

**Borough of Highlands
July 14, 2022 Regular LUB Meeting Minutes**

At Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ

Chair Rob Knox called the meeting to order at 7:04pm. Chair Knox asked all to stand for the Pledge of Allegiance.

Chair Knox read the following statement: As per requirement, notice is hereby given that this is an Abbreviated Meeting of the Borough of Highlands Land Use Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal Action will be taken.

ROLL CALL:

Present: Mayor Broullon, Chief Burton, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Councilmember Olszewski, Vice Chair Tierney, Chair Knox, Mr. Zill, Ms. Chang, Mr. Cramer

Absent: Ms. LaRussa, Mr. Ziemba

Also Present: Board Attorney Dustin Glass, Esq., Board Engineer Robert Yuro, and Board Secretary Nancy Tran

OPEN FOR PUBLIC COMMENTS: None

ACTION ON OTHER BUSINESS: None

RESOLUTIONS:

Memorialization: LUB Res 2022-14 Denial of Minor Site Plan with Ancillary Variance Relief

LUB2021-07 Farrell – Board Secretary Tran read those who were eligible to vote. Vice Chair

Tierney pointed out a typographical error with the incorrect spelling of Mr. Beyer's first name at #29. (The error has been corrected below.)

**LAND USE BOARD RESOLUTION 2022-14
MEMORIALIZATION MINOR SITE PLAN WITH ANCILLARY VARIANCE RELIEF DENIAL**

**Denied: May 12, 2022
Memorialized: July 14, 2022**

**IN THE MATTER OF KERRY M. FARRELL
APPLICATION NO. LUB 2021-07**

WHEREAS, an application for minor site plan approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the "Board") by Kerry M. Farrell (hereinafter referred to as the "Applicant") on lands known and designated as Block 43, Lot 7, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more

commonly known as 32 Shrewsbury Avenue in the WT-R (Waterfront Transition-Residential) 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 live public hearing was held on May 12, 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; and

NOW, THEREFORE, the Highlands Land Use Board makes the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 7,180 s.f. with 47.5 feet of frontage on Shrewsbury Avenue and is improved with an existing single-family, two-story dwelling. The subject Property is located within the WT-R (Waterfront Transition Residential) Zone.
2. The Applicant is seeking minor site plan approval along with ancillary variance relief to reconstruct a one-story wood framed garage located in the side yard.
3. In accordance with Section 21-93 of the Ordinance existing/proposed bulk deficiencies are noted as follows. The minimum lot frontage allowed is 50 feet, whereas 47.5 feet is existing and is proposed. The minimum front yard setback for an accessory structure is 55 feet, whereas 54.8 feet is existing and is proposed. The minimum side yard setback for an accessory structure is 3 feet, whereas 0.90 feet is existing and is proposed.
4. The Board had initially heard testimony and approved this application at its March 9, 2022 meeting. It was later found that notice was defective, and the Board lacked jurisdiction. The hearing and vote held by the Board on March 9, 2022 is therefore null and void.
5. Counsel for the Applicant, Thomas Hirsch, Esq. appeared on behalf of the Applicant. He stated that this application had previously been heard by the Board, but due to an issue with noticing, the Applicant had returned to conduct a new hearing. He stated that the Applicant was seeking setback variance relief to rebuild a 212 square foot garage that was destroyed in Hurricane Sandy.
6. The Applicant, Dr. Kerry Farrell, testified that she has owned the subject Property since 2012 and it had been owned by members of her family prior to that time. She stated that the house was built in 1904 and that the garage was built in the 1940s. Dr. Farrell noted that members of her family had purchased the subject Property in 1954 and it has been in her family since.
7. Dr. Farrell then testified that Hurricane Sandy had punched a hole in the rear wall of the garage. After Sandy, Dr. Farrell removed some of the damaged walls and roof that were in danger of collapse. She stated that the concrete foundation, two (2) walls and beams of the roof remained.
8. Dr. Farrell also stated that she prepared plans with an architect to rebuild the garage in June 2016, and obtained construction and electrical permits from the Borough in July 2016. Dr. Farrell offered additional testimony that upon receipt of those permits, she proceeded to commence construction on the garage consistent with the plans

- that were approved and ordered materials and framed out the first level of the garage prior to receiving a stop work order in 2018.
9. Dr. Farrell further testified that after her permits were issued, the Borough Construction Official informed her that after Hurricane Sandy, FEMA had changed the flood designation of the surrounding area such that the subject Property was located in the V-zone, which did not permit garages.
 10. Dr. Farrell provided additional testimony that again in 2018, FEMA changed the flood designation for the subject Property, designating it as being located in the AE Zone, such that garages were permitted so long as they were constructed to V-zone standards. At the same time, the Borough Construction Official issued a stop-work order because too much (more than 50%) of the original garage had been torn down.
 11. Dr. Farrell testified that she was now seeking variance relief from the side yard setback and front yard setback requirements. She explained that variance relief was required because more than 50% of the original structure was taken down and the conditions are not considered "pre-existing". Dr. Farrell then confirmed that the residential use is not being changed.
 12. The Applicant's Architect, Robert Adler, P.A. testified that the proposed garage would be built upon the existing foundation. The mean height of the roof of an accessory structure in the zone is 15 feet, which the proposed garage meets and does not exceed (and, thus, no variance relief is required). The garage would have vinyl siding. The garage is close to the property line, which will be factored in during construction so as to not trespass on the neighbors' properties.
 13. Mr. Adler further testified that the garage would have breakaway walls as required for the zone. The walls would be comprised of two (2) levels, so the entire wall will not breakaway during a flood. He then stated that only the lower half would breakaway during a flood, with the upper portion only breaking away if the water level rises to that height. The two-level walls help reduce debris during a flood event.
 14. Mr. Adler also testified that flood vents would also be included for water events that are more typical and, thus, do not require use of the breakaway walls.
 15. Mr. Adler further stated that the garage is setback eleven (11) inches from the side yard property line. The roof eaves overhangs are six (6) inches, so the roof overhang stays on the subject Property by five (5) inches.
 16. Mr. Adler provided additional testimony confirming that low maintenance materials will be used; vinyl siding and Azek trim. The garage will have a traditional aesthetic, which fits with the neighborhood and the primary house.
 17. The hearing was then opened to the public, at which time Annemarie Tierney asked if the garage next to the house is consistent with the neighborhood. Mr. Adler testified that other houses have attached garages, some detached garages that are spaced further from their respective houses, but this proposal is consistent with what existed prior to Hurricane Sandy.
 18. Ms. Tierney further asked if any houses in the neighborhood have a detached garage on the side of the house like this proposal. Mr. Adler testified that he did not know of any.

