

**Borough of Highlands**  
**May 12, 2022 Regular LUB Meeting Minutes**

***At Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ***

Chair Rob Knox called the meeting to order at 7:03pm.  
Chair Knox asked all to stand for the Pledge of Allegiance.

Chair Knox read the following statement: As per requirement, notice is hereby given that this is an Abbreviated Meeting of the Borough of Highlands Land Use Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal Action will be taken.

**ROLL CALL:**

Present: Mayor Broullon, Chief Burton, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Councilmember Olszewski, Vice Chair Tierney, Chair Knox, Mr. Cramer  
Absent: Ms. LaRussa, Mr. Zill, Ms. Chang, Mr. Ziemba  
Also Present: Board Attorney Dustin Glass, Esq., Board Engineer Edward Herrman, and Board Secretary Nancy Tran

**OPEN FOR PUBLIC COMMENTS:** With no comments from the public, Chair Knox closed Public Comments.

**ACTION ON OTHER BUSINESS:**

Ordinance 22-09 Ordinance Amending Section 21-84B "Steep Slopes and Slump Blocks" of the Borough of Highlands Municipal Code

Mr. Glass explained the Ordinance and the Land Use Board's role in reviewing it for consistency with the Master Plan.

Mayor Broullon gave the history and background of the currently 2-paragraphs long code and noted that the proposed ordinance is much more in depth.

ON MOTION OF: Mr. Kutosh that O-22-09 is consistent with Master Plan

SECONDED BY: Vice Chair Tierney

ROLL CALL:

YES: Mayor Broullon, Chief Burton, Mr. Kutosh, Mr. Montecalvo, Councilmember Olszewski, Vice Chair Tierney, Chair Knox, Mr. Cramer

NO:

INELIGIBLE:

ABSTAIN: Mr. Lee

ABSENT: Ms. LaRussa, Mr. Zill, Ms. Chang, Mr. Ziemba

**RESOLUTIONS:** None

**HEARINGS ON OLD BUSINESS:** None

**HEARINGS ON NEW BUSINESS:**

LUB2021-07: Farrell, Block 32 Lot 7 (32 Shrewsbury) – Variance

Vice-Chair Tierney recused herself and stepped off the dais. Mr. Glass explained the situation of hearing the application and that any previous vote is null and void. Due to an error that was discovered after March 10<sup>th</sup> meeting, the applicant renoticed and republished and presenting their application again as if for the first time. The Board is to disregard all previous evidence and vote based on the testimony heard today only.

Thomas Hirsch, attorney for the applicant, gave an overview of the application and then introduced his first witness.

Chief Burton asked for confirmation of the procedural instructions of hearing application anew.

Dr. Kerry Farrell was sworn in and Mr. Hirsch proceeded to ask her questions about the history of the property and history of the ownership of the property and the history of the original garage. Dr. Farrell answered and continued to tell the history of the attempt to rebuild the garage after Superstorm Sandy. Permits were obtained for the construction and electrical work for the garage in 2016. Foundation remained the same but more of the original structure was torn down as more damage was assessed. During the process, they received a stop order due to the then FEMA flood zone. In 2018, flood zone was finalized and was given permission to build.

Chair Knox asked if the foundation remains unchanged. Dr. Farrell confirmed. Mr. Green asked if garage is not a pre-existing condition. Mr. Hirsch confirmed and added that during construction they found that there was more damage than originally thought.

With no further questions for Dr. Farrell, Mr. Hirsch asked the architect to the stand.

Robert Adler was sworn in and gave his qualifications and experience, which the Board accepted. Mr. Adler described the proposed design and noted the added flood preventative features, like breakaway walls and flood vents. He designed the garage to be in character of the house.

Mr. Edward Herrman asked for clarification of the offset and Mr. Adler answered. Chief Burton asked of the proposed garage was in keeping with the look of the neighborhood. Mr. Adler answered in the affirmative.

Chair Knox opened the floor to the public for questions.

Annemarie Tierney, asked if having a garage on the side of the house was consistent with the neighborhood. Mr. Adler answered no.

Kathy Campbell, 27 Shrewsbury asked for the height. Mr. Adler answered. Ms. Campbell then asked about height of original garage. Dr. Farrell noted that the old garage did not match the house.

Gerry Beyer, 27 Shrewsbury, remarked that he lives across from the property and asked why the proposed garage bigger than the original. Mr. Adler answered that they wanted to it to match the house design. Chair Knox and Mr. Glass explained that applicant is seeking necessary variance for setback, not for the height. Mr. Beyer asked about the height. Mr. Adler answer that they aren't planning on duplicating the old garage but are only keep the original footprint.

Frank Barbara, 30 Shrewsbury, asked for clarification on the setback variance and the proposed overhang. Mr. Adler answered overhang is 6 inches and with gutter setback is 1 inch. Mr. Glass added that Mr. Herrman can confirm if the measurements are correct. Mr. Herrman noted that UCC has list of ancillary building parts that are not taken into account and that building setback is what is measured.

Mayor Broullon asked if Dr. Farrell has plans on lifting the house in the future. Dr. Farrell replied no as the property is not required to be lifted.

Councilmember Olszewski asked what the overhang was over at the property line. Dr. Farrell answered that there were 2 6-ft fences at the property line.

With no further questions from the public, Chair Knox opened the floor for public comments. Each speaker was sworn in after giving their name and address.

Annemarie Tierney, 21 Shrewsbury, believed that the proposed garage would substantially negatively impact the views of the properties across the street. She added that she didn't understand the need for such a big structure for a property owner who does not live at or visit the property often.

