



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2022-16

MEMORIALIZATION OF PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL WITH BULK VARIANCE RELIEF

Approved: July 14, 2022

Memorialized: September 8, 2022

**IN THE MATTER OF ARJICA PROPERTIES, INC.
APPLICATION NO. LUB 2022-01**

WHEREAS, an application for preliminary and final major site plan approval with bulk variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by Arjika Properties, Inc. ("Applicant") on lands known and designated as Block 81, Lot 12 on the official Tax Map of the Borough of Highlands ("Borough") and more commonly known as 289 Bay Avenue, Highlands, N.J. 07732 in the CBD (Central Business District) Zone ("Property"); 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, an in-person public hearing was held on July 14, 2022, 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.

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 5,000 s.f with twenty-five (25) feet of frontage along Bay Avenue within the CBD Zone. The subject Property is currently vacant.

2. On or about February 22, 2022, the Applicant submitted its application seeking preliminary and final major site plan approval with ancillary bulk variance relief from the zoning requirements of the CBD Zone.

3. On or about May 18, 2022, the Governing Body of the Borough adopted the Central Business District Redevelopment Plan. The subject Property is located in the Central Business District Redevelopment Plan Overlay 2 area (C-RO-2).

4. At the outset of the July 14, 2022 hearing, the Board Attorney advised that the Applicant had the choice of having its application considered under the requirements of the CBD Zone or under the requirements of the C-RO-2 Zone of the Central Business District Redevelopment Plan.

5. Counsel for the Applicant (Brad Batcha, Esq.) stated, on the record, that the Applicant wished to have its application considered under the requirements of the C-RO-2 Zone of the Central Business District Redevelopment Plan.

6. The Applicant proposes to construct a three-story, mixed-use commercial-residential building with 1,450 s.f. of retail space on the first floor and four (4) one-bedroom apartments on the second and third floors, each including a deck or balcony. Off-street parking is proposed, with one-way proposed circulation through the subject Property.

7. Based on the application, the following bulk variance relief from the requirements of the C-RO-2 Zone of the Central Business District Redevelopment Plan was requested:

- **Minimum Front Yard Setback** (Section VII of the Central Business District Redevelopment Plan Overlay 2 area (C-RO-2)): 2 feet is required, whereas 0 feet is proposed.
- **Lot Coverage** (Section VII of the Central Business District Redevelopment Plan Overlay 2 area (C-RO-2)): 80% is permitted, whereas 100% is proposed.

8. Christopher Ruby, a principal of the Applicant, testified and provided a further overview of the application, stating that they proposed to construct four (1) bedroom residential units on the second and third floors, and one (1) commercial unit (for one tenant) on the first floor. The Applicant agreed to a condition of approval that the commercial tenant would be limited to “retail” only.

9. The Applicant’s architect, Salvatore La Ferlita, R.A., testified next and opined that the Applicant would comply with the requirements of Section VII.B of the Central Business District Redevelopment Plan, which requires (in this instance) that two (2) bicycle parking spaces be provided outdoors (1 for commercial and .5 for residential) and one (1) indoor bicycle parking space be provided indoor for the residential units. Mr. La Ferlita testified that the Applicant would provide for outdoor bicycle parking near the rear staircase and would carve out a 6-foot-wide area from the proposed commercial space which would be used for the one (1) indoor bicycle parking spot.

10. In response to questions from the Board Engineer regarding where the subject Property waste receptacles would be located, Mr. La Ferlita provided additional testimony that the Applicant would provide for refuse and waste collection in a 6-foot-wide area, to be carved out from the proposed commercial space and would be reflected on revised architectural plans.

11. Mr. La Ferlita next testified that the Applicant proposed five (5) off-street parking spaces and the Applicant testified that he intended to assign those spaces to each residential unit. In response, the Board Engineer advised pursuant to Section VIII.A of the Central Business District Redevelopment Plan and based on the application as proposed (which is mixed-use, commercial and residential), that the Applicant was required to provide four (4) parking spaces, one of which must be ADA compliant, and that the ADA-compliant space could not be so assigned.

12. The Board Engineer also stated that the subject Property was not large enough to accommodate five (5) parking spaces and, thus, that only four (4) parking spaces, one of which is ADA-compliant could be accommodated. The Board Engineer provided further testimony that by providing four (4) off-street parking spaces one of which was ADA-compliant, the Applicant complied with the requirements of the Central Business District Redevelopment Plan and that variance relief was not required. The Applicant agreed to provide four (4) off-street parking spaces, of which one (1) would be ADA-compliant and that none of the spaces would be assigned to the residential units.

13. Mr. La Ferlita provided additional testimony that the Applicant would comply with the requirements of the Central Business District Redevelopment Plan requirements as to intended design criteria. He elaborated that the commercial space would be outfitted with glass windows.

