

RESOLUTION

MICHAEL MCCARTY

Minor Subdivision
3 BLACKPOINT HORSESHOE
BLOCK 79, LOT 3

**IN THE MATTER OF THE
APPLICATION OF
MICHAEL MCCARTY
BLOCK 79, LOT 3**

**RESOLUTION DENYING
SUBDIVISION AND VARIANCE
APPROVAL**

WHEREAS, MICHAEL MCCARTY hereinafter the "Applicant", has proposed the development of property located at 3 Black Point Horseshoe and Navesink Avenue, in the Borough of Rumson, County of Monmouth, and State of New Jersey which property is further known and designated as Block 79, Lot 1 on the Tax Map of the Borough of Rumson; and

WHEREAS, the Applicant has applied to the Planning Board of the Borough of Rumson for Minor Subdivision approval wherein the Applicant proposed to subdivide a 3.599 acre tract at the corner of Black Point Horseshoe and Navesink Avenue into two (2) single family building lots. The proposed corner lot (lot 1.01) will have a lot area of 89,243.97 sq. ft. (2.0488 acres) with 205.46 ft. of frontage on Black Point Horseshoe and 503 ft. of frontage on Navesink Avenue with 153.40 ft. along the Navesink River. Proposed interior lot (lot 1.02) will have a lot area of 67,550.33 sq. ft. (1.5507 acres) with 99.54 ft. of frontage on Black Point Horseshoe and 153.39 ft. of frontage along the Navesink River. Proposed new lot 1.02 requires variance relief for failure to meet the lot shape requirements contrary to the provisions of Section 22-2.4 and 22-5.1.a of the Development Regulations of the Borough of Rumson; and

WHEREAS, the subject property is located in the R-2 Single Family 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 Rumson on January 6, 2020, July 13, 2020 and September 14, 2020 respectively due notice of said meetings 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 presented by the Applicant and having heard the testimony of interested parties and having examined the exhibits presented by interested parties 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 Completeness Review, Engineering Review and Fee Determination prepared by T&M Associates dated November 18, 2019, marked as Exhibit A-1 in evidence.

1.2 Application for Minor Subdivision dated October 24, 2019, marked as Exhibit A-2 in evidence.

1.3 Minor Subdivision Plan prepared by Cranmer Engineering P.A. dated October 11, 2019, revised December 23, 2019, marked as Exhibit A-3 in evidence.

1.4 Second Engineering Review prepared by T&M Associates dated January 2, 2020, marked as Exhibit A-4 in evidence.

1.5 Color Rendered Subdivision Plan prepared by Cranmer Engineering dated November 26, 2019, revised December 23, 2019, marked as Exhibit A-5 in evidence.

1.6 Aerial Map prepared by Cranmer Engineering dated December 2, 2019, marked as Exhibit A-6 in evidence.

1.7 Filed Plat dated May 29, 1875 case #-7 entitled "Map of Black Pointe Property" marked as Exhibit A-7 in evidence.

1.8 Third Engineering Review of T&M Associates dated June 18, 2020, marked as Exhibit A-8 in evidence.

1.9 Minor Subdivision Plan prepared by Cranmer Engineering P.A. dated June 1, 2020, marked as Exhibit A-9 in evidence.

1.10 Colorized Minor Subdivision Plan prepared by Cranmer Engineering P.A. dated June 1, 2020, marked as Exhibit A-10 in evidence.

1.11 Planning Brief of Planner/Engineer Cranmer dated September 2, 2020, marked as Exhibit A-11 in evidence.

1.12 Memorandum of Planning Board Attorney Michael B. Steib, Esq. dated August 19, 2020, marked as Exhibit A-12 in evidence.

2. The Planning Board has also received the following additional Exhibits from interested parties:

2.1 Lot Shape Exhibit prepared by Peter Steck, Marked as Exhibit O-1 in evidence.

2.2 Slide Exhibit prepared by Planner Peter Steck consisting of 9 sheets with two aerial photographs, two plot plans, one lot shape exhibit and seven photographs marked as Exhibit O-2 in evidence.

2.3 Statement of Diane V. Ziegler, marked as Exhibit Z-1 for identification.

3. The premises in question are located at 3 Black Point Horseshoe, in the Borough of Rumson, County of Monmouth and State of New Jersey which property is further known and designated as Block 79, Lot 1 on the Tax Map of the Borough of Rumson. The subject property is a corner lot located at the intersection of Black Point Horseshoe and Navesink Avenue.

