

**IN THE MATTER OF  
APPLICATION NO. PB22-02  
OF JOHN DEMAIO & BETH SHARACK  
BLOCK 9 LOT 6**

**RESOLUTION DENYING VARIANCE  
AND SUBDIVISION APPROVAL**

**WHEREAS, JOHN DEMAIO & BETH SHARACK**, hereinafter the "Applicant", has proposed the development of property located at 33 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 9, Lot 6 on the Tax Map of the Borough of Atlantic Highlands; and

**WHEREAS**, the Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for Variance and Subdivision approval to subdivide an existing 10,500 square foot corner lot into two nonconforming, undersized 5,250 square feet lots requiring the following relief:

- a. Lot area of 5,250 square feet where 7,500 square feet is required for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- b. Lot area of 5,250 square feet where 7,500 square feet is required for lot 6.02 (Section 150-29) (A) (2) (Exhibit 5-2).
- c. Lot frontage and width of 50 feet where 75 feet is required for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- d. Lot frontage and width of 50 feet where 75 feet is required for lot 6.02 (Section 150-29) (A) (2) (Exhibit 5-2).
- e. Lot shape diameter of 20 feet where 45 feet is required for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- f. Lot shape diameter 30 feet where 50 feet is required for proposed lot 6.02 (Section 150-29) (A) (2) (Exhibit 5-2).
- g. Front yard setback of 11.6 feet where 20 feet is required along East Mount Avenue for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- h. Front yard setback of 5.7 feet where 20 feet is required on 3<sup>rd</sup> Avenue for lot 6.02 (Section 150-29) (A) (2) (Exhibit 5-2).
- i. Accessory side yard setback of 0.4 feet where 5 feet is required for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).

- j. Accessory rear yard setback of 2.7 feet where 5 feet is required for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- k. Building coverage of 32.2% where 25% is permitted for lot 6.01 (Section 150-29) (A) (2) (Exhibit 5-2).
- l. Usable floor area ratio of 0.44 for lot 6.01 where 0.40 is permitted (Section 150-29) (A) (2) (Exhibit 5-2).
- m. Driveway 3 feet from the property line where 5 feet is required for lot 6.01 (Section 150-54.F).
- n. Driveway 10 feet in width where 12 feet is required for lot 6.01 (Section 152-89.D) (1).

The foregoing is contrary to the Development Regulations of the Borough of Atlantic Highlands. The Applicant also requires subdivision approval to create the proposed lots; and

**WHEREAS**, the subject property is located in the R-1 Residential Zone District and single family residential homes with associated accessory structures are a permitted use in the zone; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on October 6, 2022, due Notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act, and the Municipal Land Use Law and a quorum of the Planning Board being present the application was heard; and

**WHEREAS**, the Applicant's witnesses were sworn and the Planning Board having heard the testimony of the Applicant's witnesses and having examined the Exhibits submitted by the Applicant and having considered all of the evidence presented in favor of or in opposition to the application, the Planning Board has made the following findings of fact:

1. The Planning Board has received and reviewed the following documents, exhibits and reports:

1.1 Zoning Review of Zoning Officer Michelle Clark dated January 27, 2022, marked as Exhibit A-1 in evidence.

- 1.2 Application for Subdivision, dated January 21, 2022, marked as Exhibit A-2 in evidence.
- 1.3 Application for Variance, dated January 21, 2022, marked as Exhibit A-3 in evidence.
- 1.4 Subdivision Plan prepared by Richard E. Stockton & Associates, dated December 7, 2021 revised March 8, 2022 and further revised August 17, 2022, marked as Exhibit A-4 in evidence.
- 1.5 Review #1 of CME Associates, dated February 25, 2022, marked as Exhibit A-5 in evidence.
- 1.6 Review #2 of CME Associates, dated March 11, 2022, marked as Exhibit A-6 in evidence.
- 1.7 Proposed Floor Plan drawings marked as Exhibit A-7 in evidence.
- 1.8 Review #3 of CME Associates, dated July 6, 2022, marked as Exhibit A-8 in evidence.
- 1.9 Review #4 of CME Associates dated August 25, 2022, marked as Exhibit A-9 in evidence.
- 1.10 Proposed Floor Plan consisting of 5 sheets, marked as Exhibit A-10 in evidence.
- 1.11 Series of four (4) Photographs of subject property, marked as Exhibit A-11 in evidence.
- 1.12 NJNG Invoice dated March 25, 2022, marked as Exhibit A-12 in evidence.
- 1.13 Excerpts from 2019 Atlantic Highlands Master Plan, marked as Exhibit A-13 in evidence.
- 1.14 Exhibit entitled Neighborhood Characteristics Map Key, prepared by James Higgins, Professional Planner dated October 6, 2022, marked as Exhibit A-14 in evidence.

