

TO: Borough of Highlands Land Use Board

FROM: Susan Gruel, PP
Megan Adam, Associate Planner

RE: 19 Bay Avenue
Block 38.01, Lot 13
Use Variance, Waiver of Site Plan Requirements, and Appeal of Zoning Official Decision

DATE: May 7, 2025

As requested, we have reviewed the following materials:

- Borough of Highlands Land Use Board Application, dated January 29, 2025;
- Borough of Highlands Zoning Board of Adjustment Resolution 2010-03;
- Property Survey of Block 38.01, Lot 13 in the Borough of Highlands, prepared by Seneca Survey Co., Inc., dated August 3, 2017;
- 2-sheet Concept Sketches, undated;
- Completeness Review for Proposal at 19 Bay Avenue, prepared by Carmela Roberts, PE, CME, CPWM, Land Use Board Engineer, dated March 14, 2025; and
- Denial of Zoning Permit for 19 Bay Avenue, prepared by Courtney Lopez, Borough of Highlands Zoning Official, dated February 21, 2025.

Site Description

The subject property is an approximately 0.07-acre (3,220 square foot) through lot with frontage along Bay Avenue to the north and Shore Drive to the south, located at 19 Bay Avenue. The property is located on Lot 13 of Block 38.01 in the Borough and includes approximately 54.7 feet of frontage along Bay Avenue (two-way roadway) and 52.5 feet of frontage along Shore Drive (one-way roadway).

The property is developed with a two-story office building, which includes a ground floor area of 1,200 square feet, and second floor area of approximately 363 square feet. The building's current use includes the offices of the Inspired Network Financial Group on the ground floor. The second floor of the building is noted to include an open-concept room with a kitchenette and one (1) bathroom. The second level is only accessible via an external staircase and semi-enclosed porch. The ground level is faced with brick, while the second level is lined with white vinyl paneling.

The property's asphalt parking area, accessed to/from Bay Avenue, is located in the front yard of the existing building. Spaces within this parking area are not delineated, so it is currently unclear how many

parking spaces are provided. Signage along a wooden fence indicates that parking is reserved for the Inspired Network Financial Group. The office building is accessed up a flight of stairs from the parking lot. An additional, smaller parking area has been created directly adjacent to the building, and is accessed to/from Shore Drive. This area is marked by the same signage as the larger parking lot, that it is reserved for the finance office. This smaller parking area is located at a higher elevation on the lot and does not require the use of the stairs to access the building; however, no ADA signage or markings are present.

The subject property is located within the WC-1 Waterfront Commercial Zone. Directly east of the property, on Lot 12, is a one-story building that houses the offices of DSV Property Management. On Lot 15.01 to the west is the Chubby Pickle sports bar and grill. The remaining portion of the block on which the property is located includes surface lots for parking overflow from the nearby Bahrs Landing and Moby's Lobster Deck restaurants and the Gateway Marina.

Prior Property Approvals

The subject property was granted preliminary and final site plan approval by the Borough's Zoning Board of Adjustment on March 4, 2010 (memorialized in Resolution 2010-03). This application involved the construction of the existing 363-square feet second-story addition, and a 158-square foot addition to the ground floor.

The approved uses for the site included a seasonal bicycle rental shop on the ground floor, and an office space on the second floor for a local masonry contracting business. This level was to be occupied by at most two (2) employees. Access for the second level was always intended to be separate from the ground level.

The approved parking arrangement for the site describes the parking lot along Bay Avenue containing three (3) parking stalls. The parking area accessed from Shore Drive is described as a handicapped space. Therefore, a total of four (4) parking spaces were approved.

Zoning Permit Denial

On February 21, 2025, the subject property was issued a zoning permit denial from the Borough's Zoning Official, for requesting to utilize the second floor of the building as a short-term rental studio apartment.

Aerial of Subject Property



Project Overview

The applicant is proposing to convert the entire second level into a short-term rental studio apartment. It is currently unclear whether any interior fit-out work (e.g., new flooring, lighting, partition walls) or exterior modifications to the parking areas are proposed as a result of the residential addition.

The proposed apartment will include an open-concept living/sleeping room, which includes access to the existing kitchenette and bathroom. The covered porch will remain and serve as an extended living space for the unit.

Zoning

The property is in the WC-1 Waterfront Commercial 1 Zone. Per Chapter 21 of the Borough Ordinance, all residential uses are explicitly prohibited within this Zone. Therefore, the application requires a d(1) use variance.

