



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## **LAND USE BOARD RESOLUTION 2023-08**

### **MEMORIALIZATION OF MINOR SITE PLAN FOR A CONDITIONAL USE APPROVAL WITH ANCILLARY VARIANCE RELIEF**

**Approved: December 20, 2022**

**Memorialized: February 9, 2023**

#### **IN THE MATTER OF THE HONORABLE PLANT, LLC. APPLICATION NO. LUB 2022-08**

**WHEREAS**, an application for minor site plan approval for a conditional use with ancillary variance relief has been made to the Borough of Highlands Land Use Board (hereinafter referred to as the "Board") by The Honorable Plant, LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 46, Lot 3, as depicted on the Tax Map of the Borough of Highlands (hereinafter "Borough"), and more commonly known as 123 Bay Avenue in the CBD (Central Business) Zone and CBD Redevelopment Overlay (C-RO-3) Zone; and

**WHEREAS**, a public hearing was held before the Board on December 20, 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 18,000 s.f. and is improved with a two-story 3,980 square feet footprint, mixed-use building containing vacant retail space on the first floor and residential apartments on the second floor. The subject Property is located in the Central Business District (CBD) Zone and the CBD Redevelopment Overlay 3 (C-RO-3) Zone of the Borough with dual frontage along Bay Avenue (County Route 8) and South Second Street.

2. The Applicant is seeking minor site plan approval for a conditional use with ancillary variance relief to convert the first floor of the mixed-use building into a cannabis retail store while maintaining the existing second floor residential apartment space. The proposed cannabis retail use is a permitted conditional use. The Applicant is seeking variance relief to permit a minimum side yard setback of five (5) feet, whereas a side yard setback of 0.46 feet exists and is proposed to remain. The Applicant is also seeking variance relief from the requirement of a maximum lot coverage of 80%, whereas 86.1% coverage is existing and 90% coverage is proposed.

3. Counsel for the Applicant, Edward J. McKenna, Jr., Esq. stated that the Applicant was seeking minor site plan approval to permit a conditional use. Before proceeding with presenting the application, Mr. McKenna stated that the Applicant complied with all conditional use requirements.

4. The Applicant's Engineer, Andrew Stockton, P.E., P.P. testified that the subject Property was identified as Lot 3 in Block 46 and was located on the southwest side of Bay Avenue across from its intersection with Jackson Street and with frontage on the northeast side of South 2<sup>nd</sup> Street. He stated that the subject Property was in the CBD (Central Business District) Zone and the C-RO-3 Overlay Zone. Mr. Stockton further testified that the existing building was a

mixed-use which previously had a pizzeria on the first floor and two (2) current residential apartments on the second floor. He stated that an associated parking lot existed that was in need of repair.

5. Mr. Stockton testified that the Applicant was proposing to repave the parking lot surface to provide twenty-nine (29) parking spaces. He explained that twenty-seven (27) of the parking spaces would be 9 feet x 18 feet and two (2) parking spaces would be ADA compliant at a size of 8 feet x 18 feet with an 8 foot island between the two (2) ADA compliant spaces. Mr. Stockton further testified that the frontage of the building on Bay Avenue had existing curb and a concrete sidewalk with brick pavers. He stated that an exterior staircase on the side of the building provided access to the residential apartments on the second floor. Mr. Stockton further stated that a concrete sidewalk was located along the side of the building for two-thirds of the building's length. He further stated that a concrete pad was located at the rear of the building adjacent to a loading door and a man door and utility sidewalk. He then explained that a church was located adjacent to the subject Property to the west. Mr. Stockton further testified that the building had a bump out on the first floor that was approximately 0.2-0.3 feet from the property line shared with the church.

6. Mr. Stockton next testified that the existing utilities would remain. He stated that the utilities included gas, water, sewer, and overhead electrical and cable wires connected through Bay Avenue. Mr. Stockton noted that there may be sewer connection to South 2<sup>nd</sup> Avenue, as well. He also stated that a utility pole within the parking lot would be surrounded with a green island and bike rack. Mr. Stockton further testified that the Applicant was proposing to

reconfigure the impervious coverage to provide 1,800 square feet, or 10% of the subject Property as open green space.

