

**Borough of Highlands
LAND USE BOARD
February 4, 2021 Regular Meeting Minutes**

HELD VIA VIDEO CONFERENCE

Chair Knox called the meeting to order at 7:34pm.

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, Councilmember Martin, Mr. Kutosh, Vice Chair Tierney, Ms. LaRussa, Ms. Walsh, Mr. Montecalvo, Ms. Nash, Chair Knox

Absent: Mr. Lee

Also Present: Board Attorney Mr. Dustin Glass for Mr. Cucchiaro
Board Engineer Mr. Greg Gitto for Mr. Herrman

OPEN FOR PUBLIC COMMENTS: None

WELCOME APPOINTED MEMBER: Mr. Glass swore in Ms. Helen Chang as Alternate 2 Member of the Land Use Board since Mr. Montecalvo moved to the vacant Class IV position.

RESOLUTIONS:

1. LUB2019-04, 95-99 Bay Avenue, Block 41 Lot 13.01, Chia Inc, Use Variance-Memorialization of Resolution

**RESOLUTION
BOROUGH OF HIGHLANDS LAND USE BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
USE VARIANCE RELIEF WITH PRELIMINARY AND
FINAL MAJOR SITE PLAN APPROVAL**

**Approved: January 7, 2021
Memorialized: February 4, 2021**

**IN THE MATTER OF CHIA, INC.
APPLICATION NO. LUB 2019-04**

WHEREAS, an application for use variance relief with preliminary and final major site plan approval has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by Chia, Inc. (hereinafter referred to as the “Applicant”) on lands known and designated as Block 41,

Lot 13.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 95-99 Bay Avenue in the CBD (Central Business) Zone; and

WHEREAS, live public hearings were held before the Board on October 1, 2020 and November 5, 2020 and a virtual meeting was held on January 7, 2021, 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 18,000 s.f. and is a corner lot with frontage of 120 ft. along Bay Avenue, Spring Street and South Second Street. The subject Property is vacant and unimproved and is located within the CBD (Central Business) Zone.

2. The Applicant is seeking use variance relief along with preliminary and final major site plan approval to permit the construction of an eight (8) unit multi-family townhouse development. The Applicant is specifically seeking to construct two (2) three (3) story buildings containing 13,227 s.f. of floor area with four (4) units in each building. The Applicant further proposes sixteen (16) on-site parking spaces, landscaping, lighting and utilities.

3. Counsel for the Applicant, Sean Byrnes, Esq. stated that the subject Property is a corner lot and has been vacant for decades. He explained that the Applicant was seeking use variance relief along with preliminary and final major site plan approval to permit the construction of two (2) townhouse buildings each containing four (4) units for a total of eight (8) townhouse units.

4. Testimony was first provided by Charlie McCague who identified himself as the owner of the subject Property. He stated that he has owned the subject Property since approximately 2014 and that it has been vacant for the entire time period. He also provided a history of the Applicant’s experience in residential development.

5. The Applicant’s Engineer, Charles Surmonte, PE testified that the subject Property contains 18,000 s.f. and is a vacant corner lot with frontage on Bay Avenue, Spring Street and South Second Street within the CBD Zone. He stated that the Applicant was seeking use variance relief along with preliminary and final major site plan approval permitting the construction of two (2) multi-family townhouse buildings each containing four (4) three (3) bedroom units for a total of eight (8) units.

6. Mr. Surmonte testified that the subject Property contains less than one (1) acre and is therefore not considered a major development for stormwater management purposes and is not subject to NJDEP stormwater management requirements. He did, however, acknowledge that the Applicant was proposing to increase impervious coverage by approximately 70%. Mr. Surmonte explained that the increase would not result in an appreciable increase in stormwater runoff. He also highlighted that the proposed driveway would be constructed of pervious materials which would assist in infiltrating water on-site. He also confirmed that the increase in impervious coverage would not result in runoff to adjacent properties.

