



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**LAND USE BOARD RESOLUTION 2019-09
RESOLUTION APPROVING BULK VARIANCES
FOR ARORA TRADING, LLC AT 228 BAY AVENUE**

WHEREAS, the applicant, ARORA TRADING, LLC is the owner of a newly constructed home at 228 Bay Avenue, Highlands, New Jersey (Block 64, Lot 18) and has filed an application to approve the already completed construction as the result of encroachments into the setback requirements and coverage, which were not part of the originally approved plans; 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 October 3 and November 7, 2019; and

WHEREAS, the Board heard testimony from the applicant's builder, CHRISTOPHER RUBY, who the applicant consented to process its application; and PATRICK WARD, the applicant's engineer and planner; and

WHEREAS, no persons appeared to ask questions or object to the application, though the neighbor's son, RUSSELL CARD, testified on November 7 that he and his father were pleased to see that the staircase and platform on the westerly side of the home were removed; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (2 pages)
- A-2 Narrative of Intent (3 pages)
- A-3 Letter from Hilliard Construction dated 9/12/19 (2 pages)

- A-4 As built final location survey by Thomas Finnegan dated 10/19/18
- A-5 Same as A-4, with variance information added 9/10/19
- A-6 Resolution approving bulk variances for 228 Bay Ave. dated 5/9/18
- THERE IS NO A-7
- A-8 7/24/19 letter from Kevin Kennedy, Esq. to Borough Clerk, Mr. Arjika, Borough Attorney, Land Use Board Attorney and Mr. Herrman
- A-9 Picture of house at 25 Fourth Street
- A-10 Picture of house at 61 Fourth Street
- A-11 Picture of houses at 228 & 226 Bay Ave.
- A-12 Picture of the subject house—25 Cedar Street
- A-13 Copy of Borough Ordinance 21-65.27
- A-14 Picture of houses at 15 & 17 Fourth Street
- A-15 Topographical land survey by Thomas Finnegan dated 11/30/17
- A-16 revised Finnegan survey of 10/22/19

AND, WHEREAS, the following exhibit was also marked into evidence:

- B-1 Board engineer incompleteness letter by Edward Herrman dated 8/22/19 (2 pages)
- B-2 Board engineer review letter by Edward Herrman dated 9/27/19 (3 pages)

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

1. The applicant is the owner of a newly constructed home in the R-2.02 Zone.
2. This property was previously before the Land Use Board on March 8, 2018 (resolution is dated May 8, 2018; exhibit A-6 here), at which time variance relief was requested and obtained for side yard setback, front yard setback and building coverage.
3. The applicant then began construction, virtually completing the home, however, the Construction Department declined to issue a Certificate of Occupancy because of discrepancies between the approved plan and resolution, and what was actually built.

4. The issues in this case center around the staircase leading to the first living level and its attached platform/deck, and the covered front porch.

5. The applicant's builder, Christopher Ruby, testified that he has built five or six homes in the Borough over the past six years. Photographs of those homes were admitted into evidence as Exhibits A-9, A-10, A-11, A-12 and A-14.

6. In each of the prior constructed homes, the applicant's builder placed staircases to reach the electric meter and/or air conditioning units, and no variance relief was required for the same. In each case a Certificate of Occupancy was issued, the properties were sold, and new owners inhabit those homes.

7. In the subject case, when the builder and owner sought a Certificate of Occupancy, that relief was denied because the staircase on the original approved plans came down the left/westerly side of the property at the same sideyard distance as the structure. However, the actually built staircase came down within inches of the left/westerly sideyard, being only arms-length from the neighboring structure. Previously, when this matter was heard before the Board in 2018, variance relief for the side yard setback was granted of 3/4 feet where 6/8 feet are required. The "as built" condition was .5 feet.

8. Between the first and second hearing nights, the applicant removed the newly-built staircase and platform on the left/westerly side of the property and reinstalled the staircase only so that it is the same distance from the sideyard property line as approved in 2018. As a result, no sideyard variances are needed.

9. Also, because of the roof over the front porch, a front yard setback variance was previously granted of 15.1 feet, where 20 feet is required. As built,

the setback is 12.5 feet, a further incursion into the front yard setback requirements.

