



BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2022-16

MEMORIALIZATION OF AMENDED MINOR SITE PLAN APPROVAL

Approved: June 9, 2022
Memorialized: July 14, 2022

IN THE MATTER OF B-FOUR ENTERPRISES, INC. APPLICATION NO. LUB 2022-03

WHEREAS, an application for amended minor site plan approval has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by B-Four Enterprises, Inc. (hereinafter referred to as the “Applicant”) on lands known and designated as Block 72, Lots 8, 8.01, 9.001, 9.011, and 9.012, and Block 69, Lots 13, and 13.01, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 1 Marina Court and 1 Atlantic Street in the WC-2 (Central Business) Zone; and

WHEREAS, a live public hearing was held before the Board on June 9, 2022, 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 176,443 s.f. and is currently developed as the Seafarer Tiki Bar with associated dock and parking lot area. The site is located in the Waterfront Commercial (WC-2) Zone with frontage along Atlantic Street. The Applicant previously received preliminary and final site plan approval to permit the establishment of the “Seafarer Tiki Bar” in May 2015.

2. The Applicant is seeking amended minor site plan approval to utilize a 1,500 s.f. river paddle boat for public and private use. This will reduce the available space from a capacity of twelve (12) boats to ten (10) boats on the subject Property. The Applicant further proposes the removal of fourteen (14) seats from the tiki bar, leaving a total of twelve (12) seats. The river paddle boat will be located along the southern dock and consist of eight (8) tables of four (4) seats for a total of 32 seats, for use by patrons of the tiki bar. The existing 29 tables of four (4) seats (a total of 116 seats) are located on the deck and around the center bar, while the food truck and lavatories will remain in place. The Applicant also proposes to use the river boat for private parties.

3. Counsel for the Applicant, Amanda Curley, Esq. stated that the subject Property is the improved and utilized by the Seafarer Tiki Bar and that the Applicant is seeking to add a river paddle boat to the dock to provide for additional patron seating and private parties.

4. The Applicant’s Architect, Mike Monroe, AIA testified that the tiki bar was approved by the Board in 2015 and that the Applicant was seeking to amend the site plan to add a boat to the dock. He stated that ADA improvements had been made to the subject Property since the 2015 approval. Mr. Monroe testified that the Applicant proposed no changes to the

current occupancy limits and was only seeking to move seats around to provide flexibility for events and shelter during inclement weather.

5. Mr. Monroe further testified that the subject Property also operates as a marina and features a tiki bar, a building for storage, food truck, and a deck on the north side of the subject Property. He stated that a minimum of 174 parking spaces is required, whereas 186 are existing and are proposed to continue to exist. The river boat would not be a permanent structure, would not block any view as it is not very tall, and is 65-feet in length. Mr. Monroe also testified that the Applicant was not proposing any changes to the landscaping and drainage.

6. In response to questions from the Board, Mr. Monroe testified that the boat will be permanently used as a restaurant and that it has been in use as a restaurant (elsewhere) for 10 years. He further stated that the river boat would be towed from its current location on Barnegat Bay to the Highlands if the application is approved.

7. Mr. Monroe then explained that the river boat has two levels and there would not be any cooking on the boat. The food operations are located at the food truck. The operation of the restaurant would remain the same, with no additional staff needed. He testified that the Applicant was seeking to provide more space for its patrons.

8. In response to further questions from the Board, Mr. Monroe testified that the boat would not be decommissioned entirely. In case of an emergency, such as a hurricane, the boat would be able to move under its own power. He confirmed that the Applicant was not seeking to increase the occupancy, but rather to move existing seating to the boat.

9. In response to questions from the Board Engineer, Mr. Monroe testified that there are ten (10) dry dock parking spaces at the center of the subject Property, lined up with the dock. Nothing has changed from the 2015 approval until now and there will not be any alterations to the dock.

10. Mr. Monroe provided additional testimony that there is some overlap with parking between the restaurant and the marina, but the restaurant is primarily used at night, whereas the marina is used during the day. There have not been any issues with the overlap of parking since obtaining land use approval in 2015.