2. The premises in question are located at 33 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 9, lot 6 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 Residential Zone District and single-family residential homes with associated accessory structures are a permitted use in the zone.

4. The subject property has approximate dimensions of 100.00 ft. x 105.00 ft. x 100.00 ft. x 105.00 ft. with an approximate area of 10,500 square feet and is a regularly shaped rectangle with frontages on East Mount Avenue and 3<sup>rd</sup> Avenue. It is a corner lot with an approximate area of 10,500 square feet (0.24 +/- acres). The property is presently developed with a 2.5 story single family residential home with ancillary improvements including a driveway extending from 3<sup>rd</sup> Avenue, a covered front porch and rear porch, detached garage, stone walls, stockade fence and walkways.

5. The Applicant proposes to subdivide the property into two undersized lots. Proposed new lot 6.01 will retain all of the existing improvements on the property and will have a lot area of 5,250 square feet (0.1205 acres). Proposed lot 6.02 will be a vacant parcel with a lot area of 5,250 square feet (0.1205 acres).

6. The Applicant was represented by Monica Kowalski, Esq. who presented Exhibit A-13 and provided an opening statement referencing a variety of passages in the current Borough Master Plan encouraging the preservation and restoration of historic structures. The Planning Board recognizes that the Master Plan objectives include preservation of historic sites and districts as well as restoration and rehabilitation of historic buildings within the Borough. However, the Planning Board recognizes other principles, goals, and objectives of the Master Plan that counterbalance the Applicants request for approvals on the basis of historic value. Ms. Kowalski advised the Board that the existing residence on the property is approximately 113 years old and opined that the subdivision request, along with the various variances, is necessary in order to fund restoration of the existing residence.

7. Ms. Kowalski presented the testimony of James Higgins, a licensed professional Planner in the State of New Jersey. Mr. Higgins presented Exhibit A-14 which identified conforming lots and

nonconforming lots within the vicinity of the subject property as well as identifying multifamily residences, commercial uses and public/quasi-public uses and denoting that a substantial number of the residential units on these lots are buildings ranging from 70 to over 100 years of age. Mr. Higgins concurred with Ms. Kowalski's references to the Master Plan as encouraging the rehabilitation/restoration of historic buildings within the Borough and opined that the grant of the requested variances for lot area of both lots, lot frontage for both lots, lot width for both lots, lot shape diameter for both lots, front setback for proposed lot 6.01 from East Mount Avenue, and front yard setback from 3<sup>rd</sup> Avenue for lot 6.01 along with the accessory building side yard setback variance and rear yard setback variance could be justified pursuant to N.J.S.A. 40:55 D-2 a., g., i. and j. He opined that the grant of the variance relief would promote the general welfare by permitting the restoration of an historic building. He further opined that the subdivision would provide efficient space in an appropriate location for a variety of residential uses. He further testified that the new structure and the restored structure would promote a desirable visual environment and that the grant of the subdivision with variances would promote the conservation of historic sights and districts. Thus, he opined that the grant of the requested variance relief would promote these purposes of the Municipal Land Use Law. He further opined that proposed lot 6.01 could accommodate a .04 deviation from floor area ratio. Mr. Higgins also opined that the grant of the requested variance relief would not result in any substantial detriment to the public good or a substantial impairment of the Zone Plan or Zoning Ordinance based upon his Exhibit demonstrating other nonconforming lots within the vicinity of the subject property.

8. The Planning Board notes that Mr. Higgins conceded that the subject property is not designated as an historic site or building on the national registry of historic places and does not have an historic designation. The Planning Board also notes that the subject property is not on the Borough Master Plan list of historic landmark sites. In addition to the foregoing, the Planning Board notes that there was no testimony of any kind given as to the history of this specific structure, whether there were important individuals who had resided there, whether there were important events that had occurred there or whether its architecture is linked to any specific historic architect or style. Nor were any plans presented or other information advising how the structure would be restored/rehabilitated to conform with any specific style and suggested that the Board should grant the approval with no ascertainable standards for restoration other than to provide a deed restriction that the Applicant return to the Board at a later time with plans for the renovation/restoration by an historic architect.

