

**IN THE MATTER OF  
APPLICATION NO. PB 23-09  
OF MESSERCOLA EXCAVATING CO., INC.  
BLOCK 125 LOT 8**

**RESOLUTION GRANTING  
MINOR SUBDIVISION APPROVAL  
WITH VARIANCES**

**WHEREAS, MESSERCOLA EXCAVATING CO., INC.,** hereinafter the "Applicant", has proposed the development of property located at 43 Avenue C, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 125, Lot 8 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 approval to subdivide an existing 21,250 square foot (0.49 acre) site into three (3) residential building lots requiring the following Variance relief:

1. Lot are of 7,350 square feet where 7,500 square feet is required for new lot 8.01.
2. Lot area of 6,825 square feet where 7,500 square feet is required for new lot 8.02.
3. Lot area of 6,825 square feet where 7,500 square feet is required for new lot 8.03.
4. Lot frontage of 70 feet where 75 feet is required for new lot 8.01
5. Lot frontage of 65 feet where 75 feet is required for new lot 8.02.
6. Lot frontage 15 feet where 75 feet is required for new lot 8.03.
7. Lot width of 65 feet where 75 feet is required for new lot 8.02.
8. Lot width of 65 feet where 75 feet is required for new lot 8.03.
9. Lot shape diameter of 45 feet where 50 feet is required for new lot 8.02.
10. Lot shape diameter of 45 feet where 50 feet is required for new lot 8.03.
11. Lot width for corner lot of 70 feet where 75 feet is required for new lot 8.01.
12. Lot shape diameter of corner lot of 40 feet where 45 feet is required for new lot 8.01.

All of the following are contrary to Section 150-29.(A)(2)(Exhibit 5-2).

The following additional relief is necessary:

1. A nonconforming lot may not be used for any purpose unless it conforms to the minimum lot area. The three (3) proposed lots do not comply with the lot area requirements (Section 150-49.1(1)(b)).

2. Buildings may not be constructed on nonconforming lots unless the lot conforms to the minimum lot area requirements. None of the proposed lots conform to minimum lot area (Section 150-49.1(3)(b)).

3. No driveway shall be within 5 feet of the side lot line. The proposed driveway for lot 8.03 will be 3.0 feet from the westerly sideline and approximately 1.0 feet from the southerly sideline (Section 150-54.F).

4. No driveway shall be less than 12 feet in width. The proposed driveway for lot 8.03 is 10 feet in width (Section 150-89.D(1); and

**WHEREAS**, 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; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on January 4, 2024, 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 July 12, 2023, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Messercola Excavating Co., Inc., dated August 22, 2023, with checklist marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Harbor Consultants Inc., marked as Exhibit A-3 in evidence.

1.4 Subdivision Plan prepared by Harbor Consultants, Inc., dated May 16, 2023, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated October 23, 2023, marked as Exhibit A-5 in evidence.

1.6 Conceptual Architectural Renderings, marked as Exhibit A-6 in evidence.

1.7 Photo Board with 6 Photographs, prepared by Harbor Consultants, Inc., marked as Exhibit A-7 in evidence.

1.8 Aerial Photograph, prepared by Harbor Consultants, Inc., marked as Exhibit A-8 in evidence.

1.9 Colorized Plan, prepared by Harbor Consultants, Inc., marked as Exhibit A-9 in evidence.

1.10 Letter to Attorney Kennedy seeking to acquire additional land, marked as Exhibit A-10 in evidence.

2. The premises in question are located at 43 Avenue C, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 125, Lot 8 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 property in question has approximate dimensions of 200.00 ft. x 105.00 ft. and is substantially rectangular in shape. The subject property is presently developed with a vacant 5,500 square foot, one-story building previously used as a fireman's field house with an associated parking area and other ancillary improvements. The bulk of the subject property is located within a zone "X" which is an area determined to be outside the 0.2% annual chance flooding. A portion of the site is situated in the AE-12 Special Flood Hazard Area, which is

regulated by NJDEP. There do not appear to be any wetlands or open water features on the property.

5. The Applicant proposes to subdivide the existing property into three (3) new parcels to be developed as single-family residential dwellings. Proposed lot 8.01 will have a total area of approximately 7,350 square feet. Lots 8.02 and 8.03 will have lot areas of 6,825 square feet each. Lot 8.01 will be a corner lot with frontages along Avenue "C" and West Washington Avenue. Lots 8.02 and 8.03 will be interior lots with frontage along West Washington Avenue. New asphalt driveways are proposed for each lot extending to West Washington Avenue. Right-of-way improvements include new curbing, concrete aprons and sidewalk. The surrounding properties contain residential parcels as well as the Fireman's Memorial Field located to the east of the site.

