



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2026-09
MEMORIALIZATION OF INTERPRETATION OF CODE SEC. 21-17A.9
AND APPROVAL OF TWO-YEAR EXTENSION OF BULK VARIANCE RELIEF

Approved: December 11, 2025
Memorialized: February 12, 2026

IN THE MATTER OF MARY T. SHARKEY
APPLICATION NO. LUB2023-05

WHEREAS, an application for (i) an interpretation of Code Sec. 21-17A.9 pursuant to N.J.S.A. 40:55d-70b as well as for (ii) a two-year extension of time for bulk variance relief granted pursuant to LUB Resolution No. 2023-19 has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the "Board") by Mary T. Sharkey (hereinafter referred to as the "Applicant") on lands known and designated as Block 42, Lot 2, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more specifically located at 9 Shrewsbury Avenue, Highlands, New Jersey, in the R-2.02 Single-Family Residential (R-2.02) Zone District (hereinafter "Property"); and

WHEREAS, a live public hearing was held before the Board on December 11, 2025, with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Highlands Land Use Board make the following findings of fact based on evidence presented by the Applicant during its public hearing at which a record was made:

1. The subject Property is a vacant, pre-existing non-conforming, irregularly shaped, and undersized lot that contains 1,874 s.f. with 33.50 feet of frontage on Shrewsbury Avenue within the R-2.02 (Single-Family Residential) Zone.

2. On November 9, 2023, the Board granted the Applicant bulk variance relief to construct a single-family dwelling on the subject Property, which approval was memorialized in a Resolution dated December 14, 2023, as LUB Resolution No. 2023-19.

3. Sec. 21-17A.9 of the Borough Code provides that variances "shall expire in one (1) year unless an extension of the time period is granted or the variance is exercised by either the erection or alteration of structures, the commencement of use, the submission of required subdivision or site plan application, or the specific terms of the original variance. Any appeal to the Governing Body or court of competent jurisdiction shall suspend the running time for the period of the appeal."

4. The Applicant is seeking a two-year extension of time pursuant to Sec. 21-17A.9 of the Code, until December 14, 2026, for the bulk variance relief granted by the Board in LUB Resolution No. 2023-19.

5. The Applicant also requests that the Board render an interpretation of Sec. 21-17A.9 of the Zoning Code pursuant to N.J.S.A. 40:55D-70b such that an applicant can apply for an extension of time at any time, even after a variance has expired and that the standard to be applied by the Board when considering such requests is whether good cause has been shown such that an extension of time is reasonable under the circumstances.

6. Counsel for the Applicant, Henry Wolff, submitted a legal position, dated November 1, 2025, and supplemented the same at the hearing.

7. Mr. Wolff explained to the Board that the Applicant had received bulk variance relief to construct a two-story dwelling, which approval was granted on November 9, 2023 and memorialized in a resolution on December 14, 2023.

8. The Applicant, Mary Sharkey, was sworn in and testified regarding the application, stating that after she had received approval to construct the two-story dwelling, she had contacted contractors and intended to pull permits and proceed with construction.

9. The Applicant continued testifying that in August of 2024, she was impacted by financial constraints that prevented her from proceeding with construction, which constraints were unexpected and unforeseen, such as the loss of employment and, thus, income. Accordingly, the Applicant was unavoidably unable to commence construction within one year of the Board granting bulk variance relief.

10. The Applicant further testified that on September 24, 2025, under the mistaken belief that she had up to two (2) years to commence construction, she requested an extension of time for LUB Resolution No. 2023-19.

11. The Applicant provided additional testimony that at the time she applied for the extension, she was advised that the variance approval had expired pursuant to Sec. 21-17A.9 and that the Applicant would need to seek further relief from the Board.

12. The Applicant initially testified that she was only seeking an extension of time until June of 2026, but after being questioned by the Board, agreed that a two-year extension was more appropriate under the circumstances and, thus, requested a two-year extension, until December 14, 2026.