19. Kathy Campbell appeared before the Board and asked how high the roofline of the proposed garage will be. Mr. Adler stated that the mean height of the garage is 14 feet 10 inches, where 15 feet is the maximum mean allowed for accessory structures. She further asked how high the roofline of the original garage was. Mr. Adler did not know how high the original roofline was, but stated that the proposed height of the garage is consistent with the zone requirements.
20. Gerald Beyer asked why the proposed garage is larger than the original garage. Mr. Adler testified that the purpose of the changed roof is to be more consistent with the zone. The proposed roofline is better aesthetically than the original.
21. Mr. Beyer further asked if the Applicant required a variance for the roof. Mr. Adler stated that variance relief was not required for the roof. He added that the Applicant was not proposing to rebuild the original garage, just proposing to build a garage that fits within the neighborhood.
22. Frank Barbara asked for clarification that the variance for the side yard setback is eleven (11) inches from the property line and the overhang is six (6) inches closer to the property line. Mr. Barbara further asked if the overhang makes the setback five (5) inches. Mr. Adler explained that variances for setbacks are measured at the base of the structure. The Board Engineer explained that the Uniform Construction Code ("UCC") provisions that are incorporated into the Zoning ordinance measure the setbacks from the structure itself. The UCC provisions has ancillary allowances for overhangs, cantilevers, etc. up to two (2) feet from the structure.
23. In response to a question about whether she intended to lift her home because it was located in the AE Flood Zone, Dr. Farrell testified that although she did not know the exact base flood elevation, she had been advised that she did not have to lift the house because the dwelling had not been deemed substantially damaged, such that it was required to be lifted.
24. In response to a question from the Board, Dr. Farrell testified that fencing will exist along the adjoining property where the proposed garage is to be located.
25. The hearing was then opened to the public for comment, at which time Ms. Tierney testified that the original garage had a flat roof and was knocked out by Hurricane Sandy. She testified that the proposed garage will impede the view of the neighbors. She stated that setbacks exist for a reason and that the current swelling is not at a flood elevation. Ms. Tierney further testified that the house is not occupied or rented, therefore she does not understand the need for a garage.
26. Ms. Tierney continued testifying that the garage will have a substantial impact on the view. She did not believe that variances should be given for an accessory building that is not necessary. She concluded by testifying that although a newly-constructed garage would be good, it does not outweigh the value of her view.
27. Ms. Campbell testified that she agreed with Ms. Tierney that the proposed garage would negatively impact the view. She stated that she lives directly across the street from the subject Property. She explained that she once had a better view, but a house was built on the property immediately next to the subject Property.

28. Carl Glickstein, 23 Shrewsbury Avenue, testified that he agreed that the view would be negatively impacted. He testified that he lives diagonally across the street from the subject Property.
29. Gerald Beyer, 27 Shrewsbury Avenue testified that the original garage had existed for over 60 years, and that the proposed garage is different. He testified that he had no issue with rebuilding the garage after Hurricane Sandy, but the Applicant should not be able to build a garage that is larger than the original. The height of the garage is his concern and the variance should not be granted.
30. Frank Barbara, 30 Shrewsbury Avenue, testified that the proposed garage would be located right on the property line, which he shares with Dr. Farrell. He referenced page 57 of the application packet, which shows an image of the subject Property, the current two-story dwelling, and existing garage structure. The garage is located right on top of the property line.
31. Mr. Barbara continued testifying that the purpose of setbacks is for safety. Granting the variance in this instance, Mr. Barbara testified would create a safety risk without reward. He is concerned that in case of fire, there is an increased risk of damage to his property.
32. Jake Kimmelman, 34 Shrewsbury Avenue, testified that it was his understanding that setbacks exist for fire safety and uniformity throughout town. The proposal is to build directly on the property line, which will be the only garage of its kind in the neighborhood and would have a negative affect on the neighborhood.
33. Mr. Kimmelman further testified that he was concerned with the fire hazard the proposal may create. He testified that he never has seen anyone stay at the house overnight and that the house is vacant. He was concerned that if a fire breaks out at night, there is no one at the house to respond to the fire. He recommended that the Board deny the application and require the Applicant take down the remaining parts of the garage.
34. Dr. Farrell then testified that Hurricane Sandy had destroyed the original garage and that the proposed garage is slightly taller than the original structure. Dr. Farrell further testified that there would be a very small change in the view that the neighbors had previously enjoyed. She further testified that she did consider the neighbors' view when developing these plans. She conceded that some views may be diminished, also stated that some of the testimony from the public was inaccurate. She further testified that the extra height is crucial for the design element and improves the aesthetics. The extra height is also for parking and storage.
35. In response to questions from the Board, Mr. Adler testified that the house could be higher than base flood elevation, but the garage cannot. If the garage complied with the setback of three (3) feet, then the Applicant would not have to be before the Board as the height complies with the zone.
36. Mr. Adler provided additional testimony that, within the setback area, there is only about two (2) feet of the garage that blocks the view. He reiterated that the zone allows the height proposed. The Applicant is only before the Board seeking variance for the setbacks, which is the focus of this hearing.