4. The subject property is located in the R-2 Zone District and single family homes with associated accessory structures are a permitted use in the Zone on lots of one acre in size or larger.

5. At the commencement of the hearing the application was reviewed for completeness and the Planning Board Engineer advised that he had no objections to the submission waivers being requested and recommended that the application be deemed complete. Based upon the Board Engineer's recommendations the requested submission waivers were granted and the application was deemed complete for hearing.

6. The application presented at the January 6, 2020 hearing requested Minor Subdivision approval with four variances. Proposed new lot 1.01 required variance relief for front yard setback of 58.8 ft. along Navesink Avenue where 75 ft, is required, lot shape requirement of 54.1 ft. where 100 ft is required and lot width and frontage of 155.0 ft. where 200 ft. is required for a corner lot. Proposed new lot 1.02 required a lot shape requirement variance for diameter of 99.9 ft. where 100 ft. is required.

7. At the January 2020 hearing, and subsequent hearings, the Applicant was represented by Rick Brodsky, Esq. who presented the testimony of David Cranmer, a licensed Professional Engineer and licensed Professional Planner in the State of New Jersey. Mr. Cranmer described the existing conditions of the property. He testified that the subject property was 2 lots some years ago which merged over time and the existing residence

straddles what was previously the property line between the 2 lots. Mr. Cranmer further testified as to certain environmental constraints which limit the developability of the property and provided planning testimony as to the zoning justification for the grant of the requested variances.

8. At the first hearing a number of interested citizens appeared in opposition to the application of four of whom (McCane, Thomas, Lawrence and Muss) were represented by Daniel J. O'Hern, Esq. . At the conclusion of the January meeting the application was adjourned.

9. Subsequent to the January hearing the Applicant revised its plans and submitted what it characterized as a "variance-free" application. At the July meeting Mr. Cranmer presented further testimony and advised the Board that revisions had been made to the proposal to conform to Ordinance Section 22-7.32 which permits the yard bordering on a river or navigable waterway to be designated as the front yard if the water frontage conforms to the minimum lot frontage for the Zone. Mr. Cranmer advised that this Section has been applied to proposed lot 1.02, the interior lot located on Black Point Horseshoe. Mr. Cranmer testified as to the dimensions of the proposed lots and opined that the lot shape requirement should be measured from the mean high waterline with an additional distance to be added in order that the lot shape circle be located outside of certain encumbered areas.

10. The interested citizens presented testimony of licensed Professional Planner Peter G. Steck who opined, contrary to the testimony of Mr. Cranmer, that the starting point for measurement of the lot shape requirement should be taken from the borderline of the property which in the instant case is submerged within the Navesink River.

11. At this point, the Planning Board notes the following for clarity:

Ordinance Section 22-2.4 provides that "LOT SHAPE REQUIREMENT" shall mean the minimum diameter of a circle, measured in feet, as prescribed for the Zone District, which can

be located within the envelope delineated by the yards, as required by the Zone district for the placement of principle building, tangent to the front yard setback line and unencumbered by:

1. Freshwater wetlands or required buffer /transition areas;

2. Saltwater (tidal) wetlands;

3. Any portion of a stream, lagoon or watercourse having a width of eight feet (8') or more from the top of bank to top of bank or;

4. Any portion of a pond with a total water surface of 5,000 sq. ft. or more; or

5. Any portion of a riparian grant or license not filled, graded and stabilized in compliance with Subsection (22-7.13.)

During the hearing on July 13, 2020 the Applicant presented the testimony of David Cranmer, a licensed Professional Engineer and Professional Planner who prepared the subdivision plan before the Planning Board. That plan employs the provision of Section 22-7.32 of the Borough of Rumson Development Regulations which permits an Applicant with property bordering a river or other navigable waterway to utilize the yard bordering such waterway as a front yard “if the water frontage conforms to the minimum lot frontage of the Zone District”.