13. The Board Attorney stated that Sec. 21-17A.9 is silent as to whether an applicant would need to seek relief prior to the expiration of the variance and further that the Ordinance also set forth no standard as to the basis (or standard of proof) for granting a request for an extension of time in this instance.

14. The Board Attorney stated that the Applicant was requesting that the Board render a decision pursuant to N.J.S.A. 40:55D-70(b) as to how to interpret Sec. 21-17A.9 to determine (i) when an applicant can make a request for an extension of time pursuant to Sec. 21-17A.9 and (ii) what standard of proof an applicant needs to demonstrate in order for the Board to grant a request for an extension of time pursuant to Sec. 21-17A.9.

15. Mr. Wolff, counsel for the Applicant, noted that Sec. 21-17A.9 does not require that an extension be sought prior to the expiration of the one-year variance period. Mr. Wolff further explained that the Code Section did not provide any guidance as to the basis for granting an extension.

16. Mr. Wolff concluded that the Board has the power to grant the extension at any time, even after the one-year variance period had expired and urged the Board to exercise its inherent powers to construe the meaning of the Zoning Code accordingly.

17. Mr. Wolff further commented that with respect to the extension request, the Applicant suffered an unexpected and unforeseen financial constraint when she lost her job and, thus, source of income. The unavoidable financial loss resulted in the Applicant being unable to commence construction of the dwelling within one (1) year of the granting of the variance. Accordingly, Mr. Wolff submitted that it would be reasonable under the circumstances to grant the request for a two-year extension, until December 14, 2026.

18. There were no members of the public expressing an interest in this application.

NOW, THEREFORE, the Board makes the following conclusions of law based upon the foregoing findings of fact:

I. Interpretation of Zoning Ordinance Pursuant to N.J.S.A. 40:55D-70b

The Municipal and Use Law vests exclusive jurisdiction with zoning boards to render interpretations of the zoning ordinance. See N.J.S.A. 40:55D-70b.

The principles governing the interpretation of a zoning ordinance are the same as those for interpreting legislation in general. Tp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). Those principles require that an ordinance should be interpreted to “effectuate the legislative intent in light of the language used and the objects sought to be achieved.” Merin v. Maglaki, 126 N.J. 430, 435 (1992); see also, State Dep’t of Law & Public Safety v. Gonzalez, 142 N.J. 618, 627 (1995). The first step of statutory construction requires an examination of the language of the ordinance. Bergen Comm’l Bank v. Sisler, 157 N.J. 188, 202 (1999). The meaning derived from that language controls if it is clear and unambiguous. Id. If the text, however, is susceptible to different interpretations, a board should consider extrinsic factors, such as the statute’s purpose, legislative history, and statutory context to ascertain the legislature’s intent. Wingate v. Estate of Ryan, 149 N.J. 227, 236 (1997); see also, Lesniak v. Budzash, 133 N.J. 1, 8 (1993).

Above all, a board must seek to effectuate the “fundamental purpose for which the legislation was enacted.” New Jersey Builders, Owners and Managers Ass’n v. Blair, 60 N.J. 330, 338 (1972). Thus, for example, where a statute or ordinance does not expressly address a specific situation, a board will interpret it “consonant with the probable intent of the draftsman ‘had he anticipated the matter at hand.’” AMN, Inc. v. So. Bruns. Tp. Rent Leveling Bd., 93 N.J. at 518, 525 (1983). In that regard, “[i]t is axiomatic that an ordinance will not be construed to lead to absurd results.” State v. Provenzano, 34 N.J. 318, 322, (1961).

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 concludes that pursuant to N.J.S.A. 40:55D-70(b) good cause has been shown to interpret Sec. 21-17A.9 of the Zoning Code such that an applicant can apply for an extension of time at any time, even after a variance has expired and that the standard to be applied by the Board when considering such requests is whether good cause has been shown such that an extension of time is reasonable under the circumstances.

