



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2025-27
MEMORIALIZATION OF BULK VARIANCE RELIEF WITH DESIGN WAIVERS

IN THE MATTER OF JAMES KUBIS
APPLICATION NO. LUB2025-02

Approved: November 13, 2025
Memorialized: December 11, 2025

WHEREAS, an application for bulk variance relief with a design waiver has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the "Board") by James Kubis (hereinafter referred to as the "Applicants") on lands known and designated as Block 119, Lot 2.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 260 Navesink Avenue, Highlands, New Jersey, in the R-2.03 Single-Family Residential (R-2.03) Zone District (hereinafter "Property"); and

WHEREAS, a live public hearing was held before the Board on November 13, 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 a 7,973-sf lot located in the R-2.03 Zone, improved with a one and a half (1 ½)-single-story frame dwelling with decking, a detached one-story garage, and other site improvements.

2. The subject Property is located on the northwest corner of Navesink Avenue (NJ State Highway No. 36), northbound and South Linden Avenue (one-way). Driveway access to the subject Property occurs via South Linden Avenue. The southern property line borders the Township of Middletown.

3. The subject Property is located within the X Flood Hazard zone and within the Steep Slopes Area, but the Applicant's licensed Land Surveyor has determined that the average steepest slope is 7%. Therefore, the property is not subject to the steep slope provisions (but remains subject to any and all X Flood Hazard zone provisions).

4. The Applicant proposes constructing two (2) decks and performing related site improvements.

5. More specifically, the Applicant proposes to construct a flat deck (11'-9"x 19'-9") atop the first story of the existing dwelling, located in the rear of the subject Property.

6. The Applicant also proposes to remove the existing wood deck located off the first story of the existing dwelling and construct a new lower deck (13'-9 1/2"x 19'-9") in its place.

7. The Applicant further proposes to construct staircases from the upper deck to the lower deck, and from the lower deck to the existing patio.

8. The Applicant received a Denial of Zoning Permit on February 3, 2025, for non-compliance of bulk requirements and, therefore, requires Land Use Board approval.

9. The Applicant requires two (2) bulk variances for lot depth and minimum side yard setback, and one (1) design waiver for the location of the existing air conditioning unit.

10. The nature and extent of the two (2) bulk variances is as follows:

Schedule I – Bulk and Area Requirements for R -2.03 Zone			
	Required	Existing	Proposed
Min. Lot Depth (ft.)	100	75**	75*
Min. Side Yard Setback (ft.)	6 (Navesink) 8 (South Linden)	2.8** (Navesink) 34.0 (South Linden)	2.8* (Navesink) 34.0 (South Linden)

*Proposed Variance

**Existing Variance

11. With this application, the Applicant proposes to bring an existing non-conformity, for the minimum deck setback along Navesink Avenue, into compliance as follows:

Schedule I – Bulk and Area Requirements for R -2.03 Zone			
	Required	Existing	Proposed
Min. Deck Setback (ft.) (Navesink)	3	2.3**	3

12. James Kubis, the owner of the subject Property and Applicant, was sworn in and testified about the application.

13. The Applicant summarized the application and noted that the proposed lower deck would be approximately two (2) ft. larger than the proposed upper deck.

14. The Applicant provided additional testimony that the proposed lower deck would extend two (2) feet further into the rear yard than the existing lower deck, but would not trigger any additional variance relief.

15. The Applicant further testified that his proposal would not exacerbate the existing conditions and that the side yard setback along Navesink Avenue would not be changing and would remain at 2.8ft.

16. In response to a comment by the Board Engineer, the Applicant confirmed that the existing rear deck is set back 2.3ft from Lot 3 and that the proposed lower deck is to be set back 3ft

from Lot 3, thus bringing an existing nonconformity into conformity.

17. The Applicant's Architect, Anthony M. Condouris, was sworn in and accepted as an expert in the field of architecture and testified about the application.

18. Mr. Condouris testified that the proposed upper deck would connect to the second floor of the dwelling via a doorway, with new staircases connecting the two (2) proposed decks.

19. Mr. Condouris provided additional testimony that despite the additional deck space proposed, none of the setbacks were exacerbated by the application.

20. In response to a question from the Board Engineer, Mr. Condouris confirmed that the deck setback would be brought into compliance with the proposal.

21. In response to further questions from the Board, the Applicant and Mr. Condouris testified that the Applicant's fence encroaches upon adjoining Lot 3 by three (3) feet, but that the Applicant has entered into an Encroachment Agreement with the owner of Lot 3, which Agreement permits the fence to remain in its current location.

22. In response to additional questions from the Board, the Applicant agreed to record the Encroachment Agreement with the County of Monmouth.

23. In response to further questions from the Board Professionals, the Applicant confirmed that the A/C unit existed in its current location at the time he purchased the Property and that he did not alter the same.

