

RESOLUTION 2021-09
BOROUGH OF HIGHLANDS LAND USE BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY MINOR
SUBDIVISION APPROVAL
WITH ANCILLARY VARIANCE RELIEF

Approved: January 7, 2021
Memorialized: February 4, 2021

IN THE MATTER OF PAUL GIL

APPLICATION NO. HGPB-R1800

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by Paul Gil (hereinafter referred to as the “Applicant”) on lands known and designated as Block 77, Lot 13, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 1-3 Barberie Avenue in the R-2.01 (Single Family Residential) Zone; and

WHEREAS, a virtual public hearing was held before the Board on January 7, 2021, with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses 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 Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Highlands Land Use Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains .147 acres (6,837 s.f.) with 129.18 feet of frontage along the southeast side of Barberie Avenue and approximately 37.50 feet of frontage along the

southwest side of Marine Place within the R-2.01 Zone district. The subject Property is currently improved with a 2-story multi-family dwelling and a garage serviced by municipal water and waste systems.

2. The Applicant proposes to demolish the existing multi-family dwelling and garage, and subdivide the subject Property into two (2) new lots as follows:

- Proposed Lot 13.01 will contain .074 acres (3,217 s.f.) with 37.50 feet of frontage along Barberie Avenue to be improved with a proposed 2-story dwelling.
- Proposed Lot 13.02 will contain .073 acres (3,170 s.f.) with 43.26 feet of frontage along Marine Place to be improved with a proposed 2-story dwelling.

3. The intent of the Minor Subdivision is to demolish the existing multi-family dwelling and garage, subdivide Lot 13 into two roughly equal-sized lots (13.01 and 13.02), creating one new building lot fronting Marine Place (13.01), and building a new dwelling on the lot (13.02) facing Barberie Avenue.

4. The Applicant testified that he wished to subdivide his irregular, L-shaped Lot 13 into two separate lots and construct single family residential homes. He stated that Lot 13 was previously two separate lots which had been merged at some point.

5. Testimony was also provided by the Applicant's Builder Robert Davis, who more precisely described the application. Mr. Davis testified that the multi-family dwelling on Lot 13 has been storm-damaged and vacant since Hurricane Irene. The application proposed to subdivide the property into two lots, that would be more consistent in size and shape with those on both Barberie Avenue and Marine Place.

6. The Board's Engineer Edward Herrman, P.E., C.M.E., C.F.M., testified that the project is in the R-2.01 Zone and that the application was for minor subdivision approval with ancillary bulk variance relief from the minimum lot area, frontage, and maximum building coverage requirements. He stated that nine (9) bulk variances were required and that the Applicant would have to demonstrate his entitlement to relief pursuant to the positive and negative criteria.

7. Mr. Herrman further testified that the minimum lot area requirement in the R-2.01 Zone is 3,750 s.f. while the existing lot contains 6,387 s.f., and the proposed lots would be undersized for the Zone by varying degrees with Proposed Lot 13.01 containing 3,217 s.f. and Proposed Lot 13.02 containing 3,170 s.f.. The minimum lot frontage is 50 feet in the Zone and the proposed lots would require relief on both lots. Lot 13.01 would also not meet the Zone's required depth.

8. Mr. Herrman also explained that the front yard setback in the Zone on Barberie Avenue is 20 feet subject to the prevailing setbacks in the neighborhood, but not less than 10 feet. The proposed front yard setback would be 5.5 feet for the corner lot (Lot 13.01) and 6 feet for the interior lot (Lot 13.02) resulting in variance relief for both proposed lots. He stated, however, that the proposed setbacks are somewhat consistent with the other homes on Barberie Avenue.

9. Mr. Herrman next stated that the rear yard setback requirement for the Zone would be met on Proposed Lot 13.02 and that Proposed Lot 13.01 would lack a technical rear yard and, thus, there is no rear yard requirement for that lot. He also stated that the maximum lot coverage is met on both proposed lots. The maximum building coverage in the Zone is 33% but

the proposal would exceed that for both proposed lots; Proposed Lot 13.02 proposes 34.8% coverage and Proposed Lot 13.02 proposes 36.6% coverage.

