



BOROUGH OF HIGHLANDS
LAND USE BOARD REORGANIZATION AND
REGULAR MEETING

22 Snug Harbor Avenue, Highlands NJ 07732
Thursday, January 06, 2022 at 7:00 PM

AGENDA

Please be advised that the agenda as shown may be subject to change. This meeting is a quasi-judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.

CALL TO ORDER

The chair reserves the right to change the order of the agenda.

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETING STATEMENT

As per requirement, notice is hereby given that this is a Regular 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

OPEN FOR PUBLIC COMMENTS

*General Procedural Process Questions or Comments **not pertaining to ANY Applications.***

ACTION ON OTHER BUSINESS: None

RESOLUTIONS

1. Nomination & Vote
2. Resolution 2022-01 Board Secretary and Assistant Secretary
3. Resolution 2022-02 Board Attorney (Resolution Awarding Professional Legal Services Contract)
4. Resolution 2022-03 Board Engineer (Resolution Awarding Professional Legal Services Contract)
5. Administer Oath where necessary.
6. Resolution 2022-04 Nomination & Vote Chairperson

7. Resolution 2022-05 Nomination & Vote Vice-Chairperson
8. Executive Session (If Necessary)
9. Resolution 2022-06 Designation of 2022 Meeting Dates & 2023 Reorganization Date
10. Resolution 2022-07 Designation of Asbury Park Press & The Two River Times as the Official Newspapers

RESOLUTIONS: None

HEARINGS ON OLD BUSINESS: None

HEARINGS ON NEW BUSINESS:

11. LUB 2019-01: Alvator, Block 35 Lots 6 & 7 (10 North Peak) – Extension of resolution

APPROVAL OF MINUTES

- [12.](#) LUB Meeting Minutes Dec. 2, 2021

ANNUAL REPORT:

“Observations/Recommendations” portion of Annual Report 2021

13. DRAFT LUB Annual Report 2021

COMMUNICATION AND VOUCHERS:

1. Approval of invoices from Board Professionals
2. New monthly meeting date and time for 2022 meetings starting next month -- **2nd Thursdays starting at 7pm**

Board Policy: • All meetings shall adjourn no later than 10:00 PM unless a majority of the quorum present at said hour vote to continue the meeting to a later hour. • No new hearing shall commence after 9:15 PM unless the Chairperson shall rule otherwise. • The Chair may limit repetitive comments or irrelevant testimony and may limit the time or number of questions or comments from any one citizen to ensure an orderly meeting and allow adequate time for members of the public to be heard.

ADJOURNMENT



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

LAND USE BOARD RESOLUTION 2022-02

**A Resolution Appointing a Land Use Board Attorney for the Calendar Year 2022,
Rejecting Proposals that were Received and Authorizing the Award of a Fair and Open Contract for
Professional Legal Services**

WHEREAS, the Borough of Highlands Land Use Board has a need for professional legal services to be provided for the calendar year 2022 pursuant to the provisions of N.J.A.S. 19:44A-20.5; and

WHEREAS, the Borough has, through the fair and open process, publicly advertised for a Request for Proposals and Qualifications, and said requests for Professional Services –Land Use Board Attorney were received in the Office of the Municipal Clerk, and

WHEREAS, such Professional Legal Services can only be provided by a licensed professional; and

WHEREAS, the Land Use Board wishes to appoint Ronald Cucchiaro, Esq. and Dustin F. Glass, Esq. of the firm of Weiner Law Group, LLP; and

WHEREAS, the Local Public Contracts Law N.J.S.A 40A:11-1 et. Seq., requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised.

WHEREAS, the Chief Financial Officer has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, certification of the availability of funds is hereby made contingent upon the adoption of the 2022 Municipal Budget as follows:

Account # 2-01-21-180-000-242

For Legal Services for the Period of January 1, 2022 through December 31, 2022.