7. Mr. Stockton further stated that customers of the adjacent bakery often parked in the subject Property's parking lot. He testified that the bakery leased one (1) or two (2) parking spaces, but that customers often used more. Mr. Stockton explained that the Applicant was proposing twenty-nine (29) parking spaces, but only eleven (11) or fourteen (14) parking spaces were required, depending on conflicting sections of the ordinance. He stated that the Applicant factored in the bakery parking when designing the parking lot. Mr. Stockton further testified that there was no need for an ADA ramp because access to the building and parking lot was at grade.

8. Mr. Stockton next testified that the Applicant did not need "d(3)" variance relief. He stated that cannabis retail was a conditionally permitted use and noted that the conditions were: (1) no consumption of cannabis inside or outside; (2) the use would not be located within 1,000 feet of a school; and (3) that the building comply with the design standards of the overlay zone.

9. Mr. Stockton explained that proposal complied with design standards: §21-65.7 driveways complied; §21-65.9 grade and soil removal was not needed; §21-65.10 landscaping would comply; §21-65.11 lighting would comply; §21-65.13 loading was existing and was proposed to remain unchanged; §21-65.14 sufficient off street parking was provided; §21-65.15 the parking lot would be repaved to specifications; §21-65.17 sidewalk was existing and a new sidewalk along the side of the building at seven (7) feet in width was proposed to the entire length of the building; §21-65.19 signage would comply; §21-65.20 solid waste was in a trash enclosure with a dumpster, which the Applicant may not need the entire dumpster space

because any cannabis trash was separate and complied with State regulations; and, §21-65.21 utilities were sufficient.

10. Mr. Stockton also explained that the Ordinance calculating the number of parking spaces was different in two (2) sections. The first calculation permitted not including the first 1,000 square feet for the Floor Area Ratio (FAR), then required one (1) parking space for every 300 square feet. He stated with the first calculation, would require ten (10) spaces, then an additional four (4) spaces for the residential apartments for a total of fourteen (14) parking spaces. Mr. Stockton next explained that the second calculation using a business use chart required one (1) parking space for every 600 square feet, which would require eleven (11) total parking spaces. He stated that the Applicant was providing twenty-nine (29) parking spaces.

11. Mr. Stockton further testified that the Applicant removed a three (3) foot tall wall from the plans. He stated that removing the wall would discourage potential loitering by customers. Mr. Stockton further testified that the maximum permitted impervious coverage was 80%, whereas 86.1% was existing, and 90% was proposed. He stated that the proposed impervious coverage was compliant with the design standards requiring 10% of the subject Property to be landscaping. Mr. Stockton also testified that there were exterior and interior improvements proposed for the building.

12. The Board Engineer advised that he concurred with the testimony provided that the proposal was compliant with the design standards. He also advised that there was a typographical error in his report stating that the subject Property was in the C-RO-2 Overlay zone, whereas the subject Property was in the C-RO-3 Overlay zone. In response to questions from the

Board, Mr. Stockton testified that the Applicant was not proposing anything that was relevant to the differences between the C-RO-2 Overlay zone and the C-RO-3 Overlay zone.

13. In response to questions from the Board Engineer, Mr. Stockton testified that the Applicant would be providing at least one (1) EV charging parking space. The Board Engineer recommended that the Applicant provide two (2) EV chargers, even though only one (1) was required.

14. In response to further questions from the Board Engineer, Mr. Stockton testified that the ordinance permitted a maximum height of a fence of four (4) feet within the frontage of a property or permitted a maximum height of a fence of six (6) feet within the frontage if it is behind the front yard setback. Mr. Stockton explained that the existing fence along the frontage on South 2<sup>nd</sup> Street and along the adjacent property line was six (6) feet in height. He stated that the Zone did not have any front yard setbacks resulting in the fence being compliant with the part of the ordinance permitting a maximum height of six (6) feet if it is behind the front yard setback. Mr. Stockton further stated that the adjacent church had an existing fence along its frontage on Bay Avenue and along the shared property line. He noted that the fence along the shared property line near the bump out of the Applicant's building was vinyl and four (4) feet tall. Mr. Stockton further testified that the Applicant proposed to replace the existing wooden fence with a higher quality fence. He stated that the replacement fence would have a gate providing access for emergency vehicles and pedestrians from South 2<sup>nd</sup> Street. He stated that the replacement fence would use black vinyl material, not chain linked.

