



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

LAND USE BOARD RESOLUTION 2025-23

MEMORIALIZATION OF MINOR SITE PLAN APPROVAL WITH BULK VARIANCE RELIEF

**IN THE MATTER OF EDWARD AND LORI PAHLER
APPLICATION NO. LUB25-09**

**Approved: July 10, 2025
Memorialized: August 14, 2025**

WHEREAS, an application for minor site plan approval with ancillary bulk variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the "Board") by Edward and Lori Pahler (hereinafter referred to as the "Applicants") on lands known and designated as Block 54, Lot 13, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 35 Miller Street, Highlands, New Jersey, in the R-2.02 Single-Family Residential (R-2.02) Zone District and in the AE Flood Hazard Area (hereinafter "Property"); and

WHEREAS, a live public hearing was held before the Board on July 10, 2025, with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Highlands Land Use Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property is an existing undersized lot containing 2,000.00 square feet (0.046 acres) with 25 feet of frontage along Miller Street within the R-2.02 Single-Family Residential (R-2.02) Zone District. The subject Property is located within the AE Flood Hazard Area.

2. The subject Property is a vacant lot, upon which a multi-family dwelling previously stood (but has since been demolished).

3. The Applicants propose to construct a single-family residential dwelling, which will consist of three (3) bedrooms with site improvements and three (3) parking spaces, comprised of a garage and driveway.

4. The Applicants are now seeking minor site plan approval with bulk variance relief from the requirements of the Borough's Zoning Code to construct the proposed single-family residential dwelling.

5. The Applicants require six (6) bulk variances for lot area, lot frontage/width, minimum front yard setback, minimum side yard setback, minimum rear yard setback, and maximum building coverage.

6. Mr. Edward Pahler, the owner of the subject Property and one of the Applicants, was sworn in and testified about the application. Mr. Pahler summarized the application and confirmed the following variance relief:

Schedule I – Bulk and Area Requirements				
R-2.02 Single Family Residential District				
	Required	Existing	Proposed	Variance
Min. Lot Area (sf)	4,000	2,000 ⁽¹⁾	2,000	Yes ⁽¹⁾
Lot Frontage/Width (ft)	50	25.00 ⁽¹⁾	25.00	Yes ⁽¹⁾
Lot Depth (ft)	75	80.00	80.00	No
Min. Front Yard Setback (ft)	20 ⁽²⁾	0	±15.0	Yes
Min. Side Yard Setback (ft)	6/8 3/4 ⁽³⁾	0	3/3 ⁽³⁾	Yes-1
Min. Rear Yard Setback (ft)	20	0	10	Yes
Max. Building Height (ft) ⁽⁴⁾	30	0	32.4	No
Max. Lot Coverage (%)	75	0	63.5	No
Max. Building Coverage (%)	33	0	53.2	Yes
Min. Deck/Stairs Setback (ft)	3	0	3	No
On-Site Parking (spaces)	2	0	3	-

(1) Existing non-conformity

(2) Or the average of the existing front yard setback within two hundred (200) feet in the same block and zone, per § 21-79.B.

(3) Please see Comment No. 5.

(4) Where a dwelling is constructed or reconstructed to provide the required parking under the structure, the maximum height shall be increased by two and one-half feet.

7. Mr. Pahler testified that the subject Property was constrained by unique physical characteristics and dimensions, which are existing nonconformities, such as the lot being half as wide as the Borough's Zoning requirements. Mr. Pahler also testified that 25-foot-wide lots, such as the subject Property, are not uncommon in the neighborhood.

8. Mr. Pahler further testified that the exceptional topographic conditions and physical features that exist on the subject Property drive the dimensions and scope of the project and, thus, the proposed single-family dwelling.

9. Mr. Pahler provided additional testimony about the proposed single-family dwelling, stating that the Applicants propose a three-bedroom dwelling that will provide three (3) off-street parking spaces, two (2) in the garage and one (1) in the driveway.

10. Mr. Pahler continued testifying that all staircases are located internally and that the home is proposed with the potential to install an elevator, both of which proposals increase the width of the proposed dwelling to a degree.

11. Mr. Pahler further testified that the proposed building coverage requires variance relief but that the proposal complied with the Borough's impervious coverage requirements.

