

Borough of Highlands
LAND USE BOARD
Regular Meeting
February 6, 2020

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

Mr. Stockton called the meeting to order at pm 7:38pm

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

Mr. Stockton read the following statement: As per requirement of P.L.1975, Chapter 231 notice is hereby given that this is a Regular Meeting of the Borough of Highlands Land Use Board and all the 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.

ROLL CALL:

Present: Mayor Broullon, Mr. Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Mr. Montecalvo, Ms. Nash, Ms. Walsh, Ms. Tierney, Chairman Stockton

Absent: Mr. Knox (arrived at 7:51pm)

Also Present: Board Attorney Mr. Baxter

Board Engineer Mr. Herman T&M Associates

OATH OF OFFICE:

Attorney Greg Baxter swore in:

Laurie LaRussa as a Class IV Member of the Land Use Board

OPEN FOR PUBLIC COMMENTS: None

RESOLUTIONS:

1. 2019-7 12 Fourth St, Block 57 Lot 14, Arjika Property Inc. – Application for Bulk Variance Approval
2. 2019-8 40 Ocean Ave, Block 100 Lot 10, Arjika Property Inc. – Application for Bulk Variance Approval

**MEMORIALIZATION OF RESOLUTION APPROVING BULK VARIANCES
FOR ARJIKA PROPERTIES, INC. AT 12 FOURTH STREET**

WHEREAS, the applicant, ARJIKA PROPERTIES, INC. is the owner of a lot at 12 Fourth Street, Highlands, New Jersey (Block 57, Lot 14) on which a single-family home is under construction. The applicant filed an application to complete construction of a new 2-story elevated single family home with a covered front porch; 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 a public hearing on January 2, 2020; and

WHEREAS, the Board heard testimony from the applicant's builder, CHRIS RUBY; and three neighbors (WILLIAM CAIZZA, JOE MESSINA and CHARLES LEROUX). Each of the neighbors asked questions, with Mr. Caizza and Mr. Messina objecting to parts of the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (2 pages)
- A-2 Zoning Officer's denial letter dated 8/15/19
- A-3 Owner's consent form dated 9/12/19
- A-4 Topographical Location Survey by Thomas Finnegan dated 3/29/19
- A-5 same survey as A-5, revised on 1/2/20
- A-6 picture of subject home under construction
- A-7 picture of 15 and 17 Fourth Street homes, across the street, built by Mr. Ruby
- A-8 picture of façade of house built by Mr. Ruby at 25 Fourth Street

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

- B-1 Board engineer (in) completeness letter by Edward Herrman dated 8/29/19
- B-2 Board engineer completeness letter by Edward Herrman dated 9/18/19
- B-3 Board engineer review letter by Edward Herrman dated 10/28/19
(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 lot where a single-family home is under construction, located in the R-2.02 Zone.
2. The existing/proposed use for a single-family home is in conformance with the R-2.02 Zone requirements.
3. No variance relief is required for building height, as it conforms to the Borough's ordinances.
4. The applicant requests the following variances for preexisting conditions: lot area of 2,500 square feet, where 4,000 square feet are required; and

lot frontage of 40 feet, where 50 feet are required; and lot depth of 61.50 feet, where 75 feet are required.

5. The applicant also seeks variances for the following: front yard setback of 11.1 feet where 20 feet are required; rear yard setback of 16.4 feet, where 20 feet are required; side yard setbacks of 5/7 feet, where 6/8 feet are required; and building coverage of 38.7%, where 33% is permitted.

6. No parking variance is required, since the off-street parking requirements of the ordinance have been met.

7. Prior to the hearing, the applicant amended his application to eliminate the enhanced side yard incursions. The setback for the stairs and air conditioning unit shown on the original plan were no longer needed, as the unit was moved to the rear of the house. The access to the utility meter was also removed as a variance issue because the meter was moved to the front of the home.

8. On the right of the home there is a 5 ft. easement which runs in favor of the lot to the rear of the subject. There is also a 5 ft. easement on the neighboring property (Fitzgerald, Lot 8, 8 Fourth Street), resulting in a 10 foot wide easement access to the rear lot owned by Mr. Caizza. He uses that for vehicular access to his lot. Much testimony was taken from the applicant and the objectors regarding the easement. Since the applicant currently has a fence on the right side of the home, and is removing that fence, and proposing to install a new fence, no less than 5.5 feet from the right side property line, the access easement to the rear lot will be preserved on the subject property.

