



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## **LAND USE BOARD RESOLUTION 2023-17**

### **MEMORIALIZATION VARIANCE APPROVAL**

**Approved: October 12, 2023**  
**Memorialized: November 9, 2023**

#### **IN THE MATTER OF KERRY M. FARRELL** **APPLICATION NO. LUB 2023-03**

**WHEREAS**, an application for minor site plan approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by Kerry M. Farrell (hereinafter referred to as the “Applicant”) on lands known and designated as Block 43, Lot 7, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 32 Shrewsbury Avenue in the WT-R (Waterfront Transition-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**, a public hearing was held on October 12, 2023, 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**, the Highlands Land Use Board makes the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 7,180 s.f. with 47.5 feet of frontage on Shrewsbury Avenue and is improved with an existing single-family, two-story dwelling. The subject Property is located within the WT-R (Waterfront Transition Residential) Zone.
2. The Applicant is seeking variance relief to reconstruct a one-story wood framed garage located in the side yard, together with minor site plan approval to the extent such relief

is required to allow for construction of a new detached garage at the original location of the garage serving this property.

3. In accordance with Section 21-93 of the Ordinance existing/proposed bulk deficiencies are noted as follows. The minimum lot frontage allowed is 50 feet, whereas 47.5 feet is existing and is proposed. The minimum front yard setback for an accessory structure is 55 feet, whereas 54.8 feet is existing and is proposed. The minimum side yard setback for an accessory structure is 3 feet, whereas 0.90 feet is existing and is proposed.

4. Counsel for the Applicant, Thomas Hirsch, Esq. appeared on behalf of the Applicant and provided a background history of the property and the issues pertaining to the accessory garage. The property has always been utilized as a single-family home which home exists today. The house historically also had a detached (set off less than a foot of the principal structure) one-car garage which was severely damaged during Sandy. Applicant sought a variance to rebuild the garage, however, sought to have a second level for additional storage whereas the original garage was only one story. Applicant sought to put the garage over the same foundation of the original garage and therefore required a side yard setback. That application was originally granted unanimously; however, as a result of a notice issue, the application had to be reheard at which time the application did not receive a majority vote and therefore was denied previously by this Board.

5. Applicant now returns before the Board having filed a new application with a redesigned one-story attached garage emulating the original garage which requires a side yard setback variance. The front façade of the principal dwelling is set back from the front yard property line by approximately 68.5 feet where only 35 feet is required. The proposed garage, which is being built over the existing slab from the original garage, may be slightly closer to the front yard than the existing façade of front porch.

6. The Applicant, Dr. Kerry Farrell, testified that she has owned the subject Property since 2012 and it had been owned by members of her family prior to that time. She stated that the house was built in 1904 and that the garage was built in the 1940s. Dr. Farrell noted that members of her family had purchased the subject Property in 1954 and it has been in her family since. Dr. Farrell then testified that Hurricane Sandy had punched a hole in the rear wall of the

garage. After Sandy, Dr. Farrell removed some of the damaged walls and roof that were in danger of collapse. She stated that the concrete foundation, two (2) walls and beams of the roof remained. Dr. Farrell also stated that she prepared plans with an architect to rebuild the garage in June 2016, and obtained construction and electrical permits from the Borough in July 2016. Dr. Farrell further testified that after her permits were issued, the Flood Plain Administrator and Zoning Officer advised Dr. Farrell that the area had been placed in a new flood zone that did not permit garages. In 2016, the Borough Construction Official issued a stop-work order because too much (more than 50%) of the original garage had been torn down. Dr. Farrell provided additional testimony that the subject Property was placed in a new flood zone again in 2018. This time with garages as permitted structures.

7. Dr. Farrell testified that she was now seeking variance relief from the side yard setback and front yard setback requirements. She explained that variance relief was required because more than 50% of the original structure was taken down and the conditions are no longer considered “pre-existing.” Dr. Farrell then confirmed that the residential use is not being changed.

8. The Applicant’s Architect, Robert Adler, P.A. testified that the proposed garage would be built upon the existing foundation and have a height of 10 feet 6 inches, which was the original garage height based off photographs of the former structure. Mr. Adler reinforced the fact that having a garage was a permitted accessory structure; it was only restoring it as originally located that creates a setback variance under the new ordinance. Demolition of the remaining structure post-Sandy removed any preexisting non-conforming protections enjoyed by the original structure. Mr. Adler then focused on the proposed design. In order to minimize encroachments into the sideyard setback, the garage will not have external gutters.

9. Mr. Adler also described an analysis he had undertaken to consider alternative locations on the property for the replacement garage, but neither location was deemed superior to the original location, either because CAFRA permitting would be prohibitive, or would detrimentally impact view now enjoyed by adjoining properties. Mr. Adler referenced a two (2) page exhibit (considered part of the Application Package) that depicted the visual impacts a relocated garage structure could pose on adjoining properties.

10. Mr. Adler also provided testimony supporting the grant of the setback variances. In order to help aesthetics, the garage will have a decorative design both front and rear, with cornice detailing constructed using Azek composite materials for enhance durability. A crown molding with cap are also proposed to further enhance aesthetics. The interior storage of equipment ordinarily kept within a garage is a superior planning alternative than outside storage and provides a community benefit in that regard. Replacing the garage as originally located will have the least impact on such views by comparison. Mr. Adler opined that the setback variances were supported under both the c(1) and c(2) criteria.

