

TO: Borough of Highlands Land Use Board

FROM: Susan Gruel, PP
Megan Adam, AICP Candidate, Associate Planner

RE: 44 Miller Street
Block 58, Lot 7.01
D(1) Use Variance and Minor Site Plan Approval with "C" Variances

DATE: October 3, 2025

As requested, we have reviewed the following materials:

- Borough of Highlands Land Use Board Application, dated June 26, 2025; and
- Property Survey of Block 58, Lot 7.01 in the Borough of Highlands, prepared by Morgan Engineering & Surveying, dated April 3, 2025; and
- Variance Plan for 44 Miller Street, prepared by Morgan Engineering & Surveying, dated May 7, 2025; and
- Architectural Plans for 44 Miller Street, prepared by James T. Daly Architect + Associates, dated February 23, 2021, and revised through January 23, 2025; and
- Completeness Review for Proposal at 44 Miller Street, prepared by Carmela Roberts, PE, CME, CPWM, Land Use Board Engineer, dated August 12, 2025; and
- Denial of Zoning Permit for 44 Miller Street, prepared by Courtney Lopez, Borough of Highlands Zoning Official, dated August 20, 2024.

Site Description

The subject property is an approximately 0.11-acre (4,920 square foot) corner lot with frontage along Fourth Street and Miller Street, located at 44 Miller Street. The property is located on Lot 7.01 of Block 58 in the Borough and includes approximately 61.5 feet of frontage along the west side Miller Street (two-way roadway) and 80 feet of frontage along the south side of 4th Street (one-way roadway). The property is located within the AE flood zone and has a base flood elevation of 11 feet.

The property was previously developed with a one-story duplex building, which was approved to be lifted above base flood elevation on March 31, 2021. The footprint of the existing building was not proposed to change, and its use as a duplex was to be grandfathered in as an existing non-conforming use. During this process to elevate the duplex, it collapsed and was subsequently demolished in August of 2021. Only the building's foundation remained on the site, as well as a concrete walkway along the northern property line.

At some point between the demolition of the previous structure and March 4, 2024, construction of a new three-story concrete duplex on the site had begun. On this date, the Borough's Zoning Official issued a Stop Work Order, as the site had not received zoning approval. Further, on August 20, 2024, the subject property was issued a zoning permit denial from the Zoning Official, for noncompliance with provisions of Sections: 21-98.A, 21-98.C of the Borough's Zoning Ordinance. The zoning denial reiterated that d(1) use variance approval is required to construct a new two-family duplex in the R-2.02 Single Family Zone.

The applicant then received a Notice of Unsafe Structure on September 13, 2024, and was ordered to demolish the new duplex by October 4, 2024. The Applicant received a follow up to this Notice of Unsafe Structure status on December 17, 2024, and was fined on January 12, 2025.

Beyond the partially-constructed duplex on the site, the southern and western sections of the property are undeveloped. These areas are lined with grass and gravel.

The subject property is located within the R-2.02 Single Family Zone of the Borough. Directly west of the property, on Lot 5.01, is two-story dwelling. Properties located north of the subject property are zoned for single-family residential use, and those to the south are mainly zoned within the Borough's Central Business District. The subject property is located one (1) block north of the Bay Avenue commercial corridor.

Prior Property Submissions

On September 27, 2024, a bulk variance application for the subject property, as well as an appeal of the Zoning Official's decision, was submitted to the Borough. Subsequently, on February 10, 2025, sketches and architectural plans were submitted for review. This application was not heard before the Land Use Board, as the Board Engineer deemed the application incomplete, citing the need for d(1) Use Variance and Minor Site Plan approval. In response, the current application (LUB #25-10) has been submitted.

Aerial of Subject Property



Project Overview

The applicant is proposing to construct a new elevated three-story concrete duplex within the eastern section of the property, within the footprint of the previous dwelling. The northern section of the building will be one story, and atop it will be an elevated concrete deck.

East of the duplex building is a proposed gravel driveway along Miller Street, which will provide access to the building's two (2) two-car garages. Also at this ground level, opposite the walls of the garages, is an open space with access to an elevator. This elevator offers direct access to the living space of only one of the dwelling units. Additional residential access to this unit is located along the property's Miller Street frontage, through a private entry foyer and staircase. The sole access to the second dwelling unit will be through its private foyer and staircase, which is also located along Miller Street. A planter box will be located at these entrances along Miller Street.