9. The builder, Mr. Ruby, has built several homes in the Borough, perhaps eight (8) or more, and Board members were familiar with his construction. The general comments were that he builds a nice home, which is visually appealing.

10. The issue here is the covering of the front porch which, when covered, impacts the front yard setback and the building coverage requirements in the ordinance.

11. Mr. Ruby testified that the adding of the front porch gives the home better curb appeal and is visually appealing in the neighborhood. Exhibit A-7 illustrates what the home would look like with a covered porch, since those homes, constructed by Mr. Ruby across the street, are very similar to this proposed application.

12. The applicant testified that the front stairs will be at least 3 feet from the curb line.

13. In answer to a Board member's question, the applicant testified that he could construct an interior staircase, but that would not solve the problem of having the electric meter being accessible to the utility company.

14. The neighboring home to the left has stairs on the outside, together with a covered porch.

15. The applicant's proposal is for an 18 foot wide driveway. As a result, he will have to redo the depressed curb and sidewalk.

16. The applicant testified there will be no underground utilities in the easement area, though there will be underground utilities on the easement side of the home. The applicant further testified that the construction of this home will not disturb the utilities to the rear property.

18. The only deck with a covered porch will be on the front of the home.

19. As to the rear deck, the plans show that it will be 4.4 feet from the property line. The Board was concerned that the deck be no closer than 4.4 feet to the rear property line, which the applicant represented and consented to.

20. There was further discussion regarding the potential of enclosing the front porch at a later date. The applicant testified that it is not his intent to do so, and that he would agree to a restriction that any attempt to enclose that porch would require variance approval.

21. The purpose of adding a covered deck is so that anyone standing outside, to enter the home, would be able to get out of the rain. The adding of the covered deck will also add charm and character to the home, and be consistent with the neighborhood.

22. The adding of the covered deck will not have any negative impact, visually or otherwise, on the neighborhood or the community.

23. This application was necessitated by the proposal to place a roof over the front deck, which relief the board finds to be de minimus.

24. The applicant meets the requirements of N.J.S.A. 40:55D-70c(2) in that the applicant has minimized the deviations from 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. In fact, the board finds no detriment.

25. 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.

WHEREAS, the application was heard by the Board at its meeting on January 2, 2020, 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 ARJIKA PROPERTIES, INC. to complete construction of the single family home by adding a covered deck in the front, as shown on the applicant's application and exhibits, be and the same is hereby approved; and variances are hereby granted for the pre-existing conditions set forth in paragraph 4 above, and for the additional conditions set forth in paragraph 5 above;

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

A. The applicant shall reconstruct the sidewalk and curb in conformance with the requirements of the borough engineer. Any damage to any existing pavement, sidewalk, or curb by this project shall be repaired or replaced by the applicant, to the satisfaction of the Borough.

B. The front stairs leading down towards the street, shall be, where the stairs meet grade, at least 3 feet from the sidewalk.

C. The 5 ft. easement on the right side of the home shall be kept open for access to the rear lot.

D. The existing fence on the right side of the home shall be removed. Its replacement shall be no less than 5.5 feet from the right-side property line.

E. No utility service to the rear home shall be disturbed.

F. The rear deck shall be no closer to the rear property line than 4.4 feet.

G. The front porch with roof shall not be enclosed without an application being made for variance approval to the appropriate Board, and approval being granted.

H. The applicant shall obtain outside agency approvals, as required, from the following:

(1) Construction Official

(2) Fire Official

(3) All other departments and agencies having jurisdiction.

RECORD OF VOTE

Mr. Burton offered the motion to approve.

Mr. Knox seconded the motion to approve.

Ayes: Mr. Burton, Ms. Walsh, Ms. Nash, Mr. Knox, Chairman Stockton

Nay: Mr. Kutosh

Abstentions: None

Absent: None

**MEMORIALIZATION OF RESOLUTION APPROVING BULK VARIANCES
FOR ARJIKA PROPERTIES, INC. AT 40 OCEAN AVENUE**

WHEREAS, the applicant, ARJIKA PROPERTIES, INC. is the owner of a home at 40 Ocean Avenue, Highlands, New Jersey (Block 100, Lot 3). The applicant filed an application to complete construction of a new 2-story elevated single family home with a covered front porch; 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 a public hearing on January 2, 2020; and

