

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

7/2/15

**RESOLUTION DENYING BULK VARIANCE RELIEF  
FOR FLYNN AT 9 SEADRIFT AVENUE**

WHEREAS, the applicant, CHRISTINE FLYNN, is the owner of a single-family home at 9 Seadrift Avenue, Highlands, New Jersey (Block 72, Lot 36); and

WHEREAS, the property owner filed an application to raise her home in accordance with flood plain requirements, at a height exceeding the height allowed by ordinance; 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 April 2 and May 7, 2015; and

WHEREAS, testimony was provided by the owners, COLLEEN and MIKE FLYNN; plus comments from neighbors, TERRENCE KING, PATRICIA SCARANO and CLAUDETTE D'ARRIGO, the latter two of whom supported the application; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1: Variance application (3 pages);

- A-2: Letter from DALE LEUBNER, Zoning Officer, dated 1/28/15 regarding building height;
- A-3: Letter from DALE LEUBNER dated 2/23/15 regarding building height;
- A-4: Survey by RICHARD STOCKTON dated 11/1/13;
- A-5: Surveyor's report by RICHARD STOCKTON dated 2/4/15;
- A-6: Proposed Raised Foundation and Renovation Plan by JOSEPH M. TINLEY, JR. dated 4/28/14, revised 9/9/14 (3 pages );
- A-7: Foundation and Renovation Plan by JOSEPH TINLEY, JR., of KON Struction dated 7/25/14, revised 4/28/15;

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);
- O-1: Elevation certificate for King dated 8/13/13 and 2/24/15 with 14 photos

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

1. The applicant is the owner of a single-family home located in the R-2.01 Zone.
2. This home was substantially damaged during Super Storm Sandy, and has since been raised and reconstructed, although the construction was contrary to the plans approved by the construction department.
3. The applicants received approval from the Highlands Construction Department to rebuild their

home in accordance with plans submitted, which plans did not provide for a structure at the height actually built.

4. While the home was under reconstruction, a stop work order was entered. That stop work order was subsequently rescinded, so that the property owner could close in and protect the structure until it was determined what would be permitted by the Board. As of the April 2, 2015, meeting, the dwelling had been sided, the roof partially done with an ice shield installed, and interior work and roughing had been undertaken.

5. The applicant proposes a home with four levels, the top three of which are for living space. The first level is for parking only. The second level is the prior first level of the home, which has been raised. The third level is part of the old structure, with an addition. The fourth level is all new.

6. The Board spent an inordinate amount of time attempting to interpret the exhibits provided by the applicant. In doing so, the Board rejected the calculations of JOSEPH M. TINLEY, JR. on his proposed Raised Foundation and Renovation Plans, since there does not appear to be any basis for the calculations

he used for the heights of the various floors vis-à-vis the elevation of the property; plus, he failed to include the dimensions between the first and second level, the second and third level, and the third and fourth level. When the Board attempted to extrapolate and determine what the precise measurements were, they did not match up against the information provided by the applicant's surveyor. As a result, the board, by unanimous vote during the hearing, rejected the calculations provided by MR. TINLEY.

7. When the construction began, the property owners changed from 8-inch block to 12-inch block, though they did not return to the borough to seek approval for that change.

8. Prior to this construction project the home was a 1 1/2-story structure.

9. The footprint of the building did not change from the old structure to the new one.

10. The other houses on the street are topping out at the height permitted by the zoning ordinance.

11. The current roof, under construction, is a hip roof.

12. The Board determined, with input from the Board Engineer, that the correct flood zone is the AE-

12 Zone. As such, you must add one foot, and begin construction at least 13 feet above the base flood elevation. Based on these requirements, the permitted height of the structure would be 32.5 feet under the ordinance.

13. This structure exceeds the height allowed by ordinance. The Board, with the Board Engineer's input, calculates the height of the structure, as defined by ordinance (to the midline of the roof) as 35.3 feet. As such, the applicant requires a variance for 2.8 feet, making this a C/hardship variance application for height.

