

**RESOLUTION 2021-13
BOROUGH OF HIGHLANDS LAND USE BOARD
RESOLUTION OF DENIAL
MONMOUTH COUNTY, NEW JERSEY
DENIAL OF USE VARIANCE AND MINOR SUBDIVISION RELIEF**

**Denied: May 6, 2021
Memorialized: June 3, 2021**

IN THE MATTER OF ARJIKA PROPERTIES, INC.

APPLICATION NO. LUB-2020-08

WHEREAS, an application for use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with minor subdivision approval pursuant to N.J.S.A. 40:55D-47 and bulk variance relief pursuant to N.J.S.A. 40:55D-70c has been made to the Highlands Land Use Board (“Board”) by Arjika Properties, Inc. (“Applicant”) on lands known and designated as Block 81, Lot 12 on the official Tax Map of the Borough of Highlands (“Borough”) and more commonly known as 289 Bay Avenue, Highlands, N.J. 07732 in the CBD (Central Business District) Zone (“Property”); 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 public hearing was held on May 6, 2021, via the Zoom platform, 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.

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 5,000 s.f with twenty-five (25) feet of frontage along Bay Avenue within the CBD Zone. The subject Property is currently vacant.

2. The Applicant is seeking (d)(1) use variance relief along with minor subdivision approval to create two, equal-sized 2,500 s.f. lots which will both be developed with one single-family dwelling. Each proposed dwelling would have a concrete driveway, a covered and elevated wooden front porch, an elevated rear wooden deck, and an attached garage. Ingress and egress from each dwelling would be via Bay Avenue and, if approved.

3. The proposed single-family dwellings are not a permitted use in the CBD Zone.

4. The Applicant has applied for the following four (4) bulk variances (as discussed infra, the bulk variance relief is subsumed within the request for use variance relief).

<u>CBD Zone</u>	<u>Required</u>	<u>Existing Lot 12</u>	<u>Proposed Lot 12.01</u>	<u>Proposed Lot 12.02</u>
Min. Side Yard Setback	5*	0	3 4	3 4
*Section 21-91 of the Borough Code indicates that side yards are not required in the CBD Zone, however, if any are to be provided, they shall be at least five (5) feet.				

5. The Applicant’s attorney, Brad Batch, Esq., introduced the proposed development and advised that the Applicant intended to subdivide the lot and construct two (2), new single-family homes.

6. The Project Contractor, Chris Ruby, testified that the Applicant was seeking to subdivide the subject Property and create two (2) 2,500 s.f. building lots. He noted that he had constructed two similar homes in the Borough, at 15-17 4th Street, and that the to-be-constructed homes for the proposed development would resemble those homes in shape, size, and layout.

7. Mr. Ruby continued that the stairs for each proposed dwelling would be situated in such a way as to permit two (2) vehicles to park in the driveway, for a total of three (3) off-street parking spaces. He stated that this would also allow better access to the utilities, located near the stairwells.

8. Mr. Ruby further testified that the proposed homes would each have three (3) bedrooms and would mirror the images of one another. The proposed lots would also each be twenty-five (25) feet wide.

9. The Applicant's Planner, Patrick Ward, PE, PP testified that single-family dwellings are not a permitted use in the CBD Zone and that use variance relief, as well as four (4) bulk variances for side-yard setbacks would be required.

10. Mr. Ward testified that four (4) foot set backs on the inner facing side yards and three (3) foot setbacks on the outer facing side yards were required. The Applicant would also erect firewalls, as needed, to comply with fire code requirements. The air conditioning units for both proposed dwellings would be located along the inner facing side yard, projecting no more than two (2) feet from the side of the home.

11. Mr. Ward then testified that the Project complied with the R.S.I.S. parking requirements for residential dwellings. He continued that most of the existing uses near the subject Property are residential, with only one (1) nearby site being a commercial use. He opined that the particular area of the CBD Zone is more appropriate for residential than commercial uses.

12. He further testified that the proposed development would promote a desirable environment and that the Applicant has built similar homes elsewhere in the Borough with success. He further asserted that the proposed development would be compatible with the neighborhood and of other homes in the vicinity and, thereby, preserve the character of the Borough's downtown area.