The Applicant was represented by John Anderson, Esq. who presented the testimony of Christian Cuetto, a Licensed Professional Engineer in the State of New Jersey and Gabriel Bailor, a Licensed Professional Planner in the State of New Jersey. They provided testimony that the Applicant has received approval from the Freehold Soil Conservation District and has received a letter of exemption from the Monmouth County Planning Board. The Applicant does require CAFRA approval. The Applicant's Engineer provided testimony that the proposed improvements will comply with the requirements of the Residential Site Improvement Standards (RSIS). The Applicant also agreed to provide a Sight Triangle Easement at the intersection of Avenue "C" and West Washington Avenue in compliance with Ordinance Section 150-51 and the Standards of AASHTO.

6. The Applicant's Engineer reviewed review #1 of CME Associates marked as Exhibit A-5 in evidence and agreed to comply with the recommendations set forth in that review and particularly those recommendations set forth in subparagraphs 10, 11 and 12 at pages 7 and 8 of the report.

7. With respect to potential traffic, the Applicant's Engineer testified that, pursuant to the Institute of Traffic Engineers, the proposed uses will generate less peak hour traffic than would be generated by the existing field house use.

8. The Applicant agreed that stormwater will be directed toward the street and not toward the adjacent lots 9, 10, 11 & 12. The Applicant also agreed to provide an enhanced landscape plan

to be reviewed and approved by the Shade Tree Commission and the Planning Board Engineer as a condition of approval.

9. Mr. Bailor testified as to the justification for the grant of Variance relief. He testified that the existing building and improvements provide virtually 100% of impervious coverage which is out of character with the surrounding residential neighborhood. He opined that although a conforming two lot subdivision could be created the lots would be "oversized" exceeding 10,000 sq. ft. each with 100 foot frontages which are out of character for the surrounding area which is characterized by 5,000 sq. ft. lot with 50 foot frontages and widths. This includes 24 lots within the immediate vicinity of the subject property. He opined that, despite the necessity for the variances, a three lot subdivision is more in character with the surrounding neighborhood and opined that the grant of the requested Variances would promote the purposes of the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2 (a) to promote the general welfare by removing a blighted structure and excessive lot coverage, (i) to promote a desirable visual environment through good and civic design and arrangement that is harmonious with the existing pattern of development in the neighborhood, (g) to provide sufficient space in appropriate locations for a variety of uses including residential uses that meet the needs of New Jersey citizens and, (e) to promote the establishment of appropriate population densities and concentrations contributing to the well-being of persons, neighborhoods and communities, and (c) to provide adequate light, air and open space. He also opined that the driveway Variance for proposed lot 8.03 is due to the fact that although the easternmost portion of the paved area appears to be Washington Avenue it is actually a privately owned right-of-way owned by the Fire Company. Consequently, the driveway for that lot must be no more than 10 ft. n width and be located in the area proposed in order to connect directly with the public right-of-way.

Discussion was conducted as to the location of on-street parking and the extent to which the proposed driveway locations would impact the number of available parking spaces. The Applicant agreed to coordinate with the Planning Board Engineer in order to locate the driveways to maximize on-street parking as a condition of approval.

10. Several residents expressed concern regarding the proposed development including citizens Montagna and Fisher, who opined that the grant of Variance relief to create a three-lot subdivision would be contrary to the intent and purpose of the Master Plan. Planning Board members expressed different views as to whether a three-lot subdivision was a preferable

planning alternative. The majority of the Planning Board agreed with the Applicants witnesses that a three-lot subdivision is more consistent with the character of the neighborhood and surrounding community and would promote the purposes of the Municipal Land Use Law testified to by the Applicants witnesses thus, establishing the positive criteria for the grant of the requested Variance relief. The majority of the Planning Board further found that the Applicant has satisfied the negative criteria for the grant of the requested Variance relief.

11. The Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. More particularly, the Planning Board is satisfied that the grant of the requested Variances will permit a three-lot subdivision that will be more consistent with the existing neighborhood scheme and will not result in oversized lots with typically larger homes that would be inconsistent with the development of the neighborhood. Thus, the majority of the Planning Board finds that the grant of the requested Variance relief will not result in substantial detriment to the public good but will, in fact, have positive impacts.

12. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. The Planning Board notes that there are a significant number of Variances requested. However, the Planning Board finds that deviations proposed are minimal and di minimis in scope and will result in lots that are consistent with the neighborhood scheme. The Planning Board finds that the Ordinance provisions in question are designed to control development so that lots are of sufficient size to accommodate residential development without resulting in the appearance of overbuilding on properties. In this case, the proposal is to remove the existing improvements covering 100% of the site and replace them with an attractive three-lot subdivision which will have three homes with adequate setbacks and conforming coverages lines. Thus, any adverse impacts flowing from the grant of the requested Variance relief are di minimis and insubstantial.

13. The Planning Board also agrees with the Applicants witnesses that the Variances for use of nonconforming lots and that buildings can be constructed on nonconforming lots, are technical in nature and subsumed on the grant of the dimensional Variances as previously set forth herein.