Patrick DeBlasio, CFO

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that:

1. Ronald Cucchiaro, Esq. and Dustin F. Glass, Esq. of the Law Office of Weiner Law Group, LLP is hereby appointed as Land Use Board Attorneys for the period of January 1, 2022 through December 31, 2022 and said appointment is made as a fair and open contract.
2. This contract is awarded without competitive bidding as a “Professional Service” in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession.
3. The Chairman and Board Secretary are hereby authorized to sign a contract for Professional Legal Services in accordance with this Resolution.
4. A copy of the Resolution as well as the contract shall be placed on file with the Board Secretary and the Borough Clerk.
5. The Board Secretary is hereby directed to publish notice of this award as required by law.

| Member, Class, and Name | Intro | 2nd | Aye | Nay | Abstain | Absent |
|--------------------------------------|-------|-----|-----|-----|---------|--------|
| Class I: Mayor | | | | | | |
| Mayor Carolyn Broullon | | | | | | |
| Class II: Official of Borough | | | | | | |
| Chief Rob Burton | | | | | | |
| Class III: Council Member | | | | | | |
| Councilmember Joanne Olszewski | | | | | | |
| Class IV: Members | | | | | | |
| Robert Knox | | | | | | |
| Bruce Kutosh | | | | | | |
| Laurie LaRussa | | | | | | |
| Christian Lee | | | | | | |
| Frank Montecalvo | | | | | | |
| Annemarie Tierney | | | | | | |
| Alt (in order): | | | | | | |
| 1 Mark Zill | | | | | | |
| 2 Helen Chang | | | | | | |
| 3 Denis Ziemba | | | | | | |
| 4 Dean Cramer | | | | | | |

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on January 6, 2022.

Michelle Hutchinson
Land Use Board Secretary



BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Joanne Olszewski, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class III Member according to the best of my ability, so help me God.

 Joanne Olszewski

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer



BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Christian Lee, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class IV Member according to the best of my ability, so help me God.

 Christian Lee

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer

BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Mark Zill, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class Alternate 1 Member according to the best of my ability, so help me God.

 Mark Zill

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer

BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Denis Ziemba, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class Alternate 3 Member according to the best of my ability, so help me God.

 Denis Ziemba

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer

BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Dean Cramer, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class Alternate 4 Member according to the best of my ability, so help me God.

 Dean Cramer

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer



BOROUGH OF HIGHLANDS LAND USE BOARD

OATH OF OFFICE

Borough of Highlands }
 County of Monmouth, State of New Jersey } §

I, Robert Burton, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New Jersey, that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of people; and that I will faithfully, impartially, and justly perform all the duties of the office of Land Use Board Class II Member according to the best of my ability, so help me God.

 Robert Burton

Sworn to and subscribed before me this 6th Day of January 2022.

 Signature Administering Officer
 Borough of Highlands

 Print Name of Administering Officer

**Borough of Highlands
December 2, 2021 Regular Meeting Minutes**

Meeting Location: Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ

Chair Rob Knox called the meeting to order at 7:31pm.
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, Ms. LaRussa (arrived at 7:35pm), Mr. Lee, Mr. Montecalvo, Ms. Chang, Vice Chair Tierney, Chair Knox
Absent: Councilmember Martin, Ms. Walsh, Ms. Nash, Ms. Pendleton
Also Present: Board Attorney Dustin Glass
Board Engineer Edward Herrman

Chair Knox informed that the meeting will depart from the Agenda order to best accommodate the Bay Avenue Redevelopment topic. Additionally, he stated that the applicant, LUB2020-07: 9 Shrewsbury Avenue, Block 42 Lot 2, Char-Ron, submitted in writing to withdraw their application without prejudice.

Dustin Glass noted that there would be no action taken regarding the Bay Avenue Redevelopment Plan agenda item. The Planner would outline his draft redevelopment plan for the Board's input and recommendations.

OPEN FOR PUBLIC COMMENTS: Chris Francy, 36 Fifth St., asked about missing Land Use Board meeting materials. He was informed that all meeting agenda and application materials are posted on the Land Use Board page before each meeting and taken down after application has been heard.

Gert Sofman, 157 Bay Ave., asked when the public gets to share their thoughts to the Redevelopment Plan. She was informed that the Council meeting is the forum for that.

RESOLUTIONS:

1. Memorialization of Resolution 2021-23: 26 Ralph Street, Block 113 Lot 6.01, Giordano

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, Vice Chair Tierney, Chair Knox

NO:

INELIGIBLE: Chief Burton

ABSENT: Councilmember Martin, Ms. Walsh, Ms. Nash, Ms. Pendleton

DATED: December 2, 2021

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 December 2, 2021.

Michelle Hutchison, 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.