11. Mr. Monroe further stated that all conditions of the 2015 resolution remain in effect and will not be altered by this approval. The hours of operation will remain 11 a.m. to 11 p.m. Mr. Monroe testified that there would be no security concerns because the boat can be locked and there are security cameras on the subject Property. Access to the boat will be provided via a gangway and the Applicant will make a reasonable effort to make the first level of the river boat ADA compliant. Mr. Monroe continued, however, that because the upper level is less than 20% of the total area, the Applicant is not required by ADA to provide access to everywhere on site. The boat meets current boat safety standards.

12. The Board Engineer advised that the application is similar to the site plan approved in 2015 and that he is satisfied with the application. There are no variances required. The Applicant is just adding a boat and moving seating around.

13. The hearing was opened to the public for questioning at which time Jerry Sorano asked if live music will be seven (7) days a week. The Applicant stated that the live music schedule

will be the same as it is currently but will be set up on either the boat or at the main tiki bar – not both. Live music will end at 10pm as it does currently.

14. Jeff Wilson asked what the capacity of the boat is. Mr. Monroe testified that the total capacity is 110 persons, including the upper deck, but he has not decided if he will use the upper deck. He does not intend to use all of the permitted 110 capacity.

15. Francis Shoreman asked if the boat has a fire suppression system. Mr. Monroe testified that boat has an up-to-date fire suppression system that is approved by the United States Coast Guard.

16. Mr. Shoreman further asked how the Applicant would accommodate additional parking with the other uses on the subject Property. Mr. Monroe testified that the parking for the tiki bar is based on seating. The marina has 130 parking spaces. The new business near the marina is included in the 130 marina parking spaces. The marina parking is based on one (1) space per boat slip.

17. Mr. Shoreman next voiced his concern as to whether the subject Property had sufficient emergency vehicle access.

18. In response to further questions from the Board, Mr. Monroe testified that the total capacity of the restaurant as per the Fire Marshall is 200. The Applicant was not seeking to increase the capacity. As the Applicant is not increasing the capacity, there is no need for additional parking. The Board Engineer advised that fire capacity is governed by the construction code and is based on fire safety. Mr. Monroe stated that the Applicant was allowed to limit the

amount of people by itself to be less than the fire capacity, which the Applicant is limiting the seating to 160 as per the 2015 approval. Ms. Curley stated that the standard for parking is one (1) space per four (4) seats; capacity is for safety, not parking.

19. Maggie Bourdeux expressed concern that the Applicant would max out the fire capacity and allow another 100 people with the boat. Mr. Monroe testified that his intention was to spread people out and allow covered space in case of rain. The Applicant does not intend to increase the amount of people.

20. Ms. Bourdeux asked what is keeping the Applicant from increasing the amount of people. Ms. Bourdeux further asked what is keeping the Applicant from putting up something else, such as a Ferris wheel. The Applicant's attorney stated that she was confident that ferris wheels are not permitted in the Zone and would require the Applicant to come before the Board for d(1) use variance approval.

21. Maryanne Bower asked why the Applicant would not use the boat and the deck at the same time on a nice day that draws more people requiring more parking. The Applicant's attorney stated that parking is based on the number of seats, not the number of bodies. The plan permits use of both the tiki bar and boat without the need for parking relief. The Applicant is guided by the Ordinance setting the parking standards.

22. Ms. Bower voiced additional concerns about the potential noise, traffic, and use. In response, the Applicant testified that they intended to have approximately 50 people on the boat at any one time.

23. Members of the public next inquired whether the 2015 approval required the Applicant to have a food truck, noting that the current “food truck” does not have wheels and should not be considered a food truck. The Applicant stated that by restaurant standards, it is technically a food truck.

24. Members of the public next asked whether the river boat is effectively a barge and would become a large projectile during a storm and cause damage to structures on land. The Applicant testified that the boat is operational and can be moved in the event of a damaging storm.

