

1/3/19

**RESOLUTION DENYING BULK VARIANCES  
FOR MAIER AT 353 SHORE DRIVE**

WHEREAS, the applicants, WILLIAM and DANIELLE MAIER are the owners of a vacant lot at 353 Shore Drive, Highlands, New Jersey (Block 103, Lots 6 and 15) and have filed an application to construct a single family home of four stories, the lowest level being for under-structure parking; 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 4, November 1 and December 6, 2018; and

WHEREAS, the Board heard testimony from the applicants, WILLIAM and DANIELLE MAIER, their planner, JAMES HIGGINS; ANDREW THOMAS, objector's (NEAL TABER) planner, and the following neighborhood objectors, some of whom asked questions and all but one of whom opposed the application: NEAL TABER, MARY RYAN, SCOTT BRESLOW, HARESH -----, ANTHONY CASTELLITO, DON RYAN and DON TORPEY; and

WHEREAS, the applicant submitted the following documents in evidence:

A-1	Zoning Permit denial letter by Edward Hermann dated 5/10/18
A-2	Variance Application (2 pages)
A-3	Photo-front of home--demolished
A-4	Photo-back of home--demolished
A-5	Plot plan by Richard Stockton dated 6/19/18; revised 8/22/18
A-6	Topographical survey by Richard Stockton dated 9/5/17
A-7	Architectural drawings by Catherine Franco dated 8/20/18 (1 page)
A-8	6 Buy-Sell letters from Evan Zimmerman to neighboring property owners dated Oct. 19, 2018
A-9	enlargement of exhibit A-5
A-10	Aerial photograph, enlarged, of neighborhood

A-11 Aerial of wider area with zone boundary lines, enlarged, with zoning map to right  
A-12 Appraisal by Robert Warncke dated 10/31/18  
A-13 Anasoulis resolution on 357 Shore Drive 10/25/15  
A-14 Williams resolution on 359 Shore Drive 8/7/14  
A-15 Steiner resolution on 6 King Street 8/21/13  
A-16 same as A-5; Development plan by Richard Stockton revised 11/15/18  
A-17 same as A-8; Architectural plan by Catherine Franco, still Dated 8/20/18, but now 2 pages

AND, WHEREAS, the following exhibits were also marked into evidence:

B-1 Board engineer review letter by Robert Yuro dated 8/28/18 (4 pages)  
B-2 Board engineer second review letter by Robert Yuro dated 11/28/18 (4 pages)  
  
O-1 Objector attorney's email of 10/4/18 to Board Attorney with attachments of her clients emails to her  
O-2 Buy-sell letter response from Taber dated 10-31-18  
O-3 Geraldine McDermott appraisal dated 10/30/18  
O-4 McDermott appraisal order form  
O-5 2 photos on board: #1 the subject; and #2 the adjoining house to the right/west  
O-6 2 photos on board: #3 adjoining house to the left/south; and #4 the house on Shore Dr. between King and Matthew Streets  
O-7 2 photos on board: #5 6 King Street; and #6 359 Shore Dr.  
O-8 photo on board of 357 Shore Dr.  
O-9 chart by Andrew Thomas of building coverages of surrounding homes

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

1. The applicants are the owners of a vacant lot located in the R-2.03 Zone.

2. The lot previously housed a single family home, which the applicants demolished.

3. No variance relief was required for parking, lot depth, rear yard setback, building height, lot coverage or front or side yard setbacks for the front deck and accessory structure (garage).

4. The applicants requested the following variances for preexisting conditions, though, since the lot is now vacant, "pre-existing" only refers to the former structure on the lot: lot area of 3,759 square feet where 5,000 square feet are required; and lot frontage of 41.50 feet where 50 feet are required.

5. The applicants also seek variances for the following: front yard setback of 16.9 feet where 20 feet are required; side yard setbacks of 8/4.1 feet where 6/8 feet are required; and building coverage of 36.71% where 30% is permitted.

8. The applicants purchased two undersized lots of irregular shape and now seek to "maximize the livable space", according to their testimony. The proposed square footage of the house, not counting the first/parking level, is proposed to be approximately 3,000 square feet.

9. All persons who testified regarding the size of other homes in the neighborhood stated that there may only be one other home in the neighborhood that is as large as the one proposed by the applicants. The applicants, in an effort to meet the requirements in Dallmeyer v. Lacey Tp. Bd. of Adj., 219 N.J. Super 134, 146 (Law Div. 1987), provided documentation to the Board showing their efforts to either purchase additional property from their neighbors, or to sell their property to the neighbors for fair market value. None of the neighbors offered to sell any property to the applicants, which is understandable, since the neighbors who might do so have undersized lots to begin

with, and any diminution of their lots would further exacerbate the nonconformities of their lots.

