

Borough of Highlands
LAND USE BOARD
Regular Meeting
October 1, 2020

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

Chairman Stockton called the meeting to order at 7:37pm.

Chairman Stockton asked all to stand for the Pledge of Allegiance.

Chairman Stockton read the following statement: As per requirement, notice is hereby given that this is an Abbreviated Meeting of the Borough of Highlands Land Use Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal Action will be taken.

ROLL CALL:

Present: Mayor Broullon, Chief Burton, Mr. Kutosh, Ms. LaRussa, Mr. Lee, Councilmember Mazzola, Ms. Tierney, Mr. Montecalvo, Ms. Pendleton, Ms. Walsh, Mr. Knox, Chairman Stockton

Absent: Ms. Nash

Also Present: Board Attorney Mr. Baxter

Board Engineer Edward Hermann

OPEN FOR PUBLIC COMMENTS: None

RESOLUTIONS:

1. **LUB2020-01, 273 & 295 Shore Drive, Block 120 Lot 10.04 & 10.05, Careri – Minor Subdivision**
Jill Careri, 295 Shore Dr., wanted explanation on the way the resolutions are signed. Mr. Baxter explained.

LAND USE BOARD RESOLUTION 2020-01
RESOLUTION APPROVING MINOR SUBDIVISION
FOR CARERI AT BLOCK 120 LOT 10.05

WHEREAS, the applicant, JILL CARERI, is the owner of 273 Shore Drive (Block 120, lot 10.04) and ALFRED W. MARKER, JR. is the owner of 295 Shore Drive (Block 120, lot 10.05), the latter of which is the subject lot sought to be subdivided; and

WHEREAS, the applicant proposes to subdivide lot 10.05 into two lots, creating the proposed lot 10.06, which would be a new lot in between the existing Careri and Marker lots; and

WHEREAS, ALFRED W. MARKER, JR. has consented to this application; and

WHEREAS, all jurisdictional requirements have been met, and the Board has jurisdiction to hear this application; and

WHEREAS, the Land Use Board of the Borough of Highlands considered the application at a public hearing on September 3, 2020; and

WHEREAS, the Board heard testimony from the applicant, JILL CARERI and her neighbor, ALFRED W. MARKER, JR.; and

WHEREAS, CHRIS FRANCY testified in support of the application, but no other persons appeared to question, support or oppose the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Application for Zoning Permit dated 4/10/19 (3 pages, including survey)
- A-2 Denial of development permit by Marianne Dunn, Zoning Officer dtd 4/10/19
- A-3 Subdivision application dated 4/2/19; received 1/2/20 (4 pages)
- A-4 Monmouth County Planning Board notice of exemption from approval dated 4/13/20
- A-5 Survey by Robert F. Hogan dated 2/12/19
- A-6 1/29/15 deed conveying Merrie Dellert's 25% interest to Alfred W. Marker, Jr., giving him title to the entire property at Block 120, lot 10.05 (recorded 3/11/15)
- A-7 Architectural Plans by Anthony Condouris dated 6/23/20 (3 pages)
- A-8 power point presentation with 13 slides

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

- B-1 Board engineer letter of incompleteness by Edward Herrman dated 1/23/20 (3 pages)
- B-2 Board engineer's completeness letter by Edward Herrman dated 4/26/19, revised 3/4/20 (3 pages)
- B-3 Board engineer's second completeness review letter by Edward Herrman dated 5/26/20 (3 pages)
- B-4 Board engineer's review letter dated 6/15/20 (4 pages)

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

1. The applicant is the owner of a single-family home at 273 Shore Drive and Mr. Marker is the owner of a single-family home at 295 Shore Drive, which properties are contiguous to each other, each being in the R-2.01 Zone.
2. Both the Careri and Marker properties also have frontage on South Linden Ave, however the rear of both of their properties have a steep slope, with no access from South Linden Avenue.
3. The applicant, Jill Careri, is the contract purchaser of the new lot to be created by this subdivision.
4. The applicant proposes to subdivide lot 10.05 in block 120 by reducing its side yard by what is proposed to be a new lot with 35 feet frontage on Shore Drive, 57.82 feet frontage on South Linden Avenue, and side lines of 147.86 on the north and 149.84 on the south.
5. No changes to any of the existing Careri or Marker houses are planned or requested.
6. The shed on the new lot will be removed.
7. The railroad ties forming a border for a playground area, together with any other encroachment onto the new lot from the Careri lot, shall be removed, such that there are no encroachments on the new lot. Also, the existing driveway on the Careri lot (block 120, lot 10.04), together with the fence, shall be relocated if the new lot (10.06) is sold.

