

**BOROUGH OF HIGHLANDS**  
**LAND USE BOARD MEETING MINUTES**

**MAY 9, 2018**

**Meeting Location: Robert D. Wilson Community Center**  
**22 Snug Harbor Avenue, Highlands, New Jersey**

**Call to Order:**

**Pledge to Flag:**

**Open Public Meeting Statement:**

As per requirement, notice is hereby given that this is a Regular 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:** Mayor O'Neil, Mr. Burton, Mr. Braswell, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Lee, Mr. Montecalvo, Mr. Nolan and Mr. Stockton.

**Absent:** None

**Open for Public Comments:**

Mr. Stockton explained to the public the process and procedures of the Land Use Board; followed by his asking the Public if they had any questions at this time.

Mr. Mullen, 11 Marine Place, Highlands raised his hand.

Mr. Stockton announced the arrival of Mr. Francy at 7:34 pm.

Mr. Mullen asked if the first application to be heard tonight, which Mr. Serpico interjected to clarify was to be, 2018-02 - 7 Marine Place, if a Use Variance is required is it heard separate from Bulk Variance?

Mr. Serpico requested to answer that there is no Use Variance; that the Board had the opinion from T&M that no Use Variance is required and that he was going to swear in the Planner/Engineer, Mr. Yuro, and he will tell us why. Mr. Mullen said he would like Mr. Serpico's opinion as well. Mr. Serpico said he didn't look at it that he relied on T&M's Planners. Mr. Serpico stated that if Mr. Mullen wanted to pick out a section of the Ordinance that he was supposed to look at, he will.

Mr. Gallagher asked Mr. Serpico if a Uses Variance was required what would happen. Mr. Serpico explained that it would operate typical of the Zoning Board of Adjustments; therefore, only Class IV

members would participate and he would ask others to step down. Only a maximum of seven (7) members are allowed to participate even though we have larger Board. If not bifurcated but heard as one application, the standard would require five (5) affirmative votes.

**Motions for Adjournment and any other Motions:** None

**Applications scheduled for Completeness Review:** None

### **Unfinished or Adjourned Hearings:**

**2018-02 Ruby, 7 Marine Place** – Minor Subdivision, Bulk Variances to construct three single family dwellings on newly created lot.

Mr. Stockton introduced Arjika/Ruby Properties to come and present their application. Mr. Serpico requested to take care of initial jurisdictional issues confirming notice is in proper form and Applicant did notice for Use in case one was needed. Mr. Serpico continued that since last month and now, a request was made that T&M give an opinion on this since they are the ones who render the reports on all files and that they decide which variances are required on the applications. Mr. Serpico asked that Mr. Yuro of T&M be sworn in.

At this point, Mr. Stockton noted the applicant had retained the services of his father, Mr. Richard E. Stockton, so he would be stepping down to avoid conflict and gave the meeting over to the Vice Chairman, Mr. Nolan.

Mr. Yuro, Professional Planning Engineer with T&M was sworn in. Mr. Serpico asked Mr. Yuro if he understood Mr. Mullen's question and if he could explain T&M's findings. Mr. Yuro stated he had reviewed this question with his planners on staff and that they had indicated that since this is a minor sub division, according to Land Use Law, a minor sub division in a residential district with residential application does not fall under the density category, and therefore, a Bulk Variance is requested this evening and not a Use Variance.

Mr. Serpico then swore in Mr. Mullen. Mr. Mullen indicated in his review of this Land Use Law, specifically 7.1, it does mention density as being the trigger. Mr. Yuro indicated under MLUL 40:55D-70, sub section D which addresses Use Variance items, number five (5) addresses increase density except when applied for lots as part of a minor subdivision. According to the Borough Ordinance, minor sub division is considered the sub division of three (3) lots or less.

Mr. Ruby questioned the Board if this hearing was a continuation of the prior meeting or a new hearing. Mr. Serpico clarified it was a new hearing as it had been re-noticed.

Mr. Kennedy, Esq. introduced himself as the attorney of record for this application explaining his purpose and intent of representation.

He began by stating that tonight's application, 7 Marine Place, Block 78 Lot 7, is that of an existing five (5) unit apartment building in which his clients are applying to demo the existing structure of a non-

conforming use and separating three (3) lots to build three (3) single family homes which requires several variances. He stated that the substance of this application is that they would be taking a pre-existing, non-conforming use and proposing three conforming single-family homes in their place which are permitted. He explained he had two witnesses, Mr. Chris Ruby, the licensed builder and property manager of Arjika Properties and Mr. Richard E. Stockton as Surveyor and Planner.

