



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## LAND USE BOARD RESOLUTION 2023-12

### MEMORIALIZATION OF PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL WITH ANCILLARY VARIANCE RELIEF

IN THE MATTER OF CATCHERMAN, LLC  
APPLICATION NO. LUB2023-01

Approved: June 8, 2023  
Memorialized: August 10, 2023

**WHEREAS**, an application for preliminary and final major subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by Catcherman, LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 76, Lots 4, 5, & 7.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 30 Sea Drift Avenue in the R-2.01 (Residential Zone) Zone; 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 on June 8, 2023, 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**, the Highlands Land Use Board makes the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains a total of 9,333 square feet (0.214 acres) consisting of three (3) existing lots and is located within the Residential 2.01 (R-2.01) Zone of the Borough. The subject Property is situated along the northwesterly side of Sea Drift Avenue between Cheerful Place and Recreation Place. Existing Lot 4 (3,500 square feet) and existing Lot 5 (1,750 square feet) are currently vacant. Existing Lot 7.01 (4,083 square feet) contains an existing 1-1/2 story single family dwelling.

2. The Applicant is seeking preliminary and final major subdivision approval to create three (3) new 2,333 square foot lots and one (1) new 2,334 square foot lot. The Applicant intends to construct three (3) new residential dwellings on proposed Lots 4.01, 5.01, & 5.02. The existing dwelling on proposed Lot 7.11 is to be renovated, with the addition of a front and rear deck.

3. The Applicant is seeking variance relief from the following:

- a. **Chapter 21 – Attachment 1** – the minimum lot area is 3,750 square feet, whereas 2,333 square feet is proposed for Lots 4.01, 5.01, and 5.02, and 2,334 square feet is proposed for proposed Lot 7.11
- b. **Chapter 21 – Attachment 1** – the minimum lot frontage/width is 50 feet, whereas a lot frontage/width of 33.33 feet is proposed for Lots 4.01, 5.01, 5.02, and 7.11.
- c. **Chapter 21 – Attachment 1** – the minimum lot depth is 75 feet, whereas a lot depth of 70 feet is existing and proposed for Lots 4.01, 5.01 5.02, and 7.11.
- d. **Chapter 21 – Attachment 1** – the minimum front yard setback is 20 feet (12 feet\*), whereas 9.3 feet\*\* is existing on Lot 7.01 and is proposed to remain for new Lot 7.11.
- e. **Chapter 21 – Attachment 1** – the minimum side yard setback is 6 feet and 8 feet, whereas 1.6 feet and 36.73 feet is existing for Lot 7.01 and a side yard setback of 1.6 feet and 11.7 feet proposed to remain for new Lot 7.11.
- f. **Chapter 21 – Attachment 1** – the minimum side yard setback is 6 feet and 8 feet, whereas a side yard setback of 6.1 feet and 6.2 feet is proposed for Lots 4.01, 5.01 and 5.02.
- g. **Chapter 21 – Attachment 1** – the minimum rear yard setback is 20 feet, whereas 16.3 feet is existing on Lot 7.01 and is proposed for Lot 7.11.
- h. **Chapter 21 – Attachment 1** – the minimum rear yard setback is 20 feet, whereas 17.8 feet is proposed for Lots 4.01, 5.01, and 5.02.
- i. **Chapter 21 – Attachment 1** – the maximum building coverage is 33%, whereas 24.7% is existing for Lot 7.01 and 38.0% is proposed for Lot 7.11.
- j. **Chapter 21 – Attachment 1** – the maximum building coverage is 33%, whereas 38.7% is proposed for Lots 4.01, 5.01, and 5.02.

\* Or the average of the existing front yard setback within two hundred (200) feet in the same block and zone, per Ordinance Section 21-79B. The prevailing setback shall be the average setback of buildings on the same block in the same zone, but not less than the average of the setbacks of the buildings on the two (2) nearest adjacent lots and in no case, less than half the required setback.

\*\* Any deck that extends above the elevation of the first floor of the principal structure shall meet the setback requirements for that principal structure.