WC-1 Waterfront Commercial 1 Zone (Chapter 21 Attachment 1)			
	Ordinance Requirements	Existing	Proposed
Min. Lot Area	-	3,220 SF	No change
Min Lot Frontage/Width	100 feet	Bay Ave.: 54.7 feet (ENC)* Shore Dr.: 52.5 feet (ENC)	No change (V)
Min. Lot Depth	150 feet	57.1 feet (ENC)	No change (V)
Min. Front Setback	20 feet	Bay Ave.: > 20 feet Shore Dr.: 0.1 feet (ENC)	No change (V)
Min. Side Setback	8 feet / 8 feet	9.5 feet / > 8 feet	No change
Min. Rear Setback	-	N/A – through lot	N/A
Max. Building Height	36 feet	<36 feet	No change
Max. Building Cover	25%	~18.6%	No change
Max. Impervious Cover	65%	~87% (ENC)	No change (V)

Required Stair Setback from Property Line (21-8)	3 feet from any side or rear property line	Applicant to confirm setbacks from private stairway to second level	No change
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* The lot frontage along Bay Avenue was taken from the most recently amended Borough tax maps, from December 2024.

ENC = Existing non-conformance

V = Bulk variance relief required

Off-Street Circulation, Parking, and Loading Requirements			
	Ordinance Requirements	Existing	Proposed
Minimum Number of Parking Spaces (26-65.14)	Professional Services: 1 per 600 square feet of gross floor area: 1,200 SF / (600 SF/parking space) = 2 spaces + 1-Bedroom Apartment = 1.8 spaces per unit = 1.8 spaces Total = 4 spaces	Unclear - applicant to confirm	No change
Minimum Parking Space Dimensions (26-65.14D)	In general, ninety (90) degree parking spaces shall be nine (9) feet wide by eighteen (18) feet long	Unclear - applicant to confirm	No change
Driveway Aisle Width (26-65.14D)	Bay Avenue lot (90-degrees parking angle): 24 feet Shore Drive (one-way, head on parking area): 12 feet	Unclear - applicant to confirm	No change
Guide Rail Provisions (26-65.14D)	Parking spaces shall be delineated by a treated wood guide rail, at minimum of thirty (30) inches above grade	Not provided (ENC)	No change (W)

W = Design Waiver required

Variances and Waivers Required

D(1) Use Variance

1. The applicant requires d(1) variance relief to permit apartment use within the WC-1 Waterfront Commercial 1 Zone.

Pre-Existing Non-Conforming Conditions

Pre-existing non-conforming conditions include:

C-Variances

1. **Insufficient Lot Frontage/Width (Chapter 21 Attachment 1)** – A minimum lot width/frontage of 100 feet is required, where 54.7 feet exists along Bay Avenue and 52.5 feet exists along Shore Drive, and is proposed to remain.
2. **Insufficient Lot Depth (Chapter 21 Attachment 1)** – A minimum lot depth of 150 feet is required, where 57.1 feet exists, and is proposed to remain.
3. **Insufficient Front Setback (Chapter 21 Attachment 1)** – A minimum front setback of 20 feet is required, where 0.1 feet exists along Shore Drive, and is proposed to remain.
4. **Excessive Impervious Coverage (Chapter 21 Attachment 1)** – A maximum impervious coverage of 65% is permitted, where 87% exists, and is proposed to remain.

Design Standards

5. **Guide Rail Provisions (§26-65.14D)** – Where guide rails are required for surface parking spaces, no guide rails exist and none are proposed.

Planning Comments:

Variance

1. This application requires d(1) use variance relief to permit an apartment use within the WC-1 Zone. The applicant shall provide planning testimony to justify the requested relief from the Board.
 - a. Positive Criteria - That there are “special reasons” for granting the requested variance and that the site is “particularly suitable” for the proposed use, which are often referred to as the “positive criteria”.
 - i. The “special reasons” testimony shall either demonstrate how the proposed use advances the purposes of zoning, whether there is a hardship that prevents development of the property with a permitted use, or whether the proposed use is inherently beneficial.

- ii. The “particularly suitable” analysis should focus on why this location within the municipality or region is particularly suited to the use despite the zoning, and what unique characteristics of the site make it appropriate for the proposed use rather than a permitted use.
 - b. Negative Criteria - The applicant’s testimony must demonstrate that the requested variance can be granted without substantial detriment to the public good. This analysis should consider impacts on neighboring properties and on the general public welfare. The applicant’s testimony must demonstrate that the requested variance will not substantially impair the intent and the purpose of the Borough Master Plan and Zoning ordinance.
2. The application requires one (1) design exception. The applicant shall provide testimony demonstrating that strict compliance with the Ordinance standards is impracticable per the standard set forth at N.J.S.A. 40:55D-51.

