

Mr. Fox offered the following Resolution and moved on its adoption:  
11/6/14

**RESOLUTION APPROVING USE AND BULK VARIANCES  
FOR GROVER**

WHEREAS, the applicant, CHRISTOPHER GROVER, is the owner of property at 321 Bay Avenue, Highlands, New Jersey (Block 88, Lot 5), which is at the corner of Bay and Waterwitch Avenues; and

WHEREAS, the applicant filed an application for use and bulk variance relief, seeking to construct a new mixed use retail building (on the first floor) with residential uses on the second and third floors; 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 October 2, 2014; and

WHEREAS, the Board heard the testimony of CHRISTOPHER GROVER, DIANA GROVER, and their architect, KEITH MAZUREK; and

WHEREAS, many residents appeared to ask questions and to testify in support of the application. Those testifying in support of the application were ARNOLD FOUG, ED MCNAMARA, NANCY BURTON, KIM SKORKA, GARRETT NEWCOMB, BARBARA IANUCCI, CAROLYN

BROULLOM, MELISSA PEDERSEN, ANGUS MAC DOUGAL, BRYAN ADAMS and GREG WALLS; and

WHEREAS, no persons appeared in opposition to the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Site plan review application (3 pages);
- A-3 Zoning officer's list of variances necessary;
- A-4 10/16/63 survey by Richard Stockton;
- A-5 Architectural plans by Keith Mazurek dated 7/31/14 (2 sheets);

AND, WHEREAS, the following exhibits were marked into evidence as Board exhibits:

- B-1 8/21/14 Board engineer (ROB 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 B-1 Overlay Zone.
2. The subject premises were an old hardware store and have been left in the condition where

substantial work is required to restore the building to an operating commercial enterprise.

3. The existing building has retail on the first level and two apartments on the second level. The applicant proposes retail use on the first level, three apartments on the second level, and three apartments (for a total of six apartments) on the third level.

4. The applicant proposes to retain the existing footprint, and simply increase the height of the building to add an additional level. As such, the structure will cover the entire property, as it does now.

5. There are currently the following setbacks: 17.9 feet from Waterwitch Ave.; .1 foot from Bay Avenue; and 5 feet from the southerly side line. All will continue under the applicant's plan.

6. The apartment units will be approximately 750 square feet to 1,100 square feet in size.

7. The applicant, as well as many of those who appeared and testified at the hearing, is desirous of having this corner of the borough become more attractive to the community, especially since it is

the entry point for most people coming into the borough.

8. Since 3-bedroom units are not allowed in the zone, the applicant has requested approval for six 2-bedroom apartments.

9. There are no current tenants in the building. There were tenants there for quite some time, however, they were not paying rent. Of the two existing apartments, one is a 4-bedroom unit, and the other is a 2-bedroom unit.

10. There are two municipal parking lots nearby, one approximately 300 feet away, and the other approximately 600 feet away.

11. The applicant also owns 5 feet of an alley alongside of the building.

12. The applicant proposes to flood proof the ground level of the structure.

13. The applicant inquired as to the possible purchase of the neighboring lot, however, it is not for sale.

14. The applicant testified that he posted information on Facebook as to his proposed plan and had 15 responses within the first few days, thereby indicating that there is certainly a demand for

residential apartment uses downtown in the Borough of Highlands. He also received numerous calls regarding the retail space.

15. The applicant made his architectural rendering available to people in town to see and also provided it with his application. The response has been overwhelmingly positive, as indicated by many of those who testified at the hearing.

16. This building is a cornerstone of the borough.

17. This particular applicant has been in the construction business for 35 years, and many of those who testified did so by highlighting the attractive projects he has constructed thus far.

18. The owner lives just outside the borough and, therefore, will be nearby to the subject property.

19. There will be washers and dryers in each unit, which are the small stackable type. Each unit will have its own heat and hot water utilities and meters.

20. Several small business owners in the borough have lent their encouragement to this project. Many hope that the reconstruction of this building will be

contagious, and form the impetus for others to do the same in other buildings in the downtown area.

