



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## **LAND USE BOARD RESOLUTION 2023-21**

### **MEMORIALIZATION OF BULK VARIANCE RELIEF**

**Approved: November 9, 2023**  
**Memorialized: December 14, 2023**

**IN THE MATTER OF CATCHERMAN, LLC**  
**APPLICATION NO. LUB2023-02**

**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 Catcherman, LLC (hereinafter referred to as the “Applicant”) on lands known and designated as Block 101, Lot 27.04, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 17 Locust Street, Highlands, New Jersey, in the R-1.03 Single-Family Residential (R-1.03) Zone District (hereinafter “Property”); and

**WHEREAS**, a live public hearing was held before the Board on November 9, 2023, with regard to this application; and

**WHEREAS**, the Applicant was represented by attorney Daniel J. O’Hern, Jr.

**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 pre-existing non-conforming, and undersized lot located in the R-1.03 Zone. The lot is currently undeveloped.

2. The applicant is proposing to construct an 18 ft x 42 ft (756 SF) single-family dwelling on the lot and is seeking relief for bulk variances. The dwelling is proposed to have three (3) stories and will consist of a ground floor (garage/storage only), first floor living space, second floor living space with three (3) bedrooms, and an attic which leads to roof terraces on the front and back of the property through use of a circular staircase. Attached to the first floor is a balcony and elevated deck, a patio is also proposed beneath the deck.

3. Bulk relief is required as summarized below:

R-1.03 Zone	Required R-1.03 Zone	Existing	Proposed
Min. Lot Area (sf)	14,000	2,500	2,500 (E,V)
Min. Lot Frontage/Width (ft)	75	25	25 (E,V)
Min. Lot Depth (ft)	200	100	100 (E,V)
Min. Front Yard Setback (ft)	35 <sup>(1)</sup>	NA	21 <sup>(1)</sup>
Min. Side Yard Setback (ft)	8/12	NA	3.0/4.0 (V)
Minimum Rear Yard Setback (ft)	25	NA	37.0
Maximum Building Height (ft)	32.5 <sup>(2)</sup>	NA	36 (V) <b>32.75 (V)(c)</b>
Maximum Lot Coverage	60%	NA	52.74%
Maximum Building Coverage	25%	NA	30.24% (V)

E= Existing Condition V= Variance Required N/A= Not Applicable c=Calculated by T&M

4. Robert Davis, the Applicant’s principal, testified in support of the application by providing an overview of the single-family detached dwelling he wished to build on this property. Having built comparable homes in both this neighborhood and others nearby, Mr. Davis

explained how other similarly shaped and sized lots have been approved for new home construction.

5. Engineer Sean Savage, P.E., next testified and provided the Board with an overview of the site plan required to accommodate the home that Mr. Davis seeks to build. Mr. Savage stipulated that the Applicant took no exception to the technical comments set forth in the Board Engineer's October 30, 2023 review letter, and further stipulated that the third floor space would not be converted into additional bedrooms absent a return before the Board since the available on-site parking was sufficient for only the proposed two (2) bedrooms. Mr. Savage also stipulated that the height of the structure would be reduced to conform with zoning.

6. Contract purchaser and local builder, Charles LaRue, testified that the utility platform required to comply with flood design requirements would require a slightly greater sideyard setback variance (1.5 feet versus 3 feet originally proposed), but that the visual impact of the reduced setback would be shielded from public view by the dwelling's layout.

7. Lou Longo, who resides on an adjacent property, expressed concern over the noise to be generated by the proposed air conditioning condensers. 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 Applicant

should be granted bulk variance relief pursuant to both N.J.S.A. 40:55D-70c(1) and c(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 provide a permitted residential structure and use consistent with neighboring development. 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 and unusual with respect to both its shape and dimensions. Ultimately, a functional and visually desirable dwelling not only benefits the Applicant, but also advances 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 improvements requiring variance relief will 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 Applicant's stipulation to reduce the proposed dwelling height to conform with zoning was welcomed by the Board. The Board therefore concludes that there is no substantial detriment to the Zone Plan or the Zoning Ordinance. Granting of the variances sought by the applicant will also not result in any substantial detriment to the public welfare, thus the negative criteria has therefore been satisfied. Furthermore, under the c(2) analysis, 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).

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Highlands Land Use Board on this 14<sup>th</sup> day of December 2023, that the action of the Board taken on November 9, 2023, granting Application No. LUB 2023-02 of Catcherman, LLC for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2) 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. All decks shall be of pervious construction with appropriate spacing and materials to allow these features to remain pervious.
4. This approval allows for two-bedrooms only. The proposed third floor shall not be converted into additional bedroom(s) without prior approval of this Board for either variance relief and/or an RSIS parking waiver.
5. The Applicant shall submit a grading plan to the Board Engineer for his review and approval.
6. The Applicant shall obtain all necessary approvals from the Borough Flood Plain Officer and ground level walls shall conform with all applicable flood zone construction standards.
7. 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.
8. The Applicant shall apply for all necessary Zoning Permit(s).

9. The Applicant shall provide a certificate that taxes are paid to date of approval.
10. 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.
11. 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.

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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 Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on December 14, 2023.

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Nancy Tran, Secretary  
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

Case No. No. LUB2023-02/Catcherman

Bulk Variance Relief

November 9, 2022

INTEROFFICE REPORTS

- B-1 Board Engineer's First Completeness Review letter, dated May 18, 2023.
- B-2 Board Engineer's Second Completeness Review letter, dated October 25, 2023.
- B-3 Board Engineer's First Engineering Review letter, dated October 30, 2023.