37. In response to concerns from the public, Mr. Adler testified that safety is not a purpose of setbacks and that structures are built on property lines all the time. The setback does not make the garage any more or less likely to catch fire. Whether a person is at the subject Property overnight does not increase the likelihood of a fire.
38. Mr. Adler also testified that the fire code addresses fire concerns, not the setbacks. He further testified that the proposed garage would be built according to the fire building code.
39. The Board commented that there was a fire March 3, 2011, that started at 28 Shrewsbury Avenue and spread to 30 Shrewsbury Avenue, and that the distance between those houses was greater than the proposed distance between the subject Property and 30 Shrewsbury Avenue. In response thereto and from Board member questions, Mr. Adler testified that the homes involved in the fire had been built many years ago and may not have been built to code, whereas the proposed garage would be built to current fire code standards.
40. Ms. Tierney reappeared before the Board to provide further testimony. She showed a picture of the original garage and again testified that garage used to have a flat roof.
41. Ms. Tierney asked what the height of the peak of the proposed roof is. Mr. Adler testified that the peak is 16 feet. Ms. Tierney stated that the proposed garage is six (6) feet higher than the original garage and that setbacks are to preserve sight views.
42. Ms. Tierney testified that there are no other garages like this on Shrewsbury Avenue. There are some detached garages at the rear of properties, but none on the side. She further asked how far the garage would be located from the dwelling, to which Mr. Adler testified that the garage is six (6) inches from the house.
43. Ms. Tierney testified that the proposed garage with the house effectively blocks the view along the entire front of the property, which is a substantial change to the neighbors' views. She testified that she does not support building something this tall and will lose view from the first and second floors of her home.
44. Mr. Adler responded testifying that the roof height complies with the zone requirements. The roof where the variance for the setback is needed is much lower than the peak. The highest point and dormer are within the setback.
45. In response to questions from the Board, Dr. Farrell testified that putting the garage in the backyard would have a worse impact on the views of the neighbors and created a great obstruction for the neighbors to either side of the subject Property.
46. In response to the concern of the Board regarding fire safety, Mr. Adler testified that the fire code is what makes structure safe, not the setbacks. He also addressed the public's concern of the view stating that moving the garage to the backyard would have a more negative effect on views.
47. Dr. Farrell further testified that the proposed garage does not block neighbors' views any more than their current views as the house blocks the view. The height of the garage does not change the current view. She testified that there are other single car garages in the neighborhood that are close to property lines, just this proposed garage faces the road.
48. The Applicant's Attorney, Mr. Hirsch, argued that the Applicant was seeking the variance as a hardship, c(1) variance. The New Jersey courts have recognized that a

hardship does not have to be caused by the physical land, but can also be caused by an existing permitted structure. He argued this application meets that hardship because of the existing foundation of the garage and the location of the house on the subject Property. He argued that the roof height is standard for the zone and is based on the percentage of the peak, which the proposal complies. It will be a small section of the roof that is higher. The proposed garage is more aesthetically pleasing. There are structures all over town that are fire hazards. This will be built to the latest fire code, thereby reducing fire hazards. The lot is 2.5 feet narrower than permitted in the zone, so if the lot width complied with the zone, the garage could fit on the subject Property without a need for a variance. The house was built long before the zoning ordinances and the original garage was built not too long after. The house takes up most of the land creating the hardship for c(1). The c(1) variance should be granted because of the existing house, the narrow lot, and the existing foundation of the garage.

49. Mr. Hirsch further argued that the negative impact will be minimal. Fire risk is based on how the structure is built, not how close the structure is to other structures. The setback makes no impact on fire risk. The fire risk is addressed by the fire code, which this proposal will follow thereby mitigating the negative impact of fire risk. He argued the neighbors are not entitled to the views, but even if they were, there are no changes to their views. The zone allows this height.
50. The Board discussed the merits of granting the c(1) variance, and observed that there was testimony that the garage could be built elsewhere on the subject Property without variance relief. The Board further discussed how Hurricane Sandy created the situation but that the Applicant proposes more than just rebuilding the original garage from Hurricane Sandy. The proposed garage would have a higher roof and the public is concerned with the height of the structure, although no variance was needed or requested for the height of the proposed garage.
51. In response to further questions from the Board, Mr. Adler testified that the garage is six (6) inches from the existing home. The roof lines are not causing the setback issues and there will not be any overhang by the house as there is no room. The garage cannot be moved closer to the house.
52. Mr. Adler further testified that the roof design could be modified as a condition of approval. The Applicant agreed to lower the proposed garage height by two (2) feet to make the total height fifteen (15) feet instead of the mean height of fifteen (15) feet. The dormer would be removed. The roof design would remain with those modifications and Mr. Adler offered additional testimony that these modifications should allay the public's concerns.
53. 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 minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with variance relief pursuant to N.J.S.A. 40:55D-70c should be denied in this instance.

The Board finds that the Applicant has proposed a minor site plan which requires 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 ancillary 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 which 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.

The Board finds that the Applicant has failed to satisfy the positive criteria. The Board first addresses the Applicant's request for a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Applicant's testimony could be interpreted to allege that the garage structure lawfully existed prior to its destruction in Hurricane Sandy. The Applicant, however, never applied for or obtained a certification of pre-existing non-conforming structure pursuant to N.J.S.A. 40:55D-68. Such an application also has public noticing requirements. Accordingly, to the extent the Applicant's testimony could be interpreted to allege that the garage structure lawfully existed prior to its destruction in Hurricane Sandy, the Board is therefore constrained to find that the structure was lawfully pre-existing. The Board further finds that the Applicant is not merely seeking to reconstruct the garage at the same dimensions. Rather, the new proposed garage will be larger. The Board also recognizes the testimony which demonstrated that a new garage could be constructed in conformance with Ordinance requirements. The Board also acknowledges the testimony from the Applicant's professional that although constructing a garage in the rear yard could have a negative impact to the neighbors, the garage could be so constructed in conformance with the zoning requirements. The Board therefore does not find a hardship.

The Board also does not find that the positive criteria has been satisfied under the "flexible" variance standard at N.J.S.A. 40:55D-70c(2). The Applicant has not demonstrated that any of the goals of planning enumerated at N.J.S.A. 40:55D-2 would be advanced in the public interest. The Applicant's Architect testified that the grant of variance relief would create a desirable visual environment. The Board, however, finds that variance relief is not required in order achieve this goal. The structure could be rebuilt at the same dimensions and still be visually attractive. It could also be rebuilt in compliance with Ordinance requirements and achieve a desirable visual environment.

Based upon the foregoing, the Board finds that the Applicant has failed to satisfy the positive criteria under either the c(1) or c(2) criteria.

