



**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**LAND USE BOARD RESOLUTION 2019-11
RESOLUTION DENYING USE VARIANCE
FOR FIVE STAR REAL ESTATE GROUP, LLC
AT 16 MILLER STREET**

WHEREAS, the applicant, FIVE STAR REAL ESTATE GROUP, LLC is the owner 16 MILLER STREET, Highlands, New Jersey (Block 56, Lot 5) and has filed an application to construct four townhomes, which application was bifurcated, at the applicant's request, to first hear the use variance request and delay the site plan application until a decision on the use has been made by the board; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at public hearings on and December 5, 2019 and February 6 and March 5, 2020; and

WHEREAS, the Board heard testimony from CHARLES BONICI, the managing member of the LLC; together with his witnesses, ROBERT ADLER, architect; YOSEF PORTNOY, engineer; PATRICK LYNAM, engineer; and NICHOLAS DICKERSON, planner; and

WHEREAS many residents asked questions of the witnesses who testified on behalf of the applicant; and

WHEREAS the following residents testified in opposition to the application: CHRIS FRANCY, ANN MARIE TIERNEY, THOMAS WALCKEWSKI, ASHLEY LEDER, CANDACE DOUGLAS, CHRISTOPHER MORAN and PATRICIA CATALANO; and two residents testified in support of the application (LYNN STERNBERG and WILLIAM JENNINGS); and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Denial of zoning permit by Marianne Dunn, Zoning Officer dtd 9/18/19
- A-2 Use Variance application (bifurcated) dated 10/11/19 (4 pages)

A-3	Variance plan by Yosef Portnoy of Maser Consulting dated 9/6/19
A-4	Boundary and topographic survey by Eric Wilde of Maser Consulting dated 3/6/17
A-5	Architectural plans by Robert W. Adler dated 7/22/19 (6 pages)
A-6	Large board with 7 color photos
A-7	Large board with 8 color photos—Site Photo Exhibit
A-7A	same as A-7, but on 8 ½ X 11” paper
A-8	Large board—Existing Conditions for 16 Miller St.—aerial photo
A-9	4 screen shots from a 3-D rendering, on board
A-10	Variance Plan on board—aerial view
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A-11	Revised Variance Plan (formerly A-3) by Yosef Portnoy revised 1/16/20
A-12	Proposed Townhouses drawings by Robert Adler (formerly A-5) revised 1/17/20
A-13	20 pages of OPRA documents regarding property C.O.s
A-14	Property record card (3 pages)
A-15	Colored rendering by Robert Adler
A-16	aerial, on board, showing placement of proposed 2 buildings
A-17	drawing of what a compliant structure would look like in the neighborhood AND, WHEREAS, the following exhibits were also marked into evidence:
B-1	Board engineer completeness letter by Edward Herrman dated 11/18/19 (4 pages)
B-2	Board engineer review letter by Edward Herrman dated 12/4/19 (5 pages)
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B-3	Board engineer revised review letter by Edward Herrman dated 2/5/20 (5 pages)
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B-4	Affidavit by board member Jacyn Walsh regarding listening to prior meeting tape recording
B-5	Affidavit by board member Miranda Nash regarding listening to prior meeting tape recording
B-6	Affidavit by board member BRUCE KUTOSH regarding listening to prior meeting tape recording
B-7	Affidavit by board member LAURIE LARUSSA regarding listening to prior meeting tape recording WHEREAS, the Board, after considering the evidence, has made the following factual

findings and conclusions:

1. The applicants are the owners of property located in the R-2.02 Zone.
2. Under borough ordinance 21-86B(1), the R-2.02 zone does not permit townhouses or multi-family uses, only single-family residences and existing bungalow colonies.
3. The site currently contains three structures, all residential. Those structures have a total of four single-family units, though the middle structure of the three has not been inhabited for many years.
4. The structures are in various stages of disrepair.

5. The applicant submitted an OPRA request to the borough for all Certificates of Occupancy for the three structures and obtained approximately 20 C.O.s, though many were confusing as to which structure was covered by a particular C.O.

