



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

LAND USE BOARD RESOLUTION 2019-06

**RESOLUTION APPROVING BULK VARIANCES
FOR ARJIKA PROPERTIES, INC. AT 25 CEDAR STREET**

WHEREAS, the applicant, ARJIKA PROPERTIES, INC. is the owner of a newly constructed home at 25 Cedar Street, Highlands, New Jersey (Block 69, Lot 16) and has filed an application to approve the already completed construction as to the landing and front stairs; 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 October 3, 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; 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 1/10/19
- A-5 Same as A-4, with variance information added 9/10/19
- A-6 Owner's letter of consent dated 9/12/19
- A-7 Resolution approving bulk variances for DJF Construction LLC At O Cedar Street [the subject property] dated 8/9/17 (6 pages)
- A-8 7/24/19 letter from Kevin Kennedy, Esq. to Borough Clerk, Mr.

- A-9 Arjika, Borough Attorney, Land Use Board Attorney and Mr. Herrman
- A-10 Picture of house at 25 Fourth Street
- A-11 Picture of house at 61 Fourth Street
- A-12 Picture of houses at 228 & 226 Bay Ave.
- A-13 Picture of the subject house—25 Cedar Street
- A-14 Copy of Borough Ordinance 21-65.27
- A-15 Picture of houses at 15 & 17 Fourth Street

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

- B-1 Board engineer incompleteness letter by Edward Herrman dated 8/29/19 (2 pages)
- B-2 Board engineer completeness letter by Edward Herrman dated 9/18/19 (2 pages)
- B-3 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 in 2017, at which time variance relief was requested, and obtained, for front yard setback, rear yard setback, side yard setback, and building coverage. That resolution was marked A-7 in this hearing.

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, the platform for the air conditioning unit, and the platform for the electric meter.

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, 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 did not come down to Cedar Street in line with the home, but rather was to the left of the home, 0.2 feet from the line. Previously, when this matter was heard before the Board in 2017, variance relief for the side yard setback was granted of 4/4.25 feet where 6/8 feet are required. The "as built" condition is 4.1/4.16 feet, a de minimus change from the Board's prior resolution.

8. Also, because of the roof over the front porch, a front yard setback variance was previously granted of 12 feet, where 20 feet is required. As built, the setback is 7.5 feet, a further incursion into the front yard setback requirements of 4.5 feet.

9. Mr. Ward discussed the deviations from the prior approval, pointing out that the stairs/steps do not require variance relief, but the platform at the top of the stairs, to the left of the house, does.

10. Both Mr. Ward and Mr. Ruby testified that JCP&L requires the platform for the electric meter, which standards must be met in order for service to be provided to a home.

11. The Board and applicant discussed the possibility of having a second staircase, one to the home and one for the electric panel or air conditioning

unit. Mr. Ward testified that it would not be advisable to have a second staircase on such a small lot. He also testified that the air conditioning units usually are put at the side of the home.

12. In this case, there is no structure to the immediate right of the property. Rather, it is a rear yard for an adjoining home. Accordingly, the impact is minimal.

13. In this case, the lot is neither a square nor a rectangle. Rather, it is a parallelogram, making the geometry and calculations more unusual.

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 side yard and building coverage variations are de minimus.

16. Mr. Ward further testified that the construction of this home, 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 requests variances for the following pre-existing conditions:

A. Minimum lot area of 2,500 square feet, where 4,000 square feet are required;

B. Minimum lot frontage of 25 feet, where 50 feet are required;
and

C. Minimum lot depth of 71.92 feet, where 75 feet are required.

18. The applicant also seeks variances for the following:

A. Front yard setback of 7.5 feet where 20 feet are required;

B. Rear yard setback of 10.8 feet where 20 feet are required (note that the board previously approved by resolution a rear yard setback of 9.9 feet);

C. Side yard setback of 0.2 feet for the entry stairs and meter platform, where 3 feet are required;

D. Side yard setback of 0.7 feet for the air conditioning unit and platform, where 3 feet are required; and

E. Building coverage of 39.5%, where 33% is permitted (note that the board previously approved by resolution coverage of 38.48%).

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

20. There was much discussion with the applicant, his engineer, and the Board Engineer, as well as among the Board members, regarding Ordinance 21-65.27 (Exhibit A-13). The Board was conflicted as to whether, under the wording of 21-65.27D, a variance is even required for the staircase leading down from the first living level to the street. That ordinance states "An arbor, open trellis, flag pole, unroofed steps, recreation and clothes-drying equipment, shall be permitted to encroach without limitations." Though the Board does not specifically find that the referenced ordinance permits the staircase as constructed, it is aware of the ordinance and grants variance relief for the same, if it should be determined that a variance was required.

21. 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.

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 October 3, 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 ARJIKA PROPERTIES, INC. to for both pre-existing conditions as set forth in paragraph 17 above, and for the additional bulk variance conditions set forth in paragraph 18 above be and the same 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.

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

Bulk Variances Approved 7-0

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 November 7, 2019. WITNESS my hand this 13th day of November 2019.



Michelle Hutchinson
Land Use Board Secretary
Borough of Highlands, New Jersey