



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2022-15

MEMORIALIZATION OF BULK VARIANCE RELIEF

Approved: June 9, 2022
Memorialized: July 14, 2022

IN THE MATTER OF RACHEL SHWOM APPLICATION NO. LUB2022-02

WHEREAS, an application for bulk variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by Rachel Shwom (hereinafter referred to as the “Applicant”) on lands known and designated as Block 101, Lot 9, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 342 Shore Drive 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 June 9, 2022, 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 contains 2,590 s.f. with 27.09 feet of frontage on Shore Drive and 25 feet of frontage on Locust Street within the R-2.03 (Single-Family Residential) Zone. The subject Property is located in flood zone AE-12 and is currently improved with an 834 s.f. elevated, two and one-half story, single-family residential structure with an elevated deck.

2. The Applicant is seeking bulk "c" variance relief from the R-2.03 Zone's zoning requirements to permit construction of a 463-foot elevated, two and one-half story addition with a new elevated deck and expanded existing elevated deck. The proposed addition would reduce the existing side yard setback from 1.6 feet to 1.2 feet due to the dwelling's relation to the property line, and would be located on the south/southwest side of the subject Property (Shore Drive).

3. The proposed addition would also increase building coverage from 32.2% to a proposed coverage of 51%, both of which exceed the 30% maximum permitted building coverage.

4. The Applicant testified that she has owned the subject Property for eleven years and was seeking to add an addition on to the existing dwelling. The home was raised after Hurricane Sandy by the prior homeowners.

5. In response to questions from the Board, the Applicant testified that the proposed addition would be to the front of the home, and that the Locust Street side of the subject Property was the rear thereof.

6. The Applicant testified that the following variance relief was proposed:

- a. **Minimum Lot Size:** 5,000 s.ft. is required whereas 2,590 s.f. presently exists and 2,590 s.f. is proposed to remain.

- b. **Minimum Lot Frontage (Locust Street):** 50 feet is required whereas 27.09 feet currently exists and 27.09 feet is proposed to remain.
- c. **Minimum Front Yard Setback (Locust Street):** 20 feet (or 35.8 feet, which is the average of the existing front yard setback within two hundred feet in the same block and zone per Ordinance Section 21-79) is required whereas 11 feet currently exists and 11 feet is proposed to remain.
- d. **Minimum Side Yard Setback:** 6 feet and 8 feet is required whereas 1.6 feet and 3.7 feet presently exist. The 1.6 foot side yard setback is proposed to be decreased to 1.2 feet, whereas the 3.7 foot setback is proposed to remain unchanged.
- e. **Building Coverage:** 30% is permitted whereas 32.2% presently exists and is proposed to be changed to 51%.

7. The Applicant testified that the subject Property has a larger front yard than most other properties in the neighborhood and that, therefore, it would not be inappropriate to, construct an addition on the front of the dwelling.

8. The Board Engineer testified that the subject Property is undersized and located in the R-2.03 Zone. He provided additional testimony that the subject Property is unique in that it has two front yards because it abuts both Shore Drive and Locust Drive.

9. The Board Engineer stated that the Applicant proposed to decrease the side-yard setback on the southwest side of the lot from 1.6 feet to 1.2 feet and to increase building coverage from 32.2% to 51%, both of which required variance relief. The Board Engineer further testified that the Applicant required four (4) additional variances, all of which were pre-existing non-compliant conditions that would not be further exacerbated by this application.

10. The Board Engineer offered additional testimony that the height of the proposed addition was not problematic and did not require variance relief. He stated that the Residential Site Improvement Standards (R.S.I.S.) required three (3) off-street parking spaces as well.

11. In response to questions from the Board Engineer, the Applicant offered two photographs that were marked into evidence as “A-1” and “A-2”, depicting the front side of the subject Property (Shore Drive) and rear side thereof (Locust Street).

12. The Applicant testified that the photos demonstrated that a car could be parked in the rear of the subject Property and that it is setback much more so than the others in the surrounding area, thus making an addition anywhere but in the front-yard difficult.

13. In response to a question from the Board, the Applicant’s Architect, Vincent Minkler, A.I.A., testified that the proposed addition would extend outward towards Shore Drive by approximately twenty-five (25) feet.

14. The Board next inquired whether the proposed building coverage was similar to that of the rest of the neighborhood. Mr. Minkler responded that the building coverage would be similar to the home next door. He provided additional testimony that the subject Property is at most approximately 27 feet wide whereas 50 feet is a more common lot width in Highlands and, thus, the narrowness of the subject Property makes it more likely to need building coverage variance relief.

