

Borough of Highlands
LAND USE BOARD
Regular Meeting
December 5, 2019

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

Mr. Stockton called the meeting to order at 7:34 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, Alternate Mr. Lee, Alternate Mr. Montecalvo, Alternate Mr. Kutosh Mr. Colby, Mr. Burton, Mr. Knox, Mayor O'Neil, Vice Chairman Nolan, Chairman Stockton

Absent: None

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

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 October 3, 2019. Continued on November 7, 2019.

Memorialized Resolutions

1. 2019-09 Application of Aurora Trading, LLC. for bulk variance relief at 228 Bay Avenue

**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.

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		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			
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.

Mr. Stockton opened the hearing.

Application of Five Star Real Estate Group, LLC, for variance relief at 16 Miller Street, Block 56 Lot 5

Mayor O'Neil and Councilmember Mazzola stepped down.
Mr. Baxter read the list of exhibits.

FIVE STAR REAL ESTATE GROUP, LLC (16 Miller St.) EXHIBITS

- A-1 Denial of zoning permit by Marianne Dunn, Zoning Officer dated 9/18/19
- A-2 Use Variance application (bifurcated) dated 10/11/19 (4 pages)
- A-3 Variance plan by Yosef Portnoy of Maser Consulting dated 9/6/19
- A-4 Boundary and topographic survey by Eric Wilde of Maser Consulting dated 3/6/17
- A-5 Architectural plans by Robert W. Adler dated 7/22/19 (6 pages)
- A-6 Large board with 7 color photos
- A-7 Large board with 8 color photos—Site Photo Exhibit
- A-7A same as A-7, but on 8 ½ X 11" paper
- A-8 Large board—Existing Conditions for 16 Miller St.—aerial photo
- A-9 4 screen shots from a 3-D rendering, on board
- A-10 Variance Plan on board—aerial view

BOARD EXHIBITS

- B-1 Board engineer completeness letter by Edward Herrman dated 11/18/19 (4 pages)
- B-2 Board engineer review letter by Edward Herrman dated 12/4/19 (5 pages)

Present were Mr. Bonnice, representative for Five Star Real Estate LLC and his attorney Marc A. Leckstein, Esq of Leckstein & Leckstein, LLC 463 Prospect Avenue Little Silver, NJ 07739

Atty Lexington testified that there is no site variance that will needed for this project. The only thing they are seeking approval from tonight is the number of units.

Mr. Charles Bonnice 350 Chestnut Ridge Road, Woodcliff Lake, NJ 07677, was sworn and provided testimony on behalf of Five Star Real Estate, LLC.

Mr. Bonnice testified that he did wanted to conform to the town code. The property was delapidated when he purchased it with three structures on it. One two family home and another rental unit. He is asking to place 6 units on the lot.

Mr. Francy questioned the sewer bill and how many units are being billed. Applicant stated he was not sure the billing was preexisting.

Mr. Gallagher questioned did he look to follow ordinances and what the property was zoned for. Mr. Bonnice stated it was zoned for a single family.

After the testimony of the applicant and the Board Mr. Stockton opened the floor for public comment.

Mark Van Severen 122 Statesir Place Red Bank, NJ 07748, had an issue with traffic, construction vehicles, the access road and parking.

Ann Marie Tierney 29 Shrewsbury Avenue Highlands, NJ 07732, questioning the legality of the rentals and asking if applicant is seeking a parking variance

Ed Pahler 30 Miller Street Highlands, NJ 07732, questioning size of lot and how you could increase the number of units to 6 from 4 on such a small space.

Donica Basinger, 12 Miller St Highlands, NJ 07732, upset about garbage and has had to clean the middle lot for the past few years.

Eileen Scanlon 22-24 5th Highlands, NJ 07732, does the lot have the same foot print as the neighboring lots.

William Douglas, 24 Miller Street, Highlands NJ 07732, questioning width of property conducive with the width of proposed building, board stated question for engineer.

Veronica Fennell, 80 Shrewsbury Ave, Highlands NJ 07732, questioned why applicant would want to do this with the property.