The Board further finds that the plain language of Sec. 21-17A.9 of the Zoning Code *does not* prohibit an applicant from making the request for an extension after the variance has expired. Additionally, the Board finds that although no standard of proof is set forth in Sec. 21-17A.9 of the Zoning Code that the Board should consider the reasons regarding an applicant's request for an extension, such as why the applicant has been prevented from proceeding with construction within the one-year variance period. Accordingly, the Board finds that an applicant must demonstrate good cause as to why he/she has been prevented from proceeding with construction within the one-year variance approval period, such that an extension would be reasonable under the circumstances.

The Board wishes to be clear that this decision is based upon the plain language of the Zoning Ordinance and the principles governing the interpretation legislation, such as the Zoning Ordinance, in general and not the particulars of how the subject Property is utilized.

II. Extension of Time

Sec. 21-17A.9 of the Borough Code provides that variances "shall expire in one (1) year unless an extension of the time period is granted or the variance is exercised by either the erection or alteration of structures, the commencement of use, the submission of required subdivision or site plan application, or the specific terms of the original variance. Any appeal to the Governing Body or court of competent jurisdiction shall suspend the running time for the period of the appeal."

The Board has interpreted Sec. 21-17A.9 as permitting an applicant to request an extension of time pursuant to that section, at any time, even after a variance has expired and that the standard to be applied by the Board when considering such requests is whether good cause has been demonstrated such that an extension of time is reasonable under the circumstances.

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 concludes that good cause has been shown to approve the application of Mary Sharkey for a two-year extension of time, until December 14, 2026, pursuant to Sec. 21-17A.9 of the Zoning Code.

The Board finds that the Applicant suffered an unexpected and unanticipated financial hardship that was beyond her control and that prevented her from diligently pursuing approvals with the

necessary agencies and proceeding with construction within the one-year variance approval period. The Board further finds that the Applicant intended to proceed with construction within the one-year period and had taken steps to do so, before financial hardship befell her in August of 2024, which was within the one-year period. The Board also finds that the Applicant was under the mistaken belief that the variance approval did not expire until two years from the date of the approval. Based upon the facts in evidence, the Board finds that the Applicant has demonstrated good cause for a two-year extension, until December 14, 2026, pursuant to Sec. 21-17A.9 of the Zoning Code and that the extension is reasonable in this circumstance.

NOW, THEREFORE, BE IT RESOLVED by the Highlands Land Use Board on this 12th day of February, 2026, that the action of the Land Use Board taken on December 11, 2025 granting Application No. LUB-2023-05 of Mary Sharkey for a two-year extension of time, until December 14, 2026, for LUB Resolution No. 2023-19 for bulk variance relief and for an interpretation of Sec. 21-17A.9 of the Zoning Code pursuant to N.J.S.A. 40:55D-70b be and the same is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. Sec. 21-17A.9 of the Zoning Code shall be interpreted in accordance with the terms of this Resolution.
2. The Applicant is granted a two-year extension of time for LUB Resolution No. 2023-19 approval with bulk variance relief, until December 14, 2026.
3. All terms and conditions of the Board's previous approvals, except as satisfied or amended, shall remain in place.
4. The Applicant shall provide a certificate that taxes are paid to date of approval.
5. 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.

6. 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: Mayor Broullon

SECONDED BY: Mr. Sayah

ROLL CALL:

YES: Mayor Broullon, Councilmember Olszeski, Mr. Montecalvo, Vice-Chair Sayah, Ms. Tierney, Mr.

Zill, Mr. Cramer, Mr. Cody, and Ms. Vickery

NO: n/a

ABSTAINED: n/a

INELIGIBLE: Ms. Chang

ABSENT: n/a

DATED: February 12, 2026

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on February 12, 2026.



Irina Jvarisheishvili-Darar, Secretary
Borough of Highlands Land Use Board