

Borough of Highlands
LAND USE BOARD
November 5, 2020 Regular Meeting Minutes

Meeting Location: Robert D. Wilson Memorial Community Center, 22 Snug Harbor Ave, Highlands NJ

Chairman Stockton called the meeting to order at 7:36pm.

Chairman Stockton asked all to stand for the Pledge of Allegiance.

Chairman Stockton 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.

Chairman Stockton noted that meeting will go out of order from Agenda.

ROLL CALL:

Present: Mayor Broullon, Chief Burton, Mr. Kutosh, Mr. Lee, Ms. Tierney, Ms. Nash, Ms. Pendleton, Vice Chairman Knox, Chairman Stockton

Absent: Ms. LaRussa, Councilmember Mazzola, Mr. Montecalvo, Ms. Walsh

Also Present: Board Attorney Mr. Baxter

Board Engineer Edward Hermann

OPEN FOR PUBLIC COMMENTS: None

RESOLUTIONS:

1. LUB2020-05, 193-195 Bay Avenue, Block 59 Lot 16.01, Sigman-Minor Subdivision

**LAND USE BOARD RESOLUTION 2020-5
A RESOLUTION DENYING MINOR SUBDIVISION
FOR SIGMAN REAL ESTATE PARTNERS AT BLOCK 59 LOT 16.01**

WHEREAS, the applicant, SIGMAN REAL ESTATE PARTNERS, LLC, is the owner of 193 – 195 Bay Ave. (Block 59, lot 16.01), which property currently contains two single-family dwellings, a two-story home and a one-story bungalow; and

WHEREAS, the applicant proposed to subdivide lot 16.01 into two lots, with each dwelling being on its own lot, thereby creating the proposed lot 16.02 and retaining lot 16.01; and

WHEREAS, all jurisdictional requirements have been met, and the Board has jurisdiction to hear this application; and

WHEREAS, the Land Use Board of the Borough of Highlands considered the application at a public hearing on October 1, 2020; and

WHEREAS, the Board heard testimony from the applicant, ZACH SIGMAN, and his Engineer and Planner, JEFFREY CARR; and

WHEREAS, CHRIS FRANCY asked questions and also testified in opposition to the application, but no other persons appeared to question, support or oppose the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Denial of development permit by Marianne Dunn, Zoning Officer with flood hazard documents dated 3/6/20 (7 pages)
- A-2 Variance application dated 2/19/20 (3 pages)
- A-3 Subdivision application dated 2/18/20 (3 pages)
- A-4 Certification of counsel re LLC members dated 5/14/20
- A-5 Minor Subdivision and Use Variance plan by David J. Von Steenburg dated 9/10/19; revised 3/12/20 (1 page)

AND, WHEREAS, the following exhibits were also marked into evidence:

- B-1 Board engineer completeness letter by Edward Herrman dated 7/9/20 (3 pages)
- B-2 Board engineer review letter by Edward Herrman dated 8/20/20 (5 pages)
- B-3 Board attorney letter regarding type of variance sought dated 9/28/20 (2 pages)

WHEREAS, the Board, after considering the evidence, has made the following factual findings and conclusions:

1. The applicant is the owner of a lot fronting on both Bay Avenue and Valley Avenue, which lot currently contains two single-family dwellings, a two-story dwelling and a separate one-story bungalow. Though the CBD (Commercial Business District) zone does not permit single-family homes, it does permit existing single-family homes to remain. It does not permit the building of any new single-family home.

2. The Board Attorney issued an opinion letter (B-3) in which he opined that, since the proposal is to keep the existing two single-family dwellings, no use variance under N.J.S.A. 40:55D-70 is required.

3. The applicant proposes to subdivide lot 16.01 in block 59 by reducing the existing lot area of lot 16.01 from 3,590 sq. ft. to 2,043 sq. ft., and create a new lot, with the bungalow, of 1,547 sq. ft. The CBD zone does not have a minimum lot area requirement.

4. The current lot on lot 16.01 has a width of 45.01 ft. It is proposed to be reduced to 25.64 ft.; and the proposed lot 16.02 will have 49.6 ft. The CBD zone does not have a minimum lot width requirement.

5. The proposed lot depth of lot 16.01 is 79.56 ft., and the proposed lot depth for lot 16.02 is 49.6 ft. There is no minimum lot depth requirement in the CBD zone.

6. There is no minimum front yard setback requirement in the CBD zone. The existing lot 16.01 has .8 ft. front yard setback, which will remain; and the proposed front yard setback for lot 16.02 is 2.5 ft.

7. The CBD zone requirement for minimum rear yard setback is 12 ft. The existing lot has no such requirement, because it is a corner lot. If subdivided, lot 16.01 will have a 32.0-foot rear yard setback. Proposed lot 16.02 will not have a required minimum rear yard setback because it is a corner lot.

