



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

LAND USE BOARD RESOLUTION 2024-16

**MEMORIALIZATION OF PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH ANCILLARY VARIANCE RELIEF**

**IN THE MATTER OF 60 BAY AVE HIGHLANDS LLC
APPLICATION NO. LUB 2024-02**

**Approved: August 8, 2024
Memorialized: September 12, 2024**

WHEREAS, an application for preliminary and final site plan approval has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by 60 Bay Ave Highlands LLC (hereinafter referred to as the “Applicant”) on lands known and designated as Block 42, Lot 1, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 60 Bay Avenue in the CBD (Central Business) Zone and CBD Redevelopment Overlay 2 – Gateway Parcels (C-RO-2) Zone; and

WHEREAS, a public hearing was held before the Board on August 8, 2024, 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 6,625 square feet (0.147 acres) with frontage along Bay Avenue (County Route 8) South Street and Shrewsbury Avenue within the Central Business

District (CBD) Zone and the CBD Redevelopment Overlay 2 Zone – Gateway Parcels (C-RO-2) Zone. The adjacent property, Lot 15, is located within the same zone, and adjacent residential Lot 7 is located within the R-2.02 District. The subject Property is located within the AE Flood Hazard zone, partially in the Coastal A zone, and in the Limit of the Moderate Wave Action (LiMWA) delineation area.

2. The subject Property is improved with a three-story multi-family dwelling.

3. The Applicant is seeking preliminary and final major site plan approval to move and elevate the existing three-story multi-family residential building, complete renovations, provide ground floor storage and garage parking, and construct two extensions, decks, and associated site improvements. The Applicant proposes to expand the existing multi-family residential building by increasing the number of units for a total of five (5) units and will include a one (1) one-car garage, two (2) 1.5-car garages, and one (1) two-car garage.

4. Counsel for the Applicant, Donna Jennings, Esq., stated that the Applicant was seeking preliminary and final site plan approval with design waiver relief to elevate the existing four (4) unit residential building and add an additional residential unit. Ms. Jennings identified the subject Property as Block 42, Lot 1 with the address of 60 Bay Avenue and located within the CBD (Central Business) Zone and CBD Redevelopment Overlay 2 – Gateway Parcels (C-RO-2) Zone. She stated that the ground floor would contain garages and storage.

5. The Applicant's Engineer, Douglas Clelland, P.E., introduced a Neighborhood Colorized Aerial dated July 26, 2024 as Exhibit A-1. Mr. Clelland identified the subject Property as Block 42, Lot 1 with the address of 60 Bay Avenue and located within the CBD (Central Business) Zone and CBD Redevelopment Overlay 2–Gateway Parcels (C-RO-2) Zone. He stated that the

subject Property contained three (3) frontages which included Bay Avenue, South Street, and Shrewsbury Avenue. Mr. Clelland further testified that other residential lots were located to the west of the subject Property and a park was located across South Street and Shrewsbury Avenue. He described the area as a mix of commercial, residential, and multi-family residential uses.

6. Mr. Clelland further testified that the Applicant was proposing to relocate, elevate, and expand the existing multi-family residential building. Mr. Clelland introduced a Blown-up Version of the Neighborhood Colorized Aerial dated July 26, 2024 as Exhibit A-2. He explained that the Applicant was proposing to provide a new driveway on the Bay Avenue frontage and as well as a new driveway on Shrewsbury Avenue frontage. He stated that the ground level would contain garages and storage. Mr. Clelland further testified that a multi-level deck would surround the building and that a walkway would connect to the sidewalk. He then confirmed that the structure currently had four (4) units, and that the Applicant was proposing an additional unit which would be located in the addition to the building resulting in a total of five (5) residential units.

7. Mr. Clelland also confirmed that the proposal did not require any variance relief. He stated that the Applicant was, however, seeking design waiver relief from the driveway width at the curb of 19.09 feet where a maximum of 18 feet at the curb was permitted. Mr. Clelland stated that the existing driveway width at the curb was 30 feet and that the proposed driveway width would be an improvement from the existing condition. He further testified that the wider driveway was necessary because of the unique shape of the subject Property. He explained that the unique shape required the driveway to be at an angle to the garage and that the wider

driveway allowed cars to maneuver into the garage while also providing two (2) parking spaces within the driveway.