2. Memorialization LUB2021-01: 49 Miller Street, Block 54 Lot 7.01, LDN Real Estates

BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2021-26
RESOLUTION OF MEMORIALIZATION
USE VARIANCE RELIEF WITH PRELIMINARY AND
FINAL MAJOR SUBDIVISION APPROVAL

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

IN THE MATTER OF LDN, LLC
APPLICATION NO. LUB2021-01

WHEREAS, an application for use variance relief with preliminary and final major subdivision approval has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by LDN, LLC (hereinafter referred to as the “Applicant”) on lands known and designated as Block 54, Lot 7.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 49 Miller Street in the CBD (Central Business District) 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 November 4, 2021, 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 .30 acres (13,297 s.f.) with ninety feet (90ft) of frontage along the southeast side of Miller Street and approximately sixty feet (60ft) of frontage along the northwest side of North Street within the CBD (Central Business District) Zone district. The subject Property is currently unimproved, but is serviced by municipal water and waste systems.

2. The Applicant proposes to subdivide the subject Property into five (5) new lots as follows:

- Proposed Lot 7.011 will contain 3,729 s.f. with 30 feet of frontage along Miller Street to be improved with a proposed 2-story, single-family dwelling.
- Proposed Lot 7.012 will contain 2,392 s.f. with 30 feet of frontage along Miller Street to be improved with a proposed 2-story, single-family dwelling.
- Proposed Lot 7.013 will contain 2,392 s.f. with 30 feet of frontage along Miller Street to be improved with a proposed 2-story, single-family dwelling.

- Proposed Lot 7.014 will contain 2,392 s.f. with 30 feet of frontage along North Street to be improved with a proposed 2-story, single-family dwelling.
- Proposed Lot 7.015 will contain 2,392 s.f. with 30 feet of frontage along North Street to be improved with a proposed 2-story, single-family dwelling.

3. Counsel for the Applicant, Richard Sciria, Esq. stated the Applicant sought Major Sight Plan Approval to subdivide the subject Property into five smaller lots and to construct single family homes on those subdivided lots.

4. Mr. Sciria continued that single-family dwellings are not a permitted use in the CBD zone and, thus, that a (d)(1) "Use" variance was required. He noted that the subject Property was previously located in the R-2.02 Residential zone where single-family homes are permitted and is, in fact, currently abutted by residential zones.

5. Mr. Sciria stated that despite this being a major subdivision application, the project was more akin to a minor subdivision because there were no proposed water retention basins, new roadways, or street lighting.

6. Mr. Sciria continued that each proposed new lot would have sufficient frontage and front an existing street.

7. Testimony was then taken from Emily Bahrs Valentino, who identified herself as the Managing Member of the Applicant. She stated that the Applicant has owned the subject Property since 2009 and that family members had owned it prior thereto.

8. Ms. Valentino testified that prior to Superstorm Sandy, the subject Property was improved with three structures, containing eight residential units. She explained that the dwellings were heavily damaged in Superstorm Sandy and that leaving them in a dilapidated state would have been unsafe.

9. Ms. Valentino further testified that in 2013, the residential dwellings were demolished and the subject Property was cleared. She stated that the Applicant now intends to subdivide the subject Property and build five single-family residential homes thereon with three (3) facing Miller Street and two (2) fronting North Street.

10. The Applicant's General Contractor Daniel Fers next testified that four (4) of the proposed homes would have three (3) bedrooms and one (1) would be a four-bedroom home (located on Proposed Lot 7.011). Three of the proposed homes would front Miller Street and two would front North Street.

11. Mr. Fers provided further testimony that each of the homes would be two stories tall and have a rear deck, and that access to the homes would occur at ground level via an interior staircase.

12. Mr. Fers further testified that four (4) of the proposed lots: (Proposed Lots 7.012, 7.013, 7.014, and 7.015) would be thirty feet (30 ft) by eighty feet (80 ft) and that one lot (Proposed Lot 7.011) would have dimensions of thirty feet (30 ft) by one hundred and twenty feet (120 ft).

13. Mr. Fers provided additional testimony that each proposed home would have a six foot (6 ft) covered front deck accessed from the interior of the home, and an uncovered back deck accessed by an exterior stairwell.

14. Mr. Fers next explained that the homes would be elevated above BFE and be two stories tall. He continued that the bottom floor of the homes contains the garage and would be outfitted with flood vents.

