

**LAND USE BOARD
BOROUGH OF HIGHLANDS
DECEMBER 6, 2018**

Regular Meeting: 7:35 pm

Location: Community Center, 22 Snug Harbor Road, Highlands, NJ

Mr. Stockton called the meeting to order by reading a procedural statement indicating that the meeting is being held in compliance with the Open Public Meetings Act. Everyone in attendance stood for the Pledge of Allegiance.

ROLL CALL:

PRESENT: Mayor O'Neil, Chief Burton, Councilmember Braswell, Mr. Francy, Mr. Gallagher, Mr. Nolan, Mr. Stockton, Mr. Lee, Mr. Kutosh, Mr. Montecalvo, Ms. Compagni

ABSENT: Mr. Knox, Mr. Colby

Gregory Baxter was present as Board Attorney. Robert Yuro was present as Board Engineer.

Public Comment – Mr. Stockton opened the meeting for Public Comments for any general Land Use questions. No public comments were received.

New Business

Application 2018-05, 353 Shore Drive, Maier, Application for Bulk Variance for New Single Family Home – Mr. Stockton indicated he is recused from hearing this application before stepping down from the Board. Mr. Gallagher continued his role as Chairperson for this hearing.

Evan Zimmerman, Esq. of Giordano, Halleran and Ciesla appeared on behalf of the applicant and stated that the applicant has revised the plans, which have been submitted to the Board. The home has been reduced in size.

Mr. Baxter asked for the new attorney for the objector to introduce himself.

Ron Gasiorowski introduced himself as the attorney for the objector, Neal Taber. He noted that Ms. Edwards was the previous attorney on record, however she was not able to attend this evening.

Mr. Baxter indicated that the testimony was concluded and the cross examination was done by Ms. Edwards and the public was able to ask questions. Now that the new plan has a few minor changes, there may be some new testimony followed by cross-examination and questions on the amendment.

A plot plan prepared by Richard Stockton, last revised November 25, 2018 was marked as Exhibit A-16. The revised Architectural Plans prepared by Catherine Franco were marked as Exhibit A-17. The review of Robert Yuro, Board Engineer, dated November 28, 2018 was marked Exhibit B-2. Mr. Baxter added that there is a letter from Mr. Zimmerman dated December 4, 2018 which addresses the valuation of the property, which he will deal with when they get to it.

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Mr. Zimmerman stated that the planning testimony from the previous hearing still stands. The applicant has shrunk the home, which increased the side yard setbacks. Originally they proposed 3.1 feet on the east side and 7 feet on the other side and they have been increased to 4.1 and 8 feet, respectively. They moved the footprint 1.3 feet further from the roadway so there was an original proposal of a front yard setback of 15.6 feet and now they are proposing 16.9 feet. The footprint was also moved 1.2 feet further from the rear property line, bringing the rear setback from 20.1 feet to 21.3 feet. These reductions resulted in a reduction in building coverage to 36.7% where 41.5% was originally proposed. The final change was the proposal of a landscape buffer along the rear property line. The variances are lessened so they will rely on the prior planning testimony.

Mr. Baxter referred to Mr. Yuro's letter and stated that there is a typo. The minimum lot frontage should be the same for proposed and existing and should be 41.5 feet. There is still a variance required for the pre-existing conditions.

Mr. Nolan stated that the coverage is pretty standard with what is in the area.

The Board indicated no questions for the applicant.

Mr. Gasiorowski raised concern with the buy/sell letters. The objector has offered to purchase the property in excess of what it was appraised for so the C-1 hardship criteria is void. Mr. Baxter explained that it is not an automatic void of the C-1 hardship criteria.

Mr. Gasiorowski asked several questions of Mr. Higgins. Mr. Higgins indicated he had advised the client to reduce the home, based on comments received from the Board members during the previous hearings, however he was not involved with the design. He did, however, review the revised plans. Mr. Gasiorowski asked if consideration had been given to a conforming plan. Mr. Zimmerman objected that Mr. Higgins advised that he did not discuss plan design. Objection sustained by the Chair. Mr. Higgins confirmed that his discussions were with the applicant and his attorney suggesting a reduction in size of the proposed home. Mr. Gasiorowski asked various questions regarding setbacks, lot size and surrounding lot sizes, which were answered by Mr. Higgins to the best of his ability.

