

11/1/18

**RESOLUTION APPROVING BULK VARIANCES  
FOR PORTLAND ROAD ASSOCIATES, LLC AT 112 PORTLAND ROAD**

WHEREAS, the applicant, PORTLAND ROAD ASSOCIATES, LLC is the owner of two lots at 112 Portland Road, Highlands, New Jersey (**Block 1, Lots 4.03 and 4.04**, the latter of which is a riparian grant); and

WHEREAS, the property owners filed an application to demolish the existing residential structure and construct a two-story dwelling at grade with a garage under the proposed living space; 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 a public hearing on October 4, 2018; and

WHEREAS, the Board heard the testimony of WALTER HOPKIN, the applicant's engineer and planner; PAUL MURPHY, the applicant's fire expert; and FRANK MONTECALVO, managing member of the applicant LLC; and

WHEREAS, no one appeared to ask questions or object to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Zoning Officer denial letter dated 8/6/18 with Permit Application form attached (3 pages)
- A-2 Variance Application (5 pages)
- A-3 9/8/87 Subdivision Resolution of Planning Board (5 pages)
- A-4 7/6/18 Variance Plan by Walter Hopkin of WJH Engineering (3 pages)
- A-5 Building drawing by Robert Rich Associates dated 9/11/18 (1 page)
- A-6 Rendering by Walter Hopkin

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

- B-1 Board engineer review letter by Robert Yuro dated 9/24/18 (3 pages)

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

1. The applicant is the owner of two lots located in the R-1.03 Zone.
2. The applicant seeks variances for lot frontage of 29.28 feet where 75 feet are required (a pre-existing condition, previously approved by the board); and front yard setback of one foot where 35 feet is required.
3. The Borough ordinance requires two off-street parking spaces, which condition is met as the

result of a multi-bay garage and five additional at-grade parking stalls.

4. The applicant meets the requirements of the borough's zoning ordinances, and therefore requires no variance relief for lot area, lot depth, rear yard setbacks, side yard setbacks, building height, lot coverage, or building coverage.

5. A portion of the proposed driveway is to be located on Lot 4.01, which the applicant currently owns.

6. The lot frontage variance requested is somewhat misleading in that the only frontage on Portland Road is the driveway entrance of approximately 29.28 feet. That driveway runs in excess of 128 feet along the southerly side of Lot 4.01 before it reaches the main portion of the subject property. Since that is a pre-existing condition and, at best, a de minimus violation of the ordinance, the Board finds that the requested variance for the pre-existing condition of minimum lot frontage is more than satisfied.

7. The front yard setback variance of 1.0 feet is also somewhat misleading, in that you have to go approximately 188 feet off of Portland Road before you reach the proposed primary structure. That structure

would then be 1.0 feet off of the rear lot line of Lot 4.01. That deficiency is being met by an access easement to be given by the owner of Lot 4.01 to the subject (Lot 4.03).

8. At the time of the hearing, the proposed access easement from Lot 4.01 was not available to the Board. Approval of this variance, therefore, is conditioned upon review, approval and acceptance of such easement.

9. As indicated earlier, the Board heard testimony of Walter Hopkin, a professional planner and professional engineer in New Jersey, as well as other states. He and the applicant's attorney both stipulated that the conditions of the Board Engineer's review letter dated September 24, 2018 (B-1 in evidence) were both acceptable and would be complied with.

10. Other easements on the subject lot were also discussed, those being an existing sanitary sewer easement and a utility easement for an existing drainage pipe.

11. The utility (drainage) easement is along the southerly lot line separating the subject lot (4.03) from Lot 3. The initial plans submitted would have a 3 foot portion of the new home encroaching on the

drainage easement. That problem was resolved by the applicant's agreement to reduce the utility (drainage) easement on the south side from 11 feet to 7 feet, thereby avoiding any violation of the easement. Approval of this variance, therefore, is conditioned upon review, approval and acceptance of such amended easement.

12. This is an oversized lot, being in excess of 20,000 square feet (actually 27,375 square feet). The lot itself is approximately 115 feet deep, not counting the driveway.

13. Pursuant to a resolution of the Planning Board in 1987 (A-3 in evidence), the aforementioned drainage easement was imposed on the subject lot. That is the easement addressed in paragraph 11.

14. There is also a 20 foot wide emergency access easement which is in the front (western) portion of the property. Testimony indicated that easement starts about halfway down the driveway from Portland Road and then jogs to the left/north to the subject's northerly property line. Testimony of Mr. Murphy, which the Board accepts, was that the easement provides no benefit to the subject properties nor to any of the adjoining properties and, therefore, should be removed. Mr. Murphy further testified that the

removal of that easement would not constitute a hardship for any emergency services' access. The Board had no objection to the removal of the easement, however, the Board has not yet seen the existing easement in order to make a final determination. Accordingly, that existing easement shall be supplied to the Board Attorney and Board Engineer for review. If either of the Board's professionals determine that the easement serves, or is meant to serve, any property other than the subject, the Board will reconsider this issue.

