



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**LAND USE BOARD RESOLUTION 2022-09
RESOLUTION OF MEMORIALIZATION
MINOR SUBDIVISION APPROVAL
WITH ANCILLARY VARIANCE RELIEF**

**Approved: February 10, 2022
Memorialized: March 10, 2022**

IN THE MATTER OF CHRISTOPHER MATTINA

APPLICATION NO. LUB2019-05

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by Christopher Mattina (hereinafter referred to as the "Applicant") on lands known and designated as Block 12, Lots 4.01 and 4.02, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 49 Portland Road in the R-1.03 (Single Family Residential) Zone; and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, live public hearing was held on February 10, 2022, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties were provided with an opportunity to be heard; and

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 includes two (2) lots which contain a total of 37,908 sf. Lot 4.01 contains 13, 439 sf and is improved with a two-story single-family dwelling. Lot 4.02 contains 24,469 sf and is vacant. Both lots are located within the R 1.03 Single-Family Residential Zone with frontage along Portland Road. The subject Property previously received minor subdivision approval in 1995, however, the Zone requirements were subsequently amended.

2. The Applicant is now seeking a new minor subdivision approval along with ancillary bulk variance relief to modify the existing lot lines. Proposed Lot 4.01 will contain 10,058 sf with frontage along Portland Road Proposed Lot 4.02 will contain 27,850 sf and will not have frontage along an improved road. The Applicant is not proposing any construction on Proposed Lot 4.01. The Applicant proposes a new 2 ½ story single family dwelling on Proposed Lot 4.02.

3. Counsel for the Applicant, Thomas J. Hirsch, Esq. stated that the Applicant was seeking minor subdivision approval with ancillary bulk variance relief. He described existing Lot 4.02 as a flag lot and existing Lot 4.01 as a standard shaped lot. Mr. Hirsch further explained that a minor subdivision had previously been granted but that amendments to the zoning ordinance required a new approval.

4. The Applicant testified that he had purchased the lots in 2020 but that the title search had not clearly reflected the applicable steep slope ordinance requirements which he asserted necessitated the instant application.

5. The Applicant's Engineer, Kenneth Cahill, P.E. testified that existing Lot 4.01 is improved with a single-family residence and existing Lot 4.02 is currently vacant. He explained that while the Applicant was seeking a minor subdivision approval, the characteristics of the application were really that of a lot line adjustment. Mr. Cahill stated that the proposed plan attempted to accommodate the steep slope ordinance. He identified the following required relief:

a) Proposed Lot 4.01:

- 1) Minimum lot area where 14,000 sf is required and 10,058 sf. is proposed.
- 2) Minimum lot depth where 200 ft. is required and 56.6 ft. is proposed.
- 3) Minimum front yard setback where 35' is required and 0.5 ft. is proposed.
- 4) Minimum rear yard setback where 25 ft. is required and 24.3 ft. is proposed.
- 5) Disturbance distance (top/toe) where 15 ft./10 ft. is required >25 ft./ 0 ft. are proposed.

b) Proposed Lot 4.02:

- 1) Minimum lot depth where 200 ft. is required and 186.29 ft. is proposed.
- 2) Minimum front yard setback where 35' is required and 21.33 ft. is proposed.
- 3) Disturbance distance (top/toe) where 15 ft./10 ft. is required >25 ft./ >10 ft. are proposed.

6. Mr. Cahill further testified that the following relief was also required to permit a lot not fronting on an improved public street:

- a) **Section 21-77.A** of the Ordinance requires every principal building be built upon a lot with frontage on a public street, and that the principal building shall have pedestrian and vehicular access for driveway and parking purposes from that improved street. The Applicant is proposing to subdivide the property and create a land-locked Proposed Lot 4.02.
- a) **Section 21-84.B** of the Ordinance indicates that where slopes exceed 35% there shall be no disturbance of the steep slope areas, whereas the Applicant is proposing a curb cut and driveway within steep slopes exceeding 35% on Proposed Lot 4.01.

7. Mr. Cahill then explained that design waiver relief was also required from Section 21-65.4 of the Borough Code to permit the existing non-curbed frontage to remain.

8. Mr. Cahill further asserted that the proposed lots shared characteristics with others in the area. In response to Board questions, he also testified that all required access easements would be provided as a condition of approval. He additionally stated that a fire hydrant would be located at the frontage of the subject Property in order to accommodate emergency vehicles. Mr. Cahill then explained that the common driveway would be governed by a maintenance agreement which would be approved by the Board's professionals.