Kathy Campbell, 27 Shrewsbury, agreed with Ms. Tierney's comments and added that her water views would be greatly impacted. Mr. Hirsch asked where her property was situated in relations to the Dr. Farrell's property and asked if the house on the property currently blocks the view. Ms. Campbell answered that her view would be blocked even more.

Carl Glickstein, 23 Shrewsbury, remarked that he has partial water views now and the proposed garage will fully block it.

Gerry Beyer, 27 Shrewsbury, noted that the view hasn't changed in over 20 years. Mr. Hirsch asked if his problem was with the proposed height and not the garage itself. Mr. Beyer answered yes.

Frank Barbara, 30 Shrewsbury, stated that his property is directly adjoins the applicant's and that the setback variance would be right on his property. He expressed concern for safety.

Jake Kimmelman, ?, stated that there are reasons for setbacks and that allowing this variance will place it right on the property line. He voiced concern the need for an accessory structure to be allowed a variance and that the fire hazard posed increases with the absence of the owner.

Mr. Glass noted that the Board has no power of condemnation of a property owner's use of their property. Mr. Cramer stated that homeowners do not have a right to views. He asked if Dr. Farrell was restoring something that was lost, how long it has been, and if she had seen the other property owners' perspective of the possible lost water views. Dr. Farrell answered.

Chief Burton commented on the decision not to raise the house. Mr. Adler responded that if he had designed it at minimum setback, he could go higher. He added that buildings are built on property lines all the time with proper fire rated considerations it is safe. He further added that having someone living in the house does not necessarily make it less likely to catch fire. Mr. Adler repeated that the construction would strictly adhere to code to make a safe structure.

Mayor Broullon stated that there was a recent fire in the area and thought that 11 inches was not adequate. Mr. Lee asked if applicant was going to give the positive and negative criteria.

Ms. Tierney thought that it is important for the Board to see what the original garage looked like and that there are no other property in the neighborhood with a side garage. She asked for the distance of the garage from the house. She stated that 2 stories from her house would be obstructed with the proposed structure. Mr. Adler asked if he eliminated the dormer from the design, if it would be OK then. Ms. Tierney answered no but she would support replacement of the garage with same dimensions. She does not support adding height for aesthetic reason. She asked if she could pass a picture of the old garage as evidence. Mr. Glass stated that it was OK.

Mayor Broullon asked if they considered putting the garage in the backyard. Dr. Farrell answered that that would much more greatly obstruct views. Mayor Broullon replied that she was not concerned about views but rather safety. Mr. Adler stated that it would destroy the views much worse.

Dr. Farrell stated that the house currently blocks neighbors' views and that the proposed garage wouldn't block any more. Mr. Hirsch asked if there were other properties with garages. Dr. Farrell answered several do.

Mr. Hirsch summarized the application, noting that the variance because of hardship has several parts to it and part C is often missed. He then presented relevant cases and asked for Mr. Adler's testimony. Mr. Adler stated that he worked with Dr. Farrell to design the garage, building on existing foundation and footprint. The 11 inches setback was always there and it's hard to define if any views will be affected. Design is aesthetically appealing and will be built adhering to fire code.

Mr. Glass asked Mr. Hirsch to confirm that the applicant is not asking for variance because of positive and negative criteria but because of hardship. Mr. Hirsch answered that it was because of several things. Addressing Section C, the house was built long ago and a garage was built there. Both structure and garage are existing. Addressing negative impact, Mr. Adler addressed the safety concerns. Mr. Glass asked for clarification if Mr. Hirsch was answer Section C1 or C2. Mr. Hirsch answered C1 and Section C.

Mr. Glass explained the Board's role in the deliberation and testimony to consideration. Mr. Hirsch suggested that the garage can be built without the dormer to address the audience's concern. Chair Knox stated that he's hearing that height is audience's concern and added that height is "nice" but not a needed. He asked if design modifications were considered.

Mr. Montecalvo asked if proposed and original are same and if they considered moving over. Mr. Kutosh stated that they can't move the garage over without moving the existing foundation.

Chair Knox asked Mr. Herrman for specificity guidance. Mr. Herrman gave some points for consideration, such as if storage space is more important than neighbors' views and compromise of height and pitch of roof. Mr. Adler replied that there could be a compromise of removing the dormer and lowering the pitch of the roof.

Mr. Cramer asked if proposed garage was in line with the original. Mr. Adler replied no.

MOTION: Chief Burton motioned to approve

SECONDED BY: Mr. Kutosh

ROLL CALL:

YES: Chief Burton, Mr. Kutosh, Councilmember Olszewski, Chair Knox

NO: Mayor Broullon, Mr. Lee, Mr. Montecalvo, Mr. Cramer

RECUSE: Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Zill, Ms. Chang, Mr. Ziemba

Mr. Glass declared that the application needed a majority vote and thus, failed with a tie vote.

Vice Chair Tierney returned to the dais.

**APPROVAL OF MINUTES OF APRIL 14, 2022 MEETING**

Offered by: Mr. Kutosh

Seconded by: Councilmember Olszewski

YES: Mayor Broullon, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Councilmember Olszewski, Chair Knox, Mr. Cramer

NO:

INELLIGIBLE: Chief Burton, Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Zill, Ms. Chang, Mr. Ziemba

**COMMUNICATION AND VOUCHERS** - None

**ADJOURNMENT**

Offered by: Mr. Kutosh


Seconded by: Mr. Montecalvo

All in favor

None Opposed

Adjourned at 8:33pm.

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on May 12, 2022.

  
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Nancy Tran, Land Use Board Secretary