Conformance with the Borough Master Plan

1. The 2016 Master Plan Reexamination Report for the Borough intentionally established distinct waterfront zones, separating waterfront commercial zones from waterfront residential and waterfront mixed-use residential/commercial zones. The subject property is located within a waterfront commercial zone, as most of the area’s development consists of restaurants, marinas, and commercial establishments; in accordance with the Master Plan Reexamination, all residential uses are prohibited within the waterfront commercial zones.
 - a. Economic Development/ Redevelopment goals reiterated in this 2016 Reexamination Report support maintaining the unique character of each waterfront zoning district. These goals include:
 - i. “Focus economic activity in the Borough’s economic centers including Bay Avenue and commercial waterfront areas. Recognize the unique character of each area and promote development that will strengthen and reinforce market niches” (p.47).
 - ii. “Encourage selected retail, marina and office mixed use development along the Sandy Hook Bay waterfront that take advantage of extensive waterfront frontage and regional access. Target the corridor for uses that complement Bay Avenue rather than compete with it” (p.48).
 - b. The applicant shall provide testimony regarding the implications of deviating from the Reexamination Report’s vision, and proposing a residential addition within a waterfront commercial zone, rather than a waterfront residential or mixed-use zone.

Residential Addition

2. We note that the subject property (i.e., 19 Bay Avenue) is currently posted on Zillow as a “multifamily” home with one (1) bedroom, and three (3) bathrooms (including one (1) full bathroom and two (2) half bathrooms). Additionally, a second posting on Zillow lists the property as 750 square feet studio space with one (1) bathroom.
 - a. The Borough Ordinance explicitly prohibits all residential uses within the WC-1 Zone; the applicant shall therefore provide testimony regarding this appearance of an existing residential apartment on the site.
3. Dimensions / a drawing scale have not been provided with the concept floor plans. These dimensions shall be added to the drawings, to confirm the extent of the proposed living space.
4. The applicant shall confirm that the bathroom on the second floor is a full bathroom (i.e., provides a shower, toilet, and sink). These features shall be added to the drawing set, and the bathroom shall be articulated to read cohesively with the remainder of the floor plan features.
5. The applicant shall provide testimony regarding any safety measures (e.g., locks) to be implemented for the second floor apartment.
6. The applicant shall clarify provisions for the collection of trash and recycling for the short-term rental unit.
 - a. Will this be integrated with the office’s trash/recycling?
 - b. Who will be responsible for bringing trash to the curb on pickup days?

Site Improvements

While the following comments are related to compliance with the Borough’s site improvement standards, we reiterate that the primary scope of this application relates to the proposed residential addition.

7. The application indicates that a total of five (5) parking spaces exist on the site, but Resolution 2010-03 outlines a total of four (4) parking spaces (including the one ADA parking space) on the site.
 - a. The applicant shall clarify how the five (5) parking spaces were calculated.
8. The applicant shall confirm compliance with the following ordinance requirements, as they are currently unclear from the application materials. The survey should be revised accordingly to include this information.
 - a. Setback of the private exterior stairwell from eastern property line; per the standards outlined in §21-8, a minimum setback of 3 feet is required. Additional variance relief may be required.
 - b. The location of all existing parking spaces and their respective dimensions.

- i. The plans should clearly delineate all parking spaces within the parking areas. A minimum dimension of nine (9) feet wide by eighteen (18) feet long is required. Additional waiver relief may be required.
 - c. The width of both driveway aisles should be confirmed and added to the survey. A minimum width of 24 feet is required for the driveway along Bay Avenue and 12 feet is required along Shore Drive.
- 9. No ADA signage or pavement markings were observed during a site visit on May 1, 2025, within the driveway along Shore Drive.
 - a. An ADA parking space is required for the site, per Resolution 2010-03 and the Borough Ordinance; indication of ADA parking spaces must be articulated through signage and pavement markings.
- 10. Exterior light fixtures are shown around the building, but photometric plans have not been provided to demonstrate compliance with the Borough Ordinance.
 - a. The applicant shall provide testimony about the proposed lighting's compliance with Section 26-65.11 of the Borough Ordinance.
 - b. Additional design waivers may be needed for any deviations from the Borough's lighting standards.

Miscellaneous

- 11. The pavers along the secondary driveway encroach over the northwestern property line. Do any easements exist on the property?
- 12. The survey provided was conducted almost 8 years ago. The applicant shall clarify that no major site improvements have been made within this time period.

Site Visit Photos (taken May 1, 2025)



Views of the subject property along Bay Avenue.



Views of the subject property along Shore Drive.



(Left) Secondary parking area, accessed from Shore Drive.

(Right) Private external staircase leading to the proposed residential unit.