



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

**LAND USE BOARD RESOLUTION 2025-21
MEMORIALIZATION OF MINOR SITE PLAN APPROVAL AND CHANGE OF USE**

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

**IN THE MATTER OF BAY AVENUE PROPERTY MANAGEMENT, LLC
APPLICATION NO. LUB25-08**

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 Bay Avenue Property Management, LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 59, Lot 11.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 181 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 7,824 s.f. and is currently improved with a two-story

brick building, which was previously in use as a house of worship, with associated site improvements, such as concrete and brick sidewalks, brick walls, wood deck, patio, concrete pads, and a lawn area. 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 along the southwest side of Bay Avenue between Miller Street and Valley Road, with residential lots to the rear of the subject Property.

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 brick building was proposed to remain, and that any future site improvements would require further approval from the Board or Borough.

8. With respect to the relief required, Mr. Hopkin testified that the change in use did not present a detriment to the neighborhood, Zoning Plan, or Zoning Ordinance.

9. Mr. Hopkin agreed that, as a condition of approval, the Applicant would comply with the applicable parking ordinance requirements for that use in the CBD Zone and that because the Applicant proposed no site improvements with its application that any future site improvements would require further land use approval, whether from the Board or the Borough.

10. Mr. Hopkin concluded his testimony by reiterating that the Applicant, therefore, sought minor site plan approval for a change in use pursuant to N.J.S.A. 40:55D-46.1 of the Municipal Land Use Law and §21-55, and -58 of the Highlands Borough Code.

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

The Board finds it necessary to first express the statutory requirements in a site plan application. The Municipal Land Use Law tightly circumscribes the jurisdiction of a land use board in reviewing a variance free site plan application for a permitted use. The jurisdiction of a land use board is limited to determining compliance with ordinance requirements. The New Jersey courts have consistently held that where an approval is required where all ordinance requirements have been satisfied. The New Jersey Courts have also held that a land use board cannot deny a site plan for a permitted use due to an increase in traffic, noise or parking where all ordinance requirements have been satisfied.

The Board finds that this application proposes no site improvements and, thus, that any

future 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.

The Board, therefore, finds that the Applicant in the instant matter has complied with all ordinance requirements. In view of the above discussed statutory and common law constraints and based on the testimony provided, this Board finds that it is required to grant minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 for the change in use. For the avoidance of doubt, however, 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. LUB25-08, for minor site plan approval for a change in use pursuant to N.J.S.A.

40:55D-46.1 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. LUB25-08 / Bay Avenue Property Management, LLC

Minor Site Plan Approval for Change in Use

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, of Lot 11.01 of Block 59, Tax Map Sheet #12, 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, "Boundary & Topographic Survey, Lot 11.01 of Block 59, Borough of Highlands, Monmouth County, NJ", prepared by WJH Engineering, signed and dated April 23, 2024 (1 sheet).
- B-1 Board Engineer review letter by Roberts Engineering Group, LLC, dated June 4, 2025 (4 pages)