

**RESOLUTION
TOWNSHIP OF HOWELL PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
MINOR SUBDIVISION APPROVAL
WITH ANCILLARY BULK VARIANCE
AND DESIGN WAIVER RELIEF**

**Approved: November 2, 2023
Memorialized: December 14, 2023**

IN THE MATTER OF SAMUEL NEIGER

APPLICATION NO. SD-3010

WHEREAS, an application for minor subdivision approval with ancillary bulk variance and design waiver relief has been made to the Howell Township Planning Board (hereinafter referred to as the “Board”) by Samuel Neiger (hereinafter referred to as the “Applicant”) on lands known and designated as Block 18, Lots 8 & 15, as depicted on the Tax Map of the Township of Howell (hereinafter “Township”), and more commonly known as 200 Bry Avenue in the R-2 (Residential) District; and

WHEREAS, a public hearing was held before the Board on December 14, 2023 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant’s consultant, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Howell Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property includes two (2) lots which contain a total of 42,185 square feet within the R-2 Residential (R-2) Zone District. Lot 15 contains 318 feet of frontage along Bry Avenue and Lakewood-Farmingdale Road as well as 16 feet of frontage along Larrabee Boulevard. Lot 8 contains 50 feet of frontage along Larrabee Boulevard. Lot 15 is improved with a two-story dwelling, stone driveway, concrete walk, porch, remote garage, and in-ground pool. The northern and western portion of Lot 15 is partially covered by trees. Lot 8 is fully wooded.

2. The Applicant is seeking minor subdivision approval to subdivide the two existing lots into two new lots as follows:

- Proposed Lot 8.01 would contain 0.23 acres (9,900 square feet) and would be improved with a proposed two-story dwelling. Two new 18-foot-wide paved driveways with depressed curbs are proposed from Larrabee Boulevard. A new septic disposal field is proposed in the rear of the proposed dwelling.
- Proposed Lot 15.01 would contain 0.74 acres (32,285 square feet) and retain the existing two-story dwelling and all existing improvements. No changes are proposed to this lot other than the lot line adjustment.

3. Counsel for the Applicant, Jared Pape, Esq., stated that the Applicant was seeking minor subdivision approval with ancillary bulk variance relief. Mr. Pape described the proposal as a lot line adjustment. He described Lot 15 as irregularly shaped and being improved with the existing two-story dwelling, stone driveway, concrete walk, porch, remote garage, and in-ground pool. Mr. Pape also stated that Lot 15 contained several existing non-compliant conditions. He noted the proposed new Lot 15.01 would not require any relief. Mr. Pape further stated that Lot 8 was vacant and undersized. He explained that the proposed minor subdivision would slightly increase the lot area and lot width for proposed new Lot 8.01

4. Mr. Pape next stated that the Board's Professionals requested a history of the subject lots be provided, however none could be located. He explained that a title search suggested that Lot 15 may have been created via lot merger. Mr. Pape also stated that the Applicant had sent buy/sell letters to all of the owners of the adjacent lots of Lot 8 and received no response.

5. The Applicant's Engineer and Land Surveyor, Charles Surmonte, P.E., P.L.S., testified that Lot 8 had a width of fifty (50) feet and that the proposed width would include an additional sixteen (16) feet taken from Lot 15. He stated that Proposed Lot 8.01 would contain 9,900 square feet. Mr. Surmonte further testified the Applicant was not proposing any changes to the existing improvements on Lot 15. He stated that the Applicant was proposing to construct a single-family dwelling on the proposed Lot 8.01. Mr. Surmonte noted that soil tests had been performed and confirmed the developability of the site. He also stated that a septic field was proposed for Lot 8.01.

