



**BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH**

**LAND USE BOARD RESOLUTION 2024-17**

**MEMORIALIZATION OF HEIGHT VARIANCE AND BULK VARIANCE RELIEF**

**IN THE MATTER OF JOHN AND SHARI NASTASI  
APPLICATION NO. LUB2024-04**

**Approved: August 8, 2024  
Memorialized: September 12, 2024**

**WHEREAS**, an application for height variance and bulk variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by John and Shari Nastasi (hereinafter referred to as the “Applicants”) on lands known and designated as Block 100, Lot 26.19, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 19 Gravelly Point Road, Highlands, New Jersey, in the Bungalow Colonies area of the R-2.03 Single-Family Residential (R-2.03) Zone District (hereinafter “Property”); and

**WHEREAS**, a live public hearing was held before the Board on August 8, 2024, 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 is an existing undersized lot containing 2,758.25 square feet (0.06 acres) with 50.15 feet of frontage along Gravelly Point Road within Bungalow Colonies area

of the R-2.03 Single-Family Residential (R-2.03) Zone District. The subject Property is located within the AE Flood Hazard Area.

2. The subject Property is improved with an existing elevated two-story frame dwelling with existing garage under parking, with an elevated addition with garage under parking, decking, and stairs. The Applicants are proposing to construct a third floor which will include one (1) additional bedroom. Utilities will be elevated and located in the proposed attic. The Applicants propose paring in the existing and proposed garage as well as the under-parking area. The existing decking and stairs are proposed to be removed, and the existing shed and attached covered area are proposed to remain unchanged.

3. Counsel for the Applicants, Edward McKenna, Esq., identified the subject Property as Block 100, Lot 26.19, with the address of 19 Gravelly Point Road, Highlands, New Jersey, and located within the Bungalow Colonies area of the R-2.03 Single-Family Residential (R-2.03) Zone District. Mr. McKenna stated that the Applicants were seeking variance relief to permit pre-existing non-compliant conditions. He also represented that revisions had been made to the plans in response to the Board Engineer's Report. Mr. McKenna explained that the Applicants were seeking height variance relief from the Bungalow Colonies standards and noted that the proposed height would be compliant if the R-2.03 zone standards were applicable.

4. The Applicants' Architect, Catherine Franco, AIA, testified that the Applicants were proposing to elevate the existing bungalow to provide needed garage space. She stated that the dwelling would be brought into compliance with the latest building standards and that the ground level would contain the garage. Ms. Franco further testified that the Applicants were proposing to remove an existing bedroom on the first level and enlarge the kitchen. She also stated that the second level would contain three (3) bedrooms and two (2) bathrooms. Ms.

Franco explained that the existing ceiling height was ten (10) feet and nine (9) feet on the first and second levels, respectively. She testified that the roof was not flat.

5. Ms. Franco further testified that the proposal would eliminate the need for on-street parking by providing three (3) parking spaces onsite within the garage. She stated that the parking spaces would be tandem. Ms. Franco further explained that elevating the dwelling would also place the utility out of the flood level by locating them in the attic. She stated that the A/C units would remain in the existing location but would be mounted upon a raised platform.

6. In response to questions from the Board, Ms. Franco testified that the attic was accessed by pull down stairs. She stated that the height of the collar ties in the attic was four (4) feet, therefore the attic would not be living space.

7. Testimony was then taken from John Caruso, how identified himself as the owner of Lil' Johns Construction, LLC, which was serving as the Applicants' General Contractor. Mr. Caruso testified that he had constructed fourteen (14) new houses, ten (10) renovations, and three (3) lifts on Gravelly Point Road. He also stated that he resides on Gravelly Point Road. Mr. Caruso opined that the proposal would be similar to the other houses on the street which he had constructed, renovated and lifted. He, therefore, believed that the proposed dwelling improvements would conform with the surrounding area. He also stated that the proposal would not impair the zone or the public good.

8. The Applicants confirmed the need for the following variance relief:

Requirement	R-2.03 Residential Zone	Bungalow Colonies Required	Existing Lot 26.19 Bungalow Colonies	Proposed Lot 26.19 Bungalow Colonies
Minimum Lot Area	5,000 sf	5,000 sf	2,758.25 sf**	2,758.25 sf*
Lot Frontage/Width	50 ft	50 ft	50.15 ft	50.15 ft
Minimum Lot Depth	100 ft	100 ft	55.0 ft**	55.0 ft*
Minimum Front Yard Setback	20 ft	3 ft	5.1 ft	4.11 ft
Minimum Side Yard Setback	6 ft/8 ft	3 ft	6.56 ft/11.7 ft	5.46 ft/4.1 ft
Minimum Rear Yard Setback	20 ft	3 ft	2.37 ft**	2.37 ft*
Maximum Building Height***	30 ft	20 ft	16.0 ft	29.1 ft*
Maximum Lot Coverage****	75%	75%	53.4%	69.8%
Maximum Building Coverage****	30%	35%	43.3%	59.3%
On-Site Parking	2 spaces	1 space	3 spaces	3 spaces

\*Proposed Variance

\*\*Existing non-conformity

\*\*\* Where a dwelling is constructed or reconstructed to provide the required parking under the structure, the maximum height shall be increased by two and one-half (2 ½) feet.