8. The Marker and Careri properties were the subject of at least one prior subdivision, however both the applicant and Mr. Marker were unable to locate any subdivision resolution or documentation. Mr. Marker did testify that the Marker, Careri and what is now the neighboring condominium to the north of the Marker home, were once all part of the same lot owned by Mr. Marker's father.

9. The applicant seeks minor subdivision approval pursuant to Section 21-55 of the Borough Ordinance. This subdivision is minor in nature, as it contains three or less properties, does not require a new street or road, and does not adversely affect the development of the parcels.

10. As a result of the subdivision, the Marker property will be reduced to 11,985 square feet, and the new lot (10.06) will be 6,866 square feet. Both meet the minimum lot area requirements. There will be no change in the size or dimensions of the Careri lot (10.04).

11. The new lot (10.06) requires a lot frontage variance of 35 feet, where 50 feet are required. No other bulk variances are required for the new lot, understanding that, if any application to construct a dwelling is made, it will have to comply with the borough's bulk zone requirements.

12. The upward slope behind the lot will not be disturbed.

13. Though many references were made by the applicant to her financing difficulties in order to purchase the newly created lot versus moving the lot line and having a total of two lots, rather than three, the Board does not consider the financing issues as relevant to its consideration.

14. The applicant testified that her only purpose in creating this new lot is to have more space for her children and for gardening. She testified that it is not her intention to construct a home on the new lot at any time in the near future.

15. Based upon the evidence submitted, the Board is satisfied that the proposed application for a lot frontage variance and a minor subdivision will not cause any detriment to any of the surrounding properties.

16. The Board further finds that the variance requested will not substantially impair the intent and purposes of the zoning plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on September 3, 2020, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the application of JILL CARERI for a lot frontage variance for 35 feet on Shore Drive and minor subdivision of lot 10.05 into two lots (referred to on the applicant's plans as lot 10.05 and new lot 10.06 in block 120), pursuant to the plans submitted and the evidence received, is hereby granted; and the board determines that no landscaping plan is required; and no street trees shall be required.

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

A. Should the applicant decide to build a home on the newly-created lot, she shall submit for a zoning permit and also provide a detailed plot/grading/stormwater management plan at a larger detailed scale in order to document that a zoning-compliant dwelling and appurtenances can be constructed without any additional variance relief, and providing a

means of managing stormwater runoff, such that it will not impact neighboring properties or the public roadway.

B. The applicant shall provide a metes and bounds description for review and approval by the board engineer.

C. If the applicant files a plat plan, it shall be in conformance with the Map Filing Law (N.J.S.A. 46:23-9.9 et seq.), and any deed to be filed shall clearly describe the minor subdivision. In either or both cases, the document shall first be provided to the board engineer and board attorney for review and approval, before filing, and any deed shall be signed by the board chairman and board secretary before filing. The applicant shall perfect the minor subdivision by plan or deed filing with the County recorder within 190 days from the date of approval.

D. The applicant shall provide a written confirmation from the tax assessor that the lot numbering is acceptable, prior to filing any deeds.

Offered by: Mayor Broullon

Seconded by: Mr. Knox

Ayes: Vice Chairman Knox, Mayor Broullon, Mr. Kutosh, Councilmember Mazzola, Ms. Tierney, Ms. Walsh, Mr. Montecalvo

Nays: None

Abstain: None

Absent: Ms. Nash

2. **LUB2020-04, 220 Navesink Avenue, Block 120 Lot 1&2, Gundlach-Lot Line Adjustment**

**LAND USE BOARD RESOLUTION 2020-04
RESOLUTION APPROVING MINOR SUBDIVISION
FOR GUNDLACH AT BLOCK 120 LOTS 1 & 2**

WHEREAS, the applicant, PAUL GUNDLACH, is the owner of two lots, one fronting on Navesink Avenue (State Highway 36) and the other on Shore Drive, both of which contain a two-family dwelling; and

