

**Borough of Highlands**  
**LAND USE BOARD**  
**Regular Meeting**  
**November 7, 2019**

***Meeting Location: Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ.***

Mr. Stockton called the meeting to order at 7:30 pm.

The Pledge of Allegiance was recited.

***Mr. Stockton read the following statement:*** Per P.L 1975 Chapter 271 notice is hereby given that this is a Regular Meeting of the Land Use Board of the Borough of the Highlands. All requirements have been met, notice has been posted on the public bulletin board and transmitted to the Asbury Park Press and Two River Times. Formal Action may be taken.

**ROLL CALL:**

Present: Mr. Francy, Mr. Gallagher, Councilmember Mazzola, Vice Chairman Nolan, Chairman Stockton, Alternate Mr. Lee, Alternate Mr. Montecalvo, Alternate Mr. Kutosh

Absent: Mr. Colby, Mr. Burton, Mr. Knox, Mayor O'Neil

Also Present: Board Attorney Greg Baxter, Esq.  
Board Engineer Edward Herrman  
Land Use Board Secretary Hutchinson  
Land Use Board Assistant Secretary Conlon

Mr. Stockton requested any public comments regarding the Land Use Board. There were none.

Mr. Stockton moved to approve memorialized resolutions from the Land Use Board Meeting of September 5, 2019.

**Memorialized Resolutions**

1. 2019-06 Application of Arjika Properties, Inc. for variance relief at 25 Cedar Street, Block 69 Lot 16

The Board Voted to Approve the Resolution. The record of the vote is as follows:

Board Member, Class	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
<b>Mayor O'Neil, I</b>						X
<b>Robert Burton, II</b>						X
<b>Councilmember Mazzola, III</b>		X	X			
<b>Mr. Colby, IV</b>						X
<b>Mr. Francy, IV</b>			X			
<b>Mr. Gallagher, IV</b>			X			

Mr. Knox, IV						X
Mr. Nolan, IV	X		X			
Chairman Stockton, IV			X			
Alternate Ms. Kutosh			X			
Alternate Mr. Lee			X			
Alternate Mr. Montecalvo			X			

- 2019-10 Application of John and Nichole Caruso for variance relief at 22 Gravelly Point Road, Block 100 Lot 26.22

The Board Voted to Approve the Resolution. The record of the vote is as follows:

Board Member, Class	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
Mayor O'Neil, I						X
Robert Burton, II						X
Councilmember Mazzola, III					X	
Mr. Colby, IV						X
Mr. Francy, IV			X			
Mr. Gallagher, IV			X			
Mr. Knox, IV						X
Mr. Nolan, IV	X		X			
Chairman Stockton, IV					X	
Alternate Ms. Kutosh			X			
Alternate Mr. Lee		X	X			
Alternate Mr. Montecalvo			X			

**Old Business**

Mr. Stockton requested public comment on any of the Applications pending before the Land Use Board at this meeting. There was none.

**Application of Paul Arijika d/b/a Aurora Trading, LLC for variance relief at 228 Bay Avenue, Block 64 Lot 18**

Mr. Stockton noted that this was a continued hearing from October 3, 2019.

Board Attorney Mr. Baxter re-opened the Hearing and read the list of exhibits. Present were Mr. Chris Ruby, representative for Paul Arjika d/b/a Aurora Trading, LLC, and the builder of the subject property.

Also present was the Attorney for Arjika Properties, Inc., Mr. Brad Batcha, Esq.

Also present to present testimony on behalf of Arjika Property, Inc. was Mr. Pat Ward, P.P., P.E., of Inside Engineering

Mr. Chris Ruby was sworn and provided testimony on behalf of the applicant.

Mr. Ruby testified that he had corrected two issues on the subject property by moving the staircase to be compliant with the Borough of Highlands Land Use Code. Mr. Ruby also testified that he moved the air conditioner to the rear deck to be compliant with the Borough of Highlands Code. Mr. Ruby testified that he moved the electrical meter to be compliant with the Borough of Highlands Code. Applicant Attorney Mr. Batch indicated that there were only two variances remaining which required bulk variance approval.

Upon the close of testimony the Board resolved as follows:

**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.

The air conditioning unit shall remain at the rear of the home.

