

5/7/15

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

**RESOLUTION APPROVING BULK VARIANCES
FOR ALLEN AT 5 OCEAN AVENUE**

WHEREAS, the applicants, CHRISTOPHER & BETH ALLEN, are the owners of a single-family home at 5 Ocean Avenue, Highlands, New Jersey (Block 99, Lot 16); and

WHEREAS, the property owners filed an application to extend their second floor deck; 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 April 2, 2015; and

WHEREAS, testimony was provided by the applicant, CHRISTOPHER ALLEN;

WHEREAS, a neighbor, PATTY UBER appeared to ask questions and comment on the planned placement of an air conditioning unit and emergency generator on the rear deck; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1: Variance application (3 pages);

- A-2: Zoning permit application with designs and photos attached, with no comments by the zoning officer (7 pages);
- A-3: Site plan elevations by CHESTER DI LORENZO dated 5/6/05 (2 pages);
- A-4: Zoning Officer denial letter by DALE LEUBNER dated 2/20/15;
- A-5: Prior resolution of Highlands Zoning Board of Adjustment dated 7/18/13;
- A-6: 2 Photos of unfinished house;

AND, WHEREAS, the following exhibit was also marked into evidence:

- B-1: Board Engineer review letter dated 3/26/15 (4 pages with aerial photo attached);

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

1. The applicants are the owners of a single-family home located in the R-2.03 Zone.
2. This home was substantially damaged during Super Storm Sandy, and has since been raised and reconstructed.
3. The property is located on Ocean Avenue, where the surrounding properties are residential.
4. The applicants received approval from the Highlands Zoning Board of Adjustment on July 18, 2013, which approval permitted the applicant to construct a new dwelling in accordance with the plans submitted at

that time. Several items of variance relief were granted in that resolution.

5. The applicants seek the following relief:

A. Lot area variance for 2,500 s.f., where 5,000 s.f. are required; a pre-existing condition.

B. Lot frontage of 25 feet, where 50 feet are required, a pre-existing condition.

C. Front yard setback of 9.1 feet, where 20 feet are required, a pre-existing condition.

D. Side yard setbacks of 3/3 feet, where 6/8 feet are required, a pre-existing condition.

6. The applicants also seek new variance relief for the following:

E. Building coverage of 47.35%, where 30% is required. The prior application approved building coverage of 37.58%. The additional coverage is as a result of the decks being added to the structure.

F. Side yard setback for rear deck on second floor of 3/3 feet, where 6/8 feet are required. The prior approval, and existing

situation, is 7/7 feet, where 6/8 feet are required.

7. Because the property is in compliance, variance relief for rear yard setbacks, building height, lot coverage and the setbacks for the rear deck on the first floor and for the front balcony meet the requirements of the zoning ordinance.

8. The variance relief sought here is *de minimus*, in that the enlargement of two decks is the only proposal that requires further board action.

9. The lower deck was previously 247 s.f. (13' X 19'); and the upper deck was 44 s.f. (11' X 4'); for a total square footage of decks of 291 s.f.

10. The applicants propose making both decks, upper and lower, 16' X 19', for a total of 304 s.f. each, or a total of the two decks of 608 s.f.

11. The reason for the need to enlarge the upper deck is to have a place to locate the air conditioning unit and emergency generator. Other options for location, such as in front of the house or on the roof, were rejected by the applicants because of their negative aesthetic impact. There is insufficient space in the front or side yards to install the same.

12. The damaged fencing, which was on the property prior to the 2013 application, has been removed.

13. The property owner acknowledged the requirement in the 2013 variance approval to install two trees, and will comply with that requirement.

14. The Board felt that most homes in the area have air conditioning units, and many also have emergency generators, which are only used when necessary, other than to run them for a brief period of time once per week. The Board does not feel that placement of the air conditioning unit and emergency generator on the upper deck at the rear of the home will have any substantial impact on any of the neighbors.

15. Other than the decks, there is no change to the footprint of the building previously approved.

16. There will be no cover on the upper deck.

17. The Board finds that this application satisfies the positive criteria, in that the proposed decks will promote a public purpose, as set forth in the Municipal Land Use Law, be far more aesthetic for the placement of the air conditioner and generator than in the front of the house or on the roof, and

thereby provide improved community planning that benefits the public. The benefits of this variance, to the extent they may exist, substantially outweigh any detriment.

18. This application has been approved upon the Board finding that most of the variance relief requested is for pre-existing conditions, and that the two new variances are for *de minimus* changes. As a result, the Board finds that this relief can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. Additionally, this relief will not cause damage to the character of the neighborhood, nor will it constitute a substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meeting on April 2, 2015, 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 CHRISTOPHER & BETH ALLEN to install two decks in the rear of their property, each 16' X 19', be and the same is hereby approved; and variances for the pre-existing conditions of lot area, lot frontage, front yard setback and side yard setback, as

set forth in paragraph 5 are hereby approved; and additional variance relief as set forth in paragraph 6 is hereby granted for building coverage and for the side yard setback for the second floor rear deck;

AND BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

A. Conditions placed on the variance approval by this Board on July 18, 2013, shall continue.

B. Specifically, the property owner will install two trees.

C. There will be no cover on the upper deck.

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

ROLL CALL:

AYE: Mr. Kutosh, Mr. Mullen, Ms. Ziemba

NAY: None

ABSTAIN: None

DATE: May 7, 2015

**Carolyn Cummins
Board Secretary**

I hereby certify this to be a true copy of the Allen Resolution adopted by the Borough of Highlands Zoning Board on May 7, 2015.

Board Secretary