

**Appendix D3:**  
**Municipal Responses and Articles,**  
**Applications to the Board**

**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. Berzinski 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 4<sup>th</sup> 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', is written above 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 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.

# BOROUGH OF HIGHLANDS, N.J.

INCORPORATED 1900

171 BAY AVENUE  
07732  
COUNTY OF MONMOUTH  
PHONE: 732-872-1224  
FAX: 732-872-0670  
WWW.HIGHLANDSNJ.COM



HISTORIC "TWIN LIGHTS"

FRANK L. NOLAN  
MAYOR  
CAROLYN M. CUMMINS  
BOROUGH CLERK  
TIMOTHY HILL  
BOROUGH ADMINISTRATOR

## LETTER OF TRANSMITTAL

TO: Kerri Branin  
52 Huddy Avenue  
Highlands, NJ 07732

Date: September 10, 2015

### ATTENTION:

RE: **Zoning Board Approval for Bulk Variances & Site Plan  
Branin, Block 59 Lot 8 – 66 Miller Street**

WE ARE SENDING YOU THE ATTACHED LISTED BELOW:

COPIES	DATE	DESCRIPTION
1	09/03/15	Copy of ZB Resolution For Block 59 Lot 8

**NOTE:** Please provide payment for the Parking Deficiency Fund in the amount of \$450.00.

cc: Paul Vitale, Construction Official— *EX A-11*  
Charles Heck, Tax Assessor  
Dale Leubner, Flood/Zoning Officer  
Robert Keady, P.E., Borough Engineer

  
**Carolyn Cummins, Borough Clerk**

9/3/15

Mr. Kutosh offered the following Resolution and moved on its adoption:

**RESOLUTION APPROVING BULK VARIANCES, AND  
PRELIMINARY AND FINAL SITE PLAN APPROVAL  
FOR BRANIN**

WHEREAS, the applicant, KERI BRANIN, is the owner of property at 66 Miller Street, Highlands, New Jersey (Block 59, Lot 8); and

WHEREAS, the applicant received use variance approval on August 6, 2015 for a commercial use on the first floor and residential use on the second floor of one building (hereafter referred to as Building A), and an ice cream-type facility in the smaller building (hereafter referred to as Building B), subject to conditions, including the obtaining of bulk variances and site plan approval; and

WHEREAS, the applicant now seeks various bulk and parking variances, together with preliminary and final site plan approval; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at a public hearing on August 6, 2015, which hearing was a continuation of the use variance hearing on July 2, 2015; and



WHEREAS, the Board heard the testimony of the applicant, KERI BRANIN, but no other persons appeared; and

WHEREAS, the applicant submitted the following documents in evidence:

SUBMITTED AT JULY 2, 2015 HEARING:

- A-1 Variance application (3 pages);
- A-2 Zoning Officer denial dated 5/22/15;
- A-3 Site plan review application (2 pages);
- A-4 Conceptual minor site plan by JAMES B. GODDARD, of Land Control Services, dated 5/21/15 (1 page);
- A-5 Picture of string lights and light fixtures;
- A-6 Photograph of site;
- A-7 Photograph of site;
- A-8 Photograph of site;

SUBMITTED AT AUGUST 6, 2015 HEARING:

- A-9 Two photographs of structures with awnings;
- A-10 Two photographs of signs;
- A-11 Conceptual minor site plan by JAMES B. GODDARD, of Land Controls Services, dated 5/21/15, revised July 20, 2015;
- A-12 Parking and site plan summary and proposal by applicant (3 pages) with 2010 ADA standards for accessible design attached;

AND, WHEREAS, the following exhibit was previously marked into evidence as a Board exhibit:

B-1        Revised 6/29/15 Board engineer (ROBERT KEADY) and planner (MARTIN TRUSCOTT) review letter (6 pages with aerial photo attached);

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

1.    The applicant is the owner of property located in the R-2.03 Zone, for which use variance approval was granted on August 6, 2015 to permit limited commercial uses on the first floor and a residential use on the second floor of building A; and an ice cream-type facility in building B.