21. Since the site does not have any on-street parking, and did not have on-street parking in the past, there was discussion by the board as to the parking requirements. The applicant and several others testified that this structure will be similar to those you see in places such as Hoboken, where people have access to the waterfront for ease of getting to and from work and, therefore, are accustomed to walking to their homes or from their cars to their homes with groceries.

22. As at least one witness testified, the applicant's proposal will create exactly the environment the borough should be encouraging, both of individual properties and those others who may seek to invest in the downtown area, whether current owners or prospective buyers.

23. The board was struck by the overwhelming community support for this project, both from those who own homes in the borough as well as those who have business interests in the borough. On the flip side, no one appeared to give testimony in opposition to the application, nor did anyone ask any questions that

might be interpreted as a negative comment about the application.

24. A plan will need to be constructed for the lighting for the alleyway and sidewalks, which plan shall have to meet the requirements of the borough ordinances.

25. The utilities on the property require upgrading, especially sewer. The details of same, together with the restoration and road repair, will need to be reviewed by the Engineer to see if they satisfy the requirements of the borough ordinance.

26. Similarly, the sidewalk installation will need to be reviewed by the Engineer.

27. Retail sales and services are permitted as principal uses in both the B-1 and B-1 Neighborhood Business Overlay Zones. Residences, however, are not permitted, nor are they conditional uses in the B-1 Zone; yet they are permitted conditional uses in the B-1 Neighborhood Business Overlay Zone, as long as they are above the first (ground) level and meet the standards required in Borough Ordinance 21-97. Since this property is in the B-1 Overlay Zone, but does not meet all of the standards required in Ordinance 21-97, a d(3) variance is required for the following

deviations from the standards prescribed for a conditional use:

A. Maximum of 1 floor allowed for residential use. Here 2 floors of residential use are proposed.

B. Maximum of 33% of the floor area is allowed for residential use. Here 67% of the floor area is proposed for residential use.

C. Ordinance requires 15 parking space for residential uses and 11 parking spaces for business use. No parking spaces are proposed with this application.

D. Each apartment must have a minimum gross floor area of 1,000 square feet. 4 of the 6 proposed apartments have less than 1,000 square feet of gross floor area.

E. 350 cubic feet of storage space is to be provided for each apartment, in addition to any storage areas within each dwelling. No additional storage space is provided for any apartment in this application.



F. Adequate provisions must be provided for trash and garbage. Thus far, no provisions have been proposed; however, the applicant did testify that the probability is that the residential trash receptacles will be stored in the alleyway, as a result of which the property owner will need to make arrangements for the removal of the same, since those cans might not otherwise be placed at the curb for collection by the borough.

28. In addition to the deviations from the conditional use standards, and the use variance for mixed uses in the zone, the applicant also requires a variance for floor area ratio (FAR). Ordinance 21-96F1b maximizes the allowable FAR at 2. In this application the proposed FAR is 2.02, which is a *de minimus* change.

29. A variance is also required for maximum density. Ordinance 21-97L1 permits 8 units per acre at a maximum. In this case, the density approximates 60 units per acre.

30. In addition to the variances set forth above, the following bulk variance is also required:

A. The borough ordinances require a total of 26 parking spaces for this application: 2 spaces per residential unit, plus .05 spaces per unit for public parking; and 1 space for every 250 square feet of office use (an additional 11 spaces). The ordinance further provides, however, that if the applicant can demonstrate that municipal parking is available within 1,000 feet of the subject use, which the applicant has done, the parking requirement may be reduced by the zoning board. Section 21-96.02.G states that if the Board reduces or eliminates the parking requirement of the non-commercial portion of the building, then the applicant shall address the one-time fee to the Borough of Highlands Municipal Parking Capital Improvement Fund as outlined in Section 21-65-14E.2.C. This equates to fifteen spaces multiplied by \$500.00 per space, totaling \$7,500.00.

B. Furthermore, as stated earlier, there are two municipal parking lots nearby, which the Board acknowledged and accepted as

it relates to Borough Ordinance Section 21-65.14E (commercial parking deficiency variance and parking deficiency fee). Therefore, the one-time fee would not be applicable for the commercial portion of the building.