15. The Applicant's Architect, Catherine Franco, AIA, testified that the Applicant proposed to gut the interior of the first floor. She explained that customers would enter the front

door to a waiting area that would contain fifteen (15) seats. Customers would then enter through a door to the sales and merchandise showroom. Ms. Franco testified that the Applicant was proposing a twenty-five (25) person capacity for the showroom, even though fire code capacity would be forty-five (45) persons. She further explained that the rear of the building would contain a manager's office, security room, receiving and loading area, and employee breakroom. Ms. Franco stated that two (2) ADA compliant bathrooms would also be located within the building. She also testified that storage space would be located within the bump out, which was an existing storage space. Ms. Franco stated that the building would have a full security system, which would include cameras, monitors, and alarms.

16. Testimony was taken from the operator of the Applicant, Elizabeth Stavola. Ms. Stavola testified that she was a nationally recognized cannabis retailer for the previous ten (10) years and had received several awards. She stated that she has operated sixty-five (65) dispensaries over twelve (12) states, including eighteen (18) cultivation and manufacturing facilities. Ms. Stavola further testified that the proposed cannabis retailer would be family operated between herself and her daughter. She stated that she lived in neighboring Middletown Township which would allow her to operate the proposed cannabis retailer locally.

17. Ms. Stavola next testified that the security of the building would include a combination of electrical and physical security barriers. She stated that there would be cameras inside and outside of the building. Ms. Stavola also testified that security guards would be hired from an outside company and had former military or law enforcement experience. She stated that the subject Property would be under surveillance 24/7.

18. Ms. Stavola next testified that the hours of operation would be 10am to 7pm Monday through Saturday and 10am to 5pm on Sunday. She stated that the average length of time a customer would be on site would be fifteen (15) to twenty (20) minutes. Ms. Stavola testified that she anticipated having six (6) to eight (8) employees on site, but would adjust that number based on demand needs. Ms. Stavola further testified that the waiting area would accommodate overflow within the building instead of outside the building. She explained that if overflow was greater than what the waiting area could accommodate, a security guard would manage the line outside to keep the line around the building and remain on the subject Property. In response to a concern from the Board, Ms. Stavola agreed to limit the hours of operation on Sunday to 12pm to 5pm in order to not disturb church services next door.

19. Ms. Stavola also stated that the product does not create any nuisances because all of the products would be pre-packaged and vacuum sealed. She also stated that the HVAC system located on the roof would purify the air of any potential unexpected odor. Ms. Stavola also testified that the product was under control of security 24 hours. She explained that each employee would have a classification related to security access. Ms. Stavola stated that the receptionist would only have security access for the waiting room. She further stated that managers and assistant managers would have security access to the office, safe, and loading area. She stated that managers were the only employees authorized to accept deliveries. Ms. Stavola further testified that deliveries would be made by vans operated by secured and licensed delivery services. She stated because the deliveries were made by vans, there was no need for a loading area. Ms. Stavola further testified that trash from the product would be contained within the building in a gun-type safe. She explained that trash from the product could be expired or



defective product. Ms. Stavola explained that the manufacturer would pick up the trash and dispose of it properly at the manufacturer's location.

20. Ms. Stavola next introduced an exhibit of ten (10) pages which were before and after photographs of the Applicant's other locations as Exhibit A-1. Ms. Stavola testified that the Applicant proposed to renovate the existing building similarly to the Applicant's other locations depicted in Exhibit A-1.