Mr. Serpico swore in Mr. Ruby for testimony. At this time Mr. Kennedy began questioning Mr. Ruby regarding his knowledge, credentials and specifics of the current conditions of the property, as well as the proposed plans. During this discussion, pictures of the existing structure and one of the rear of structure were marked into evidence as A1 & A2 respectively.

Upon completion of this testimony, Mr. Nolan asked if the Board had any questions. At which time members of the Board asked for additional details where needed. Mr. Braswell and Mr. Francy questioned if the intent was to sell the homes and if testimony had been provided confirming the current property to be a legal five (5) family with five (5) Cos and five (5) separate sewer bills going back an extended period.

Mr. Ruby stated he didn't know if that had been established; at which time the owner interjected and was stopped by Mr. Serpico that he was not sworn in and Mr. Kennedy asked that he be able to come back to this question.

Mr. Nolan asked for questions from the public at which time Mr. Sean Byrnes, Esq., attorney representing Mr. Bierbacher, 5 Washington Avenue, Highlands began his questioning of Mr. Ruby regarding further detail comparing the current property layout and condition and that of the proposed plan.

Mr. Kennedy requested Mr. Ruby provide copies of the COs dated May 9, 2018 given to us by the owner and signed by Mr. Dave Mercado referencing all units having valid COs which were marked into evidence as A3.

Mr. Serpico swore Mr. Arona Bikram, Owner of 7 Marine Place, Highlands. Mr. Kennedy then began questioning Mr. Bikram on the quality of the home since he took ownership, through Super Storm Sandy, as well as his rental experiences since his purchase.

Mr. Kennedy asked if Mr. Ruby could come back up to answer questions on the CO which then followed with more questions from a few of the Board members.

Mr. Nolan asked if there were any more questions from Board; none.

Mr. Nolan asked for any more questions from public to which Mr. Byrnes and Mr. Mullen completed their final questioning of details and offered their summation of their opinions. Mr. Rohrig, Esq, appearing as son of homeowner of adjacent property at 6 Barbarie Ave stating his father's concerns and comments regarding this application.

At this time Mr. Kennedy introduced Mr. Richard E. Stockton, Licensed Surveyor at 942 Hwy 36, Atlantic Highlands, New Jersey and listed his qualification asking Mr. Byrnes and Mr. Mullen if they had any questions or concerns on these qualifications. To which they both said no

Mr. Kennedy began his questioning of Mr. Stockton on his professional review of the details of his investigation of this application in its entirety.

Mr. Nolan asked for questions from the Board at which Mr. Francy expressed his concerns of two (2) versus three (3) single family homes and Mr. Gallagher stated his concerns of the possible increase of occupants in the new proposed plan.

Mr. Nolan asked for questions from the Public to Mr. Stockton's testimony at which Mr. Mullen replied and offered his questions followed by Mr. Sean Byrnes.

Mr. Braswell then asked if the owner would consider perhaps building less bedrooms and perhaps changing the layout of the structures themselves.

Mr. Yuro requested confirmation that the applicant was going to comply with the technical issues outlined in his letter dated May 3, 2018 regarding grading, sidewalks, curbs, and all engineering issues to which Mr. Kennedy confirmed yes.

Mr. Serpico then outlined the next line of business was if anyone in the audience had witnesses to question, of which there were none. Mr. Serpico requested statements from the public either for or against this application before Board vote at which time Mr. Mullen, Mr. Byrnes and Mr. James Rohig reconfirmed their concerns and opinions.

A fifteen-minute recess was taken followed by roll call. Mr. Gallagher offered a motion to extend the meeting time due to the length of the testimony of this application and the intent to begin Completeness Review for Our Lady of Perpetual Help, 2017-12, to which Mr. Nolan second. There was no discussion from table or public. Roll call taken; all were in favor and motion passed.

Summation provided by Mr. Kennedy on application 2018-02 Ruby, 7 Marine Place supporting the Applicant's request for a minor subdivision to construct three single family homes on newly created lot.

Board members each gave their opinions of this application followed by a roll call vote.

AYE: Mayor O'Neil, Mr. Knox & Mr. Nolan

NAY: Mr. Burton, Mr. Braswell, Mr. Francy, Mr. Colby, Mr. Gallagher, & Mr. Lee

ABSTAIN: Mr. Stockton

Application: Denied

### **Hearing on New Business:**

Mr. Stockton introduced **2017-12 – Our Lady of Perpetual Help**, 141 Navesink Avenue - Site Plan approval with Variances to configure the Rectory and part of property for a parking lot. Mr. Serpico reviewed submissions of all notices and confirmed all in proper form.

