

**IN THE MATTER OF
APPLICATION NO. PB22-10
OF ERIC & ANGIE LAMBERT
BLOCK 17 LOT 38**

**RESOLUTION DENYING
VARIANCE**

WHEREAS, ERIC LAMBERT & ANGIE LAMBERT, hereinafter the "Applicant", has proposed the development of property located at 54 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 17, Lot 38 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 approval to retain a 6-foot-high solid fence in a front yard where 4 foot is the maximum permitted. The foregoing is contrary to the provisions of Chapter 150-70. A(1) of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-2 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 September 1, 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 Review of Borough Zoning Officer Michelle Clark, dated April 14, 2022 marked as Exhibit A-1 in evidence.

1.2 Application of Eric & Angie Lambert, dated March 8, 2022, marked as Exhibit A-2 in evidence.

1.3 Narrative of Circumstances, dated February 27, 2022, marked as Exhibit A-3 in evidence.

1.4 Two photographs of subject property, marked as Exhibit A-4 in evidence.

1.5 Site Improvement Plan, prepared by Two River Engineering, dated October 20, 2021, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated May 17, 2022, marked as Exhibit A-6 in evidence.

1.7 Five photographs of subject property from various perspectives, marked as Exhibit A-7 a-e in evidence.

1.8 Six photographs of subject property and surrounding area from various perspectives, marked as Exhibit A-8 a-f in evidence.

1.9 Photograph from inside car at driveway exit to Ocean Avenue, marked as Exhibit A-9 in evidence.

1.10 Application for Development Permit with Survey, marked as Exhibit A-10 in evidence.

1.11 Series of three photographs of adjacent property (50 Ocean Boulevard), marked as Exhibit A-11 in evidence.

2. The premises in question are located at 54 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 17, lot 38 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-2 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 125.65 ft. x 242.85 ft. x 58.56 ft. x 92.66 ft. x 262.58 ft. and is an elongated rectangle with an approximate area of 37,767 square feet (0.867 +/- acres). The subject property is presently developed with a two-story residential dwelling with a detached garage and circular driveway.

5. On June 28, 2021, the Applicant received a Development Permit approval from the Zoning Officer to construct a six-foot-high fence in a rear yard and a three-foot fence in the front yard. The application was accompanied by a Plan of Survey prepared by Brunswick West Inc. dated October 19, 2018 with red highlight along the westerly sideline of the property where the fence was to be located. The survey does not show where the six-foot fence would be placed or where the three-foot fence would be placed. The Applicants testified that they believed that, notwithstanding that the property has street frontage on Ocean Boulevard, they believed that the front yard of the property was to the north facing the Atlantic Highlands Yacht Harbor. Therefore, they constructed the six-foot-tall solid fence along the southwesterly sideline between the existing residence and the street. The Applicants were later notified that the fence was not compliant with the ordinance as it is six foot in height within a front yard area which is contrary to Section 150-70. A (1) of the Atlantic Highlands Development Regulations. They were advised that they should either remove the fence, reduce its height to conforming height or request a variance resulting in this application to the Planning Board.

6. The Planning Board notes the testimony of its Engineer, Doug Rohmeyer, who testified that the area between the residence and Ocean Boulevard is a front yard area. The Planning Board notes that his opinion is consistent with Section 150-53 B. which provides that all yards facing on a public street shall be considered front yards and shall conform to the minimum front yard requirements for the zone. The planning Board also notes Section 150-52 of the ordinance which requires that every principal building shall be built upon a lot with frontage on a public street. Thus, the Planning Board finds that the Applicant's reliance on their belief that they could elect their front yard to face the Atlantic Highlands Yacht Harbor is mistaken and the area of the lot between Ocean Boulevard and the residential home is a front yard pursuant to the ordinance. The Planning Board further finds that it is clear from the photographs presented

in Exhibit A-8 that the existing home on the property is clearly oriented with its front facing Ocean Boulevard.

7. The Applicants presented their testimony that it would be expensive to remove the fence and that the fence is of vinyl construction and cannot be lowered nor can it be modified to provide for spacing so as not to constitute a solid fence. The Applicant testified that the purpose of the fence was to create a barrier to avoid conflict with the neighboring property owners to the west. They also provided Exhibit A-9 a photograph from their car at the driveway entrance to Ocean Boulevard contending that the fence was setback far enough from the road so as not to interfere with visibility of vehicles on Ocean Boulevard or of vehicles attempting to exit the subject property.

8. The application was opposed by neighboring residents who testified that no other properties along Ocean Boulevard have six-foot-high fences in their front yard. They further opined that the fence is out of character with the Victorian neighborhood. They testified that lots in the vicinity are narrow and a six-foot fence has the impact of blocking visibility from Ocean Boulevard and of "closing in" the properties. The adjacent neighbor testified "I feel boxed in" by this fence. The neighboring property owner also testified that the fence has an overbearing appearance. Another neighbor described the fence as "ghastly" and "an outrage".

9. The Planning Board finds that the Applicant has not satisfied the positive criteria for the grant of the requested variance relief. The Applicant presented no testimony to demonstrate a hardship of the property due to exceptional narrowness, shape, topographic conditions or physical features that prevent the Applicant from fully complying with the requirements of the ordinance. Nor did the Applicants present any testimony or Exhibits that demonstrate the subject parcel to be a specific piece of property by which allowing the variance would advance the purposes of the Municipal Land Use Law and the benefits of the deviation which substantially outweigh any detriment. The Planning Board finds that there is no benefit derived from granting variance relief in this case and that there are detriments to the neighborhood and neighboring property owners as testified to by the neighboring property owners.

10. The Planning Board further finds that the Applicant has failed to satisfy the negative criteria for the grant of the requested variance relief. The Planning Board finds that the grant of the requested

variance relief would result in substantial detriment to the public good. The Planning Board agrees with the objecting neighbors that the subject property is located in a Victorian neighborhood and that there are no other properties in the area with six-foot-high solid fences in their front yard. The Planning Board therefore finds that the proposed variance results in a fence that is out of character with the surrounding neighborhood. The Planning Board further finds that the grant of variance relief would result in a "closed in", "boxed in" impact upon the neighboring property. The Planning Board finds that the impact of the grant of variance relief would result in a substantial detriment to the immediate neighbors and to the street scape along Ocean Boulevard within the neighborhood and therefore is a substantial detriment to the public good.

11. The Planning Board further finds that the grant of the requested variance relief would result in a substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board agrees with the objecting neighbors that one purpose of the height restriction within a front yard is to prevent excessive height fences in a front yard area resulting in reduced light, air and particularly open space appearance. The Planning Board agrees with the neighboring residents that one purpose of the fence height restrictions within a front yard area is to prevent properties from being "boxed in" and that the grant of variance relief in this case would result in that negative impact and offend the purposes for which the ordinance restriction was adopted.

12. As a result of all of the foregoing, the Planning Board finds that the Applicant has failed to satisfy the positive and negative criteria for the grant of the requested variance relief and that the variance should be denied.

13. 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 6th day of October 2022, that the Application of **ERIC & ANGIE LAMBERT** be and is hereby denied.

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. DOUGHERTY

ROLL CALL:

YES: MR. DOUGHERTY, MR. HAWLEY

NO: DR. ZUZULOCK, MR. PEPE, MR. NEFF, MR. MCGOLDRICK, MR. JOSKO,
MR. KRUPINSKI, MS. MAJEWSKI

ABSTAIN: NONE

ABSENT: CACCAMO, CROWTHER, KURDES, BERTH



**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 October 6, 2022.



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