

**Borough of Highlands**  
**LAND USE BOARD**  
**Regular Meeting**  
**May 7, 2020**

***Meeting Location: Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ (Held Via Video Conference)***

Mr. Stockton called the meeting to order at 7:38 pm.

Mr. Stockton asked all to stand for the Pledge of Allegiance.

***Mr. Stockton read the following statement:*** As per requirement, notice is hereby given that this is an Abbreviated Meeting of the Borough of Highlands Land Use Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal Action will be taken.

**ROLL CALL:**

Present: Mr. Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa (arrived at 7:40pm)  
Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mayor Broullon, Mr. Knox, Chairman Stockton

Absent: Mr. Montecalvo, Ms. Tierney

Also Present: Board Attorney Mr. Baxter

Board Engineer Edward Hermann

**OPEN FOR PUBLIC COMMENTS:** None

**MEMORIALIZATION OF RESOLUTIONS:**

- 1) LUB2019-11, 16 Miller Street, Block 56 Lot 5, Five Star Real Estate Group, LLC - Application for a Use Variance

**LAND USE BOARD RESOLUTION 19-11**

**RESOLUTION DENYING USE VARIANCE**

**FOR FIVE STAR REAL ESTATE GROUP, LLC**

**AT 16 MILLER STREET**

WHEREAS, the applicant, FIVE STAR REAL ESTATE GROUP, LLC is the owner 16 MILLER STREET, Highlands, New Jersey (Block 56, Lot 5) and has filed an application to construct four townhomes, which application was bifurcated, at the applicant's request, to first hear the use variance request and delay the site plan application until a decision on the use has been made by the board; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at public hearings on and December 5, 2019 and February 6 and March 5, 2020; and

WHEREAS, the Board heard testimony from CHARLES BONICI, the managing member of the LLC; together with his witnesses, ROBERT ADLER, architect; YOSEF PORTNOY, engineer; PATRICK LYNAM, engineer; and NICHOLAS DICKERSON, planner; and

WHEREAS many residents asked questions of the witnesses who testified on behalf of the applicant; and

WHEREAS the following residents testified in opposition to the application: CHRIS FRANCY, ANN MARIE TIERNEY, THOMAS WALCKEWSKI, ASHLEY LEDER, CANDACE DOUGLAS, CHRISTOPHER MORAN and PATRICIA CATALANO; and two residents testified in support of the application (LYNN STERNBERG and WILLIAM JENNINGS); and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Denial of zoning permit by Marianne Dunn, Zoning Officer dtd 9/18/19
  - A-2 Use Variance application (bifurcated) dated 10/11/19 (4 pages)
  - A-3 Variance plan by Yosef Portnoy of Maser Consulting dated 9/6/19
  - A-4 Boundary and topographic survey by Eric Wilde of Maser Consulting dated  
3/6/17
  - A-5 Architectural plans by Robert W. Adler dated 7/22/19 (6 pages)
  - A-6 Large board with 7 color photos
  - A-7 Large board with 8 color photos—Site Photo Exhibit
  - A-7A same as A-7, but on 8 ½ X 11” paper
  - A-8 Large board—Existing Conditions for 16 Miller St.—aerial photo
  - A-9 4 screen shots from a 3-D rendering, on board
  - A-10 Variance Plan on board—aerial view
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- A-11 Revised Variance Plan (formerly A-3) by Yosef Portnoy revised 1/16/20
  - A-12 Proposed Townhouses drawings by Robert Adler (formerly A-5) revised 1/17/20
  - A-13 20 pages of OPRA documents regarding property C.O.s
  - A-14 Property record card (3 pages)
  - A-15 Colored rendering by Robert Adler
  - A-16 aerial, on board, showing placement of proposed 2 buildings
  - A-17 drawing of what a compliant structure would look like in the neighborhood
- AND, WHEREAS, the following exhibits were also marked into evidence:
- B-1 Board engineer completeness letter by Edward Herrman dated 11/18/19 (4 pages)
  - B-2 Board engineer review letter by Edward Herrman dated 12/4/19  
(5 pages)
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- B-3 Board engineer revised review letter by Edward Herrman dated

- B-4 Affidavit by board member Jacyn Walsh regarding listening to prior meeting tape recording
- B-5 Affidavit by board member Miranda Nash regarding listening to prior meeting tape recording
- B-6 Affidavit by board member BRUCE KUTOSH regarding listening to prior meeting tape recording
- B-7 Affidavit by board member LAURIE LARUSSA regarding listening to prior meeting tape recording

WHEREAS, the Board, after considering the evidence, has made the following factual findings and conclusions:

1. The applicants are the owners of property located in the R-2.02 Zone.
2. Under borough ordinance 21-86B(1), the R-2.02 zone does not permit townhouses or multi-family uses, only single-family residences and existing bungalow colonies.
3. The site currently contains three structures, all residential. Those structures have a total of four single-family units, though the middle structure of the three has not been inhabited for many years.
4. The structures are in various stages of disrepair.
5. The applicant submitted an OPRA request to the borough for all Certificates of Occupancy for the three structures and obtained approximately 20 C.O.s, though many were confusing as to which structure was covered by a particular C.O.
6. The board makes no determination as to the number of legal dwelling units on the site, but accepts as fact that there were three buildings formerly in use. The front building purportedly contained two dwelling units, and each of the two rear buildings contained one dwelling unit.
7. If the existing structures are demolished, the owner/applicant will only be permitted to construct dwelling units in accordance with the borough zoning ordinances (see para. 2 above). The number of previously approved dwelling units on the property, if they are all to be demolished, is not binding on the board or municipality as to the number of new units to be constructed; hence, the need for a use variance under N.J.S.A. 40A:55D-70(d).
8. Borough ordinance 21-98A(1) states that "A non-conforming use shall not be expanded or changed to another non-conforming use." To approve this application would contravene the borough ordinance.
9. Notably, the applicant stipulated that there is no claimed hardship.
10. The applicant's planner discussed what in his opinion were special reasons for this project under N.J.S.A. 40:55D-2, which reasons the board does not find persuasive. The board's decision, however, does not turn on the special reasons component of the positive criteria required to obtain a use variance.
11. The applicant did not prove that the use variance requested would promote the purpose of zoning.
12. The applicant did not prove that the site is particularly suited for the proposed use, a requirement to prove the positive criteria to grant a use variance. The board specifically finds that the site is not particularly suited to the proposed use, considering the neighborhood and its single-family predominance.

13. Though there was testimony and argument regarding the number of sewer bills and/or permits for the existing uses, the board does not find this issue of importance to its determination.

14. The massiveness of the proposed townhomes, both in height (though no height variance would be required under the applicant's plans), length, lot coverage, and increased activity on the site would dwarf the other homes in the neighborhood. In simple terms, the applicant has proposed to put too much structure on a small lot (i.e., .206 acres).

15. During the first night of hearings in this case, the application proposed six townhomes. That number was later reduced by the applicant, and its plans were modified accordingly. The board does not compare the two proposals in making a determination as to whether a use variance should be granted. Rather, the board only considers the application as modified in making its determination.

16. The Board finds that the applicant's proposal would result in an overdevelopment of the property, especially when there is a better design alternative (i.e. building a single-family home in conformance with the Borough's ordinances). Further, it would substantially negatively impact the neighborhood.

17. In the borough's Master Plan, Item number 2 in the Goals and Objectives regarding Residential properties states: "Limit new development and infill development that increases the intensity of neighborhood land and property use." This application runs contrary to the Master Plan's objective.

18. The Board finds no factual or legal basis to grant a D(1) or any other D variance in this case. To determine otherwise would require the board to disregard the borough ordinances, the master plan, and the nature of the neighborhood; and the board is not empowered to, effectively, rezone the property. That is the province of the governing body.

19. Accordingly, the Board finds that, if it were to grant the requested variance relief, such a relief would be with substantial detriment to the public good and would substantially impair the intent and purpose of the zone plan and zoning ordinance. As a result, the board finds that the negative criteria required to obtain a use variance under N.J.S.A. 40:55D-70d have not been proven.

WHEREAS, the application was heard by the Board at its meetings on December 5, 2019, and February 6 and March 5, 2020, this resolution shall memorialize the Board's action taken at the last of those meetings;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the application of FIVE STAR REAL ESTATE GROUP LLC to construct four townhomes on lot 5 in block 56 be and the same is hereby DENIED.

Offered by Mr. Kutosh

Seconded by Ms. LaRussa

There was no debate.

Ayes: Mr. Burton, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Ms. Nash, Mr. Knox, Chairman Stockton

Nays:

Abstentions: Mr. Colby, Councilmember Mazzola, Ms. Walsh, Mayor Broullon

Absent: Mr. Montecalvo, Ms. Tierney

2) LUB2019-13, 45 Second Street, Block 62 Lot 2, Burton - Application for Bulk Variance

**BOROUGH OF HIGHLANDS  
COMBINED LAND USE BOARD  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
MONMOUTH COUNTY, NEW JERSEY  
BULK VARIANCE RELIEF**

**Approved: March 5, 2020  
Memorialized: May 7, 2020**

**MATTER OF: ROBERT BURTON AND NANCY THOMAS**

**APPLICATION NO. LUB2019-13**

**WHEREAS**, an application for bulk variance relief has been made to the Borough of Highlands Combine Land Use Board (hereinafter referred to as the “Board”) by Robert Burton and Nancy Thomas (hereinafter referred to as the “Applicants”) on lands known and designated as Block 62, Lot 2, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 45 Second Street, Highlands, New Jersey, in the R-30/20 (Residential) Zone District; and

**WHEREAS**, a public hearing was held before the Board on March 5, 2020 with regard to this application; and

**WHEREAS**, the Board has heard testimony and comments from the Applicant 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 Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

**WHEREAS**, the following exhibits were marked into evidence:

- A – 1 Survey prepared by Andrew Stockton
- A – 2 Application for project including Affidavit of Applicant
- A – 3 Landlord Registration Certificate dated October 7, 2019
- A – 4 Proposed New house Plan prepared by Franco Architects & Planners, dated September 22, 2019 consisting of seven (7) sheets.

