



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2025-18
MEMORIALIZATION OF USE VARIANCE RELIEF DENIAL

IN THE MATTER OF TIM AYERS
APPLICATION NO. LUB25-01

Approved: May 8, 2025
Memorialized: June 12, 2025

WHEREAS, an application for use variance relief pursuant to N.J.S.A. 40:55D-70(d) with ancillary bulk variance relief and a design waiver has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the "Board") by Tim Ayers (hereinafter referred to as the "Applicant") on lands known and designated as Block 38.01, Lot 13, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 19 Bay Avenue, Highlands, New Jersey, in the WC-1 Waterfront Commercial Zone District (hereinafter "Property"); and

WHEREAS, a live public hearing was held before the Board on May 8, 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 is an approximately 0.07-acre (3,220 square foot) through lot with frontage along Bay Avenue to the north and Shore Drive to the south, located at 19 Bay Avenue. The property is located on Lot 13 of Block 38.01 in the Borough and includes approximately 54.7 feet of frontage along Bay Avenue (two-way roadway) and 52.5 feet of frontage along Shore Drive (one-way roadway).
2. The property is developed with a two-story office building, which includes a ground floor area of 1,200 square feet, and second floor area of approximately 363 square feet.

The building's current use includes the offices of the Inspired Network Financial Group on the ground floor.

3. The second floor of the building is noted to include an open-concept room with a kitchenette and one (1) bathroom. The second level is only accessible via an external staircase and semi-enclosed porch. The ground level is faced with brick, while the second level is lined with white vinyl paneling.

4. The Property's asphalt parking area, accessed to/from Bay Avenue, is located in the front yard of the existing building. Spaces within this parking area are not delineated, so it is currently unclear how many parking spaces are provided. Signage along a wooden fence indicates that parking is reserved for the Inspired Network Financial Group.

5. The office building is accessed up a flight of stairs from the parking lot. An additional, smaller parking area has been created directly adjacent to the building, and is accessed to/from Shore Drive. This area is marked by the same signage as the larger parking lot, that it is reserved for the finance office. This smaller parking area is located at a higher elevation on the lot and does not require the use of the stairs to access the building; however, no ADA signage or markings are present.

6. The subject property is located within the WC-1 Waterfront Commercial Zone. Directly east of the property, on Lot 12, is a one-story building that houses the offices of DSV Property Management. On Lot 15.01 to the west is the Chubby Pickle sports bar and grill. The remaining portion of the block on which the property is located includes surface lots for parking overflow from the nearby Bahrs Landing and Moby's Lobster Deck restaurants and the Gateway Marina.

7. The subject Property was granted preliminary and final site plan approval by the Borough's Zoning Board of Adjustment (which has since been consolidated with the Borough's Planning Board, into the Land Use Board) on March 4, 2010 (memorialized in Resolution No. 2010-03) to construct the (now) existing 363-square feet second-story addition, and a 158-square foot addition to the ground floor.

8. The approved uses for the Property included a seasonal bicycle rental shop on the ground floor, and office space on the second floor for a local masonry contracting business. The

second floor was to be occupied by at most two (2) employees. Access for the second level was always intended to be separate from the ground level.

9. The approved parking arrangement for the Property describes the parking lot along Bay Avenue containing three (3) parking stalls. The parking area accessed from Shore Drive is described as a handicapped space. Therefore, a total of four (4) parking spaces were approved In Resolution No. 2010-03.

10. On February 21, 2025, the subject Property was issued a zoning permit denial from the Borough's Zoning Official, for requesting to utilize the second floor of the building as a short-term rental studio apartment, because the proposed residential use is not permitted in the zone and which residential use is, in fact, prohibited in the WC-1 Zone.

11. The Applicant was represented by Daniel J. O'Hern, Jr., Esq. at the time of the hearing. Mr. O'Hern provided the Board with an overview of the application, confirming that the Applicant was requesting use variance relief, along with the associated bulk variances and design waivers for existing nonconformities on the Property, to convert the second floor of the building into a short-term studio rental apartment.

12. Jennifer L. Cook, an employee of the Inspired Network Financial Group, the ground floor tenant at the subject Property, testified on behalf of the Applicant. The Applicant submitted a power of attorney, authorizing Ms. Cook to act on his behalf.

13. Ms. Cook testified that she works for the Applicant out of the subject Property on the ground floor thereof. She continued that she is on site during the week and would be the main point of contact for any issues arising with the Property.

14. Ms. Cook provided additional testimony that the Applicant was proposing to use the second floor as a short-term rental unit and required variance relief as a result of the proposal.

15. Ms. Cook testified, regarding the existing conditions on site and in response to the Engineering Review Letter, dated March 14, 2025 and the Planning Review Letter, dated May 7, 2025.

