of the board members concurred from their observations, that Shrewsbury Avenue is becoming a single-family area, and that the borough is moving away from two-family homes. One resident, DOUG CARR, testified that he had checked the permits issued recently for that area, and all of them in that area were for single-family custom homes. The applicant's expert testified that she had not reviewed or seen any permits regarding construction on Shrewsbury Avenue.

15. The subject home was damaged by more than 50%. The applicant had planned to

reconstruct the building, rather than improve it; but, for financial reasons, determined it would be more financially feasible to have two rental units, rather than one. For the past many years the applicant/owner has rented the property and has not resided in it. He had no plans to reside in the property if it was approved for a two-family.

16. The applicant's expert testified that Shrewsbury Avenue was not a prime street in the borough. The Board rejects that testimony.

17. In order to obtain a use variance, the applicant must prove special reasons as part of the positive criteria necessary under N.J.S.A. 40:55D-70d. The fact that the applicant would be able to generate more rental revenue if there were two units, rather than one, is not a special reason.

18. No proofs were presented that the refusal by the Board to grant the use variance would result in undue hardship.

19. Under the negative criteria required to be proved by the applicant for a use variance, there must be proof that the variance would not substantially impair the intent and purpose of the zoning plan and ordinance. As previously stated, the granting of the requested variance would conflict with the borough's Master Plan. Additionally, it would be in direct conflict with the zoning ordinance, where only one-family homes are permitted.

20. When seeking a use variance, an applicant must also prove that the property is particularly suited to the proposed use, in conformance with the doctrines of Medici. No such proofs were provided. Additionally, the Board does not find that this property is particularly suited for a two-family home, rather than the permitted use of a one-family home.

21. The Board does not find that the proposed variance would not cause damage to the character of the neighborhood or constitute a substantial detriment to the

public good, both of which findings would be required as part of the negative criteria necessary to obtain a use variance.

22. Though the motion made following the hearing was to grant the requested use variance, the vote was 4 in favor and 3 against, the effect of which is, according to statute, a denial of the use variance, since use variances require 5 affirmative votes

WHEREAS, the application was heard by the Board at its meeting on September 5, 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 TROY and KERRY OSTERMILLER for a use variance to demolish their existing one-family residence and construct a two-family residence at 41 Shrewsbury Avenue (Block 49, Lot 2) be and is hereby denied for the reasons set forth above. Seconded by Mr. Mullen and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Gallagher, Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

**DATE:** October 3, 2013

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**Carolyn Cummins, Board Secretary**