



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2025-20

**MEMORIALIZATION OF MINOR SITE PLAN APPROVAL AND CHANGE IN USE
WITH ANCILLARY BULK VARIANCE RELIEF**

**Approved: June 12, 2025
Memorialized: July 10, 2025**

**IN THE MATTER OF 125 BAY AVE, LLC
APPLICATION NO. LUB25-07**

WHEREAS, an application for minor site plan approval for a change in use has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by 125 Bay Ave. LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 46, Lot 4, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 125 Bay Avenue in the Amended CBD Redevelopment Area, as designated by the Amended CBD Redevelopment Plan, dated August 21, 2024; and

WHEREAS, a live public hearing was held before the Board on June 12, 2025, with regard to this application; and

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

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

NOW, THEREFORE, does the Highlands Land Use Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 12,000 s.f. and is currently improved with a two-story block building, which was previously in use as a house of worship, with associated site improvements, such as sidewalks, a fountain, fencing, an enclosed patio, storage features, lawn, and landscaped areas. The Property is located in the Amended CBD Redevelopment Area, as designated by the Amended CBD Redevelopment Plan, dated August 21, 2024.

2. The subject Property is located between the southwest side of Bay Avenue and South Second Avenue and between Spring Street and W. North Street.

3. The subject Property has no driveway access and, thus, no off-street parking, and is located in the Special Flood Hazard Zone AE.

4. The Applicant's Attorney, Salvatore Alfieri, introduced the application and stated that the Applicant was seeking a change in use from the prior use as a house of worship to any one of the principal permitted uses in the CBD Zone.

5. The Applicant's Professional Engineer and Professional Planner, Walter Joseph Hopkin, P.E., P.P. was sworn in and qualified as an expert in both engineering and planning.

6. Mr. Hopkin testified that the Applicant is seeking a change in use from a former house of worship to any one of those permitted principal uses in the CBD Zone, pursuant to the Borough of Highlands' Amended CBD Redevelopment Plan, dated August 21, 2024, which are as follows:

- Retail sales and services
- Offices
- Banks and financial institutions
- Eating and drinking establishments
- Bakeries
- Food preparation services

- Food manufacturing given that a portion of the space is dedicated to the sale of the food products that are manufactured on-site
- Cottage food preparation services and sales
- Microbreweries and distilleries
- Pool halls
- Houses of worship
- Theaters
- Childcare Centers
- Educational uses
- Art, artisan, woodworking, and jewelry making handicraft studios, workshops and galleries
- Health, fitness, dance, music, and martial arts studios
- Municipal uses
- Open space
- Mixed-use developments (which includes a combination of permitted principal uses in the zone)
- Existing single-family and two-family homes
- Existing multi-family residential
- Multi-family residential located in a mixed-use building where the first floor serves as a nonresidential use.
- Wholesale sales and services
- Hotels
- Bed & Breakfasts
- Body Piercing, tattoo, and skin art studios
- Surface parking lots

7. Mr. Hopkin provided additional testimony that no site improvements were proposed with this application, that the two-story building was proposed to remain, and that any future site improvements would require further approval from the Board or Borough.

8. Mr. Hopkin testified, however, that one (1) bulk was required for an existing non-conforming rear yard setback, with 3.3' existing and proposed and 5' required. *See Schedule 1 – Bulk and Area Requirements.*

9. With respect to the relief required, Mr. Hopkin testified that the variance relief could be granted under the c1 hardship standard because to alleviate the condition would require the building to be removed and/or modified.

10. Mr. Hopkin provided additional testimony that the variance could also be granted under the c2 flexible standard because it advances at least two purposes of the Municipal Land Use Law, such as (a) to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare and (b) to provide adequate light, air, and open space.

11. Mr. Hopkin concluded testifying that the application satisfied both the positive criteria because it was repurposing an unused lot and the negative criteria because there was no detriment to the neighborhood, Zoning Plan, or Zoning Ordinance. Accordingly, the Board could grant the application as presented.

