

**IN THE MATTER OF
APPLICATION NO. PB21-19
OF WEST END KB, LLC
BLOCK 68 LOT 5**

**RESOLUTION DENYING
SUBDIVISION AND VARIANCE APPROVAL**

WHEREAS, WEST END KB, LLC, hereinafter the "Applicant", has proposed the development of property located at 80 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 68, Lot 5 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 minor subdivision and Variance approval to subdivide a 12,600 square foot parcel into two residential building lots requiring the following Variance relief:

1. Section 150-29.A(2) (Exhibit 5-2) lot area for proposed lot 5.01 of 6,300 square feet where 7,500 square feet is required.
2. Section 150-29.A(2) (Exhibit 5-2) lot area for proposed lot 5.02 of 6,300 square feet where 7,500 square feet is required.
3. Section 150-29.A(2) (Exhibit 5-2) lot frontage for lot 5.01 of 60 feet where 75 feet is required.
4. Section 150-29.A(2) (Exhibit 5-2) lot width for lot 5.01 of 60 feet where 75 feet is required.
5. Section 150-29.A(2) (Exhibit 5-2) lot frontage for lot 5.02 of 60 feet where 75 feet is required.
6. Section 150-29.A(2) (Exhibit 5-2) lot width for lot 5.02 of 60 feet where 75 feet is required.
7. Section 150-29.A(2) (Exhibit 5-2) lot shape diameter for lot 5.01 of 40 feet where 50 feet is required.
8. Section 150-29.A(2) (Exhibit 5-2) lot shape diameter for lot 5.02 of 40 feet where 50 feet is required.

9. Section 150-49.l(1)(b) permit construction of buildings or structures on a non-conforming lot with deficient lot area for lot 5.01.

10. Section 150-49.l(1)(b) permit construction of buildings or structures on a non-conforming lot with deficient lot area for lot 5.02.

The foregoing are contrary to the provisions of Chapter 150, Article V, Section 150-29 and Article VII, Section 150-49 of the Development Regulations of the Borough of Atlantic Highlands; 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 March 3, 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 Denial of Zoning Officer Michelle Clark, dated October 20, 2021, marked as Exhibit A-1 in evidence.

1.2 Variance & Subdivision Application of West End KB, LLC, dated October 27, 2021, with Exhibit "A" marked as Exhibit A-2 in evidence.

1.3 Minor Subdivision Plan prepared by Charles Surmonte P.E. & P.L.S., dated October 10, 2021, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Charles Surmonte, P.E. & P.L.S., dated September 5, 2021, marked as Exhibit A-4 in evidence.

1.5 Completeness Review #1 of CME Associates, dated December 15, 2021, marked as Exhibit A-5 in evidence.

1.6 Series of four Photograph's of homes built by Applicant, marked as Exhibit A-6 a-d in evidence.

1.7 Series of six Photograph's showing trees on subject property, marked as Exhibit A-7 a-f in evidence.

1.8 Survey of property prepared by Charles Surmonte, dated September 15, 2021 with tree location, type and diameter, marked as Exhibit A-8 in evidence.