15. Mr. Minkler provided additional testimony that due to the exceptional narrowness of the subject Property, the current dwelling is a “shotgun” style home.

16. The application was then opened to members of the public who inquired whether the water runoff and/or drainage would be affected by the proposal. The Applicant responded that there would not be any anticipated runoff.

17. The Applicant testified that the application would make the subject Property more consistent with the neighboring properties and anticipates no detriment to the community and/or zoning plan.

18. The Board Engineer noted that per the R.S.I.S., the application required three (3) off-street parking spaces but testified that no-off street parking was to be provided. The Applicant provided testimony that she is able to use one on-street parking space on Locust Street and currently only has one vehicle. In response, the Board advised the Applicant that a de minimis exception from the R.S.I.S. parking requirements, was required.

19. There were no other 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 Applicant should be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) in this instance.

The Board finds that the Applicant has proposed construction, 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 improvements to the subject Property will improve the functionality of the dwelling

by increasing the habitable floor space. The Board further finds that the proposed improvements will be aesthetically pleasing and create a desirable visual environment, which will be more commensurate with other homes in the neighborhood in terms of size and setbacks. The Board further finds that the subject Property is unique in its exceptional narrowness as to width and dual frontage on Shore Drive and Locust Street, and that it is setback further from Shore Drive than other homes in the neighborhood. Ultimately, a more functional and visually desirable dwelling not only benefits the Applicant, but also advances the interests of the entire community by updating the dwelling to more current housing standards. 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 improvements do not exacerbate any of the pre-existing non-compliant conditions and, thus, granting the requested variances will also not cause a detriment to the community in any discernible way. In fact, the Board finds that proposed addition 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. The Board therefore concludes that there is no substantial detriment to the Zone Plan or the Zoning Ordinance. To the extent there were concerns as to potential drainage issues after the proposed addition is constructed, the Applicant has agreed to submit a grading plan to the Board Engineer for his review and approval. The public welfare has also not been substantially detrimented. 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).

The Applicant requires a de minimis exception from the RSIS parking requirements. The Board finds that the subject Property has off street parking which can accommodate the Applicant. Adequate on-street parking also exists in the area to address any further parking needs. The Board therefore finds that a de minimis exception from the R.S.I.S. is appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 14th day of July 2022, that the action of the Board taken on June 9, 2022, granting Application No. LUB2022-02 of Rachel Shwom for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) with a de minimis exception from the R.S.I.S. is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in the 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 professionals.
3. The Applicant shall submit a grading plan to the Board Engineer for his review and approval.
4. The Applicant shall obtain all necessary approvals from the Borough Flood Plain Officer.
5. The project site is located in the Coastal Area Facilities Review Act (CAFRA) Zone. The Applicant shall comply with all applicable NJDEP requirements and should confirm any specific restrictions and/or permitting requirements accordingly.

6. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
7. The Applicant shall provide a certificate that taxes are paid to date of approval.
8. 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. 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:
ABSENT:
DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Highlands Land Use Board, Monmouth County, New Jersey at a public meeting held on July 14, 2022.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD
EXHIBITS
Case No. LUB 2022-03 / B-Four Enterprises, Inc.
Amended Preliminary and
Amended Final Major Site Plan Approval
June 9, 2022

- A-1 Denial of development permit by Marianne Dunn, Zoning Officer dated 2/19/19
- A-2 Variance application dated 4/3/19 (3 pages)
- A-3 Disclosure of Ownership dated 4/3/19
- A-4 Site Plan Review Application (2 pages)
- A-5 Preliminary & Final Site Plan by Charles Surmonte dated 2/10/18, last revised 12/2/19 (8 pages)
- A-6 Architectural Plans by Brian Berzinskis dated 12/19/19 (1 page)
- A-7 Sheet 4 of site plan on large board, in color
- A-8 Stormwater Management Plan by Mr. Surmonte dated 7/9/19
- A-9 Large photo of property
- A-10 Large colored rendering of proposed building—view from Bay Ave.
- A-10a Reverse side of A-10—view from rear
- A-11 A-6 with modifications
- A-12 Traffic Report by Mr. Surmonte dated 11/5/20
- A-13 Planner presentation by David Roberts (8 pages—two sided)
- B-1 Board engineer incompleteness letter by Edward Herrman dated 4/29/19 (4 pages)
- B-2 Board engineer review letter by Edward Herrman dated 9/25/20 (10 pages)