\*\*\*\* §21-86 A.4.b(c) Total building coverage shall not exceed thirty-five (35%) percent of the total lot area and total lot coverage shall not exceed seventy-five (75%) percent except for those situated in Block 100, Lots 26.01-26.76 and Block 69, Lots 15.01-15.28.

9. 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 Applicants should be granted bulk variance relief pursuant to both N.J.S.A. 40:55D-70c(1) and c(2), as well as height variance relief pursuant to N.J.S.A. 40:55D-70d(6) in this instance.

The Applicants require the following variance relief:

- a. **Section 21-86A.4.b(2)(d)** – The maximum permitted building height is 20 feet, whereas 29.1 feet is proposed.
- b. **Section 21-86A.4.b(2)(a)** – Detached accessory structures are prohibited in the minimum required yard area, whereas the existing shed and covered area are located within the side yard setback and rear yard setback. The existing shed and covered area are to remain.
- c. **Section 21 Attachment I** – The Minimum lot area is 5,000 square feet, whereas 2,758.25 feet is existing and proposed.
- d. **Section 21 Attachment I** – The Minimum Lot Depth is 100 feet, whereas 55.0 feet is existing and proposed.
- e. **Section 21 Attachment I** – The Minimum Rear Yard setback is 3 feet, whereas 2.37 feet is existing and proposed.
- f.

I. **Height Variance Relief**

The Applicants require height variance approval pursuant to the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(6). The subject Property is located in the Bungalow Colonies area of the R-2.03 Single-Family Residential (R-2.03) Zone District and the maximum height of a principal structure in the zone is 20 feet. The Applicant, therefore, requires height variance relief because the height of the principal structure exceeds by 9.1 feet or 45.50% the maximum height permitted in the district for a principal structure.

In Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41 (App. Div. 2004), the Court explored reasons for adopting height limitations. The Grasso Court found that special reasons may be established by demonstrating an undue hardship, which for a d(6) variance requires a showing that the height restriction prohibits the use of the property for a conforming structure, or in the alternative by demonstrating that the increased height of the building does not offend the purpose of the height restriction which the court characterized as being focused primarily on light and air concerns as well as providing an opportunity to control density.

The Board finds that the Applicants have satisfied the positive criteria. The Board finds that the proposed height comports with the density of the area. The Board finds that the majority of the dwellings in the area are of comparable height. The Board further finds that the proposed height will not block any view corridors for surrounding neighbors or cast undue shade upon adjoining properties. The Board also finds that the proposed height will allow additional on-site parking which would alleviate the demand for on-street parking in the area. The proposed height will also better protect the home from flood damage. The Board therefore finds that the positive criteria have been satisfied.

The Board also finds that the negative criteria has been satisfied for the reasons expressed infra in the bulk variance section. The Board concludes that the positive criteria substantially outweighs the negative criteria and height variance relief may be granted pursuant to N.J.S.A. 40:55D-70d(6).

## **II. Bulk Variance Relief**

The Board finds that the Applicants have 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 Applicants have satisfied the positive criteria. The Board finds that the proposed improvements to the subject Property will upgrade the existing residential structure and will be 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 its dimensions. Ultimately, the Board finds that the grant of variance relief will result in a visually desirable dwelling which will not only benefit the Applicant but will also advance 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 Applicants have 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 and will advance the general welfare by providing increased privacy and sound attenuation for both the Applicants and the neighbors alike. Granting of the variances sought by the Applicants will also not result in any substantial detriment to the public welfare or impair the purpose or intent of the Zone Plan or Zoning Ordinance. The Board therefore concludes that the negative criteria has therefore been satisfied pursuant to N.J.S.A. 40:55D-70c(2).

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 12<sup>th</sup> day of September 2024, that the action of the Board taken on August 8, 2024, granting application no. LUB 2024-04 of John and Shari Nastasi for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and "c(2)" and height variance relief pursuant to N.J.S.A. 40:55D-70d(6) is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in 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 Applicants shall comply with all recommendations contained in the Reports of the Board’s Professionals.
3. The Applicants shall apply for all necessary Zoning Permit(s).
4. The attic shall not be used as living space.
5. The Applicants shall provide a certificate that taxes are paid to date of approval.
6. 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.
7. 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 Applicants’ expense and to send a certified copy of this Resolution to the Applicants 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 September 12, 2024.

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Nancy Tran, Secretary  
 Borough of Highlands Land Use Board