In this case the northernmost property line of the parcel is submerged below the high waterline of the Navesink River. The property is further impacted proceeding to the south by a flood hazard area, wetlands and a wetland buffer. In order to meet the lot shape circle requirement of the Ordinance the Applicant’s Engineer, Mr. Cranmer, used the mean highwater line as the point from which to measure the front yard setback rather than the actual submerged property line boundary. The lot shape circle is required to be tangent to that front yard setback line. He then moved the front yard setback line an additional 40 feet (115 feet

from the mean highwater line) to measure the lot shape circle. Mr. Cranmer opined that this was necessary in order for lot shape circle to be unencumbered by freshwater wetlands, buffer transition areas, saltwater wetlands and the like which the Ordinance does not permit in the lot shape circle. Thus, he urged that a "common sense" approach dictates that the mean highwater line be utilized for that measurement rather than the actual lot boundary line is submerged beneath the Navesink River and that the front yard setback line from which to measure the lot shape circle should be moved further to a point where the lot shape circle will be unencumbered by the environmental features referenced in the Ordinance.

Interested neighbors presented the testimony of Professional Planner Peter G. Steck who urged that a literal reading of the Ordinance is required and that the front yard setback line must be measured from the submerged northerly boundary line of the property. He opined that when that approach is utilized, the lot shape circle is encumbered by the features previously referenced herein and therefore does not conform to the Ordinance. Therefore, a variance is required. In support of this argument he submitted Exhibit O-1 which visually demonstrated his interpretation of the Ordinance.

The foregoing arguments necessitated interpretation by the Planning Board as to what relief, if any, is required with respect to the lot shape requirement for the instant application.

The Planning Board attorney reviewed the Ordinance provisions and the arguments of the Applicant's and neighbors' professionals and, after consultation with the Board's Engineering and Planning staff at T&M Associates, issued a memorandum to the Board.

The Planning Board Counsel's memorandum acknowledged that Mr. Steck's argument applying a strict literal reading of Ordinance definitions could lead the Board to interpret the Ordinance to require that the land from which the lot shape requirement is measured be a distance of 75 ft. from the northerly boundary line of the subject property. However, the memorandum noted that Mr. Steck had not considered other language in the Ordinance

indicating that the setback should be measured from the highwater line. More particularly, Section 22-7.32.a. provides that the front yard bordering on a river or other navigable waterway may be designated as a front yard if the water frontage conforms to the minimum lot frontage of the Zone District. Although not defined in the Ordinance the term “water frontage” has a common definition in usage as frontage of property abutting a body of water measured along the highwater line. Thus, water frontages are found where land abuts water and not in the open water away from land.

The Board Counsel Memorandum noted that Section 22-7.32.b. equates water frontage to street frontage. Thus, when Section 22-7.32.a. is applied, the mean highwater line is analogous to the street line for purposes of measuring required setbacks.

The Ordinance definition of “lot frontage” includes the language “the distance measured on a horizontal plain between the side lot lines measured along the street line” it is noted that this definition uses the term “street line” and not “property line” or “lot line”. Since the highwater line is analogous to the street line it follows that the frontage is measured along the mean highwater line and that the front yard setback line for a waterfront property should be measured from the mean highwater line. The Planning Board notes that this interpretation is further supported by Section 22-7.32.d. dealing with hedges or screen plantings in the water setback area which is the area between the building setback to the bulkhead or mean highwater line. In that section the Ordinance clearly uses the mean highwater line to describe the point from which required setbacks are to be measured.

The Planning Board finds that the intent of Section 22-7.32 is to reasonably permit a property line bordering a river or other navigable waterway to be utilized as the front yard. The Planning Board notes that, as shown in Exhibits presented before the Board, many waterfront properties extend into the adjacent waterways and that utilizing the boundary line of the property to measure the front setback, as in this case, and likely in many other cases, would result in non-conforming lot shape requirements. The Planning Board finds that a more

practical interpretation is derived from the other language in Section 22-7.32 indicating that the water frontage (highwater line) is the point from which the Ordinance is intended to measure setback for determination of the lot shape requirement.

12. As a result of the foregoing the Planning Board agrees with the Applicant's Engineer/Planner Mr. Cranmer that the point from which setback for measuring the lot shape requirement should be the highwater line. However, that does not relieve the Applicant from the requirement for variance relief. The Planning Board finds nothing in the Ordinance to support Mr. Cranmer's argument that, if the resulting lot shape circle is encumbered by those features referenced in the Ordinance, it may be arbitrarily moved to another location further from the mean highwater line where it is not encumbered. The Planning Board finds that, if the lot shape requirement as measured from the mean highwater line in the case of waterfront properties is encumbered, a variance is required. That is the situation in this case.

