

Mr. Gallagher offered the following Resolution and moved on its adoption:  
6/5/14

**RESOLUTION APPROVING BULK VARIANCES  
FOR ERNST**

WHEREAS, the applicant, **MICHAEL ERNST**, is the owner of one property at 40 Jackson Street and 120 Bay Avenue in the Borough of Highlands (Block 47, Lot 12); and

WHEREAS, the applicant proposes to build a one-story addition to the existing residential building, in order to accommodate the new flood elevations, and to add a new driveway for the residential use fronting on Jackson Street; 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 application at a public hearing on May 1, 2014; and

WHEREAS, the Board heard the testimony of the applicant, MICHAEL ERNST, 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 3/24/14 with email attached;
- A-3 12/13/13 survey, revised 12/19/13 b James J. Kuhn
- A-4 Elevation certificate by James J. Kuhn dated 12/12/13 (5 pages)
- A-5 Architect's plans by Anthony Condouris dated 3/5/14 (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 4/25/14 (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 B-2 Overlay Zone.
2. The site currently contains two buildings, one for commercial use with residential units upstairs, and a second building for residential use only, both in the AE flood zone.
3. Because of Superstorm Sandy, the applicant proposes to add a second story to the residential building and convert the existing living space on ground level to a garage.

4. Though borough ordinances require that an addition of more than 80% of the existing structure requires variance approval, Ordinance 13-5, recently enacted by the governing body, permits pre-existing non-conforming uses to elevate their structures without the need for variance relief.

5. Here the board determines that the adding of a second story, and converting the original ground floor to garage use, is the equivalent of elevating the structure pursuant to Ordinance 13-5.

6. As a result of the creation of a garage, a driveway is needed, and the applicant requests a design waiver for the same since only one driveway is permitted if the property is under 400 feet of frontage, as this property is.

7. The Board notes that the balcony encroaches onto Bay Avenue. The Board does not approve of that situation, but takes no action with respect to it.

8. The applicants plans show compliance with the ordinance requirements regarding lot area, lot frontage, lot depth, front yard setback (except the balcony), building height, lot coverage, building coverage and floor area ratio.

9. The applicant seeks the following variance relief:

A. Minimum side yard setback of 3.11 feet where 5 feet are required (pre-existing condition).

B. Rear yard setback of 2.88 feet where 12 feet are required (pre-existing condition).

10. The Board finds that the requested variance relief is only for two pre-existing conditions, and the requested design waiver for the second driveway (on Jackson Street) is a *de minimus* change to the existing structures and footprint.

11. The Board finds that the positive criteria required for bulk variance relief under N.J.S.A. 40:55D-70(c) have been met, as the proposed adding of the second floor for residential purposes, will promote a public purpose by taking it out of the flood plain, thereby improving community planning; plus the benefits of the variance and design waiver substantially outweigh any detriment, of which the board finds none.

12. 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 to the surrounding properties, nor any damage to be caused to the character of the neighborhood.

WHEREAS, the application was heard by the Board at its meeting on May 1, 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 MICHAEL ERNST to build a one-story addition to the existing residential building, and add a new driveway for the residential use is hereby approved. Variance relief for the preexisting conditions of front and side yard setbacks, and a design waiver for the second driveway, are both granted;

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

A. The applicant shall provide details for the new driveway, driveway apron and curb, and the driveway apron shall be ADA-compliant.

B. Any damages to the existing pavement, sidewalk or curb shall be repaired or replaced to the satisfaction of the borough.

C. The applicant shall verify with DEP that he is eligible for an NJ DEP permit by rule, and obtain any necessary permits.

D. Compliance with the flood elevation is deferred to the Flood Plain Officer.

E. This resolution shall not be interpreted to approve the encroachment of the balcony over the lot line onto Bay Avenue.

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

**ROLL CALL:**

**AYES:** Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Mullen, Ms. Pezzullo, Ms. Ziemba

**NAYS:** None

**ABSTAIN:** None

**DATE:** June 5, 2014

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**Carolyn Cummins**  
**Board Secretary**

I hereby certify this to be a true copy of the resolution adopted by the Borough of Highlands Zoning Board on June 5, 2014.

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**Board Secretary**