



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

LAND USE BOARD RESOLUTION 2024-19

**MEMORIALIZATION OF DISMISSAL OF APPLICATION FOR DEVELOPMENT
WITHOUT PREJUDICE**

**IN THE MATTER OF HOME & LAND DEVELOPMENT CORP.
APPLICATION NO. LUB 2022-10**

**Dismissed: September 12, 2024
Memorialized: October 10, 2024**

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by Home and Land Development Corp. (hereinafter referred to as the “Applicant”) on lands known and designated as Block 35, Lots 8 and 9, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 14 North Peak Street and 32 North Peak Street in the R1.01 Zone District (“R1.01 Zone”); and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, and 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, public hearings were conducted on May 9, 2024, July 11, 2024 and September 12, 2024 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.

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 Applicant has filed an application seeking minor subdivision approval to adjust the existing lot line between Block 35 Lot 8 and Lot 9 in order to construct one (1) single-family dwelling on each lot. The Applicant also sought approval in order to construct a retaining wall within the North Peak Street right-of-way along the frontage of the subject Property.

2. The Applicant was represented by Evan P. Zimmerman, Esq. of the Law Firm Giordano, Halleran & Ciesla, P.C.

3. An objector, Joseph Dorin, the owner of adjacent properties designated as Block 35, Lots 10, 11 and 12 on the Tax Map of the Borough of Highlands was represented by Vincent J. DelRiccio, Esq. of R.C. Shea & Associates.

4. On or about September 2021 the Applicant obtained a permit from the Borough of Highlands permitting tree removal on the subject Property. The Applicant was permitted to remove ten (10) trees in accordance with that permit. The Applicant, however, clearcut the subject Property in violation of the tree removal permit.

5. On or about April 2022 violations were issued to the Applicant.

6. On or about November 2022 an application for development was filed by Home & Land Development Corp. The application for development dated November 18, 2022 was reviewed by the then Land Use Board Engineer, Edward W. Herrmann, P.E., P.P., C.M.E., C.F.M., who issued a Review Report dated January 3, 2023 wherein Mr. Herrmann deemed the application incomplete.

7. Mr. Herrmann identified numerous deficiencies in the Applicant's submission including, but not limited to, the failure to provide the existence and location of any utility or other Easements, the failure to provide a certification from the Tax Collector that all taxes and assessments for local improvements on the property have been paid up-to-date as well as the failure to provide a wetlands statement provided by a qualified expert.

8. In his January 3, 2023 Report, Mr. Herrmann also identified numerous deficiencies in the plans that are outlined on pages 2 and 3 and set forth in Items A through H of the Report including, but not limited to, "grading and disturbance for the proposed improvements appears to comprise the entire property limits including some off-tract elements relative to the installation of a retaining wall within the unnamed 10 foot right-of-way to the south of the tracts." Furthermore, Mr. Herrmann stated the plans failed to depict the location of the septic system for the prior dwelling on Lot 9. The plans also failed to identify how the Applicant would connect to the Borough sanitary sewer system located in Valley Avenue. The plans also failed to identify the means of utility connections for water and electric as well as the failure to provide

calculations relative to steep slope disturbance. Finally, Mr. Herrmann contends the Applicant failed to provide the means and methods for controlling velocity and rate of stormwater runoff.

9. Mr. Herrmann, issued a second Review Letter dated August 15, 2023 wherein many of the same requests for information or documentation still had not been provided including, but not limited to, the existence and location of any utility or other Easements, Certification from the Tax Collector that all taxes and assessments for local improvements on the property have been paid to date, and the failure to provide a wetlands statement provided by a qualified expert. Mr. Herrmann also confirmed that the same comments as contained in the January 3, 2023 Review Letter A through H continue to remain unresolved. Further, with respect to documenting compliance with Steep Slope Ordinance 21-84.B Mr. Herrmann stated “The applicant is requesting variance relief from the Steep Slope Ordinance. The property contains slopes greater than 20%. Considering this factor and the extent of improvements proposed, I recommend the applicant demonstrate compliance with all requirements of 21-84.B prior to being deemed complete.”.

10. On February 20, 2024 the current Land Use Board Engineer, Carmella Roberts, P.E., C.M.E., C.P.W.M. issued the third Review Report regarding this application. The Report identified numerous deficiencies with the application, including but not limited to the Applicant’s failure to provide a statement from a licensed engineer or other authority confirming the presence or absence of wetlands on the property. Ms. Roberts also stated “The proposed lots have many engineering issues that must be addressed by a licensed civil engineer.”. Further, due to the disturbance of steep slopes, the Applicant was also requested to provide slope area calculations in accordance with the Ordinance requirements.