The duplex's living spaces will be raised to a foot higher than the base flood elevation (i.e., 12 feet). The living spaces for each dwelling will span throughout three levels. The floor plans for the dwellings are similar, and include an open-concept kitchen, living, and dining room at the raised first level, bedrooms and a laundry room at the raised second level, and an enclosed den and attic space at the raised third level. Each dwelling will also include two (2) full bathrooms, one (1) powder room, and closet space. The dwelling unit which does not have elevator access will also include an office at the raised second level.

Each dwelling will include a series of balconies and decks along the northern and southern (i.e., along Miller Street) façades. Along the northern façade, this includes a shared concrete deck at the raised first level, and private balconies from the bedrooms at the raised second level. Further, along the southern/Miller Street façade, private decks at the raised second and third levels are to be constructed.

Zoning

The property is in the R-2.02 Single-Family Residential Zone. Per §21-85 of the Borough Ordinance, two-family dwellings are not a permitted use within this Zone. As the previously grandfathered duplex on the site was demolished, the application to construct a new duplex requires a d(1) use variance.

R-2.02 Single-Family Residential Zone (Chapter 21 Attachment 1)			
	Ordinance Requirements	Existing	Proposed
Min. Lot Area	4,000 SF	4,920 SF	No change
Min Lot Frontage/Width	50 feet	Miller Street: 61.5 feet Fourth Street: 80 feet	No change
Min. Lot Depth	75 feet	61.5 feet (ENC)	No change (V)
Min. Front Setback	20 feet	N/A	Miller Street: 3.6 feet (V) Fourth Street: 0.9 feet (V)
Min. Side Setback	6 feet / 8 feet	N/A	Relative to Miller Street: 0.9 feet / 22.5 feet (V) Relative to Fourth Street: 3.6 feet / 7.3 feet (V)
Min. Rear Setback	-	N/A – corner lot	N/A
Max. Building Height	32.5 feet*	<32.5 feet	32.5 feet
Max. Building Cover	33%	N/A	~41.3% (2,032 SF) (V)
Max. Impervious Cover	75%	N/A	Unclear; applicant to confirm.
Required Stair Setback from Property Line (§21-8)	3 feet	N/A	< 3 feet along Fourth Street (V)

*Where a dwelling is constructed or reconstructed to provide the required parking under the structure, the maximum height shall be increased by two and one-half (2 1/2) feet. As this situation applies to the subject property, 2.5 feet above the maximum permitted 30 feet can be constructed (i.e., 32.5 feet).

ENC = Existing non-conformance

V = Bulk variance relief required

Design Standards			
	Ordinance Requirements	Existing	Proposed
Minimum Number of Parking Spaces (§21-65.14)	Two-family residences: 2-Bedroom = 1.5 spaces per unit x 2 units Total = 3 spaces	N/A	4 spaces
Driveway Location (§21-65.5)	On lots with multiple frontage, driveways should be located on the minor street, if possible. Driveways shall be a minimum of twenty-five (25) feet from any intersection, measured from the street line of the intersecting street.	> 25 feet from the intersection of Miller Street and Fourth Street	No change
Driveway Dimensions (§21-65.5)	For residential lots: 18-foot maximum at the curb 22-foot maximum at the interior	N/A	Unclear at curb; > 22 feet at certain points in the driveway (W).

W = Design Waiver required

Variances and Waivers Required

D(1) Use Variance

1. The applicant requires d(1) use variance relief to permit a two-family dwelling use within the R-2.02 Single-Family Residential Zone.

Bulk/"C" Variances

Pre-existing non-conforming conditions include:

1. **Insufficient Lot Depth (Chapter 21 Attachment 1)** – A minimum lot depth of 75 feet is required, where 61.5 feet exists, and is proposed to remain.

Newly-created conditions:

1. **Insufficient Front Setback (Chapter 21 Attachment 1)** – A minimum front setback of 20 feet is required, where 3.6 feet is proposed along Miller Street and 0.9 feet is proposed along Fourth Street.

2. **Insufficient Side Yard Setback (Chapter 21 Attachment 1)** – A minimum side yard setback of 6 feet and 8 feet are required, where 0.9 feet and 22.5 feet are proposed along Miller Street, and 3.6 feet and 7.3 feet are proposed along Fourth Street.
3. **Excessive Building Coverage (Chapter 21 Attachment 1)** – A maximum building coverage of 33% is permitted, where 41.3% is proposed.
4. **Insufficient Stair Setback from Property Line (§21-8)** – A minimum setback of 3 feet for any ingress and egress stair is required from any side or rear property line, where less than three feet is proposed along the Miller Street frontage. Further, the proposed staircases to the deck along the northern property line do not meet the minimum required 3-foot setback.

