



HGPB- R1680

November 2, 2021
Via Email and Regular Mail

Michelle Hutchinson, Land Use Board Secretary
Borough of Highlands Land Use Board
42 Shore Drive
Highlands, New Jersey 07732

**Re: 49 Miller Street – LDN Real Estate, LLC
Block 54, Lot 7.01
Major Subdivision and Use Variance
First Engineering Review**

Dear Ms. Hutchinson:

As requested, our office has reviewed the above referenced application for preliminary major subdivision approval. The applicant submitted the following documents in support of this application:

1. Land Use Board Application for Subdivision, dated March 12, 2021.
2. Zoning Denial letter, dated March 3, 2021, and updated letter dated May 21, 2021.
3. Proposed Subdivision Plan prepared by Richard E. Stockton & Associates, dated January 20, 2021.
4. Proposed Architectural Plan for proposed lot 7.011, prepared by Salvatore La Ferlita, dated March 15, 2021.
5. Proposed Architectural Plan for proposed lot 7.012, prepared by Salvatore La Ferlita, dated March 15, 2021.
6. Proposed Architectural Plan for proposed lot 7.013, prepared by Salvatore La Ferlita, dated March 15, 2021.
7. Proposed Architectural Plan for proposed lot 7.014, prepared by Salvatore La Ferlita, dated March 15, 2021.
8. Proposed Architectural Plan for proposed lot 7.015, prepared by Salvatore La Ferlita, dated March 15, 2021.

Based on our review of the submitted documents, we offer the following comments for the Board's consideration:

A. Project Description

The 0.30-acre (+/-13,297 square foot) property is currently an undeveloped through lot which is vacant with no existing principal structures. It has frontage on both Miller Street and East North Street. The site is located in the Central Business (CBD) Zone of the Borough since the most recent Zoning Map amendment in 2018. It is noted that the lot previously was in the R-2.02 Zone. With this proposal, the applicant is seeking preliminary major subdivision and use variance approval and is proposing to develop the parcel into five (5) total lots. The proposed single-family development use is not a permitted use in the CBD Zone. It should also be noted that this property was included in the recent "area in need of redevelopment" study being undertaken by the Borough.

B. Zoning and Planning

1. The subject property is located in the Central Business (CBD) Zone. This zone does not permit single-family developments therefore a d(1) use variance is required.



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The applicant must demonstrate that the application satisfies both the positive and the negative criteria of the Municipal Land Use Law for the granting of the use variance relief. The determination of the positive criteria establishes the benefits of the variance. The determination of the negative criteria establishes the detriments to the public good that would result from the variance. By nature, a variance is a departure from and an impairment of the zone plan. On balance, the benefits of granting the variance must be such that the resulting detriments are not substantial. The greater the benefits of the variance, the greater the detriments must be in order to be considered substantial. Accordingly, the applicant must demonstrate the following for "d" variance relief:

Positive Criteria

There are two prongs to the positive criteria that the applicant must satisfy, as follows:

That the site is particularly suited to the use. Unless the Board determines that the proposed use qualifies as an inherently beneficial use of the proposed site, the applicant must prove that the site is particularly suited to the use.

There are special reasons that allow a departure from the zoning regulations in this particular case. Unless the Board determines that the use qualifies as an inherently beneficial use as discussed above, the applicant must prove that special reasons support the grant of the variance. The only acceptable special reasons for the grant of a "d" variance would be proof that the variance promotes the purpose of zoning, or proof of undue hardship. The purposes of zoning are established by the Municipal Land Use Law (N.J.S.A. 40:55D-2) and the applicant must demonstrate that the variance promotes one or more of those purposes to establish special reasons. Alternatively, the applicant may offer as a special reason proof that refusal to grant the variance would result in undue hardship. Proof of undue hardship for a "d" variance requires that the applicant prove that the property cannot be reasonably adapted to conform to the zone requirements.

Negative Criteria

There are two prongs to the negative criteria that the applicant must satisfy, as follows:

That the variance can be granted without substantial detriment to the public good. This prong requires an evaluation of the impact of the variance on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.

That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance. The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. The process for zoning decisions is through the recommendations of the municipal master plan as implemented through zoning ordinances adopted by the governing body. This establishes the zones, standards, and requirements for the development of the municipality. The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. If the grant of a variance substantially alters the municipality's zone plan, the action is impermissible because it usurps the zoning power of the governing body and undermines the municipal planning process.



