



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2025-08

MEMORIALIZATION OF HEIGHT VARIANCE AND BULK VARIANCE RELIEF

IN THE MATTER OF SUZANNE MCGHEE
APPLICATION NO. LUB24-05

Approved: January 9, 2025
Memorialized: February 13, 2025

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 Suzanne McGhee (hereinafter referred to as the “Applicant”) on lands known and designated as Block 100, Lot 26.43, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 43 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 January 9, 2025, 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 1,347.50 square feet with 24.50 feet of frontage along Gravelly Point Road within the 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 Applicant's Architect, Brian Baer, RA, testified that the subject Property is identified as Block 100, Lot 26.43, with the address of 43 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.

3. Mr. Baer testified that the subject Property is currently unimproved as the previous single-story, single-bedroom dwelling has since been demolished.

4. Mr. Baer introduced Exhibit A-1 and provided additional testimony that the Applicant proposes to construct a two-story, three-bedroom dwelling, with a front deck located on the first floor of habitable living space and a rear deck located on the second floor of habitable living space, with two off-street parking spaces provided for using a one-car ground floor garage and driveway (which are not habitable living spaces).

5. Mr. Baer also testified that the proposed first floor deck extends over the front yard setback by 2.91 feet, which is acceptable because the proposed deck conforms with §21-86A.4.b(2)(a) for it extends to a location equivalent to the prior deck and equivalent to the locations of the front decks on the adjacent properties.

6. Mr. Baer further testified that the Applicant was proposing a rain dispersion system, in lieu of gutters and rain leaders, and played a YouTube video for the Board, demonstrating usage of the rain dispersion system, which video was marked as part of Exhibit A-1.

7. Mr. Baer further testified that the proposal would be aesthetically pleasing and not out of character for the zone, in particular, the Bungalow Colonies area, and would be constructed in accordance with applicable flood hazard zone requirements. Mr. Baer also stated that the proposal would not impair the zone or the public good.

8. In response to questions from the Board, Mr. Baer testified that a rain dispersion system is

different from gutters and rain leaders, with the water dispersion system deflecting the water from the roof, onto the decks and area below. Mr. Baer provided additional testimony that the water runoff on the subject Property flows from the rear of the Property to the front of the Property, towards Gravelly Point Road, and does not flow onto the adjacent properties.

9. In response to additional questions from the Board, the Applicant agreed to submit plans, satisfactory to the Board Engineer, demonstrating that the water runoff on the subject Property does not flow onto the adjoining properties.

10. The Applicant confirmed the need for the following variance relief:

Requirement	R-2.03 Residential Zone	Bungalow Colonies Required	Existing Lot 26.43 Bungalow Colonies	Proposed Lot 26.43 Bungalow Colonies
Min. Lot Area (sf)	5,000	5,000	1,347.5**	1,347.5*
Lot Frontage/Width (ft)	50	50	24.50**	24.50*
Min. Lot Depth (ft)	100	100	55**	55.00*
Min. Front Yard Setback (ft)	20	3	-	9.73
Min. Side Yard Setback (ft)	6/8	3	-	3/3
Min. Rear Yard Setback (ft)	20	3	-	3
Max. Building Height (ft)***	30	20	-	26.0*
Max Lot Coverage****	75%	75%	-	71.4% Includes decks
Max Building Coverage****	30%	35%	-	64.5% Includes roof
On-Site Parking (spaces)	2	1	-	2

*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.

11. 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 Applicant 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 Applicant requires the following variance relief:

- a. **Section 21-86A.4.b(2)(d)** – The maximum permitted building height is 20 feet, whereas 26 feet is proposed.
- b. **Section 21 Attachment I** – The Minimum lot area is 5,000 square feet, whereas 1,347.50 square feet is existing and proposed.
- c. **Section 21 Attachment I** – The Minimum lot frontage/width is 50 feet, whereas 24.50 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.

I. Height Variance Relief

The Applicant requires 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 permitted 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 (i.e., the proposed dwelling) exceeds by 6 feet or 30% 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 Applicant has satisfied the positive criteria. The Board finds that the proposed height comports with the density and aesthetics 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, using the ground floor garage and driveway, 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 Applicant has 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 Applicant has satisfied the positive criteria. The Board finds that

the proposed single-family dwelling will eliminate a vacant parcel and will be consistent with neighboring developments. The Board further finds that the proposed single-family dwelling will be aesthetically pleasing, provide adequate light, air, and open space, 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, providing adequate light, air, and open spaces, 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 Applicant has 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 single-family dwelling 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 for both the Applicant and the neighbors alike. Granting of the variances sought by the Applicant 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.

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(1) and (2).

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 13th

day of February 2025, that the action of the Board taken on January 9, 2025, granting application no. LUB 24-05 of Suzanne McGhee 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 improvements 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 Applicant shall comply with all recommendations contained in the Reports of the Board’s Professionals.
3. The Applicant shall provide plans satisfactory to the Board Engineer, demonstrating that the stormwater runoff shall not impact adjoining properties.
4. Applicant represents that all representations and stipulations made either by or on behalf of Applicant to the Highlands Land Use Board are true and accurate and acknowledges that the Land Use Board specifically relied upon Applicant’s stipulations in the Land Use Board’s granting of this approval. If any representation or stipulation is false, this approval is subject to revocation.
5. The Applicant shall apply for all necessary Zoning Permit(s).
6. The Applicant shall provide a certificate that taxes are paid to date of approval.
7. 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.
8. 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 agency having jurisdiction hereunder.

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:

INELIGIBLE: Mayor Broullon, Councilmember Olszewski

ABSENT:

DATED: February 13, 2025

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 February 13, 2025.

Nancy Tran, Board Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD
Case No. LUB24-05/McGhee
Height and Bulk Variance Relief
January 9, 2025

EXHIBITS

A-1 Existing Conditions and Proposed Renderings of Subject Property, including video of rain dispersion system

INTEROFFICE REPORTS

B-1 Board Engineer's Completeness Review, dated September 16, 2024 (Completeness Review No. 1)

B-2 Board Engineer's Completeness Review, dated October 25, 2024 (Completeness Review No. 2)

B-2 Board Engineer's Completeness Review, dated December 6, 2024 (Completeness Review No. 3)