The Board also finds that the Applicant has failed to satisfy the negative criteria. The Board finds that the proposed detached garage design is out of character with the other garages in the neighborhood and would be inconsistent and detrimental to the prevailing neighborhood scheme. The purpose of the set back is also to maintain adequate light, air and open space between lots. The proposed setbacks are virtually on top of the property line and do not achieve any of these

critical goals of the Ordinance. While the Ordinance does not require a “view corridor”, the required bulk standards result in open space and attractive views. Both would be frustrated by the proposed plan. The Board therefore finds that the grant of variance relief would result in substantial detriment to the public good and substantial impairment of the zone ordinance and the zone plan. The Applicant has therefore failed to satisfy the negative criteria.

The Board finds that the failure to satisfy either the positive or the negative criteria results in denial of variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2).

To the extent that minor site plan approval is required in connection with an application regarding a single family home pursuant to N.J.S.A. 40:55D-46.1, such request has been rendered moot by the denial of variance relief.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 9th day of June 2022, that the action of the Land Use Board taken on May 12, 2022 denying Application No. LUB2021-07, for minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2) is as follows:

The application for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2) and minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 as well as the Land Use of 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’ 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.

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB 2021-07/KERRY FARRELL

Minor Site Plan Approval with Ancillary Variance Relief

June 9, 2022

- A-1 Land Use Board Application, dated December 8, 2021.
- A-2 Architectural Plans prepared by Robert W. Adler & Associates, PA, dated November 11, 2021.
- A-3 Engineering Review Letter prepared by Edward W. Herrman, P.E., dated March 6, 2022.
- A-4 Undated photograph of old garage.

MOTION: Mayor Broullon motioned to approve denial as amended

SECONDED BY: Mr. Montecalvo

ROLL CALL:

YES: Mayor Broullon, Mr. Lee, Mr. Montecalvo, Mr. Cramer

NO: None

INELIGIBLE: Chief Burton, Mr. Kutosh, Vice Chair Tierney, Chair Knox, Mr. Zill, Ms. Chang,

ABSENT: Ms. LaRussa, Mr. Ziemba

Memorialization: LUB Res 2022-15 Granting Bulk Variance Relief LUB2022-02 Shwom
Board Secretary Tran read those who were eligible to vote.

**LAND USE BOARD RESOLUTION 2022-15
MEMORIALIZATION OF BULK VARIANCE RELIEF**

**Approved: June 9, 2022
Memorialized: July 14, 2022**

**IN THE MATTER OF RACHEL SHWOM
APPLICATION NO. LUB2022-02**

WHEREAS, an application for bulk variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the “Board”) by Rachel Shwom (hereinafter referred to as the “Applicant”) on lands known and designated as Block 101, Lot 9, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more specifically located at 342 Shore Drive Highlands, New Jersey, in the R-2.03 Single-Family Residential (R-2.03) Zone District (hereinafter “Property”); and

WHEREAS, a live public hearing was held before the Board on June 9, 2022, 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 2,590 s.f. with 27.09 feet of frontage on Shore Drive and 25 feet of frontage on Locust Street within the R-2.03 (Single-Family Residential) Zone. The subject Property is located in flood zone AE-12 and is currently improved with an 834 s.f. elevated, two and one-half story, single-family residential structure with an elevated deck.
2. The Applicant is seeking bulk “c” variance relief from the R-2.03 Zone’s zoning requirements to permit construction of a 463-foot elevated, two and one-half story addition with a new elevated deck and expanded existing elevated deck. The proposed addition would reduce the existing side yard setback from 1.6 feet to 1.2 feet due to the dwelling’s relation to the property line, and would be located on the south/southwest side of the subject Property (Shore Drive).
3. The proposed addition would also increase building coverage from 32.2% to a proposed coverage of 51%, both of which exceed the 30% maximum permitted building coverage.

4. The Applicant testified that she has owned the subject Property for eleven years and was seeking to add an addition on to the existing dwelling. The home was raised after Hurricane Sandy by the prior homeowners.
5. In response to questions from the Board, the Applicant testified that the proposed addition would be to the front of the home, and that the Locust Street side of the subject Property was the rear thereof.
6. The Applicant testified that the following variance relief was proposed:
 - a. **Minimum Lot Size:** 5,000 s.ft. is required whereas 2,590 s.f. presently exists and 2,590 s.f. is proposed to remain.
 - b. **Minimum Lot Frontage (Locust Street):** 50 feet is required whereas 27.09 feet currently exists and 27.09 feet is proposed to remain.
 - c. **Minimum Front Yard Setback (Locust Street):** 20 feet (or 35.8 feet, which is the average of the existing front yard setback within two hundred feet in the same block and zone per Ordinance Section 21-79) is required whereas 11 feet currently exists and 11 feet is proposed to remain.
 - d. **Minimum Side Yard Setback:** 6 feet and 8 feet is required whereas 1.6 feet and 3.7 feet presently exist. The 1.6 foot side yard setback is proposed to be decreased to 1.2 feet, whereas the 3.7 foot setback is proposed to remain unchanged.
 - e. **Building Coverage:** 30% is permitted whereas 32.2% presently exists and is proposed to be changed to 51%.
7. The Applicant testified that the subject Property has a larger front yard than most other properties in the neighborhood and that, therefore, it would not be inappropriate to, construct an addition on the front of the dwelling.
8. The Board Engineer testified that the subject Property is undersized and located in the R-2.03 Zone. He provided additional testimony that the subject Property is unique in that it has two front yards because it abuts both Shore Drive and Locust Drive.
9. The Board Engineer stated that the Applicant proposed to decrease the side-yard setback on the southwest side of the lot from 1.6 feet to 1.2 feet and to increase building coverage from 32.2% to 51%, both of which required variance relief. The Board Engineer further testified that the Applicant required four (4) additional variances, all of which were pre-existing non-compliant conditions that would not be further exacerbated by this application.
10. The Board Engineer offered additional testimony that the height of the proposed addition was not problematic and did not require variance relief. He stated that the Residential Site Improvement Standards (R.S.I.S.) required three (3) off-street parking spaces as well.
11. In response to questions from the Board Engineer, the Applicant offered two photographs that were marked into evidence as "A-1" and "A-2", depicting the front side of the subject Property (Shore Drive) and rear side thereof (Locust Street).

