

Mr. Kutosh offered the following Resolution and moved on its adoption:
5/1/14

**RESOLUTION APPROVING BULK VARIANCES
FOR SOMMER
AND SUPPLEMENTING RESOLUTION DATED DECEMBER 5, 2013**

WHEREAS, the applicant, **PETER JOHN SOMMER**, is the owner of a residential property at 29 Ocean Avenue in the Borough of Highlands (Block 99, Lot 26); and

WHEREAS, the applicant previously filed an application to raise the existing one-story frame dwelling and relocate it further to the rear of the property, which application was approved by this board by resolution dated December 5, 2013; 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 this new application at a public hearing on April 3, 2014; and

WHEREAS, the Board heard the testimony of the applicant, **PETER JOHN SOMMER**, and the Board Engineer, **ROBERT KEADY**; 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 denial form dated 2/27/14;
- A-3 "Field set" hand-drawings (2 pages)
- A-4 This board's resolution dated 12/5/13 (5 pages)

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 3/27/14 (4 pages plus aerial photo);

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-2.03 Zone, which permits single-family homes.
2. The site currently contains a single-family home, which was damaged during Superstorm Sandy.
3. The applicant previously applied for variance relief to this board, seeking to elevate and relocate the existing structure by moving it deeper into the lot, thereby allowing for an access stairway and off-street parking.

4. The board approved the applicant's 2013 variance application by resolution dated 12/5/13 (Exhibit A-4), as a result of which the house was moved back 12 feet.

5. The applicant, during construction, jacked the house up, put a foundation underneath, and was planning to frame the underneath portion, when he decided that it made more sense, because of the small amount of living area in the home (only 884 square feet), to add another level. The additional level would be the first living level, making the existing living area the top floor.

6. Because the proposed additional level is 100% of the size of the existing level, a variance is required.

7. The ground level will permit parking for three cars, therefore no parking variance is required. There will be no living space on the ground level.

8. There will be no change in lot coverage to the plan approved on December 5, 2013 (A-4).

9. There are four (4) decks proposed. This was the primary issue discussed during the hearing. The two rear decks meet the ordinance requirements, so no variance is required for them.

10. The front deck on the second level (first living floor) will be 16 feet to the curb, and therefore will not require a variance.

11. The third level deck (top floor) is proposed at the same size and requires a variance because Ordinance 21-65.27 indicates that "any deck that extends above the elevation of the first floor of the principal structure shall meet the setback requirements for that principal structure."

12. The neighborhood homes have similar designs and decks. For instance, the house two lots over has the same 2-deck design. There is another similar situation across the street. Here, the subject house is further back from the street than the other homes, an improvement.

13. The applicant seeks the following variance relief:

A. Lot area of 2,500 square feet where 5,000 square feet is required (pre-existing condition approved 12/5/13).

B. Lot frontage of 25 feet where 50 feet is required (pre-existing condition approved 12/5/13).

C. Minimum side yard setback of 3.47 feet/3.47 feet where 6 feet/8 feet are required (pre-existing condition approved 12/5/13).

D. Accessory structure setback of 1.3 feet, where 3 feet are required (pre-existing condition approved 12/5/13).

E. Building coverage of approximately 40.27% where 30% is allowed (pre-existing is 40.27%; previously 43.74%).

F. A new variance for the deck above the first living floor (i.e., the top floor for front yard setback).

G. A new variance for building a vertical addition exceeding 80% of the original (previously approved) building footprint, as discussed above.

14. As a result of the Board Engineer's consideration of the documents submitted, it was determined that the applicant meets the requirements for height, so no variance for height is required.

15. All but two of the requested variances (items 14F and G above) are for preexisting conditions.

16. The Board finds that the requested variance relief seeks *de minimus* changes to the existing footprint and the plans approved on December 5, 2013. Though the applicant proposes to build the house higher than originally planned, the height requirements are not violated.

17. The Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) have been met.

18. This relief can be granted without any substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan. The board finds no detriment as to either.

19. The Board determines that the requested relief will not cause any damage to the character of the neighborhood or constitute a substantial detriment to the public good. In fact, the applicant's proposal is quite similar to other homes in the immediate neighborhood.

WHEREAS, the application was heard by the Board at its meeting on April 3, 2014, 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 PETER JOHN SOMMER to further elevate the dwelling to add an additional living area, effectively the first floor of living area, is hereby approved. This resolution shall be read in conjunction with this board's resolution dated December 5, 2013 and any differences herein shall take precedence over the

board's earlier resolution. Variance relief for the preexisting conditions of minimum lot area, minimum lot frontage, minimum side yard setback, accessory structure setback and building coverage are all granted, as more fully set forth herein. New variances are hereby granted for the third level deck and from Ordinance 21-98.A.2 for the vertical addition exceeding 80% of the original building footprint.

Seconded by Mr. O'Neil and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Kutosh, Mr. Mullen, Mr. O'Neil, Ms. Ziemba

NAYES: None

ABSTAIN: None

DATE: May 1, 2014

Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of a Resolution adopted by the Borough of Highlands Zoning Board on May 1, 2014.

Board Secretary