8. Mr. Clelland further testified that the proposal complied with the EV charging space regulations. He explained that EV chargers were only required to be installed for developments with ten (10) parking spaces or greater whereas only seven (7) parking spaces were proposed. Mr. Clelland also stated that the Ordinance permitted the inclusion of on-street parking spaces in the calculation and identified three (3) on-street parking spaces provided along the frontages. He explained that the number of parking spaces might require a *de minimis* exception from the Residential Site Improvement Standards (RSIS). Mr. Clelland testified that one (1) tandem two-car garage was proposed which would be accessed from Shrewsbury Avenue. He also stated that two (2) 1.5-car garages which only equated to one (1) parking space, would be accessed from Bay Avenue, and a one (1) one-car garage would be accessed from Bay Avenue.

9. Mr. Clelland further testified that he had observed the available street parking within 200 feet of the subject Property on two occasions. He stated that he observed the subject Property on Friday, July 26, 2024 at 6:00 p.m. and Saturday, July 27, 2024 at 2:00 p.m. Mr. Clelland explained that he observed a total of fourteen (14) on-street parking spaces available on Friday evening, none of which were on Shrewsbury Avenue. He also stated that a total of six (6) on-street parking spaces were available on Saturday afternoon.

10. Mr. Clelland further testified that all new utilities would be provided to the building and that electric would be underground. He also stated that the proposal would result in an increase in impervious coverage but was not classified as a major development for

stormwater management purposes. Mr. Clelland also stated that the impervious coverage would comply with all bulk requirements. He further testified that the roof leaders would be drained to the existing stormwater inlet within South Street. Mr. Clelland explained that the proposed roof leaders would reduce the stormwater sheet flow because the existing building did not have any gutters. He further testified that the grade of the subject Property would be pitched toward the streets away from the adjacent lots.

11. Mr. Clelland also stated that trash cans would be located at the rear of the building and then taken out to the street for pick up. He explained that the location of the trash storage was located at the northwesterly side of the building near the existing fence.

12. Mr. Clelland further testified that the Applicant was proposing residential light fixtures similar to the existing light fixtures but would require design waiver relief. He stated that the proposed luminosity was the minimum necessary for safety while also providing the minimal amount of impact. Mr. Clelland also believed that the lighting would also illuminate the driveway for safe ingress and egress. Mr. Clelland further testified that the 1.7 footcandles provided a blend with the existing on-street lighting which was included within the analysis. He also confirmed that the illumination was 0.6 footcandles at the property line.

13. Mr. Clelland further testified that the existing street trees would remain. He stated that evergreen trees would also be planted in order to provide a screen for Lot 2. Mr. Clelland then identified an existing fence located on Lot 15 along the shared property line. He stated that the Applicant was proposing a fence that would connect to the existing Lot 15 fence at a 90-degree angle and run along the property line with Lot 2. Mr. Clelland explained that two (2) shade trees would be provided.

14. Mr. Clelland also stated that the Applicant would apply to the NJDEP for CAFRA permit. He believed that the proposed elevation would be compliant with all regulations. He stated that the Applicant would also apply to Monmouth County Planning Board because Bay Avenue was a county road.

15. In response to questions from the Board Engineer, Carmela Roberts, P.E., CME, CPWM, Mr. Clelland testified that the building was being enlarged and relocated. He also stated that the Zoning Permit denial was not based upon the Redevelopment Plan standards.

16. In response to further questions from the Board Engineer, Mr. Clelland testified that the tandem garage and the driveway parking space directly in front of the garage would be assigned to the three-bedroom unit which was anticipated to be owned by the owner of the building. He also stated that the three (3) of the other units have a garage space and that the fifth unit would have a parking space within the driveway. Mr. Clelland agreed to provide a turning analysis for the driveway. He then explained that the purpose of the wider driveway was to provide an additional 9 ft. x 18 ft. parking space within the driveway.

17. In response to further questions from the Board Engineer, Mr. Clelland testified that the Applicant was proposing three (3) curb cuts along Bay Avenue. He stated that one (1) curb cut was presently existing and was wide enough for two (2) driveways. He further testified that the third curb cut would eliminate one (1) existing on-street parking space. Mr. Clelland explained that the distance from the curb cut closest to the intersection was 26.91 feet to the property line at the intersection, therefore the distance to the curb of the intersection was a little more than 26.91 feet. He also stated that the existing curb cut was the western most curb cut.

Mr. Clelland further testified that two (2) new curb cuts were proposed. He stated that the curb cuts would be subject to review and approval by the Monmouth County Planning Board.