12. The Board inquired about the proposed use and what the application intended to accomplish.

13. Mr. Hopkin replied, testifying that the Property was previously used and permitted as a house of worship and that site plan approval is required for a change in use, even for a change to another permitted use. Accordingly, the Applicant was requesting minor site plan approval for a change in use from a house of worship to any one of those permitted principal uses in the CBD Zone.

14. The hearing was then opened to members of the public, at which time Melissa Pedersen, Bay Street, asked how the different uses requiring different needs would be addressed on the Property.

15. In response to Ms. Pederson's inquiry, Mr. Alfieri responded that any site improvements would require further land use approval, whether from the Board or the Borough.

16. Mr. Alfieri continued that, as a condition of approval, the Applicant agreed to comply with the applicable parking ordinance requirements for that use in the CBD Zone.

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

18. Prior to voting on the application, the Board Attorney clarified that the request from the Applicant was for a change in use, from a house of worship to any one of the permitted principal uses in the CBD Zone, which request required minor site plan approval with ancillary bulk variance relief.

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's request for minor site plan approval for a change in use with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-46.1 and N.J.S.A. 40:55D-70c of the Municipal Land Use Law and §21-55, and -58 of the Highlands Borough Code should be granted in this instance.

I. Minor Site Plan

The Board finds it necessary to first express the statutory requirements and Borough Code requirements in a site plan application. The Municipal Land Use Law defines minor site plans in N.J.S.A. 40:55D-5 as “a development plan of one or more lots which (i) proposes new development within the scope as defined by ordinance and (ii) does not involve a planned development, a new street, or require the developer to make a pro rata contribution to the cost of off tract improvements under N.J.S.A. 40:55D-42.” Pursuant to §§21-55 and -58 of the Highlands Borough Code, site plan approval is required for any Change in Use, which is defined in §21-8 of the Highlands’ Borough Code as “The use of a building or land which is substantially different from the previous use and/or which has a greater effect on parking, drainage, circulation, or building arrangements than the previous use.” Pursuant to § 21 65.14(D)(3), “No change in use within a building shall be allowed unless it can be shown how sufficient parking will be provided for the new use.”

The Board finds that Property has existed in its current configuration for some time and that no site improvements are proposed with this application. To that end, the existing nonconforming rear yard setback is not impacted by this application and will remain “as is”. Any proposed site improvements would require approval from the Board or the Borough, as appropriate for the proposed improvements and relief necessitated by the same.

The Board further finds that pursuant to §21-65.14(D)(3) of the Borough Code, “No change in use within a building shall be allowed unless it can be shown how sufficient parking will be provided for the new use.” The Applicant has agreed to comply with the off-street parking requirements applicable to any permitted principal use in the CBD Zone and, thus, the Applicant has represented to the Board that the off-street parking will comply with the Borough Ordinance

with respect to the same and the Board accepts that representation. To the extent the Applicant proposes to deviate from the required off-street parking requirements for a permitted principal use in the CBD Zone, the Applicant would need to apply to the Board for relief from those requirements and this Resolution of Approval.

Although the Applicant's proposal requires bulk variance relief, for the reasons expressed in this Resolution and, more specifically, the following section, this Board finds that it is appropriate to grant minor site plan approval for a change in use with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-46.1 and N.J.S.A. 40:55D-70c of the Municipal Land Use Law and §§21-55 and -58 of the Highlands Borough Code.

II. Bulk Variance Relief

Although no site improvements are proposed, there is an existing non-conforming rear yard setback, with 3.3' existing and proposed and 5' required, 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 and negative criteria and 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(1) and (2).

The Board finds that the Applicant has satisfied the positive criteria. The Board finds that the application will eliminate an unused lot and that the proposal advances at least two purposes of the Municipal Land Use Law, such as (a) to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare and (b) to provide adequate light, air, and open space.