15. Mr. Fers continued testifying that each home would have the required number of off-street parking spaces and would be appropriately landscaped. The Applicant would be open to working with the Borough's professionals to develop an appropriate landscaping plan.

16. Mr. Fers then stated that North Street is a one-way street without curbs and that Proposed Lots 7.014 and 7.015 fronting North Street would have driveways connected to the street. He continued that Miller Street already has curb cuts and that for Proposed Lots 7.011, 7.012, and 7.013 fronting Miller Street, the Applicant would install new sidewalks and curb cuts.

17. Mr. Fers also testified that North Street does not have water access and that water access to homes fronting that street is received from Miller Street. He continued that, therefore, Proposed Lots 7.014 and 7.015 would need easements from Proposed Lots 7.012 and 7.013, respectively to obtain water access thereto.

18. Mr. Fers provided additional testimony that the HVAC systems would be located on the rear deck and, thus, be elevated above BFE.

19. The Board asked how far into the rear yard setback the stairwell to the proposed rear deck would protrude. Mr. Fers responded that the rear deck was ten feet (10 ft) deep and, therefore, he estimated that the rear stairwell would extend fourteen feet (14 ft) from the rear of the home.

20. The Applicant's Surveyor, Ronald Trinidad provided a history of the subject Property, stating that it had initially been two (2) lots (six and seven) but that it was joined at some time to form the subject Property, Lot 7.01.

21. Mr. Trinidad provided further testimony that subdividing the subject Property into five (5) smaller lots would create lots that were commensurate in size with others in the neighborhood. Mr. Trinidad next testified as to the dimensions of the proposed lots.

22. Mr. Trinidad stipulated that the Applicant agreed to comply with all aspects of the Board Engineer's Review Letter.

23. Mr. Trinidad additionally testified that project was RSIS compliant and that all proposed homes would have the required number of off-street parking spaces. He continued that the driveways would be approximately eighteen feet (18 ft) in width and twenty feet (20 ft) in length.

24. The Board Engineer testified that based upon the driveway dimensions, two (2) vehicles could be parked in the driveway and one (1) in the garage and, thus, three (3) off-street parking spaces were provided for, satisfying the RSIS requirements for both the proposed three-bedroom homes (which requires two parking spaces) and four-bedroom home (which requires two and one-half parking spaces).

25. The Board Engineer asked whether the Applicant had inquired as to whether any CAFRA permits and/or approvals were required from the NJDEP. Mr. Trinidad responded that they had not done so but agreed to make the necessary inquiries as to what the Applicant's obligations may be.

26. The Applicant's Planner, Paul Ricci, PP, AICP testified that the Applicant required (d)(1) variance relief because single-family homes are not permitted in the CBD Zone. Mr. Ricci continued that the Puleio case dictates that there are no bulk standards to be applied to a non-permitted use.

27. Mr. Ricci testified that the subject Property is particularly suitable to the proposed use and must, therefore, meet the "enhanced" criteria.

28. Mr. Ricci provided additional testimony concerning the Borough's Master Plan and the creation of the CBD Zone. He asserted that the subject Property was the only property along Miller Street zoned commercial, but the Board disputed that assertion, noting that the Borough Tax Map shows multiple properties on Miller Street zoned for commercial use. Mr. Ricci continued that he was trying to demonstrate that the Borough was "in conflict" with how to zone this part of the community.

29. Mr. Ricci next testified that the subject Property is particularly suitable for residential use because it was previously used as such and developing it for commercial use would be problematic. He asserted that it would be easy to raise a residential home above the BFE but doing so with a commercial property would be difficult.

30. Mr. Ricci continued testifying that the neighboring property owners do not want to sell to the Applicant and that the subject Property lacks frontage on Bay Avenue, thereby making it a less appealing option for commercial use. To that end, Mr. Ricci also testified that commercial use as office space was contemplated but that demand for office space is lacking and, thus, not a good use of the subject Property. Mr. Ricci concluded that, to the extent the site was suitable for commercial use, it would likely be occupied by lower-end, less desirable establishments.

31. Mr. Ricci next testified that the Applicant razed structures and cleaned up the subject Property after Superstorm Sandy, not knowing that she could have kept the residential units in perpetuity as a pre-existing, nonconforming use. Mr. Ricci continued that maintaining the subject Property as a vacant parcel would not benefit the community but that subdividing the subject Property and improving the subdivided lots with aesthetically pleasing single-family homes would be beneficial thereto.