15. There will be no construction between the pool and the Shrewsbury River (i.e. the easternmost portion of the property).

16. The Board also heard testimony about the roof line vis à vis the Board's 1987 resolution (A-3).

17. The board considered the height of the new structure, the 1987 resolution, and the borough's current zoning ordinances on the subject. The board determines that if the applicant constructs its new home in accordance with the plans and evidence submitted, no height variance is required.

18. The drainage easement previously discussed also runs in a L-shape from the property's southerly property line (Lot 3) towards the lot line with Lot

4.02. The applicant does not propose to remove or disturb the north-south portion of that easement (i.e. the board only addresses the east-west portion of the easement).

19. The Board also took testimony on the proposed grading and found that there would be no adverse impact, either on the subject property or the adjoining properties.

20. The Board further determines that, if the currently existing easements are treated as set forth in this resolution, there will be no adverse impact on the subject property or any adjoining properties. This property is somewhat unique in that there is a lengthy driveway accessing the major portion of the property.

21. The Board finds the two variances sought, both pre-existing and new, to be reasonable and in accordance with the intent and purpose of the Borough's master plan.

22. The Board finds that the applicant has met the positive and negative criteria required under the Municipal Land Use Law. The proposed new home will not be a substantial detriment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant this bulk variance

pursuant to both N.J.S.A. 40:55d-70c(1) and -70c(2).

As to subsection c(2), the purposes of the Municipal Land Use Law will be advanced, in that the benefit of the deviations requested substantially outweigh any detriment. In fact, the Board sees no detriment.

WHEREAS, the application was heard by the Board at its meeting on October 4, 2018, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Highlands Land Use Board that the application of PORTLAND ROAD ASSOCIATES to construct a new single-family home in accordance with the evidence submitted and to demolish the existing structure, together with the variance relief set forth in paragraph 2 above is hereby granted for lot frontage and the front yard setback.

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

A. Applicants shall comply with the provisions in the Board Engineer's review letter (Exhibit B-1).

B. Grading and drainage plans shall be submitted to the Board Engineer, and be subject to his approval.

C. The drainage easement on the south side of the property shall be reduced from 11 feet to 7 feet.

D. The plan shall be amended to remove the driveway nearest to the Shrewsbury River, which comes onto the property from Lot 3 (as previously directed by NJ DEP).



E. There shall be no construction on the property east of the swimming pool.

F. The applicant shall address the height (roof top) of the proposed structure, relative to Portland Road in accordance with the earlier provisions of this resolution.

G. The emergency access easement shall be handled as follows:

(1) The existing easement shall be provided to the Board Attorney and Board Engineer;

(2) The Board Engineer and Board Attorney shall determine whether the emergency access easement was intended to serve any property other than the subject.

(3) If the Board Attorney and Board Engineer determine that the emergency access easement was not intended to services any adjoining property, then the emergency access easement shall be removed by the recording of an appropriate document with the Monmouth County Clerk.

(4) If the Board Attorney and Board Engineer determine that the emergency access easement was intended to serve the benefit of any adjoining property, they shall report such findings or determination, or their inability to make such findings, to the Board, and the Board shall determine if further discussion on this issue is warranted.

H. All easements, amended easements or easements to be vacated, including copies of the existing easements, shall be

supplied to the board attorney and board engineer, as set forth earlier in this resolution, and each shall be dealt with as detailed earlier. See, for reference purposes, paragraphs 7, 11 and 14.

OFFERED BY: Mr. Gallagher

SECONDED BY: Mr. Knox

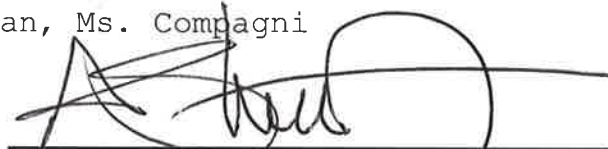
ROLL CALL:

YES: Mr. Braswell, Chief Burton, Mr. Francy,  
Mr. Knox, Mr. Colby, Mr. Lee, Mr. Kutosh,  
Mr. Gallagher, Mr. Stockton

NO: None

RECUSED: Mr. Montecalvo

ABSENT: Mr. Nolan, Ms. Compagni



**Andrew Stockton**  
**Chairperson, Land Use Board**  
**Borough of Highlands**

I certify that the above is a true and exact copy of the Resolution passed by the Land Use Board of the Borough of Highlands at its meeting held on October 4, 2018.



**Erin Uriarte**  
**Secretary, Land Use Board**  
**Borough of Highlands**