



BOROUGH OF IGHLANDS
COUNTY OF ONMOUTH

LAND USE BOARD RESOLUTION 2025-11

MEMORIALIZATION OF MINOR SUBDIVISION PLAN WITH ANCILLARY VARIANCE RELIEF DENIAL

IN THE MATTER OF EDWARD AND
MARGARET WHEELER
APPLICATION NO. LUB24-03

Denied: February 13, 2025
Memorialized: March 13, 2025

WHEREAS, an application for minor subdivision approval with ancillary variance relief has been made to the Highlands Land Use Board (hereinafter referred to as the “Board”) by Edward and Margaret Wheeler (hereinafter referred to as the “Applicant”) on lands known and designated as Block 80, Lot 17, as depicted on the Tax Map of the Borough of Highlands (hereinafter “Borough”), and more commonly known as 63 Washington Avenue in the R-2.01 (Residential) Zone; and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, a live public hearing was held on February 13, 2025, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties were provided with an opportunity to be heard; and

NOW, THEREFORE, the Highlands Land Use Board makes the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 4,000 s.f. with 50 feet of frontage on Washington Avenue and is improved with an existing single-family, one and one-half (1 ½) story dwelling, with decks, garage, stone drive, and fencing. The subject Property is located within the R-2.01 (Residential) Zone.

2. The Applicant is seeking minor subdivision plan approval along with ancillary variance relief to subdivide the subject Property, which is conforming except for the existing front yard setback, into two (2) nonconforming 2,000 s.f. lots to be known as proposed Lot 17.01 and

proposed Lot 17.02.

3. The existing dwelling is proposed to remain on proposed Lot 17.01 and the Applicant proposes to construct an elevated two-story dwelling with decking, garage and associated site improvements on proposed Lot 17.02.

4. In accordance with Section 21-86(A)(4) of the Land Use Ordinance, ten (10) existing/proposed bulk deficiencies are noted as follows:

Schedule I – Bulk and Area Requirements

R-2.01 Residential Zone	Required	Existing Lot 17	Proposed Lot 17.01	Proposed Lot 17.02
Min. Lot Area (sf)	3,750	4,000	*2,000	*2,000
Lot Frontage/Width (ft)	50	50	*25.00	*25.00
Min. Lot Depth (ft)	75	80	80.00	80.00
Min. Front Yard Setback (ft)***	20	**6.0	**6.0	18.0
Min. Side Yard Setback (ft)	6/8	**1.2/28.6	**1.2/*3.6	Avg. is 11.0 *3.5/*3.5
Min. Rear Yard Setback (ft)	20	28.5	28.5	20.0
Max Lot Coverage	75%	62%	62.0	64.0
Max Building Coverage	33%	22.8%	*45.5	*52.7
On-Site Parking (spaces)	2	4	2	3

*Proposed Variance

**Existing non-conformity

*** Or average of the existing front yard setback within 200 ft of same block and zone or average of adjacent lots.

**** Where a dwelling is constructed or reconstructed to provide the required parking under the structure, the maximum height shall be increased by two and one-half (2 ½) feet.

5. Counsel for the Applicant, Rick Brodsky, Esq. appeared on behalf of the Applicant. He stated that this application seeks minor subdivision plan approval, to subdivide the subject Property into two (2) single-family residential lots, with 25 feet of frontage each.

6. Mr. Brodsky continued that the existing dwelling is proposed to remain on proposed Lot 17.01 and the Applicant proposes to construct a new, single-family dwelling on proposed Lot 17.02; the Applicant further intends on moving into the single-family dwelling proposed to be constructed on proposed Lot 17.02, which dwelling is proposed to include an elevator.

7. Mr. Brodsky also stated that what is proposed, in terms of lots size and lot width would be consistent with the neighborhood. He also discussed the bulk variance relief requested.