32. Mr. Ricci further testified about the prevailing neighborhood characteristics, stating that the proposed subdivision would be consistent with the community, creating lots similar in size to those in the area. He concluded that Applicant has satisfied the positive criteria because the application furthers the goals of municipal planning by (a) promoting the general welfare; (g) providing adequate air and open space for citizens; and (i) creating homes that are in conformity with the neighborhood scheme.

33. Mr. Ricci next testified as to the negative criteria, stating that the density of the project would decrease from eight homes (which is what it was previously before the subject Property was cleared by the Applicant) to five homes (proposed). He added that the amount of required parking is being reduced by the project and that all off-street parking is provided on-site.

34. Mr. Ricci also stated that single-family homes are contemplated, although not allowed, in the CBD Zone and closed by asserting that the proposed application should be granted.

35. The Board Engineer then questioned whether the Board wanted to require the Applicant to install a new sidewalk and curb cuts to North Street as a condition of approval. The Board Engineer also inquired whether the Board would require the Applicant to repave both Miller Street and North Street in the disturbed areas.

36. The Board Engineer provided additional testimony that the proposed development would not likely cause any traffic impacts.

37. The hearing was then opened to the public at which time testimony was taken from Joanne Olszewski of 27 Grand Tour who asked whether Andy's Shore Bar was on a double lot. The Applicant responded that lot Andy's Shore Bar is on a lot that is approximately three times as wide as the proposed, subdivided lots.

38. There were no other members of the public or Board 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 may be granted use variance relief

pursuant to N.J.S.A. 40:58D-70d(1) along with preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 and final major subdivision approval pursuant to N.J.S.A. 40:55D-50.

The Applicant requires use variance relief in order to permit the proposed single-family use within the CBD Zone. The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the Applicant, would be best served by permitting the proposed use.

In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the Applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish the above criteria.

The Board finds the Applicant has satisfied the positive criteria. The Board first finds that the subject Property is distinguishable from others in the CBD Zone. This is because it is vacant and surrounded by other residential uses. The subject Property therefore has characteristics of an infill development. Board also finds that the subject Property is currently oversized when compared to other lots in the area.

The proposed subdivided lots will be of a similar size and shape as others in the neighborhood and the proposed homes will also, similarly, be of the same type and size as other homes in the community. Moreover, the Board finds that the application and proposed construction of five, single-family homes furthers the goals of municipal planning by (a) promoting the general welfare; (g) providing adequate air and open space for citizens; and (i) creating homes that are in conformity with the neighborhood scheme. The Board finds that these goals will be promoted, because, consistent with the Master Plan, the proposed scale of infill development is consistent in with the character of the area and therefore does not disturb the neighborhood scheme. The Board further finds that the alternative would be for the Applicant to propose larger subdivided lots with larger homes, which provide less air and open space and which are less consistent with the neighborhood scheme. The addition of new and aesthetically pleasing single-family homes, of the size and shape proposed, would visually enhance the area and create an aesthetically pleasing infill development. The Board therefore finds that the positive criteria has been satisfied.

The Board further finds that the enhanced criteria has also been satisfied. The Master Plan does not discourage infill development and further promotes harmonious compatible uses which complement each other and are appropriately sited in close proximity. Although located in the CBD Zone where the proposed use is not permitted, the Zoning Ordinances likely did not anticipate infill developments such as is proposed in the instant application. The Board further finds that the subject Property is particularly suitable for the proposed residential use and is distinguishable from other properties because, although

located in the CBD Zone, the subject Property does not front Bay Avenue and is situated close to other residential properties. The Board therefore finds the enhanced criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The proposed subdivision and construction of single-family homes will likely have negligible impact on the level of noise or traffic in the area. Moreover, the density of the project would decrease from eight residential units (which is what existed previously) to five single-family homes (which is what is proposed). The Board further finds that the amount of required parking is being reduced by the project and that all off-street parking is provided on-site. The proposed new lots and homes will also fit in seamlessly and be in harmony with the prevailing neighborhood scheme. The Board therefore finds there will be no substantial detriment to the zone plan, zoning ordinance or the public welfare. The negative criteria has therefore been satisfied. The Board further finds that the positive criteria substantially outweighs the negative criteria and that use variance relief may be granted in this instance pursuant to N.J.S.A. 40:55D-70d(1).