6. Mr. Surmonte identified the following existing non-compliant conditions:

- a. **Section 188-70 (Schedule II)** – The minimum required front yard setback is 50 feet, whereas the existing house on proposed Lot 15.01 is set back 27.7 feet.
- b. **Section 188-70 (Schedule II)** – The minimum required side yard setback is 20 feet, whereas the existing house on proposed Lot 15.01 is set back 11.8 feet.
- c. **188-70 (Schedule II)** – The minimum required accessory building setback is the equivalent to the building height, whereas the remote garage on proposed Lot 15.01 is set back 3.7 feet. The height of the garage is not identified.

7. Mr. Surmonte also identified the following required variance relief:

- a. **Section 188-70 (Schedule II)** – The minimum required lot area is 20,000 sf; whereas proposed Lot 8.01 is 9,900 sf in size.

- b. **Section 188-70 (Schedule II)** – The minimum required lot frontage is 100 feet, whereas the proposed Lot 8.01 frontage is 66.0 feet.
 - c. **188-70 (Schedule II)** – The minimum required front yard setback is 50 feet, whereas the proposed dwelling on proposed Lot 8.01 is set back 25.0 feet.
 - d. **Section 188-70 (Schedule II)** – The minimum required side yard setback is 20 feet, whereas the proposed dwelling on proposed Lot 8.01 is set back 15.5 feet from both the eastern and western property lines.
8. Mr. Surmonte further identified the following required design waiver relief:
- a. **Section 188-132A** – Sidewalks shall be constructed along the entire frontage of the subject Property, whereas no sidewalk exists nor is proposed along the Larrabee Boulevard, Lakewood-Farmingdale Road, or Bry Avenue frontages. If the Board grants a waiver from providing sidewalks along the frontages, we note that minor subdivision applications are exempt from contributing to the Howell Township sidewalk fund.

9. In response to questions from the Board Engineer, Mr. Surmonte testified that the subdivision would be filed by plat map and that the plat map had already been prepared. Mr. Surmonte also stated that the Applicant was seeking design waiver relief from providing sidewalk along the frontages. He explained that the Applicant was proposing two (2) driveways on proposed Lot 8.01 because the entry stairs were at the center of the front yard and were in the way of providing a single driveway. He also stated that a garage was not proposed. Mr. Surmonte further testified that the proposed septic in the back yard created the need to push the dwelling forward toward the front. Mr. Surmonte agreed to revise the entry stairs to provide a single driveway.

10. In response to questions from the Board, Mr. Surmonte testified that the proposed septic was designed for a five (5) bedroom dwelling. He stated that he did not know the size of

the septic on Lot 15. Mr. Pape represented that there was no existing septic on Lot 8. Mr. Pape also represented that the existing septic on Lot 15 would remain unchanged.

11. The Board Planner, Jennifer Beahm, P.P., A.I.C.P., explained that the Applicant was proposing to transfer a narrow sliver of Lot 15 to Lot 8. She stated that the proposed Lot 8.01 would still be undersized but would be closer to conformity. Ms. Beahm explained that the Applicant was not creating any new lots and characterized the application as a lot line adjustment. She also stated that the proposed Lot 8.01 would be slightly wider than the adjacent lots along Larrabee Boulevard.

12. The Applicant's Planner, Allison Coffin, P.P., AICP, testified that the Applicant was seeking variance relief to permit the creation of an undersized lot of 9,900 square feet where a minimum of 20,000 square feet was required. Ms. Coffin also stated that the proposed lot frontage was sixty-six (66) feet, where a minimum of 100 feet was permitted. She stated that there were no changes proposed to Lot 15.01. Ms. Coffin further testified that proposed Lot 8.01 required variance relief for the front yard and side yard setbacks.

13. Ms. Coffin also stated that the Applicant was seeking design waiver relief from providing sidewalks along the frontages. She testified that there were no public schools within two (2) miles, therefore sidewalks were not necessary.

