



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2023-20

MEMORIALIZATION OF BULK VARIANCE RELIEF

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

IN THE MATTER OF MARY T. SHARKEY

APPLICATION NO. LUB2023-05

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 Mary T. Sharkey (hereinafter referred to as the “Applicant”) on lands known and designated as Block 42, Lot 2, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 9 Shrewsbury Avenue, Highlands, New Jersey, in the R-2.02 Single-Family Residential (R-2.02) 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 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 1,874 s.f. with 33.50 feet of frontage on Shrewsbury Avenue within the R-2.02 (Single-Family Residential) Zone.

2. The subject property is a vacant, pre-existing non-conforming, irregularly shaped, and undersized lot that contains 1,874 s.f. with 33.50 feet of frontage on Shrewsbury Avenue within the R-2.02 (Single-Family Residential) Zone. The proposed structure is located within the AE-12 Flood Zone, and within the Limit of Moderate Wave Action (LiMWA).

3. The applicant is proposing to construct a 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 two (2) bedrooms, a third-floor recreational space. A rooftop deck with an optional attached circular staircase is also proposed.

4. Bulk relief is required as summarized below:

R-2.02 Zone	Required	Existing	Proposed
Min. Lot Area (sf)	4,000	1,871 or 0.04 AC	1,871 or 0.04 AC (E,V)
Min. Lot Frontage/Width (ft)	50	33.5	33.5 (E,V)
Min. Lot Depth (ft)	75	51.7	51.7 (E) 56.2 (c)(E,V)
Min. Front Yard Setback (ft)	20 ⁽¹⁾	NA	10 5.5 (c)(V)
Min. Side Yard Setback (ft)	6/8	NA	3.2/4 3.2/4.0(c)(V)
Minimum Rear Yard Setback (ft)	20	NA	13.1 (V) 9 (c)(V)
Maximum Building Height (ft)	32.5 ⁽²⁾	NA	32.5 28 (c)
Maximum Lot Coverage	75%	2.7%	61.0%
Maximum Building Coverage	33%	NA	38.3% (V) 46.7% (c)(V)

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

5. Both Mary Sharkey and Hugh Sharkey offered testimony in support of the application. Initially, Mr. Sharkey explained that a title issue raised during completeness review had been addressed satisfactorily by the title company as confirmed by Mr. Hermann's office. Mr. Sharkey then provided testimony summarizing the application, explaining the unique circumstances impacting this property that in his opinion warranted relief to allow the property's development for a permitted single family detached dwelling.

6. Architect Salvatore La Ferlita next testified and provided the Board with an overview of his architectural floor plans and elevations. Mr. La Ferlita stipulated that the Applicant took no exception to the technical comments set forth in the Board Engineer's October 26, 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.

7. Charles LaRue, a lifelong resident, builder and former contract purchaser of this property, expressed profound disappointment that a nearly identical application he had proposed for this very same property needed to be withdrawn due to the Sharkeys' objections. In response, the Sharkeys believed the circumstances involving both applications were considerably different.

8. 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 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 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 14th day of December 2023, that the action of the Board taken on November 9, 2023, granting Application No. LUB 2023-05 of Mary T. Sharkey 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. Applicant shall remove/relocate the existing vinyl fence off of Block 42, Lot 2.
5. 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.
6. The Applicant shall submit a grading plan to the Board Engineer for his review and approval.
7. 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.
8. 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.
9. The Applicant shall apply for all necessary Zoning Permit(s).
10. The Applicant shall provide a certificate that taxes are paid to date of approval.

11. 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.
12. 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 Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on December 14, 2023.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD
Case No. No. LUB2023-05/Sharkey
Bulk Variance Relief
November 9, 2022

EXHIBITS

- A-1 Aerial Map Exhibit.
- A-2 Buy/Sell Letters.
- A-3 Site Photographs.
- A-4 Photographs and Tax Cards for four properties.
- A-5 Air, Light and Open Space Exhibit.
- A-6 Architectural Plan Sheet A-100 revised November 6, 2023.
- A-7 Comparable design photographs

INTEROFFICE REPORTS

- B-1 Board Engineer's Review of Minor Site Plan, Plat Requirements, dated September 29, 2023.
- B-2 Board Engineer's Review of Minor Site Plan, Fee and Escrow Calculation letter, dated September 29, 2023.
- B-3 Board Engineer's First Engineering Review letter, dated October 26, 2023.