The Board also finds that any bulk variances and design waivers are subsumed within the granting of use variance relief. Puleio v. Tp. of North Brunswick Zoning Bd. of Adj., 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005).

The Board relies on the above and finds that the proposed lots are substantially similar to other lots in the neighborhood. The proposed lots will also be similarly developed with single family homes. Again, based upon the above analysis, the Board finds that preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 and final major subdivision approval pursuant to N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 2nd day of December 2021, that the action of the Land Use Board taken on November 4th, 2021 granting Application No. LUB2021-01, for use variance relief with use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-46 and final major subdivision approval pursuant to N.J.S.A. 40:55D-50 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 comply with the Map Filing Law. Failure to do so shall render this approval null and void.
4. The Applicant shall record this Resolution in the Office of the Monmouth County Clerk.
5. The architecture of the new homes shall be consistent with the exhibits presented to this Board.
6. All homes shall be serviced by public sewer and water. The Applicant shall submit easements for water service to (i) Proposed Lot 7.012 from Proposed Lot 7.014 and (ii) to Proposed Lot 7.013 from Proposed Lot 7.015 for review and approval of the Board Engineer and Board Attorney.
7. The Applicant shall obtain a jurisdictional determination from NJDEP regarding CAFRA requirements.

8. The Applicant shall comply with all sidewalk and curb requirements.
9. The Applicant shall submit a landscaping plan for review and approval by the Board's professionals.
10. The Applicant shall submit a grading plan for review and approval by the Board's professionals.
11. The Applicant shall comply with all RSIS requirements.
12. All HVAC units shall be located in the rear of the properties and be elevated subject to the review and approval of the Board Engineer.
13. Any future modifications to this approved plan must be submitted to the Board for approval.
14. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
15. The Applicant shall comply with all applicable Affordable Housing requirements.
16. The Applicant shall provide a certificate that taxes are paid to date of approval.
17. 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.
18. 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: Mr. Kutosh, Mr. Lee, Ms. Chang, Vice Chair Tierney, Chair Knox

NO:

INELIGIBLE: Mayor Broullon, Chief Burton

CONFLICT: Mr. Montecalvo

ABSENT: Councilmember Martin, Ms. Walsh, Ms. Nash, Ms. Pendleton

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

EXHIBITS

Case No. No. LUB2021/LDN, LLC

Major Subdivision with Use Variance Relief

November 4, 2021

December 2, 2021

- A-1 Packet consisting of four sheets (Exhibits 1 through 4) showing a colorized, existing land use map.
- A-2 Borough of Highlands Master Plan, dated 2016
- A-3 Borough of Highlands Zoning Map
- A-4 Land Use Board Application for Subdivision, dated March 12, 2021.
- A-5 Zoning Denial Letter, dated March 3, 2021.
- A-6 Proposed Subdivision Plan prepared by Richard E. Stockton & Associates, dated January 20, 2021.
- A-7 Proposed Architectural Plan for proposed lot 7.011, prepared by Salvatore La Ferlita, dated March 15, 2021.
- A-8 Proposed Architectural Plan for proposed lot 7.012, prepared by Salvatore La Ferlita, dated March 15, 2021.
- A-9 Proposed Architectural Plan for proposed lot 7.013, prepared by Salvatore La Ferlita, dated March 15, 2021.
- A-10 Proposed Architectural Plan for proposed lot 7.014, prepared by Salvatore La Ferlita, dated March 15, 2021.
- A-11 Proposed Architectural Plan for proposed lot 7.015, prepared by Salvatore La Ferlita, dated March 15, 2021.

INTEROFFICE REPORTS

- B-1 Board Engineer's Review of Major Subdivision, Plat Requirements (completeness) letter, dated June 8, 2021.
- B-2 Board Engineer's Review of Major Subdivision, Fee Calculation letter, dated June 8, 2021.
- B-3 Board Engineer's First Engineering Review letter, dated November 2, 2021.

HEARINGS ON OLD BUSINESS: None

LUB2020-07: 9 Shrewsbury Avenue, Block 42 Lot 2, Char-Ron – Withdrew

HEARINGS ON NEW BUSINESS: None**ACTION ON OTHER BUSINESS:** Bay Avenue Redevelopment Plan

Chair Knox handed over the meeting to Vice Chair Tierney as Acting Chair to proceed with the Bay Avenue Redevelopment Plan portion.

