

**RESOLUTION 2021-12  
BOROUGH OF HIGHLANDS LAND USE BOARD  
RESOLUTION OF MEMORIALIZATION  
MONMOUTH COUNTY, NEW JERSEY  
MINOR SUBDIVISION APPROVAL  
WITH ANCILLARY BULK VARIANCE RELIEF**

**Approved: April 1, 2021  
Memorialized: May 6, 2021**

**IN THE MATTER OF JOSEPH FRANCOLINO, JR.**

**APPLICATION NO. LUB-2020-10**

**WHEREAS**, an application for minor subdivision approval with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c has been made to the Highlands Land Use Board ( “Board”) by Joseph Francolino, Jr. ( “Applicant”) on lands known and designated as Block 91, Lot 7 on the official Tax Map of the Borough of Highlands ( “Borough”) and more commonly known as 12 Marine Place, Highlands, N.J. 07732 in the R-2.01 (Single Family Residential Zone) ( “Property”); and

**WHEREAS**, a complete application has been filed, the fees as required by Borough Ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

**WHEREAS**, public hearings were held on March 4, 2021 and April 1, 2021, via the Zoom platform, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties were provided with an opportunity to be heard.

**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 .184 acres (8,000 s.f.) with 80 feet of frontage along the southeast side of Marine Place and approximately 100 feet of frontage along the southeast side of Waterwitch Avenue within the R-2.01 Zone. The subject Property is currently vacant.

2. The Applicant proposes to subdivide the subject Property into two (2) new lots fronting Marine Place as follows:

- Proposed Lot 7.01 will contain .092 acres (4,000 s.f.) with 40 feet of frontage along Marine Place and 100 feet along Waterwitch Avenue to be improved with a proposed 4-story single family dwelling with a two-car garage.
- Proposed Lot 7.02 will contain .092 acres (4,000 s.f.) with 40 feet of frontage along Marine Place to be improved with a proposed 4-story single family dwelling with a two-car garage.

The Applicant would reside in the newly-constructed home on Proposed Lot 7.01 and sell the newly-constructed home on Proposed Lot 7.02.

3. Based upon the application and plans submitted, any amendments or modifications thereto and the testimony of the Applicant’s experts, the following bulk variance relief is required:

<u>R-2.01 Zone</u>	<u>Required</u>	<u>Existing Lot 7 (Corner Lot)</u>	<u>Proposed Lot 7.01 (Corner Lot)</u>	<u>Proposed Lot 7.02</u>
Minimum Lot Frontage (ft.)	50 ft.	80 ft.	<b>40 ft – Marine Place</b> 100 ft. Waterwitch Ave.	<b>40 ft.</b>
Minimum Lot Width (ft.)	75 ft.	90 ft.	70 ft.	<b>40 ft.</b>
Minimum Lot Depth (ft.)	75 ft.	90 ft.	<b>70 ft.</b>	100 ft.
Min. Front Yard Setback (ft.)	20 ft.	N/A	<b>12 ft. (Waterwitch Ave.)</b>	20 ft.
Min. Side Yard Setback (ft.)	6 ft. / 8 ft.	N/A	<b>2 ft. / 29.8 ft.</b>	6 ft. / 8 ft.

4. Items in **bold** require variance relief and six (6) variances in total are requested. Initially, the Applicant proposed a side yard setback for Proposed Lot 7.01 of six feet (6 ft.) and a front yard setback for Proposed Lot 7.01 of eight feet (8 ft.); however, the plans were later revised to reflect the above, thus, requiring a variance for the proposed two-foot (2 ft.) side yard setback

for Proposed Lot 7.01 and the proposed twelve-foot (12 ft.) front yard setback for Proposed Lot 7.01.

5. The Applicant's Engineer, Gregory Gitto, P.E., testified that the subject Property is located within the R-2.01 Zone and that the Applicant was seeking minor subdivision approval with ancillary bulk variance relief. He specifically stated that six (6) bulk variances were required and that the Applicant would have to demonstrate his entitlement to relief pursuant to the positive and negative criteria.