Board Member, Class	INTRODUCE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Mayor O'Neil, I						X
Robert Burton, II						X
Councilmember Mazzola, III			X			
Mr. Colby, IV						X
Mr. Francy, IV	X		X			
Mr. Gallagher, IV			X			
Mr. Knox, IV						X
Mr. Nolan, IV		X	X			
Chairman Stockton, IV			X			
Alternate Mr. Kutosh			X			
Alternate Mr. Lee			X			
Alternate Mr. Montecalvo			X			

Chairman Stockton noted there were no hearings on New Business  
Chairman Stockton noted that there were two items on the Agenda for Other Business.

- 1) Ordinance Review for Master Plan Consistency - ORDINANCE 0-19-21 An Ordinance Amending Section 21-65.9 Regarding Grading Plans and Adding Fees for Grading Plan Review
- 2) Vote on LUBR-04 – A Resolution constituting the Report of the Land Use Board Concerning Ordinance No. O-19-21 UNDER N.J.S.A. 40: 55D-26

Attorney Baxter noted that both items were the same item, and accordingly should be discussed together.

Attorney Baxter explained both the Ordinance and the Resolution constituting the report of the Land Use Board Concerning Ordinance No. O-19-21.

Mr. Francy disagreed with adopting the ordinance. He noted it makes it a requirement that will affect almost all projects people will be doing in town and that it added a significant fee structure.

Mr. Nolan asked for the motivation. Mr. Stockton surmised that he believes the Borough is moving more in line with the fees charged by Middletown.

Mr. Francy note that this was a big change and he believed it was a problem.

Councilmember Mazzola indicated that the Borough Council's motivation was that many construction projects were resulting in flooding onto adjoining properties due to improper grading.

Ed Herrman noted that there are impacts to sidewalks, driveways etc. which were causing run offs, and that this Ordinance mandated review to avoid those problems. He believed that it was good sense to review these grading scenarios.

The Board discussed the size of the projects which would trigger a required grading plan.

Mr. Stockton noted that these are fairly standard Ordinances and it was consistent.

Mr. Herrman noted that without grading review this can result in ancillary flooding. He also noted that he believed it was the duty of this Board to make recommendations and that it was a good practice to have an engineer review the grading plan.

Mr. Nolan commented that he believed it was consistent with the Master plan and should be reported as such to Borough Council.

Mr. Hermann noted that this was not for small projects, but for more substantial projects which would affect the surrounding soil.

The Board Resolved as follows regarding the Report of the Land Use Board concerning the Consistency of Borough of Highlands Ordinance O-19-21 regarding Grading Plans and Adding Fees for Grading Plan Review:

**BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH**

**LAND USE BOARD RESOLUTION LUBR 19-04**

**RESOLUTION CONSTITUTING THE REPORT OF THE LAND USE BOARD CONCERNING  
ORDINANCE NO. O-19-21 UNDER N.J.S.A. 40: 55D-26**

**WHEREAS**, on or about October 16, 2019, Highlands Borough introduced ORDINANCE 0-19-21, entitled, "An Ordinance Amending Section 21-65.9 Regarding Grading Plans and Adding Fees for Grading Plan Review"; and

**WHEREAS**, on or about October 18, 2019, the Governing Body of the Borough of Highlands referred ORDINANCE 0-19-21 "An Ordinance Amending Section 21-65.9 Regarding Grading Plans and Adding Fees for Grading Plan Review" to the Land Use Board to make a determination concerning whether the Ordinance is inconsistent with the Borough of Highlands Master Plan and any other comments the Land Use Board may have concerning the proposed ordinance as authorized by N.J.S.A. 40:55D-26;

**WHEREAS**, the Land Use Board of the Borough of Highlands reviewed Ordinance No. O-19-21 at its regularly scheduled meeting of November 7, 2019; in conformance with the requirements of N.J.S.A. 40:55D-26 and found that Ordinance No. O-19-21 is not inconsistent with the Borough's Master Plan and it hereby finds as follows:

**NOW THEREFORE BE IT RESOLVED**, by motion duly made and seconded, that the Borough of Highlands Land Use Board hereby and offers the following comments to Ordinance No. O-19-21 as follows:

1. The purpose of proposed Ordinance No. O-19-21 is to amend the Borough Code so as to require grading plans for residential lots unless otherwise waived and to establish fees for review of grading plans.
2. The Board finds and concludes that the proposed Ordinance is not inconsistent with the Borough Master Plan.
3. The Board offers the following recommendations regarding Ordinance No. O-19-21;

- a. The Grading Plan shall be submitted to the Borough Engineer
  - b. The words "*a new accessory building or structure that exceeds 500 square feet*" should be removed.
4. This Resolution constitutes the Land Use Board's report pursuant to N.J.S.A. 40:55D-26 concerning Ordinance No. O-19-17, and it directs the Secretary of the Land Use Board to submit this Resolution to the Mayor and Council of the Borough of Highlands.