7. Mr. Surmonte acknowledged that the Applicant was proposing limited landscaping on the subject Property. He explained, however, that the size of the lot as well as its unique location consisting of three frontages created some practicable difficulties. Mr. Surmonte did agree that additional shrubbery and plantings would be provided in order to enhance the visual appeal of the proposed development.

8. Mr. Surmonte further provided testimony concerning the proposed lighting. He stated that one (1) light pole was proposed on the eastern side of the subject Property. He stated that this light could accommodate the needs of the site but did agree to provide a light shield. The applicant further agreed that all non-security lighting would be either turned off, reduced or set to motion detector at night.

9. Mr. Surmonte also confirmed that sixteen (16) parking spaces were proposed where nineteen (19) parking spaces are required. He asserted that the three-bedroom units would be adequately serviced by the proposed number of parking spaces and that the surrounding traffic did not exist in a volume which would create any safety issues.

10. The Applicant's Architect, Brian Berzinskis, AIA testified that each unit would be serviced by a two (2) car garage which would accommodate the needs of the residents. He also explained that the proposed air conditioning units would be located on the roof tops with appropriate screening. In response to questions, Mr. Brezinski testified that the subject Property was not suitable to commercial uses due to its location in the flood zone.

11. The Applicant's Planner, David Roberts, PP testified and referred to the Borough's Master Plan and Master Plan Reexamination. He explained that the land use objectives in both documents promote appropriate development in flood prone areas where there will not be any detrimental impact on the neighborhood. He further testified that the subject Property is distinguishable from others in the Zone not only because of its location in the flood zone but also because of its frontages on three (3) public roads. He highlighted the difficulty the subject Property has experienced which is evidenced by its long period of vacancy. He therefore concluded that the subject Property was particularly suited for the proposed use.

12. Mr. Roberts also addressed the negative criteria. He stated that the expected traffic generation would not be much different than a permitted use on the subject Property and would therefore not have an appreciable impact on the neighborhood. He also opined that the proposed development was visually attractive and would benefit the entire community. Mr. Roberts therefore concluded that the negative criteria had been satisfied. He further concluded that the positive criteria substantially outweighed the negative criteria and that use variance relief could be granted.

13. The hearing was opened to the public at which time Lyn Beadle of 54 Navesink Ave. stated that the requested variance relief was too intense and that the proposed parking was dangerous.

14. Gayle Maryon of 72 State Route 36 questioned why a residential project was appropriate in a commercial zone.

15. 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 use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with along with preliminary major site plan approval pursuant to N.J.S.A. 40:55D-46 and final major site plan approval pursuant to N.J.S.A. 40:55D-50 along with a de minimis exception from the R.S.I.S. should be granted in this instance.

The Applicants require use variance relief in order to permit the construction of an eight (8) unit multi-family townhouse development. 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 criterion 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 the Applicant has satisfied the positive criteria. The Applicant has demonstrated that the subject property is distinguishable from others in the Zone. It is located in a flood zone which makes commercial development difficult. It is also distinguishable because it has frontages on three separate public streets. The size, shape and topography of the subject Property are also distinguishable. These factors in totality distinguish the subject Property from others in the Zone. The Applicant has also proposed a development which will take a vacant underutilized lot and replace same with a visually desirable residential project. The enhanced aesthetics will benefit the entire neighborhood and therefore promote the goals of planning as enumerated in N.J.S.A. 40:55D-2. These goals of planning are specifically being advanced on the subject Property due to the previously enumerated distinguishing factors. The Board therefore concludes that the positive criteria has been satisfied.

The Board also finds that the Applicant has satisfied the enhanced criteria. The Borough Master Plan promotes the appropriate development of land taking into consideration relevant environmental and topographical considerations. The location of the subject Property in a flood zone with three frontages and limited lot area are the precise kinds of considerations the master plan takes into account. The Board finds that the Master Plan does not have a policy goal which results in the

undevelopability of the subject Property. The Borough Master plan and proposed development can therefore be reconciled.