9. In addition, the Planning Board notes that the Applicant provided no information as to the proposed structure on proposed new lot 6.02 to demonstrate that structure would be consistent in style to harmonize with the surrounding neighborhood. In sum, the Board was provided with little or no evidence as to what would happen to the subject property if the variances and subdivision were approved other than that two nonconforming lots with a 30% deviation from the lot area requirement, 33% deviations for frontage and lot width, 55% and 40% deviations from lot shape diameter respectively and a usable floor area ratio in excess of that permitted for proposed lot 6.01. All of the foregoing variances being new variances to accommodate the application. The Planning Board finds that these deviations are substantial and not di minimis and that the Applicant has not satisfied the positive criteria for the grant of the requested variance relief.

10. The Planning Board acknowledges the Master Plan references encouraging renovation/restoration of historic buildings. They recommend that this be done in a controlled format and encourages the adoption of an ordinance permitting an historic preservation committee and an historic preservation ordinance which will provide standards for the restoration of historic structures. Those standards don't exist at present and the Planning Board is not the body to create them. Moreover, the Planning Board notes that there is substantial language in the Master Plan that is contrary to the subdivision and variance request presented in this case. More particularly Section IV "Vision, Goals and Objectives" provides that it is the vision of the Atlantic Highlands planning program to retain the character of the Borough as a small town. Subsection IV B. provides that a goal of the Master plan is to "limit future development and population density" that section further provides that the Borough should develop town-wide policies to restrain additional housing development so as to maintain the small-town character of the Borough. It is also stated in that section that the Borough should "develop ways to discourage over development of infill lots as much as possible". Although the term "infill" is not defined in the ordinance or in the Master Plan this term is defined in other sources such as the New Illustrated Book of Development Definitions by Harvey S. Moskowitz and Carl G. Lindbloom in which that term is defined as "the development of new housing or other buildings on scattered vacant sites in a built-up area". That definition precisely fits proposed lot 6.02 that would be developed in the event the subdivision is approved. Thus, the Planning Board finds that the grant of this subdivision is directly contrary to the directives of the Municipal Master Plan. Section VII Principles, Objectives, Functions, Policies and Standards further supports a position contrary to the grant of relief in this case. The principles include the restraint of future development

on scarce un-built land. It goes on to provide that one of the principles is the maintenance of the present intensity of land use density of population and existing lot sizes and configurations and the maintenance and preservation of existing single-family neighborhoods. The Planning Board finds that the grant of the requested relief is directly contrary to these principles set forth in the Borough Master Plan. Instead of maintaining the present intensity of land use and density of population, the proposal of the Applicant's increasing intensity of land use and increasing the density of population. Furthermore, the grant of the requested variance relief does not maintain and preserve the existing single-family neighborhood. Instead, it takes from one fully conforming lot and creates two substantially nonconforming parcels which will act to erode the existing residential neighborhood.

11. The Master Plan goes on at Section VII Objectives to state that an objective of the Master Plan is to limit future land development and population density to ensure neighborhood, community and regional well-being and protection of the environment. The Planning Board finds that the requested relief of the Applicant is contrary to these Objectives.

12. The Planning Board cannot ignore Section VIII of the Master Plan, Land Use Element where it states that the land use plan makes recommendations that residential growth and development should be limited based on, among other factors, policies that discourage future infill on substandard lots. Thus, once again the Applicant's application is directly contrary to the Master Plan which reiterates under Section VIII Goals and Objectives, the goal and objective to limit future residential development to maintain population density. Moreover when discussing the residential zone districts the Master Plan states "there are eight residential land use districts that are based upon established land use patterns. The established residential districts are to be maintained in their present form. Existing lot layouts are to be kept at their present dimensions and configurations. Subdivisions that result in nonconforming lots are to be discouraged.

#### R-1-Single Family Residential

- The land use in this district is predominately single family
- Two-family conversions have been eliminated in this district

- Conversion of houses containing two or more units to single family use is encouraged
- Minimum lot size of 7,500 square feet

13. As to the lot area variances, the Planning Board finds that there is a currently existing 10,500 square foot lot. Although that lot is oversized it is not excessive. Based on the previously cited provisions of the Borough Master Plan the grant of variance relief would not promote the purposes of the Municipal Land Use Law. The proposed use and development is contrary to the Master Plan desire to maintain the existing uses and not to decrease lot size and create nonconforming, undersized lots. Moreover, the grant of variance relief will not provide sufficient space in an appropriate location for these residential purposes as the Master Plan promotes not creating undersized lots and to maintain existing residential density. Nor has the Planning board been provided with any information as to how the grant of variance relief will promote a desirable, visual environment as the Applicant has failed to provide any plans to demonstrate what renovations/restorations will be provided on this home. Nor have they provided any plans to demonstrate the home that will go on proposed new lot 6.02 and whether it will be compatible with the surrounding neighborhood. Nor does the Planning Board find that the grant of the variances in question will promote the conservation of historic sites and districts. As noted previously, the Planning Board has been provided with no information as to the history of this structure or whether it is connected to historic persons, events or architecture. Thus, the Planning Board is left in a "vacuum".