11. Ms. Roberts issued another Review Report dated May 8, 2024. Ms. Roberts confirmed that “The applicant has satisfied many of the comments as outlined within the third completeness review dated February 20, 2024.”. Ms. Roberts further determined that the application is a major subdivision, as well as a major site plan application. Ms. Roberts also opined that New Jersey Department of Environmental Protection (“NJDEP”) Treatment Works Approval (“TWA”) is required for Lots 8 and 9 based on the proposed sanitary sewer extension.

Ms. Roberts then stated that “According to N.J.A.C. 7:14A-22, proposed Lots 8 and 9 must apply for a TWA for the installation of the sanitary sewer pipeline and manholes.”.

12. Ms. Roberts also identified six (6) variances that were required in connection with the development application. The variances included: maximum lot coverage for Lot 8 where 33.4 percent (33.4%) is permitted and 39 percent (39%) is proposed; maximum impervious surface area for Lot 8 where 15.8 percent (15.8%) is permitted and 39 percent (39%) is proposed; and maximum lot disturbance for proposed Lot 8 where 7,075 square feet is permitted and 7,775 square feet is proposed. Next as to proposed Lot 9, the Applicant requires variance relief from minimum front yard setback where 35 feet is required and 31.9 feet is proposed; maximum impervious surface area where 21.2 percent (21.2%) is permitted and 34.2 percent (34.2%) is proposed; and maximum lot disturbance where 5,140 square feet is permitted and 5,649 square feet is proposed.

13. Ms. Roberts also stated under Section 3 Checklist Items of her May 8, 2024 Report, Item 4 stated that “A review of the NJDEP GeoWeb does not definitively establish that there are no wetlands present on the property. Field observations are necessary to determine the presence or absence of wetland. A signed letter by a qualified expert is required.”.

14. Under V. General Comments Section of the May 8, 2024 Board Engineer’s Report, the Board Engineer stated in Item No. 4. that “The floor area of the proposed dwellings is unknown. No architectural plans have been provided or square footage noted by the Applicant.”.

15. Under V. General Comments Section of the May 8, 2024 Board Engineer’s Report, Item 7. the Board Engineer identifies numerous Items 7.a. through i. regarding the installation of a retaining wall and storm drainage improvements within the existing cartway area of North Peak Street which requires Borough Council approval. More specifically, in 7.b. Ms. Roberts stated “The proposed retaining wall is provided so that access to Lot 9 is possible. The retaining wall is over 10 feet high and is used to extend North Peak Street so that Lot 9 can access the proposed driveway. This extension of North Peak Street and installation of the retaining wall must be pre-approved by Borough Council.”.

16. Furthermore, in Item h., Ms. Roberts stated “Off-street parking is determined by the number of bedrooms. This information was not provided.”. In 7.i., Ms. Roberts stated “We

question vehicle access to Lot 9 by way of the proposed driveway, narrow roadway and the proposed 10+ feet high adjacent retaining wall. Access to Lot 9 will be in a space approximately 10 feet wide annexed to a 10 foot retaining wall.”.

17. Under V. General Comments, Item 10., Ms. Roberts states “The prior dwelling utilized the septic system. The location and disposition of this should be shown on the plans. The septic tank is shown on the minor subdivision plan prepared by Thomas P. Santri, P.L.S. The applicant must provide documentation from the Health Department that the system has been or will be properly removed.”.

18. Under V. General Comments, 16. Items j. and k. relative to the use of retaining walls, the Board Engineer stated “In regard to the retaining walls, we note that walls provided by Garden State Precast are proposed. Generally these walls are masses of weight which use a wide base to provide the needed stability. Therefore, these walls are very wide and will use a lot of area underground.”. “k. The above concerns although directed at the two proposed lots, are also of concern to the surrounding lots. The applicant must analyze the impact of uncontrolled surface runoff from this site onto all surrounding and downstream properties.”.

19. In regard to V. General Comments, Item 17. the Board Engineer states “The applicant is seeking a waiver for an Environmental Impact Report as required in Section 21-84.b. Steep Slope and Slump Block. We do not recommend a waiver based on our many concerns commented upon above.”.

20. The Board Engineer in V. General Comments, Item 18. stated “We also note that the proposed retaining wall is very close to the existing retaining walls for Lot 7. The proposed height of the retaining wall in the south corner of Lot 8 is 7.7 feet higher than that of the existing retaining wall on Lot 7. More information is required to determine the impact the new retaining walls will have on the existing dwellings and walls.”.

21. Under V. General Comments, Item 21. Ms. Roberts stated “It is understood that the site was cleared. Tree permits were approved in September 2021. Tree replacement may be required according to Section 22-1.8 Tree Replacement Requirements Ordinance O-24-04.”.