10. The Board questioned whether the Applicant would need to return to the Land Use Board for additional relief when he constructed the dwellings on the newly subdivided lots. Mr. Herrman responded that when the Applicant proposes to construct the dwellings, the Zoning Officer would review the proposal and if any part of the proposal required additional relief, the Applicant would need to return to the Board for further approvals.

11. Mr. Herrman then explained that the application proposes two parking spaces for each unit which is in accord with the Zoning Ordinance. The application proposes utilizing existing utility connections and the Applicant would have to demonstrate that the existing utility connections are viable and also add new utilities to the new home.

12. Mr. Herrman further testified that the project is located in the VE Zone, so any construction would also require DEP permits. Construction of the homes would have to satisfy V Zone code standards and would have to be submitted to the Flood Plain Management Department and Building Department for compliance reviews.

13. Mr. Davis then continued to testify about the application noting, partly in response to questions from the Board, that the proposed lots would be consistent in size and shape with the other lots on Barberie Avenue and Marine Place, and that the proposed new dwellings would be consistent with other homes in the area. Accordingly, the proposed subdivision would be in keeping with the neighborhood.

14. Mr. Davis and the Applicant then discussed the positive and negative criteria, testifying that the subdivision would benefit the neighborhood by eliminating a vacant, foreclosed, storm-damaged, unlivable multi-family dwelling and turning the subject Property into two, attractive single-family homes. Multifamily dwellings are not a permitted use in the R-2.01 Zone and, thus, the application would be eradicating a nonconformity. The application would have no negative impact on the neighborhood.

15. Mr. Herrman also opined that the application would likely promote the purposes of zoning enumerated in the Municipal Land Use Law, under a few of the conditions set forth therein. Mr. Herrman then confirmed that the subdivision would be filed by deed.

16. The Board requested that the Applicant provide appropriate landscaping of the subdivided lots with appropriate lawn, landscaping rock, or shrubbery consistent with the neighborhood. The Applicant agreed to do so.

17. The Board then questioned whether the size of the buildings identified on the plans would be what the Applicant actually planned to construct in the future. The Applicant and Mr. Davis agreed that the plans were representative of the size of the homes they wished to construct although the shape may change.

18. The hearing was then opened to the public at which time testimony was taken from Tricia Rivera, 31 Waterwitch Avenue, who asked whether the Applicant's public notice identified the types of variances requested. The Applicant responded that the types of variances were identified in the notice sent to all property owners within 200 feet and published in the newspaper prior to the hearing.

19. Testimony was then taken from Walter Guenther, 2 Marine Place, a neighbor of the proposed subdivision. He supported the application because it would result in the demolition of the ugly, multi-family dwelling on the current lot and replace same. Mr. Guenther asked how soon demolition would begin, to which Mr. Davis responded they would apply for demolition permits as soon as possible and proceed thereafter.

20. Testimony was taken from Paul Oliveira, 14 Seadrift Avenue, who asked whether the Applicant intended on keeping the existing garage and whether the application required a height variance. The Applicant and Mr. Davis responded that as listed on the plans, the existing garage would be demolished and that no height variance was requested or required with the application.

21. There were no other members of the public expressing an interest in this application.

WHEREAS, the Highlands 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 Applicant's request for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c should be granted in this instance.

The Board finds that the Applicant has proposed a minor subdivision which 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 applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An 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 applicant has 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, an 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 Applicant has satisfied the positive criteria with regard to the previously enumerated requests for variance relief from minimum lot size requirements, frontage

requirements, and maximum building coverage requirements. The Board finds that the proposed subdivision eliminates a non-conforming use by demolishing the current multifamily dwelling on Lot 13. The proposed subdivision will create two, nearly equal-sized lots consistent with the prevailing neighborhood scheme. The homes proposed to be constructed thereon would be of the same size and shape as those in the surrounding neighborhood. The Board finds that the application advances the goals of Municipal Land Use Law as enumerated at N.J.S.A. 40:55D-2 by promoting the establishment of appropriate population density concentrations that contribute to the wellbeing of the neighborhoods and preservation of the environment; promoting adequate air, light and open space; and promoting to a desirable visual environment through creative development techniques and civic design/arrangements. The Board therefore finds that the positive criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The proposed subdivision of the existing lot into two smaller, equal-sized lots creates two uniform lots that are substantially-similar to other lots in the surrounding neighborhood. As previously stated, the community will also benefit from the elimination of the existing dilapidated nonconforming use which would be replaced by two (2) aesthetically pleasing conforming single-family structures. The Board therefore finds that the proposed variance relief does not result in a substantial detriment to the zone plan or the zoning ordinance or the public good. The Applicant has therefore satisfied the negative criteria. The Board further finds that the positive criteria substantially outweighs the negative criteria and that variance relief can be granted pursuant to N.J.S.A. 40:55D-70c(2) in this instance.

