



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2022-21

MEMORIALIZATION OF MINOR SITE PLAN APPROVAL WITH BULK VARIANCE RELIEF

Approved: October 13, 2022
Memorialized: December 20, 2022

IN THE MATTER OF LINK

APPLICATION NO. LUB2022-05

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by David Link (hereinafter referred to as the "Applicant") on lands known and designated as Block 65, Lot 25, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 74 Fourth Street in the R-2.02 (Single Family 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, an in-person public hearing was held on October 13, 2022, 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 subject Property contains 2,500 square feet with 25 feet of frontage along the northeast side of 4th Street within the R-2.02 (Single Family Residential) Zone district. The subject Property has a Lot depth of 100 feet. The subject Property is currently vacant and previously contained a two-story single-family dwelling and wooden deck.

2. Per Borough Ordinance No. 22-13, a portion of the western adjacent alley, between 72 4th Street and 26 Cedar Street was vacated by the Borough and is proposed as a permanent utility easement/reservation for this application. The vacation increased the lot area of the subject Property from 2,500 square feet to 2,739 square feet.

3. The Applicant proposes to construct an elevated, two and one-half story dwelling on the subject Property, which requires the following bulk variance relief:

- Minimum Lot Size: 4,000 square feet is required, whereas 2,739 square feet is proposed (and existing).
- Minimum Lot Frontage: 50 feet is required, whereas 27.5 feet is proposed (with 25 feet existing).
- Minimum Side Yard Setback: 6 feet and 8 feet is permitted, whereas 2 feet and 3 feet are proposed.
- Maximum Building Coverage: 33% is permitted, whereas 45.2% is proposed.
- Minimum Front Yard Setback: 20 feet is permitted, whereas 15 feet is proposed.

4. Although the Applicant's proposal initially required bulk variance relief for the maximum building height, the Applicant and his professionals testified at the hearing that the proposal would, as revised, comply with the maximum building height and, thus, that no variance relief was requested or needed.

5. The Applicant, David Link, testified that he purchased the subject Property and demolished the vacant home existing thereon. He now proposes to construct a new single-family dwelling on the subject Property and to reside in the home.

6. The Applicant's Engineer and Planner, Andrew Stockton, P.E., P.P. testified next and stated that the subject Property is undersized, with existing non-conformities as to Minimum Lot Size and Minimum Lot Frontage.

7. Mr. Stockton testified as to the variances requested, stating that the bulk variance relief requested for Minimum Lot Size and Minimum Lot Frontage could be analyzed under (c)(1) hardship criteria, whereas the variances for Building Coverage and the side yard Setback were more appropriately viewed under the (c)(2) "flexible" standard. Mr. Stockton provided additional testimony as to the home that existed previously on the subject Property and how close it existed from the side, front, and rear yard lot lines.

8. Mr. Stockton testified that the Applicant planned to construct the dwelling with a proposed front yard setback of fifteen (15) feet (inclusive of the covered front porch). Mr. Stockton added additional testimony that the Zone required a minimum front yard setback of 20 feet or the prevailing setback in the Zone, which was calculated to be approximately 14.3 feet (excluding one of the adjacent properties that was out of character for the Zone). The Board Engineer agreed with the calculation and the testimony that it would be appropriate to consider the prevailing setback in the Zone to be 14.3 feet. Alternatively, the Board could consider all adjacent properties (inclusive of those out of character) and the prevailing setback would be approximately 19 feet. Mr. Stockton testified that it would be prudent to seek variance relief

from the front yard setback requirements, however, given the potential for discrepancies in the calculations.

9. Mr. Stockton next testified as to the proposed building height of the dwelling, stating that the roof measures 38.5 feet from the garage door to the highest part of the roof, 36 feet from the garage door to the roof eaves, and 33.8 feet from the garage door to the highest roof level. Because the Borough definition defines building height as the measurement from the garage door to the highest roof level, the Applicant initially proposed to construct a dwelling that is 1.3 feet (16 inches) higher than the maximum building height in the zone, 32.5 feet.

10. Mr. Stockton continued to provide testimony, stating that although the application required relief from the side yard setback requirements, the Borough had vacated a paper street, which adjoined the subject Property and that by doing so provided the subject Property with an additional 2.5 feet of lot width. Mr. Stockton also testified that the additional width would lessen the side yard setback relief needed. The Borough reserved a portion of the vacated paper street as a permanent utility easement.