2.    The applicant also proposes an outdoor patio and seating area for the ice cream shop use.

3.    The Board Engineer reported that since no parking is proposed for either of the two commercial uses on the site, and since the ADA requirements for parking are indexed to the number of commercial parking spaces on site, there is no requirement for ADA parking in this case, nor any need for variance approval of the same.

4.    The applicant is seeking bulk variance relief for the following:

A. Lot area of 3,510 s.f., where 5,000 s.f. are required (a preexisting condition);

B. Lot depth of 60 feet, where 100 feet is required (a preexisting condition);

C. Front yard setback of .95 feet for Building B and 17.5 feet for Building A, where 20 feet are required (both preexisting conditions);

D. Rear yard setback of -.45 feet for Building A, where 20 feet is required (a preexisting condition);

E. Side yard setback of 1 foot for Building B, where 6/8 feet are required (a preexisting condition);

F. Building coverage of 37.42%, where 30% is permitted (a preexisting condition).

G. A parking variance for 9 spaces. Applicant proposes no spaces for the commercial use in Building A or the use in Building B. The Building A requirement would be 4 parking spaces (1 space for every 300 s.f.), and the parking requirement for

Building B would be 5 spaces (1 space per 4 seats for food use);

H. A sign variance for the sign on Building B.

I. Sign location on Building B, because of its encroachment onto the sidewalk;

5. As to the parking requirement, the applicant agrees to pay the borough ordinance-required fee for the shortage of 9 parking spaces, the payment of which fee shall be a condition of the issuance of any construction permits.

6. The Board has been made aware of the encroachment of the rear portion of Building A over the property line onto the neighboring (borough-owned) property. The Board has no jurisdiction to permit such an encroachment. Though aware of the encroachment, this resolution shall not be read to give approval for the encroachment or be used to support any claim for adverse possession by the owner of the subject property. The applicant understands and agrees to the same.

7. Ordinance 21-65.27(E) requires that awnings, if they project into the public right-of-way, as this

proposed one does, be at least 7.5 feet high from the ground to the lowest portion of the awning. The applicant agrees to comply with this condition, as a result of which no variance relief is required.

8. The Board Engineer commented upon the patio. The plans submitted do not show the proposed elevations. The patio must comply with the ADA requirements regarding slope.

9. On the plans submitted by the applicant there is no ramp access to Building A; however one shall be provided. The applicant agrees to construct that access similar to deck construction, in which case no lot coverage issue is implicated. The ramp shall be ADA compliant.

10. During the hearing, the applicant agreed to reduce the height of the fence shown on her proposal to 6 feet, as a result of which the fence will meet the requirements of the ordinance, and no variance is required.

11. The Board discussed the lighting of the property, both with respect to Building A and Building B. The applicant agrees to comply with Ordinance 21-65.11 as to any lighting requirements.

12. The applicant also testified that the bathroom in Building B will be ADA compliant.

13. As to the sign on Building B, the applicant agrees to meet the height requirements. As a result, no variance is required for the height; however, since signs are not permitted in this zone, a variance is required. The Board finds that the proposed sign is not obtrusive in any way and does not pose any adverse impact to the neighboring properties or the community in general.

14. The vast majority of the bulk variances requested (items A through F of paragraph 4 above) are all for preexisting conditions. As to those conditions (lot area, lot depth, front yard setback, rear yard setback, side yard setback and building coverage), the Board finds that there is no adverse impact to the neighboring properties, since all of those conditions have preexisted for many many years.

15. As to the parking variances requested (for both Building A and Building B), the Board finds that this property is adjacent to the downtown business area of the borough. Though there is municipal parking and street parking available, there is a paucity of parking available on site on the various

properties in the downtown area. The borough has adopted an ordinance providing for an alternative for commercial property owners, that being the payment of a parking fee in lieu of providing on-site parking. The applicant has agreed to comply with those requirements.

