

RESOLUTION 2021-08
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 criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the Applicants, would be best served by permitting the proposed use.

In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the Applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish the above criteria.

The Board finds 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 has 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, Chairman
Borough of Highlands Land Use Board

ON MOTION OF: Vice Chairwoman 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.

A handwritten signature in black ink, appearing to read 'MH', written over a horizontal line.

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 BUILDINGS 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.