21. In response to questions from the Board, Ms. Stavola explained that the initial application did not propose any changes to the exterior of the building, but after discussion with the owner of the building and architect, the Applicant decided to make exterior upgrades. She testified that exterior upgrades would comply with the design standards and the appearance would fit with the surrounding area.

22. In response to further questions from the Board, Ms. Stavola testified that the maximum number of employees she would anticipate having on-site at the same time would be twelve (12). She explained that would be on busy days, such as April 20 (4/20), which is day of celebration within cannabis culture. She stated that as an experienced operator, she often offered discounts on April 19 in order to encourage customers to visit the location on other days than April 20 and spread the demand over multiple days.

23. In response to further questions from the Board, Ms. Stavola testified that the flow of customers would be steady throughout the day and not have a single peak. She explained that customers may visit during their lunch break or after work. Ms. Stavola further testified that she understood the Board's concern of lines of people out the door. She explained that the existing dispensary in Eatontown had a maximum capacity of twenty (20) persons and that a line

of customers would often form outside the door. She stated that this proposed dispensary had much greater capacity with a waiting area within the building, so a line of customers would not form outside the door.

24. Ms. Stavola next explained the State licensing process. She explained that the Applicant has applied for a conditional license. Ms. Stavola stated that the conditional license can be for anywhere in the State. She stated that an Applicant was then required to obtain planning board approval and building permits within the municipality that the dispensary is to be located. She further explained that an Applicant would then convert the conditional license to an annual license. The State regulatory board would then inspect the subject Property for compliance. Ms. Stavola further testified that the Applicant did not presently operate any cannabis dispensaries in New Jersey.

25. Testimony was next taken from Michael Salerno, who was identified as the owner of the subject Property. Mr. Salerno testified that renovations were not proposed with the initial application, however, he stated he was encouraged by the appearance of the Applicant's other locations (depicted in Exhibit A-1) to make renovations to the exterior. Mr. Salerno testified that the renovations would comply with the design standards of the Zone. He stated that the existing façade material would be an imitation stucco. He stated that the material would be upgraded.

26. In response to questions from the Board, Mr. Salerno testified that he chose not to expand the second floor to add more apartments because construction would be too time consuming. He stated that the conditional license had an expiration of six (6) months. Ms. Stavola clarified that the conditional license had six (6) months to convert to an annual license, but there

were no time restrictions on construction. He stated that the Applicant wanted to be operational as soon as possible.

27. The Applicant's Planner, Andrew Janiw, P.P., AICP, testified that the Applicant was seeking a conditionally permitted use. Mr. Janiw testified that the conditions to permit a cannabis retailer included no consumption of cannabis on premises, and not be within 1,000 feet of a school. He stated that the term "school" was not defined in the Ordinance. Mr. Janiw further testified that ordinance was rooted in the State criminal code N.J.S.A. 2C:35-7 (Distribution on or within 1,000 feet of a school property). He further stated that N.J.S.A. 2C:35-7 defined "school" as "any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board." Mr. Janiw further testified that the criminal statute mimicked the Federal statute. He stated that the Redevelopment Plan also made a distinction between "school" and uses that may use the word "school", such as a dance school which were not schools. Mr. Janiw concluded that the Redevelopment Plan intended the term "school" to be defined similarly to the criminal code and not a colloquial meaning of "school."

28. Mr. Janiw next referenced an Aerial Photo of the subject Property with a 1,000-foot radius line, which was included in the Application packet. He stated that the closest school to the subject Property was Highlands Elementary School, which was outside of the 1,000-foot radius. Mr. Janiw therefore testified that the proposal did not require a "d(3)" variance relief because the proposal complied with the conditions of the permitted use.

29. Mr. Janiw next testified that the Applicant was seeking two (2) bulk variances. He stated that the Applicant was seeking relief from the side yard setback for the existing bump out. Mr. Janiw explained that most of the building was compliant with the five (5) foot side yard

setback requirement with the exception of the bump out. He further testified that the Applicant was seeking relief from the maximum permitted impervious coverage requirement. Mr. Janiw stated that the maximum permitted impervious coverage was 80%, whereas 86.1% was existing and 90% was proposed. He explained that the increased impervious coverage would facilitate better circulation of the parking lot. He also stated that with an impervious coverage of 90%, the proposal would still comply with the design standard requiring 10% of the subject Property be landscaped.