12. Mr. Pahler next testified with respect to the front-yard setback and provided lay testimony, as he was not sworn as an expert witness, with respect to the same. Mr. Pahler testified that the proposed front-yard setback of 15 feet is not out of character for the neighborhood and is necessary to provide 23 feet of driveway/garage depth for vehicles.

13. In response to questions from the Board, Mr. Pahler testified that the elevator, if and when it was installed, would be compliant with all building requirements. He further testified that the staircase entering the garage would provide sufficient clearance for vehicles to enter/exit the garage, but that the plans could be revised if the staircase did not provide sufficient clearance.

14. In response to further questions from the Board Engineer, Mr. Pahler testified as to how he calculated the right-of-way measurements.

15. The Applicants' Architect, James T. Daley, was sworn in and accepted as an expert in the field of architecture and provided testimony with respect to the application.

16. Mr. Daley testified as to the depth and width of the garage, and how it was proposed with sufficient space to accommodate vehicles and the proposed internal staircase.

17. Mr. Daley then testified about the proposal, stating that the first floor is in the flood zone and would be constructed accordingly, with flood vents. Mr. Daley continued that the Applicants will raise the first floor slightly to adjust for the possibility of flooding, but that the change would be internal and would not affect the grading or any of the relief requested.

18. Mr. Daley continued testifying with respect to the bedrooms, noting that the hallway must be located on one side of the home, to accommodate the bedrooms, given the exceptional narrowness of the lot, which drives the size of the proposed dwelling.

19. Mr. Daley further testified that all mechanical equipment would be located above the flood plain and be accessible to third parties.

20. Mr. Daley next testified that the electrical meter would be placed along the side of the proposed dwelling and would be accessible as well. He added that the location would double as an area for refuse containers.

21. Mr. Daley responded to the Engineer's Review Letter and confirmed that the Applicants would install gravel in lieu of grass around the proposed dwelling.

22. In response to further questions from the Board Engineer, the Applicants confirmed that they would legally extinguish the easement, which provides the subject Property with access to Lot 12 in order to maintain, repair and restore the dwelling erected upon the subject Property, because the prior multi-family dwelling on the subject Property no longer exists and the proposed single-family dwelling will provide sufficient access on the subject Property, which renders the easement unnecessary.

23. Mr. Pahler provided additional testimony, in response to questions from the Board

Engineer, that the Applicants would install roof leaders to move water away from Lot 12 and towards the street and that the leaders would be reflected on the site plan. He added that the gravel proposed to be used also provides stormwater management, allowing the water to quickly run through the gravel and then out towards the street.

24. In response to another question from the Board, Mr. Pahler testified that there is sufficient light, air, and open space between the proposed single-family dwelling and the neighboring dwellings.

25. There were no members of the public expressing an interest in this application.

WHEREAS, the Highlands Land Use Board, having reviewed the proposed application and having considered the impact of the proposed application on the Borough and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Borough of Highlands; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicants' request for minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with bulk variance relief pursuant to both N.J.S.A. 40:55D-70c(1) and c(2) should be granted in this instance.

The Board finds that the Applicants have proposed constructing a new single-family residence, which requires bulk variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. Under the "c(1)" criteria, an Applicant may show that exceptional topographic conditions or physical features exist uniquely affect a specific piece of property. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully

existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the “c(2)” criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, the Applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. It is only in those instances when the Applicant has satisfied both these tests that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

The Board finds that the Applicants have satisfied the positive criteria with respect to the c(1) and c(2) criteria. The Board finds that the proposed single-family residence will be an aesthetically pleasing structure and will be consistent with neighboring development and, thus, create a desirable visual environment for the community. The Board further finds that the subject Property is unique and unusual with respect to its dimensions and that the Applicants would not be able to construct a livable residence if the strict bulk and area requirements were applied and variance relief was not granted. Ultimately, the Board finds that the grant of variance relief will result in a visually desirable dwelling which will not only benefit the Applicant but will also advance the interests of the entire community. The Board therefore concludes that the goals of planning as enumerated in N.J.S.A. 40:55D-2 have been advanced. The Applicants have therefore

satisfied the positive criteria under both the c(1) and c(2) criteria.

