

Mr. Gallagher offered the following Resolution and moved on its adoption:  
8/7/14

**RESOLUTION AMENDING RESOLUTION DATED JANUARY 2, 2014 AND  
APPROVING BULK VARIANCES FOR OLIVEIRA**

WHEREAS, the applicants, PAUL and NICOLE OLIVEIRA are the owners of a residential property at 14 Sea Drift Avenue in the Borough of Highlands (Block 77, Lot 4); and

WHEREAS, the applicants filed an application to amend the board's resolution of January 2, 2014, which permitted the applicants to construct a new single-family dwelling on their vacant lot which had previously contained a single-family structure; 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 public hearings on June 5 and July 3, 2014; and

WHEREAS, the Board heard the testimony of the applicant, PAUL OLIVEIRA; his architect, GREGORY WAGA; together with two neighbors, CLAUDETTE D'ARRIGO and BARBARA IANUCCI; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1 Variance application (7 pages);

- A-2 Foundation location survey by Valery Braginsky dated 1/14/14 (2 pages: one existing and one proposed)
- A-3 Letter from Zoning Officer Dale Leubner dated 4/7/14;
- A-4 Architectural plans by Gregory Waga dated 7/31/13, last revised 5/22/14 (4 pages)
- A-5 Architectural plans by Gregory Waga last revised 6/19/14 (4 pages)

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

- B-1 Board Engineer review letter by ROBERT KEADY dated 5/29/14 (4 pages);
- B-2 Zoning Board resolution dated 1/2/14 (7 pages)
- B-3 Revised board engineer review letter dated 6/26/14 (5 pages with aerial photo and file memo dated 6/24/14).

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 is currently under construction, though a stop work order has been issued because, among other problems, no building permit(s) had been obtained, plus the construction official did not believe the foundation was located in the position

approved by the board in its January 2, 2014 resolution.

3. The applicant proposes to build a new home, essentially maintaining the footprint of the former home, except for the depth.

4. Once construction began, putting aside the issue of no building permits having been obtained (that issue to be dealt with by other departments and officials within the borough), it appeared that the home was closer to the side yard than had been previously approved.

5. In the initial application (2013), the applicant proposed to center the dwelling on the property as much as possible. The revised proposal seeks to do the same.

6. The applicant seeks the following variance relief, thereby seeking to amend the January 2, 2014 approval:

CONTINUING JANUARY 2, 2014 APPROVALS FOR:

A. Lot area of 1,750 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).

NEW APPROVALS SOUGHT IN THIS APPLICATION:

C. Front yard setback of 8.0 feet where 20 feet are required (prior resolution approved 9.25 feet).

D. Side yard setbacks of 4.0/4.33 feet where 6/8 feet are required (prior resolution approved 3.08/5.37 feet). This request seeks a net change of .12 feet, the equivalent of less than one and a half inches.

E. Rear yard setback of 14.01 feet where 20 feet are required (prior resolution approved 12.75 feet, so this is an improvement over the prior approval).

F. Building coverage of 45.3% where 33% is allowed (prior resolution approved 48.8% coverage, so this is an improvement over the prior approval).

G. Lot coverage of 79.5% where 75% is permitted (prior resolution approved 82.6% coverage, so this is an improvement over the prior approval).

7. The height of the new structure will be approximately 32.39 feet. Since parking is provided below the structured, no height variance is required.

8. This application and its predecessor were prompted by Superstorm Sandy and the damage it caused.

9. The changes requested by the applicant to the Board's January 2, 2014, resolution are *de minimus*. One, the side yard setback, is a change of less than two inches total and a more centering of the house on the lot. Two, the rear yard setback is

larger than the distance approved by the Board in January. Three, the building coverage is less than the Board approved in January. The front yard setback is only 1.25 feet more than approved in January; however, many houses on the street have similar front yard setbacks.

10. The changes to the January 2014 resolution with the variance relief sought here falls under N.J.S.A. 40:55D-70c(2). The purposes of the Municipal Land Use law will be advanced by deviation from the zoning ordinance requirements because three of the four new items of relief are actually improvements to the setbacks for which the applicant sought relief in January, with the remaining one being only 1.25 feet different. As a result, the benefits of the deviation substantially outweigh any detriment.

11. The Board heard testimony from the neighbor, CLAUDETTE D'ARRIGO, who stated that her homeowners insurance company told her that she might be denied continued coverage because of the nearness of the Oliviera home and fire rating issues. Between the June 5 and July 3 meetings those issues were addressed between the applicant and MS. D'ARRIGO, and it appears that those issues have been resolved. To the extent

that they have not been resolved, the applicant agrees to work with MS. D'ARRIGO in resolving them, so that she does not find herself without homeowners insurance coverage caused by the construction of the OLIVIERA home. In addition, the Board has dealt with those issues by way of conditions of approval to this resolution.

12. Constructing this home above the flood elevation and providing off-street parking are also significant improvements to the property and to the neighborhood.

13. 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.

14. The Board further 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.

WHEREAS, the application was heard by the Board at its meetings on June 5 and July 3, 2014, and this resolution shall memorialize the Board's action taken at the last of those meetings;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of PAUL and NICOLE OLIVEIRA to construct a new home on their lot in accordance with their application and plans, is granted. Variances are hereby granted for the previously approved conditions of lot area and lot frontage as stated in paragraphs 6A, and B above; and for front yard setback, side yard setback, rear yard setback, building coverage and lot coverage as set forth above in paragraphs 6C, D, E, F and G;

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. Since the applicant is not eligible for NJ DEP permit-by-rule approvals, further review is deferred to the NJ DEP.

C. No replacement shed shall be constructed on the property.

D. The building height shall conform with the borough ordinance, and proof of the building height shall be supplied to the Construction Department (note that 32.5 feet is allowed).

E. A certification regarding fire code compliance shall be provided prior to any building permit being issued.

F. A certification of continued homeowners insurance being available to the neighbor, CLAUDETTE D'ARRIGO, shall be provided prior to the issuance of any Certificate of Occupancy.

G. The builder, its agents and employees, together with any other persons undertaking any work on the subject premises, shall not go on to the neighbors' property.

H. The applicant will work with the neighbor, CLAUDETTE D'ARRIGO, to resolve any fire rating issues and satisfy her and her insurance company that the structure is fully compliant with fire safety regulations and the building code

I. The structure shall be fully compliant with the fire safety regulations. This matter is further deferred to the Construction Official, PAUL VITALE.

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

**ROLL CALL:**

**AYES:** Mr. Fox, Mr. Knox, Mr. Gallagher, Mr. Mullen,  
Mr. Braswell

**NAYS:** None

**ABSTAIN:** None

**DATE:** August 7, 2014

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Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of a Resolution adopted by the Borough of Highlands Zoning Board of Adjustment on August 7, 2014.



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Board Secretary

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