11. Mr. Stockton testified that the Applicant proposed lot coverage of 45.2%, whereas 33% was permitted. He continued that the covered porch accounted for 112 square feet of the coverage. Mr. Stockton provided additional testimony that the proposed dwelling was only slightly larger (roughly 300 square feet) than the dwelling that existed previously. Mr. Stockton, in response to a comment from the Board Engineer, clarified that the reference to the prior dwelling was for historical purposes only, that the prior dwelling had been demolished, and that the Applicant had no entitlement to any pre-existing conditions or approvals.

12. Mr. Stockton testified that the subject Property was not located in a CAFRA zone and, therefore, that no NJDEP approval would be required. He provided additional testimony that the proposal would not result in an increase in stormwater runoff and, therefore, would not impact the downstream properties more than they had been impacted by the prior development.

13. Mr. Stockton continued testifying that given the dimensions of the subject Property and with limited, unused frontage available, the Applicant requested a waiver from the Borough's landscaping requirements. Mr. Stockton did testify, however, that it might be possible to plant one shade tree on the subject Property nearby the Borough's easement.

14. Mr. Stockton testified that the proposed dwelling would have 3 bedrooms and provide 2.5 off-street parking spaces; therefore, the proposal complies with the Borough's residential off-street parking requirements.

15. Mr. Stockton concluded his testimony by stating that the requested variance relief could be granted without any substantial detriment to the public good and that the proposal, advances the goals of municipal planning. He continued that the proposal advanced goals (B)(to secure safely from fire, flood, panic, etc.), (C)(to provide adequate light, air, and open space), (I)(to promote a desirable visual environment), and (M)(to encourage the coordination of various private and public procedures for shaping land development and efficient use of land) of N.J.S.A. 40:55D-2.

16. The Applicant's architect, Salvatore La Ferlita, R.A., testified next and opined that Applicant proposed a single-family dwelling, with a covered front porch. Mr. La Ferlita continued

that the first floor would contain the kitchen and living space, with a rear deck containing a spiral staircase up to the second floor.

17. Mr. La Ferlita provided additional testimony that the second floor would contain three bedrooms and third floor would contain a loft space, wet bar, powder room, with proposed rooftop deck. Mr. La Ferlita continued testifying that he could lower the proposed garage by six inches and the roof by another six inches, thereby decreasing the overall height of the dwelling by one foot (12 inches) (which would still require variance relief of 4 inches).

18. Mr. La Ferlita testified that the utility meters would be installed at the ground floor, adjacent to the garage and that the HVAC system and condenser would be installed on the first-floor rear deck, behind the kitchen. He continued that the HVAC would need to be located on the deck because it was required to be a certain distance above the flood plain and that there was insufficient clearance to place the unit on the ground floor, under the deck.

19. In response to questions from the Board, Mr. La Ferlita stated that the narrowness of the subject Property made locating a utility meter on the side of the proposed dwelling difficult, but he continued that because of elevation of the subject Property, the meter could be installed without the need of a meter reading platform. The Applicant agreed, as a condition of approval, that the electric meter and appurtenances would be installed without requiring further relief from the Board.

20. The meeting was then opened to the members of the public, at which time Pat Walsh at 20 Cedar Street (adjacent to the subject Property), inquired as to whether the proposed dwelling would obstruct her views. In response, the Applicant and Board stated that the proposal

would obstruct some of her views, but that a home could be constructed (without any variance relief) that would still do so.

21. Rob Miller, 27 Cedar Street next inquired as to whether the Board could alleviate the parking problems in the area and was advised that the matter was beyond the scope of the application.

22. Scott DeVere at 55 Fifth Street inquired what the side yard setbacks are in the Zone, to which the Board Engineer responded that it was generally six feet and eight feet, with some exceptions.

23. There were no other members of the public expressing an interest in this application.

24. The Board inquired whether the Applicant could reduce the height of the third-floor loft space by four (4) inches, in addition to 12-inch reduction agreed to previously, to comply with the maximum permitted building height of 32.5 feet. Mr. La Ferlita responded that the Applicant agreed to comply with the maximum permitted building height of 32.5 feet and, therefore, that no variance relief for the maximum permitted building height was requested or needed.

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 request for minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with variance relief pursuant to N.J.S.A. 40:55D-70c should be granted in this instance.