A – 5 Zoning Denial by Maryanne Dunn, Zoning Official dated March 18, 2019.

B – 1 Engineering Report prepared by Hoder Associates Consulting Engineers dated February 14, 2020.

**NOW, THEREFORE**, does the Borough of Highlands Combined Land Use Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 4,110 sf with frontage along Second Street and Shore Drive within the R-2.02 (Residential) Zone. The lot is located in Flood Zone AE with a base flood elevation of 11 ft above sea level. The subject Property was currently improved with a one-story single-family residential structure.

2. The Applicants are seeking bulk variance relief permitting the demolition of the previously developed single-family home and the construction of a 2½ story single family structure. The first floor is proposed to be 688 sf and the second floor is proposed to be 822 sf for a total of 1,510 sf. The first floor is proposed to be 3 ft. above the base flood elevation. A first-floor garage containing 688 sf is also proposed. The Applicants further propose an addition to the existing driveway which will continue to have ingress/egress to Shore Drive.

3. The Applicant, Robert Burton, testified that he and his wife were the owners of the subject Property and had demolished the previously existing home and constructed a new single-family structure. He explained that he had proceeded through the construction permitting process

and had received the requisite approvals. Mr. Burton stated that these approvals appeared to have some flaws and that variance relief was now necessary.

4. Mr. Burton confirmed that the first-floor square footage would total 688 sf (exclusive of the garage) with the second floor containing 822 sf. He further noted that a 300 sf deck as well as a 688 sf first floor garage were also proposed.

5. Mr. Burton then addressed some inconsistencies in the submitted plans regarding building height. He confirmed that the structure did not exceed the permitted 30 ft. plus 2.5 ft. He then addressed the minimum front yard setback requirements. The R-2.02 Zone requires a 20 ft. front yard setback. An applicant, however, may demonstrate that existing front yards within a 200 ft. radius have the same or a lesser setback. Mr. Burton stated that he was proposing a 17.58 ft. setback to the residential structure with a 2.2 ft. set back to the stairs. He then produced a survey which depicted all properties within the requisite 200 ft. confirming that the subject Property was consistent with the existing setbacks of the other lots in the radius area concerning setbacks to principal structures. He therefore asserted that variance relief from the setback requirement was only required for the setback to the stairs.

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

7. The Board has received, reviewed, and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

**WHEREAS**, the Borough of Highlands Combined 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 may be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2).

The Board finds that the Applicants have proposed a permitted use on the subject Property. The proposal, however, 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 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 Applicants have satisfied the positive criteria. The Board 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 Applicants, 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 Applicants have 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 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. 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).

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Highlands Combined Land Use Board on this 7<sup>th</sup> day of May, 2020, that the action of the Board taken on March 5, 2020, granting Application No. LUB2019-13 of Robert Burton and Nancy Thomas bulk variance relief pursuant to N.J.S.A. 40:55D-70c (2) is hereby memorialized 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 Applicants shall provide an As-Built Survey prior to obtaining a Certificate of Occupancy.
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.

OFFERED BY: Mr. Kutosh

SECONDED BY: Councilmember Mazzola

ROLL CALL

YES: Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mayor Broullon, Mr. Knox

NO:

ABSTAINED: Mr. Colby, Chairman Stockton

ABSENT: Mr. Montecalvo, Ms. Tierney

**HEARINGS ON OLD BUSINESS:** None

**HEARINGS ON NEW BUSINESS:** None

**ACTION ON OTHER BUSINESS:** Discussion was held on how and if any cases could be heard. The six pending cases were read one by one to determine if they would be able to be heard. Procedures were sent in place to notify public of meetings going forward.

**APPROVAL OF MINUTES:**

1. February 6, 2020

Offered by Mr. Knox

Seconded by Chief Burton

Ayes: Chief Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Nays:

Abstain: Mayor Broullon

Absent: Mr. Montecalvo, Ms. Tierney

2. March 5, 2020

Offered by Mr. Kutosh

Seconded by Ms. LaRussa

Ayes: Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Nays:

Abstain: Chief Burton, Mr. Colby, Mayor Broullon,

Absent: Mr. Montecalvo, Ms. Tierney

**COMMUNICATION AND VOUCHERS:** None

**ADJOURNMENT**

Mr. Knox offered a motion to adjourn

Seconded: Mr. Kutosh

All in favor

None Opposed

Adjourned at 9:15PM

Offered by Mayor Broullon

Seconded by Mr. Knox

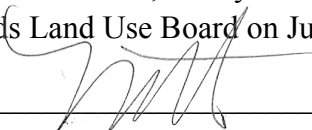
Ayes: Mayor Broullon, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Mr. Montecalvo, Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Nays:

Abstain: Ms. Tierney

Absent: Chief Burton, Mr. Colby

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on June 4, 2020

  
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Michelle Hutchinson, Land Use Board Secretary