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2. The following bulk requirement summary is provided for the Board's reference. It should be noted that while the proposed use (single-family residential) is not a permitted use in the CBD Zone, it is permitted in the former R-2.02 Zone. **The Board will have to determine what bulk zoning standards will be required of the applicant.** The various bulk requirements have been provided for the Board's reference below as well:

Standard	R-2.02 Zone	Existing Lot 7.01	Prop. Lot 7.011	Prop. Lot 7.012	Prop. Lot 7.013	Prop. Lot 7.014	Prop. Lot 7.015
Min. Lot Area (sf)	4,000	13,297	3,729(V)	2,392(V)	2,392(V)	2,392(V)	2,392(V)
Min. Lot Frontage/Width (ft)	50	60	30(V)	30(V)	30(V)	30(V)	30(V)
Min. Lot Depth (ft)	75	120.5	119	79.75	79.75	79.75	79.75
Min. Front Yard Setback (ft)	20*	NA (vacant)	20	14.2(V)	14.2(V)	14.2(V)	14.2(V)
Min. Side Yard Setback (ft)	6/8**	NA (vacant)	4/6(V)	4/6(V)	4/6(V)	4/6(V)	4/6(V)
Min. Rear Yard Setback (ft)	20	NA (vacant)	44	20.5	20.5	20.5	20.5
Max. Building Height (ft)	30***	NA	26.6	26.6	26.6	26.6	26.6
Max. Lot Coverage (%)	75	NA	41.3	47.1	47.1	47.1	47.1
Max. Building Coverage (%)	33	NA	32.7	37.6(V)	37.6(V)	37.6(V)	37.6(V)

(E) – Existing Nonconformity

(V) – Variance

NA – Not Applicable

* Section 21-79.B of the Ordinance permits an alternative front yard setback of the average of the existing front yard setback within two hundred (200) feet in the same block and zone.

** Section 21-91.4.a of the Ordinance indicates that no side yard is required adjacent to the properties in the CBD zone, however, if any is to be provided, it shall be at least five (5) feet. Any side yard which serves as a boundary between that lot and any residence zone shall be at least five (5) feet and shall contain buffering in accordance with the requirements of this section.

*** Building height measured from the grade plane, which is BFE+1 foot (NAVD88), to the average height of the roof surface. Bonus credit of 2.5 feet for parking underneath.

3. The Cover Sheet shall be revised to indicate that the property is located in the CBD Zone.
4. The proposed application will ultimately require the bulk 'c' variances noted in the chart above if reviewed under the R-2.02 standards.



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5. The proposed application will ultimately require the following bulk ‘c’ variances if reviewed under the CBD Zone standards. As you can see, the CBD Zone requirements are not well suited for residential projects, but are presented below for information purposes:

Standard	CBD Zone	Existing Lot 7.01	Prop. Lot 7.011	Prop. Lot 7.012	Prop. Lot 7.013	Prop. Lot 7.014	Prop. Lot 7.015
Min. Lot Area (sf)	NA	13,297	NA	NA	NA	NA	NA
Min. Lot Frontage/Width (ft)	NA	60	NA	NA	NA	NA	NA
Min. Lot Depth (ft)	NA	120.5	NA	NA	NA	NA	NA
Min. Front Yard Setback (ft)	0	NA (vacant)	20	14.2	14.2	14.2	14.2
Min. Side Yard Setback (ft)	NA**	NA (vacant)	4/6(V)	4/6(V)	4/6(V)	4/6(V)	4/6(V)
Min. Rear Yard Setback (ft)	12	NA (vacant)	44	20.5	20.5	20.5	20.5
Max. Building Height (ft)	36***	NA	26.6	26.6	26.6	26.6	26.6
Max. Lot Coverage (%)	80	NA	41.3	47.1	47.1	47.1	47.1
Max. Building Coverage (%)	35	NA	32.7	37.6(V)	37.6(V)	37.6(V)	37.6(V)
Max. FAR	0.65	NA	0.84	1.03	1.03	1.03	1.03

(E) – Existing Nonconformity

(V) – Variance

NA – Not Applicable

** Section 21-91.4.a of the Ordinance indicates that no side yard is required adjacent to the properties in the CBD zone, however, if any is to be provided, it shall be at least five (5) feet. Any side yard which serves as a boundary between that lot and any residence zone shall be at least five (5) feet and shall contain buffering in accordance with the requirements of this section.

*** Building height measured from the grade plane, which is BFE+1 foot (NAVD88), to the average height of the roof surface. Bonus credit of 2.5 feet for parking underneath.

**** Section 21-91.4.b of the Ordinance requires any building containing residential units provide outdoor living space at the rate of 100 square feet per residential unit plus 50 square feet per bedroom. The applicant is proposing one (1) four-bedroom unit and four (4) three-bedroom residential units. The four-bedroom unit would require 300 square feet of outdoor living space and the three-bedroom units would require 250 square feet respectively.

This space may be provided either at ground level or directly adjacent to the unit in the form of decks and/or roof top terraces. The area provided shall be private, for the exclusive use of the residential terrace and shall be sufficiently screened or otherwise designed to ensure that privacy and exclusive use. The applicant is proposing a 6 feet by 20 feet (120 s.f.) covered porch for each unit.



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To be entitled to bulk variance relief, the applicant must ultimately provide proof to satisfy the criteria pursuant to N.J.S.A. 40: 55D-70c for the bulk variances.