WHEREAS, the Board heard testimony from the applicant's builder, CHRIS RUBY; and

WHEREAS, no members of the public appeared to ask questions or comment on the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (2 pages)
- A-2 Owner's letter of consent dated 9/12/19
- A-3 Topographical Location Survey by Thomas Finnegan dated 1/3/19
- A-4 same survey as A-3, revised on 9/10/19
- A-5 same survey as A-3 and A-4, revised 1/2/20

There is no A-6

- A-7 picture of 15 and 17 Fourth Street homes, across the street, built by Mr. Ruby
- A-8 picture of façade of house built by Mr. Ruby at 25 Fourth Street
- A-9 picture of subject property/house at 40 Ocean Avenue

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

- B-1 Board engineer review letter by Edward Herrman dated 10/28/19
(3 pages)
- B-2 Board engineer completeness letter by Edward Herrman dated 9/18/19 (2 pages)

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

1. The applicant is the owner of a pre-existing non-conforming lot where a single-family home is under construction, located in the R-2.03 Zone.

2. The existing/proposed use for a single-family home is in conformance with the R-2.03 Zone requirements.

3. No variance relief is required for rear yard setback, building height or lot coverage, and, as a result of the amendment to the application and plans, no relief is now required for side yard setbacks for the entry stairs, platform and A/C unit, as they all conform to the Borough's ordinances.

4. The applicant requests the following variances for preexisting conditions: lot area of 2,375 square feet, where 4,000 square feet are required; lot frontage of 25 feet, where 50 feet are required; and lot depth of 95 feet, where 100 feet are required.

5. The applicant also seeks variances for the following: front yard setback of 15 feet where 20 feet are required; rear yard setback of 16.4 feet, where 20 feet are required; side yard setbacks of 3/4 feet, where 6/8 feet are required; and building coverage of 37.5%, where 30% is permitted.

6. No parking variance is required, since the off-street parking requirements of the ordinance have been met.

7. Prior to the hearing, the applicant amended his application to eliminate the enhanced side yard incursions. The setback for the stairs and air conditioning unit shown on the original plan were no longer needed, as the unit was moved to the rear of the house. The access to the utility meter was also removed as a variance issue because the meter was moved to the front of the home.

8. The builder, Mr. Ruby, has built several homes in the Borough, perhaps eight (8) or more, and Board members were familiar with his construction. The general comments were that he builds a nice home, which is visually appealing.

9. The issue here is the covering of the front porch which, when covered, impacts the front yard setback and the building coverage requirements in the ordinance.

10. Mr. Ruby testified that the adding of the front porch gives the home better curb appeal and is visually appealing in the neighborhood. Exhibit A-9 depicts the home without the front covered porch. Exhibits A-7 and A-8 depict other homes built by Mr. Ruby and what the home will look like with a covered front porch. All are very similar to this proposed application, albeit on lots with slightly smaller frontage.

11. The applicant testified that the front deck will be no larger than 18' X 6'.

12. The applicant testified that the front stairs, towards the street, will be no closer to the front property line than 3 feet.

13. The applicant testified that the coverage variance is needed because of the small lot size. 14. The A/C unit has now been moved to the rear deck, which is an improvement to the originally proposed plan.

15. The utility meter has now been moved to the front of the home, accessible on the front deck. This is also an improvement to the original plan.

16. The structure already exceeds the ordinance requirement as to coverage (32.9%, where 30% is permitted). The request for building coverage of 37.5% is deemed de minimus, in consideration of the small lot size.

17. There was further discussion regarding the potential of enclosing the front porch at a later date. The applicant testified that it is not his intent to do so, and that he would agree to a restriction that any attempt to enclose that porch would require variance approval.

18. The purpose of adding a covered deck is so that anyone standing outside, to enter the home, would be able to get out of the rain. The adding of the covered deck will also add charm and character to the home, and be consistent with the neighborhood.

19. The adding of the covered deck will not have any negative impact, visually or otherwise, on the neighborhood or the community.

20. This application was necessitated by the proposal to place a roof over the front deck, which relief the board finds to be de minimus.

21. The applicant meets the requirements of N.J.S.A. 40:55D-70c(2) in that the applicant has minimized the deviations from 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. In fact, the board finds no detriment.

22. 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.