The Board also finds that the Borough Governing Body did not purposely exclude the subject Property from residential development. The Ordinance addresses the Zone as a whole. It does not take into account the previously enumerated distinguishing features. The Governing Body also could not singularly rezone this specific piece of property as such would result in unlawful spot zoning. The Governing Body did not intend that the subject Property remain vacant. The Board therefore finds that the proposed development and the ordinance can be reconciled and that the enhanced criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The Board is persuaded that the traffic associated with the proposed use is not appreciably different from traffic which would be created with a permitted use. The parking is also appropriate for a three (3) bedroom unit and will not result in a dangerous situation. The noise and odors associated with the proposed use are also less intense than permitted commercial developments. The Board therefore concludes that the proposed development will not result in a substantial detriment to the zone plan, zoning ordinance or public welfare. The negative criteria have therefore been satisfied. The Board further concludes that the positive criteria substantially outweighs the negative criteria and that use variance relief may be granted pursuant to N.J.S.A. 40:55D-70d(1).

The Board also finds that any bulk variances and design waivers are subsumed within the granting of use variance relief. Puleio v. Tp. of North Brunswick Zoning Bd. of Adj., 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005).

The Applicant also requires a *de minimis* exception from the R.S.I.S. where nineteen (19) parking spaces are required and sixteen (16) are being proposed. Relief from the R.S.I.S. is not subsumed by the grant of use variance relief because it is a State regulation. The Board finds the Applicant provided persuasive professional testimony that the proposed exception is reasonable considering the limitations of the subject property and is limited in scope due to the previously enumerated distinguishing characteristics of the subject Property. This decision is based upon an understanding of the existing infrastructure and the impact on public health and safety, The Board finds that a *de minimis* exception from the R.S.I.S. is appropriate pursuant to N.J.A.C. 5:21-3.1.

The previous analysis required evaluation to all proposed site improvements. As previously stated, the bulk standards are also subsumed within the grant of use variance relief. Pursuant to the above referenced relief, the Board finds that preliminary major site plan approval pursuant to N.J.S.A. 40:55D-46 and final major site plan approval pursuant to N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 4th day of February 2021, that the action of the Land Use Board taken on January 7, 2020, granting Application No. LUB 2019-04, for use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with preliminary major site plan approval pursuant to N.J.S.A. 40:55D-46 and final major site plan approval pursuant to N.J.S.A. 40:55D-56 along with a *de minimis* exception from the R.S.I.S. 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 utilize lighting shields subject to review and approval of the Board Engineer.
4. All air conditioning units shall be located on the roof tops and be appropriately screened pursuant to the review and approval of the Board Engineer.
5. The Applicant shall submit a landscaping plan subject to the review and approval of the Board Engineer.
6. All outdoor non-security lighting shall either be turned off, dimmed or subject to motion detectors after dusk.
7. Any future modifications to this approved plan must be submitted to the Board for approval.
8. The Applicant shall provide a certificate that taxes are paid to date of approval.
9. 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.
10. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Highlands, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Robert Knox, Chair
Borough of Highlands Land Use Board

ON MOTION OF: Vice Chair Tierney
SECONDED BY: Chief Burton
ROLL CALL:
YES: Burton, Kutosh, Tierney, Knox, Nash
NO:
ABSTAINED:
ABSENT: Lee, Pendleton
DATED: February 4, 2021

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Highlands Land Use Board, Monmouth County, New Jersey at a public meeting held on February 4, 2021.