The Board also finds that the negative criteria has been satisfied. The proposed single-family residence requiring variance relief will not cause a detriment to the community in any discernible way. In fact, the Board finds that proposed dwelling will be consistent with and fit in seamlessly with the prevailing neighborhood residential scheme. The proposal is consistent with the Borough's overall goals and objectives of providing new, safe and visually attractive homes and will advance the general welfare for both the Applicants and the neighbors alike. The Board further finds that the Applicant has proposed three (3) off-street parking spaces, which is more than the ordinance requires, thus alleviating concerns (if any) with respect to parking. The Board further finds that the Applicants have agreed to implement stormwater management measures, by installing roof leaders and gravel, which will direct the flow of stormwater away from Lot 12 and towards the street, and minimize the impact of any such stormwater. Granting of the variance sought by the Applicants will also not result in any substantial detriment to the public welfare or impair the purpose or intent of the Zone Plan or Zoning Ordinance. The Board therefore concludes that the negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and that bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2) as well as c(1) as noted herein.

It bears mentioning that Sec. 21-98F1 of the Borough Code concerns pre-existing nonconforming vacant lots. Although the Code Section provides a mechanism to enlarge single-family and two-family uses on such nonconforming lots, because the subject Property is currently vacant, variance relief is required whether pursuant to Sec. 21-98F1 or otherwise. To that end, Sec. 21-98F1 would not apply to this Application because the Applicants would require variance relief from the same Code Section. Accordingly, the bulk and area requirements set forth in Par. 5 of this Resolution are applicable and form the basis of the variance relief.

The Board also wishes to comment on the front yard setback and, although it found the Applicants' analysis of the front yard setback instructive, because no expert testimony was provided with respect to the same, the Board assumes the 20-foot setback applies, which requires variance relief. For the reasons expressed herein, however, the Board grants the front yard setback variance relief in this instance.

Upon consideration of the plans, testimony, and application, the Board determines that the Applicants have met the minimum requirements of the MLUL, case law, and Borough Ordinances to a sufficient degree so as to enable to the Board to grant minor site plan approval, to the same is request or applicable to the variance relief also being granted herewith.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 14th day of August 2025, that the action of the Board taken on July 10, 2025, granting application no. LUB 2025-09 of Edward and Lori Pahler for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2) together with minor site plan approval pursuant to N.J.S.A. 40:55D-46.1, to the extent deemed necessary, is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvements shall take place in strict compliance with the testimony provided on July 10, 2025, and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. There is an existing 6 ft wide by 60 ft long easement on Lot 12 along the common line with the property. The easement is described in Deed Book 4538 Page 903 (yr. 1985) as "for the purpose of maintaining, repairing and restoring the dwelling erected upon Lot 13. This easement being necessitated because the side yards on Lot 13 are only six inches on one side and one ft. eleven inches on the other...." The dwelling has been demolished and, thus, the Applicant shall legally extinguish the easement because the purpose of the easement is no longer valid and/or relevant.
3. The Applicants shall install roof leaders, which shall be depicted on the site plan, demonstrating that the stormwater runoff flows away from Lot 12 and towards the street.
4. Except where specifically modified by the terms of this Resolution, the Applicants shall comply with all recommendations contained in the Reports of the Board's

Professionals.

5. The Applicants shall apply for all necessary Zoning Permit(s).
6. Any ambiguities regarding the interpretation of this Resolution related to major site plan modifications shall be resolved by the Land Use Board upon due notice to the public.
7. The Applicants shall provide a certificate that taxes are paid to date of approval.
8. This approval is subject to the Applicants' continuing payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
9. Prior to the issuance of building permits, the Applicant shall be responsible for obtaining any other approvals or permits from other governmental agencies, as may be required by law, including all applicable Federal, State, County, and Municipal regulations.
10. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Highlands, County of Monmouth, State of New Jersey, or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicants' expense and to send a certified copy of this Resolution to the Applicants and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Robert Knox, Chairman
Borough of Highlands Land Use Board

ON MOTION OF:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAINED:
INELIGIBLE:
ABSENT:
DATED:

I hereby certify this to be a true and accurate copy of the LUB Resolution 2025-23 adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on August 14, 2025.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD
Case No. LUB25-09/Pahler
Bulk Variance Relief
July 10, 2025

EXHIBITS

- A-1 Zoning Map of the Borough of Highlands
- A-2 Sheet 13 of the Tax Map of the Borough of Highlands
- A-3 Aerial view from Google Maps, to demonstrate prevailing setbacks
- A-4 Parking Exhibit

INTEROFFICE REPORTS

- B-1 Board Engineer's Completeness Review, dated June 16, 2025 (Completeness Review No. 1)