

APPLICATION TO
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF UPPER

Applicant's Name Strathmere Motel, Inc.

Applicant's Address 117 Mount Vernon Avenue, Haddonfield, NJ 08033

Applicant's Phone No. (609) 707-7258

Applicant's Fax or E-Mail stephenmaloney@verizon.net

Owner's Name Stephen Maloney

Owner's Address 117 Mount Vernon Avenue, Haddonfield, NJ 08033

Relationship of applicant to owner (i.e., tenant, agent, purchaser under contract, same person, or other) Owner

Location of Premises 513 Commonwealth, Strathmere

(Street)

Block(s) 834 Lot(s) 1

(Tax Map Reference)

The premises are situated on the (east, west, north, south) side of East

Commonwealth (street) and are approximately 0 feet

from intersection of Sherman Avenue (landmark or intersection of

another street) The premises are located in the RC zone as shown on the

Zoning Map of the Township of Upper.

PART III

TO BE FILLED IN ONLY IF APPLICATION IS MADE DIRECTLY TO THE BOARD OF ADJUSTMENT OR IF ALTERNATIVE RELIEF IS SOUGHT PURSUANT TO N.J.S.A. 40:55D-70c OR d.
(If inadequate space is provided, attach additional sheet of paper with additional information)

A. Variances being requested (list sections of the ordinance from which variance is requested:

Expansion of a non-conforming use in the RC Zone, and associated bulk and height variances in the zoning schedule. However, due to the request for a use variance, the height and bulk variances are subsumed in the use variance. See Narrative attached.

B. Proposed construction, alteration, conversion or use:

Proposed new 4-story reconstruction of an existing hotel/motel use to modernize the facility, improve accessibility for guests and meet FEMA, State & Municipal Flood Plain Requirements.

C. If site plan or subdivision approval is being requested in conjunction with a use variance request, set forth the following:

Applicant represents a request for the following:

Subdivision:

Minor Subdivision Approval
 Subdivision Approval (Preliminary)
 Subdivision Approval (Final)
Number of lots to be created _____
(including remainder lot)
Number of proposed dwelling units _____
(if applicable)

Site Plan:

Minor Site Plan Approval
 Preliminary Site Plan Approval
[Phases (if applicable) _____]
 Final Site Plan Approval
[Phases (if applicable) _____]
 Amendment or revision to an approved site plan Area to be distributed (sq. ft.) _____

Total number of proposed dwelling units 15
 Request for waiver from site plan review and approval

Waivers requested: _____

Reason for request: _____

1. Said property is 80 FT. x 200 FT., 16,000 S.F.

(give dimensions and area) and has the following existing structures: _____

containing a single two-story motel building

2. If less than the entire lot is to be utilized for the proposed use or construction, dimensions of the portion of the lot to be utilized are: _____

3. Size of proposed building:

At street level 417 S.F.

Feet Front 171.50 FT.

Feet Deep 57.08 FT.

Height 40'-1" to the ridge (from Flood Protection Elevation)
43'-6" to the elevator penthouse (from Flood Protection Elevation)

Stories 4

Feet 43 FT.

4. Setbacks of Primary Structure:

Setbacks of Accessory Structures:

Front 8.58 FT.

Rear 14.34 FT.

Side 15.0 FT.

Side 13.50 FT.

% Building Coverage 41.30%

5. Date property acquired: 2011
6. Has there been any previous appeal, request or application to this or any other Township Boards or the Construction Official involving these permits?
Yes X No _____

If YES, state the nature, date and the disposition of said matter:

Withdrawn before decision.

7. Set forth facts and conditions, including any special reasons, if applicable, which entitle the applicant to the variance relief requested.

See attached Narrative.

8. Set forth why variance relief requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zoning Plan and Zoning Ordinance.

See attached Narrative.

9. All applicants must set forth below or attach to this application the following information (if applicable):

(a) Type of construction (frame, stone, brick, cement, etc.):

Existing Type V-B, Proposed Type V-A Suppressed

(b) Present use of existing building(s) and premises:

Existing two-story motel building

(c) Describe any deed restrictions affecting this property:

None

(d) Total proposed floor area: 12,844 S.F.

(e) Total proposed parking spaces: 19 spaces

(f) Are photographs of land and buildings involved in the application attached:
X yes _____ no

(g) Names and addresses of all expert witnesses proposed to be used: _____

William C. McLees, Architect

5 MAcArthur Boulevard, Somers Point, NJ 08244

Robert Bruce, Engineer

91 Mays Landing Road, Somers Point, NJ 08244

Lance Landgraf, PP, AICP

9 Harvard Avenue, Ventnor City, NJ 08406

(h) Proof of payment of all taxes due and owing on the premises.