12. The Applicant testified that the photos demonstrated that a car could be parked in the rear of the subject Property and that it is setback much more so than the others in the surrounding area, thus making an addition anywhere but in the front-yard difficult.
13. In response to a question from the Board, the Applicant's Architect, Vincent Minkler, A.I.A., testified that the proposed addition would extend outward towards Shore Drive by approximately twenty-five (25) feet.
14. The Board next inquired whether the proposed building coverage was similar to that of the rest of the neighborhood. Mr. Minkler responded that the building coverage would be similar to the home next door. He provided additional testimony that the subject Property is at most approximately 27 feet wide whereas 50 feet is a more common lot width in Highlands and, thus, the narrowness of the subject Property makes it more likely to need building coverage variance relief.
15. Mr. Minkler provided additional testimony that due to the exceptional narrowness of the subject Property, the current dwelling is a "shotgun" style home.
16. The application was then opened to members of the public who inquired whether the water runoff and/or drainage would be affected by the proposal. The Applicant responded that there would not be any anticipated runoff.
17. The Applicant testified that the application would make the subject Property more consistent with the neighboring properties and anticipates no detriment to the community and/or zoning plan.
18. The Board Engineer noted that per the R.S.I.S., the application required three (3) off-street parking spaces but testified that no off street parking was to be provided. The Applicant provided testimony that she is able to use one on-street parking space on Locust Street and currently only has one vehicle. In response, the Board advised the Applicant that a de minimis exception from the R.S.I.S. parking requirements, was required.
19. 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 should be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) 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 improve the functionality of the dwelling by increasing the habitable floor space. The Board further finds that the proposed improvements will be aesthetically pleasing and create a desirable visual environment, which will be more commensurate with other homes in the neighborhood in terms of size and setbacks. The Board further finds that the subject Property is unique in its exceptional narrowness as to width and dual frontage on Shore Drive and Locust Street, and that it is setback further from Shore Drive than other homes in the neighborhood. Ultimately, a more functional and visually desirable dwelling not only benefits the Applicant, but also advances the interests of the entire community by updating the dwelling to more current housing standards. 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 do not exacerbate any of the pre-existing non-compliant conditions and, thus, granting the requested variances will also not cause a detriment to the community in any discernible way. In fact, the Board finds that proposed addition will still be consistent and fit in seamlessly with the prevailing neighborhood residential scheme. The proposal is consistent with the Borough’s overall goals and objectives of providing new, safe and visually attractive homes. The Board therefore concludes that there is no substantial detriment to the Zone Plan or the Zoning Ordinance. To the extent there were concerns as to potential drainage issues after the proposed addition is constructed, the Applicant has agreed to submit a grading 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 Applicant requires a de minimis exception from the RSIS parking requirements. The Board finds that the subject Property has off street parking which can accommodate the Applicant. Adequate on-street parking also exists in the area to address any further parking

needs. The Board therefore finds that a de minimis exception from the R.S.I.S. is appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Land Use Board on this 14th day of July 2022, that the action of the Board taken on June 9, 2022, granting Application No. LUB2022-02 of Rachel Shwom for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) with a de minimis exception from the R.S.I.S. 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 submit a grading plan to the Board Engineer for his review and approval.
4. The Applicant shall obtain all necessary approvals from the Borough Flood Plain Officer.
5. The project site is located in the Coastal Area Facilities Review Act (CAFRA) Zone. The Applicant shall comply with all applicable NJDEP requirements and should confirm any specific restrictions and/or permitting requirements accordingly.
6. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
7. The Applicant shall provide a certificate that taxes are paid to date of approval.
8. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
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.



BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB 2022-03 / B-Four Enterprises, Inc.

Amended Preliminary and
Amended Final Major Site Plan Approval
June 9, 2022

- A-1 Denial of development permit by Marianne Dunn, Zoning Officer dated 2/19/19
- A-2 Variance application dated 4/3/19 (3 pages)
- A-3 Disclosure of Ownership dated 4/3/19
- A-4 Site Plan Review Application (2 pages)
- A-5 Preliminary & Final Site Plan by Charles Surmonte dated 2/10/18, last revised 12/2/19 (8 pages)
- A-6 Architectural Plans by Brian Berzinskis dated 12/19/19 (1 page)
- A-7 Sheet 4 of site plan on large board, in color
- A-8 Stormwater Management Plan by Mr. Surmonte dated 7/9/19
- A-9 Large photo of property
- A-10 Large colored rendering of proposed building—view from Bay Ave.
- A-10a Reverse side of A-10—view from rear
- A-11 A-6 with modifications
- A-12 Traffic Report by Mr. Surmonte dated 11/5/20
- A-13 Planner presentation by David Roberts (8 pages—two sided)
- B-1 Board engineer incompleteness letter by Edward Herrman dated 4/29/19 (4 pages)
- B-2 Board engineer review letter by Edward Herrman dated 9/25/20 (10 pages)

MOTION: Mr. Kutosh motioned to approve

SECONDED BY: Ms. Chang

YES: Mr. Kutosh, Mr. Montecalvo, Mr. Zill, Ms. Chang, Mr. Cramer, Chair Knox

NO: None

INELIGIBLE: Mayor Broullon, Chief Burton, Mr. Lee, Councilmember Olszewski, Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Ziemba

Memorialization: LUB Res 2022-16 Amended Minor Site Plan Approval LUB2022-03 B-Four Enterprises

LAND USE BOARD RESOLUTION 2022-16
MEMORIALIZATION OF AMENDED MINOR SITE PLAN APPROVAL

Approved: June 9, 2022
Memorialized: July 14, 2022

IN THE MATTER OF B-FOUR ENTERPRISES, INC.
APPLICATION NO. LUB 2022-03

WHEREAS, an application for amended minor site plan approval has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by B-Four Enterprises, Inc. (hereinafter referred to as the “Applicant”) on lands known and designated as Block 72, Lots 8, 8.01, 9.001, 9.011, and 9.012, and Block 69, Lots 13, and 13.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 1 Marina Court and 1 Atlantic Street in the WC-2 (Central Business) Zone; and

WHEREAS, a live public hearing was held before the Board on June 9, 2022, 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 176,443 s.f. and is currently developed as the Seafarer Tiki Bar with associated dock and parking lot area. The site is located in the Waterfront Commercial (WC-2) Zone with frontage along Atlantic Street. The Applicant previously received preliminary and final site plan approval to permit the establishment of the “Seafarer Tiki Bar” in May 2015.