13. Mr. Ward then testified that granting the application would decrease parking stress on Bay Avenue by providing a total of six (6) off-street parking spaces which would not result in any negative impact on the Borough.

14. In response to questions from the Board, Mr. Ruby stated that he had purchased the lot and torn down the existing home after Hurricane Sandy. The subject Property has been vacant for approximately nine (9) years.

15. The Board also noted that the property directly next to the subject Property is commercial. The Board also commented that the Master Plan promotes commercial uses and disfavors the construction of residential uses in the CBD Zone.

16. Mr. Ward responded that the Master Plan contemplates new commercial development on Bay Avenue but that the Board must be mindful of appropriate commercial uses, taking into account parking issues.

17. The Board also commented that the proposed development would increase the residential use of the Property, doubling the density thereof. The Board then questioned whether replacing the previous home with one (1) single-family home would be more appropriate.

18. Mr. Ruby responded that if he constructed one (1) home on the lot, the proposed dwelling could be much larger and out of character with the neighborhood. He testified that he could build a home of approximately 3,500 s.f., which would be oversized for the area.

19. The Board further questioned whether the proposed dwellings would actually result in the loss of two (2) on-street parking spaces. Mr. Ward responded that although two (2) on-street

parking spaces would be lost, the subject Project would add six (6) other parking spaces, for a net positive.

20. The Board asked whether the CBD Zone is a redevelopment area. Mr. Ward responded that it is not and is a zoning district but stated that the CBD Zone is, however, relatively new, having been created in 2018.

21. It was, however, revealed that the entirety of Bay Avenue is being studied to be included as part of a redevelopment area. Mr. Ward agreed that the subject Property is in an area being studied for redevelopment.

22. Mr. Ward added that this section of Bay Avenue is unique in that it is predominantly residential. He testified that the subject Property is oversized for residential development and, thus, subdividing is more appropriate.

23. Mr. Ward further testified that although certain commercial uses are permitted in the CBD Zone, all of these permitted uses require more parking than a residential development.

24. The Board Engineer asked the Applicant to respond to the Engineer's March 9, 2021 Review Letter. The Applicant indicated that he would comply with all recommendations and requirements in the Engineer's letter, including placing appropriate landscaping, if possible, in the rear of the yard.

25. The hearing was then opened to the public, at which time James Horniacha, 287 Bay Avenue, asked why the project is being considered if the CBD Zone prohibits such use. The Applicant's attorney responded that the Applicant was seeking relief from the zoning

requirements. Mr. Horniacha then asked about the yard setbacks and Mr. Ward provided him with the details thereof.

26. Tara Coffey, 135 Portland Road, asked how many variances were being requested. Mr. Ward responded that they were seeking one (1) use variance and four (4) bulk variances.

27. Mr. Horniacha then testified that the comparable homes in the neighborhood were built roughly 100 years ago and are extremely small and narrow. Mr. Horniacha objected to the Project.

28. The Board noted that there are many vacant lots around town and that lot uniqueness is not uncommon. Is the Project better than what may come in the future?

29. The Board then questioned whether the Applicant had discussed the proposed development with some of the neighbors. Mr. Batcha stated that the Applicant had discussed the proposed development with the neighbors. Mr. Batcha continued that the Applicant was doing the best to limit parking stress and, in fact, the parking would be a net positive for the Borough.

30. The Board commented that the Master Plan is more than an outline and going from a single-family use to a denser residential use, does not promote the goal of the Master Plan. If the Borough is going to allow constant development on Bay Avenue then the Master Plan should be amended, as opposed to the Board granting a variance.

31. The Board also recognized that it has received mixed-use applications and that the Applicant does not appear to have considered what variances would be required.

32. There were no other members of the public or Board 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 minor subdivision approval pursuant to N.J.S.A. 40:55D-47 should be denied in this instance.

The Applicants require use variance relief in order to permit the construction of two (2) single-family homes in the CBD Zone. The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the Applicants, would be best served by permitting the proposed use.

In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicant can show that the proposed use is peculiarly suited to

the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the Applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish the above criteria.

The Board finds that the Applicant has failed to satisfy the positive criteria. The Board rejects the testimony of the Applicant's Planner. The Board finds that while the surrounding neighborhood has some residential development, the lot immediately next to the subject Property is developed with a permitted commercial use. Creating two prohibited residential lots would not fit in with the character of the adjoining permitted use. The Board also finds that a desirable visual environment could also be created through the development of a conforming permitted use or even one single family home.