8. The minimum side yard setback is 0 ft. or 5 ft. (if there is any side yard provided, it must be at least 5 ft.). The existing lot has 0.0/12.5 side yard setbacks, which is conforming. Proposed lot 16.01 would have 0/2.1-foot side yard setback, which proposal requires a side yard setbacks variance. Proposed lot 16.02 has a 2.1 ft. side yard setback, which requires a variance, and 12.5-foot side yard setback on the other side.

9. Both the existing and the proposed subdivided lots meet the CBD zone requirements for building height, lot coverage, and maximum floor area ratio.

10. The maximum building coverage in the CBD zone is 35%. Currently, the existing lot 16.01 has 40.8%. The proposal is for lot 16.01 to have a 45.2% coverage, which requires a variance. The proposed building coverage for lot 16.02 is 34.9%, which does not require a variance.

11. No changes to any of the existing structures are planned or requested. In other words, there is no proposed change to the footprint of either structure.

12. The applicant seeks minor subdivision approval pursuant to Section 21-55 of the Borough Ordinance. This subdivision is minor in nature, as it contains three or less properties, does not require a new street or road, and does not adversely affect the development of the parcels.

13. The applicant's engineer/planner testified that the requested variances were de minimus and that the proposed subdivision would help the intent of the ordinance by creating two lots in the CBD zone, either of which could be developed in accordance with the ordinances concerning CBD zones; and, in that way, they would be more conforming.

14. MR. CARR also testified that it is less likely that the two-story dwelling would be changed to a commercial use, since he stated that many of the single-family homes in that zone are well maintained and would likely remain.

15. MR. FRANCY testified that the bungalow is not flood compliant, and the two-story dwelling may not be flood compliant either.

16. MR. FRANCY also testified that the subdivision is problematic on a larger scale because, if approved, the Borough would effectively be rewarding the situation of a small lot with a small bungalow to be converted to a commercial use permitted in the CBD zone on a very small lot, which is not in keeping with the town's plans or view.

17. During the applicant's engineer's testimony, there were several issues that he said needed to be changed on the plans submitted. Also, the existing walkway will require reconstruction so that it is all on one lot.

18. The Board was not persuaded that the applicant has met his burden of proving that a minor subdivision should be granted. All Board members spoke as to their reasons for denying the application. Those reasons included:

A. Creating a lot on Bay Avenue of this small size is not justified and such a small lot would not be a business opportunity, it being only 19 ft. in width. This determination conflicted with the applicant's engineer's opinion.

B. Creating a small lot for a business use in a CBD zone is neither justified nor appropriate.

C. This proposal conflicts with the Borough's master plan of rebuilding the business district and providing for off-street parking.

D. There would be insufficient off-street parking for both lots.

E. Separating the lots into two smaller lots is not an improvement or in keeping with the CBD zone goals.

F. The proposal is not in conformance with the master plan.

G. The applicant, though having made a laudable effort, did not meet the positive and negative criteria required to approve the subdivision. Though there are some positive benefits to the proposal, as testified to by the applicant's engineer, the positive criteria do not outweigh the negative criteria.

19. Based upon the evidence submitted, and for the reasons set forth above, the Board denies the requested subdivision.

20. The Board further finds that the proposed subdivision would substantially impair the intent and purposes of the zoning plan and zoning ordinance, and would not be consistent with the Borough's master plan.

WHEREAS, the application was heard by the Board at its meeting on October 1, 2020, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the application of SIGMAN REAL ESTATE PARTNERS, LLC for a minor subdivision is hereby denied.

Offered by: Vice Chairman Knox

Seconded by: Mr. Kutosh

Ayes: Vice Chairman Knox, Mayor Broullon, Mr. Kutosh, Mr. Lee, Ms. Tierney, Chairman Stockton

Nays: None

Abstain: None

Absent: Ms. LaRussa, Councilmember Mazzola, Mr. Montecalvo, Ms. Walsh

HEARINGS ON NEW BUSINESS:

LUB2019-05, 210 Bay Avenue, Block 64 Lots 24 & 25, Hung –to be adjourned to December 3

Offered by: Mr. Kutosh

Seconded by: Ms. Tierney

Ayes: Mr. Kutosh, Mr. Lee, Ms. Tierney, Ms. Nash, Ms. Pendleton, Chairman Stockton

Nays: None

Abstain: Vice Chairman Knox, Chief Burton

Absent: Ms. LaRussa, Councilmember Mazzola, Ms. Walsh, Mr. Montecalvo

ACTION ON OTHER BUSINESS:

Redevelopment – Resolution 20-225

RESOLUTION 20-225

A RESOLUTION AUTHORIZING THE LAND USE BOARD TO UNDERTAKE A PRELIMINARY INVESTIGATION TO DETERMINE WHETHER VARIOUS PROPERTIES QUALIFY FOR DESIGNATION AS AREAS IN NEED OF REDEVELOPMENT PURSUANT TO N.J.S.A 40A:12A-1 ET. SEQ.