16. In response to questions raised by Board Professionals in their review letters and at the hearing, concerning the width of the drive aisle and the number of parking spaces

proposed on site, Ms. Cook testified that she measured the parking area by herself and determined that five (5) parking spaces could be accommodated on the subject Property. Similarly, she measured the drive aisle widths and concluded that they met the Zoning requirements.

17. The Board's Professionals testified that the measurements taken by Ms. Cook were not accurate and, in fact, not based on any widely accepted methodology for doing so. Moreover, those measurements could not be independently verified by the Board's Professionals.

18. The Board's Professionals further opined that only four (4) parking spaces had been previously approved and that the evidence did not support the finding that the site could accommodate five (5) parking spaces, that were ADA compliant.

19. In response to questions from the Board, Ms. Cook testified that the Applicant had posted the studio apartment for rent without first obtaining approval from the Borough or the Board to do so. Ms. Cook testified that the Applicant was not aware of the fact that the proposed use as a short-term rental property required Board approval or any municipal action, prior to posting the unit for rent.

20. The Board Planner testified, providing an overview of her report, dated May 7, 2025. She provided testimony that the proposed use was not permitted in the WC-1 Zone and was, in fact, prohibited in the Zone. Similarly, residential uses were found to be inconsistent with the 2016 Master Plan. She concluded her testimony by offering that, in her opinion, the Applicant had failed to satisfy the requirements for a use variance.

21. The Board and its Professionals, along with the Applicant, confirmed the need for the following variance relief:

Use Variance

- The applicant requires d(1) variance relief to permit apartment use within the WC-1 Waterfront Commercial 1 Zone.

Bulk Variances (Pre-Existing Nonconformities)

- Insufficient Lot Frontage/Width (Chapter 21 Attachment 1) – A minimum lot width/frontage of 100 feet is required, where 54.7 feet exists along Bay Avenue and 52.5 feet exists along Shore

Drive, and is proposed to remain.

- Insufficient Lot Depth (Chapter 21 Attachment 1) – A minimum lot depth of 150 feet is required, where 57.1 feet exists, and is proposed to remain.
- Insufficient Front Setback (Chapter 21 Attachment 1) – A minimum front setback of 20 feet is required, where 0.1 feet exists along Shore Drive, and is proposed to remain.
- Excessive Impervious Coverage (Chapter 21 Attachment 1) – A maximum impervious coverage of 65% is permitted, where 87% exists, and is proposed to remain.

Design Standards

- Guide Rail Provisions (§26-65.14D) – Where guide rails are required for surface parking spaces, no guide rails exist, and none are proposed.

22. The hearing was then opened to the public, at which time Carolyn Broullon, of Miller Street stated that the proposed use was inconsistent with the Borough Master Plan. She continued that the proposed residential use was also not permitted in the WC-1 Zone and was, in fact, prohibited in that zone.

23. There were no other members of the public expressing an interest in the application, at which time the public portion was closed.

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 use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and c(2) along with a design waiver is denied for the reasons set forth herein.

The Applicant requires the following relief:

Use Variance

- The applicant requires d(1) variance relief to permit apartment use within the WC-1 Waterfront

Commercial 1 Zone.

Bulk Variances

- Insufficient Lot Frontage/Width (Chapter 21 Attachment 1) – A minimum lot width/frontage of 100 feet is required, where 54.7 feet exists along Bay Avenue and 52.5 feet exists along Shore Drive, and is proposed to remain.
- Insufficient Lot Depth (Chapter 21 Attachment 1) – A minimum lot depth of 150 feet is required, where 57.1 feet exists, and is proposed to remain.
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- Excessive Impervious Coverage (Chapter 21 Attachment 1) – A maximum impervious coverage of 65% is permitted, where 87% exists, and is proposed to remain.

Design Standards

- Guide Rail Provisions (§26-65.14D) – Where guide rails are required for surface parking spaces, no guide rails exist and none are proposed.

I. Use Variance Relief

The Applicant requires use variance relief in order to permit the second floor of the two-story building on the site to be used as a short-term rental studio apartment. The proposed apartment (which currently exists) would include an open concept living/sleeping room, with access to a kitchenette and bathroom. Residential uses are not permitted in the WC-1 Zone and are, in fact, prohibited in that 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 Applicants, 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 suited 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 that the Applicant has failed to satisfy either the positive or the negative criteria with respect to the use variance. As a whole, the Board finds that the Applicant failed to present any expert testimony supporting his request for relief. To that end, the Applicant did not offer any planning testimony, either. The only testimony presented on behalf of the Applicant was that of a lay witness, Ms. Cook, acting as an agent of the Applicant. Although the lack of a particular type of testimony being presented (or not) is not a reason to deny the requested relief in isolation, but forms a basis as to why the Board weighed the facts and reached the conclusions that it did.