1.9 Aerial Photograph of subject property, marked as Exhibit A-9 in evidence.

1.10 Aerial Google Earth Photo of subject property, marked as Exhibit A-10 in evidence.

1.11 Exhibit with compliant & non-compliant lots, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 80 East Washington 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 4 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 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 120.00 ft. x 105.00 ft. x 120.00 ft. x 105.00 ft. and is rectangular in shape with an approximate area of 12,600 square feet. The subject property is presently developed with a two-story dwelling with a one-story attached enclosed porch, driveway, concrete patio and paver patio and associated walkways. The Applicant proposes to sub-divide the subject property into two undersized lots requiring ten Variances as set forth previously in this resolution. The Applicant presented the testimony of Justin Auciello a licensed Professional Planner in the State of New Jersey. He testified that the area surrounding the subject property consists principally of single-family residential homes. He presented Exhibit A-11 which analyzed the number of lots with non-conforming frontages less than 75 feet and conforming frontage lots. The property in question is presently a larger lot oversized that complies in all respects to the bulk standard requirements of the R-1 Zone. Mr. Auciello referenced the case of **Kauffman v. Planning Board for Warren Township** 110 NJ 551 (1988) and opined that the Kauffman case supports the grant of Variance relief in this case. He testified that Exhibit A-11 shows that of the 54 lots in the immediate vicinity of the subject property, 21 lots currently are non-conforming as to frontage. The remaining 33 lots conform to the ordinance requirements. Mr. Auciello opined that Variance relief is appropriate as the proposed application promotes the purposes of the Municipal Land Use Law N.J.S.A. 40:55D-2 by providing light, air and open space as the proposed structures will meet the bulk standard requirements of the zone. He further opined that subdividing for two homes would provide a more consistent population density and that the subject property is an appropriate location to provide an additional residential home.

5. Mr. Auciello further opined that the proposed lots fit the character of the neighborhood and the zone plan. He further opined that a deviation from the lot shape diameter circle requirement would not be a detriment since all setback requirements could be met.

6. The Applicant also presented the testimony of Charles Surmonte, a licensed Professional Engineer and Surveyor who opined that the property is somewhat level and that drywells would be provided so that overall runoff would not increase over existing conditions. He noted that if the property were not subdivided, a substantially larger home could be constructed on the lot than the homes that can be constructed on the subdivided lots. Further, Mr. Surmonte testified that the proposed subdivision would be consistent with appropriate engineering practices.

7. Matthew Kelly, a principal of the Applicant presented photographs of homes with a similar style but somewhat smaller than other homes he had built of similar architectural style. He noted that all existing improvements would be demolished, and two new homes constructed in their place and that driveways would be placed in areas to maximize the number of street parking spaces that could be retained. Mr. Surmonte conceded that there would be a loss of two street parking spaces if the application was approved.

8. Interested residents were represented by Bernard Reiley, Esq. who contended that the purpose of the subdivision is solely for profit of the Applicant and that pursuant to the Kauffman case cited previously herein, Variance relief should not be granted where only the purposes of the owner are advanced. Mr. Reiley argued that the area examined in Exhibit A-11 was too small as it only included two blocks around the subject property and noted that the Master Plan includes a goal discouraging "in-fill" lots and also includes a principle that encourages the maintenance of existing density and lots within the Borough.

9. Mr. Reiley presented the testimony of his client John Archibald who is the immediate next door neighbor to the subject property. Mr. Archibald testified that the most recent Master Plan adopted in 2018 made no recommendations to lessen the required lot area of 7,500 square feet in the R-1 Zone. He also noted sections of the Master Plan goals and objectives including limiting future development population density including restraining additional housing developments in order to maintain the small-town character of the Borough and to discourage overdevelopment of infill lots as much as possible. He noted that the Master Plan also discourages subdivisions resulting in nonconforming lots and that the goals of the Master Plan include limiting future residential development in order to control population density. Mr. Archibald also identified a number of lots in the immediate vicinity that could be subdivided if the Applicant's basis for justifying the grant of Variance relief were accepted. He opined that this would change the character of the neighborhood.

10. Citizen Mark Fisher testified that the grant of Variance approval to permit the subject subdivision would further serve to erode the balance of the character of the area in which 60% +/- homes are conforming and only 40% +/- are deficient.

11. Several other citizens raised objections to the grant of approval on the basis of the potential for altering the character of the neighborhood resulting in unnecessary and offensive tree removal.

12. Wendy Crowther, Esq. the attorney representing the sellers of the subject property to the developer presented their testimony that due to personal circumstances they need to leave the subject property and were advised that a subdivision would provide them the best monetary gain.