6. Mr. Gitto added that all electricals would have to be located above the flood plain and that any decks above the first floor would be considered as part of the primary structure and, thus, subject to the same setback requirements. He proposed retooling and replacing the sidewalks, including the Americans with Disabilities Act apron as part of the proposal.

7. Mr. Gitto opined that the subject Property would not likely qualify for a (c)(1) "hardship" variance but would satisfy the (c)(2) "flexible" variance criteria.

8. Mr. Gitto further testified that the project would need to satisfy the positive criteria and promote the goals of planning enumerated in the Municipal Land Use Law. He stated that the proposal satisfied the positive criteria by promoting the following goals of planning: (c) to provide adequate light air, and open space; (e) to promote appropriate population densities . . . ; and (i) to promote a desirable visual environment. . . See N.J.S.A. 40:55D-2c, e and i.

9. Mr. Gritto next testified that the negative criteria had also been satisfied because the proposal would not result in substantial detriment to the zone plan, Zoning Ordinance or public welfare.

10. The Applicant provided testimony from the project architect, Michael Deruvo, A.I.A. Due to Mr. Deruvo's hearing-impairment, project manager Vivian Esposito assisted him during his testimony and, thus, the testimony provided was from Mr. Deruvo but relayed orally at the hearing by Ms. Esposito. For purposes of the Resolution, the testimony will be directly attributed to Mr. Deruvo.

11. The Applicant testified that the subject Property is currently vacant but that prior to Hurricane Sandy, a single-family home was located on Lot 7. He stated that the subject Property was already vacant when he purchased it in 2019.

12. The Applicant testified the proposed subdivision and variance relief would yield two (2) lots and single family homes that would conform to the surrounding area in terms of lot size, width, and setback. The proposed lots would be larger than most in the surrounding area and the two (2) proposed homes would be just less than 3,000 s.f. in size, which is commensurate with those in the surrounding area.

13. The Applicant further testified that each proposed home would have four (4) bedrooms and three (3) parking spaces, with two (2) available spaces inside the garage and one (1) in the driveway. The Applicant agreed to a deed restriction, prohibiting use of the garages on Proposed Lot 7.01 and Proposed Lot 7.02 from being used for any other purpose other than as a garage for vehicles.

14. After further discussion, the Applicant testified that he would discuss any possible concerns about the project, including location and size of the proposed homes, with his neighbors.

15. The Board then identified some discrepancies between the plans and survey. The Applicant clarified that the staircase, which had initially been included on the plans for the proposed home on Proposed Lot 7.02 would not be located on the side of the home. Mr. Deruvo and the Applicant then testified that the correct location of the stairs for Proposed Lot 7.02 would be in front of the home, located from the property line approximately fourteen feet (14') to the house.

16. The Board next inquired whether the home on Proposed Lot 7.01 would have no windows on the side facing Proposed Lot 7.02, as shown on the project plans. The Applicant initially offered to add windows to the home but later clarified that the lack of windows on the plan was in error and, in fact, both homes would have windows on all sides.

17. The Board next inquired whether the Applicant had discussed the plans with his neighbors. The Applicant responded that he spoke to the neighbor behind Proposed Lot 7.01 who asked whether the home could be moved further from Waterwitch Avenue and closer to Proposed Lot 7.02. The neighbor was concerned with his line of sight and open air. The Applicant opined that all other neighbors were "happy" with the project.

18. Members of the public were invited to ask questions and, the first question received was from Thomas Snow, 15 Marine Place, who inquired whether the project was FEMA compliant. The Applicant responded that the project would have break-away walls on the first floor that would be compliant with FEMA's VE Zone requirements.

19. Mr. Snow also asked whether there was sufficient on-site parking. The Applicant responded that the on-site parking was compliant and sufficient with three (3) parking spaces.

20. Chris Francy, 36 Fifth Street, asked whether the project required a height variance. The Applicant replied that the height was compliant. Mr. Francy next inquired whether the project had the required three (3) parking spaces.