4. Counsel for the Applicant, Daniel J. O'Hern, Jr., stated that the subject Property contained three (3) existing lots of Lots 4, 5, and 7.01 with the address of 30-40 Sea Drift Avenue. Mr. O'Hern stated that the Applicant was seeking to create four (4) new lots. He stated that the existing dwelling located on Lot 7.01 would be renovated, whereas three (3) new dwellings would be constructed on the remaining three (3) lots. He stated that the subject Property was located within the R-2.01 Zone. He stated that the Applicant was seeking bulk variance relief for the proposed lots.

5. Testimony was taken from Robert Davis, a principal of the Applicant. Mr. Davis testified that there was an existing dwelling located on the subject Property that was partially renovated after Superstorm Sandy, but was not completed. He stated that the dwelling was now in disrepair.

6. Mr. Davis introduced Photographs of Constructed Homes on 25-foot wide Lots as Exhibit A-1. He explained that he intended to construct three (3) new dwellings on three (3) of the new lots with a garage setback underneath the first floor that would provide a driveway length to fit two (2) cars and a one (1) car garage similar to the dwellings depicted in Exhibit A-1. He explained that he would renovate the existing dwelling by retaining the foundation and most of the first floor, however, the garage would not be setback like the three (3) new dwellings. Mr. Davis submitted Photos of 5 Sea Drift Avenue and 7 Sea Drift Avenue as Exhibit A-2 to show the style of dwelling that he has constructed on Sea Drift Avenue, which the proposed new dwellings would be similar. He introduced a Photo of 3 Ocean Avenue as Exhibit A-3 to show the style of dwelling proposed for the existing dwelling. He introduced a Photo of the Existing Dwelling as Exhibit A-4.

7. In response to questions from the Board, Mr. Davis testified that the mechanical equipment would comply with the three (3) foot setback to the rear and side property lines. Mr. Davis also stated that he had construction experience, having constructed seven (7) new dwellings and renovated three (3) dwellings within the Borough. Mr. Davis explained that no architectural plans had been drawn because he was awaiting approval from this Board and the Borough, as well as input from buyers.

8. The Board Engineer, Edward Herrman, P.E., P.P., testified that the Board could condition the approval that the architectural plans be submitted to the Board prior to filing the plat. Mr. Herrman further testified that the Applicant required several bulk variances. He explained that the side yard setback required a minimum of six (6) feet on one side and a minimum of eight (8) feet on the other side for a combined minimum of fourteen (14) feet, whereas the Applicant was proposing a combined side yard setback of approximately twelve (12) feet. He stated that the proposed side yard setback would allow for a twenty-one (21) foot wide dwelling, which was a better design.

9. In response to questions from the Board Engineer, Mr. Davis explained that the deck on the first floor would include stairs to access the deck along the side, which would also have a meter platform. He stated that any decks above the first floor would be stepped back in order to be within the building envelope.

10. In response to questions from the Board, Mr. Davis testified that the exterior stairs were not the only access stairs and that there would be access stairs within the garage. He stated that the exterior stairs would be three (3) to four (4) feet wide and was permitted to be within the side yard setback. He stated that there would be pervious landscaping pebbles along the sides and rear of the dwelling. Mr. Davis testified that there were lots in the area with width of twenty-five (25) feet, so the proposed lot widths fit within the character of the area.

11. The Applicant's Engineer/Planner, Andrew Stockton, P.E., P.P., testified that the existing lots were Lots 4, 5, and 7.01 within Block 76 in the R-2.01 zone. Mr. Stockton testified that the existing subject Property was 133.33 feet wide with a depth of 70 feet, whereas the minimum permitted size was 50 feet width and 75 feet depth. He stated that the minimum lot area was 3,750 square feet, whereas 2,333 square feet was proposed for each lot having the

dimensions of 33.33 feet width by 70 feet depth. Therefore, the Applicant was seeking variance relief from the lot area, frontage, and depth.

12. Mr. Stockton next testified that there was an existing dwelling located on the northerly side of the subject Property. He stated that the existing side yard setback of the dwelling was 1.6 feet and a front yard setback of 9.3 feet. He explained that the front yard setback was based on the average of front yard setbacks within 200 feet in the same block and zone, which in this area was twelve (12) feet. He testified that the new dwellings would comply with this front yard setback. Mr. Stockton also testified that the proposed dwellings would comply with the minimum side yard setback of six (6) feet, but not the combined side yard setbacks. He stated that the proposed combined side yard setbacks was 12.3 feet. He stated that the variance relief for the combined side yard setbacks would allow a dwelling width of twenty-one (21) feet, which was a better design. Mr. Stockton also stated that the rear yard setback was the result of the existing shorter lot depth. Mr. Stockton explained that the Applicant was seeking variance relief for the lot coverage in anticipation of changes to the architectural plans. Mr. Stockton also stated that the Applicant was seeking waiver relief from providing street trees.