24. The Board Engineer advised that the existing A/C unit is too close to the property line and that a design waiver would be needed for it to remain in its present location.

25. The Applicant further testified that the A/C unit is proposed to remain in its existing location and that he was, therefore, seeking a design waiver for the same.

26. 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 should be granted bulk variance relief pursuant to both N.J.S.A. 40:55D-70c(1) and c(2), along with design waiver relief pursuant to N.J.S.A. 40:55D-51, in this instance.

The Board finds that the Applicant has proposed constructing two (2) decks and performing related site improvements, 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. 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 Applicant has satisfied the positive criteria. The Board finds that the proposed decks and stairways will upgrade the existing residential structure and will be consistent with neighboring development. The Board further finds that the proposed decks will be aesthetically pleasing and create a desirable visual environment which will be commensurate with other homes in the neighborhood. The Board further finds that the subject Property is unique and unusual with respect to its dimensions. 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 Applicant has therefore satisfied the positive criteria.

The Board also finds that the negative criteria has been satisfied. The proposed decks requiring variance relief will not cause a detriment to the community in any discernible way. In fact, the Board finds that proposed decks will still be consistent 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 Applicant and the neighbors alike. Granting of the variance sought by the Applicant 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 further finds that the Applicant will bring the Property into further conformity with the Zoning Ordinance, by proposing to eliminate the existing variance for the minimum deck setback. Additionally, the Board finds that the Applicant and the property owner of Lot 3 have entered into an Encroachment Agreement, permitting the fence that encroaches upon Lot 3 to remain in its current location, which Agreement shall be recorded with the County. The Board therefore concludes that the negative criteria has therefore been satisfied pursuant to N.J.S.A. 40:55D-70c(2).

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).

The proposal also requires design waiver relief from the requirements of § 21-65.27.C for the location of the existing A/C unit. The MLUL permits site plan design exceptions pursuant to N.J.S.A. 40:55D-51(b). The statute permits the Board to grant a deviation from the requirements for site plan approval if (1) doing so is “reasonable”, (2) within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to Article 4 of the MLUL; and (3) if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

Based on the testimony provided, the Board has determined that the design the waiver, for the location of the existing air conditioning unit may be reasonably granted because it

presents a better planning alternative and safer design overall, and exists in an appropriate location with respect to the subject Property. For the foregoing reasons, the Board therefore finds that it is appropriate to grant design waiver relief pursuant to N.J.S.A. 40:55D-51.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 11th day of December 2025, that the action of the Board taken on November 13, 2025, granting application no. LUB 2025-02 of James Kubis for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and “c(2)” and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the Reports of the Board's Professionals.
3. The Applicant shall apply for all necessary Zoning Permit(s).
4. With respect to the Applicant's fence that encroaches upon adjoining Lot 3 by three (3) feet, the Applicant has entered into an Encroachment Agreement with the owner of Lot 3, which Agreement permits the fence to remain in its current location. The Applicant shall record the Encroachment Agreement with Monmouth County and provide proof of the same. Failure to record the Encroachment Agreement shall require the Applicant to remove the fence or seek further relief from the Land Use Board with respect to the same.
5. 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.
6. The Applicant shall provide a certificate that taxes are paid to date of approval.
7. This approval is subject to the Applicant's 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.
8. 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.

9. 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 Applicant's expense and to send a certified copy of this Resolution to the Applicant 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 Resolution adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on December 11, 2025.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

Case No. LUB25-02/Kubis

Bulk Variance Relief

November 13, 2025

APPLICATION DOCUMENTS

- Land Use Board Application for Variance, dated February 28, 2025.
- Denial of Zoning Permit issued on February 3, 2025, for the Borough of Highlands.
- Plan set entitled, “Kubis Residence, 260 Navesink Avenue, Highlands, New Jersey, Block 119 Lot 2.01”, prepared by Anthony M. Condouris, Architect, dated August 7, 2025, last revised September 8, 2025, signed, and consisting of 4 sheets.
- Plan set entitled, “Proposed Alterations and Addition for Kubis Residence, 260 Navesink Residence, Highlands, New Jersey, Block 119 Lot 2.01”, prepared by Anthony M. Condouris, Architect, dated April 8, 2024, signed, and consisting of 4 sheets.
- Survey for 260 Navesink Avenue, prepared by Thomas Craig Finnegan Land Surveying, LLC, dated July 30, 2025.

EXHIBITS¹

A-1 Encroachment Agreement with owner of Lot 3

A-2 Freehold Soil Conservation District letter, dated October 9, 2025

INTEROFFICE REPORTS

B-1 Board Engineer’s Completeness Review, dated March 14, 2025 (Completeness Review No. 1)

B-2 Board Engineer’s Completeness Review, dated Sept. 17, 2025 (Completeness Review No. 2)

¹ Although the exhibits were not marked during the hearing, for sake of reference, they are being marked as “A-1” and “A-2” as documented herein.