2. The Applicant is seeking amended minor site plan approval to utilize a 1,500 s.f. river paddle boat for public and private use. This will reduce the available space from a capacity of twelve (12) boats to ten (10) boats on the subject Property. The Applicant further proposes the removal of fourteen (14) seats from the tiki bar, leaving a total of twelve (12) seats. The river paddle boat will be located along the southern dock and consist of eight (8) tables of four (4) seats for a total of 32 seats, for use by patrons of the tiki bar. The existing 29 tables of four (4) seats (a total of 116 seats) are located on the deck and around the center bar, while the food truck and lavatories will remain in place. The Applicant also proposes to use the river boat for private parties.

3. Counsel for the Applicant, Amanda Curley, Esq. stated that the subject Property is the improved and utilized by the Seafarer Tiki Bar and that the Applicant is seeking to add a river paddle boat to the dock to provide for additional patron seating and private parties.

4. The Applicant’s Architect, Mike Monroe, AIA testified that the tiki bar was approved by the Board in 2015 and that the Applicant was seeking to amend the site plan to add a boat to the dock. He stated that ADA improvements had been made to the subject Property since the 2015 approval. Mr. Monroe testified that the Applicant proposed no changes to the current occupancy limits and was only seeking to move seats around to provide flexibility for events and shelter during inclement weather.

5. Mr. Monroe further testified that the subject Property also operates as a marina and features a tiki bar, a building for storage, food truck, and a deck on the north side of the subject Property. He stated that a minimum of 174 parking spaces is required, whereas 186 are

existing and are proposed to continue to exist. The river boat would not be a permanent structure, would not block any view as it is not very tall, and is 65-feet in length. Mr. Monroe also testified that the Applicant was not proposing any changes to the landscaping and drainage.

6. In response to questions from the Board, Mr. Monroe testified that the boat will be permanently used as a restaurant and that it has been in use as a restaurant (elsewhere) for 10 years. He further stated that the river boat would be towed from its current location on Barnegat Bay to the Highlands if the application is approved.

7. Mr. Monroe then explained that the river boat has two levels and there would not be any cooking on the boat. The food operations are located at the food truck. The operation of the restaurant would remain the same, with no additional staff needed. He testified that the Applicant was seeking to provide more space for its patrons.

8. In response to further questions from the Board, Mr. Monroe testified that the boat would not be decommissioned entirely. In case of an emergency, such as a hurricane, the boat would be able to move under its own power. He confirmed that the Applicant was not seeking to increase the occupancy, but rather to move existing seating to the boat.

9. In response to questions from the Board Engineer, Mr. Monroe testified that there are ten (10) dry dock parking spaces at the center of the subject Property, lined up with the dock. Nothing has changed from the 2015 approval until now and there will not be any alterations to the dock.

10. Mr. Monroe provided additional testimony that there is some overlap with parking between the restaurant and the marina, but the restaurant is primarily used at night, whereas the marina is used during the day. There have not been any issues with the overlap of parking since obtaining land use approval in 2015.

11. Mr. Monroe further stated that all conditions of the 2015 resolution remain in effect and will not be altered by this approval. The hours of operation will remain 11 a.m. to 11 p.m. Mr. Monroe testified that there would be no security concerns because the boat can be locked and there are security cameras on the subject Property. Access to the boat will be provided via a gangway and the Applicant will make a reasonable effort to make the first level of the river boat ADA compliant. Mr. Monroe continued, however, that because the upper level is less than 20% of the total area, the Applicant is not required by ADA to provide access to everywhere on site. The boat meets current boat safety standards.

12. The Board Engineer advised that the application is similar to the site plan approved in 2015 and that he is satisfied with the application. There are no variances required. The Applicant is just adding a boat and moving seating around.

13. The hearing was opened to the public for questioning at which time Jerry Sorano asked if live music will be seven (7) days a week. The Applicant stated that the live music schedule will be the same as it is currently but will be set up on either the boat or at the main tiki bar – not both. Live music will end at 10pm as it does currently.

14. Jeff Wilson asked what the capacity of the boat is. Mr. Monroe testified that the total capacity is 110 persons, including the upper deck, but he has not decided if he will use the upper deck. He does not intend to use all of the permitted 110 capacity.

15. Francis Shoreman asked if the boat has a fire suppression system. Mr. Monroe testified that boat has an up-to-date fire suppression system that is approved by the United States Coast Guard.

16. Mr. Shoreman further asked how the Applicant would accommodate additional parking with the other uses on the subject Property. Mr. Monroe testified that the parking for the tiki bar is based on seating. The marina has 130 parking spaces. The new business near the marina is included in the 130 marina parking spaces. The marina parking is based on one (1) space per boat slip.

17. Mr. Shoreman next voiced his concern as to whether the subject Property had sufficient emergency vehicle access.

18. In response to further questions from the Board, Mr. Monroe testified that the total capacity of the restaurant as per the Fire Marshall is 200. The Applicant was not seeking to increase the capacity. As the Applicant is not increasing the capacity, there is no need for additional parking. The Board Engineer advised that fire capacity is governed by the construction code and is based on fire safety. Mr. Monroe stated that the Applicant was allowed to limit the amount of people by itself to be less than the fire capacity, which the Applicant is limiting the seating to 160 as per the 2015 approval. Ms. Curley stated that the standard for parking is one (1) space per four (4) seats; capacity is for safety, not parking.

19. Maggie Bourdeux expressed concern that the Applicant would max out the fire capacity and allow another 100 people with the boat. Mr. Monroe testified that his intention was to spread people out and allow covered space in case of rain. The Applicant does not intend to increase the amount of people.

20. Ms. Bourdeux asked what is keeping the Applicant from increasing the amount of people. Ms. Bourdeux further asked what is keeping the Applicant from putting up something else, such as a Ferris wheel. The Applicant's attorney stated that she was confident that ferris wheels are not permitted in the Zone and would require the Applicant to come before the Board for d(1) use variance approval.

21. Maryanne Bower asked why the Applicant would not use the boat and the deck at the same time on a nice day that draws more people requiring more parking. The Applicant's attorney stated that parking is based on the number of seats, not the number of bodies. The plan permits use of both the tiki bar and boat without the need for parking relief. The Applicant is guided by the Ordinance setting the parking standards.