Testimony of Robert Adler, Architect 1049 Broadway #5, West Long Branch, NJ 07764

Speaking on exhibits A-9. Mr. Adler explained the look of the building, the various levels and materials being used. Front door to each of the six units would face Miller Street, which is one of the requirements. He also explained each of the units in detail square footage, layout and options purchaser would have. Each unit would have 3 bedrooms and the option for an elevator.

Mr. Gallagher had a question on which direction the buildings would face.

Mr. Nolan had a question on the height of the structure

Mr. Francy asked if the height was 32 ½ feet. Mr. Adler stated if the roof top was an issue, they would remove it they would never ask for a height variance.

Mr. Stockton asked about the back of the building if it was a continuous straight wall. Mr. Adler says it was not the same as the front façade but not a continuous straight wall.

Mr. Stockton also asked what the flood zone is. It is an A-E Zone.

The Board also noted that the parking requirement was 2.4 spaces per unit. The applicant stated that there are two parking spots inside the garage per unit.

Mr. Stockton asked if the proximity to the building located at Block 58 Lot 3 was considered.

Mr. Adler stated the idea was to keep a traditional style to fit in to the neighborhood.

Mr. Knox questioned the disposal/storage of solid waste and recycling. Mr. Adler stated there is a designated spot for waste storage in plans, located in garage under the stairs. Mr. Leckstein, stated that this would be a site plan question.

Mr. Montecalvo asked what the total length of building would be. The applicants' expert answered the building is a total of 151 ft 6 inches long and 31.8 feet high, 30.5 feet without attic.

The landscaping was noted to be a mix of gravel and vegetation which the association would maintain.

Mr. Knox asked what the square footage of each unit would be. Mr. Adler stated each unit would be 2205 square feet, 37 square feet as the attic, 421 square feet of the garage was included as that space is not considered habitable.

Mr. Baxter asked about sidewalk distance from front of structure. 14 feet does not include in the sidewalk.

Public questions for architect:

Martin of Fifth Street asked if emergency services can operate and get in if needed? The questioner stated that 50 feet is a long run and that it is on a dead-end run.

Mr. Leckstein stated the application will have to be reviewed by the fire department, by a Fire Marshall and be reviewed properly. He stated this would not be part of the variance at this time.

Chairman Stockton commented that he feels this is an importance consideration at this time.

Martin of Fifth Street inquired that if each owner was going to have to put multiple garbage cans placed out near the curb on collection days. He suggested a central spot for garbage instead of storing in the individual units. Mr. Leckstein stated garbage collection will be addressed during site plan review.

Mr. Knox asked how wide is garage, and will garbage cans fit along with cars. Mr. Leckstein stated the Garage is 19' X 20' and that there is a plan for the garbage to be stored.

Mr. Kutosh asked about fire sprinklers and fire-resistant building material should be used.

Annamarie Tierney questioned the height of the structure, from garage to the top the applicants expert answered 37 Feet.

Mr. Leckstein stated that a lot of the issues being brought up tonight will be addresses at a later meeting. The only approval applicant is seeking tonight is the number of units. Then would need to get site plan approval.

Candice Douglas 24 Miller St Highlands, NJ 07732, asked about how many cans would be out front and near her home, and that there would be more than 24 garbage cans on a short street front. She asked if the townhouse garbage would be picked up by the Borough Garbage contractor.

Pat of Clark Rd-garbage asked again about putting cans out.

Veronica Fennell 80 Shrewsbury Avenue stated she was concerned building would not fit with the current neighborhood.

Tom Walczewski of 80 Shrewsbury Avenue questioned the width of the proposed garages indicating that a 19' X 20' space would not accommodate all cars for a family with 3 drivers and asked what do you do with a car if you have more than two cars.

Donica Basinger of Miller Street asked about lighting from the buildings.