8. The Applicant's Architect, Jeremiah J. Regan, AIA. testified about the project and the proposed single-family dwelling to be constructed on proposed Lot 17.02.

9. Mr. Regan, referenced exhibit A-1 and testified that the proposed single-family dwelling would be two and one-half (2 ½) stories of habitable living space, with the first floor living space consisting of a kitchen, dining/living room space, half-bathroom, a balcony and deck; the second floor would contain two (2) bedrooms and two (2) full bathrooms; while the half-story, which is the habitable attic, would have (1) bedroom, (1) full bathroom, and balcony.

10. Mr. Regan provided additional testimony that garage parking would be provided underneath the proposed dwelling on proposed Lot 17.02, and that the Applicant proposed a total of three (3) off-street parking spaces with two (2) located on the proposed driveway and (1) in the proposed garage, which would exceed the minimum required number of parking spaces of two (2) for a three-bedroom home.

11. Mr. Regan further testified about the proposed setbacks, stating that the proposed front yard setback would be 18 feet, whereas the average prevailing setback in the area is 11 feet.

12. Mr. Regan continued testifying that the existing home has a front yard setback of 6 feet, which is proposed to remain unchanged.

13. Mr. Regan next testified about the proposed side yard setbacks for proposed lot 17.02, noting that they are proposing 3.5 feet side yard setbacks on each side, to be able to construct a livable home on the proposed 25 ft wide subdivided lot, whereas 6 feet and 8 feet are required.

14. Mr. Regan further testified that the proposed dwelling on proposed Lot 17.02 would be 18 feet wide, which was the minimum width needed to construct a usable garage, but that the habitable living space could be less wide and less impactful.

15. Mr. Regan responded to comments in the Board Engineer's Review Letter, testifying that no height variance is required. height is No variance needed for building height.

16. Mr. Regan testified that the proposed garage on proposed Lot 17.02 is not defined as a floor above grade and, thus, the proposed dwelling is two and one-half (2 ½) stories.

17. Mr. Regan continued testifying that the distance between proposed new home

on proposed Lot 17.02 and the existing home on Lot 16 would be approximately 7 feet, with both homes having a 3.5 side yard setback.

18. Mr. Regan testified about the existing dwelling on proposed Lot 17.01, stating that it has two (2) existing off-street parking spaces, which satisfies the RSIS requirements for a three (3) bedroom home.

19. Mr. Regan provided additional testimony that the existing Holly tree would be removed or transplanted, and the Applicant would need to comply with tree removal/planting requirements of Borough Code.

20. The Applicant, Edward Wheeler, testified about the existing dwelling on proposed Lot 17.01, stating that carriage door on the side of the house is a garage door, which opens upward, not outward and will remain because it provides access to the garage for pedestrian access, not vehicle access.

21. Mr. Wheeler testified that the stairs on the front of the existing house on proposed Lot 17.01 would be eliminated, leaving a balcony, because there are stairs entering the home from the existing garages and a set of stairs at the rear of the home.

22. In response to questions from the Board concerning the accuracy of Exhibit A-1, Mr. Regan testified that the exhibit was incorrect in that it showed an empty lot adjacent to the proposed dwelling on proposed Lot 17.02, and did not show the existing dwelling on proposed Lot 17.01.

23. Mr. Regan confirmed, through testimony, that the A-1 depicted 65 and/or 67 Washington Avenue, and not 63 Washington Avenue, the subject Property.

24. The Board expressed concerns that Exhibit A-1's inaccuracy made it more difficult to understand the impact that the subdivision and, more specifically, the proposed dwelling on proposed Lot 17.02 would have on the neighborhood and Zoning Plan.

25. The Applicant's Planner, John Taikina, P.P., A.I.C.P. testified about the application and introduced Exhibit A-2, which was a three-page exhibit prepared by Cofone Consulting Group.