Andrew Thomas was sworn in and accepted as an expert planner for the objecting neighbor.

A photo Board consisting of 2 photos was marked as Exhibit O-5. Mr. Thomas stated that the first photo shows the subject property and the second photo shows the adjacent home to the west. A photo board consisting of a photo of the adjacent home to the south and the houses between Fay Street and Matthew was marked as Exhibit O-6. A photo board consisting of photos of 6 King Street and 359 Shore Drive was marked as Exhibit O-7. A photo of 358 Shore Drive was marked as Exhibit O-8. A chart of estimated building coverage for surrounding homes was marked as Exhibit O-9.

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Mr. Thomas indicated he was retained by Mr. Taber and was present at the last hearing. He indicated that a number of the homes in the area were raised as a result of Hurricane Sandy. Most homes were raised on their previously existing footprint.

Mr. Kutosh asked if Mr. Thomas knows what the previous homes looked like and how many have increased in size. Mr. Thomas stated that he knows of the ones that were approved by Resolution.

Mr. Thomas referred to exhibit O-5 and stated that the subject lot is a vacant property. Lot 5 is adjacent and has a raised home with a garage underneath. Lot 8 is a small house. The rear house is lot 12.01, which is Mr. Taber's house. Mr. Thomas went on to describe the homes in the photo exhibits. He noted that none of the immediate surrounding properties have a conforming lot size of 5,000 square feet for the zone. The immediate surrounding properties are shown on the plot plan. The subject property is rectangular and deeper than the other properties. The other properties and the houses are angled towards the roadway. Prior to the previous existing home being demolished, the size of the house and garage on the property included a 588 square foot, one-story house and a 322 square foot detached garage so the total was 910 square feet. If you calculate that out based on the lot size, the prior building coverage was 24.2% where 30% is the maximum permitted. The new house will be a three story house with a garage under it and will have a building coverage of 1,380 square feet, which is 36.7%, so the house will be 1.5 times greater than the original. The east side property setback was previously 10 feet at the closest point and became wider because of the placement of the house. The new house will be 4.1 feet for the length of the house, which is 68 feet long. It will essentially be four stories in height. In regard to the variances that were granted in the area for building coverage, he has photos of each of those homes. He referred to the exhibit to show the homes, explaining each home and the approval associated with each. All were existing houses that were raised and stayed within the footprint, except for 357 Shore Drive that was a reconstructed modular that was built on basically the same footprint however the front yard setback was increased and the rear yard setback was improved as was the building coverage. He understands the relief in those particular situations and the common theme is that they were raised to be on essentially the same footprint and where variance relief was granted it was an improvement, which is not the case here.

Mr. Thomas referred to the height of the building, you can still put a conforming house on the building envelope. If you are building a house at the maximum height without meeting the side yard setback, it creates a detriment to the surrounding area, particularly the adjacent houses.

Mr. Gasiorowski asked Mr. Thomas if he looked at the property to see if a compliant footprint could be put on the property. Mr. Thomas stated that he can lay out conceptual plans so he used the same auto-cad equipment as the engineers and was able to create an alternate plan with a footprint that could comply. This is one of the larger lots on the block, it is long and narrow and does not meet the minimum lot area, but it is a larger lot. They could do a three story house and

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still meet the height and yard requirements. He agreed that the prevailing front yard on the plot plan is what he used, which is 11.8 feet. In order to be compliant, they would have to knock off about 14 feet off of the home but there still might be a small portion of the house that would need a variance for about 1 foot. Mr. Thomas feels that they can in fact built a 3-story home that would be less in size than what is being proposed. A compliant home would still be the largest home on the block but would have a lesser impact because the setbacks would be met.

Mr. Nolan asked how long the home would be if it were compliant. Mr. Thomas replied that it could be 54 feet.

Mr. Braswell stated that they are talking about 1.9 feet, they have granted variances for more. Mr. Gasiorowski stated that simply wanting a bigger house is not a valid reason to grant a variance. He feels that zoning is like a road map and you are supposed to play by the rules unless you have a hardship.