Mark Vance of Red Bank posed a similar question

Chairman Stockton closed public portion

Testimony of Mr. Yosef Portnoy of Maser Consulting, 10 Gila Place Lakewood NJ 08701, was sworn in by Mr. Baxter testifying on variance plan, using exhibit A-10 variance plan which is an aerial view of the proposed plan. He indicated that there were at least 3 existing houses on the lot.

Attorney Baxter and Chairman Stockton asked if the setbacks were checked. Mr. Portnoy confirmed they were.

Chairman Stockton indicated that it appeared there was 54 % building coverage and only 33% is allowable. Mr. Stockton asked if building fits on the property without the need of setback.

The Board questioned if a dumpster would impact the layout of the project, the expert engineer stated a dumpster would not impact the layout as drawn.

Chairman Stockton also stated that looking at the drawing and the properties surrounding it, if the building conformed with the buildings in the neighborhood. The expert Engineer did state it was larger than the other buildings around it.

Chairman Stockton also asked about the side yard setback asking that if a 6ft minimum required how far is the building from the house next door, Block 56 Lot 3. The engineer stated it is 4.6 feet less than 5 feet from the back of the proposed building and the house next door.

Attorney for applicant asked for a short recess. Mr. Stockton announced a break at 9:34pm. Mr. Kutosh exited at 9:35pm

ROLL CALL:

Present: Mr. Knox, Mr. Burton, Mr. Colby, Mr. Francy, Mr. Gallagher, Alternate Mr. Lee, Alternate Mr. Montecalvo, Vice Chairman Nolan, Chairman Stockton

Absent Mr. Kutosh

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

Mr. Leckstein stated the applicant would like to reduce the number of units to four after hearing the concerns of the residents. After reducing the number of units the building length would be 110 ft instead of 115ft.

The Board indicated that it is important to consider a lot of instances how you situate the building after reducing the number of units with regard to setbacks, fire access, distance between the applicants proposed building and the building on lot 3.

Mr. Leckstein indicated that Bulk variances will be needed.

The Board suggested the following items be addressed and ready for review at the next meeting:

1. Certificate of Occupancy Certificates for existing dwellings. The applicant stated he doesn't believe there were C of O's for the existing dwellings
2. How many units were being billed for sewer on the current property.
3. The Board suggested the applicant set up a meeting with the Fire Marshall about concerns with emergency vehicle access.

Mr. Baxter suggested the Applicant and his attorney set up meeting with the public.

The Applicant addressed the public stating he does want to work with the Board and the public and he is willing to appeal to the Board and neighbors. The applicant stated he believed 4 units would be fair but would cut into his profit significantly.

Attorney Baxter addressed applicant stating profit is not an issue please do not discuss it during the meetings. It can not be considered.

The Board indicated that it will be changing during reorganization in January 2020 as all but 2 members terms would expire 12/31/2019 and that they were not sure who would be on the Board as well as the professionals.

Mr. Leckstein asked to carry application to February 6, 2020.

Offered by Mr. Gallagher and seconded by Mr. Knox.

ROLL CALL VOTE:

Ayes: Mr. Burton, Mr. Colby, Mr. Francy, Mr. Gallagher, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan, Chairman Stockton. .

Nayes: None

Application will be carried to February 2020

Action on other business:

Ordinance 0-19-21 was already heard by Borough Council and the resolution presented by the Board regarding the Ordinance was rejected and the Ordinance was passed by Borough Council 3 to 2.

Approval of minutes:

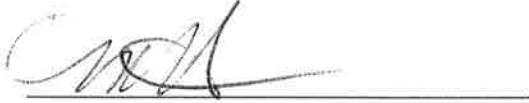
The minutes of October 3, 2019 were submitted for Approval

Approval was offered by Mr. Gallagher and seconded by Vice Chairman Nolan

All were in favor, none opposed, and the minutes were approved.

An Offer of a motion to adjourn the meeting was made by Vice Chairman Nolan, seconded by Mr. Knox. All were in favor, none were opposed, and the meeting was adjourned at 10:10pm.

I, Michelle Hutchinson, 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 December 5, 2019

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

Michelle Hutchinson
Land Use Board Secretary