C. Site Requirements & Layout

1. The applicant is seeking a total of five building lots. Given the dual roadway frontage, each proposed lot will have frontage and access to a municipal street. No new roadways are proposed.
2. The applicant is proposing a one-car garage and driveway combination for each unit, yielding at least two (2) off-street parking spaces per dwelling, which is consistent with the RSIS standards for three-bedroom units. The four-bedroom unit (lot 7.011) would require 2.5 parking spaces. The applicant shall provide testimony on the adequacy of the proposed number of parking spaces for this unit, considering the driveway width and length.
3. The limits of all proposed curb, sidewalk, and asphalt shall be clearly shown on the plans. There is existing curb and sidewalk along Miller Street that will need to be adjusted. There is no curb or sidewalk along East North Street along the frontage of this property. The Board should determine if adding curb and sidewalk there would be appropriate.
4. We recommend half-section milling, base repair where needed, and 2" surface course replacement across the frontage of the project.
5. Construction details should be provided for the various improvements that will be required.
6. Detailed plot/grading/stormwater management plans should be provided.

D. Traffic Impact

1. The applicant has not provided a traffic impact report. Given the size of the site and scope of the proposed improvements a detailed report is not required. However, testimony should be provided regarding the project's impact to the surrounding road networks.
2. The applicant shall provide testimony on the trash and recyclables to be generated with the proposed use, along with the process, times, and frequency of refuse pickup.

E. Grading, Drainage, & Utilities

1. The proposed development will not disturb an area exceeding 1 acre, nor will it create more than a quarter acre of new impervious surfaces. Therefore, the project is not considered a "major development" as defined by NJAC. 7:8 and is not subject to the NJDEP Stormwater Management stormwater quantity, quality and recharge requirements of a major development.
2. While the project is not considered a major development, the applicant is proposing to increase impervious coverage. The applicant shall provide testimony confirming that the increase from pre- to post-development stormwater runoff is de minimis. Additional stormwater runoff mitigation measures may be required.



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3. The applicant shall confirm there will be no adverse drainage impacts to the adjacent properties as a result of the proposed improvements.
4. The applicant shall provide testimony regarding the suitability of existing utility connections and/or additional utility connections or improvements necessitated by the subject application.

F. Landscaping & Lighting

1. Per Ordinance Section 21-65.10.A, all areas not devoted to structures, paving, or other required uses shall be appropriately graded, landscaped, and maintained in accordance with a landscaping plan approved by the Board. No landscaping has been provided.
2. We recommend street trees be provided as required under Ordinance Section 21-65.10.B.
3. No landscaping is proposed around the proposed buildings and throughout the site. We recommend additional shrubs and tree plantings be provided, along with increasing the diversity of plant species to avoid the hazards of monoculture and enhance visual interest.
4. No lighting is indicated on the plans. The applicant should provide testimony on their lighting intent.

G. Miscellaneous

1. It should be noted that this property is located within the "AE" flood zone with a Base Flood Elevation (BFE) of 11 feet. The applicant shall confirm the elevations on the individual architectural plans. Additionally, it is recommended that the applicant obtain an Elevation Certificate for the subject property.

We defer further review to the Flood Plain Administrator and Construction Official for any applicable building requirements accordingly.

2. The project site is located in the Coastal Area Facilities Review Act (CAFRA) Zone. The applicant shall comply with any applicable NJDEP requirements and should confirm any specific restrictions and/or permitting requirements accordingly. We recommend a jurisdictional determination be provided. We defer further review to NJDEP.
3. The applicant shall provide testimony as to the proposed locations of any mechanical equipment including but not limited to A/C units and backup power generators.
4. The Building Department should review the architectural plans for ADA compliance.
5. The applicant will ultimately be obligated to comply with the Borough's Affordable Housing obligations/requirements.
6. A note shall be added to the plans indicating that all improvements are to be ADA compliant, where applicable.
7. A note shall be added to the plans stating that any/all existing curb, sidewalk, roadway, and other off-site objects damaged by construction should be repaired and/or replaced to the satisfaction of the Borough Engineer.



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8. The applicant should be aware that construction of habitable space below the base flood elevation could subject this space to inundation by floodwaters. This construction could also have an impact on the applicant's future flood insurance premiums. The applicant should clarify any/all uses of ground floor area.
9. Should this application ultimately secure Board approval, a plat consistent with the State's Title Recordation Act will be required.
10. Approvals or waivers should be obtained from any agencies having jurisdiction. These may include, but shall not be limited to, the following:
 - a. Monmouth County Planning Board
 - b. Freehold Soil Conservation District
 - c. New Jersey Department of Environmental Protection
 - d. Construction Office
 - e. DPU/DPW
 - f. Fire Official

Should you have any questions or require any additional information, please call.

Very truly yours,

T&M ASSOCIATES

EDWARD W. HERRMAN, P.E., P.P., C.M.E., C.F.M.
LAND USE BOARD ENGINEER

EW H

cc: Michael Muscillo, Borough Administrator (via email)
Ron Cucchiaro, Esq., Land Use Board Attorney (via email)
Richard Stockton, PLS; Applicant's Surveyor (rstocktonnj3@gmail.com)
LDN Real Estate, LLC; (dan@djfconstructionllc.com)(emval6@verizon.net)
Kevin Kennedy, Esq.; (kevinkennedy@verizon.net)