26. Mr. Taikina further testified that proposed Lot 17.02 would likely be known as 61 Washington Avenue since the street numbers went from 59 Washington Avenue to 63 Washington Avenue,

but he confirmed through additional testimony that there was no evidence that a home previously existed on proposed Lot 17.02.

27. In response to questions from the Board, Mr. Taikina testified that Exhibit A-1 correctly identified the proposed home on proposed Lot 17.02 but was inaccurate, because it incorrectly identified the proposed location of the home as well as the surrounding properties and dwellings.

28. Mr. Taikina continued with additional testimony about the ten (10) bulk variances being requested, discussing the facts thereof in detail. With respect to the front yard setback variance for proposed Lot 17.02, Mr. Taikina testified that although the prevailing setback was 11 feet and they were proposed 18 feet that he did not believe variance relief was required but the Applicant was requesting the same out of an abundance of caution.

29. Mr. Taikina testified that the building coverage for the proposed dwelling on proposed Lot 17.02 is 52.7%, and not 37.8% as depicted on the plans, which revised calculation includes the decks as required by the Zoning Ordinance.

30. Mr. Taikina provided additional testimony regarding existing and proposed conditions, testifying that the existing home on proposed Lot 17.01 is located 1.2 feet from the side yard lot line, which will remain, and will have 3.6 feet for the proposed side yard setback between the existing home on proposed Lot 17.01 and the lot line for proposed Lot 17.02. He continued, testifying that the proposed home on proposed Lot 17.02 would have 3.5 feet side yard setbacks on either side.

31. Mr. Taikina further discussed the nature of the bulk variance relief requesting, testifying that the Applicant requested two (2) c(1) hardship variances for the existing side yard setback and existing front yard setback for the existing home, which is proposed to remain on proposed Lot 17.01. Mr. Taikina testified that the remaining bulk variance relief was requested under the c(2) flexible standard.

32. Mr. Taikina next testified about the standard required to satisfy the c(2) variance relief, testifying that providing for two – 25-foot lots with modest homes on them represents better planning than permitting one large single-family home on an oversized 4,000 foot lot.

33. Mr. Taikina referenced page 2 of Exhibit A-2 with respect to the prevailing frontages in the

neighborhood, testifying that of the seventy-eight (78) surrounding lots surveyed, both the median and the mode, fall at 25-foot-wide lots and that 25-foot-wide lots are more common than 50-foot-wide lots.

34. Mr. Taikina provided further testimony that the proposal is not out of character with the area or untoward because the surrounding lots are both twenty-five (25) feet wide and, thus, having two (2) additional 25-foot-wide lots, as proposed, will not disrupt the zoning plan or neighborhood scheme.

35. Mr. Taikina noted, through additional testimony, that the Borough's Zoning Ordinance requires lot widths of fifty (50) feet and lot sizes of at least 3,750 s.f. in the zone but that in his opinion the Borough's bulk requirements were more aspirational than applicable.

36. Mr. Taikina further testified that the excessive lot coverage would be addressed through stormwater management and engineering, and reiterated that the application was compliant with respect to the required number of off-street parking spaces.

37. Mr. Taikina next testified that the application satisfied goals (e), (g), and (i) of municipal planning (N.J.S.A. 40:55D-2), stating that the application was appropriate given character of neighborhood, provided appropriate density and sufficient space for proposed modest home with sufficient setbacks and parking, and that the proposed home on proposed Lot 17.02 is attractive and aesthetically pleasing.

38. Mr. Taikina testified that the application was consistent with the goals of the Borough's 2016 master plan, specifically with respect to the goal of having infill development to be compatible with the neighborhood and to the improvement of residential structures.

39. Mr. Taikina next testified as to the negative criteria, testifying that there was no substantial detriment to public good because the proposed home on proposed lot 17.02 would be modest, not have any impact on the neighbors, not substantially increase traffic, and the Applicant was proposing adequate 3.5 ft wide side yard setbacks.