13. Mr. Stockton introduced a Lot Sizes Exhibit as Exhibit A-5. Mr. Stockton testified that there were a total of forty-seven (47) lots within 200 feet of the subject Property. He stated that nineteen (19) of those lots had an undersized width of twenty-five (25) feet. He stated that two (2) lots to the immediate north had widths of 33.33 feet, as the Applicant has proposed. He stated that there were eleven (11) lots that had undersized widths, but were wider than 33.33 feet. He stated that all lots in the area had undersized depths of seventy (70) feet. Mr. Stockton concluded that 68% of the lots in the area were undersized, therefore the proposed lots were not out of character for the area.

14. In response to questions from the Board, Mr. Stockton explained that the proposed dwellings would be similar to other dwellings in the area and would not be out character. He stated that there would be an eighteen (18) foot wide driveway to allow space for two (2) cars and a one (1) car garage. He further explained that there were some dwellings in the area that had not been renovated since Superstorm Sandy and remained non-compliant. Mr.

Stockton introduced a Photo of the Dwellings Across Sea Drift Avenue from the Subject Property dated June 8, 2023 as Exhibit A-6.

15. Mr. Stockton next testified that the variance and waiver relief would not have a substantial detriment to the master plan and zone. Mr. Stockton testified that the proposal advanced purposes c), e), g), and i) of the Municipal Land Use Law (MLUL). He stated that there would not be any substantial detriment to the public good. Mr. Stockton testified that the lot depth was an existing hardship, which would meet the c(1) criteria. He stated that the setbacks of the existing dwelling were also an existing hardship, which would meet the c(1) criteria.

16. Mr. Stockton next testified that the Applicant would comply with the comments within the Board Engineer's Report. He also stated that the subject Property was located within the AE Flood Zone, so the Applicant would obtain the permits from the Floodplain Manager and NJDEP. He explained that the subject Property was located within the CAFRA zone, however the development was not large enough to require CAFRA permits. He also stated that the Applicant would apply to the Monmouth County Planning Board because the four (4) lot subdivision, it was considered a major subdivision for purposes of the Monmouth County Planning Board.

17. In response to questions from the Board Engineer, Mr. Stockton testified that the Applicant was intending each dwelling to have three (3) bedrooms, therefore the number of parking spaces would comply with the Residential Site Improvement Standards (RSIS). Mr. Stockton also explained that the existing stormwater mostly flowed toward the street, whereas there was a small area located at the rear that flowed toward the northwest. He stated that the Applicant would grade the subject Property so all of the stormwater flowed toward the street. He further explained that there were no stormwater drains in the street near the subject Property, but the stormwater flowed down the street toward the waterfront.

18. The Board Engineer, Mr. Herrman, advised that the prevailing front yard setback in the zone was twenty (20) feet, however, he explained, the ordinance permitted an averaging of the existing front yard setback, which was approximately twelve (12) feet. He stated that the width variance relief was reasonable. Mr. Herrman asked what the depth of the proposed dwellings were and what the rear yard setback was. Mr. Stockton testified that the depth of the dwellings would be forty-three (43) feet and the rear yard setback was 14.8 feet, whereas a

minimum of twenty (20) feet was required. Mr. Herrman opined that the Applicant could reduce the depth of the dwelling to reduce the impact of the rear yard setback and the impervious coverage.

19. In response to questions from the Board, Mr. Herrman testified that the lots in the area that had widths of twenty-five (25) feet were created a long time ago. Mr. Herrman also explained that the building code permitted first floor decks and stairs to be within setbacks. He explained that with the proposed rear setback of 14.8 feet, a rear deck could be four (4) to five (5) feet from the rear property line.

20. The Board asked if the Applicant would consider a three (3) lot subdivision instead of four (4) lots. The Board opined that more conforming lots may be a better proposal. Mr. Davis argued that the proposed four (4) lots were more fitting with the character of the area than three (3) lots. He also argued that three (3) lots would still require the same variance relief. There was discussion amongst the Board, the Applicant, and the Board Engineer about the merits of reducing the number of lots. The Applicant maintained its proposal of four (4) lots, but agreed to not exceed a dwelling depth of forty (40) feet.