Ms. Cook provided lay testimony, but she could not provide expert testimony and was not qualified in that regard. She did, however, attempt to answer questions from the Board and its professionals regarding the current conditions of the site and proposed use. In response to questions from the Board and/or its professionals, Ms. Cook provided testimony concerning the width of the drive aisles, as well as to how the five (5) parking spaces were calculated. Although Ms. Cook testified that she personally measured the drive aisles and calculated the number of parking spaces, she is neither an engineer nor did she have any expertise in that regard.

The Board finds that the calculations provided by Ms. Cook were not accurate. Although the Board appreciated Ms. Cook's explanation as to the size of the drive aisles and number of

parking spaces proposed, it finds the calculations provided by Ms. Cook to be incorrect and that the calculations were not performed in accordance with any accepted method for doing so.

The Board and its professionals also raised questions regarding the survey, which was approximately eight (8) years old. Ms. Cook testified that no major site improvements had been made within that time period but could not confirm whether the survey was accurate.

With respect to the positive criteria, the Board finds that “special reasons”, i.e., whether the Property is “particularly suitable” for the proposed residential use, has not been demonstrated by the Applicant and that the Property can be developed with a permitted use, as it has been (and continues to be). Accordingly, there is no hardship. There is also no evidence that the proposed residential use advances the purposes of zoning or that it is inherently beneficial. In fact, rental units and, for that matter, studio apartments, are not inherently beneficial uses, nor were they alleged to be.

No testimony was presented by the Applicant as to whether the proposed residential use advanced the purposes of zoning and the Board is loath to find that any such reasons exist. To the contrary, the second floor was approved to be used as an office space and can continue to be approved for that use, despite the fact that the Applicant had been attempting to rent out the unit, without Borough or Board approval to do so.

The Board further finds that the Applicant has failed to satisfy the negative criteria because the evidence presented does not support a finding that the variance can be granted without substantial detriment to the public good or that it will not impair the intent and purpose of the Borough Master Plan and Zoning Ordinance. The 2016 Master Plan Reexamination Report for the Borough intentionally established distinct waterfront zones, separating waterfront commercial zones from waterfront residential and waterfront mixed-use residential/commercial zones. The subject Property is located within a waterfront commercial zone (WC-1), as most of the area’s development consists of restaurants, marinas, and commercial establishments; in accordance with the Master Plan Reexamination, all residential uses are prohibited within the waterfront commercial zones, including the WC-1 Zone. The Applicant did not provide testimony to support deviating from the Reexamination Report’s vision or the Zoning Ordinance’s prohibition of residential uses in the WC-1 Zone, by permitting a residential use within a

waterfront commercial zone, rather than a waterfront residential or mixed-use zone.

II. Bulk Variance Relief and Design Waivers

Bulk Variances

The Applicant requires four (4) bulk variances for existing conditions. 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.

Design Waivers

The Applicant requires one (1) design waiver for existing conditions. The MLUL permits site plan design exceptions pursuant to N.J.S.A. 40:55D-51(b). The statute permits the Board to

grant a deviation from the requirements for site plan approval if (1) doing so is “reasonable”, (2) within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to Article 4 of the MLUL; and (3) if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

With respect to both the bulk variances and the design waiver, because the Board elected to deny the “d” variances sought in this Application, it did not need to resolve any of the issues concerning the site plan design exception or bulk variances sought by the Applicant and therefore makes no conclusions thereon. Had the Board reached a different conclusion on the “d” variance sought by the Applicant, it would have proceeded to deliberate and vote upon on the design exceptions sought pursuant to N.J.S.A. 40:55D-51(b) and the bulk variances pursuant to N.J.S.A. 40:55D-70c.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 12th day of June 2025, that the action of the Land Use Board taken on May 8, 2025 denying Application No. LUB2025-01, for use variance relief pursuant to N.J.S.A. 40:55D-70d(1) with associated bulk variance relief pursuant to N.J.S.A. 40:55D-70c and design waivers is as follows:

The application for variance relief and design waivers under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1), N.J.S.A. 40:55D-70c, and N.J.S.A. 40:55D-51(b) as well as the Land Use Ordinance of the Borough of Highlands is hereby denied.

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:

INELIGIBLE:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on June 12, 2025.

Nancy Tran, Board Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD
Case No. LUB25-01/Ayers
Use Variance Relief
May 8, 2025

EXHIBITS

A-1

INTEROFFICE REPORTS

B-1 Board Engineer's Review Memorandum, dated March 14, 2025 (3 pages)

B-2 Board Planner's Review Memorandum, dated May 7, 2025 (11 pages)