Mr. Art Gallagher stated that he needed to recused himself from this application.

Mr. Michael Butler, Esq., attorney representing Our Lady of Perpetual Help, 141 Navesink Avenue, Block 21 Lot 1.2 and Lot 3 introduced himself and proceeded to offer his overview of the application stating that the applicants were asking for the reconfiguration of the current property and elimination of the

Rectory and garage to increase parking spaces and to provide a safe passage. Mr. Butler indicated that this application is being requested because the current Church parking lot across the street is being sold to the Borough of Highlands, and therefore, additional parking is needed in the church lot. Mr. Butler indicated he would have one witness for testimony, Mr. Richard DeFalco, NJ Licensed Engineer & Planner.

Mr. Serpico questioned Mr. Butler that he stated there were current negotiations between his client and the Borough of Highlands and as such, questioned if there was anyone at the table that is a part of that negotiations. At this time Mayor O'Neil and Councilman Braswell were asked to recuse themselves from this application. Mr. Francy asked Mr. Serpico if there was reason for concern as he was a current parishioner of this parish. Mr. Serpico asked Mr. Francy if he had any part in the negotiations of the sale of the property; to which he said he did not. Mr. Serpico asked if anyone in the audience had problem with Mr. Francy as parishioner sitting for this application; there was none. Mr. Serpico then stated if anyone was active in parish and had a concern of conflict they should recuse themselves, otherwise if they could be objective and there is no opposition, he will let them sit. Mr. Butler concurred.

Mr. De Falco was sworn in and proceeded to give his credentials as a Licensed Planner in State of NJ since 1981. Mr. Butler began by offering a polarized version of landscaping plan which showed the site plan elements as well. This was marked into evidence as A1. Mr. De Falco went on to describe the intent of this application and the alterations needed to the current layout. Mr. De Falco clarified that the applicants for this application were the Church and co-applicant, the neighbor, who was allowing approximately 125 sq. ft of his property to be used for this project to allow for a smoother, safer use of that section of the parking lot.

Testimony continued describing the proposed design and reconfiguration of the current parking lot.

Mr. Yuro was sworn in and proceeded to ask his questions of the Planner for clarification of application as well as stating his recommendations, including requirements for the cross-access driveway easement agreement needed for this application.

Mr. Stockton asked if there were any questions of this witness. To which there were none. Mr. Serpico asked if there were any other witnesses to which Mr. Butler replied no. Mr. Butler then offered his summation of the application prior to roll call vote.

**Roll Call:**

**AYE:** Mr. Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Lee, Mr. Montecalvo, Mr. Nolan & Mr. Stockton

**NAY:** None

**ABSTAIN:** Mayor O'Neil, Mr. Braswell

**MOTION:** Approved

**Approval of Resolutions:**

- 1) **2018-01 Arjika Properties, 228 Bay Avenue** – Bulk Variance to cover a front porch

Mr. Stockton requested the Record show Mayor O’Neil and Mr. Braswell returned to session at 10:50.

Offered by Mr. Nolan, Second by Mayor O’Neil.

### **Roll Call:**

**AYE:** Mayor O’Neil, Mr. Burton, Mr. Francy, Mr. Colby, Mr. Lee, Mr. Nolan & Mr. Stockton

**NAY:** None

**ABSTAIN:** Mr. Braswell, Mr. Knox

**Motion:** Approved

- 2) **Appointment of Nancy O’Neil as Land Use Board Secretary**

Offered by Mr. Nolan, Second by Mr. Knox

### **Roll Call:**

**AYE:** Mr. Burton, Mr. Francy, Mr. Knox, Mr. Colby, Mr. Gallagher, Mr. Lee, Mr. Nolan & Mr. Stockton

**NAY:** None

**ABSTAIN:** Mayor O’Neil

**Motion:** Approved

### **Action of Any Other Business:**

- 1) **Review of Procedures for Completeness Review for Both Land Use Board and T&M Associates**

Mr. Stockton offered that due to the late hour, this would be best if held over for the next meeting. A brief discussion was held followed by Mr. Gallagher offering and Mr. Nolan Second. All in favor

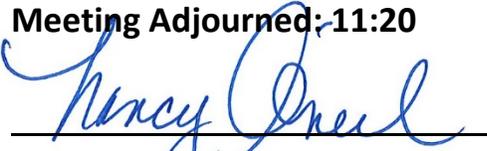
### **Approval of Minutes:**

All in favor; none opposed.

### **Communication and Vouchers:**

Offered Mr. Nolan, second Mr. Knox. All in favor

**Meeting Adjourned: 11:20**



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**Nancy O'Neil, LUB Secretary**