18. Ms. Roberts stated that the lighting of 1.7 footcandles on the sidewalk was excessive. She explained that it was not the responsibility of a residential building to illuminate a public sidewalk. Mr. Clelland agreed to work with the Board Engineer to reduce the lighting at the property line to become compliant, thereby eliminating need for design waiver for lighting.

19. In response to questions from the Board Attorney, Ms. Jennings represented that the proposal was not subject to the affordable housing requirements because only one (1) unit was being added, but the Applicant would comply with the affordable housing requirements if applicable.

20. In response to questions from the Board, Mr. Clelland testified that the fence along Lot 2 could transition to a four (4) foot fence within the front yard. He stated that the fence would not obstruct sight distance at the driveway. Mr. Clelland explained that the existing fence on Lot 15 transitioned from six (6) feet in height to four (4) feet in height approximately fifteen (15) feet setback from the front property line. He also stated that the fence on Lot 15 encroached slightly on the subject Property. He agreed to discuss with the owner of Lot 15 correcting the encroachment if the fence were ever to be replaced.

21. In response to questions from the Board, Mr. Clelland confirmed that there was one (1) driveway on Shrewsbury Avenue and three (3) driveways on Bay Avenue. He stated that drivers within the driveway on Bay Avenue would back out onto Bay Avenue. He testified that the minimum front yard setback was two (2) feet, whereas five (5) feet was proposed on Bay

Avenue, 8.3 feet was proposed on South Street, and 8.05 feet was proposed on Shrewsbury Avenue.

22. The Board expressed its concern with drivers backing out onto Bay Avenue, particularly considering the proximity of the nearby curve. Mr. Clelland testified that he was unaware of any issues with the current driveway on Bay Avenue.

23. In response to further questions from the Board, Mr. Clelland testified that the distance between the curb cuts was approximately thirty-five (35) feet, which he opined was sufficient for one (1) on-street parking space. He also stated that utilities were available within Shrewsbury Avenue and South Street if a moratorium preventing a street opening on Bay Avenue.

24. In response to further questions from the Board, Mr. Clelland testified that the existing building contained three (3) two-bedroom units and one (1) studio unit. He stated that the Applicant was proposing one (1) additional unit.

25. The hearing was then opened to the public for questions of the Applicant's Engineer, at which time Ed Sharkey, 9 Shrewsbury Avenue, asked why the commercial building setback requirements did not apply to the multi-family building. Mr. Clelland stated that the building was residential, not commercial and therefore the commercial building standards did not apply. In response to further questions from Mr. Sharkey, Mr. Clelland stated that the trash cans would be brought out to Shrewsbury Avenue and Bay Avenue. He testified that a row of eighteen (18) evergreen trees would also be planted along the property line with Lot 2 which has Mr. Sharkey's property. Mr. Clelland then confirmed that the two-car garage would be tandem. He also stated that the proposed multi-family building was compliant with the code and the zone therefore it was not necessary for the Applicant to consider alternative uses. Mr. Clelland further

testified that the maximum permitted impervious coverage was 80%, whereas 62% was proposed.

26. The Applicant's Architect, Salvatore LaFerlita, R.A., AIA, testified that the Applicant was proposing to lift the building, replace the foundation, and move the building eight (8) feet toward Bay Avenue. He stated that the Applicant was also proposing to construct an addition on the side of the building and along the Shrewsbury Avenue frontage. Mr. LaFerlita further testified that three (3) units would be served by a one-car garage and that the largest unit would receive the tandem two-car garage and one (1) driveway space. He also noted that one (1) unit would receive additional driveway space. Mr. LaFerlita explained that gravel could be placed within the five (5) feet between the driveway and the property line, which would eliminate the need for the wider driveway at the curb because the gravel would allow a wider turn. The Applicant agreed to provide such gravel to comply with the required driveway width at the curb, thereby eliminating the need for the design waiver. He also stated that bike racks would be located inside and outside of the building. He stated that the building would contain an elevator.