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL") authorizes municipalities to determine whether certain parcels of land located therein constitute areas in need of redevelopment; and

WHEREAS, the governing body of the Borough of Highlands desires to explore whether the following real property, commonly referred to as the Central Business District/ Bay Avenue Corridor ("Study Areas") may be appropriate areas for consideration for the program of redevelopment:

- Block 40.01, Lots 21.01, 22.01
- Block 41, Lots 9, 10, 13.01
- Block 42, Lots 1, 10, 12.01, 13, 14, 15
- Block 45, Lots 4.01, 6.01, 7
- Block 46, Lots 1, 2, 3, 4, 5, 6, 7, 8
- Block 47, Lot 10
- Block 53, Lots 1, 3, 4, 5, 6, 7, 8, 9
- Block 54, Lots 1, 3.01, 4, 5, 7.01
- Block 58, Lots 1, 3.01, 17.01, 18, 19, 20, 23.01, 24, 25, 26
- Block 59, Lots 5, 6, 8, 9, 10, 11.01, 11.02, 13.01, 14, 16.01
- Block 64, Lots 1, 2, 24, 25, 28.01
- Block 69, Lots 1, 2, 4.01, 5, 6; and

WHEREAS, the governing body of the Borough of Highlands considers it to be in the best interest of the Borough to have the Land Use Board conduct such an investigation for

the properties referenced above, commonly referred to as the Central Business District/Bay Avenue Corridor; and

WHEREAS, the governing body of the Borough of Highlands believes that the subject parcels are potentially valuable for contributing to, serving and protecting the public health, safety and welfare and for the promotion of smart growth within the Borough; and

WHEREAS, the LRHL sets forth a specific procedure for establishing areas in need of redevelopment; and

WHEREAS, pursuant to N.J.S.A. 49A: 12A-6, prior to the governing body of the Borough of Highlands making a determination as to whether the Study Areas qualify as areas in need of redevelopment, the governing body must authorize the Land Use Board, by Resolution, to undertake a preliminary investigation to determine whether the Study Areas meet the criteria for designation as areas in need of redevelopment as set forth in N.J.S.A. 40A: 12A-5; and

WHEREAS, the governing body of the Borough of Highlands wishes to direct the Land Use Board to undertake such preliminary investigation to determine whether the Study Areas meet the criteria for designation as areas in need of redevelopment pursuant to N.J.S.A. 40A: 12A-5 and in accordance with the investigation and hearing process set forth in N.J.S.A. 40A:12A-1 et seq.

NOW, THEREFORE, BE IT RESOLVED, that governing body of the Borough of Highlands hereby directs the Borough of Highlands Land Use Board to conduct the necessary investigation and to hold a public hearing to determine whether the Study Areas defined hereinabove qualify for designation as areas in need of redevelopment under the criteria and pursuant to the public hearing process set forth in N.J.S.A. 40A: 12A-1 et seq.

BE IT FURTHER RESOLVED, that the redevelopment area determination shall further authorize the municipality to use all those powers provided by the New Jersey Legislature for use in a redevelopment area, other than the use of eminent domain (hereinafter referred to as a "Non-Condemnation Redevelopment Area").

BE IT FURTHER RESOLVED, that the Land Use Board shall submit its findings and recommendations to the governing body of the Borough of Highlands in the form of a Resolution with supportive documentation.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution be forwarded to the Acting Borough Clerk, Chief Financial Officer, Borough Land Use Board and Land Use Board Secretary.

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
BRASWELL			X			
MAZZOLA			X			
RYAN	X		X			
VALKOS		X	X			
BROULLON					X	

R 20-225

This is a Certified True copy of the Original Resolution on file in the Municipal Clerk's Office.

DATE OF VOTE: October 21, 2020



Michelle Hutchinson, Acting Municipal Clerk

Paul Grygiel, planner at Phillips Preiss LLC, sent report to the Land Use Secretary to send to counsel. Mayor Broullon will call to set up a time frame to get together with him.

Discussion on Resolution 20-225.