With the exception of the above relief, the Applicant has complied with all other zoning, subdivision and design criteria. The Applicant may therefore be granted minor subdivision approval pursuant to N.J.S.A. 40:55D-47.

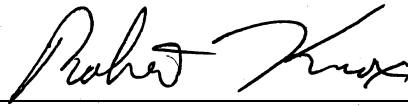
NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 4th day of February 2021, that the action of the Land Use Board taken on January 7, 2020, granting Application No. HGPB-R1800, for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in the strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this resolution, the Applicant shall comply with all recommendations contained in the reports of the Board professionals.
3. The Deed recorded memorializing this subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicant shall record the Subdivision Plat or Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render this approval null and void.
4. The Applicant shall record this Resolution in the Office of the Monmouth County Clerk.
5. The Applicant shall submit a Landscaping Plan, which includes using lawn, landscaping rock, or shrubbery (a permeable surface) consistent with the neighboring properties, subject to review and approval of the Board Engineer.
6. Any future modifications to this approved plan must be submitted to the Board for approval.
7. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).

8. The Applicant shall provide a certificate that taxes are paid to date of approval.
9. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
10. 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 Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Robert Knox, Chairman
Borough of Highlands Land Use Board

ON MOTION OF: Mr. Kutosh

SECONDED BY: Ms. LaRussa

ROLL CALL:

YES: Broullon, Burton, Kutosh, LaRussa, Martin, Tierney, Knox, Walsh

NO:

ABSTAINED:

ABSENT: Lee, Montecalvo

DATED: February 4, 2021

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Highlands Land Use Board, Monmouth County, New Jersey at a public meeting held on February 4, 2021.



Michelle Hutchinson, Secretary
Borough of Highlands Land Use Board

1949221_1

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. HGPB-R1800 / Paul Gil

Minor Subdivision

January 7, 2021

February 4, 2021

- A-1 Minor Subdivision Plan consisting of one (1) sheet prepared by Richard E. Stockton & Associates, Inc. dated July 24, 2019, last revised through July 22, 2020.

INTEROFFICE REPORTS

- B-1 Planning Board Application for Subdivision, dated March 10, 2020.
- B-2 Zoning Denial, dated October 2, 2019.
- B-3 Copy of receipts from Sewer Department March 9, 2020
- B-4 Board Engineer's Review of Minor Subdivision, Plat Requirements (completeness) letter, dated July 9, 2020
- B-5 Board Engineer's Review letter, dated August 29, 2020
- B-6 Board Engineer's Fee and Escrow Calculation letter, dated August 29, 2020

NOTICE

PLEASE TAKE NOTICE THAT ON JANUARY 7, 2021, THE LAND USE BOARD OF THE BOROUGH OF HIGHLANDS GRANTED MINOR SUBDIVISION APPROVAL ALONG WITH ANCILLARY VARIANCE RELIEF TO PAUL GIL, BLOCK 77, LOT 13 AS DEPICTED ON THE TAX MAP OF THE BOROUGH OF HIGHLANDS, AND MORE COMMONLY KNOWN AS 1-3 BARBERIE AVENUE, BOROUGH OF HIGHLANDS, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER HGPB-R1800, PERMITTING THE SUBDIVISION OF BLOCK 77, LOT 13 INTO TWO NEARLY, EQUAL-SIZED LOTS TO BE USED FOR SINGLE FAMILY RESIDENTIAL DEVELOPMENT. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE LAND USE BOARD, BOROUGH OF HIGHLANDS MUNICIPAL BUILDING, 42 SHORE DRIVE, HIGHLANDS, NEW JERSEY.

PAUL GIL

1949221_1