25. Meghan Nice asked if the boat could be moved elsewhere. Mr. Monroe testified that after several revisions of the plan, the proposed location is the best location for the boat. The location along the dock is the most secure for the boat and has the least amount of impact on the area.

26. The hearing was opened to the public for comment, at which time Tim Morris stated that he understands the Applicant wants to make money, but the location of the boat is terrible. The boat is too close to the shore and swimming area.

27. Tom Quinn stated that a 65-foot boat is not small and will be an eyesore. It’s effectively a three-story building.

28. Francis Shoreman stated that he has been fine with the Seafarer as is, but the addition of the boat doesn’t make sense him when almost all the neighbors are against it. He believed it is disingenuous of the Applicant to say there will not be more people and disingenuous

for the Board to not listen to the concerns regarding parking. He believed it will be detrimental to the value of the neighboring homes and the purpose of the Board is to protect the value of homes.

29. Maryanne Bower stated that her backyard borders the parking lot. She stated she loves the Seafarer and it has been a good neighbor, but she was concerned that there will be an increase in people and an increase in noise in the parking lot when people come and go. She is also concerned the boat will ruin her view.

30. Scott Doyle stated that parking is an issue and the application is an intensification of the use. He recently moved to the neighborhood and purchased his house from someone who moved because of the Seafarer.

31. Joe Shacky stated that he appreciates the Applicant has improved privacy since the 2015 application, but the boat will change that privacy being in the water. He is concerned with patrons of the restaurant being rowdy in the community with the boat having easier access to the water.

32. Amy Magada stated that the Board should consider that the boat will increase the amount of people and it is not fair to the neighbors.

33. Maggie Bourdeux stated that the boat is an expansion of the restaurant, and it will continue to grow. The guidelines the board follows might have to change. It is not worth it to the neighborhood.

34. Margaret Valor stated that she is concerned with the boat standing out in the water. The Applicant's attorney stated that the height of the boat is approximately 24 feet, which if it were a structure, would be within the height limits of the zone. There are no height requirements for boats in the zone.

35. 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 amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 should be granted in this instance.

The Board finds it necessary to first express the statutory requirements in a site plan application. The Municipal Land Use Law tightly circumscribes the jurisdiction of a land use board in reviewing a variance free site plan application for a permitted use. The jurisdiction of a land use board is limited to determining compliance with ordinance requirements. The New Jersey courts have consistently held that where an approval is required where all ordinance requirements have been satisfied. The New Jersey Courts have also held that a land use board

cannot deny a site plan for a permitted use due to an increase in traffic, noise or parking where all ordinance requirements have been satisfied.

The Applicant in the instant matter has complied with all ordinance requirements. In view of the above discussed statutory and common law constraints, this Board finds that it is required to grant amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 14th day of July 2022, that the action of the Land Use Board taken on June 9, 2022, granting Application No. LUB 2022-03, for amended minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 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 conditions of the Planning Board Resolution dated September 10, 2015 continue to be in effect and are incorporated herein.
4. Any future modifications to this approved plan must be submitted to this Board for approval.
5. The Applicant shall provide a certificate that taxes are paid to date of approval.
6. 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.
7. 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: Mr. Zill

SECONDED BY: Mr. Montecalvo

ROLL CALL:

YES: Mr. Kutosh, Mr. Montecalvo, Mr. Zill, Mr. Cramer, Chair Knox

NO:

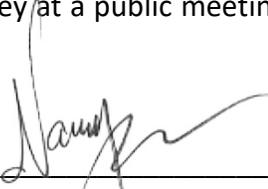
RECUSED: Ms. Chang

INELIGIBLE: Mayor Broullon, Chief Burton, Mr. Lee, Councilmember Olszewski, Vice Chair Tierney

ABSENT: Ms. LaRussa, Mr. Ziemba

DATED: July 14, 2022

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 July 14, 2022.



Nancy Tran, Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. LUB 2022-03 / B-Four Enterprises, Inc.

Amended Preliminary and
Amended Final Major Site Plan Approval
June 9, 2022

- 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)