The Board also recognizes that the New Jersey Courts have held that it is not enough to merely advance the goals of planning. Rather, the advancement of these goals in a use variance application has to be related to the subject property and the distinguishing characteristics of that property. The Board rejects the assertion that the subject Property is distinguishable. There are numerous vacant properties in the Borough with common characteristics. The Board therefore cannot conclude that the subject Property is particularly suited for development of two (2) single family homes on two lots. The Applicant has failed to satisfy the positive criteria.

The Board also finds that the Applicant has failed to satisfy the enhanced criteria. The Applicant has failed to cite any section of the Master Plan which promotes residential development on the subject Property. The Applicant has further failed to identify any recommendations contained

in a Periodic Master Plan Reexamination Report which promotes residential development on the subject Property. The Board therefore finds that the Applicant has failed to reconcile the absence of such policy statements in the Master Plan with the proposed development. The Applicant has further provided testimony that the Zoning District was recently created in 2018. The Borough Council was aware of the characteristics of the area at that time. It was also aware that the Master Plan did not recommend residential development on the subject Property. Consistent with the Master Plan, the Borough Council made a purposeful decision not to permit residential development. There is nothing in the record to suggest that the Borough Council somehow overlooked the subject Property. The Applicant has therefore failed to reconcile the proposed use with the decision of the Borough Council to prohibit it. The Applicant has therefore failed to satisfy the enhanced criteria.


The Board also finds that the Applicant has failed to satisfy the negative criteria. The Board is without jurisdiction to simply disagree with the zoning in this area. It is also aware that the entire area is currently being reviewed as an area in need of redevelopment. The Board finds that it would be unlawfully usurping the legislative power of the Borough Council by granting use variance relief in this instance. The Board also finds that the creation of two residential lots would unduly increase prohibited residential density. Once again, the subject Property is immediately adjacent to a permitted commercial use. This would result in a substantial detriment to the zone plan and the zoning ordinance. The Board therefore finds the Applicant has failed to satisfy the negative criteria.

The Board concludes that the Applicant has failed to satisfy the positive or the negative criteria and that use variance relief pursuant to N.J.S.A. 40:55D-70d(1) must be denied.

The Board also finds that the request for minor subdivision approval pursuant to N.J.S.A. 40:55D-47 must be denied for the same reasons.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 3rd day of June 2021, that the action of the Land Use Board taken on May 6, 2021 for Application No. LUB 2020-08, for use variance relief pursuant to N.J.S.A. 40:55D-70d(1) along with minor subdivision approval pursuant to N.J.S.A. 40:55D-47 is determined and hereby memorialized as follows: The application for use variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(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's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Robert Knox, Chairman
Borough of Highlands Land Use Board

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAINED:

ABSENT:

DATED:

The undersigned Secretary certifies the within Resolution was adopted by this Land Use Board on May 3, 2021, and memorialized herein pursuant to N.J.S.A. 40:55D-10g on June 6, 2021.

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

Michelle Hutchinson, Secretary
Borough of Highlands Land Use Board

2029211_1

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS

Case No. LUB-2020-08/Arjika Properties, Inc.

Minor Subdivision

May 6, 2021

June 3, 2021

- A-1 Planning Board Application, dated March 10, 2020.
- A-2 Zoning Denial, dated June 4, 2020.
- A-3 One (1) Minor Subdivision Plan prepared by Thomas Craig Finnegan, P.L.S., dated June 25, 2019 revised through November 18, 2020, consisting of one (1) sheet.
- A-4 One (1) Architectural Plan prepared by Grammar Designs, LLC, not dated, consisting of three (3) sheets.
- A-5 Subdivision Application.

INTEROFFICE REPORTS

- B-1 Board Engineer's Review Letter of Minor Subdivision, Plat Requirements (Completeness), dated September 11, 2020.
- B-2 Board Engineer's Review of Minor Subdivision, Plat Requirements (Second Completeness), dated January 15, 2021.
- B-3 Board Engineer's Fee and Escrow Calculation Letter, dated January 15, 2021.
- B-4 Board Engineer's First Engineering Review Letter, dated March 9, 2021.