27. Mr. LaFerlita further testified that the first floor would contain two (2) two-bedroom units. He explained that the existing studio apartment would be expanded into the addition to make it two (2) bedrooms. Mr. LaFerlita also stated that the existing deck would be enclosed to provide living space. He explained that an additional deck area of approximately 100 square feet would also be provided. Mr. LaFerlita further testified that the second floor would include two (2) two-bedroom units similar to the first floor. He stated also located on the second floor would also have a bedroom belonging to the third floor three-bedroom unit which would be accessed by a staircase internal to the three-bedroom unit. Mr. LaFerlita testified that the

third floor contained two (2) out of three (3) of the three-bedroom unit along with decks. He also stated that the A/C equipment would be located on a roof deck near the elevator. Mr. LaFerlita stated that the main entry to a large porch would be located on the first floor. He noted that the existing yellow color would be changed. He introduced a Color Rendering of the Bay Avenue Elevation as Exhibit A-3.

28. In response to questions from the Board, Mr. LaFerlita testified that the floor elevation was at fourteen (14) feet and was compliant with FEMA Flood Hazard regulations. He further testified that the building would comply with the Coastal A & AE requirements by being built to VE requirements. He stated that the ground floor may require breakaway walls.

29. The hearing was then opened to the public, at which time Ed Sharkey, 9 Shrewsbury Avenue, asked the size of the decks. Mr. LaFerlita testified that the decks were a length of twenty-five (25) to thirty (30) feet with a depth of ten (10) feet. Mr. LaFerlita also stated that the size of the decks was compliant. Mr. Sharkey asked if the building could also be moved toward the southeast. Mr. LaFerlita stated that such reorientation would be difficult. In response to further questions from Mr. Sharkey, Mr. LaFerlita testified that an additional parking space could be provided under the deck, however, it would require an additional curb cut. Mr. LaFerlita stated that the trash cans could also be stored within the garages. He further testified that the existing square footage of the building was approximately 5,000 square feet and approximately 7,000 square feet was proposed.

30. Mr. Sharkey also testified that the previous owner of the subject Property had imported soil, which changed the stormwater flow pattern. He stated his property was negatively impacted by the change in stormwater flow pattern. Mr. Clelland testified that the subject

Property would be regraded when the building was lifted. He opined that the stormwater would then flow toward the streets and away from adjacent properties. Mr. Sharkey also reiterated his interpretation of the Ordinance requiring the building to have setback of twelve (12) feet as is required of commercial buildings within the CBD Zone.

31. There were no other 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 preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50 should be granted in this instance.

The Board finds that the Applicant has proposed to move and elevate an existing three-story multi-family residential building, complete renovations, provide ground floor storage and garage parking, and construct two extensions, decks, and associated site improvements. The proposal does not require any variance or design waiver relief. The Board finds that the Applicant had initially requested several design waivers, but has agreed to comply with all design standards. The proposal is therefore as of right. The Board finds that the proposal complies with all requirements of the site plan, zoning and design criteria Ordinances. A planning variance required by the MLUL to grant site plan approval when all Ordinance requirements are complied

with an ingress and egress is safe. There has not been any testimony which could lead to the conclusion that ingress and egress was unsafe. The applicant is also subject to the conditions expressed herein. The Board is therefore required to grant preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 12th day of September 2024, that the action of the Land Use Board taken on August 8, 2024, granting application no. LUB 2024-02, for preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan 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 improvements 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. 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 all applicable design standards and eliminate all design waiver relief pursuant to N.J.S.A. 40:55D-51.
4. The fence along the shared property line with Lot 2 shall not exceed a height of four (4) feet within the front yard.
5. The Applicant shall submit a compliant lighting plan subject to the review and approval of the Board Engineer.
6. The Applicant shall submit a revised plan depicting vehicles maneuvering from the garages and driveways into the roadways subject to review and approval of the Board Engineer.

7. The driveway width at the curb shall not exceed eighteen (18) feet and shall comply with all Ordinance requirements.
8. The Applicant shall provide gravel between the Shrewsbury driveway and the property line shared with Lot 2 sufficient for turning maneuver into the driveway parking space subject to review and approval by the Board Engineer.

9. Any future modifications to this approved plan must be submitted to the Board for approval.
10. The Applicant shall apply for a CAFRA permit.
11. The Applicant shall extend new utilities to the subject Property. The Applicant shall be solely responsible for securing any necessary utility easements.
12. The Applicant shall comply with any applicable affordable housing requirements.
13. The tandem parking spaces shall be for the exclusive use of the three (3) bedroom unit.
14. The fence encroachment shall be eliminated if the fence is replaced.
15. The A/C unit shall be located on the roof near the elevator/
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

ON MOTION OF:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAINED:
ABSENT:
DATED:

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 September 12, 2024.

Nancy Tran, Secretary
Borough of Highlands Land Use Board