

BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2021-25
RESOLUTION OF MEMORIALIZATION
FOR BULK VARIANCE RELIEF

Approved: November 4, 2021
Memorialized: December 2, 2021

IN THE MATTER OF CHRISTOPHER MARRON

APPLICATION NO. LUB2021-04

WHEREAS, an application for bulk variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by Christopher Marron (hereinafter referred to as the “Applicant”) on lands known and designated as Block 76, Lot 15, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 39 Barberie Ave. Highlands, New Jersey, in the R-2.01 (Residential) Zone District (hereinafter “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, a public hearing was held before the Board on November 4, 2011 with regard to this application, 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; and

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 3,750 s.f. with fifty feet (50 ft.) of frontage on Barberie Avenue within the R-2.01 (Residential) Zone. The subject Property is located in flood

zone AE-11 and is currently improved with an elevated, two-story single-family residential structure.

2. The side yard setback is currently non-compliant and is proposed to remain, and is unaffected by this application.

3. The Applicant is seeking bulk “c” variance relief from the R-2.01 Zone’s minimum front yard setback requirements, proposing a nine and one-quarter foot (9-1/4 ft) setback where a twenty-foot (20 ft) setback is required. The Applicant also requests variance relief from the side yard setback, proposing a one and one-half foot (1-1/2 ft) setback where six/eight feet (6/8 ft) is required.

4. The Applicant is seeking variance relief to permit the construction of a two-story addition to the front of the dwelling within the footprint of the current front porch thereof. New access is to be provided by a newly-constructed stairwell and uncovered front porch/elevated walkway. The Applicant also proposes constructing a second-floor addition on the rear of the dwelling with a cantilevered second-floor access stairwell to a new rooftop deck.

5. The Applicant testified that he was proposing an addition of approximately 500 square feet of living space to the existing dwelling and that variance relief was required from the front and side yard setback requirements.

6. The Board Engineer testified that the subject Property is located in the R-2.01 Residential Zone and that the dwelling’s existing covered porch is already setback nine and one-quarter feet (9-1/4 ft) from the front yard property line. He further stated that the covered porch is a pre-existing, non-compliant condition that will not be exacerbated by the Applicant’s proposal.

7. The Board Engineer further testified that the dwelling is currently setback one and one-half feet (1-1/2 ft) from the side yard property lines, that the proposal would not alter the side yard setbacks and, thus, the proposal would also not exacerbate this preexisting nonconformity.

8. The Board Engineer further testified that the Applicant would be increasing the habitable living space and adding an uncovered staircase and porch/walkway (to access the home) to the front of the dwelling. He also stated that the uncovered staircase and porch/walkway would not require variance relief because they would be setback more than three feet (3ft) from the property line.

9. The Board Engineer continued testifying that the proposal would increase both the building coverage and lot coverage, but that neither increase would require variance relief.

10. The Board inquired as to the age of the dwelling, to which the Applicant responded that it was probably 115 years old.

11. The Board also asked whether the Applicant had added the covered front porch and he responded that the covered front porch existed prior to him purchasing the subject Property.

12. The Board next questioned whether the Applicant had raised the home after Superstorm Sandy and the Applicant answered that the dwelling had been raised prior to him purchasing the subject Property in early 2016.

13. The Board next queried whether the new front porch/walkway would be uncovered and the Applicant replied "yes".

14. The Board Engineer added that the uncovered porch/walkway would need to comply with UCC requirements.

15. There were no 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 should be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) in this instance.

The Board finds that the Applicant has proposed construction, 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 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, the 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. The Board finds that the proposed improvements to the subject Property will improve the functionality of the dwelling by increasing the habitable floor space thereof and adding more deck space and better access thereto. The Board further finds that the proposed improvements will be aesthetically pleasing and create a desirable visual environment. A more functional and visually desirable dwelling not only benefits the Applicant, but also advances the interests of the entire community by updating the dwelling to more current housing standards. The Board therefore concludes that the goals of planning as enumerated in N.J.S.A. 40:55D-2 have been advanced. The Applicant has therefore satisfied the positive criteria.

The Board also finds that the negative criteria has been satisfied. The proposed improvements do not exacerbate any of the pre-existing nonconformities of the subject Property and, thus, granting the requested variances will also not alter the look of the dwelling to the community in any discernible way. The renovated home will still be consistent and fit in seamlessly with the prevailing neighborhood residential scheme. The proposal is consistent with the Borough's overall goals and objectives of providing new, safe and visually attractive homes. The Board therefore concludes that there is no substantial detriment to the Zone Plan or the Zoning Ordinance. The public welfare has also not been substantially detrimented. The negative criteria has therefore been satisfied. The Board concludes that the positive criteria substantially outweighs the negative criteria and that bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 2nd day of December 2021, that the action of the Board taken on November 4, 2021, granting

Application No. LUB2021-04 of Christopher Marron for bulk variance relief pursuant to N.J.S.A.
40:55D-70c(2) is hereby memorialized 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 Applicant shall obtain all necessary approvals from the Borough Flood Plain Officer.
4. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
5. The Applicant shall provide a certificate that taxes are paid to date of approval.
6. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
7. 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.



Robert Knox, Chairman
Borough of Highlands Land Use Board

ON MOTION OF: Mr. Kutosh

SECONDED BY: Vice Chair Tierney

ROLL CALL:

YES: Mayor Broullon, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Ms. Chang, Vice Chair Tierney, Chair Knox

NO:

ABSTAINED:

ABSENT:

DATED: December 2, 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 December 2, 2021.



Michelle Hutchinson, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

Case No. No. LUB2021-04/Marron

Bulk Variance Relief

November 4, 2021

December 2, 2021

EXHIBITS

- A-1 Application for Variance Relief, dated August 16, 2021.
- A-2 Architectural Plans prepared by A. Vincent Minkler, AIA, dated November 29, 2020.
- A-3 Flood Plain Review Application, undated.
- A-4 Denial of Development Permit, dated January 26, 2021.

INTEROFFICE REPORTS

- B-1 Board Engineer's Review of Site Plan Plat Requirements (completeness) letter, dated August 27, 2021.
- B-2 Board Engineer's Fee and Escrow Calculation letter, dated August 27, 2021.
- B-3 Board Engineer's First Engineering Review letter, dated September 22, 2021.

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