

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 Olszewsky 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

suiting 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

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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:

ABSTAINED:

ABSENT: Councilmember Martin, Ms. LaRussa, 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.