13. The Planning Board notes that the Planner for the interested property owners disagreed with the Planning Board's professionals contending that the start point for setback measurement for the lot shape requirement should be from the submerged boundary line rather than the highwater line. Consequently, he testified that not only is a variance required, but the extent of the variance is greater because of the differentiated start points. He observed that only a portion of the lot shape requirement is encumbered utilizing the methodology adopted by the Planning Board's professionals whereas the entirety of the area is encumbered using his methodology. The Planning Board finds that it agrees with the memorandum of its Counsel and will address the positive and negative criteria for variance relief based hereon.

14. The subject property is a 156,794 sq. ft. (3.599 acre) tract of land located at the northeasterly corner of the intersection of Black Point Horseshoe and Navesink Avenue. The property is substantially rectangular in shape with approximate dimensions of 305.00 ft. x 503.00 ft. x 306.79 ft. x 526.00 ft. The subject property has 306.79 ft. of frontage along the Navesink River on which there are certain environmental features including submerged lands,

wetlands and wetland buffer areas along with a flood hazard area. The property is presently developed with an existing single family residential home with associated driveway, walkways, decks and a pool. The Planning Board finds that this existing development is consistent with the surrounding neighborhood scheme of Black Point Horseshoe.

15. The Planning Board notes that Black Point Horseshoe is a somewhat "U" shaped roadway with a discreet neighborhood atmosphere with 24 single family residential lots fronting on the street. With the exception of 1 lot (lot 9) the lots along Black Point Horseshoe are principally rectangular in shape with substantial frontages on Black Point Horseshoe. More particularly, of the 24 lots 8 lots meet or exceed a 300 ft. frontage, 3 lots exceed 200 ft. of frontage, 7 lots are between 150 and 200 ft. such that 75% of the lot frontages along Black Point Horseshoe exceed 150 ft.. Of the remaining lots all except lot 9, which is a flag lot, exceed 110 ft. of frontage. Based upon the foregoing the Planning Board finds that the neighborhood scheme for Black Point Horseshoe in this unique enclave is for relatively rectangular lots with substantial frontages. This is shown graphically on Exhibit O-2 presented by the interested property owners Planner Peter Steck including slide 2 and slide 4 of that Exhibit.

16. The Planning Board finds from the testimony and Exhibits presented that a principal purpose of the lot shape requirement in the Zoning Ordinance is to maintain regularity of lot design including lot shapes within neighborhoods.

17. The Applicant has now proposed to subdivide the existing property into 2 single family building lots. Proposed corner lot (lot 1.01) will be 89,243.97 sq. ft. (2.0488 acres) with 205.46 ft. of frontage on Black Point Horseshoe and 503 ft. of frontage on Navesink Avenue with 153.40 ft. of frontage along the Navesink River. The proposed interior lot (lot 1.02) will consist of 67,550.33 sq. ft. (1.5507 acres) with 99.54 ft. of frontage on Black Point Horseshoe and 153.39 ft. of frontage along the Navesink River. The Planning Board notes that it agrees with the Planner of the interested property owners that the proposed subdivision would result in a lot frontage for new lot 1.02 that would be the smallest frontage on Black Point Horseshoe

with the exception of the flag lot previously referenced herein. The Planning Board agrees with Mr. Steck that the lot configuration of proposed lot 1.02 has “gerrymandered” the shape of the lot in an effort to reduce the number of variances required for subdivision approval by utilizing Section 22-7.32 of the Ordinance to make the property line bordering the Navesink River as the front yard. Notwithstanding the foregoing, the Applicant nevertheless requires a variance from the lot shape provisions of the Ordinance insofar as the lot shape circle formed on this property is not unencumbered. Instead, it consists of approximately 1/3 freshwater wetlands buffer areas. The Planning Board notes that, utilizing Mr. Steck’s calculations, the entirety of the lot shape circle would be encumbered by these environmentally sensitive areas. However, its findings are based on the proposed lot shape circle being encumbered by approximately one-third (1/3).