40. Mr. Taikina continued with testimony that the purposes of the Zoning Plan indicate that development should take into account character of each zone, and that the application did just that and was a better planning alternative than what could be constructed on a non-subdivided 4,000 s.f. lot.

41. In response to questions from the Board, Mr. Taikina testified that the Applicant intended on managing the stormwater runoff from the roof down to the ground and that A-1

was incorrect in its depiction that water would simply roll off the roof of the home.

42. The Board next questioned Mr. Taikina regarding the Master Plan and whether the proposal was consistent therewith, stating that the 25-foot-wide lots were created prior to when there was an appropriate understanding of flooding concerns and the impact of lot coverage, and that the Master Plan disfavors infill development with excessive lot coverage, such as the application proposed.

43. The Board expressed further concern with respect to the proposed 3.5-foot-wide side yard setbacks for the proposed home on proposed Lot 17.02 and the proposed building coverage percentage of 52.7% for the same, both of which required variance relief.

44. The Board questioned the height of the proposed dwelling on proposed Lot 17.02, with Mr. Regan testifying that 28.3 feet was proposed, as calculated based on the Zoning Ordinance, but that no variance relief was required or requested.

45. Mr. Regan testified, in response to additional questions from the Board with respect to the height of the half-story, the habitable attic, that it was 8 feet high in the middle of the room.

46. The Board questioned whether the existing dwelling on proposed Lot 17.01 had sufficient parking, to which the Applicant testified that two (2) parking spaces existed and would remain, and that the existing garage could accommodate vehicles.

47. In response to questions from the Board, the Board Engineer confirmed that the Borough had sufficient stormwater and sewer capacity to handle the application.

48. The Board further questioned whether the application furthered the goals of the Master Plan because one of the goals of the Master Plan is not to increase density. In response, Mr. Taikina testified that the proposal would be in line with the surrounding neighborhood, with 25-foot-wide lots.

49. The Board disagreed with Mr. Taikina's assertion, pointing out that directly across the street from the subject Property were multiple homes constructed on approximately 50-foot-wide lots and that the subject block contained numerous conforming lots.

50. The Board next inquired as to whether subdividing a conforming 4,000 s.f. lot into two (2) nonconforming lots represented better planning when there were homes

constructed on approximately 4,000 s.f. lots across the street from the subject Property (i.e., within the neighborhood).

51. Mr. Taikina responded with testimony that the subject Property was oversized for the Zone, to which the Board disagreed, stating that the minimum lot size in the zone was 3,750 s.f. and, thus, that a 4,000 s.f. lot such as the subject Property was not oversized, but was conforming.

52. The Board also questioned whether the representation that the 25-foot-wide lots were commonplace, was accurate.

53. The hearing was then opened to the public, at which time Al Pavao of Washington Avenue asked about the front yard setback on the proposed dwelling on proposed Lot 17.02, to which Mr. Regan testified that it was an 18 foot setback and that a car could be parked in front of the garage.

54. Mr. Pavao next asked whether the proposed dwelling on proposed Lot 17.02 would be taller than the existing home on proposed Lot 17.01, to which Mr. Regan responded in the affirmative and that it would be taller.

55. Mr. Pavao asked an additional question whether the application provided sufficient off-street parking, to which the Applicant responded that the application was compliant with respect to off-street parking requirements and, thus, that no variance relief was requested. The Applicant would comply with the off-street parking requirements.

56. The hearing was then opened to the public for comment, at which time Mr. Pavao testified that off-street parking was of particular concern to him because the application would bring more traffic to the area, which would exacerbate the parking issues. He also testified that he questioned whether the existing home on the subject Property could accommodate a modern-day vehicle.

57. In response to Mr. Pavao's testimony, the Applicant testified that the garage to the existing home on the subject Property could accommodate two (2) vehicles in the existing garage for the existing home on the subject Property.