The Board finds that the Applicant has proposed a permitted use on the subject Property. The proposal, however, requires minor site plan approval and 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 Applicants may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. 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. Additionally, under the c(2) criteria, the Applicants have 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 failed to meet its burden of proof to be granted a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Applicant did not provide any evidence concerning the creation of the subject Property. The Applicant's argument regarding the dimensions of the subject Property when purchased are also not relevant. A self-created hardship created by a prior owner is imputed to the current owner under the law. The Applicant has failed to demonstrate hardship and cannot satisfy the positive criteria pursuant to N.J.S.A. 40:55D-70c(1).

The Board finds, however, that the Applicant has satisfied the c(2) positive criteria. The Board finds that the proposal advances the goals of Zoning enumerated in N.J.S.A. 40:55D-2(B)(to secure safely from fire, flood, panic, etc.), (C)(to provide adequate light, air, and open space), (I)(to promote a desirable visual environment), and (M)(to encourage the coordination of various private and public procedures for shaping land development and efficient use of land). The Board further finds that the proposed improvements enhance the aesthetics and usefulness of the subject Property and also result in a diversified housing stock. Improved aesthetics not only benefits the Applicant, but also advances 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 result in an aesthetic improvement to the subject Property, which is currently vacant, and also result in a diversified housing stock. The new home will also be consistent and fit in seamlessly with the prevailing neighborhood residential scheme and the proposal does not require variance relief from the maximum permitted building height. All flood elevation requirements will also be satisfied. The proposal is consistent with the Borough's overall goals and objectives of providing new, safe and visually attractive homes. The Board therefore concludes that there is no substantial detriment to the zone plan or the zoning ordinance. The public welfare has also not been substantially detrimented. The negative criteria has therefore been satisfied. 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).

With the exception of the above relief, the Applicant has complied with all other zoning, subdivision and design criteria. The Applicant may therefore be granted minor site plan approval pursuant to N.J.S.A. 40:55D-46.1.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 20th day of December 2022, that the action of the Land Use Board taken on October 13th, 2022 granting Application No. LUB2022-05, for minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with variance relief pursuant to N.J.S.A. 40:55D-70c as follows:

The application is granted subject to the following conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application.

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 obtain all necessary approvals from the Borough Flood Plain Officer.
4. The Applicant shall submit a utility easement subject to the review and approval of the Board Engineer and Board Attorney.
5. The Applicant shall locate the electric meter and appurtenances without requiring relief from the Board.
6. The Applicants shall provide an As-Built Survey prior to obtaining a Certificate of Occupancy.
7. The Applicants shall provide a certificate that taxes are paid to date of approval.
8. 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.
9. 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.

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 December 20, 2022.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. No. LUB2022-05/Link

Bulk Variance Relief

October 13, 2022

December 20, 2022

- A-1 Land Use Board Application (Minor Site Plan), dated June 22, 2022.
- A-2 Architectural Plan prepared by Salvatore La Ferlita, R.A., dated September 23, 2022.
- A-3 Topographical Survey prepared by Ronald L. Trinidad, P.L.S. of R & T Land Surveying, dated June 1, 2022.
- A-4 Location Land Survey prepared by Thomas C. Finnegan, P.L.S., dated November 22, 2021.
- A-5 Grading Plan, prepared by Andrew R. Stockton, P.E., P.L.S., of Eastern Civil Engineering, L.L.C., dated August 10, 2022.
- A-6 Sketch of Cedar Street Road Vacation, part of Lot 25, Block 65, prepared by Robert K. Sanchez, P.L.S. of CME Associates, dated June 21, 2022.
- A-7 Sketch of Cedar Street Road Vacation, part of Lot 2.01, Block 68, prepared by Robert K. Sanchez, P.L.S. of CME Associates, dated June 21, 2022.
- A-8 Sketch of Cedar Street Road Vacation, part of Lot 2.01, Block 68, prepared by Robert K. Sanchez, P.L.S. of CME Associates, dated June 21, 2022.
- A-9 Colored Rendering of Architectural Plans

INTEROFFICE REPORTS

- B-1 Zoning Officer letter, dated June 22, 2022.
- B-2 Board Engineer's First Completeness Review letter, dated September 27, 2022.
- B-3 Board Engineer's Fee and Escrow Calculation letter, dated September 27, 2022.
- B-4 Board Engineer's First Engineering Review letter, dated September 30, 2022.