21. The Applicant provided testimony that the driveway and on-site garage parking were sufficient and could hold three (3) vehicles. The Applicant then stated that four (4) vehicles could actually fit on the subject Property. The Applicant next opined that the garage was wide enough to hold two (2) vehicles and that the garage door (at 14 feet wide) satisfied the zoning requirements, despite Mr. Francy's contentions to the contrary.

22. Robert Hanratty, 11 Waterwitch Avenue, stated that he was the neighbor directly behind the subject Property. He had previously asked the Applicant whether the home on Proposed Lot 7.01 could be shifted away from Waterwitch Avenue. He continued that most of the newer homes on Waterwitch Avenue have almost twenty feet (20 ft.) setbacks, whereas the older properties have closer to twelve-foot (12 ft.) setbacks. In the initial plans, the home on Proposed Lot 7.01 would have been located eight feet (8 ft.) from Waterwitch Avenue. He requested the home be shifted to a twelve-foot (12 ft.) setback from Waterwitch Avenue.

23. Mr. Hanratty continued that the initial eight-foot (8 ft.) setback negatively affected the neighbors' views and line-of-sight to the water, and was non-conforming. Accordingly, to make the proposed project more conforming, he requested the project be shifted away from Waterwitch Avenue.

24. Peter Mullens, 11 Marine Place, reiterated that the Applicant should obtain a survey of the surrounding properties to confirm the setback requirements for Proposed Lot 7.01 off Waterwitch Avenue. He also stated that the Applicant could also shift the home, without changing

the overall square footage thereof, while maintaining the appropriate setbacks and, thus, not needing a variance. The Applicant responded that moving the home elsewhere on Proposed Lot 7.01 would negatively impact the views of the neighbors.

25. The Applicant agreed to carry the hearing until April 1, 2021 in order to resubmit revised plans and confirm the setbacks on Waterwitch Avenue. He further agreed to discuss the objections with his neighbors in hopes of resolving same prior to the next hearing.

26. The Applicant returned to the April 1, 2021 hearing with revised plans, taking into account the concerns of the neighbors and moving the proposed home on Proposed Lot 7.01 away from Waterwitch Avenue so that it would have a twelve-foot (12 ft.) setback off of Waterwitch Avenue and a two-foot (2 ft.) side yard setback from the inner property line (Proposed Lot 7.02).

27. The Board Attorney and Architect summarized the discussions of the March 4, 2021 hearing and offered an overview of the application. The Board Engineer confirmed that because the plans had been changed and the home on Proposed Lot 7.01 shifted closer to the Proposed Lot 7.02 property line (with only a proposed two-foot (2 ft.) side yard setback), six (6) variances were now requested (whereas only five had been requested previously).

28. The Applicant further testified that he revised the plan to address the concerns of the neighbor. He stated that he has agreed to move the home on Proposed Lot 7.01 away from Waterwitch Avenue to preserve his neighbors open space and line-of-sight.

29. The Applicant then testified that his neighbors requested a twelve-foot (12 ft.) side yard setback for Waterwitch Avenue, leaving a two-foot (2 ft.) side yard setback between Proposed

Lot 7.01 and Proposed Lot 7.02. He explained that, even with the new plans, there was still ample space between the homes on Proposed Lots 7.01 and 7.02.

30. The Applicant also stated that he had surveyed the neighboring area and found that the proposed twelve-foot (12 ft.) setback was commensurate with other homes in the neighborhood and, thus, the requested relief was appropriate.

31. The hearing was then opened to the public, at which time Mr. Mullens asked whether the Board was going to require the Applicant to undertake a more scientific survey of the surrounding homes in the area for setback requirements. The Applicant reiterated that based on his calculations, his project was in accord with the setbacks in the surrounding area.

32. The Board Engineer confirmed that based upon all submitted evidence, the Applicant still needed a variance for the twelve foot (12 ft.) front yard setback for Proposed Lot 7.01.

33. Mr. Mullens asked the Board Engineer to opine on the ability of the Applicant to enter and exit from the driveway onto Proposed Lot 7.01. The Board Engineer declined to do so, noting that although the scenario may not be ideal, the Applicant was trying to comply with the Zoning Ordinances with the design of the driveway.