14. Mr. La Ferlita and Mr. Ruby testified that the Applicant would not be providing landscaping, rather, it would be blacktop, but that they would comply with the signage requirements of the Central Business District Redevelopment Plan.

15. The Board asked whether the blacktop triggered the lot coverage variance, to which the Applicant responded that it did.

16. The Board next asked whether the Applicant could use crushed stone instead of blacktop, and whether that would alleviate the need for the lot coverage variance. In response, the Board Engineer stated that the NJDEP disfavored crushed stone and that the stone would eventually become compacted like concrete because of the daily use of the subject Property. Accordingly, using crushed stone would not result in pervious coverage and the ADA-compliant space was required to be a solid, non-crushed stone surface.

17. The Applicant stated that they wished to proceed with the application “as is” and request the lot coverage variance. In response to a request from the Board Engineer, the Applicant agreed to have its Engineer provide drainage calculations showing the change from 0% impervious lot coverage to 100% impervious lot coverage.

18. Mr. La Ferlita next testified as to the residential units, explaining that they were symmetrical one-bedroom, walk-up apartments. He testified as to the specifics of the residential units, noting that the units complied with all ingress/egress requirements and that all units had their own laundry. Mr. La Ferlita also testified that the units would have individual patios or balconies.

19. Mr. La Ferlita, in response to a question from the Board, testified that the commercial unit on the first floor would be compliant with all FEMA requirements. The Board Engineer next stated that because the commercial space was built at grade and below the BFE, that the Applicant was required to provide mechanical flood-proofed doorways. The Applicant agreed to comply with all FEMA and municipal rules regarding flood vents and requirements.

20. Mr. La Ferlita testified that the roof is flat, pitched from front to back and that all mechanicals would be placed on the roof. He provided additional testimony that access to the roof would be provided through hatch in the common hallway, but that the residents would not have access thereto.

21. Mr. La Ferlita further testified that the mechanicals would not be visible from the street because they would be located far enough from the front of the subject Property and obscured by a bulkhead. The Applicant agreed to provide a roof plan and rendering depicting the bulkhead.

22. Mr. La Ferlita provided additional testimony that the roof of the building was proposed to be 36 feet in height, which is below the maximum allotted height of 40 feet and, therefore, no variance was needed for the height of the proposed building.

23. The Applicant testified that they requested variance relief from the two-foot front yard setback requirement because the sidewalk in the area was sufficiently wide to accommodate pedestrian travel in front of the proposed building. The Board asked whether, if the Applicant moved the building back by two feet, whether the turning radius for the proposed

parking area would be affected. The Applicant responded that it would be negatively affected and would not permit sufficient turning radius.

24. The Board next asked if the Applicant could make the building smaller by two feet. In response, Mr. La Ferlita stated that each unit would lose 30 s.f. and that doing so would make the rooms very small.

25. The Board Engineer directed the Applicant to have its Engineer revise the plans to confirm that there will not be any conflict with the rear stairwell(s) and the vehicles' means of ingress/egress.

26. The Board Engineer asked whether the proposed balconies are cantilever or vertical. Mr. La Ferlita testified the rear balconies are cantilevered but the front is vertical with a roof deck overhanging the first floor.

27. The Board asked whether the Applicant could cantilever the front decks and thereby decrease the commercial space by two feet on the front of the subject Property but leave the residential units as proposed. The Applicant agreed that by doing so, the sidewalk space would be increased but that the livable residential space would be unchanged.

28. The Board acknowledged that a variance would still be required for the two-foot front yard setback, but that first floor of the building would be setback two-feet from the front yard lot line and that that the second and third floors would remain the same.

29. The Applicant agreed to reduce the first-floor commercial space of the building by two (2) feet from the front yard line and to cantilever the front decks above, so that the residential portion of the building (floors two and three) would remain on the front yard property line but that the first floor would be setback two (2) feet therefrom. The Applicant further agreed to provide flowerpots and plantings as appropriate with the cantilevered front decks.

30. The Applicant testified that that they did not anticipate any major operation or large-scale deliveries with the proposed commercial space and that all deliveries were likely to occur at the curb.

31. Mr. La Ferlita next provided testimony regarding the aesthetics of the exterior of the building. He stated that the railings would be aluminum or metal, not PVC (more on the modern side).

32. In response to a question, the Board Attorney advised that the Applicant's requested relief from the landscaping requirements of the Central Business District Redevelopment Plan are appropriately requested by a waiver, not a variance.

33. The Board Engineer stated that the Applicant was required to provide 400 s.f. of outdoor living space for the residential units. Mr. La Ferlita responded that the Applicant meets the 400 s.f. requirements.

34. The Applicant agreed to redo the entire sidewalk and curb cuts for the length of the subject Property so that it matches the neighboring sidewalk.

35. The hearing was then opened to the public, at which time Dawn Honriacek, 287 Bay Avenue asked whether parking would be limited to one (1) car per apartment. Ms. Honriacek was advised that the Applicant complied with the parking requirements and, thus, no variance was needed.