14. The same arguments as to lot area can be made for the lot frontage, lot width and lot shape diameter deviations that are proposed by the Applicant. Their grant will not promote the appropriate use of this land or the public health safety or general welfare. It will not promote the establishment of appropriate population densities and concentrations as they already exist and the Master Plan calls for them to be maintained, not eroded. Nor is it providing sufficient space and appropriate location for these residential uses which, if granted, will be flagrantly contrary to the principles, goals, and objectives of the Master Pan. The same applies to the excessive building coverage.

15. The Planning Board further finds that the grant of the requested variance relief will result in a substantial detriment to the public good. The Planning Board notes that a number of neighborhood



residents appeared in opposition to the application. They noted from Mr. Higgins Exhibit A-14 that there are a significant number of fully compliant single family lots within the vicinity of the subject property. Although there is also a significant number of properties which are not fully conforming, the clear intent of the most recent Master Plan is to "hold the line" and not to create new, undersized, nonconforming lots that will further erode the neighborhood which the Master Plan and the Borough seeks to maintain. The Planning Board finds that the variances requested are substantial and numerous which will cumulatively result in a substantial detriment to the streetscape, the neighboring properties and the neighborhood zone scheme.

16. The Planning Board further finds that the grant of the requested variance relief will result in a substantial impairment of the Zone Plan and Zoning Ordinance. As noted from the numerous references to the master Plan the intent of the Zone Plan is not to erode the current R-1 Residential District with nonconforming properties. The clear intent of the Municipal Master Plan and Zone Plan is to retain this R-1 Zone District with its existing population densities and concentrations and not to add to those. The Planning Board finds that the erosion of the standards through the grant of numerous variances is inappropriate and will inappropriately, and adversely impact the Zone Scheme.

17. The Planning Board finds that the Applicant has submitted a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. As noted previously herein, the Planning Board finds that those requirements have not been met as such approval would require the grant of numerous and substantial variances.

18. As a result of all of the foregoing the Planning Board finds that the Applicant has not satisfied the positive and negative criteria for the grant of the requested variance relief and that the variances cannot and should not be granted at this time. Moreover, without the grant of the excessive variance relief requested the application for subdivision approval cannot and should not be granted as the subdivision presented does not conform to the standards established by Ordinance for approval.

19. The Planning Board further finds that all property owners within 200 feet of the premises in question were given proper Notice of the hearing of this application and were provided with an opportunity present evidence in favor of, or in opposition to, the appeal.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Atlantic Highlands on this 1st day of December 2022, that the Application of **JOHN DEMAIO & BETH SHARACK** be and is hereby denied.

**BE IT FURTHER RESOLVED** that nothing herein shall excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

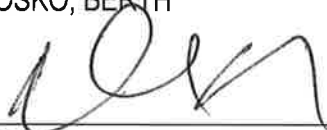
**BE IT FURTHER RESOLVED** that a written copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Applicant, the Code Enforcement Official of the Borough of Atlantic Highlands, and the Construction Code Official of the Borough of Atlantic Highlands. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

**BE IT FURTHER RESOLVED** that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.

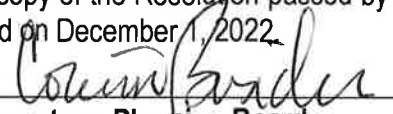
OFFERED BY: MR. HAWLEY  
SECONDED BY: MR. NEFF

ROLL CALL:

YES: HAWLEY, McGOLDRICK, NEFF, KRUPINSKI, CROWTHER, KURDES,  
MAJEWSKI  
NO: NONE  
ABSTAIN: NONE  
ABSENT: ZUZULOCK, CACCMO, JOSKO, BERTH

  
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**Chairperson, Planning Board  
Borough of Atlantic Highlands**

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Atlantic Highlands at its meeting held on December 1, 2022.

  
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**Secretary, Planning Board  
Borough of Atlantic Highlands**