16. The Board finds that the proposed changes to this property will promote a public purpose, as set forth in the Municipal Land Use Law, particularly N.J.S.A. 40:55D-2(i), to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board further finds that the proposed changes to this property, as requested in the property owner's application, will provide improved community planning and will benefit the public. The benefits of the variance substantially outweigh any detriment.

17. The Board does not find any substantial detriment to the public good or any substantial impairing of the intent and purpose of the zone plane. To the contrary, the Board finds the applicant's proposal to be a significant improvement to the property and the downtown area of the borough.

18. The Board finds that the impact of the proposed variances on surrounding properties, the bulk of which are preexisting conditions, will be minimal, if at all, and that the variances granted will not cause damage to the character of the neighborhood or any substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meetings on July 2 and August 6, 2015, and this resolution shall memorialize the Board's action taken at the latter meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of KERI BRANIN for bulk variances as set forth in paragraph 4, subparagraphs A through I, together with preliminary and final site plan approval, in conformance with the applicant's plans, as well as modifications during the hearing, as set forth earlier in this resolution, are hereby approved.

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

A. The proposed awning on Building B shall be at least 7.5 feet high from the ground level to the lowest part of the awning where it encroaches on the public right-of-way.

B. All lighting requirements shall be in accordance with borough ordinances, particularly Ordinance 21-65.11.



C. The parking fee, as detailed earlier in this resolution, shall be paid by the applicant prior to any construction permits being issued.

D. The bathroom in Building B shall be ADA compliant.

E. The Construction Department is instructed to confirm that the slope of the patio is compliant with ADA regulations and all applicable codes.

F. The ramp access to Building A shall be constructed in accordance with ADA regulations and be of the type of construction similar to a deck.

G. This resolution shall not be interpreted as approval by the Board of the encroachment at the rear of the building over the neighboring property line, which is owned by the borough; and this resolution shall not be used in support of any future application by the property owner or any other interested party for a judgment of adverse possession against the borough.

Seconded by Ms. Ziemba and adopted on the following roll call vote:

**ROLL CALL:**

**AYE:** Mr. Kutosh, Ms. Ziemba, Mr. Braswell

**NAY:** None

**ABSTAIN:** None

**DATE:** September 3, 2015

  
\_\_\_\_\_  
Carolyn Cummins, Board Secretary



**James L. Lott, Jr.**

Partner

Direct:

t: 973.451.8460

f: 973.451.8684

jlott@riker.com

Reply to: Morristown

ATTORNEYS AT LAW

October 29, 2018

**Via Electronic Mail**

Andrew Stockton  
Land Use Board Chair  
Borough of Highlands  
42 Shore Drive  
Highlands, New Jersey 07732

Re: I/M/O Polaris Retreat, LLC  
Hearing on Application for a Site Plan and Use Variance  
Application: Block 59, Lot 11.01, 181 Bay Avenue

Dear Mr. Stockton:

We represent Polaris Retreat, LLC ("Polaris") with respect to a site plan and use variance application for the above-referenced property currently before the Land Use Board of Highlands Borough. Polaris is writing to withdraw the application in its entirety without prejudice. Accordingly, the hearing scheduled for November 1, 2018 before the Land Use Board on the Polaris application is no longer necessary.

Please do not hesitate to contact me with any questions.

Very truly yours,



James L. Lott, Jr.

cc: Gregory Baxter, Esq.  
John Kwasnik, Esq.

Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962-1981 • t: 973.538.0800 f: 973.538.1984

50 West State Street, Suite 1010, Trenton, NJ 08608-1220 • t: 609.396.2121 f: 609.396.4578

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**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:

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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

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Michelle Hutchinson, Land Use Board Secretary



## REDEVELOPMENT

# Highlands drug rehab planned; some residents don't want it

**Tara Guaimano** @tguaimano

Published 5:00 a.m. ET Jun. 25, 2018 | Updated 4:55 p.m. ET Jun. 25, 2018

HIGHLANDS - Justin Sabatino was running the drills of his dreams as a Division III soccer player at Stockton University — until two serious surgeries led to an addiction to prescription painkillers.

