



HGPB- R2050

January 2, 2024

Nancy Tran, Land Use Board Secretary
Borough of Highlands Land Use Board
42 Shore Drive
Highlands, New Jersey 07732

Via Email (ntran@highlandsborough.org)

**Re: Kelly/Hall application
40 Grand Tour
Block 14, Lot 6.02
Single Family Residential (R-1.01) Zone
Steep Slope interpretation/appeal/variance
First Engineering Review**

Dear Ms. Tran:

As requested, our office has reviewed the above referenced application for steep slope interpretation/appeal and in the alternative variance relief. The applicant submitted the following documents in support of this application:

1. Land Use Board Application, dated December 13, 2023.
2. Zoning Approval Letter, dated July 27, 2023.
3. Grading Plan prepared by Andrew Stockton, P.E., P.L.S., of Eastern Civil Engineering, LLC, dated October 1, 2023 and last revised on November 6, 2023, consisting of one (1) sheet.
4. Grading Plan review letter #1, by Drew Pavlick, P.E., P.P., C.M.E., C.F.M., of CME Associates, dated November 1, 2023, consisting of two (2) pages.
5. Grading Plan review letter #2, by Drew Pavlick, P.E., P.P., C.M.E., C.F.M., of CME Associates, dated December 4, 2023, consisting of two (2) pages.
6. Resolution of Approval from Highlands Borough Land Use Board for minor subdivision of subject parcel, adopted on April 14, 2022.

Based on our review of the submitted documents, we offer the following comments for the Board's consideration:

A. Project Description

The 5,656 square foot property is currently vacant and was created as a new lot by minor subdivision in April of 2022. The site is located in the Single Family Residential (R-1.01) Zone of the Borough with frontage along Grand Tour. The applicant proposes to build a new dwelling on Proposed Lot 6.02, along with a driveway, a rear deck, and some underground stormwater management tanks. With this application, the applicant is seeking an interpretation/appeal of the Borough's Steep Slope requirements under Land Use Ordinance Section 21-84.B.

B. Planning and Zoning

In accordance with Section 21-85 of the Ordinance, proposed bulk conditions are noted as follows:



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R-1.01 Zone	Required	Proposed
Min. Lot Size	5,000 SF	5,656 SF
Min. Lot Frontage	50'	50'
Min. Lot Depth	100'	115'
Min. Front Yard Setback	35'	35'
Minimum Rear Yard Setback	25'	25'
Minimum Side Yard Setback	8' /12'	8'/12'
Maximum Building Height*	30'	27.9'
Maximum Building Coverage	30%	28%
Maximum Lot Coverage (Impervious)	70%	40.9%

- (E) – Existing Non-conformity
- (C) – Calculated
- (W) – Waiver
- (V) – Variance
- NA – Not Applicable
- NS – Not Specified, the applicant shall confirm this dimension

*Per Schedule 1 of Section 21 of the Ordinance, where a dwelling is constructed to provide the required parking under the structure, the maximum height shall be increased by two and one-half (2-1/2) feet.

1. The applicant was referred to the Borough Engineer for grading plan review under the Steep Slope Ordinance found at Section 21-84.B. The following commentary speaks to the requirements of that Ordinance Section:
2. Per Section 21-84.B.A, the properties defined as “slope areas” include “any properties south of Shore Drive and Highlands-Sea Bright Bridge, including Blocks 1 through 29 inclusive...”. As the property in question is in block 14, it is included in the areas covered by the Ordinance.
3. Per Section 21-84.B.B., there are three exceptions noted whereby a slope area permit **would not be required** for these identified properties:



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- i. Contains no slopes greater than 10%, nor any slope greater than 15% within 100 feet, and the work or disturbance is: **(In this case, the property has slopes ranging from 9% to 11% maximum, so the exception appears to fail immediately).**
 - Soil disturbance of five cubic yards or less;
 - Change in impervious ground cover of 200 square feet or less;
 - Removal of five trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground;
 - Removal or disturbance of vegetation covering 200 square feet or less.
 - ii. Contains no slopes greater than 15%, nor any slope greater than 20% within 100 feet; and the work or disturbance is:
 - Soil disturbance of three cubic yards or less; **(fail)**
 - Change in impervious ground cover of 100 square feet or less; **(fail)**
 - Removal of three trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground; **(unknown)**
 - Removal or disturbance of vegetation covering 100 square feet or less. **(fail)**
 - iii. Contains slopes greater than 15% and the work or disturbance is:
 - Soil disturbance of one cubic yard or less; **(fail)**
 - Change in impervious ground cover of 25 square feet or less; **(fail)**
 - Removal of one tree, having a circumference of up to 20 inches measured at four feet above the ground; **(unknown)**
 - Removal or disturbance of vegetation covering 25 square feet or less. **(fail)**
 - All items described in Subsection B1, 2 and 3 above represent a cumulative total per lot, per calendar year.
4. Based on our analysis of the criteria noted above, the applicant **does not** qualify for any of the exceptions and therefore is obligated to submit to the Borough Engineer for a slope area permit approval.
 5. For reference, there appear to be several inconsistencies in the Steep Slope Ordinance that the Borough should consider clarifying:
 - a. Section 21-8 Definitions: *STEEP SLOPES: Slopes greater than twenty (20%), to be developed in accordance with subsection 21-65.21.* The body of Section 21-84.B suggests that 15% is the threshold where enhancements and further evaluation is needed.
 - b. Section 21-84.B.1 provides qualified exception criteria to the need for a slope area permit for slopes greater than 10%. It is noted that adjustments to minimum lot size and maximum lot coverage only get triggered for slopes of 15% or greater. It



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is further noted that adjustments to maximum impervious coverage are triggered for all slopes less than 15%.

6. Pursuant to Ordinance Section 21-84.B.E.,

*Lot size, development density, lot coverage and disturbance. To meet the purposes, goals and standards set forth in this section, **in areas of slopes greater than 15%**, the applicable provisions of this chapter relating to minimum lot sizes and density of development, and maximum percentage of lot coverage, shall be modified, and limitations including maximum impervious surfaces and maximum lot disturbance shall be added as follows.*

The text noted in Section E offers adjustments to minimum lot size, maximum lot coverage, maximum lot coverage per slope category, and maximum lot disturbance. **It is our opinion that this entire Section is qualified by the opening paragraph noted above, and since this application has no slopes exceeding 15%, this Section does not apply.**

7. The applicant is seeking an appeal (per Section 21-84.B.J) of the Borough Engineer's decision that the applicant requires a slope area permit that adheres to the reduction criteria specified in Section 21-84.B.E., more specifically:

- Reduction of maximum impervious coverage from 70% to 35%. Applicant is currently proposing 40.9%.
- Maximum permitted lot disturbance of 130% of reduced maximum impervious coverage (or 45.5% in this case). Applicant is proposing total disturbance of 283% of the reduced maximum impervious allowance.

8. If the Board agrees that Section 21-84.B.E does not apply to this application as outlined in comment 6 above, it would appear that the slope area permit could be reviewed by the Borough Engineer under Sections 21-84.B.C and 21-84.B.D without the need for relief from Section 21-84.B.E.

9. The Board should also make recommendations regarding the inconsistencies in the Ordinance as noted in comment 5 above, and whether amendments to the Ordinance should be considered in consultation with Borough Council.

We reserve the opportunity to further review and comment on this application and all pertinent documentation, pursuant to testimony presented at the public hearing. If you have any questions regarding this matter, please do not hesitate to contact our office.



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Very truly yours,

T&M ASSOCIATES

EDWARD W. HERRMAN, P.E., P.P., C.M.E., C.F.M.
LAND USE BOARD ENGINEER

EWH

cc: Michael Muscillo, Borough Administrator (mmuscillo@highlandsborough.org)
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