



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2022-20

MEMORIALIZATION OF MINOR SUBDIVISION APPROVAL WITH ANCILLARY VARIANCE RELIEF

Approved: October 13, 2022
Memorialized: December 8, 2022

IN THE MATTER OF MARTIN

APPLICATION NO. LUB2022-06

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 Marie Martin (hereinafter referred to as the "Applicant") on lands known and designated as Block 77, Lot 15, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 15 Barberie Avenue in the R-2.01 (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 7,500 square feet with 100 feet of frontage along the southeast side of Barberie Avenue within the R-2.01 (Residential) Zone district. The subject Property has a Lot depth of 75 feet. The subject Property is currently improved with a two-story single-family dwelling serviced by municipal water and waste systems.

2. The dwelling on Lot 15 has a minimum front yard setback of 9 feet whereas 20 feet is required in the Zone and complies in all other respects with the Zoning Ordinance.

3. The Applicant proposes to subdivide the subject Property into two (2) new lots as follows:

- Proposed Lot 15.01 will contain 3,750 square feet with 50 feet of frontage along Barberie Avenue and will contain the existing two-story, single-family dwelling.
- Proposed Lot 15.02 will contain 3,750 square feet with 50 feet of frontage along Barberie Avenue to be improved with a proposed 2-story, single-family elevated dwelling.

4. The Applicant, Marie Martin, testified that the minimum lot size in the Zone is 3,750 square feet and, therefore, that the proposed subdivision will create two lots that conform to the Zoning Ordinance and are commensurate with other lots in the Zone and neighborhood.

5. The Applicant further testified that by virtue of the proposed subdivision, the dwelling on Proposed Lot 15.01 (which is not being affected by the application) will have a minimum front yard setback of 9 feet, whereas 20 feet is required in the Zone. Accordingly, variance relief is requested, but the deviation from the Zoning ordinance already exists.

6. The Applicant further testified that she needed additional variance relief for the maximum building coverage for Proposed Lot 15.01, where 35.56% is proposed and 33% is permitted in the Zone. The Applicant continued testifying that she was not altering the dwelling

at all and that the home would remain in its current location with regard to all setbacks. Accordingly, the Applicant testified that the variance relief requested occurred by virtue of the subdivision and existing dwelling, and not any proposed construction.

7. The Applicant testified that the subdivision complied in all other respects with the Zoning Ordinance, including as to building height for both the existing and proposed dwellings. The Applicant further testified that the dwelling to be constructed on Proposed Lot 15.02, as proposed, would comply with the Zoning Ordinance. The Applicant agreed that if the dwelling was not constructed in accordance with the Zoning Ordinance or the terms of this resolution that she would need to return for variance relief.

8. The Applicant agreed to comply with the Board Engineer's First Engineering Review Letter and to revise the plans to reflect a driveway length of 18 feet.

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' request for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c should be granted in this instance.

The Board finds that the Applicants have proposed a minor subdivision 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 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 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, an 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 with regard to the previously enumerated requests for variance relief from the minimum front yard setback for Proposed Lot 15.01 where 20 feet is required and 9 feet is proposed, and for the maximum building coverage for Proposed Lot 15.01 where a maximum building coverage of 33% is permitted and 35.56% is proposed.

The Board finds that the proposed subdivision and construction of a single-family dwelling on Proposed Lot 15.02 is a permitted use in the R-2.01 zone. The Board finds that the proposed subdivision will create two lots, which are consistent with the prevailing neighborhood scheme, and which comply with the Zoning Ordinance. The dwelling to be constructed on Proposed Lot 15.02 would comply with the Zoning Ordinance and, to the extent the Applicant or a subsequent owner of the subject Property sought to construct a dwelling that neither complied with this Resolution nor the Zoning Ordinance, they would need to seek relief from the Land Use Board.

The Board also accepts the Applicant's testimony that the proposed variance relief would be indiscernible to the public because it affects the existing two-story dwelling on Proposed Lot 15.01 and not the dwelling proposed to be constructed on Proposed Lot 15.02 (which will comply with the Zoning Ordinance). The Board, therefore, finds that the minimum front yard setback of 9 feet proposed for Proposed Lot 15.01 already exists and is not being exacerbated by the application. Similarly, the Board finds that although the maximum building coverage is increasing on a percentage basis, that occurs solely by virtue of the subdivision of Lot 15 and the existence

of the two-story dwelling thereon. Accordingly, the Board finds that proposed building coverage of Proposed Lot 15.01 of 35.56% is not excessive and satisfies the positive criteria.

Based on the foregoing, the Board finds that the application advances the goals of the Municipal Land Use Law as enumerated at N.J.S.A. 40:55D-2. The positive criteria has therefore been satisfied.

The Board also finds that the negative criteria has been satisfied. The proposed subdivision of the existing lot into two smaller lots creates lots that are more similar to other lots in the surrounding neighborhood and which comply with the Zoning Ordinance. The proposed development also does not violate any height requirements and therefore does not impair any view corridors. As previously stated, the proposed density and use also complies with Ordinance requirements. The proposed variance relief will also not create any perceptible additional traffic or noise. The Board finds that the grant of variance relief will not result in substantial impairment to the zone plan or zoning ordinance and will not create a substantial detriment to the public good. The Board therefore finds that the negative criteria has been satisfied.

The Board further finds that the positive criteria substantially outweighs the negative criteria and that variance relief pursuant to N.J.S.A. 40:55D-70c(2) is appropriate in this instance.

With the exception of the above relief, the Applicants have complied with all other zoning, subdivision and design criteria. The Applicants may therefore be granted minor subdivision approval pursuant to N.J.S.A. 40:55D-47.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 8th day of December 2022, that the action of the Land Use Board taken on October 8th, 2022 granting Application No. LUB2022-06, for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) as follows:

The application is granted subject to the following conditions:

1. The Subdivision Plat or Deed recorded memorializing this subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicants shall record the Subdivision Plat or Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render this approval null and void.
2. All site improvement shall take place in the 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.
3. Except where specifically modified by the terms of this resolution, the Applicant shall comply with all recommendations contained in the reports of the Board professionals.
4. The Applicant shall obtain an Elevation Certificate.
5. Any future modifications to this approved plan must be submitted to the Board for approval.
6. The Applicant shall provide a certificate that taxes are paid to date of approval.
7. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
8. The subject Property is located in a CAFRA Zone and, thus, the Applicant shall comply with all applicable NJDEP requirements and obtain all applicable approvals and/or waivers therefrom.
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 8, 2022.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. No. LUB2022-06/Martin

Minor Subdivision

October 13, 2022

December 8, 2022

- A-1 Land Use Board Application (Minor Subdivision), dated July 19, 2022.
- A-2 Minor Subdivision Plan prepared by Thomas C. Finnegan, P.L.S. of Thomas Craig Finnegan Land Surveying, L.L.C., dated May 16, 2022.

INTEROFFICE REPORTS

- B-1 Board Engineer's Review of Minor Subdivision, First Completeness Review letter, dated August 16, 2022.
- B-2 Board Engineer's Fee and Escrow Calculation letter, dated August 16, 2022.
- B-3 Board Engineer's First Engineering Review letter, dated September 28, 2022.