WHEREAS, the applicant proposes to move the lot line separating the two lots, effectively enlarging the Navesink Ave lot and reducing the Shore Drive lot, both as to depth, but make no changes to the structures or the lots themselves; and

WHEREAS, all jurisdictional requirements have been met, and the Board has jurisdiction to hear this application; and

WHEREAS, the Land Use Board of the Borough of Highlands considered the application at a public hearing on September 3, 2020; and

WHEREAS, the Board heard testimony from the applicant's planner and surveyor, RICHARD STOCKTON; and

WHEREAS, no other persons appeared to ask questions, object or support the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Denial of zoning permit by Marianne Dunn, Zoning Officer dated 6/3/20
- A-2 Variance application dated 5/6/20 (3 pages)
- A-3 Subdivision application dated 5/6/20 (3 pages)
- A-4 5 photos, submarked A through E
- A-5 Subdivision plan by Richard Stockton dated 2/24/20

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

- B-1 Board engineer completeness letter by Edward Herrman dated 7/13/20 (3 pages)
- B-2 Board engineer review letter by Edward Herrman dated 8/11/20 (4 pages)

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

1. The applicant is the owner of two contiguous lots, each containing a two-family residence, both lots being in the R-2.03 Zone.
2. The applicant proposes to subdivide lot 2 in block 120 by adjusting the lot line and reducing the rear yard by approximately 60 feet, as a result of which the depth of lot 2 in block 120 will be reduced to 100 feet on the northerly side line and to 100 feet on the southerly side line; and increasing the depth of lot 1 in block 120 to approximately 234 feet on the northerly side line and to approximately 232 feet on the southerly side line.
3. No changes to any of the existing structures, all of which have been present for many years, are planned or requested.
4. No changes to the landscaping are planned or requested.
5. The two lots are separated by a steep slope, the higher elevation being at lot 1. 6. The applicant seeks minor subdivision approval pursuant to Section 21-55 of the Borough Ordinance. This subdivision is minor in nature, as it contains three or less properties, does not require a new street or road, and does not adversely affect the development of the parcels.
7. Though the current uses are pre-existing non-conforming uses, the proposed subdivision will continue the two lots, as a result of which no bulk variance relief is required.
8. Because the properties are pre-existing non-conforming lots as to use, and since one is being lessened in size, a use variance is required under N.J.S.A. 40A:55D-70d2.
9. The newly configured lots will have 12,305 square feet (proposed lot 1.01) and 5,248 square feet (proposed lot 2.01). Both the lot areas, as well as the remaining dimensions, are in conformance with the zoning ordinances and are set forth on page 2 of the above-referenced Board Engineer's report
10. The slope will not be disturbed.
11. This application is made because of the applicant's desire to increase the buffer and maintain the integrity of the slope between the two lots.
12. The new rear lot line for both lots will match up with the rear lot line to the neighboring property on Navesink Ave. to the west.
13. There are currently plantings in front of each lot, as a result of which the Board determines that there is no need for a landscaping plan or the planting of any street trees.

14. There will be no streetscape changes on either Navesink Ave. or Shore Drive.

15. The applicant's planner testified that several special reasons as envisioned by N.J.S.A. 40:55D-2 are met. These include the providing of slope stability and maintaining the view; maintaining safety; continuing to provide sufficient space in appropriate locations by continuing the current residential uses on both lots in an environmentally safe way; and promoting the visual environment.

16. The applicant's planner further testified that the two lots (site) are particularly suited for the use since both structures have been there for many years and both are fully vegetated.

17. Both lots provide the parking required by the Borough ordinance.

18. Based upon the evidence submitted, the Board is satisfied that the proposed application for a use variance and a minor subdivision will not cause any detriment to any of the surrounding properties. In fact, the Board sees no detriment of any kind by the granting of this application.

19. The Board further finds that the variance requested will not substantially impair the intent and purposes of the zoning plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on September 3, 2020, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the application of PAUL GUNDLACH for a use variance and minor subdivision on Lots 1 and 2 in Block 120, pursuant to the plans submitted and the evidence received, is hereby granted.

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

A. The applicant shall provide a written confirmation from the Tax Assessor that the lot numberings (i.e., 1.01 and 2.01) are acceptable, prior to filing any deeds.