30. Mr. Janiw further stated that the variance relief could be granted under the c(2) criteria. He testified that the bump out could be granted under the c(1) hardship criteria, as well, because it was an existing structure and there had not been any negative impact on the surrounding area. Mr. Janiw explained that the increased impervious coverage was a better design of the parking lot because it would improve circulation, number of parking spaces, ADA compliant spaces and pathway, and landscaping. He stated that the subject Property was an appropriate location for the use because it was conditionally permitted in the zone and complied with the conditions. Mr. Janiw also testified that the proposal created a desirable visual environment.

31. Mr. Janiw further testified that he considered whether the proposal would create a nuisance when evaluations the negative criteria. Mr. Janiw concluded that the proposal would not create any nuisance. He stated that ample parking would exist, additional noise or odor would not be created, and the operation as testified to by the professionals and expert would not cause any nuisance. Mr. Janiw further stated that the Applicant had agreed to limit the Sunday hours and that additional trash would not be created because the cannabis related trash would be

contained within the building. Mr. Janiw further testified that the master plan had contemplated this use.

32. In response to questions from the Board, Mr. Janiw testified that other permitted uses in the zone, including the previous restaurant on the subject Property, generated more traffic. He stated that the cannabis retailer would have a consistent flow of customers throughout the day, which was less intense than a restaurant.

33. The Applicant's Traffic Engineer, John McCormack, P.E., PTOE, testified that the Institute of Traffic Engineers (ITE) has created trip calculations for a cannabis dispensary. He stated that a 4,000 square foot cannabis dispensary would generate forty (40) customers per an hour. He also explained that customers would not stay at the location for the entire hour. Mr. McCormack further testified that he examined three (3) other cannabis dispensary in August 2022. He explained that the trip generations he observed were similar or less than the ITE trip generations, typically thirty-five (35) customers per an hour. Mr. McCormack further testified that the ITE recognized the consistent flow of customers as Ms. Stavola had testified to earlier. He stated that the cannabis retailer generated less traffic than the gas station and liquor store across the street and would generate similar traffic to the previous restaurant use on the subject Property.

34. Mr. McCormack further testified that he did not perform a traditional traffic study, instead he relied on NJDOT traffic data. He stated that NJDOT collected data on Bay Avenue in 2018 and 2019. Mr. McCormack testified that the NJDOT data reflected 500 trips per hour on Bay Avenue. He stated that adding thirty-five (35) to forty (40) trips per hour would not result in any noticeable difference. Mr. McCormack testified that the Levels of Service (LOS) in the area would

not change. Mr. McCormack further testified that the parking lot was designed per industry standards and that the number of parking spaces would double the number of parking spaces required.

35. In response to questions from the Board, Ms. Stavola testified that there would not be a need for a roped line like the cannabis dispensary in Eatontown. She stated that there were two (2) presently operating cannabis dispensaries in the area, Eatontown, and Neptune Township. Ms. Stavola testified that the dispensary in Neptune Township was approximately 4,000 square feet, similar to this application, and that there were no issues with lines outside of the building. She stated that the dispensary in Eatontown was only 1,500 square feet and, as a result, had issues with lines outside of the building. Ms. Stavola explained that she did not know the number of parking spaces at the Neptune Township dispensary because it was within a strip mall facility.

36. Mr. McCormack then testified, in response the question from the Board, that the ITE parking standard for a cannabis dispensary was fifteen (15) to twenty (20) parking spaces at peak hours. He explained that the size of the building did not matter in calculating the need for parking because the demand was the same no matter the size of the building.