The Board further finds that the subject Property is unique and unusual with respect to its existing conditions and how the two-story building impacts the existing nonconforming rear

yard setback. Ultimately, the Board finds that the grant of variance relief will not only benefit the Applicant but will also advance the interests of the entire community. The Board therefore concludes that the goals of planning as enumerated in N.J.S.A. 40:55D-2(a) and (b) have been advanced. The Applicant has therefore satisfied the positive criteria.

The Board also finds that the negative criteria has been satisfied. Granting the variance relief for the existing rear yard setback will not cause a detriment to the community in any discernible way. In fact, the Board finds that the proposed change in use is consistent with the Borough's overall goals and objectives of repurposing vacant structures and/or land and will advance the general welfare for both the Applicant and the neighbors alike. Granting the variance sought by the Applicant will also not result in any substantial detriment to the public welfare or impair the purpose or intent of the Zone Plan or Zoning Ordinance.

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(1) and (2).

For the reasons set forth herein, this Board finds that it is appropriate to grant minor site plan approval for a change in use with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-46.1 and N.J.S.A. 40:55D-70(c) of the Municipal Land Use Law, and §21-55, and -58 of the Highlands Borough Code. For the avoidance of doubt, the Board amplifies the point that once any one (1) of the permitted principal uses of the CBD Zone is established on the Property, any future Change in Use, as that term is defined in Borough of Highlands' Code §21-8, shall require site plan approval pursuant to §21-55, and -58 of the Highlands Borough Code.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 10th day of July 2025, that the action of the Land Use Board taken on June 12, 2025, granting

Application No. LUB25-07, for minor site plan approval for a change in use with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-46.1 and N.J.S.A. 40:55D-70(c) of the Municipal Land Use Law, and §21-55, and -58 of the Highlands Borough Code as follows:

The application is granted subject to the following conditions:

1. This approval shall take place in 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. No site improvements are proposed with this application and, thus, to the extent any site improvements are proposed in the future, they shall be addressed through a future Land Use Application or through the Borough Building/Zoning Department, as deemed appropriate for the proposed improvements.
3. 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.
4. This approval is granted strictly in accordance with any recommendations set forth on the record by the Land Use Board at the time of the hearing on June 12, 2025.
5. Any future modifications to this approved plan must be submitted to this Board for approval.
6. Once any one (1) of the permitted principal uses of the CBD Zone is established on the Property, any future Change in Use, as that term is defined in Borough of Highlands' Code §21-8, shall require site plan approval pursuant to §21-55, and -58 of the Highlands Borough Code.
7. A Mixed-use development, which is one permitted principal use in the CBD Zone, may include a combination of permitted principal uses from the CBD Zone.
8. As stipulated to by the Applicant on the record, any permitted principal use shall comply with the applicable parking ordinance requirements for that use.
9. The Applicant shall provide a certificate that taxes are paid to date of approval.
10. 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.
11. 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:
SECONDED BY: ROLL CALL:
YES:
NO:
RECUSED: Mr. Montecalvo
INELIGIBLE:
ABSENT:
DATED: July 10, 2025

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 July 10, 2025.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB25-07 / 125 Bay Ave. LLC

Minor Site Plan Approval for Change in Use

With Ancillary Bulk Variance Relief

June 12, 2025

- A-1 Copy of Land Use Board Application for Use Change, dated May 13, 2025 (7 pages).
- A-2 Copy of a plan set entitled, "Change of Use Plan, Lot 4 of Block 46, Tax Map Sheet #11, Borough of Highlands, Monmouth County, NJ", prepared by WJH Engineering, signed and dated May 29, 2025 (2 sheets).
- A-3 Copy of a plan entitled, "Location Survey For: 125 Bay Avenue, LLC", prepared by R and T Land Surveying, signed and dated November 06, 2023 (1 sheet).
- B-1 Board Engineer review letter by Roberts Engineering Group, LLC, dated June 4, 2025 (4 pages)