Design Waivers

1. **Excessive Driveway Width (§21-65.5)**– Where a maximum interior driveway width of 22 feet is proposed, greater than 22 feet is proposed periodically.

Planning Comments:

Variance

1. This application requires d(1) use variance relief to permit a two-family use within the R-2.02 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

3. The 2016 Master Plan Reexamination Report for the Borough recommends that the “existing residential character of the Borough” be “preserved and protected” (p. 66). Further, it discourages construction of “new houses [out] of scale with existing development” (p.11).
 - a. The applicant shall provide testimony regarding the implications of deviating from the Reexamination Report’s vision, and constructing a two-family residence within a single-family zone.
 - b. Further, it is our opinion that the proposed construction is entirely out of character with the surrounding neighborhood (see site visit photos taken on September 30, 2025, attached to this memorandum).
 - i. Minuscule front yard setbacks are proposed for the two-family residence, creating out-of-scale masonry walls right along the streets.
 1. The concrete wall surrounding a proposed planter box encroaches onto the Miller Street sidewalk, escalating the intrusion of the construction along the property frontages.
 - ii. The proposed elevated three-story building over a parking area conforms to the Borough’s ordinance, which calculates building height for residences within a flood zone with respect to the base flood elevation plus one foot (i.e., the height measurement starts at 12 feet above average grade). As a result, the proposed building height of 32.5 feet reaches a height of 44.5 feet from the street level at its roof peak.
 1. Where an increased height creates an even greater need for enhanced setbacks, the proposed construction does not consider.
 2. Further, the decision to construct to the permitted maximum height leaves no room for a pitched roof, which is characteristic of the neighboring residences.
 - iii. It is our opinion that an appropriately-sized dwelling could be constructed on the site, and comply with the setbacks outlined in the Borough Ordinance.

Variance Plan

4. We note that there are inconsistencies between the zoning tables within the Variance Plan Architectural Plans regarding the lot's depth, width, and setbacks. These tables shall be revised to articulate consistent information, and reflect the conditions outlined in the Property Survey.

Impervious Improvements and Lot Circulation

5. The proposed lot impervious coverage is currently unclear; the architectural drawings state this value to be 76%, while the variance plan states this value to be 55.9%. The applicant shall clarify the proposed lot impervious coverage, and amend the drawings accordingly.
6. The applicant shall clarify the width of the curb cut that is proposed to remain along Miller Street, and add this to the provided variance plan. Per the standards outlined in Section 21-65.5 of the Borough Ordinance, a maximum width of 18 feet is permitted. Additional waiver relief may be required.
7. The applicant shall clarify whether the existing curb cut along Fourth Street will remain active with the proposed improvements.
 - a. The Foundation Plan on Sheet A-2 describes a fifth garage door leading to an unidentified space at grade level. Is additional parking proposed within this space?
 - i. The applicant shall confirm compliance with the following standard outlined in Section 21-82A of the Borough Ordinance: "Any residential structure may be elevated to comply with the flood regulations of Part 7, and/or provide the required off-street parking under the structure, upon issuance of flood and building permits, provided there is no increase in the building coverage or floor area of the structure other than the addition of parking under the structure."

Additional Site Improvements

8. We note that no landscaping or exterior lighting plans have been submitted. The applicant shall confirm provide these plans and confirm compliance with the additional design standards outlined in Sections 21-65.10 and 21-65.11 of the Borough Ordinance.
9. Is any fencing proposed? All fencing shall be in compliance with Section 21-65.7 of the Borough Ordinance.

Miscellaneous

10. The applicant shall provide testimony regarding any safety measures (e.g., locks, gates) to be implemented for units, particularly in relation to the staircases leading up to the elevated concrete deck.

11. The applicant shall clarify provisions for the collection of trash and recycling for the new duplex.
 - a. Where will trash be stored?
 - b. Who will be responsible for bringing trash to the curb on pickup days?

Site Visit Photos (taken September 30, 2025)



Views of the subject property along Miller Street.



View of the subject property at the intersection of Miller Street and Fourth Street.



View of the subject property along Fourth Street.



Partially-constructed details along Miller Street.



View of the proposed construction within the surrounding block.