18. The Applicant presented the testimony of David Cranmer, a licensed professional Engineer and licensed professional Planner in the State of New Jersey in an effort to justify the grant of variance relief for the lot shape requirement. Mr. Cranmer testified that the application would not qualify for relief under a “C-1” hardship scenario. The Planning Board agrees as did the interested property owners expert Mr. Steck. Any hardship created in this case is self-imposed due to the Applicant’s desire to subdivide the subject property in the manner presented.

19. Mr. Cranmer attempted to justify the grant of variance relief pursuant to a “C-2” Planning variance. Mr. Cranmer identified five (5) specific criteria relating to the “C-2” variance. The first of those was the subject property is a “specific piece of property”, he opined that the subject property is a specific piece of property insofar as it is a corner waterfront lot that is oversized for the R-2 Zone which permits development of single family homes on smaller (1 acre) lots. He also noted that the property contains environmental features including wetlands. The Planning Board finds that it agrees with Mr. Steck that the property is not a specific piece of property. In reviewing Exhibit O-2 the Planning Board finds that the subject property is a waterfront property consistent in size and dimension with other properties in the Black Point

Horseshoe neighborhood. The characteristics submitted by the subject property are not unique when viewed with the remaining properties in the neighborhood other than its lot size. The other features referenced by Mr. Cranmer are not differentiated from other lots on Black Point Horseshoe. The Planning Board finds that the grant of a "C-2" variance is appropriate where the grant of approval actually benefits the community in that it represents a better zoning alternative for the property because it promotes the purposes of Municipal Land Use law. Mr. Cranmer attempted to convince the Board that such purposes would be advanced by the grant of approval. The Planning Board disagrees.

Mr. Cranmer testified that the following purposes of the Municipal Land Use law would be advanced by granting the approval. Mr. Cranmer cited N.J.S.A. 40:55-2.e. that the grant of variance relief will promote the establishment of appropriate population densities and concentrations that will contribute to the well being of persons, neighborhoods, community, regions and preservation of the environment . Mr. Cranmer urged that having two smaller lots rather than the existing larger lot would promote this purpose. The Planning Board disagrees. The Planning Board agrees with Mr. Steck that the 1 acre minimum lot size set forth by the R-2 Zone is not directed at forcing larger tracts of property to be subdivided into smaller 1 acre lots. The Planning Board finds that one acre lots are the bare minimum lot size that can be developed in that zone and that there is nothing to prevent, or discourage, lots from being larger. Moreover, there was no testimony or evidence presented that additional population densities or concentrations are needed in the Borough of Rumson. Nor was there any credible testimony that the smaller lots proposed by the Applicant, with a variance to permit an odd shape lot inconsistent with the character of Black Point Horseshoe, would contribute to the well being of persons, neighborhoods or communities. Nor would it preserve the environment. The Planning Board agrees with testimony of Mr. Steck that if the property were subdivided the owners of smaller lots would be inclined to more intensely develop them to the fullest rather than to preserve the environment.

20. Mr. Cranmer also opined that N.J.S.A. 40:55 D-2.G. would be advanced by providing sufficient space in an appropriate location for a variety of, among other things, residential uses. Once again the Planning Board finds that there was no testimony presented to demonstrate that there is insufficient space within the Borough of Rumson to provide for the variety of uses contemplated by the statute. Nor was there any credible testimony that there is a shortage of such residential uses within the Zone or neighborhood in question. Instead, the Planning Board agrees with Mr. Steck that the grant of approval would encourage more intense development inconsistent with the existing neighborhood scheme.

21. Mr. Cranmer further testified that the grant of the requested variance relief would not result in any substantial detriment to the public good insofar as the proposed lots, with the exception of the lot shape requirement, would meet the other requirements of the Zone. Mr. Steck testified that there would be a substantial detriment to the public good from the grant of variance relief as it would create a lot inconsistent with the purposes for the lot shape requirement which would be "gerrymandered" in shape and result in a lot with frontage along Black Point Horseshoe inconsistent with the vast majority of other properties in the neighborhood. Moreover, Mr. Steck opined that the proposed lots would be more intensely developed than the existing lot and the other lots on Black Point Horseshoe and inconsistent with the existing neighborhood scheme. The Planning Board agrees.