Paul Gryiel, Planner, gave his credentials prior to giving overview of redevelopment area and plan. The big picture of plan is 3 overlay districts –description on page 21 and map on page 25 of Plan. He reiterated that the use for a property in the redevelopment study does not go away. The study and plan is non-condemnation. Borough can not buy property with this plan.

Mr. Kutosh asked why the Plan expanded the study area. He didn't think that it is ideal to change the look of the town.

Vice Chair Tierney, Ms. Chang, and Ms. LaRussa voiced their dislike of proposed allowance of 5 floors for properties in the redevelopment area as such height would not be in line with the look of the town.

Mr. Gryiel described proposed retail incentives to promote ground floor retail and design standards. Vice Chair Tierney supported idea of green space and seating areas along Bay Avenue. She asked for clarification if design standards were required or recommended as idea is for more windows and less boxy buildings for retail. Mr. Gryiel answered that it is mixed. She asked for more details for proposed downtown parking. Mr. Gryiel directed Board to page 29. Vice Chair asked about consideration for enhanced bike safety on Bay Avenue. Mr. Gryiel answered no.

Ms. Chang asked for more detail about lot coverage for retail and Vice Chair Tierney asked about more detail about setbacks. Mr. Gryiel directed Board to page 26. Ms. Chang asked for more clarification for 10 feet or 10% regarding building height note on page 27. Vice Chair Tierney wanted assurance that placement of HVAC on roofs would have no visual impact. Mr. Gryiel suggested that maybe he can add recommendation for roof decks.

When Mr. Gryiel finished his presentation, Vice Chair Tierney returned the meeting back to Chair Knox to finish Board business to allow for public portion.

APPROVAL OF MINUTES OF NOVEMBER 4, 2021 MEETING

Offered by: Mayor Broullon

Seconded by: Mr. Kutosh

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

Nays:

Ineligible: Chief Burton

Absent: Councilmember Martin, Ms. Walsh, Ms. Nash, Ms. Pendleton

COMMUNICATION AND VOUCHERS

1. Approval of Invoices from T&M Associates and Weiner Law Group
2. New monthly meeting date and time for 2022 meetings beginning February 10, 2022–2nd Thursdays starting at 7pm

Offered by: Ms. LaRussa

Seconded by: Vice Chair Tierney

Ayes: Mayor Broullon, Chief Burton, Mr. Kutosh, Ms. LaRussa, Mr. Lee, Mr. Montecalvo, Ms. Chang, Vice Chair Tierney, Chair Knox

Nays:

Absent: Councilmember Martin, Ms. Walsh, Ms. Nash, Ms. Pendleton

PUBLIC COMMENTS:

Maureen, 118 Highland Ave., thought redevelopment area should not end at Veteran Park and wondered how 5-story buildings would look from the hill.

Barbara Domingos, 247 Bay Ave., expressed concern for proposed lot coverage, building height, parking, parking fund, and results of recent survey.

Alyson Hallander, 59 Washington Ave., gave support of proposed green space plantings and 5-story buildings in overlay #3.

Lorna Milbauer, Marina Bay Ct., expressed concern of “shall” and “should” used in plan and thought that there should be more “shall” used. She wondered how the retail incentive for front setbacks would look visually.

Tricia Rivera, Waterwitch, wanted the plan to discuss more about the flood plain issue. She also expressed concern for proposed lot coverage, bike rack placement, adverse influences, vetting process, and orientation of buildings. Additionally, for any easement as mentioned on page 36, residents should have a say. She thought that line on page 39, “... well served by infrastructure...” was misleading.

Charles LaRue, 12 Second St., supported redevelopment and noted that the proposed height and setbacks won’t be as unappealing as imagined.

Patricia Hoffman, 75 Highland Ave., gave an example of a property in New York City that shows how setback incentive could go wrong.

Michelle M, Highland Ave., worried about building height in reference to fire department's ability to put out fires and recent survey's results.

Steve Solop, 205 Bay Ave., noted that the Master Plan has building height restriction and that the Master Plan super cedes the Redevelopment Plan.

With no one else from the public making a statement, the Board moved to adjourn.

ADJOURNMENT

Offered by: Mayor Broullon

Seconded by: Ms. LaRussa

All in favor

None Opposed

Adjourned at 8:54pm.

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on December 2, 2021.

Nancy Tran, Land Use Board Assistant Secretary