10. A legible plot plan or survey to scale (not less than 1" = 100" of the property) indicating the relation of the existing and/or proposed structure with adjoining property and structures accompanies this application. Scale drawings (of not less than .25" = 1" of the proposed building(s) of the existing structure indicating the changes, alterations or additions contemplated will be presented at the hearing, if relevant.

11. A copy of any conditional contract or agreement related to this application must be filed with the application or presented to the Board at the time of hearing.

12. If the applicant is a corporation, partnership or limited liability company, the names and addresses of all stockholders or partners owning a 10% or greater interest in said corporation or partnership shall be set forth in accordance with P.L. 1977 Ch.336.

13. I certify that the foregoing statements and the material submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the Corporation or that I am a general partner of the partnership applicant.

{If the applicant is a corporation this must be signed by an authorized corporate officer. If the applicant is a partnership, this must be signed by a general partner. If the applicant is a limited liability company, this must be signed by the authorized member(s).}

Richard M. King, Jr. /s/

ATTORNEY FOR APPLICANT

14. I certify that I am the Owner of the property which is the subject of this application, that I have authorized the applicant to make this application and that I agree to be bound by the applications, the representations made and the decision in the same manner as if I were the applicant.

[If the owner is a corporation, this must be signed by an authorized corporate officer. If the owner is a partnership, this must be signed by a general partner. If the owner is a limited liability company, this must be signed by the authorized member(s).]

Sworn to and subscribed
Before me this _____
Day of June, 2020

NOTARY PUBLIC

SIGNATURE OF OWNER

I understand that the sum of \$ 3,500 has been deposited in an escrow account. In accordance with the Ordinance of the Township of Upper, I further understand that the escrow account is established to cover the cost of professional services including engineering, planning, legal and other expenses associated with the review of submitted materials and the publication of the decision by the Board. Sums not utilized in the review process shall be returned. If additional sums are deemed necessary, I understand that I will be notified of the required additional amount and shall add that sum to the escrow account within fifteen (15) days.

06/09/2020
DATE

Richard M. King, Jr. /s/

ATTORNEY FOR APPLICANT

NARRATIVE

The present application seeks to replace an outdated 16-unit motel with a modern, flood-compliant, code-compliant 15-unit hotel specifically designed to be both economically feasible yet creatively arranged to provide light air and open space instead of a large box with windows. There is no location in Strathmere where a hotel is a permitted use, and this location is well-suited for the use. The site has demonstrated itself to be able to accommodate a hotel given its location in the Resort Commercial Zone, along a major thoroughfare, surrounded on three sides by streets, and proximate to the beach but not blocking any view of the beach. The lot on which the hotel is to be constructed is 260% of the minimum lot size in the zone. The height of the proposed hotel is consistent with a fair, holistic review of the maximum heights for hotels in the 4 zones in which hotels are permitted by right in the township. A hotel is an entirely appropriate and beneficial use in a shore resort, the subject lot is able to accommodate that use, and the size and design of the hotel is consistent with comparable uses in comparable zones.

I. The Applicable Law.

The following recitation of the law is taken from Price v. Himeji, LLC, 214 N.J. 263 (2013) and is directly applicable to the present use variance with associated height and bulk “variances”.

a. The Use Variance

The MLUL requires an applicant to prove both positive and negative criteria to obtain a use variance. The requirement that a use variance be based on proof of the positive criteria arises from the language of the MLUL, which limits the grant of a use variance to those cases in which there is a showing of “special reasons.” N.J.S.A. 40:55D–70(d). The MLUL does not define special reasons, but subsequent judicial interpretations have ‘infused substantive meaning into the special reasons standard.’ The term ‘special reasons’ takes its definition and meaning from the general purposes of the zoning laws codified at N.J.S.A. 40:55D-2.

Proof of the negative criteria requires the applicant to demonstrate, in accordance with the enhanced quality of proof, both that the variance “can be granted without substantial detriment to the public good” and that it “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

The standard for a use variance has been summarized as requiring a finding “that at the use promotes the general welfare because the proposed site is particularly suitable for the proposed use.” It is a site-specific approach, considering the relationship between the particular property and the community where it is located. Although the availability of alternative locations is relevant to the analysis, demonstrating that a property is particularly suitable for a use does not require proof that there is no other potential location for the use nor does it demand evidence that the project “must” be built in a particular location. Rather, it is an inquiry into whether the property is particularly

suited for the proposed purpose, in the sense that it is especially well-suited for the use, in spite of the fact that the use is not permitted in the zone. See also *Kramer v. Bd. Of Adjustment*, 45 N.J. 268 (1965) (sustaining the grant of a use variance that allowed the replacement of a deteriorating beach-front hotel in a residential zone with a new, more attractive, modern motel.)

b. The Associated Height and Bulk Variances

“There is little doubt about the fact that a use variance, by its nature, carries with it the implication that the ordinary bulk and density requirements of the zone will not be applied.” The Appellate Division has observed that “[a] Zoning Board, in considering a ‘use’ variance, must then consider the overall site design” with the result that “the ‘c’ variances are subsumed in the ‘d’ variance.”