14. Ms. Coffin next testified that the bulk variance relief could be granted under the c(1) or c(2) criteria. She stated that the bulk variance relief could be granted under the c(1) criteria because of the unique shape of the subject Property. She explained that the subject Property had three (3) frontages. Ms. Coffin explained that Lot 8 was undersized. Ms. Coffin also explained that although the subject Property had sufficient lot area to create two (2) lots with conforming lot areas, the unusual shape prohibited making such lots and that such lots would be

an even more usual shape. She opined that the proposed subdivision was a cleaner and better design. Ms. Coffin further stated that the proposed subdivision design would improve the undersized lot frontage of Lot 8. She also stated that the requirement of the septic at the rear of Lot 8.01 forced the need for the building envelope to be shifted forward, thereby creating the need for front yard setback relief. She stated that the side yard setbacks were a result of the narrow lot width.

15. Ms. Coffin further testified that the bulk variance relief could also be granted under the c(2) flexible criteria because it promoted the general welfare and the establishment of appropriate population densities and concentrations. Ms. Coffin stated that there was no substantial detriment to the surrounding area because the proposal was to improve the lot area and lot frontage of Lot 8. She stated that the grant of variance relief would not result in any detriment to light, air, open space, nor an increase in noise or odor. Ms. Coffin also stated that the master plan approved of the proposed density.

16. In response to questions from the Board, Mr. Surmonte testified that an unfinished basement was proposed for the new dwelling. Mr. Surmonte stated that the Applicant would agree to prohibit the basement from being used as a bedroom.

17. There were no members of the public expressing an interest in this application.

WHEREAS, the Howell Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township 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 Township of Howell; and upon the imposition of specific conditions to be fulfilled, hereby determines that the

Applicant's request for minor subdivision 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(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted in this instance.

The Board finds that the Applicant is proposing a permitted use but does require bulk 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 bulk 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. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning

Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board will address the required variance relief collectively. The Board first finds that the Applicant has not provided sufficient testimony or evidence to determine whether the hardship under c(1) was not self-created. The Board is therefore constrained from granting hardship variance relief pursuant to N.J.S.A. 40:55D-70c(1).

The Board does, however, find that the Applicant has satisfied the positive criteria in regard to c(2) criteria. The Board finds that the subject Property is irregularly shaped with three frontages. The Board also finds that the Applicant is not creating any additional lot. Rather he is proposing a lot line adjustment to bring the lot area and lot frontage of Lot 8 into greater compliance with Ordinance requirements. The Board does, however, recognize that the proposed Lot 8.01 will still have non-conform lot area and lot frontage. The Board typically refrains from creating undersized lots, however, in this instance, the Board is persuaded that the proposed lot size and frontage of Lot 8.01 would be an improvement and would more closely conform with the requirements of Zone. The Board also finds that the proposed lot area and lot frontage is more closely conform to the prevailing neighborhood scheme. The Board finds that the proposed subdivision will therefore result in a conforming population density as well as creating a lot which harmonizes well with the neighborhood especially considering the anticipated development of a new visually attractive home. The Board therefore finds that the goals of planning as enumerated in N.J.S.A. 40:55D-2 have been promoted and the positive criteria has been satisfied.

The Board further finds that the negative criteria has been satisfied. The Board finds the proposed lots will not increase permitted population density or result in traffic, odor or noise not already contemplated by the Ordinance. The Board therefore finds that the granting of variance relief will not result in any substantial detriment or impairment to the zone plan, zoning ordinance or public welfare. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