34. Mr. Hanratty reiterated that the Applicant discussed the matter with him and the other neighbors. Mr. Hanratty supports the amended application with the twelve foot (12 ft.) side yard setback off Waterwitch Avenue for the home on Proposed Lot 7.01. Mr. Hanratty continued that with the amended plans, the Applicant maximized his views and line-of-sight. He had no objections to the plan.



35. 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(2) 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 frontage, minimum lot width, minimum lot depth, minimum front yard setback, and minimum side yard setback requirements. The Board will address the required variances collectively. The Board finds that the proposed subdivision eliminates a vacant lot and that the proposed subdivision will create two, 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 planning contained in the 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 specifically finds that the Applicant has proposed two (2) new attractive homes. 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 neighbored. As previously stated, the community will also benefit from the elimination of the vacant lot which would be replaced by two (2) aesthetically pleasing single-family structures. The Applicant specifically revised the plans to protect the sight lines of adjoining properties. The application also will not result in any perceptible increase in noise or traffic. 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.

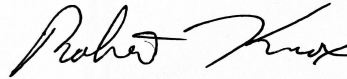
With the exception of the above relief, the Applicant has complied with all other zoning, subdivision and design ordinance criteria. The Applicant may therefore be granted minor subdivision approval pursuant to N.J.S.A. 40:55D-47.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Highlands on this 6<sup>th</sup> day of May 2021, that the action of the Land Use Board taken on April 1, 2021, granting Application No. LUB-2020-10, 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. Proposed Lot 7.01 and Proposed Lot 7.02 shall be deed restricted, prohibiting use of the motor vehicle garages for any other purpose than for the storage of motor vehicles.
7. Any future modifications to this approved plan must be submitted to the Board for approval.
8. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
9. The Applicant shall provide a certificate that taxes are paid to date of approval.
10. 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.
11. 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.



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Robert Knox, Chairman  
Borough of Highlands Land Use Board

ON MOTION OF: Mayor Broullon

SECONDED BY: Mr. Lee

ROLL CALL: Mayor Broullon, Chief Burton, Councilmember Martin, Ms. LaRussa, Mr. Lee, Mr. Montecalvo, Ms. Walsh, Ms. Chang, Ms. Nash, Vice Chair Tierney, Chair Knox

YES: Mayor Broullon, Councilmember Martin, Mr. Lee, Mr. Montecalvo, Ms. Walsh, Ms. Chang, Vice Chair Tierney

NO:

ABSTAINED:

ABSENT: Mr. Kutosh, Ms. Pendleton

DATED: May 6, 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 May 6, 2021.



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Michelle Hutchinson, Secretary  
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB-2020-10/ Joseph Francolino, Jr.

Minor Subdivision

March 4, 2021 & April 1, 2021

May 6, 2021

- A-1 Minor Subdivision Plan consisting of one (1) sheet prepared by Lakeland Surveying (Marc J. Cifone, Professional Land Surveyor), dated July 1, 2020.
- A-2 Minor Subdivision Plan consisting of one (1) sheet prepared by Lakeland Surveying (Marc J. Cifone, Professional Land Surveyor), dated July 1, 2020 and revised through March 9, 2021.
- A-3 Proposed Residential Development Plan consisting of six (6) sheets prepared by Michael Deruvo & Associates Architects, dated September 2, 2020.

INTEROFFICE REPORTS

- B-1 Application for Zoning Permit, dated September 22, 2020.
- B-2 Denial of Development Permit, dated September 22, 2020.
- B-3 Land Use Board Application for Subdivision, dated October 6, 2020.
- B-4 Flood Plain Review Application, dated October 9, 2020.
- B-5 Board Engineer's Review Letter (Review of Minor Subdivision, Plat Requirements (Completeness)), dated October 30, 2020.
- B-6 Board Engineer's Fee and Escrow Calculation Letter, dated October 30, 2020.
- B-7 Board Engineer's Review Letter (First Engineering Review), dated January 21, 2021.