C. At the time of the hearing of this application, the "80% Rule" under Ordinance 21-98A.2 was in effect. That ordinance, however, was repealed, thereby eliminating the requirement to not exceed 80% of the original building footprint, which ordinance amendment was adopted by the Highlands Borough Council on September 17, 2014.

31. In accordance with the language above, a parking variance is needed for the shortage in parking, which variance the Board approves, subject to the applicant making the required contribution.

32. No variance is required for height.

33. This application will take a dilapidated building, dress it up, and improve the appearance of both the building and the streetscape. Many of those appearing at the hearing so testified.

34. The proposed use will preserve the desired downtown business neighborhood character, and also clean it up, and improve both the property and the downtown area.

35. The applicant met the special reasons required by N.J.S.A. 40:55D-70(d) by meeting the special reasons set forth in N.J.S.A. 40:55D-2(a) (the property is particularly suitable to the proposed use, it, promotes the public welfare, and is maintaining the mixed use of the property); and subsection (i) a desirable visual environment will be created by the replacement of an old building in great need of repair, thereby removing an eyesore and creating a nice-looking structure at the entrance to the downtown area of Highlands.

36. The application meets the Medici criteria, in that the property is particularly suitable for the intended commercial use. The residential uses are also compatible with the existing neighborhood uses.

37. With respect to the negative criteria required to be proven under N.J.S.A. 40:50D-70(d), the Board heard from the applicant and many residents and business owners of their full support for having this property developed by the applicant and creating a

pleasant streetscape and environment which will hopefully attract other investors who will improve or replace the older structures in the downtown area.

38. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on October 2, 2014, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of CHRISTOPHER GROVER to construct a new mixed use residential and retail building as set forth on his plans and in his testimony at 321 Bay Avenue, for commercial uses on the first floor and six apartments, three on the second level and three on the third level is hereby approved. Variances are hereby granted for the use variances of (a) mixed residential and commercial use that does not meet the conditional use standards, (b) floor area ratio of 2.01, (c) density of approximately 60 units per acre, (d) parking (no parking on site); and for deviations from the conditional use standards of Ordinance 21-97 requiring a maximum of 1 floor allowed for residential use, maximum 33% of floor area for residential use, 26 parking-space requirement, minimum floor area per apartment unit, minimum storage space per

apartment, and provisions for trash and garbage, as more specifically defined in paragraphs 27 through 29 above; and the bulk variances set forth in more detail in paragraph 30.

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

A. Prior to any building permit or certificate of occupancy issuing, the applicant shall make the required contribution to the borough's parking fund (Ordinance 21-65.14).

B. Providing proof of arrangements being made to have all trash and garbage removed regularly from the property, such proposal to be acceptable to the borough.

C. Adherence to flood zone requirements.

D. Applicant's plans and construction shall meet all state and borough codes.

E. Lighting for both alleyway and sidewalks shall meet the requirements of the borough ordinance.

F. Details for utility upgrade, restoration and repair shall be subject to review and approval by the Borough Engineer.

G. Any damage to the existing pavement, sidewalk and curb shall be repaired or replaced to the satisfaction of the borough; and prior to construction a plan for the same shall be subject to review and approval by the Borough Engineer.

H. Safety fencing and shielding shall be installed, subject to the approval of the Borough Engineer, during construction.

I. Sidewalk upgrades, as necessary, which shall be reviewed and approved by the borough engineer for the Waterwitch Avenue frontage. The Bay Avenue frontage falls within the jurisdiction of Monmouth County.

Seconded by Mr. Kutosh and adopted on the following roll call vote;

**ROLL CALL:**

**AYE:** Mr. Fox, Mr. Kutosh, Mr. Mullen, Mr. Braswell

**NAY:** None

**ABSTAIN:** None

**DATE:** November 7, 2014

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Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of a Resolution adopted by the Zoning Board of Adjustment at a meeting held on November 7, 2014.

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Board Secretary