22. Ms. Bower voiced additional concerns about the potential noise, traffic, and use. In response, the Applicant testified that they intended to have approximately 50 people on the boat at any one time.

23. Members of the public next inquired whether the 2015 approval required the Applicant to have a food truck, noting that the current "food truck" does not have wheels and should not be considered a food truck. The Applicant stated that by restaurant standards, it is technically a food truck.

24. Members of the public next asked whether the river boat is effectively a barge and would become a large projectile during a storm and cause damage to structures on land. The Applicant testified that the boat is operational and can be moved in the event of a damaging storm.

25. Meghan Nice asked if the boat could be moved elsewhere. Mr. Monroe testified that after several revisions of the plan, the proposed location is the best location for the boat. The location along the dock is the most secure for the boat and has the least amount of impact on the area.

26. The hearing was opened to the public for comment, at which time Tim Morris stated that he understands the Applicant wants to make money, but the location of the boat is terrible. The boat is too close to the shore and swimming area.

27. Tom Quinn stated that a 65-foot boat is not small and will be an eyesore. It's effectively a three-story building.

28. Francis Shoreman stated that he has been fine with the Seafarer as is, but the addition of the boat doesn't make sense him when almost all the neighbors are against it. He believed it is disingenuous of the Applicant to say there will not be more people and disingenuous for the Board to not listen to the concerns regarding parking. He believed it will be detrimental to the value of the neighboring homes and the purpose of the Board is to protect the value of homes.

29. Maryanne Bower stated that her backyard borders the parking lot. She stated she loves the Seafarer and it has been a good neighbor, but she was concerned that there will be an increase in people and an increase in noise in the parking lot when people come and go. She is also concerned the boat will ruin her view.

30. Scott Doyle stated that parking is an issue and the application is an intensification of the use. He recently moved to the neighborhood and purchased his house from someone who moved because of the Seafarer.

31. Joe Shacky stated that he appreciates the Applicant has improved privacy since the 2015 application, but the boat will change that privacy being in the water. He is concerned with patrons of the restaurant being rowdy in the community with the boat having easier access to the water.

32. Amy Magada stated that the Board should consider that the boat will increase the amount of people and it is not fair to the neighbors.

33. Maggie Bourdeux stated that the boat is an expansion of the restaurant, and it will continue to grow. The guidelines the board follows might have to change. It is not worth it to the neighborhood.

34. Margaret Valor stated that she is concerned with the boat standing out in the water. The Applicant's attorney stated that the height of the boat is approximately 24 feet, which if it were a structure, would be within the height limits of the zone. There are no height requirements for boats in the zone.

35. 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 amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 should be granted in this instance.

The Board finds it necessary to first express the statutory requirements in a site plan application. The Municipal Land Use Law tightly circumscribes the jurisdiction of a land use board in reviewing a variance free site plan application for a permitted use. The jurisdiction of a land

use board is limited to determining compliance with ordinance requirements. The New Jersey courts have consistently held that where an approval is required where all ordinance requirements have been satisfied. The New Jersey Courts have also held that a land use board cannot deny a site plan for a permitted use due to an increase in traffic, noise or parking where all ordinance requirements have been satisfied.

The Applicant in the instant matter has complied with all ordinance requirements. In view of the above discussed statutory and common law constraints, this Board finds that it is required to grant amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 14th day of July 2022, that the action of the Land Use Board taken on June 9, 2022, granting Application No. LUB 2022-03, for amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 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 conditions of the Planning Board Resolution dated September 10, 2015 continue to be in effect and are incorporated herein.
4. Any future modifications to this approved plan must be submitted to this Board for approval.
5. The Applicant shall provide a certificate that taxes are paid to date of approval.
6. 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.
7. 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.

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. LUB 2022-03 / B-Four Enterprises, Inc.

Amended Preliminary and
Amended Final Major Site Plan Approval

June 9, 2022

- A-1 Denial of development permit by Marianne Dunn, Zoning Officer dated 2/19/19
- A-2 Variance application dated 4/3/19 (3 pages)
- A-3 Disclosure of Ownership dated 4/3/19
- A-4 Site Plan Review Application (2 pages)
- A-5 Preliminary & Final Site Plan by Charles Surmonte dated 2/10/18, last revised 12/2/19 (8 pages)
- A-6 Architectural Plans by Brian Berzinskis dated 12/19/19 (1 page)
- A-7 Sheet 4 of site plan on large board, in color
- A-8 Stormwater Management Plan by Mr. Surmonte dated 7/9/19
- A-9 Large photo of property
- A-10 Large colored rendering of proposed building—view from Bay Ave.
- A-10a Reverse side of A-10—view from rear
- A-11 A-6 with modifications
- A-12 Traffic Report by Mr. Surmonte dated 11/5/20
- A-13 Planner presentation by David Roberts (8 pages—two sided)
- B-1 Board engineer incompleteness letter by Edward Herrman dated 4/29/19 (4 pages)
- B-2 Board engineer review letter by Edward Herrman dated 9/25/20 (10 pages)

MOTION: Mr. Zill motioned to approve

SECONDED BY: Mr. Montecalvo

ROLL CALL:

YES: Mr. Kutosh, Mr. Montecalvo, Mr. Zill, Mr. Cramer, Chair Knox

NO: None

RECUSE: Ms. Chang

INELIGIBLE: Mayor Broullon, Chief Burton, Mr. Lee, Councilmember Olszewski, Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Ziemba

HEARINGS ON OLD BUSINESS: None

HEARINGS ON NEW BUSINESS:

LUB2022-01: Arijika Block 81 Lot 12, 289 Bay Ave

Mr. Glass explained to the Board and Public that the applicant has the choice of being heard under the old zoning requirements or with the new zoning requirements under the newly adopted redevelopment plan.

Brad Batch, attorney for the applicant, gave an opening statement and noted that their engineer could not be present tonight. He stated that the applicant wishes to be considered under the new redevelopment plans and listed the variances they were seeking. Mr. Yuro interjected to clarify that with the new redevelopment plan, the applicant will also need a front set back variance where none was required with the old guidelines. Mr. Batcha explained that the plans were drawn prior to the adoption of the redevelopment plan. He proceeded to describe the proposed project and to address the points on the Board Engineer's review letter. Mr. Yuro suggested that he proceeds to give the summary of the project as going point by point on the review letter could be hard to follow.