Sabatino earned his diploma in 2007, but it was only through drug treatment he was able to escape rock bottom and the grip of addiction.

Sabatino, now 33, along with his partners, wants to offer the same lifeline in Monmouth County, through a residential drug treatment center earmarked for Highlands — if only the town and local residents will let him.

“I am living proof that the system works if you give somebody the chance,” said Sabatino, who lives in Wall. “It only takes one little glimmer of hope for us to instill when somebody is down and out.”

Polaris Retreat LLC would be a residential subacute detoxification facility providing short-term treatment for people struggling with addiction to alcohol, benzodiazepines, heroin and other opioids. The center has applied to purchase the former United Methodist Church building at 181 Bay Ave.

New Jersey's opioid epidemic has left its mark in Highlands, a town still on the rebound from superstorm Sandy. According to the state Department of Human Services, Highlands saw a total of 73 substance abuse-related treatment admissions in 2016 out of 9,170 admissions in Monmouth County.

But local residents, in interviews and social media posts, have made plain that the proposed facility would be better suited elsewhere than in this square-mile town of 5,000.

Project foes argue the facility would be out of character in Highlands and imperil local residents.

“There is a flavor in Highlands that I don’t think we can duplicate,” said Sheila Weinstock, president of the Highlands Historical Society. “The epidemic has touched everyone, but we don’t want a rehab in the middle of town.”

The proposed site sports a red brick exterior supporting a faded green steeple above, marking the highest point on the skyline amid Highlands’ mile-long downtown. Garnished with overgrown grass and patches of wilted flower buds, it rests vacant, across from the post office and a veterinarian's office. Porcini, a popular Italian restaurant, and several homes are nearby. See more of the site in the video above.

Highlands resident Adina Filippone understands the need; a close family member fights addiction. “We are all for helping people, it is just the location of it,” she said. “You are going to have a detox center where you have parades that are by no means sober.”

The pushback comes as New Jersey continues to battle an opioid epidemic. New Jersey recorded 1,886 overdose deaths in the 12-month period that ended in November 2016; the figure was 2,556 deaths in the 12-month period that ended in November 2017. The 36 percent increase was the highest-percentage increase in the United States, according to new data from the Centers for Disease Control and Prevention.

### **SEE: NJ drug deaths continue to soar as national numbers decline**

More than 50 residents attended a meeting at the Wilson Community Center on June 13, where the Land Use Board concluded Polaris' application was incomplete. The Board did not take questions from the public.

Highlands administrator Kim Gonzales declined to comment because it is a pending application. Mayor Rick O'Neil could not be reached for comment.

Polaris is a for-profit organization. Under its plan, patients would receive treatment for five to 10 days, before transitioning to their next phase of recovery. No more than 20 guests would be in residence at once. They would sleep two to a room. Their licensing with the Department of Human services is pending.

The center would not offer guests long-term detox options, such as methadone or suboxone, or daily outsourcing. Patients would be monitored by 24-hour registered nurses and a

medical doctor. No visits from friends or family would be permitted except in emergencies. See a proposed floor plan at the bottom of this story.

Residents have also taken to the Highlands New Jersey public Facebook group to express their views. The group, with over 6,000 members, saw 25 related posts on June 13 alone, and more than 700 posts in the last 30 days, the overwhelming number against the proposal.

“Why not Highlands? It suffers from the same addiction issues as the rest of Monmouth County,” said Erin Sherman, another principal owner of Polaris. Sherman is Florida resident with a law degree from Rutgers and 14 years of experience in behavioral health in admissions and insurance.

Only one treatment center in Monmouth County currently offers detox and short-term stabilization services, the Discovery Institute of Addictive Disorders in Marlboro, Sherman said.