21. The hearing was the opened to the public, at which time Karen Jarmusz, 44 Sea Drift, expressed her concern with the density of four (4) lots instead of three (3) lots. Ms. Jarmusz also expressed her concern with parking and flooding.

22. 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 preliminary and final major subdivision approval pursuant to N.J.S.A. 40:55D-48 and 50 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted in this instance.

The Board finds that the Applicant has proposed a preliminary and final major subdivision which requires ancillary 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 ancillary 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 will address the variance relief collectively. The Board finds that the proposed subdivision promotes appropriate population densities identified in the Borough Code and also promotes a desirable visual environment, while providing adequate light, air and open space. These attributes both promote the goals of planning identified at N.J.S.A. 40:55D-2 and benefit the entire community. The Applicant has therefore satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70c(2).



The Board further finds that the Applicant has also satisfied the negative criteria. The proposed dimensions of the proposed lots are similar to the dimensions of other lots in the neighborhood. The proposed front-yard setback is similar to other front-yard setbacks in the neighborhood and, thus, granting the proposed subdivision will not result in increased traffic beyond what is contemplated by the Ordinance, increased noise or noxious odors. The Board finds that the proposed rear yard setback is triggered by the existing lot depth that all lots in the neighborhood. The Board therefore finds that the grant of variance relief will not result in substantial detriment to the public welfare or substantially impair the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and that variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

The Board also finds that the existing design which does not include street trees is adequate and is also in conformance with the prevailing neighborhood scheme. The Board therefore determines that requiring strict compliance with the requirements of the Ordinance would create practicable difficulty in developing the subject Property with a permitted use. Design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

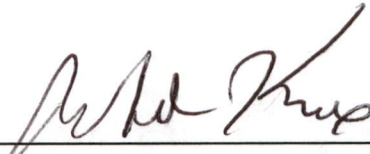
With the exception of the above relief, the Applicant complies with all other zoning, subdivision and design criteria ordinance requirements. Preliminary and final major subdivision approval pursuant to N.J.S.A. 40:55D-48 and 50 is therefore appropriate.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Highlands on this 10<sup>th</sup> day of August 2023, that the action of the Land Use Board taken on June 8, 2023 granting Application No. LUB2023-01, for preliminary and final major subdivision approval pursuant to N.J.S.A. 40:55D-48 and 50 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) along with design waiver relief pursuant to N.J.S.A. 40:55D-51 is as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in 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 comply with the Map Filing Law.
4. All easements shall be depicted on the Subdivision Plan.
5. The depth of the proposed dwellings shall not exceed forty (40) feet.
6. 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.
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' 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. Zill

SECONDED BY: Mayor Broullon

ROLL CALL:

YES: Mayor Broullon, Mr. Zill, Mr. Cramer, Mr. Cody

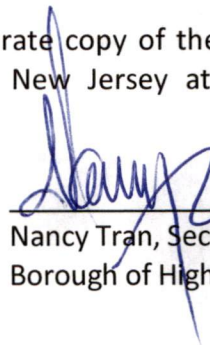
NO: None

INELIGIBLE: Mr. Montecalvo, Councilmember Olszewski, Ms. Chang

ABSENT: Chief Burton, Mr. Kutosh, Ms. LaRussa, Vice Chair Tierney, Chair Knox

DATED:

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 August 10, 2023.



Nancy Tran, Secretary  
Borough of Highlands Land Use Board



BOROUGH OF HIGHLANDS LAND USE BOARD  
EXHIBITS

Case No. LUB2023-01/CATCHERMAN, LLC  
Preliminary and Final Major Subdivision with Ancillary Variance Relief  
June 8, 2023

- A-1 Photographs of Constructed Homes on 25-foot wide Lots
- A-2 Photos of 5 Sea Drift Avenue and 7 Sea Drift Avenue
- A-3 Photo of 3 Ocean Avenue
- A-4 Photo of the Existing Dwelling
- A-5 Lot Sizes Exhibit
- A-6 Photo of the Dwellings Across Sea Drift Avenue from the Subject Property dated June 8, 2023.