9. The hearing was then opened to the public at which time Mr. Cahill confirmed that the lower level of the proposed new home would have an entry point with a garage and an observation deck. Mr. Cahill further confirmed that all stormwater management requirements would be satisfied. In response to further questions, he also testified that the vacant lot could not be developed in the absence of relief from ordinance requirements.

10. 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's

request for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c with design waiver relief pursuant to N.J.S.A. 40:55D-51 and a planning variance pursuant to N.J.S.A. 40:55D-35 and 36 should be granted in this instance.

The Board finds that the Applicant has proposed a minor subdivision 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 which 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, an 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 first addresses the positive criteria pursuant to the hardship standard. The Board finds that the vacant lot cannot be developed in the absence of variance relief. The inability to develop the lot with a permitted use constitutes a hardship. The Board is further aware that denial of variance relief would result in an undevelopable lot which is a taking which would require the Borough to purchase the property pursuant to the requirements of both the New Jersey and United States Constitutions. The Board therefore finds that the Applicant has satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70c(1).

The Board also finds that the positive criteria has been satisfied pursuant to the “flexible” statutory standard. The Board finds that the proposed subdivision promotes appropriate population densities identified in the Borough Code and also replaces a vacant lot with an attractive permitted single-family home which promotes a desirable visual environment. These attributes both promote the goals of planning identified at N.J.S.A. 40:55D-2 and benefit the entire community. The Applicant has therefore satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70c(2).

The Board further finds that the Applicant has also satisfied the negative criteria. The grant of variance relief will not result in additional population density, increased traffic beyond

what is contemplated by the Ordinance, increased noise or noxious odors. The Board therefore finds that the grant of variance relief will not result in substantial detriment to the public welfare or substantially impair the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

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

The Board also addresses the need for a planning variance pursuant to N.J.S.A. 40:55D-35 and 36. The Board finds that the land locked lot will have access to a public street through an easement which will be governed by a maintenance agreement to be approved by the Board's professionals. A fire hydrant will also be located at the site frontage in order to assist emergency vehicles. The Board therefore finds that adequate access for both home owners as well as emergency vehicles exists and relief may therefore be granted.

The Board also finds that the existing design which does not include curbing is adequate and is also in conformance with the prevailing neighborhood scheme. The Board therefore determines that requiring strict compliance with the requirements of the Ordinance would create practicable difficulty in developing the subject Property with a permitted use. Design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

With the exception of the above relief, the Applicant complies with all other zoning, subdivision and design criteria ordinance requirements. Minor subdivision approval pursuant to N.J.S.A. 40:55D-47 is therefore appropriate. The Board notes that Plot Plan approval is required for development of the new proposed home.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 10th day of March 2022, that the action of the Land Use Board taken on February 10, 2022 granting Application No. LUB2019-05, for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2), design waiver relief pursuant to N.J.S.A. 40:55D-51 along with planning variance relief pursuant to N.J.S.A. 40:55D-35 and 36 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 Subdivision Plat or Deed recorded memorializing this subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicant shall record the Subdivision Plat or Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render this approval null and void.
4. The Applicant shall submit an access easement subject to the review and approval of the Board Engineer and Board Attorney.
5. The Applicant shall submit a Maintenance Agreement for the common driveway subject to the review and approval of the Board Engineer and Board Attorney.
6. A fire hydrant shall be located at the frontage of the subject Property subject to the review and approval of the Board Engineer and appropriate Borough Fire Official.
7. The Applicant shall obtain plot plan approval for the construction of the new single-family home. This includes compliance with all relevant stormwater management requirements.

8. The Applicant shall provide a certificate that taxes are paid to date of approval.
9. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
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 Applicant' 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 March 10, 2022.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB2019-05/ CHRISTOPHER MATTINA

Minor Subdivision

February 10, 2022

- A-1 Aerial Exhibit prepared by Bohler Engineering NJ, LLC dated February 9, 2022.
- A-2 Photo Exhibit prepared by Bohler Engineering NJ, LLC dated February 9, 2022.
- A-3 Site Layout Plan – Sheet No. C-01 prepared by Bohler Engineering NJ, LLC.
- A-200 Floor Plan – Elevations prepared by Mode Monmouth Ocean Design Experts dated 10/19/21.
- A-201 Floor Plan – Elevations prepared by Mode Monmouth Ocean Design Experts dated 10/19/21.