APPROVAL OF OCTOBER 1, 2020 MINUTES:

Offered by: Ms. Tierney

Seconded by: Vice Chairman Knox

Ayes: Vice Chairman Knox, Chief Burton, Mr. Kutosh, Mr. Lee, Ms. Tierney, Ms. Pendleton, Chairman Stockton

Nays: None

Abstain: Mayor Broullon

Absent: Ms. LaRussa, Councilmember Mazzola, Ms. Walsh, Mr. Montecalvo

COMMUNICATION AND VOUCHERS:

1. Approval of Invoices from T&M Associates & Mr. Baxter, Esq.
2. Chairman Stockton signed vouchers.

Chairman Stockton and Mayor Broullon stepped down at 7:47pm. Vice Chairman Knox took over meeting.

HEARINGS ON OLD BUSINESS:

LUB2019-04, 95-99 Bay Avenue, Block 41 Lot 13.01, Chia Inc. –Use Variance: continuation of hearing

Mr. Sean Brynes gave an overview of the last meeting and stated that the Land Use Board should consider this use variance considering that it is located in a challenging zone. The approval of this townhouse development would be a great use of this area and could attract other development.

Mr. Brynes answered Vice Chairman Knox's question regarding list of variances he's seeking – preliminary site plan approval, use variance needed in a CBD Zone, and bulk variance.

Mr. Baxter swore in Mr. Berzinski, architect expert for Chia Inc., who then gave his credentials and proceeded to explain the modifications of this development that took into consideration of points addressed at last meeting. He referenced that Exhibit A-11 shows modified parking with 2 cars in garage to better illustrate Exhibit A-6. Other modifications since last meeting include position of air conditioning units –each unit will have its A/C unit hidden on its rooftop and obscured from streetview.

Ms. Tierney asked about the parking situation projected for each household. Mr. Berzinski stated that people can adjust to the given parking scenario. Mr. Baxter confirmed that 16 total spaces will be available where 19 are required.

Mr. Lee asked about the mixed commercial/residential use. Mr. Berzinski replied that commercial is not ideal given the flood zone.

Ms. Tierney questioned about amount of outdoor space for each unit and Mr. Berzinski answered.

Mr. Kutosh asked why not consider altering plan to 6 units instead of 8 to avoid non-compliance with parking requirement.

Mr. Charles Surmonte, already sworn in from last meeting, presented Exhibit A-12 to discuss traffic and parking. Ms. Tierney pointed out that the project is for 3-bedroom units, not 2 as Exhibit states.

Mr. Baxter swore in Mr. David G. Roberts, as expert testimony in support of D Variance for Chia Inc. Mr. Roberts shared copies of this 15-page presentation, Exhibit A-13, with everyone. His presentation references the 2009 Master Plan Reexamination, when the 2016 is the most recent. His report discusses the Special Reasons and Negative Criteria for the proposed development and concludes that site is suited for a townhouse type development.

Mr. Roberts answered Mr. Baxter's question of what is the residential and commercial target is waterfront property.

Mr. Baxter stated that the concept of the value of land and improvements has nothing to do with land use element.

Ms. Tierney asked why the Board should allow this kind of density in this Zone.

Mr. Kutosh stated that given the lack of parking, a 6-unit project would be more beneficial.

Chief Burton stated that he drove by the area the other day and does not think that parking will be an issue in the area.

Ms. Pendleton agrees with the project and supports the townhouse development.

Ms. Nash asked if 6 units instead of 8 units had been a consideration.

Mr. Herman stated that no concerns stated in his letter was standing out. Applicant stated that all points would be addressed.

With no further questions from the Board, meeting was opened for Public Comment. Mr. Michael Gione, a resident on Center Street, was sworn in. Mr. Gione opposed to the density and lack of greenery and outdoor living area. He stated that the CBD Zone needs more businesses, better businesses, rather than more residential.

With no further Public comment and questions, Mr. Knox closed public portion.

Ms. Tierney stated that she has issues with the project's density. She asks questions because it's her Board responsibility.

Ms. Nash is concerned with density but is excited for project.

Chief Burton motioned to approve with new drawings. Voting could not happen as Ms. Nash was absent at last meeting and is not eligible to vote. With Mr. Kutosh seconded, Board could vote to adjourn to resume for next meeting with same group to vote after Ms. Nash listens to October 1, 2020 Land Use Board meeting.

Offered by: Chief Burton

Seconded by: Mr. Kutosh

Ayes: Vice Chairman Knox, Chief Burton, Mr. Kutosh, Mr. Lee, Ms. Tierney, Ms. Pendleton,

Nays: None

Conflict: Chairman Stockton, Mayor Broullon

Absent: Ms. LaRussa, Councilmember Mazzola, Ms. Walsh, Mr. Montecalvo

ADJOURNMENT


Offered by: Vice Chairman Knox motioned to adjourn meeting.

All in favor

None Opposed

Adjourned at 10:31pm

I, Nancy Tran, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on January 7, 2021.



Nancy Tran, Land Use Board Assistant Secretary