11. Attorney Steven W. Ward appeared on behalf of interested parties Jake Kimmelman and Jenna Heckler, owners of 34 Shrewsbury Ave., and Frank and Michelle Barbara, owners of 30 Shrewsbury Ave., which lots are contiguous to and immediately north and south, respectively, of the Subject Property. Mr. Ward raised the issue of the Applicant's public notice only referencing Lot 7, without reference to Lot 7.01. The Board found that no development was being proposed for Lot 7.01, a riparian lot, to warrant its inclusion in the public notice.

12. Mr. Ward next took issue with the wording of the Applicant's public notice, primarily the use of the word "attached" rather than detached to describe the proposed replacement accessory structure. The Applicant confirmed that the garage was in fact proposed to be detached, not attached, although the proposed structure is to be located quite close to the principal dwelling structure. The Board found that use of the term attached versus detached was harmless error that would not result in any confusion as the submitted plans correctly depicted the proposal.

13. Mr. Ward then explained that the Applicant should be required to obtain variances for front yard and side yard setback encroachments, consistent with this Board's findings as detailed in Resolution 2022-14 memorialized July 14, 2022. The Board agrees with Mr. Ward that both setbacks require variance relief to allow the garage to be placed as originally located, but found that the Applicant's public notice addressed this contingency satisfactorily.

14. Additionally, several other nearby property owners and Borough residents appeared to voice objection to the proposed replacement garage structure, raising issues such as the part time occupancy of the Applicant's property, fire safety, conformity with other

structures along Shrewsbury, and a preference to place the replacement garage deeper into the Subject Property, notwithstanding the CAFRA and greater impacts upon view enjoyed by neighboring properties.

15. There were no other members of the public expressing an interest in the application, at which time the public portion was closed. The Board considered each issue raised during public and found that they neither individually nor collectively outweighed the proofs put forward by the Applicant and her professionals in support of relocating the garage upon its original foundation location.

**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 site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with variance relief to allow encroachments into the front yard and side yard setbacks pursuant to N.J.S.A. 40:55D-70c should be approved.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict ancillary 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. In this regard the lot in question is deficient in width by 2.5 feet and a fully conforming lot would not need the side yard setback variance. 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. In this regard the location of the principal structure and the pre-existing garage foundation justified the variance requested.

The Board finds that the Applicant has satisfies the positive criteria. The Board first addresses the Applicant's request for a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that the Applicant is merely seeking to reconstruct the garage, an approved accessory use of the property, at the same dimensions, but with improved fire protection ratings. While only the one exterior wall adjacent to the adjoining structure needs to be fire rated, the Applicant agreed to provide fire rated construction for the entire accessory structure and designed to accommodate future flooding events. The Board also finds that the positive criteria has been satisfied under the "flexible" variance standard at N.J.S.A. 40:55D-70c(2). The Applicant's Architect testified that the grant of variance relief would create a desirable visual environment, and that its placement as originally located would have the least impact upon the views enjoyed by neighboring properties. Based upon the foregoing, the Board finds that the Applicant has satisfied the positive criteria under both the c(1) and c(2) criteria.

The Board also finds that the Applicant has satisfied the negative criteria. The Board finds that the proposed detached garage design is comparable to the design that existed for decades on this property without issue. That design also compliments the principal structure which was not required to be lifted post-Sandy. While other properties along Shrewsbury have been lifted post-Sandy, reconstruction of the garage at its original location and dimensions will have even less impact, if any, than before the neighboring homes were lifted and have no demonstrable impact upon the light, air and open space enjoyed by those nearby properties. The Board therefore finds that the grant of variance relief to allow the accessory structure setbacks as proposed would not result in any substantial detriment to the public good, nor a substantial impairment of the zone ordinance and the zone plan, therefore satisfying the negative criteria to allow granting of the variance relief required to allow garage reconstruction.

Upon consideration of the plans, testimony and application, the Board determines the Applicant has met the minimum requirements of the Municipal Land Use Law, Case Law and Borough Ordinances to a sufficient degree so as to enable the Board to grant minor site plan

approval, to the extent same is requested or applicable to the variance relief also being granted herewith.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Highlands on this 9<sup>th</sup> day of November 2023, that the action of the Land Use Board taken on October 12, 2023 approving Application No. LUB2023-03 for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2), together with minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 to the extent deemed necessary, to allow the reconstruction of an accessory garage structure to be implemented in accordance with the plan submitted and the testimony provided by both the Applicant and her professionals, is hereby memorialized.

**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.

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Bruce Kutosh, Acting 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 November 9, 2023.

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Nancy Tran, Secretary  
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB 2023-03/KERRY FARRELL

Variance Relief with Ancillary Minor Site Plan Approval

November 9, 2023

- A-1 Packet of emails detailing garage reconstruction issues.
- A-2 Permit Package detailing garage reconstruction issues,
- A-3 Material Expenses/Invoices pertaining to garage reconstruction
- A-4 Pre and Post Sandy Property Photographs.
- A-5 Recent Photograph of Neighboring Building Facade