58. In response to concerns from the public, the Board Attorney advised that based on the application submitted and testimony presented, the Applicant was proposing two (2) off-street parking spaces per lot, which number of parking spaces met the requirements of the

Zoning Ordinance and, thus, the Applicant did not require, or request, variance relief with respect to the same.

59. Lida Bickford of Washington Avenue testified that she is against the proposed application and took issue with the testimony from the Applicant that the proposed dwelling on proposed Lot 17.02 would be modest. She continued providing testimony that if the application were approved, her property would lose sunlight and the ability to use and enjoy outdoor gardening space.

60. Ms. Bickford continued that she was in favor of development but in a more sustainable, reasonable manner and questioned whether the application was a better planning alternative. She continued testifying that she was opposed to subdividing the property in such a way that the proposed dwelling would be located close enough to her property that she could “shake hands” with her neighbors.

61. Ms. Bickford provided additional testimony that the application seemed dangerous given the potential proximity of the homes, and she concluded by testifying that the proposal would be out of character and scale for the community.

62. There were no other members of the public expressing an interest in the application, at which time the public portion was closed.

63. In conclusion, the Board expressed repeated concern that A-1 did not adequately represent the proposed single-family dwelling on proposed Lot 17.02 and that the lot frontage for the surrounding neighborhood was not accurately represented by the Applicant since the immediate block contained ten (10) conforming lots and homes directly across the street from the Applicant also contained approximately 50-foot-wide lots.

WHEREAS, the Highlands Land Use Board, having reviewed the proposed application and having considered the impact of the proposed application on the Borough and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Borough of Highlands; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant’s request for minor subdivision plan approval pursuant to N.J.S.A. 40:55D-47 along with variance relief pursuant to N.J.S.A. 40:55D-70c should be denied in this instance.

The Board finds that the Applicant has proposed a minor subdivision plan which requires

variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict ancillary and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property.

The Board finds that the Applicant has failed to satisfy the positive criteria. The Board first addresses the Applicant's request for a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that with respect to only the existing side yard setback and existing front yard setback that although those are existing conditions, no evidence was presented as to whether the Applicant self-created the hardships or whether they existed prior to and independent of the Applicant's doing. Accordingly, the Board finds that the Applicant has failed to satisfy the positive criteria with respect to the c(1) hardship standard.

As to the remaining eight (8) bulk variances requested, the Board also does not find that the positive criteria has been satisfied under the "flexible" variance standard at N.J.S.A. 40:55D-70c(2). The Applicant has not demonstrated that any of the goals of planning enumerated at N.J.S.A. 40:55D-2 would be advanced in the public interest. The Applicant's Planner testified that grant of variance relief would (i) promote a desirable visible environment, (e) promote the establishment of appropriate population densities, and (g) provide sufficient space for residential uses. The Board, however, finds that the Applicant could construct a conforming single-family home on the subject Property, as opposed to two (2) single-family homes, which proposal would necessarily increase the density of the subject Property/the proposed lots.

The Board further finds that the subject Property is already improved with a residential use (i.e., the single-family residential dwelling) and, thus, that variance relief is not required in order to achieve the goal of providing sufficient space for residential uses. The Board also finds that

although the proposed dwelling on proposed Lot 17.02 would be new and modern, it would not promote a desirable visual environment. In furtherance thereof, the Board notes that Exhibit A-1 misrepresented the proposed dwelling on proposed Lot 17.02 in that it failed to accurately depict the location of the proposed dwelling, did not depict the existing home on the subject Property (i.e., proposed Lot 17.01) and, thus, did not provide the Board with an accurate portrayal of the proposed side yard setbacks or with an inaccurate representation of the proposal (at all).

Based upon the foregoing, the Board finds that the Applicant has failed to satisfy the positive criteria under the c(2) criteria.