22. Mr. Cranmer further testified with respect to a benefit versus detriment analysis. He opined that, if not subdivided, it would be possible to construct a substantially larger home on the property of approximately 13,000 sq. ft. in area. However, he presented no testimony or exhibits to demonstrate the likelihood that would occur. The Planning Board is equally persuaded by Mr. Steck's argument that the property would not be overdeveloped with a larger type of residence and that, even if so developed, the environmentally sensitive features of the property would likely be better preserved than with the development of two smaller lots. The Planning Board agrees with Mr. Steck's opinion that the subdivision would encourage more intense development of the two resulting subdivisional lots. Consequently, the Planning Board

finds that the grant of the requested variance relief from a benefit/detriment standpoint would result in substantial detriment to the public good as it would result in a negative change in the neighborhood scheme without providing any benefit to the community. The Planning Board finds that, contrary to Mr. Cranmer's testimony, there would be less light, air and open space resulting from the development of two separate lots than from one larger lot.

23. Finally, Mr. Cranmer testified that the grant of the requested variance relief would not result in any substantial impairment of the Zone Plan and Zoning Ordinance. He based that opinion on the premise that, but for the lot shape requirement, the two proposed lots conform in all respects to the Zone requirements. The Planning Board finds that it agrees with Mr. Steck's opinions which were contrary to that of Mr. Cranmer. Mr. Steck opined that the detriments would outweigh the benefits as the detriments would be the likelihood for intense development of the proposed two lots which would be out of character in the shape, frontage, intensity of development and nature of the Black Point Horseshoe neighborhood and would tend to erode that unique enclave.

24. Finally, the Planning Board finds that the only real benefit to be obtained from the grant of variance relief to enable subdivision would be the economic benefit to the Applicant. Although that confers a benefit on the Applicant, that is not the thrust of a "C-2" variance. A "C-2" variance requires that the Applicant demonstrate a benefit to the public by improved Zoning and not the economic benefit of the Applicant.

25. 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. The Planning Board finds that it agrees with the interested property owners' Planner Mr. Steck that any hardship associated with the proposed variance relief is self created and that a "C-1" variance cannot be granted in this case. The Planning Board further agrees with Mr. Steck that the Zoning Ordinance in question does not Zone the property into inutility. The Planning Board finds that the denial of variance relief in this case does not Zone the property in utility. It is

already a fully developed parcel of property with an existing residence that may be retained or replaced with a single new dwelling.

26. The Planning Board further finds that the proposed variance does not meet the positive criteria pursuant to a planning variance under N.J.S.A. 40:55 D-70.c.(II). The Planning Board disagrees with the Applicant's Planner that the grant of variance relief would promote the purposes of the Municipal Land Use law establishing appropriate population densities in concentrations by permitting the subdivision of this oversized lot. The Planning Board agrees with Mr. Steck's analysis that the Zoning Ordinance lot area requirement simply imposes a minimum standard and that larger lots are perfectly acceptable.

27. The Planning Board further finds that the lot shape circle diameter requirement is an additional tool authorized by the Municipal Land Use law pursuant to N.J.S.A. 40:55 D-65 in order to provide for adequate air, light and open space of lots and to maintain consistent lot shapes and character of neighborhoods. The Planning Board agrees with the interested residents' planner that the grant of the requested variance would result in a substantial detriment to the existing streetscape. The Planning Board finds that given the nature of the Black Point Horseshoe neighborhood and the existing properties along it complying with the lot shape diameter requirements is extremely important and compromising that requirement to grant variance relief would result in substantial detriment to the public by changing the existing character of the neighborhood and would result in a substantial impairment of the Zone Plan and Zoning Ordinance as it would result in lots not exhibiting a sufficient light, air and open space that is characteristic of the existing neighborhood scheme.

28. 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 can not and should not be granted at this time. The Planning Board further notes that, in the absence of the grant of variance relief, subdivision approval cannot be

granted. Consequently, the Planning Board finds that the Applicant has not submitted a plat that conforms with the requirements of the Borough.

29. The Planning Board further finds that all property owners within 200 feet of the premises in question were given an opportunity to present evidence in support of or in opposition to the application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Rumson on this 5th day of October, 2020 that the Application of **MICHAEL MCCARTY** 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 Rumson and the Construction Code Official of the Borough of Rumson. 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:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAIN:

ABSENT:

**Chairperson, Planning Board
Borough of Rumson**

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Rumson at its meeting held on October 5, 2020.

**Secretary, Planning Board
Borough of Rumson**