Michelle Hutchinson, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. LUB 2019-04 / Chia, Inc.
Use Variance Relief with Preliminary and
Final Major Site Plan Approval
October 1, 2020
November 5, 2020
January 7, 2021
February 4, 2021

- 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)

NOTICE

PLEASE TAKE NOTICE THAT ON JANUARY 7, 2021, THE LAND USE BOARD OF THE BOROUGH OF HIGHLANDS GRANTED USE VARIANCE RELIEF ALONG WITH PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL ALONG WITH ANCILLARY VARIANCE RELIEF TO CHIA, INC., BLOCK 41, LOT 13.01 AS DEPICTED ON THE TAX MAP OF THE BOROUGH OF HIGHLANDS, AND MORE COMMONLY KNOWN AS 95-99 BAY AVENUE, BOROUGH OF HIGHLANDS, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER LUB 2019-04, PERMITTING THE CONSTRUCTION OF TWO (4) FOUR (4) UNIT TOWNHOME BUIDINGS WITH A TOTAL OF EIGHT (8) UNITS. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE LAND USE BOARD, BOROUGH OF HIGHLANDS MUNICIPAL BUILDING, 42 SHORE DRIVE, HIGHLANDS, NEW JERSEY.

CHIA, INC.

2. LUB2020-06, 1-3 Barberie Avenue, Block 77 Lot 13, Gil, –Subdivision - Memorialization of Resolution

**RESOLUTION
BOROUGH OF HIGHLANDS LAND USE BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY MINOR
SUBDIVISION APPROVAL
WITH ANCILLARY VARIANCE RELIEF**

**Approved: January 7, 2021
Memorialized: February 4, 2021**

**IN THE MATTER OF PAUL GIL
APPLICATION NO. HGPB-R1800**

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by Paul Gil (hereinafter referred to as the “Applicant”) on lands known and designated as Block 77, Lot 13, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 1-3 Barberie Avenue in the R-2.01 (Single Family Residential) Zone; and

WHEREAS, a virtual public hearing was held before the Board on January 7, 2021, 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 .147 acres (6,837 s.f.) with 129.18 feet of frontage along the southeast side of Barberie Avenue and approximately 37.50 feet of frontage along the

southwest side of Marine Place within the R-2.01 Zone district. The subject Property is currently improved with a 2-story multi-family dwelling and a garage serviced by municipal water and waste systems.

2. The Applicant proposes to demolish the existing multi-family dwelling and garage, and subdivide the subject Property into two (2) new lots as follows:

- Proposed Lot 13.01 will contain .074 acres (3,217 s.f.) with 37.50 feet of frontage along Barberie Avenue to be improved with a proposed 2-story dwelling.
- Proposed Lot 13.02 will contain .073 acres (3,170 s.f.) with 43.26 feet of frontage along Marine Place to be improved with a proposed 2-story dwelling.

3. The intent of the Minor Subdivision is to demolish the existing multi-family dwelling and garage, subdivide Lot 13 into two roughly equal-sized lots (13.01 and 13.02), creating one new building lot fronting Marine Place (13.01), and building a new dwelling on the lot (13.02) facing Barberie Avenue.

4. The Applicant testified that he wished to subdivide his irregular, L-shaped Lot 13 into two separate lots and construct single family residential homes. He stated that Lot 13 was previously two separate lots which had been merged at some point.

5. Testimony was also provided by the Applicant's Builder Robert Davis, who more precisely described the application. Mr. Davis testified that the multi-family dwelling on Lot 13 has been storm-damaged and vacant since Hurricane Irene. The application proposed to subdivide the property into two lots, that would be more consistent in size and shape with those on both Barberie Avenue and Marine Place.

6. The Board's Engineer Edward Herrman, P.E., C.M.E., C.F.M., testified that the project is in the R-2.01 Zone and that the application was for minor subdivision approval with ancillary bulk variance relief from the minimum lot area, frontage, and maximum building coverage requirements. He stated that nine (9) bulk variances were required and that the Applicant would have to demonstrate his entitlement to relief pursuant to the positive and negative criteria.