Mr. Zimmerman stated that Mr. Thomas had testified that the lot is rectangular. He asked if Mr. Thomas would agree that the lot narrows to the rear. Mr. Thomas replied yes. Mr. Zimmerman asked if Mr. Thomas agrees that this is a vacant lot, with no existing structures and this is an application for a new home to be built from scratch. Mr. Thomas replied yes.

Mr. Gallagher asked if any members of the public have questions for the planner.

Mary Ryan asked if this is 20% over what is allowed. Mr. Thomas replied yes, 30% is allowed and they are going over 6% which is 20% of 30. Mrs. Ryan asked if there are any homes in the area with more than 3000 square feet of living space. Mr. Thomas added that the proposed home is less than 3000 square feet but it would still be the largest.

Don Tarpey, 365 Shore Drive, asked why an applicant would declare a hardship when he knew the lot was undersized. Mr. Baxter stated that is not a legitimate question.

Neal Taber was sworn in and stated that he lives at 4 Fay Street. He advised that he bought the home in 2013, which is adjacent to the subject property. At the time of purchase, the home on the subject property was still standing. He has no objection to a house being built however he is objecting because he is concerned with coverage. He has two personal concerns with impact to him. He appeared before a Highlands Zoning Board and another property that received setback variances and he was told to plant trees to mitigate the impact of the closeness of the homes. He planted 19 trees and spent thousands of dollars and countless hours of labor to build these trees. This neighborhood is at the foot of Mount Mitchell and they are limited on sunlight as it is. He has watched these trees grow and mature and they have added and contributed to the neighborhood in many ways, one to mitigate water run-off and they have added to the habitats for the native birds. The birds use these trees for nests and food during the winter. If this home is constructed it will deprive the trees of sunlight and the birds will die. The grass will also be killed and will no longer be able to help with water run-off. This neighborhood already has

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flooding issues from the water that flows off of Mount Mitchell and building this home would exacerbate that problem.

Mr. Gasiorowski stated that the only thing Mr. Taber is asking, because it is physically possible to build a footprint that is compliant, that is all he wants them to do. Mr. Taber replied that is correct. He is asking the Board to protect his rights as a resident.

Mr. Gallagher questioned the species of birds are in the trees. Mr. Taber replied mostly sparrows, blue jays, because they really like the juniper berries, and cardinals.

Mr. Braswell is asking how the trees would be affected by this home. Mr. Taber stated that they will not get sunlight because of the shadow cast by the home. They will lose the morning sunlight and the sun in the late morning. Mr. Braswell asked if a compliant house would cast a shadow. Mr. Taber stated that during the summer time they would still get sun late in the morning. Mr. Gallagher asked if Mr. Taber is a climatologist or sun expert. Mr. Taber replied that he is no expert but he sits on his porch and watches the sun. His neighbors can also testify that the area is called Shady Town.

Mr. Zimmerman asked if Shady Town is an existing condition in the neighborhood. Mr. Taber stated that Mount Mitchell has been here since the last glacial ice age. Mr. Zimmerman questioned the testimony about the ability for the trees to thrive and asked if that is just personal opinion since he is not an arborist, environmental consultant or qualified in any way. Mr. Taber replied no he is just a man who watched the sun for the last five years. Mr. Zimmerman asked if his property sits above or below the subject property. Mr. Taber replied that the subject property is about half a foot below his property; there is a slight grade. Mr. Zimmerman referred to testimony regarding pooling of water on his property; would the run-off be running up hill to pool on Mr. Taber's property. Mr. Taber replied that he has seen water run adjacently from other properties.

Mr. Gallagher asked if the public has any questions for Mr. Taber.

Mary Ryan asked questions regarding who has the nicest lawn and who spends the most time on their grass. Mr. Taber replied it would be him. Ms. Ryan stated that the neighbors are concerned with Mr. Taber when they don't see him tending to his yard. She added that he may not be an arborist but he spends a lot of time working in his yard.

Mr. Gallagher asked for comments or testimony from the public.

Anthony Catellitto, 361 Shore Drive, was sworn in and offered comments regarding the rebuilding of his home. He was not compliant and was told he couldn't come to the Board by a previous staff member. He has no objection to the build, but it should be compliant.

Resident of 363 Shore Drive, was sworn in and stated that they are objecting to the size of the home because it is too big.