14. As a result of all of the foregoing the Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested Variance relief and that the Variances can and should be granted at this time.

15. The Planning Board further 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. The Planning Board further finds that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for approval and that subdivision approval can and should be granted at this time.

16. The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper notice of the hearing of this application and were provided with an opportunity to present testimony and evidence in support of, or in opposition to, the appeal.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Atlantic Highlands on this 1<sup>st</sup> day of February, 2024 that the Application of **MESSERCOLA EXCAVATING CO. INC.**, be and is hereby approved, which approval is expressly conditioned upon compliance with the following terms and conditions:

**GENERAL CONDITIONS –**

- 1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.
- 2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.
- 3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees, Temporary Certificate of Occupancy Guarantees, Safety and Stabilization Guarantees, Maintenance Guarantees, Inspection Fees and such other Guarantees or fees as may be required pursuant to the Municipal Land Use Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract and private site improvements.

6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant with all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".



10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.

15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

Affordable units in inclusionary developments shall have at least 50% low income units (of which at least 13% are very low income). The remaining affordable units shall be

moderate income units. The bedroom distribution for affordable units shall be a minimum of 20% three-bedroom units and a maximum of 20% one- bedroom units.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required prior to the commencement of any development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality's approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

19) The scope of the review of this application is necessarily limited to planning, zoning and land use review of the site as compared to the requirements of the Municipality. The grant of this approval and of any permit or approval in connection therewith shall not constitute a representation, guarantee or warranty of any kind or nature by the Municipality or by any Municipal official or employee thereof with respect to the practicability or safety of any structure, use or other plan proposed and shall create no liability upon or cause of action against the Board, the Municipality or any officials or employees of the Municipality for any damage or injury that result from the construction of the improvements for which this Zoning approval is granted.

#### **SPECIAL CONDITIONS –**

1) The approvals granted herein are as follows:

1. Lot are of 7,350 square feet where 7,500 square feet is required for new lot 8.01.
2. Lot area of 6,825 square feet where 7,500 square feet is required for new lot 8.02.
3. Lot area of 6,825 square feet where 7,500 square feet is required for new lot 8.03.
4. Lot frontage of 70 feet where 75 feet is required for new lot 8.01
5. Lot frontage of 65 feet where 75 feet is required for new lot 8.02.

6. Lot frontage 15 feet where 75 feet is required for new lot 8.03.
7. Lot width of 65 feet where 75 feet is required for new lot 8.02.
8. Lot width of 65 feet where 75 feet is required for new lot 8.03.
9. Lot shape diameter of 45 feet where 50 feet is required for new lot 8.02.
10. Lot shape diameter of 45 feet where 50 feet is required for new lot 8.03.
11. Lot width for corner lot of 70 feet where 75 feet is required for new lot 8.01.
12. Lot shape diameter of corner lot of 40 feet where 45 feet is required for new lot 8.01.

Additional relief is granted from the following provisions:

1. Nonconforming lot may not be used for any purpose unless it conforms to the minimum lot area. The three (3) proposed lots do not comply with the lot area requirements (Section 150-49.1(1)(b)).
  2. Buildings may not be constructed on nonconforming lots unless the lot conforms to the minimum lot area requirements. None of the proposed lots conform to minimum lot area (Section 150-49.1(3)(b)).
  3. No driveway shall be within 5 feet of the side lot line. The proposed driveway for lot 8.03 will be 3.0 feet from the westerly sideline and approximately 1.0 feet from the southerly sideline (Section 150-54.F).
  4. No driveway shall be less than 12 feet in width. The proposed driveway for lot 8.03 is 10 feet in width (Section 150-89.D(1);
- 2) The Applicant shall comply with all requirements of the Residential Site Improvement Standards (RSIS).
  - 3) The Applicant shall provide a Sight Triangle Easement at the intersection of Avenue "C" and West Washington Avenue.
  - 4) The Applicant shall comply with the technical recommendations set forth in the review #1 of CME Associates as noted previously herein as to stormwater, landscape and other noted items.

5) The Applicant shall provide an enhanced landscape plan for review and approval by the Shade Tree Commission and the Planning Board Engineer.

6) The Applicant shall consult with the Planning Board Engineer with respect to the location of the proposed driveways in order to maximize available on-street parking.

**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 should the Applicant not exercise this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9.J. these variances will expire.

**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: Ms. Majewski

SECONDED BY: Dr. Zuzulock

ROLL CALL:

YES: Mr. Caccamo, Ms. Majewski, Dr. Zuzulock, Mr. Kurdes, Vice Chair Krupinski

NO: None

ABSTAIN: None

INELIGIBLE: Ms. DePasca, Mr. Hawley, Mr. Josko, Mr. Neff, Chair McGoldrick

ABSENT: Councilman Dougherty, Mr. Bearmore



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**John McGoldrick, Chair**  
**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 February 1, 2024.



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

