



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**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 dtd 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 dtd 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:

Seconded by:

Ayes:

Nays:

Abstain:

Absent:

A handwritten signature in black ink, appearing to read "Andrew Stockton", written over a horizontal line.

Andrew Stockton,

Chairman, Land Use Board

Borough of Highlands

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on November 3, 2020

A handwritten signature in black ink, appearing to read "Michelle Hutchinson", written over a horizontal line.

Michelle Hutchinson, Land Use Board Secretary