6. The board makes no determination as to the number of legal dwelling units on the site, but accepts as fact that there were three buildings formerly in use. The front building purportedly contained two dwelling units, and each of the two rear buildings contained one dwelling unit.

7. If the existing structures are demolished, the owner/applicant will only be permitted to construct dwelling units in accordance with the borough zoning ordinances (see para. 2 above). The number of previously approved dwelling units on the property, if they are all to be demolished, is not binding on the board or municipality as to the number of new units to be constructed; hence, the need for a use variance under N.J.S.A. 40A:55D-70(d).

8. Borough ordinance 21-98A(1) states that "A non-conforming use shall not be expanded or changed to another non-conforming use." To approve this application would contravene the borough ordinance.

9. Notably, the applicant stipulated that there is no claimed hardship.

10. The applicant's planner discussed what in his opinion were special reasons for this project under N.J.S.A. 40:55D-2, which reasons the board does not find persuasive. The board's decision, however, does not turn on the special reasons component of the positive criteria required to obtain a use variance.

11. The applicant did not prove that the use variance requested would promote the purpose of zoning.

12. The applicant did not prove that the site is particularly suited for the proposed use, a requirement to prove the positive criteria to grant a use variance. The board specifically finds that the site is not particularly suited to the proposed use, considering the neighborhood and its single-family predominance.

13. Though there was testimony and argument regarding the number of sewer bills and/or permits for the existing uses, the board does not find this issue of importance to its determination.

14. The massiveness of the proposed townhomes, both in height (though no height variance would be required under the applicant's plans), length, lot coverage, and increased activity on the site would dwarf the other homes in the neighborhood. In simple terms, the applicant has proposed to put too much structure on a small lot (i.e., .206 acres).

15. During the first night of hearings in this case, the application proposed six townhomes. That number was later reduced by the applicant, and its plans were modified accordingly. The board does not compare the two proposals in making a determination as to whether a use variance should be granted. Rather, the board only considers the application as modified in making its determination.

16. The Board finds that the applicant's proposal would result in an overdevelopment of the property, especially when there is a better design alternative (i.e. building a single-family home in conformance with the Borough's ordinances). Further, it would substantially negatively impact the neighborhood.

17. In the borough's Master Plan, Item number 2 in the Goals and Objectives regarding Residential properties states: "Limit new development and infill development that increases the intensity of neighborhood land and property use." This application runs contrary to the Master Plan's objective.

18. The Board finds no factual or legal basis to grant a D(1) or any other D variance in this case. To determine otherwise would require the board to disregard the borough ordinances, the master plan, and the nature of the neighborhood; and the board is not empowered to, effectively, rezone the property. That is the province of the governing body.

19. Accordingly, the Board finds that, if it were to grant the requested variance relief, such a relief would be with substantial detriment to the public good and would substantially impair the intent and purpose of the zone plan and zoning ordinance. As a result, the board finds that the negative criteria required to obtain a use variance under N.J.S.A. 40:55D-70d have not been proven.

WHEREAS, the application was heard by the Board at its meetings on December 5, 2019, and February 6 and March 5, 2020, this resolution shall memorialize the Board's action taken at the last of those meetings;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Highlands that the application of FIVE STAR REAL ESTATE GROUP LLC to construct four townhomes on lot 5 in block 56 be and the same is hereby DENIED.

Offered by Mr. Kutsoh

Seconded by Ms. LaRussa

There was no debate.

Ayes: Mr. Burton, Mr. Kutsoh, Mr. Lee, Ms. LaRussa, Ms. Nash, Mr. Knox, Chairman Stockton

Nays:

Abstentions: Mr. Colby, Councilmember Mazzola, Ms. Walsh, Mayor Broullon

Absent: Mr. Montecalvo

I, Michelle Hutchinson, certify that this is a true and correct record of the actions of the Borough of Highlands Land Use Board on May 7, 2020



Michelle Hutchinson, Land Use Board Secretary