10. One neighbor, Neil Taber, who was the primary objector during the hearings, ultimately offered to buy the applicants' lots for the amount of the applicants' fair market value appraisal (i.e., \$122,000.00). The applicants rejected the offer.

11. Though the Board finds this information evidential, it was not determined to be an issue of substance in reaching the Board's determination.

12. The most telling testimony and statements made in the hearing were made on the final evening, when the objector's planner testified that you could build a totally conforming home of the same number of levels that the applicants sought on this property, without requiring any variance relief (but for the required lot area and lot frontage). The applicants, through their attorney, conceded that was true, but that the applicants, for family reasons, wanted a larger home.

13. Wanting something larger than permitted by ordinance does not meet the requirements for the granting of a C1 or C2 variance under N.J.S.A. 40A:55D-70.

14. The objectors uniformly testified that they did not object to a house being built on the applicants' property, and in fact hope that the applicants do so, but that that house proposed by the applicants was far too large and too violative of the Borough's ordinances, primarily with respect to side yards and building coverage.

15. The mass of the proposed home, being approximately 64 feet in depth and four stories high, in this area would dwarf most of the other homes. Having said that, the proposal did not violate the height ordinance, but the mass of the house and its intrusion into the required side yard setbacks make it unacceptable, from a zoning standpoint.

16. Much testimony was given by both expert planners regarding other properties in the neighborhood, their lot size, home size, and height. Though many, if not most, of those homes are on undersized lots, the building of a structure such as that proposed by the applicants, also on an undersized lot, would be far too intrusive.

17. The Board finds that the applicants' proposal would result in an overdevelopment of the property, especially when there is a better design alternative (i.e. building on a footprint that conforms to the Borough's ordinances).

18. One neighbor, the primary objector, testified about his concern of light and air, considering the limited time of day that the lots in this area have sunlight. During the balance of the day they are blocked by Mount Mitchell. Adding a house of this magnitude, with the amount of building coverage and incursion into the required side yard setbacks, would make that situation even worse.

19. A few of the objectors also discussed the potential flooding issues with water coming down the hill. That testimony was not found compelling as a reason to deny the requested variances.

20. As one Board member pointed out, we are not dealing with an existing home on an undersized lot. In this case, we are dealing with a vacant lot and, therefore, must look to the zoning ordinances of the Borough to see if a reasonably sized home could be constructed in a conforming building envelope. In this case, the Board finds that a home of the same height could be built within a permissible building envelope and still be approximately 3,000 square feet in size.

21. The Board finds no factual or legal basis to grant either a C1 or C2 variance in this case. Specifically, the Board finds that no hardship has been shown by the applicant under the C1 requirements, using the shape of the property, especially considering that a conforming home could be built; and, if the applicant's proposal were to be accepted, the detriments would far outweigh the benefits, which is just the reverse of what an applicant must show in order to obtain C2 variance relief.

22. Accordingly, the Board finds that, if it were to grant the requested variance relief, such a relief would be with substantial detriment to the public good and would substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meetings on October 4, November 1 and December 6, 2018, and this resolution shall memorialize the Board's action taken at the last of those meetings;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board/Land Use Board of the Borough of Highlands that the application of WILLIAM and DANIELLE MAIER to construct a four-level home, the lowest level being for under-structure parking, in accordance with the plans accepted in evidence, be and the same is hereby DENIED.

OFFERED BY: Mr. Francy

SECONDED BY: Mr. Nolan

ROLL CALL:

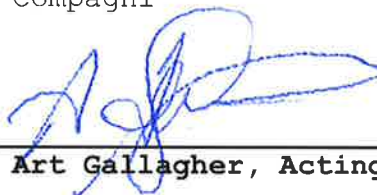
AYES: Mayor O'Neil, Councilman Braswell, Chief Burton, Mr. Francy,

Mr. Lee, Mr. Nolan, Mr. Gallagher

NAYS: None


ABSTAIN: Mr. Montecalvo, Ms. Compagni

ABSENT: Mr. Knox, Mr. Colby



**Art Gallagher, Acting Vice-Chairperson  
Land Use Board  
Borough of Highlands**

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Atlantic Highlands at its meeting held on December 6, 2018.



**Erin Uriarte, Secretary  
Land Use Board  
Borough of Highlands**