22. The Board conducted a public hearing on May 9, 2024. During the course of the hearing the Board requested clarification of the proposed sanitary sewer extension as well as

relief from the Steep Slope Ordinance. The Board had concerns regarding the proposed grading plan as well as stormwater management and how the Applicant proposed to manage water runoff from the Applicant's property onto adjoining properties.

23. The Board also noted the conditions of the property before trees on the property had been removed.

24. Ms. Roberts explained the need for architectural plans as well as more detail on the proposed retaining wall and whether the Applicant should obtain the permission from the Borough Council prior to the Board deciding on the project. The Board Engineer further expressed concerns regarding the management of stormwater runoff as a result of the proposed development.

25. The Board also asked questions regarding constructing the retaining wall on the Applicant's own property in order to eliminate the need for Borough Council approval. The Applicant's Engineer, Mr. Farrell, stated that the Applicant could work out an agreement between property owners about the maintenance of the retaining walls.

26. Ms. Roberts explained her concern regarding off-site parking and how the number of proposed bedrooms determines the required number of off-site parking spaces. She expressed the need for more details for the proposed project due to the unique characteristics of the subject Property.

27. Ms. Roberts also stated that the Applicant had requested a waiver of the submission of an Environmental Impact Report. Board members voiced their opposition to waiving the environmental impact report.

28. Ms. Roberts noted the importance of the Applicant providing a detailed stormwater management proposal as being important to understanding how stormwater may impact all neighboring properties.

29. Vincent DelRiccio, Esq., attorney for Mr. Dorin, the property owner of property designated as Lots 10, 11 and 12 on the Tax Map of the Borough of Highlands, stated that he would reserve his right to cross-examine witnesses upon submission of future revisions.

30. The matter was carried to the July 11, 2024 meeting of the Land Use Board without further notice to the public.

31. The Board continued the public hearing process on July 11, 2024. Evan Zimmerman, Esq., counsel for the Applicant, requested that the application be carried to the August 8, 2024 meeting as the Applicant was attempting to set up a meeting with the Borough Engineer.

32. The Board received correspondence dated July 9, 2024 from Vincent DelRiccio, Esq., counsel for Joseph Dorin, the adjoining property owner, who owns property designated as Block 35, Lots 10, 11 and 12 on the Tax Map of the Borough of Highlands. Mr. DelRiccio in the July 9, 2024 letter stated in relevant part, "It appears that my client would need to grant an Easement to the Applicant in order for any construction or maintenance to occur. As represented at the last hearing, my client will not be agreeing to any such Easement."

33. Mr. DelRiccio further stated in his July 9, 2024 letter "As you are aware the subject property was clear-cut by the Applicant almost three (3) years ago, in November of 2021, resulting in the destabilization of the steep slope which lies between the Applicant's property and my client's property. As a result, my client's property is flooded and damaged with excessive runoff and loose debris every time it rains."

34. Mr. DelRiccio also stated in the July 9, 2024 letter to the Board "The Applicant is clearly continuing to waste the Board's time in an effort to avoid facing enforcement proceedings for its clear-cutting of the property and the resulting violations of the local Steep Slope Ordinances. As such, we request that the Board refuse to delay this matter any longer. My client is facing ongoing harm to his property as the direct result of the Applicant's actions and delay tactics. The Applicant is welcome to withdraw their application and re-file when they feel they are ready, but the ongoing delay only further serves to injure my client. As such, we oppose any further adjournment and urge the Board to deny this application so that enforcement may proceed."

35. At the July 11, 2024 hearing, the Board discussed granting the Applicant an extension of time to provide the additional information needed to make an informed decision. The Board voted to carry the matter to September 12, 2024.

36. At the September 12, 2024 hearing, the Board received testimony from the Applicant's Engineer, Mr. Frank Farrell, PE, and the Board was updated in regard to the Applicant

proceeding before the Borough Council regarding the Borough granting an Easement for the retaining wall on North Peak Street and for constructing a new sewer line in the Borough's lower right-of-way. Mr. Zimmerman represented to the Board that the Borough Council approved granting an Easement to the Applicant to construct a retaining wall within the North Peak Street right-of-way but denied the Applicant's request to construct a new sewer line in the Borough's lower right-of-way.

37. The Board and the Applicant addressed the issue of whether or not a major site plan application was required in connection with the proposed application. The Board determined that in accordance with the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-37 that a subdivision or individual lot application for detached 1- or 2-dwelling unit buildings shall be exempt from such site plan review and approval. Thus the Board determined that site plan approval is not required in accordance with the Municipal Land Use Law.

38. Ms. Roberts issued a Report dated September 10, 2024. In her Report in Item 3. Checklist Items she once again identified the fact that the Applicant has failed to submit a letter by a qualified wetlands expert that there are no wetlands present on the property.