37. In response to questions from the Board Engineer, Mr. Stockton testified that he had not had any conversations with the Borough Construction Official or Flood Plain Manager concerning the application. He explained that the subject Property was located within the AE Flood Zone as was all of the downtown area. Mr. Stockton also stated that the elevation of the subject Property was five (5) to six (6) feet, so the first floor of the building was within the flood hazard area. He also testified that there were no requirements to make the first floor

compliant with FEMA construction guidelines. Mr. Stockton stated that he could investigate dry proofing or wet proofing the first floor, but he would have to consult with the Borough Construction Official or Flood Plain Manager. Ms. Franco added that the Building Code required commercial buildings in a flood plain to use flood resistant material. She testified that the building would have to comply with that requirement in order to obtain a construction permit.

38. The hearing was opened to the public at which time Steve Solop, 205 Bay Avenue, asked if the traffic calculations included increased traffic generated from the Seastreak Ferry. Mr. McCormack responded that the NJDOT data was collected in 2018 and 2019. He explained that he added a multiplier to bring the traffic count to reflect current conditions. Mr. McCormick testified that the Seastreak Ferry traffic was contemplated within the background traffic and the LOS did not change. He concluded that the proposal would not have any impact on traffic.

39. Mr. Solop next asked if there were any statistics on increase in crime from cannabis retailers. Ms. Stavola testified that crime has generally decreased as a result of cannabis retailers because of the increased security presence in the area. She further stated that security cameras of cannabis retailers have been used by law enforcement to aid in the investigation of crimes in the area.

40. Mr. Solop next asked about the profile of the customers the cannabis retailer would attract. Ms. Stavola state that the profile would be the same as everyone present at this hearing. The Board recognized that it was not appropriate to consider any profile of customers and its decision would not be based upon this testimony.

41. Martin Kiely, 39 Shore Drive, asked if there were negative impact on the traffic or parking in the area.

42. Diane McCoy, 21 Shore Drive, asked if Catholic schools were considered “schools” under the definition of the criminal statute because they were run by the Catholic Diocese, not a board of education.

43. Trisha Romero, 31 Cornwall Street, asked how many cannabis retailers could be approved by the Board. The Board explained that each application before the Board was considered separately and equally. The Board could approval each application that came before the Board, however, the State limited the number of cannabis retailers in the Borough to one (1) retailer. The State would choose which application to approve for licensure for the Borough.

44. Ms. McCoy returned to testify that the sooner an application was approved by the Board, the sooner the application could convert its conditional license to an annual license and be approved by the State to operate within the Borough. The Board reiterated that it was not basing any decision on who applied first, rather was only considering each application on the merits as they come before the Board.

45. The Board recommended that the Applicant mark the parking spaces as parking for the Applicant customers only in order to keep customers of the adjacent bakery from using the Applicant’s parking spaces. The Board believes signage would help with enforcement of the parking spaces. The Applicant agreed to mark the parking spaces.

46. 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 minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) as well as conditional use approval pursuant to N.J.S.A. 40:55D-67 should be granted in this instance.

The Applicant has proposed a conditional use. The Board finds that all conditions have been satisfied and that variance relief pursuant to N.J.S.A. 40:55D-70d(3) is not required. In reaching this legal conclusion, the Board specifically considered the definition of the term "school" contained within the conditional use ordinance. Neither the conditional use ordinance nor the Borough Code define "school". The Board defines the term in this context as an institution for the teaching of children. While this would certainly include both public and private schools, the Board finds that the instruction provided at the nearby church falls outside of the scope of the term. This should not diminish the value of such instruction, but it is not contemplated within the term as used in this Ordinance.

The Board finds that the Applicant has proposed a conditionally permitted use in the Zone but does require bulk variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also

supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds the Applicant did not provide any testimony in regard to the origins of the shape of the subject Property. The Board therefore cannot find that any purported hardship was not self-created. A self-created hardship is still relevant even if created by a prior owner. The Board, therefore, cannot grant variance relief pursuant to N.J.S.A. 40:55D-70c(1).