WHEREAS, the application was heard by the Board at its meeting on January 2, 2020, 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 ARJIKA PROPERTIES, INC. to complete construction of the single family home by adding

a covered deck in the front, as shown on the applicant's application and exhibits, be and the same is hereby approved; and variances are hereby granted for the pre-existing conditions set forth in paragraph 4 above, and for the additional conditions set forth in paragraph 5 above;

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

A. The applicant shall reconstruct the sidewalk and curb in conformance with the requirements of the borough engineer. Any damage to any existing pavement, sidewalk, or curb by this project shall be repaired or replaced by the applicant, to the satisfaction of the Borough.

B. The front stairs leading down towards the street, shall be, where the stairs meet grade, no less than 3 feet from the front property line.

C. The front porch with roof shall not be enclosed without an application being made for variance approval to the appropriate Board, and approval being granted.

D. The applicant shall obtain outside agency approvals, as required, from the following:

(1) Construction Official

(2) Fire Official

(3) All other departments and agencies having jurisdiction.

VOTE ON MEMORIALIZED RESOLUTION

Mr. Burton offered the motion to approve.

Mr. Colby seconded the motion to approve.

Ayes: Mr. Burton, Mr. Lee, Mr. Colby, Ms. Walsh, Ms. Nash, Mr. Knox, Chairman Stockton

Nay: Mayor Broullon. Mr. Kutosh

Abstentions: None

HEARINGS ON NEW BUSINESS:

1. 2019-12 5 Lighthouse Road, Block 19 Lot 16.02, Whitefield. – Application for Minor Subdivision Approval

Board Attorney Baxter took jurisdiction of application it was deemed complete no further notice needed.

Mr. Kutosh offered motion to carry application to March 5th 2020

Mr. Knox seconded the motion to carry application to March 5th 2020

Ayes: Mayor Broullon, Mr. Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Mr. Montecalvo, Ms. Nash, Ms. Walsh, Mr. Knox

Nays: None

Abstentions: Chairman Stockton

HEARING ON OLD BUSINESS:

LUB2019-11, 16 Miller Street, Block 56 Lot 5, (Five Star Real Estate Group, LLC) -
Application for Site Plan Approval and Bulk Variances

Mayor Broullon, Councilmember Mazzola and Ms. Tierney stepped down.

Board Attorney summarized the meeting from December 5th, 2019 and went over list of exhibits.

Attorney Marc Leckstein stated an OPRA was requested for all C/O, violations, etc.

Mr. Leckstein stated there were some date discrepancies that he could not explain regarding the C/O.

Mr. Stockton asked if there were any tenants. Mr. Leckstein said there are presently no tenants.

Certificate of occupancy from December 2012 stated there were two families living in the main house. Mr. Leckstein came to the conclusion that there were at least 4 legal structures on the property listed on the various C/O's.

Mr. Patrick Lyman Engineer was sworn in and provided testimony on behalf of the applicant.

Mr. Stockton asked for Mr. Lyman to speak on existing conditions and new proposed plan for new members. New proposed plan is for two duplexes.

Mr. Stockton opened up comments from public.

Tom Walczwski had a question on lot size according to tax map record. Chairman Stockton stated that you should use the deed or survey information not the tax map records which may not always be accurate.

William Douglas 24 Miller Street had a question asking if the front of the building was an overhang or a bump out. He was told question was more for the architect.

Mr. Stockton closed public portion for engineer.

Mr. Robert Adler, Architect was recalled for further testimony. Mr. Adler stated that the units themselves have not changed, just the number of units being proposed has. The placement of the garbage has changed and there were two additional parking spaces added to each unit to allow for guest parking.

Candance Douglas of Miller Street had questioned the staking of the property with regards to the location of the fence. Mr. Adler stated he did not stake the property so he is not sure of the exact location but that it would be 3 feet from the actual property line.

Ms. LaRussa questioned as to whether two cars would fit in the garage. Mr. Adler stated the garages are standard sized and are considered two car garages. Mr. Herman agreed that the garages are within the standard.

Mr. Anthony Catalano, 2 Private Road was bothered by the flat roof design. Mr. Stockton stated that there is an existing dwelling on the corner of 5th and Miller St with a flat roof.

Ann Marie Tierney questioned how many properties in the surrounding 200-foot area are multifamily. Mr. Adler stated this would be better suited for the engineer.

Ms. Nash asked if Mr. Adler felt this proposal would fit the look of other buildings in the neighborhood. Mr. Adler is trying to use materials to make this more of a traditional look.

Robert Iler asked if Mr. Adler thought 10 cars would fit within the minimum lot frontage on this property. Mr. Adler yes it does not exceed the standard which is 50 ft and that there would be plenty of room for cars to pass.