13. From all of the testimony and Exhibits provided the Planning Board finds that the Applicant has failed to satisfy the positive criteria for the grant of the requested Variance relief. The Planning Board notes that the Applicant relied heavily on the Kauffman case as justification for the grant of Variance relief. The Planning Board finds that this reliance is misplaced as this application is substantially dissimilar to Kauffman. In Kauffman, the subject property was three times the minimum lot size required in the Zone and the Applicant was applying to create two oversized lots. In this case, the grant of subdivision approval would create two undersized lots. Moreover, in Kauffman the Applicant applied for only two Variances. In the instant application the Applicant is proposing ten Variances. Lot 5.01 will have a 16% deficiency in lot area, a 20% deficiency in lot frontage, a 20% deficiency in lot width, 20% deficiency in lot shape circle diameter and would permit construction on an undersized lot. Similarly proposed lot 5.02 would have a deficiency in lot area of 16%, deficiency of lot frontage of 20%, deficiency in lot width of 20%, deficiency in lot shape circle diameter of 20% and also permit the construction of a building on an undersized lot. The Planning Board finds that these deviations are cumulative and substantial.

14. The Planning Board disagrees with Mr. Auciello that creating two undersized lots will have the potential to promote the purposes of the Municipal Land Use Law for light, air and open space. Instead, it will provide smaller lots to be developed with significant deficiencies in lot area, frontage, width and lot shape diameter. The Planning Board finds that the grant of variance will reduce light, air and open space. The Planning Board further finds that Mr. Auciello's testimony that the grant of subdivision approval would provide consistent population densities is incorrect. Neither the Master Plan or the Ordinance provides for population densities at one unit per 6,300 square foot lots. Instead, they provide for development on 7,500 square foot lots. The proposed lots will not be more consistent with the neighborhood area as the Applicant's Exhibit A-11 demonstrates that the character of the area is for conforming. 60 plus percent of

lots in the surrounding area conforming lots. Thus, the character of the area is for conforming lots not nonconforming, undersized lots. Similarly, the Planning Board finds that this subdivision does not create sufficient space in an appropriate location for this residential use. As noted previously, the grant of this Variance relief will be contrary to the existing character of the area and will not be consistent with appropriate population densities as intended by the Master Plan and Zoning Ordinance.

15. The Planning Board further finds that it disagrees with Mr. Auciello's conclusion that the grant of Variance relief would not constitute a substantial detriment to the public good. As previously set forth herein the Planning Board disagrees that creating two undersized lots would fit the character of the area. Nor would it fit the Zone Plan. Moreover, the Planning Board disagrees that the intent of the lot shape circle diameter Ordinance is met since the proposed structures can meet the setback requirements of the Zone. The Planning Board notes that the purpose of the lot shape circle diameter is to create lots of consistent shape to maintain the character of the area. The grant of the Variance once again will be inconsistent with Exhibit A-11 which demonstrates that 60 +% of the lots in the vicinity have lot shapes sufficient to incorporate a lot shape circle diameter.

16. Based on the Foregoing 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 set forth previously herein the Master Plan discourages over development of in-fill lots which are nonconforming and erode the goals and objectives of retaining the small-town character of the Borough of Atlantic Highlands. The Planning Board finds that it agrees with the testimony of the objectors that the grant of these ten substantial deviations from the Ordinance requirements will result in substantial impairment of the zone plan and zoning ordinance.

17. As a result of all of the foregoing, the Planning Board finds that the Applicant has failed to establish the positive and negative criteria for the grant of the requested Variance relief and that the Variances can and should be denied at this time. Insofar as the Variances are not being granted the minor subdivision that has been submitted for approval cannot be approved and the application should be denied.

18. 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 to 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 4th day of April 2022, that the Application of **WEST END-KB, LLC** 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. KRUPINSKI

SECONDED BY: MR. HAWLEY

ROLL CALL:

YES: DOUGHERTY, NEFF, JOSKO, KRUPINSKI, CROWTHER, KURDES, BERTH, MAJEWSKI

NO: NONE

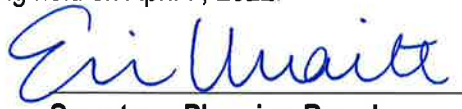
ABSTAIN: NONE

ABSENT: ZUZULOCK, PEPE, McGOLDRICK, CACCAMO, CROWTHER



**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 April 7, 2022.



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