The Board now addresses the required design waiver relief. The Board finds that minor subdivision applications are exempt from being required to contribute to the Howell Township Sidewalk Fund in lieu of installing a sidewalk along the frontage of the subject Property. The Board finds that sidewalks do not exist on either Bry Avenue, Lakewood-Farmingdale Road or Larrabee Boulevard or in the surrounding area and to require installation of such sidewalks would be more detrimental than beneficial because it would lead nowhere. Strict enforcement of the Ordinance requirement would therefore result in practicable difficulty in developing the site for its permitted use. The Board finds that relieving the Applicant of the sidewalk requirement along the frontages of Bry Avenue, Lakewood-Farmingdale Road, and Larrabee Boulevard is therefore appropriate and reasonable and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board finds that with the exception of the above, the Applicant has complied with all zoning, subdivision and design criteria ordinance requirements. Minor subdivision approval is therefore appropriate pursuant to N.J.S.A. 40:55D-47.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Howell on this 14th day of December 2023, that the action of the Planning Board taken on November 2, 2023, granting Application No. SD-3010 of Samuel Neiger for minor subdivision 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(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this Resolution, the Applicants shall comply with all recommendations contained in the Reports of the Board's Professionals.
3. The Applicant shall file the subdivision by plat in compliance with the Map Filing Act.
4. The basement shall be prohibited from being used as bedroom living space.
5. The Applicant shall provide a design for a single driveway on Lot 8.01 subject to review and approval by the Board's Professionals.
6. All driveways shall conform with RSIS requirements.
7. The Applicant shall provide a certificate that taxes are paid to date of approval.
8. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
9. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Howell, County of Monmouth, State of New Jersey or any other jurisdiction.

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 Applicants' expense and to send a certified copy of this Resolution to the Applicants and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Paul Boisvert, Chairman
Howell Township Planning Board

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAINED:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Howell Township Planning Board, Monmouth County, New Jersey at a public meeting held on December 14, 2023.

Eileen Rubano, Secretary
Howell Township Planning Board

HOWELL TOWNSHIP PLANNING BOARD

EXHIBITS

SD-3010 / Samuel Neiger

Minor Subdivision with Ancillary Variance Relief

November 2, 2023

- A-1 Development application
- A-2 Application Checklist
- A-3 Statement of Corporate Ownership
- A-4 Certified List of Property Owners
- A-5 Monmouth County Planning Board Application dated
- A-6 Waiver Requests prepared by Jared M. Pape of Heilbrunn Pape Counselors at Law dated 6/23/2023
- A-7 Minor Subdivision Plans prepared by Charles Surmonte, P.E., P.L.S. dated 5/15/2023, last revised 10/10/23
- A-8 Prior Howell Township Zoning Board Resolution Case No. 96-02 dated 7/16/1995.
- A-9 Offsite Stability Narrative prepared by Charles Surmonte, P.E. P.L.S. dated 6/13/2023
- A-10 Property Survey prepared by Charles Surmonte, P.E. P.L.S. dated 5/15/2023
- A-11 Response letter prepared by Charles Surmonte, P.E. P.L.S., dated 10/20/23
- A-12 Drywell Design prepared by Charles Surmonte, P.E. P.L.S., dated October 2023

INTEROFFICE REPORTS

- B-1 Environmental Commission Review dated 7/12/2023
- B-2 Monmouth County Conditional Final Approval dated 7/10/2023
- B-3 Shade Tree Review dated 7/19/2023
- B-4 Fire Bureau review dated 7/24/23
- B-5 Farmers Advisory review dated 7/27/23
- B-6 Board Engineer's review letter dated 8/18/23

B-7 Monmouth County Board of Health review dated 8/11/23

B-8 Board Engineer's completeness memo dated 9/8/23

NOTICE

PLEASE TAKE NOTICE THAT ON NOVEMBER 2, 2023 THE PLANNING BOARD OF THE TOWNSHIP OF HOWELL GRANTED MINOR SUBDIVISION APPROVAL WITH ANCILLARY BULK VARIANCE AND DESIGN WAIVER RELIEF TO SAMUEL NEIGER, FOR BLOCK 18, LOTS 8 & 15 AS DEPICTED ON THE TAX MAP OF THE TOWNSHIP OF HOWELL, AND MORE COMMONLY KNOWN AS 200 BRY AVENUE, HOWELL TOWNSHIP, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER SD-3010 PERMITTING CREATION OF TWO (2) RESIDENTIAL LOTS. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE PLANNING BOARD, HOWELL TOWNSHIP MUNICIPAL BUILDING, 4567 ROUTE 9 NORTH, HOWELL, NEW JERSEY.

SAMUEL NEIGER