Mr. Montecalvo asked the board engineer what is a legal lane. Mr. Adler stated 24 feet is enough space. Mr. Herman stated 18 Feet is the minimum for a residential access lane.

Veronica Fennel states there is no home in the neighborhood that faces sideways as this one would. Mr. Adler stated there is a door that faces Miller.

No further questions Chairman Stockton closed public portion 9:39pm.

Final witness sworn in by Attorney Baxter Nicholas A. Dickerson, planner with Mazer Consulting 331 Newman Springs Road Red Bank NJ 07701.

Testified that they are looking to take 3 existing structures and transform them into 2 structures each with two units each in them. There is a wide mix in neighborhood currently 2 family houses, a building that was at one point a hotel, now a 9 unit residential/commercial use, single family detached, and single family attached. He states this is a neighborhood in transition.

He quoted the master plan regarding property maintenance and that the goal of the master plan would be met by having an association maintain the property.

The boards concern is once the variance is given for a multi-family zone then it will remain with the property.

Mr. Stockton asked if ordinance 21-98C was looked at. If there was one or more unit more than 50% destroyed then they would have to be brought up to code. Mr. Leckstein stated he asked for this information in his OPRA but there was nothing designating any of the units as substantially damaged.

Chairman Stockton called for a 5-minute recess at 10:23pm.

Chairman Stockton opened meeting at 10:31pm

ROLL CALL:

Present: Mr. Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Mr. Montecalvo Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Also Present: Board Attorney Mr. Baxter

Board Engineer Mr. Herman T&M Associates

Chairman Stockton open the public portion for questions.

Danica Basinger asked if Mr. Dickerson felt that all the houses were lifted to just get out of harm's way or were they mandatorily made to lift. He did state that yes, they were not just being proactive they were made to left the homes.

Candice Douglas of Miller Street, was questioning if there would be adequate light air and open space if these homes would be built on such a small lot and 30 feet up. Mr. Dickerson stated there would be no impact on light it would not cast a shadow.

Bill Jennings of Highlands, stated that what is being proposed is better than what is there now. There are three structures that will be reduced to two structures.

Annmarie Tierney of Shrewsbury Ave if you have two small buildings and a house but what is being proposed is two rather large structures that would most definitely impact the light and air of the buildings around. Asking why the applicant feels this would be beneficial. Mr. Dickerson stated that he feels the proposal is a much better use of the property then if you elevated the existing structures.

Bill Iler asked to clarify how many bedrooms. Mr. Leckstein stated 8.

William Douglas asked why not just do 3 single family units. Mr. Leckstein stated that Mr. Adler testified it would still be the same use, that this is just a cleaner design.

Mr. Dickerson stated there will be no change in density.

Mr. Stockton closed the public at 10:56pm

RECORD OF THE VOTE

Motion to carry application to March 5th 2020

Offered by Mr. Kutosh

Seconded by Mr. Knox

Ayes: Mr. Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Nays: None

ACTION ON OTHER BUSINESS:

Referral of Ordinance O-20-01 to the Land Use Board for Master Plan Consistency (Discussion) will discussed at next meeting on February 6th, 2020.

OTHER BUSINESS: 45 Second Street Mr. Burton asked to be heard at the March 5th 2020 meeting. The board deemed the application complete and scheduled the application for March 5th 2020.

RECORD OF THE VOTE

All in favor. None Opposed

APPROVAL OF MINUTES OF JANUARY 2, 2020

Minutes tabled until next meeting.

COMMUNICATION AND VOUCHERS:

Approval of Invoices from T&M Associates & Mr. Baxter, Esq.

Board discussed putting together an ordinance review committee. Consisting of Annmarie Tierney, as chairman, Mayor Broullon, Mr. Knox and Mr. Kutosh.

ADJOURNMENT

Mr. Knox requested a motion to adjourn.

Ms. Tierney Seconded.

All in favor. None Opposed

Adjourned at 11:22PM

Offered by Mr. Knox

Seconded by Chief Burton

Ayes: Chief Burton, Mr. Colby, Mr. Kutosh, Mr. Lee, Ms. LaRussa, Councilmember Mazzola, Ms. Nash, Ms. Walsh, Mr. Knox, Chairman Stockton

Nays:

Abstain: Mayor Broullon

Absent: Ms. Tierney, Mr. Montecalvo

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on May 7, 2020



Michelle Hutchinson, Land Use Board Secretary