

**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 \_\_\_\_\_ day of \_\_\_\_\_, 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.

ON MOTION OF: Mr. Kutsoh

SECONDED BY: Councilmember Mazzola

ROLL CALL:

YES: Mr. Kutsoh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mr. Knox

NO:

ABSTAINED: Mr. Colby, Chairman Stockton

ABSENT: Mr. Montecalvo, Ms. Tierney

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on May 7, 2020



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Michelle Hutchinson, Secretary  
Borough of Highlands Land Use Board