Irene Hoylie-Ristaino, clinical director of detox services at Discovery Institute, said that there have been many times where their detox division was full and they had to turn patients away. “Most hospitals do not provide detox services — sometimes families are unsure of how to help their loved ones and make the decision to go to the ER,” she said. “It is a better choice for these clients to be referred to detoxification services.”

Price point for treatment will be the last step in the process and rumors of the set price for treatment being \$10,000 are false, Sherman said.

The company applied for a zoning use variance with the borough, as the use of a substance abuse treatment center is currently not permitted on the property. Many development plans do not specify any land use permit exclusively for substance abuse treatment, which is why many get approved with a use variance, Sabatino said.

“I don’t really find (the price point) a relevant piece of information to the zoning issue,” Sherman said. “It would be like saying if there is even a potential that everyone in town couldn’t afford to eat at Porcini that it shouldn’t be allowed to open.”

Sabatino, who earned an accounting degree at Stockton, has owned two treatment centers in Mercer County. He has five years of experience in behavioral health.

He said that the Highlands residents have had the wrong impression from the start.

“We are willing to have a conversation with the public,” he said. “We are not trying to bulldoze our way into town.”

Sherman and Sabatino attended a June 6 council meeting where they said they were willing to take questions from the public afterward. They recall only three residents approaching them.

“There are a lot of assumptions about our characters,” Sherman said. “We have been working in treatment for many years — we want to do the right thing.”

“Now that so many people and kids are either dying or overdosing because of this,” Sabatino said, his voice choked with emotion, “the need is there and the resources aren’t.”

**MORE: Belmar boardwalk body ID'd; death not suspicious, police say**

**MORE: NJ drug ring dealing 10,000 bags of heroin a week smashed in Monmouth: prosecutor**

Many residents note that Highlands still faces its own recovery, from superstorm Sandy, which saw 1,400 homes and most of the local businesses damaged or destroyed. They see the treatment proposal as yet another threat.

“This is a small town and we are finally coming up (from Sandy),” said Nick Casale, who moved to Highlands from North Jersey six years ago.

“I am not against any kind of treatment for anyone who suffers from a terrible addiction of any kind. This is not the right place for it,” said Weinstock of the historical society. “Not when we are trying to bring ourselves back from our most devastating storm in over a century.”

Standing beneath a set of strung light bulbs outside Water Witch coffee shop on the corner of Waterwitch and Bay Avenue, Weinstock suggested rebuilding the town after Sandy as an “artistic mecca.”

Weinstock juggled her latte and a binder of old postcards of the town from the turn of the century that were donated to the historical society. She flipped through faded photos covered in thin plastic, showcasing tourists coming off the ferry from New York City to enjoy the Bayshore.

“Present us with something that preserves that flavor, that charm, that special-ness,” she said. “It would be a beautiful environment for a theater.”

Residents have formed a Highlands Borough Action Committee along with a Go Get Funding page to raise money to fund legal counsel. The crowdfund is coordinated by Greg Wells and

has reached over \$2,000 in donations.

Wells, a Highlands resident of 10 years and former member of the Land Use Board, said space for a treatment facility was not included in the recent assessment of Highlands' Master Plan for development. "We need these facilities, and we probably need one in Highlands," he said. "But people don't want it in this location."

The list pricing for building was \$529,000; Sabatino said their offer, which is contingent on the land-use approvals, was relatively close.

The Highlands Planning Board Engineering evaluation determined that Polaris would need a total of 39 parking spots. Polaris arranged a lease of additional parking with a local business in Highlands. The business has recently withdrawn from the agreement following residents' Facebook posts, Sabatino said.

"If we are going to be that much of a ruckus, then maybe it is not right," Sabatino said. "Hopefully we will present a strong enough case that shows the town that this is needed, we are trying to help people, and we are trying to help the town too."

The Land Use Board will host its next meeting on July 11 at 7:30 p.m. at the Wilson Community Center to address whether the application is complete.