That does not mean that a zoning board can entirely ignore the ordinarily applicable limits on height, for example, when evaluating an application for a use variance. It does mean that the board can, as part of granting a use variance, consider the other requested variances as ancillary to the principal relief being sought.

When a zoning board considers an application for a (d)(1) use variance, it tests the associated requests for density and height variances against a more relaxed standard. That means that the applicant is required to demonstrate, to the board’s satisfaction, “that the site will accommodate the problems associated with a proposed use with [a greater density] than permitted by the ordinance.”

II. The Applicant’s Position

a. The use variance:

A hotel use is particularly well-suited for the proposed location. There is a limited market for the permitted commercial uses, such as churches or office buildings. The site has already supported a hotel use since 1959. A hotel is a traditionally permitted use in the commercial zones of resort islands near the New Jersey shore. The project is supported by special reasons, including those set forth in the subsections of N.J.S.A. 40:55D-2

- (a) Encourage appropriate development for the public health safety, morals and general welfare*
- (b) Secure safety from fire, flood, panic and other natural and man-made disasters.*

The new construction will replace an outdated hotel with a new modern building that will meet current applicable building codes such as those regulating electric service, HVAC, plumbing, emergency ingress and egress and the American with Disabilities Act.

The new motel will also be fully compliant with the applicable flood elevations and requirements, while the existing structure is located on ground level without any of the precautions intended for flood mitigation and safety.

The applicant is also replacing an existing non-conforming septic system with a new/updated septic system that conforms to today's standards

(g) provide sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens

The project is located along a major corridor and transportation route linking the shore resort barrier islands. The "Ocean Drive" is designed to support the tourism industry of Strathmere and the shore in general, and a hotel use is appropriate for this purpose. The lot is of a sufficient size to support a hotel and is one that has been used successfully for this purpose for over 60 years. The property is surrounded on three sides by roadway, and as to the only side not along road, the adjacent homes and others on the same side of the throughway are closer to the ocean than the subject property so ocean views are not affected.

(i) Promote a desirable visual environment through creative development techniques and good civic design and arrangement.

The current building is approximately 100 years old, and was used as a hotel for more than 60 years, and its design is severely outdated. There are air conditioners sticking out of 16 units. The units are very small and not consistent with the expectations of the modern visitor to a shore resort community. The hotel has few of the amenities expected by today's travelers. The unique and creative proposed design achieves a financially feasible design while at the same time breaking up the structure to create open space between buildings, placing a hot tub elevated and centered on the property, and generally presenting a design the architect intended to be compatible with the more modern yet tasteful trends of current construction on the New Jersey shore.

(m) Encouraging coordination of the various public and private procedures and activities shaping land development with a view to lessening the cost of such development and to the more efficient use of land

The lack of open land suitable for development on the barrier islands, including Strathmere, makes this project an efficient use of land for a necessary and appropriate commercial activity, without eliminating any other current uses or structures. It is also efficient to locate a structure that encourages tourism on the primary traffic corridor of the island.

The Tourism industry is also encouraged by the Cape May County Comprehensive plan which includes the policy statement

"To maintain the resort economy." The resort economy is the lifeblood of Cape May County. While the development of other facets of the County's economic base are important and should not be neglected, the County's resort economy should come first in major planning considerations. The major investment in land and buildings is significant and must be coupled with the importance of the County as a regional resource for recreation.

The project represents a 7-figure investment in Strathmere and Cape May County.

The project presents special reasons to support the relief sought, and the site is particularly well suited for the proposed use. The project also does not present a substantial detriment to the public good. The project is aesthetically pleasing, the number of units is reduced, and the use is existing. The site is on the main thoroughfare, there will be compliant parking, it is mostly surrounded by roads, and it avoids a "box" construction thus allowing for light air and open space.