7. Mr. Herrman further testified that the minimum lot area requirement in the R-2.01 Zone is 3,750 s.f. while the existing lot contains 6,387 s.f., and the proposed lots would be undersized for the Zone by varying degrees with Proposed Lot 13.01 containing 3,217 s.f. and Proposed Lot 13.02 containing 3,170 s.f.. The minimum lot frontage is 50 feet in the Zone and the proposed lots would require relief on both lots. Lot 13.01 would also not meet the Zone's required depth.

8. Mr. Herrman also explained that the front yard setback in the Zone on Barberie Avenue is 20 feet subject to the prevailing setbacks in the neighborhood, but not less than 10 feet. The proposed front yard setback would be 5.5 feet for the corner lot (Lot 13.01) and 6 feet for the interior lot (Lot 13.02) resulting in variance relief for both proposed lots. He stated, however, that the proposed setbacks are somewhat consistent with the other homes on Barberie Avenue.

9. Mr. Herrman next stated that the rear yard setback requirement for the Zone would be met on Proposed Lot 13.02 and that Proposed Lot 13.01 would lack a technical rear yard and, thus, there is no rear yard requirement for that lot. He also stated that the maximum lot coverage is met on both proposed lots. The maximum building coverage in the Zone is 33% but the proposal would exceed that for both proposed lots; Proposed Lot 13.02 proposes 34.8% coverage and Proposed Lot 13.01 proposes 36.6% coverage.

10. The Board questioned whether the Applicant would need to return to the Land Use Board for additional relief when he constructed the dwellings on the newly subdivided lots. Mr. Herrman responded that when the Applicant proposes to construct the dwellings, the Zoning Officer would review the proposal and if any part of the proposal required additional relief, the Applicant would need to return to the Board for further approvals.

11. Mr. Herrman then explained that the application proposes two parking spaces for each unit which is in accord with the Zoning Ordinance. The application proposes utilizing existing utility connections and the Applicant would have to demonstrate that the existing utility connections are viable and also add new utilities to the new home.

12. Mr. Herrman further testified that the project is located in the VE Zone, so any construction would also require DEP permits. Construction of the homes would have to satisfy V Zone code standards and would have to be submitted to the Flood Plain Management Department and Building Department for compliance reviews.

13. Mr. Davis then continued to testify about the application noting, partly in response to questions from the Board, that the proposed lots would be consistent in size and shape with the other lots on Barberie Avenue and Marine Place, and that the proposed new dwellings would be consistent with other homes in the area. Accordingly, the proposed subdivision would be in keeping with the neighborhood.

14. Mr. Davis and the Applicant then discussed the positive and negative criteria, testifying that the subdivision would benefit the neighborhood by eliminating a vacant, foreclosed, storm-damaged, unlivable multi-family dwelling and turning the subject Property into two, attractive single-family homes. Multifamily dwellings are not a permitted use in the R-2.01 Zone and, thus, the application would be eradicating a nonconformity. The application would have no negative impact on the neighborhood.

15. Mr. Herrman also opined that the application would likely promote the purposes of zoning enumerated in the Municipal Land Use Law, under a few of the conditions set forth therein. Mr. Herrman then confirmed that the subdivision would be filed by deed.

16. The Board requested that the Applicant provide appropriate landscaping of the subdivided lots with appropriate lawn, landscaping rock, or shrubbery consistent with the neighborhood. The Applicant agreed to do so.

17. The Board then questioned whether the size of the buildings identified on the plans would be what the Applicant actually planned to construct in the future. The Applicant and Mr. Davis agreed that the plans were representative of the size of the homes they wished to construct although the shape may change.

18. The hearing was then opened to the public at which time testimony was taken from Tricia Rivera, 31 Waterwitch Avenue, who asked whether the Applicant's public notice identified the types of variances requested. The Applicant responded that the types of variances were identified in the notice sent to all property owners within 200 feet and published in the newspaper prior to the hearing.