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Don Tarpey, Shore Drive was sworn in and questioned the definition of hardship. Mr. Baxter explained.

Seeing no further comments, the public hearing was closed. Mr. Gasiorowski and Mr. Zimmerman gave their summations.

Mr. Gallagher asked if a compliant home was built would it still be 18 feet wide. Mr. Thomas replied it would still be 18 feet wide but it would be shifted towards the center of the lot and it would not be as long and no variance would be needed.

Mr. Zimmerman stated that they know that compliant home could be built, but any home that complies would be too small for the use they require for their family. It would also be a very narrow and short in depth home so for those reasons, they ask for the variance to be granted.

Mr. Gasiorowski stated that Counsel just admitted they could build a compliant home without seeking variances but this particular family wants a larger house and that is not the basis for granting a variance. Mr. Zimmerman feels that they have submitted ample testimony towards to the two criteria.

Mr. Baxter read statutes regarding the criteria for granting variances. Mr. Francy added that he finds it troubling to grant the variances. This is a clear situation of the applicant pushing the envelope and he would like the Borough to review the ordinances that relate to height. Several Board members agreed.

MR. FRANCY OFFERED A MOTION TO DENY THE APPLICATION, SECONDED BY MR. NOLAN.

Ayes: Mayor O'Neil, Mr. Braswell, Chief Burton, Mr. Francy, Mr. Gallagher, Mr. Nolan, Mr. Lee, Mr. Kutosh

Nays: None

Abstain: Mr. Montecalvo, Ms. Compagni

Absent: Mr. Knox, Mr. Colby

At this time the Board took a brief recess.

Roll Call upon Reconvening:

PRESENT: Chief Burton, Councilmember Braswell, Mr. Francy, Mr. Gallagher, Mr. Nolan, Mr. Stockton, Mr. Lee, Mr. Kutosh, Mr. Montecalvo, Ms. Compagni

ABSENT: Mayor O'Neil, Mr. Francy, Mr. Knox, Mr. Colby

Application 2018-07, 22-24 Fifth Street, Block 56, Lot 15 (Scanlon) – Eileen Scanlon appeared as the owner of the property.

Mr. Baxter advised that the notices are in order however there is no application on file for this case. Ms. Scanlon only filled out the application this evening. Mr. Braswell asked how it got this

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far without an application. Mr. Baxter stated that he does not know. Mr. Gallagher noted that there are two application forms in the packet with the map.

Mr. Baxter stated that the variance application was not filled out until this evening. Ms. Uriarte indicated that the wrong form was submitted however she did not know there was a separate form for the variance. She had taken in the application and processed it with the improper forms.

Board Discussion was held and Mr. Baxter advised the application cannot be heard since there was no application on file.

MR. NOLAN OFFERED A MOTION TO CARRY THE APPLICATION TO THE NEXT MEETING, SECONDED BY MR. GALLAGHER. ALL MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Mr. Stockton announced this application will be carried to the January Reorganization meeting at 7:30 p.m. in the Community Center. No further notice will be required.

Board Members held a discussion regarding the date for the 2019 Reorganization meeting and it was decided to be held on the first Thursday of the year, January 3, 2019. All members voted in favor by voice vote.

Minutes for Approval

October 4, 2018 – COUNCILMAN BRASWELL OFFERED A MOTION TO APPROVE THE MINUTES, SECONDED BY MR. GALLAGHER. ALL PRESENT, ELIGIBLE MEMBERS VOTED IN FAVOR BY VOICE VOTE.

November 1, 2018 – MR. NOLAN OFFERED A MOTION TO APPROVE THE MINUTES, SECONDED BY MR. GALLAGHER. ALL PRESENT, ELIGIBLE MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Mr. Nolan noted that the members of the public are here to discuss Shadow Lawn however it is not on the Agenda. Councilman Braswell advised final adoption will be done by the Council on the 19th. Member of the public asked if an application has been filed with the Planning Board and was advised no applications have been filed yet.

Adjournment

Seeing no further business, Mr. Gallagher asked for a motion to adjourn.

MR. NOLAN OFFERED A MOTION TO ADJOURN THE MEETING AT 10:27 PM, SECONDED BY MR. KUTOSH. ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Respectfully submitted,

Erin Uriarte
Land Use Board Secretary