Record of the Vote

Board Member, Class	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
Mayor O'Neil, I						X
Robert Burton, II						X
Councilmember Mazzola, III				X		
Mr. Colby, IV						X
Mr. Francy, IV	X		X			
Mr. Gallagher, IV				X		
Mr. Knox, IV						X
Mr. Nolan, IV		X	X			
Chairman Stockton, IV			X			
Alternate Mr. Lee			X			
Alternate Mr. Montecalvo			X			
Alternate Mr. Kutosh				X		

This is a Certified True copy of the Resolution and vote on 11/07/2019

Chairman Stockton Noted that there was a referral from the Borough Council regarding the Borough's Steep Slope and Slump block ordinance.

Mr. Baxter indicated that the Borough passed Resolution R-19-250 assigning advisory duties to the land use board. Mr. Baxter further noted that the Borough Council was requesting the following from the Land Use Board:

1. Whether the definitions of steep slopes or slump blocks require revision;
2. Whether specific items such as steep slope footings, clearance, and setbacks require additional provisions or definitions;
3. Whether additional controls on development are necessary in steep slope areas;
4. Whether the Code should designate steep slope areas by specific blocks and lots or other designation, and if so, what areas should be designated as such;
5. Review of the International Building Code, New Jersey Edition, Section 1805.3, to determine if that section should be incorporated or referenced in the Borough Code; and



6. Consultation with the Environmental Commission, and such other entities as deemed necessary, to address the above items.

Mr. Baxter didn't believe the Board could review the ordinance without expert review. Mr. Gallagher indicated that the Board should hire the expert and submit for RFP's to have professionals review the board.

Mr. Gallagher offered a motion to request RFP's from the Borough Council for professional experts to assist the Land Use Board with their detail in reviewing the Steep Slope and Slump Block Ordinance.

Mr. Nolan Seconded the Motion.

The following members voted as follows

Mr. Francy, Mr. Gallagher, Councilmember Mazzola, Mr. Nolan, Chairman Stockton, Alternate Mr. Lee. Alternate Mr. Montecalvo, Alternate Mr. Kutosh voted Aye.

There were none opposed.

#### **Form Based Code Review**

Chairman Stockton noted that the Borough also referred advisory duties to the Land Use Board Regarding Form Based Code by Highlands Borough Council Resolution R-19-251.

Attorney Baxter also noted that the Board did not have the document and could not review it until they received it.

The Board discussed the time frames for returning a report to the Borough Council. The Board inquired to the municipal clerk when they could receive the Form Based Code document.

Municipal Clerk Conlon indicated he would forward a subsequent copy the following day.

#### **Approval of Minutes of September 6, 2019**

Mr. Gallagher noted the next item of business was approval of minutes from September 6, 2019.

A motion to approve the minutes of September 6, 2019 was offered by Mr. Nolan  
The motion was seconded by Chairman Stockton.

Mr. Francy, Councilmember Mazzola, Mr. Nolan, Chairman Stockton, Alternate Mr. Lee, Alternate Mr. Montecalvo, Alternate Mr. Kutosh voted Aye to approve the minutes.

Mr. Gallagher Abstained.

None were opposed.

#### **Approval of Bills**

Mr. Gallagher noted the next agenda item was approval of payment of invoices for Board Experts but noted this did not need board approval.

Mr. Nolan Offered a Motion to Adjourn. Councilmember Mazzola Seconded the motion. All were in favor, none were opposed.

The Board Adjourned at 8:52 PM

I, Matthew Conlon, RMC, Assistant Land Use Board Secretary of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Land Use Board, at its meeting, held November 7 , 2019

A handwritten signature in black ink, appearing to read 'M Conlon', written over a horizontal line.

Matthew Conlon, RMC  
Assistant Land Use Board Secretary