19. Testimony was then taken from Walter Guenther, 2 Marine Place, a neighbor of the proposed subdivision. He supported the application because it would result in the demolition of the ugly, multi-family dwelling on the current lot and replace same. Mr. Guenther asked how soon demolition would begin, to which Mr. Davis responded they would apply for demolition permits as soon as possible and proceed thereafter.

20. Testimony was taken from Paul Oliveira, 14 Seadrift Avenue, who asked whether the Applicant intended on keeping the existing garage and whether the application required a height

variance. The Applicant and Mr. Davis responded that as listed on the plans, the existing garage would be demolished and that no height variance was requested or required with the application.

21. 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 minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c should be granted in this instance.

The Board finds that the Applicant has proposed a minor subdivision 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 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. 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, an 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 with regard to the previously enumerated requests for variance relief from minimum lot size requirements, frontage requirements, and maximum building coverage requirements. The Board finds that the proposed subdivision eliminates a non-conforming use by demolishing the current multifamily dwelling on Lot 13. The proposed subdivision will create two, nearly equal-sized lots consistent with the prevailing neighborhood scheme. The homes proposed to be constructed thereon would be of the same size and shape as those in the surrounding neighborhood. The Board finds that the application advances the goals of Municipal Land Use Law as enumerated at N.J.S.A. 40:55D-2 by promoting the establishment of appropriate population density concentrations that contribute to the wellbeing of the neighborhoods and preservation of the environment; promoting adequate air, light and open space; and promoting to a desirable visual environment through creative

development techniques and civic design/arrangements. The Board therefore finds that the positive criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The proposed subdivision of the existing lot into two smaller, equal-sized lots creates two uniform lots that are substantially-similar to other lots in the surrounding neighborhood. As previously stated, the community will also benefit from the elimination of the existing dilapidated nonconforming use which would be replaced by two (2) aesthetically pleasing conforming single-family structures. The Board therefore finds that the proposed variance relief does not result in a substantial detriment to the zone plan or the zoning ordinance or the public good. The Applicant has therefore satisfied the negative criteria. The Board further finds that the positive criteria substantially outweighs the negative criteria and that variance relief can be granted pursuant to N.J.S.A. 40:55D-70c(2) in this instance. With the exception of the above relief, the Applicant has complied with all other zoning, subdivision and design criteria. The Applicant may therefore be granted minor subdivision approval pursuant to N.J.S.A. 40:55D-47.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 4th day of February 2021, that the action of the Land Use Board taken on January 7, 2020, granting Application No. HGPD-R1800, for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) 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 Deed recorded memorializing this subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicant shall record the Subdivision Plat or Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render this approval null and void.
4. The Applicant shall record this Resolution in the Office of the Monmouth County Clerk.
5. The Applicant shall submit a Landscaping Plan, which includes using lawn, landscaping rock, or shrubbery (a permeable surface) consistent with the neighboring properties, subject to review and approval of the Board Engineer.
6. Any future modifications to this approved plan must be submitted to the Board for approval.
7. The Applicant shall apply for all necessary Zoning Permit(s) and Demolition Permit(s).
8. The Applicant shall provide a certificate that taxes are paid to date of approval.

9. 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.
10. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Highlands, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Robert Knox, Chair
Borough of Highlands Land Use Board

ON MOTION OF: Mr. Kutosh

SECONDED BY: Ms. LaRussa

ROLL CALL:

YES: Broullon, Burton, Kutosh, LaRussa, Martin, Tierney, Knox, Walsh

NO:

ABSTAINED:

ABSENT: Lee, Montecalvo

DATED: February 4, 2021

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Highlands Land Use Board, Monmouth County, New Jersey at a public meeting held on February 4, 2021.

Michelle Hutchinson, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. HGPB-R1800 / Paul Gil

Minor Subdivision

January 7, 2021

February 4, 2021

A-1 Minor Subdivision Plan consisting of one (1) sheet prepared by Richard E. Stockton & Associates, Inc. dated July 24, 2019, last revised through July 22, 2020.