Chris Ruby, builder, was sworn in and described the proposed project further.

Salvatore La Ferlita, architect, was sworn in and his credentials were accepted by the Board. He helped Mr. Ruby answer the question of where the bike racks could be located, as the new ordinance requires bike space. Mr. Yuro found Mr. La Ferlita's outdoor bike rack acceptable but suggested that they may section off an area on the first floor for the indoor bike storage. He asked about plans for garbage storage. Mr. Batcha answered that they could use one of the proposed parking spaces. Discussion ensued regarding assigned parking spaces and meeting ADA requirements. Vice Chair Tierney asked that their revised plans and survey reflect the same number of parking spaces. Mr. Yuro clarified that given the size of the property, the most they can have are 4 regular, unassigned parking spaces and 1 ADA compliant handicap parking space. He furthered that with the new development ordinance, the project would be compliant with parking requirements and not need any variance.

Mr. Batcha asked his professionals about the windows for the retail 1st floor space, landscaping, and signage. Mr. La Ferlita answered that they will comply with design requirements regarding doors and windows of the retail space. Mr. Ruby stated that there would be no landscaping with blacktop and that they would comply with signage requirements. Discussion ensued regarding possible parking lot material. Mr. Yuro clarified lot coverage calculations, ADA compliance, and drainage for the parking lot. He stressed the need for a drainage calculation report from the applicant as the property is going from a vacant lot to a 100% lot coverage property. Mr. Batcha testified that applicant will stipulate that they will comply with all FEMA and building code.

Councilmember Olszewski asked about the roof and roof access. Mr. La Ferlita answered that the tenants will not have access to the flat roof. Vice Chair Tierney asked where the HVAC units would be. Mr. La Ferlita will provide a detailed drawing depicting the roof. Mr. Batcha noted that the revised plans will show roof plans. Chief Burton asked if they were seeking a height

variance. Mr. Glass reminded the Board that anything that is approved today and that the applicant builds that is not in conformance with what's agreed upon they would have to come back to the Board for approval.

Mr. Ruby repeated that he would like to keep the zero front set back. Chief Burton asked if the turning radius would be affected if they were to move the building back the required 2 feet setback? Mr. Zill asked if they could make the building smaller rather than move it back. Mr. La Ferlita answered that he would not recommend making the building smaller.

Mr. La Ferlita described the proposed appearance and the proposed materials of the building. Councilmember Olszewski asked about the deck railing material. Ms. Chang asked about landscaping. Mr. Glass answered that the applicant stated that they are proceeding as-is. Mayor Broullon asked if they would be using porous concrete. Mr. Ruby answered that it is something he would consider looking into. Mr. Yuro replied that porous concrete would help with drainage but applicant would still need a variance.

Mr. Yuro summarized the proposed project and asked for clarification of the balcony design, supply delivery needs, traffic impact, utilities, outdoor space requirement. He asked if applicant would supply a drainage calculation and reconcile the current discrepancy between the architecture's plan and the engineer's survey. He also noted that they may need outside agency approvals too as Bay Avenue is a County road. Chief Burton asked if applicant redo the entire sidewalk and curb cut. Mr. Ruby agreed. Chief Burton suggested that they move the retail space, first floor, back 2 feet while keeping the floors above to property line. Mr. Ruby was OK with the suggestion.

Chair Knox opened the hearing to the public.

Dawn Horniacek, 297 Bay Ave., asked who's is to limit 1 car per apartment. Mr. Glass replied that it was not a question the applicant can answer and reminded that they were not seeking a parking variance.

Jame Horniacek, 297 Bay Ave., asked why not ask for the revised plans from the applicant before approving. Vice Chair Tierney answered that everything the applicant testified on will be included in the resolution. Mr. Glass added that these items will be conditions of approval.

Prior to the Board vote, Mr. Glass read off the list of conditions of approval.

MOTION: Vice Chair Tierney motioned to approve

SECONDED BY: Mayor Broullon

ROLL CALL:

YES: Mayor Broullon, Chief Burton, Mr. Kutosh, Mr. Lee, Mr. Montecalvo, Councilmember Olszewski, Vice Chair Tierney, Chair Knox

NO: None

ABSTAIN: None

INELIGIBLE: None

ABSENT: Ms. LaRussa, Mr. Ziemba

The Board took a recess break at 8:15pm and returned at 8:19pm.

APPROVAL OF MINUTES OF JUNE 9, 2022 MEETING

OFFERED BY: Mr. Kutosh

SECONDED BY: Chair Knox

YES: Mr. Kutosh, Mr. Montecalvo, Mr. Zill, Ms. Chang, Mr. Cramer, Chair Knox

NO:

INELIGIBLE: Mayor Broullon, Chief Burton, Mr. Lee, Councilmember Olszewski, Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Ziemba

EXECUTIVE SESSION

Mr. Glass read the LUB Resolution 2022-17 prior to entering into Executive Session.

LAND USE BOARD RESOLUTION 2022-17 BOROUGH OF HIGHLANDS LAND USE BOARD OPEN PUBLIC MEETINGS ACT – EXECUTIVE SESSION

WHEREAS, N.J.S.A. 10:4-12, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW, THEREFORE BE IT RESOLVED by the Borough of Highlands Land Use Board, County of Monmouth, State of New Jersey (“Board”), on this 14th day of July 2022, as follows:

1. The public shall be excluded from discussion of the pending litigation, Eric Wokas v. Christopher Mattina, et al., Docket No. MON-L-1016-22, that falls within N.J.S.A. 10:4-12b(7).
2. Minutes will be kept of the meeting in closed session and will be made available to the public at a future date, as required by law and subject to applicable exceptions under the Open Public Records Act, N.J.S.A. 47:1A-1, et. seq.
3. The Board will not reconvene in public at the conclusion of the closed session.
4. This Resolution shall take effect immediately.

ADJOURNMENT

Offered by: Mayor Broullon

Seconded: Mr. Kutosh

All in favor

None Opposed

Adjourned at 8:33pm.

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on July 14, 2022.



Nancy Tran, Land Use Board Secretary