14. The applicants seek the following relief:

A. Lot area variance for 1,750 s.f., where 3,750 s.f. are required; a pre-existing condition.

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

C. Lot depth of 70 feet, where 75 feet are required, a pre-existing condition.

D. Front yard setback of 9.4 feet, where 20 feet are required, a pre-existing condition.

E. Rear yard setback of 17.4 feet, where 20 feet is required, a pre-existing condition.

F. Side yard setbacks of 2.5/2.6 feet, where 6/8 feet are required, a pre-existing condition.

G. Building coverage of 43.14%, where 33% is allowed, a pre-existing condition.

H. Rear setback for first story rear deck of 0 feet, where 3 feet are required, a pre-existing condition.

I. Side yard setback for first story rear deck of 0/2.8 feet, where 3 feet are required, a pre-existing condition.

J. Side yard setback for first story front deck of 2.75/4 feet, where 3 feet are required, a pre-existing condition.

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

K. Building height of 35.3 feet, where 32.5 feet is permitted.

16. Currently, the owners' deck extends onto property owned by MR. KING (11 Seadrift Avenue). That deck must be removed.

17. In order to obtain bulk variance relief, the applicant must satisfy the positive criteria under N.J.S.A. 40:55D-70c. To do so, the applicant must either prove a hardship in developing the site in accordance with the zone standards due to exceptional narrowness, shallowness or shape of the property; or due to exceptional topographic conditions or physical features which uniquely affect the property; or are due to an extraordinary and exceptional situation affecting the property or its lawful existing structures. In this case, the applicant hasn't provided any proof of hardship to exceed the height limitations in the ordinance. Though the property is narrow, that narrowness does not justify adding a fourth level to the home at the height at which it was constructed. Lastly, there are no extraordinary or exceptional situations affecting the property, nor are there any exceptional topographic conditions or physical features.

18. One alternative to satisfy the positive criteria is for the applicant to demonstrate that the variance relief will promote a public purpose, as set forth in N.J.S.A. 40:55D-2, and thereby provide improved community planning that benefits the public;

plus prove that the benefits of the variance substantially outweigh any detriment. In this case, the applicant has not provided any proofs that the variance relief sought will promote a public purpose. Neither has the applicant provided any proof that community planning will be improved. Lastly, no proofs have been provided that the benefits of the requested variance substantially outweigh any detriment. The detriment, of course, is that the height exceeds the ordinance and, according to the applicant's own testimony, since the other homes meet the ordinance requirements, this home would be an exception, with no underlying basis for the exception.

19. In addition to meeting the positive criteria of the statute, the applicant must also meet the negative criteria, as required by N.J.S.A. 40:55D-70c. In doing so, the applicant must show that the bulk variances can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. In doing so, the applicant must provide proofs that provide consideration of the impact of the proposed variances on surrounding properties, so that the Board could determine whether or not the variance would cause such



damage to the character of the neighborhood as to constitute a substantial detriment to the public good. The Board does not find that the requested variance would not cause damage to the character of the neighborhood or not be a substantial detriment to the public good. Accordingly, the negative criteria has not been met.

20. Though requested to provide a grading plan, the applicant has not done so. Had the application been granted, a grading plan would have been required, with a need to approve the same before any construction permit was granted.

WHEREAS, the application was heard by the Board at its meetings on April 2 and May 7, 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 CHRISTINE FLYNN to rebuild her home at a height of 35.3 feet (2.8 feet above what is allowed by ordinance), together with variances for the pre-existing conditions set forth in paragraph 14 be and the same is hereby DENIED.

Seconded by Ms. Pezzullo and adopted on the following roll call vote:

**ROLL CALL:**

**AYE:** Mr. Mullen, Ms. Pezzullo, Ms. Ziemba

**NAY:** None

**ABSTAIN:** None

**DATE:** July 2, 2015

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**Carolyn Cummins, Board Secretary**

I hereby certify this to be a true copy of a Resolution adopted by the Governing Body of the Borough of Highlands on July 2, 2015.

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Board Secretary