The Board finds, however, that the positive criteria has been satisfied pursuant to N.J.S.A. 40:55D-70c(2). The Board finds the bump out contributes to the characteristics and attractive

aesthetics of the subject Property. It therefore promotes a desirable visual environment. The Board also finds that the proposed impervious coverage is appropriate for the use and provides sufficient landscaping. The Board is also persuaded that the design results in the greatest efficiency and safety for the internal circulation. This promotes the interests of the entire community and not just the Applicant. The goals of planning enumerated at N.J.S.A. 40:55D-2 have been advanced and the positive criteria has been satisfied.

The Board also finds that the negative criteria has also been satisfied. The subject Property will contribute to the aesthetics of the entire neighborhood. The grant of variance relief also will not result in an increase in traffic, noise or odors not already contemplated by the Ordinance. The grant of variance relief will therefore not result in substantial detriment to the public good or substantially impair the intent or purpose of the Zone Plan and Zoning Ordinance. The negative criteria has therefore been satisfied.

The Board finds that the positive criteria substantially outweighs the negative criteria and concludes that variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

The Board finds that with the exception of the above relief, the Applicant complies with all other zoning, site plan and design ordinance requirements. The Applicant has also agreed to comply with all conditions contained herein. Based upon the foregoing, the Board finds that minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 and conditional use approval pursuant to N.J.S.A. 40:55D-67 are appropriate in this instance.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Highlands on this 9<sup>th</sup> day of February 2023, that the action of the Land Use Board taken on December 20, 2022, granting Application No. LUB 2022-08, for minor site plan approval pursuant to N.J.S.A. 40:55D-46.1

with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and conditional use approval pursuant to N.J.S.A. 40:55D-67 is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvements 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 comply with all applicable design standards.
4. The Applicant shall depict the parking spaces for the 123 Bay Avenue use as reserved subject 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. Hours of operation on Sundays shall be limited to the hours between 12pm and 5pm.
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.

  
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Robert Knox, Chairman  
Borough of Highlands Land Use Board

ON MOTION OF: Chair Knox

SECONDED BY: Vice Chair Tierney

ROLL CALL:

YES: Mayor Broullon, Chief Burton, Mr. Kutosh, Ms. LaRussa, Councilmember Olszewski, Mr. Zill, Vice Chair Tierney, Chair Knox

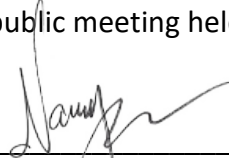
NO: None

RECUSED: Mr. Montecalvo

ABSENT: Ms. Chang, Mr. Ziemba

DATED: February 9, 2023

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 9, 2023.



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Nancy Tran, Secretary  
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS PLANNING BOARD

EXHIBITS

Case No. LUB 2020-08 / The Honorable Plant, LLC

Minor Site Plan Approval with

Ancillary Variance Relief

December 20, 2022

- A-1 Land Use Board Application, dated 10/21/2022 (7 pages)
- A-2 Architectural & Site Plans prepared by Rathunas LLC, dated 10/21/2022 (4 pages)
- A-3 Site Plans prepared by Rathunas LLC dated, 10/21/2022 (1 page)
- A-4 Zoning Permit Application dated, 10/10/2022 (1 page)
- A-5 Letter from Zoning Official, dated 10/19/2022 (1 page)
- A-6 Resolution 22-216 of the Borough of Highlands, dated 10/5/2022 (1 page)
- A-7 Planning Statement prepared by Beacon Planning and Consulting Services, LLC, dated 10/27/2022 (3 pages)
- A-8 Business Plan/Operational report/narrative, undated (15 pages)
- A-9 Architectural & Site Plans prepared by Rathunas LLC, dated 11/23/2022 (7 pages)
- A-10 Color Rendering Exhibit prepared by Andrew R. Stocton, P.E., P.L.S., of Eastern Civil Engineering, LLC, dated 11/29/2022 (1 page)
- B-1 Board Engineer Completeness Letter by Edward Herrman, dated 11/2/2022 (4 pages)
- B-2 Board Engineer Review Letter by Edward Herrman, dated 11/16/2022 (13 pages)
- B-3 Board Engineer Amended Review Letter by Edward Herrman, dated 12/16/2022 (15 pages)