B. The applicant shall provide a metes and bounds deed description for review by the Board Engineer, and the legal form of the deed for review and approval by the Board Attorney; both to be done prior to filing.

C. The applicant advises that he will not be filing a map, but rather a deed describing the minor subdivision. The proposed deed(s) shall be submitted to the Board Engineer and Board Attorney for approval and, once approved, signed by the Chairman and Secretary of the Board.

Offered by: Mr. Kutosh

Seconded by: Mr. Lee

Ayes: Mr. Kutosh, Mr. Lee, Ms. Tierney, Ms. Walsh, Mr. Montecalvo, Ms. Pendleton

Nays: None

Abstain: None

Absent: Ms. Nash

3. **LUB2020-09 57 Shore Drive, Block 502 Lot 40, Conway-Dismissal of Appeal**

LAND USE BOARD 2020-09

RESOLUTION DISMISSING CONWAY APPEAL

FOR LACK OF JURISDICTION

WHEREAS, NINA CONWAY, filed an appeal of the Zoning Officer's zoning permit denial letter dated August 4, 2020, on property located at 57 Shore Drive (Block 502, Lot 40), Highlands, New Jersey; and

WHEREAS, N.J.S.A. 40:55D-72a permits appeals of administrative officer's actions, such appeals to be taken within twenty (20) days of the determination; and

WHEREAS, the appeal filed by NINA CONWAY is dated September 3, 2020, and her initial email regarding the same is dated September 1, 2020; and

WHEREAS, the Board Attorney has advised, by letter dated September 16, 2020, that the Board does not have jurisdiction to hear this appeal because it was not filed within the time permitted by state statute;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the appeal by NINA CONWAY of the Zoning Officer's permit denial dated August 4, 2020 is hereby dismissed because of lack of jurisdiction.

Offered by: Ms. LaRussa

Seconded by: Mr. Kutosh

Ayes: Mayor Broullon, Chief Burton, Mr. Kutosh, Ms. LaRussa, Councilmember Mazzola, Ms. Walsh, Mr. Tierney, Vice Chairman Knox, Chairman Stockton

Nays: None

Abstain: Mr. Lee

Absent: Ms. Nash

HEARINGS ON OLD BUSINESS: None

HEARINGS ON NEW BUSINESS:

1. **LUB2020-05, 193-195 Bay Avenue, Block 59 Lot 16.01, Sigman-Minor Subdivision**
Mr. Baxter swore in Mark Breitman, attorney for Mr. Sigman, who explained that there are currently two single family homes on one lot. Mr. Sigman is proposing to subdivide the property to make one single family home on each lot. The property is in the CBD

Zone that doesn't allow new single-family homes; however, existing single-family homes are allowed. Use variance was questioned and deemed that no use variance was needed.

Mr. Baxter gave history of the property and then proceeded in reading list of Exhibits: A-1 through B-2. Mr. Chairman resumed the meeting. Mr. Baxter swore in Mr. Jeffrey Carr, licensed planner and engineer in NJ, as expert on behalf of Mr. Sigman. Mr. Carr described the existing buildings, a two-story building and a 1-story bungalow, on the lot. The proposal is a simple subdivision with no new construction needed. They will need some bulk variances due to current layout on lot. Footprint of structures will not change. There is no current plan to lift the bungalow to comply with flood zone regulations. There is no parking but asking to be granted as it's pre-existing. Landscaping will not change and Mr. Carr referred to the subdivision plan regarding existing landscaping, green area, and open space.

Mr. Baxter swore in the applicant, Zack Sigman, 1203 Third St., Apt. 3, Asbury Park, NJ, to answer the number of bedrooms of each building.

Mr. Carr stated that the subdivision would bring the lots more into conformation of having one primary structure per lot. There was discussion on lot sizes, use variance, bulk variance, residential use within predominantly commercial zone, and repercussions of knocking down existing building to build something else.

Mr. Stockton opened discussion to Public when Board had no more questions.

Chris Francy, 36 5th St, stated that the lot(s) are not flood compliant. Mr. Carr confirmed. Mr. Francy stated that all houses in lower district received substantial damage from Sandy, to his knowledge. Discussion of past flood damage, flood plain requirements, flood repairs, and legal tenants. Mr. Francy asked about lot size requirement for CBD Zone. Mr. Francy stated that subdivision would be detrimental to future development of town.