10. The applicant's expert testified, however, that the 12.5 feet front yard setback is very similar to the house to the east/right, and is further set back from the house to the west/left. The board notes that it is not clear, therefore, whether a variance for the front yard setback is even required, but if it is, the board grants it.

11. Both Mr. Ward and Mr. Ruby testified regarding the electric meter and JCP&L's requirements regarding access, which standards must be met in order for service to be provided to a home.

12. In order to avoid the requirement of another variance, and still comply with JCP&L's requirements, the applicant agreed to move the electric meter to the front of the home, above the flood plain level, but still accessible to the JCP&L staff. The board left it to the applicant where to place the same on the front of the home, as long as it is above the base flood elevation.

13. The original application had an air conditioning unit on the westerly/left side of the home, which encroached into the side yard setback. Between hearing dates, the A/C unit was moved to the rear of the house, thereby resolving that issue. No variance is now required for the new location of the A/C unit.

14. Both Mr. Ward and Mr. Ruby testified that the covered porch is more aesthetically pleasing, breaking up the front, and the roof line. The Board agreed.

15. The building coverage originally approved in 2018 was 36.36%, where 33% is permitted. As a result of the as-built plans, the coverage is now

37.44%, which the board finds to be a de minimus change, and therefore approves the same.

16. Mr. Ward further testified that the construction of this home will be in accordance with codes, provide fire and flood safety. That, plus the desirable visual environment, create an overall net positive for the general welfare, according to Mr. Ward.

17. The applicant now, as a result of the changes made between hearing dates, only requests variances for the following conditions:

- A. Pre-existing minimum lot area of 2,500 square feet, where 4,000 square feet are required;
- B. Pre-existing minimum lot frontage of 25 feet, where 50 feet are required; and
- C. Front yard setback of 12.5 feet, where 20 feet are required.
- D. Building coverage of 37.44%, where 33% is permitted.

18. No parking variance is required, since the off-street parking requirements of the ordinance have been met.

19. The applicant meets the requirements of N.J.S.A. 40:55D-70c(2) in that the deviations between the zoning ordinance and the relief requested will promote a public purpose and thereby provide improved community planning that benefits the public, and the benefits of the variance substantially outweigh any detriment. The board finds no detriment.

20. The granting of this variance is done without substantial detriment to the public good, and will not substantially impair the intent and purpose of the

zone plan and zoning ordinance. There will be no adverse impact on surrounding properties, and there will be no damage to the character of the neighborhood, nor any substantial detriment to the public good. In fact, the neighbor most affected by this development testified that he finds the construction, as modified, acceptable, and thanked the developer for making the changes.

WHEREAS, the application was heard by the Board at its meetings on October 3 and November 7, 2019, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Highlands Land Use Board of the Borough of Highlands that the application of AURORA TRADING LLC to for both pre-existing conditions and new variances, as set forth in paragraph 16 above, are hereby approved;

AND BE IT FURTHER RESOLVED that this approval is subject to the following condition:

- A. The applicant shall obtain outside agency approvals, as required, from the Construction Official and all other departments and agencies having jurisdiction.
- B. The electric meter shall be moved, and the plans so amended, to the front of the home, consistent with the provisions of paragraph 12.
- C. The air conditioning unit shall remain at the rear of the home.

| Member and Class | Name: | Intro | 2nd | Aye | Nay | Abstain | Absent |
|-----------------------------|-----------------------|-------|-----|-----|-----|---------|--------|
| Mayor – Class I | Mayor O’Neil | | | | | | X |
| Borough Official – Class II | Robert Burton | | | | | X | |
| Councilmember – Class III | Councilmember Mazzola | | | X | | | |
| Member – Class IV | Mr. Colby | | | | | X | |
| Member - Class IV | Mr. Francy | X | | X | | | |
| Member – Class IV | Mr.Gallagher | | | X | | | |
| Member – Class IV | Mr.Knox | | | | | X | |
| Member – Class IV | Mr. Nolan | | X | X | | | |
| Member – Class IV | Chairman Stockton | | | X | | | |
| Alternative 1 | Mr. Kutosh | | | X | | | |
| Alternative 2 | Mr. Lee | | | X | | | |
| Alternative 3 | Mr. Montecalvo | | | X | | | |

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on December 5, 2019 on LUBR Resolution 2019-09.

Michelle Hutchinson, Land Use Secretary