39. Ms. Roberts in Item 6. of her September 10, 2024 Review Report stated "It is noted that the amount of disturbance proposed for each of these lots, although already disturbed, is significantly greater than permitted under the steep slope provisions of the Ordinance. Referring to the chart on page above, allowable disturbances for Lots 8 & 9 are 1,597 square feet and 1,560 square feet respectively where 7,775 and 5,649 square feet are proposed."

40. In Item No. 7. of the September 10, 2024 Review Report, Ms. Roberts observed that the Applicant still had not provided information or documentation from the Health Department that the septic system utilized for the prior dwelling has been or will be properly removed.

41. Ms. Roberts in Item 9. of the September 10, 2024 Review Report stated "The Applicant has removed the sanitary sewer extension from the plans and is now proposing individual on-lot sewage disposal systems. However, the proposed septic systems shown on the plans are schematic only and are severely undersized. Given the density of the proposed development and the steepness of the lots both before and after construction, we doubt that

there is sufficient area on these lots for properly sized septic systems. It appears that there would be room for only one dwelling if a septic system is to be constructed. The Applicant should show properly sized septic systems on the plans, or propose some other means of providing sewer service to these lots. The Applicant may want to consider privately owned pumping systems for each lot with a connection to the nearest sanitary manhole in an adjacent roadway. We also note that it is our opinion that the septic system for Lot 8 should be designed for a 4-bedroom rather than a 3-bedroom house as noted above.”.

42. Ms. Roberts in Item No. 13. of the September 10, 2024 Review Report identified deficiencies in regard to the Applicant’s failure to identify where on the plans electric service is located. Further, the Board Engineer identified the need for either the relocation of water and gas services for Lot 9 or she contends the Applicant needs to obtain an Easement on Lot 8 to accommodate these services for Lot 9.

43. Ms. Roberts in Item No. 14. of her September 10, 2024 Review Report in reviewing maximum lot disturbance for both Lots 8 and 9 determined that the disturbed areas are 4.87 and 3.62 times the size of allowable disturbances respectively.

44. In regard to Item No. 14., Ms. Roberts identified numerous concerns regarding the stormwater plan as identified in 14.d., 14.e. and 14.f.

45. In regard to 14.g., Ms. Roberts stated “A soil bearing capacity report for the retaining walls has been submitted. No additional geotechnical information has been submitted to date and there has been no analysis as to how the various improvements will impact each other in the surrounding area.”.

46. Ms. Roberts stated in regard to Item 14.i. additional information regarding a drainage analysis is required “to ensure that stormwater will not pool in these low points to depths greater than the 4 inch depths proposed.”.

47. In regard to Item 15. Ms. Roberts contends “An environmental impact statement has been submitted but is generic in nature and fails to address the significant environmental sensitivity of the property, particularly with respect to the steep slopes and massive retaining walls. The report is unaware that the site has had nearly all trees removed and requires retaining

walls. It is recommended that a more detailed study and report be prepared to deal with the site specific environmental issues.”.

48. Mr. DelRicchio once again renewed his request for the Applicant to dismiss the application.

49. There were no other members of the public expressing an interest in the application at which time the public portion was closed.

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 under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47, variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c is hereby dismissed without prejudice.

The Board notes that the application for development was originally filed in November 2022. The Board finds that there have been multiple review reports as outlined in this Resolution. The Board further finds that many of the open issues were identified many months ago and continue to remain open notwithstanding the numerous attempts made by the Board to solicit and obtain the information.

The Board also finds that the Applicant has made modifications to the plans first proposing a connection to the sanitary sewer system for which the Applicant required municipal approval from the Borough of Highlands Council and for which the Applicant finally appeared before the Borough Council on August 21, 2024 at which point the Borough Council denied the Applicant’s request to construct a new sewer line in the Borough’s lower right-of-way. The Board notes, however, that the

Borough Council did approve granting an easement to permit construction of the retaining wall on North Peak Street within the right-of-way.

Further, the Board finds that the Applicant still has not provided verification from a wetlands expert that there are no wetlands on the property. The Board finds in general that the vast majority of the information necessary to make a full, fair, and informed decision have long been identified. The issues have continually been brought to the attention of the Applicant both in reports of the Board Engineers and during the public hearing process. The Board finds that these open issues have existed for many months without being satisfied and continue to remain open at this time.

The Board also accepts the representations of the adjoining property owner, Mr. Dorin through his legal representative that the delays in this matter have harmed his client. Thus, the Board determines that it is appropriate to dismiss the application without prejudice in order to enable the Applicant to attempt to address all of the issues raised in the Board Engineer's Review Reports as well as issues identified by the Land Use Board during the course of the hearing process.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 10th day of October 2024, that the action of the Land Use Board taken on September 12th, 2024, dismissing application no. LUB 2022-10 without prejudice.

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 October 10, 2024.

Nancy Tran, Secretary
Borough of Highlands Land Use Board