Offered by: Ms. Tierney

Seconded by: Ms. LaRussa

Ayes: Mayor Broullon, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilperson Mazzola, Ms. Walsh, Ms. Tierney, Vice Chairman Knox, Chairman Stockton

Nays: None

Abstain: Chief Burton due to conflict

Absent: Ms. Nash

Mr. Breitman asked for polling of Board's reason for denial. Board's reasons were proposed 19-foot lot is too small, no off-street parking, proposal no consistent with Master Plan, proposal not confirming to CBD.

Mr. Stockton asked for 5-minute break before starting next business to resume at 8:53pm

Meeting resumed at 9:08pm

ROLL CALL:

Present: Chief Burton, Mr. Kutosh, Ms. LaRussa, Mr. Lee, Ms. Tierney, Mr. Montecalvo, Ms. Pendleton, Ms. Walsh, Mr. Knox, Chairman Stockton

Absent: Ms. Nash, Mayor Broullon, Councilmember Mazzola

Also Present: Board Attorney Mr. Baxter

Board Engineer Edward Hermann

2. LUB2019-04, 95-99 Bay Avenue, Block 41 Lot 13.01, Chia Inc, Use Variance

Mayor Broullon, Councilmember Mazzola and Mr. Stockton are conflicted out. Mr. Stockton turned meeting over to Mr. Knox. Mr. Baxter gave overview of application, explained voting order, and listed Exhibits A-1 through B-2. Mr. Baxter asked that the meeting be cut off at 10pm with possible continuation at next meeting. No one objected.

Mr. Sean Brynes, attorney representing Chia Inc., gave description of property and stated proposal asking for new residential in CBD Zone. He then asked his client to come up to testify.

Mr. Baxter swore in Charley McCaige, 220 Navesink Ave., Atlantic Highlands, NJ 07716. Mr. McCaige has been the owner of Chia Inc. for over 25 years with single-family unit experience and has owned this vacant lot since 2014. The proposal is for 2 3-story residential buildings with 4 luxury rental units each.

Mr. Baxter swore in Charles Surmond, certified and licensed engineer in NJ since 1992, to testify on behalf of Chia Inc. Mr. Surmond described lot and proposed buildings and lot layout (Exhibit A5). Proposing 2 buildings with 8 residential units total in Zone 5 Commercial Zone, which usually doesn't allow. Proposing services to use Bay Ave instead of Spring Street to avoid cutting road. Storm water plan listed as Exhibit A8. Proposing parking variance as proposal will be short the required 2.4 spaces per unit and parking spaces do meet or exceed the standard 19ft. to answer Ms. Tierney's question. All AC units are currently proposed all on one side but can change location if needed to answer Mr. Kutosh's question.

Questions from the Public:

Lyn Beadle, 54 Navesink Avenue, noted that proposal is asking for almost every variance possible and that the proposed project creates a hazard to traffic and pedestrians, citing Exhibit A9.

Gale Maryon, 72 State Route 36, questioned proposed residential project in an established Commercial Zone.

Exhibit A10 shows view of homes from Bay Avenue to answer Ms. Tierney.

With no further questions, in observance to time, Mr. Knox asked to carry discussion over to next LUB meeting, November 5, 2020, without needing further notice.

Offered by: Ms. Tierney

Seconded by: Ms. LaRussa

All in favor

ACTION ON OTHER BUSINESS:

Ms. Tierney gave an update on ordinance review committee for light. Board discussed lighting ordinance.

APPROVAL OF SEPTEMBER 3, 2020 MINUTES:

Offered by: Vice Chairman Knox

Seconded by: Ms. Tierney

Ayes: Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Ms. Tierney, Ms. Walsh, Ms. Pendleton, Vice Chairman Knox

Nays: None

Abstain: None

Absent: Ms. Nash, Mayor Broullon, Chief Burton, Councilmember Mazzola, Chairman Stockton

COMMUNICATION AND VOUCHERS:

1. Approval of Invoices from T&M Associates & Mr. Baxter, Esq.
Chairman Stockton signed vouchers.

ADJOURNMENT

Offered by: Vice Chairman motioned to adjourn meeting.

All in favor

None Opposed

Adjourned at 10:30pm

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on October 1, 2020 .



Nancy Tran, Assistant Land Use Board Secretary