36. James Honriacek, 287 Bay Avenue asked whether the Applicant should be required to submit revised plans prior to the Board taking action on the application. Vice Chair Tierney responded that everything the Applicant testified and agreed to would be included in the resolution as conditions of approval.

37. 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's request for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) along with Preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 should be granted in this instance.

The Board finds that the Applicant has proposed construction, 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 criteria. The Board finds that the proposed improvements to the subject Property will take a vacant property, which is not in use and develop it with a functional, mixed use (commercial and residential) development. The Board further finds that the proposed improvements will create commercial and residential space along Bay Avenue and will be aesthetically pleasing and create a desirable visual environment, which is commensurate with the goals of the Central Business District Redevelopment Plan. The Board further finds that the proposed revision to the application, decreasing the commercial space of the proposed building by two (2) feet, increases the walkable, pedestrian space in front of the subject Property and, therefore, aligns the application with the goals of the Central Business District Redevelopment Plan. The Board also finds that the application also advances the interests of the entire community by building a structure that is up to current housing and commercial standards, and which complies with the parking requirements of the Central Business District Redevelopment Plan. The Board therefore concludes that the goals of planning as enumerated in N.J.S.A. 40:55D-2 have been advanced. The Applicant has therefore satisfied the positive criteria.

The Board also finds that the negative criteria has been satisfied. The proposed improvements will also not cause a detriment to the community in any discernible way. The testimony dictates that the public welfare will be benefitted by the proposed construction, taking a vacant lot and putting it to use. In fact, the Board finds that proposed building will be consistent with the goals of Central Business District Redevelopment Plan and with the Borough's overall goals and objectives of providing new, safe and visually attractive streetscapes along Bay Avenue and throughout the Borough. The Board therefore concludes that there is no substantial

detriment to the Zone Plan, Zoning Ordinance, or Central Business District Redevelopment Plan. To the extent there are concerns as to potential drainage issues, the Applicant has agreed to submit a drainage plan to the Board Engineer for his review and approval. The public welfare has also not been substantially detrimented. The negative criteria has therefore been satisfied. 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(2).

The Board further finds that the Applicant requires design waiver relief from the landscaping requirements of Section 21-65.10.C of the Borough Ordinances because no landscaping is proposed on the subject Property, whereas a portion of the property is required to be landscaped. The Board finds that the strict application of Zoning Ordinance requiring landscaping would result in difficulty in developing the site for its proposed and permitted use. The Board finds the Applicant will, to the extent possible, provide flowerpots and small plantings under the cantilevered front deck, which is appropriate given the subject Property and application. Design waiver relief pursuant to N.J.S.A. 40:5D-51 is therefore appropriate.

Aside from the above reference relief, the Applicant complies with all other requirements of the Borough's site plan, zoning and design standard ordinances. Preliminary and final site plan approval may therefore be granted pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 8th day of September 2022, that the action of the Land Use Board taken on July 14, 2022 granting Application No. LUB 2022-01, for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2), along with Preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50, and

with ancillary design waiver relief pursuant to N.J.S.A. 40:55D-51, is determined and hereby memorialized, 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. The residential units shall not have access to the roof and the first-floor commercial unit shall be limited to retail operations only.
3. The Applicant shall provide drainage calculations showing the change from 0% impervious lot coverage to 100% impervious lot coverage.
4. 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.
5. Any future modifications to this approved plan must be submitted to the Board for approval.
6. The Applicant shall provide a certificate that taxes are paid to date of approval.
7. 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.
8. The subject Property is located in a CAFRA Zone and, thus, the Applicant shall comply with all applicable NJDEP requirements and obtain all applicable approvals and/or waivers therefrom.
9. 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:

ABSTAINED:

ABSENT:

DATED:

The undersigned Secretary certifies the within Resolution was adopted by this Land Use Board on July 14, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10g on September 8, 2022.

Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB-2022-01/Arjika Properties, Inc.

Preliminary and Final Major Site Plan with Bulk Variance Relief

July 14, 2022

September 8, 2022

- A-1 Land Use Board Application, dated February 23, 2022.
- A-2 Zoning Denial, dated August 7, 2021.
- A-3 One (1) Preliminary and Final Major Site Plan prepared by Marc S. Leber, P.P., dated December 30, 2021, consisting of five (5) sheets.
- A-4 One (1) Architectural Plan prepared by Salvatore La Ferlita, R.A., dated June 16, 2021, consisting of one (1) sheet.

INTEROFFICE REPORTS

- B-1 Board Engineer's Review Letter of Preliminary and Final Major Site Plan (First Engineering Review), dated June 3, 2022.
- B-2 Board Engineer's Review of Preliminary Site Plan Requirements (First Completeness), dated April 5, 2022.
- B-3 Board Engineer's Fee and Escrow Calculation Letter, dated April 5, 2022.