INTEROFFICE REPORTS

- B-1 Planning Board Application for Subdivision, dated March 10, 2020.
- B-2 Zoning Denial, dated October 2, 2019.
- B-3 Copy of receipts from Sewer Department March 9, 2020
- B-4 Board Engineer's Review of Minor Subdivision, Plat Requirements (completeness) letter, dated July 9, 2020

- B-5 Board Engineer's Review letter, dated August 29, 2020
- B-6 Board Engineer's Fee and Escrow Calculation letter, dated August 29, 2020

NOTICE

PLEASE TAKE NOTICE THAT ON JANUARY 7, 2021, THE LAND USE BOARD OF THE BOROUGH OF HIGHLANDS GRANTED MINOR SUBDIVISION APPROVAL ALONG WITH ANCILLARY VARIANCE RELIEF TO PAUL GIL, BLOCK 77, LOT 13 AS DEPICTED ON THE TAX MAP OF THE BOROUGH OF HIGHLANDS, AND MORE COMMONLY KNOWN AS 1-3 BARBERIE AVENUE, BOROUGH OF HIGHLANDS, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER HGPB-R1800, PERMITTING THE SUBDIVISION OF BLOCK 77, LOT 13 INTO TWO NEARLY, EQUAL-SIZED LOTS TO BE USED FOR SINGLE FAMILY RESIDENTIAL DEVELOPMENT. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE LAND USE BOARD, BOROUGH OF HIGHLANDS MUNICIPAL BUILDING, 42 SHORE DRIVE, HIGHLANDS, NEW JERSEY.

PAUL GIL

HEARINGS ON OLD BUSINESS: None

HEARINGS ON NEW BUSINESS:

LUB2020-10, 12 Marine Place, Block 91 Lot 7, Francolino, –Minor Subdivision
Was not heard due to defective notice. No action from Board is needed.

APPROVAL OF MINUTES OF JANUARY 7, 2021 MEETING

Approved with changes.

Offered by: Mr. Kutosh

Seconded by: Ms. Tierney

Ayes: Mayor Broullon, Chief Burton, Mr. Kutosh, Ms. Larussa, Councilmember Martin, Vice Chair Tierney, Chair Knox, Ms. Walsh, Ms. Nash

Nays:

Conflict:

Absent: Mr. Lee, Ms. Pendleton

COMMUNICATION AND VOUCHERS:

1. O-21-06 An Ordinance Amending Chapter 21, Article XIV, Section 21-74 of the Borough Code
Was already deemed consistent with Master Plan. No further action is needed.

2. Redevelopment Resolution 20-225

Mayor Broullon introduced Paul Grygiel and explained why he was invited to meeting. Mr. Grygiel explain the redevelopment process and what it entails. Redevelopment will be open to allow residents in the area an opportunity to participate. This Redevelopment is non-condemnation –no taking of anyone’s land. This is not Rehabilitation, which is what took place after Hurricane Sandy.

Mr. Knox asked for pros and cons of Redevelopment. Chief Burton asked if this has been done in Highlands before. Mayor Broullon gave examples of Redevelopment projects. Ms. Chang asked what’s in it for Highlands. Ms. LaRussa asked if there will be any detriment to current owners.

Mr. Grygiel stated that Redevelopment cannot change Zones. Council/Board will need to take further action to make it so.

3. O-21-09 An Ordinance Amending Chapter 25 Of Borough Code With Regard To Stormwater Management And Control

Goal is to promote greener infrastructure. Gets updated every 2-3 years. Last time was in 2018. Requires a letter from Chair stating that Ordinance is consistent with Master Plan which then goes to County.

4. Approval of Invoices from T&M Associates

ADJOURNMENT

Offered by: Mayor Broullon


Seconded by: Ms. LaRussa

All in favor

None Opposed

Adjourned at 8:34pm

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on February 4, 2021.



Nancy Tran, Land Use Board Assistant Secretary