The project also does not impair the intent and purpose of the zone plan or zoning ordinance. Although not a permitted use, the hotel has existed for decades, and there is nothing in the ordinance that would explain why hotels are omitted from a "Resort Commercial" zone, nor is there any indication the hotel use would be more intense or harmful than a bar, tavern or restaurant, all of which are permitted. The township has also created zones off the barrier islands where hotels are permitted and encouraged, so the use itself is not offensive to the ordinance or the objectives of the town to promote tourism. Further, the hotel use is traditionally permitted somewhere on a barrier island within a municipality, so the use would not typically "impair" a zoning plan.

The applicant submits there are special reasons to permit expansion of this non-conforming use on this site which is particularly well-suited for the project, and to do so without substantial detriment to the public good and without substantial detriment to the zone plan or zoning ordinance.

b. The height and bulk variance

The applicant is proposing a height of 40' 1" to the ridge of the building, and 43' 6" to the elevator penthouse. The height limitation of 35' in the Resort Commercial Zone is not applicable to motels/hotels because it is not a use specifically contemplated by the ordinance. However, no one suggests the 35 height be ignored. Instead, it is appropriate review the project, the site, the location and the regulations for height in zones where hotels are clearly permitted. The project is in a shore resort, on the main thoroughfare, in a commercial zone. Hotels are permitted in 4 zones in Upper Township- the Village

Zone and three "Town Center" zones. In the Village Zone, the height maximum is 35 feet. The subject property exceeds the minimums of the Village zone for Area, Lot Frontage, Lot Width and Lot Depth. The subject property also is in a more densely developed area and is in a resort commercial zone. Of course, the subject property is not as large as the minimum lot area in the other hotel zones where a height of 45 feet is permitted. Therefore, an appropriate height for the subject motel would properly fall somewhere between the 35 of the Town Village and the 45 of the other Town Center zones. The design for this hotel calls for a height between the 35- and 45-foot height limits in the other zones, consistent with the above analysis.

TOWNSHIP OF UPPER
SITE PLAN

PRELIMINARY / FINAL

(CIRCLE ONE OR BOTH)

APPLICANT'S NAME STRATHMERE MOTEL, INC.

ADDRESS 117 MOUNT VERNON AVENUE, HADDONFIELD, NJ 08033

PHONE NUMBER 609-707-7258

FAX _____ OR
EMAIL stephenmaloney@verizon.net

OWNER OF PROPERTY STRATHMERE MOTEL, INC.

ADDRESS 117 MOUNT VERNON AVENUE, HADDONFIELD, NJ 08033

PROPOSED DEVELOPMENT NAME THE INN AT STRATHMERE

LOCATION OF DEVELOPMENT 513 COMMONWEALTH AVENUE, STRATHMERE

BLOCK(S) 834 LOT(S) 1

PROPOSED USE HOTEL

LAND AREA: ACREAGE 0.367 SQUARE FEET 16,000 S.F.

BUILDING AREA: SQ.FT. 12,844 % BLDG. COVERAGE 33.81%

PARKING SPACES REQUIRED 19 SPACES PROVIDED 19

PARKING SPACE DIMENSION: WIDTH 9 LENGTH 18 DRIVE AISLE 22

VARIANCES REQUIRED SEE ATTACHED

SIGNATURE OF APPLICANT Richard M. King, Jr. /s/ DATE 06/09/2020



Law Office of Richard M. King, Jr.

www.richardkinglaw.com

A Limited Liability Company in the Practice of Law

Richard M. King, Jr. Esq.
Amanda R. Moscillo, Esq.

June 15, 2020

Ms. Shelley Lea
Township of Upper
c/o Zoning Board of Adjustment
2100 Tuckahoe Road
Petersburg, NJ 08270

RE: Block 834, Lot 1
Our File No. RMK-Maloney

Dear Ms. Lea:

Enclosed please find the following materials pertaining to the application of Strathmere Motel, Inc.'s Preliminary and Final Site Plan Approval with associated variances:

- 1) Application to Zoning Board of Adjustment
- 2) Narrative for Application
- 3) Preliminary/Final Site Plan Application
- 4) Survey (6)
- 5) Stormwater Management Report (2)

Mr. Stephen Maloney, Owner of Strathmere Motel, Inc., will be forwarding separate checks for the appropriate application and escrow fees associated with the enclosed application.

I ask that the matter be reviewed for completeness, and that we be advised of any scheduled hearing so we may provide appropriate notice.

Of course, if there is any deficiency, or any question, I remain available at your convenience.

Thank you.

Sincerely,

LAW OFFICE OF RICHARD M. KING, JR., LLC

Richard M. King, Jr. /s/

Richard M. King, Jr., Esquire

RMK/ka
Enclosures: Itemized above