The Board finds that the Applicant has failed to satisfy the negative criteria with respect to both c(1) and c(2) criteria. The Board finds that the proposed subdivision and single-family dwelling on proposed Lot 17.02 are out of character with the homes and lots in the neighborhood and would be inconsistent and detrimental to the prevailing neighborhood scheme. With respect to other lots in the neighborhood, the Board finds that approximately ten (10) properties in the same block are conforming, while adding that certain properties across the street from the subject Property also provide 50-foot-wide setbacks and, thus, the notion that 25-foot-setbacks are the norm and/or consistent with the neighborhood scheme are rejected by the Board.

The Board further finds that the Master Plan disfavors developments which increase density and infill development with excessive lot coverage, such as the application proposed. Accordingly, the Board rejects the Applicant's contention that the application is consistent with the Master Plan and/or does not offend the same.

The purpose of setbacks is also to maintain adequate light, air and open space between lots. The proposed setbacks are virtually on top of the property line and do not achieve any of these critical goals of the Ordinance. While the Ordinance does not require a "view corridor", the required bulk standards result in open space and attractive views. Both would be frustrated by the proposed subdivision plan. The Board therefore finds that the grant of variance relief would result in substantial detriment to the public good and substantial impairment of the zone ordinance and the zone plan. The Applicant has therefore failed to satisfy the negative criteria.

The Board finds that the failure to satisfy either the positive or the negative criteria results in denial of variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2).

To the extent that minor subdivision plan approval is required in connection with this application pursuant to N.J.S.A. 40:55D-47, such request has been rendered moot by the denial of variance relief.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands on this 13th day of March 2025, that the action of the Land Use Board taken on February 13, 2025 denying Application No. LUB2024-03, for minor subdivision plan approval pursuant to N.J.S.A. 40:55D-47 along with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2) is as follows:

The application for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2) and minor subdivision plan approval pursuant to N.J.S.A. 40:55D-47 as well as the Land Use of ordinance of the Borough of Highlands is hereby denied.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Robert Knox, Chairman
Borough of Highlands Land Use Board

ON MOTION OF:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAINED:
INELIGIBLE:
ABSENT:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on March 13, 2025.

Nancy Tran, Board Secretary
Borough of Highlands Land Use Board

BOROUGH OF HIGHLANDS LAND USE BOARD

EXHIBITS/SUBMISSIONS

Case No. LUB 24-03/EDWARD AND MARGARET WHEELER

Minor Subdivision Plan with Ancillary Variance Relief Denial

March 13, 2025

Exhibits

- A-1 Color Rendering of proposed single-family dwelling on proposed lot 17.02
- A-2 Three-page exhibit prepared by Cofone Consulting Group

Submissions/Review Letters

- Copy of resubmission letter addressed to Ms. Nancy Tran, Land Use Board Secretary from Rick Brodsky, Esq., Ansell Grimm & Aaron, PC, dated October 25, 2024.
- Copy of plan entitled, “Minor Subdivision Plan for Edward Wheeler, Lot 17, Block 80, Borough of Highlands, Monmouth County, New Jersey”, prepared by Ronald Trinidad, PLS, R and T Land Surveying, unsigned and dated August 17, 2023, and last revised July 12, 2024, consisting of 1 sheet.
- Copy of submission letter addressed to Ms. Nancy Tran, Land Use Board Secretary from Rick Brodsky, Esq., Ansell Grimm & Aaron, PC, dated May 21, 2024.
- Copy of plans entitled, “New Construction, Wheeler Residence, Washington Avenue, Highlands, NJ, Block 80 Lot 17.02”, prepared by Jeremiah J. Regan, AIA, Architect, dated and signed January 15, 2024, consisting of 1 sheet.
- Copy of the Land Use Board Application for Minor Subdivision and Variance, dated May 1, 2024.
- Copy of a Letter report Denial of Zoning Permit issued on January 31, 2024, by Courtney Lopez, Zoning Officer for the Borough of Highlands.
- Completeness Review Letter, prepared by Roberts Engineering Group, LLC, dated November 15, 2024 (and any prior versions thereto).