

**IN THE MATTER OF  
GRANTING  
THE APPLICATION OF  
STEVEN SCOPELLITE  
BLOCK 87 LOT 2 & 3**

**RESOLUTION  
SUBDIVISION APPROVAL**

**WHEREAS, STEVEN SCOPELLITE**, hereinafter the Applicant, has proposed the development of property located at 52 Buena Vista Avenue, in the Borough of Rumson, County of Monmouth and State of New Jersey, which property is further known and designated as Block 87, Lot 2 & 3 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 subdivision approval to adjust the lot line between two existing parcels retaining the existing single family residential homes and associated accessory structures on each parcel. No new construction is proposed with the exception of a driveway to service the existing residence on proposed new lot 3.01. The Applicant requires the following variances:

1. Lot shape diameter of 94.3 feet where 115 feet is required (Section 22-5.4.e.)
2. Accessory building exceeding 30% of ground floor area of the principle dwelling with 84.2% proposed for lot 2.01 and 41.2% proposed for lot 3.01 (Section 22-7.a.g.)
3. Orientation of garage doors toward street frontage (Section 22-7.26.)

The foregoing are contrary to the Land Use Development Regulations of the Borough of Rumson; and

**WHEREAS**, the subject property is located in the R-1 single family Residential Zone District which permits single family homes with associated

accessory structures on lots of 1.5 acres or greater and the proposed use is a permitted use in the zone; and

**WHEREAS**, the applicant appeared before the Planning Board of the Borough of Rumson on March 1, 2021, 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 presented 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:

The Planning Board has received and reviewed the following documents, Exhibits and reports:

1.1 Minor Subdivision Application of Steven Scopellite, dated November 20, 2020, marked as Exhibit A-1 in evidence.

1.2 Minor Subdivision Plan prepared by Charles Surmonte, P.E. and P.L.S. dated February 15, 2016 revised May 2, 2017, marked as Exhibit A-2 in evidence.

1.3 Resolution Granting Subdivision Approval adopted June 6, 2016, marked as Exhibit A-3 in evidence.

1.4 Resolution Acknowledging Application of Permit Extension Act and extending approval adopted February 6, 2017, marked as Exhibit A-4 in evidence.

1.5 Completeness & Engineering Review prepared by T&M Associates, dated January 11, 2021, marked as Exhibit A-5 in evidence.

2. The Planning Board conducted a completeness review prior to commencing the hearing of the application and, based upon the Planning Board Engineer's comments and recommendations, has determined that completeness waivers are appropriate for items B-2, B-10, B-11, B-24 and D-3. The Planning Board further finds that the Applicant has now addressed items B-9 and D-7 which no longer require waivers. The submission waivers referenced herein are granted.

3. The premises in question are located at 52-54 Buena Vista Avenue, in the Borough of Rumson, County of Monmouth and State of New Jersey, which property is further known and designated as block 87 lots 2 & 3 on the tax map of the Borough of Rumson.

4. The subject property is located in the R-1 Residential Zone District and single-family homes with associated accessory structures are a permitted use in the zone on lots with a minimum lot area of 1.5 acres. The subject application complies with the lot area requirements.

5. The subject property has approximate dimensions of 744.00 ft. x 691.48 ft. x 613.814 ft. x 282.38 ft. x 427.79 ft. and is quadrilateral in shape with a lot area of 10.37 acres (452,061 sq. ft.) with 744 feet of frontage along Buena Vista Avenue. The subject property consists of two lots each of which is developed with a single-family residential home along with associated accessory structures. The in-ground swimming pool and cabana structures associated with the residence on existing lot 2 encroach onto existing lot 3. The parties propose

to adjust the lot lines between the parcels to place the in-ground pool and cabana completely within new lot 2.01 so that all structures associated with the dwelling existing on lot 2 will be located on the same lot. In addition to the foregoing, the southwesterly portion of existing lot 3 will also become part of lot new lot 2.01 so that existing horse paddocks which are used by existing lot 2 will remain with new lot 2.01 so as to provide for an equestrian estate.

6. The Applicant proposes a lot line adjustment subdivision of the subject property resulting in new lot 2.01 which will have a lot area of 343,678 sq. ft. (8.0 acres) with 544 feet of lot frontage on Buena Vista Avenue. Proposed lot 3.01 will have a lot area of 103,383 sq. ft. (2.37 acres) with 200 feet of frontage of Buena Vista Avenue. Each of the lots will retain the existing residences and accessory structures with no new construction or improvements proposed other than the construction of a new driveway from Buena Vista Avenue to the existing dwelling on new lot 3.01. The existing portion of previously shared driveway on proposed lot 3.01 will be removed.

7. The lot line adjustment will result in new lot 3.01 being deficient with respect to the minimum lot shape circle diameter. It will have a lot shape circle diameter of 94.3 feet where 115 feet is required.

8. The Applicant was represented by Rick Brodsky, Esq. who presented the testimony of Charles Surmonte, a licensed surveyor and professional engineer in the State of New Jersey and Andrew Janiw, a licensed professional planner in the State of New Jersey. The Planning board accepted the credentials of both expert witnesses.

9. Mr. Surmonte explained the existing conditions of the property and the reasons for the proposed lot line adjustment to have two lots with all accessory structures on those lots being related to the principal residence on that lot. As set forth previously herein, the pool and cabana which services the residence on

existing lot 2 (proposed lot 2.01) encroaches onto existing lot 3 and the Applicant proposes to “jog” the lot line in order to go around those improvements they will be on the same lot as the residence which they serve (new lot 2.01).

10. Mr. Surmonte opined that the purpose of the lot shape circle diameter requirement is to provide adequate area to accommodate a structure and its curtilage. He further noted that the lot shape circle is measured from the front setback line. In this case the changing of the lot line will reduce an existing conforming lot shape circle diameter at the front property line. Mr. Surmonte as well as Mr. Janiw testified that the subject property is already developed with an existing single family residential home and detached garage. Those structures are located more than 375 feet interior to the parcel from Buena Vista Avenue and are not near the front property line. Moreover, the area of new lot 3.01 where structures exist can easily accommodate the 115 foot lot shape circle diameter within the building envelope. Thus, the Applicant’s witnesses opined that the intent and spirit of the Ordinance is maintained in this application due to the existing developed structures on the property which will be retained in their existing locations.

11. Mr. Surmonte further testified that, with the exception of the driveway which will have virtually no visual impact, there is no other development proposed and no physical changes to the property so that the grant of the lot line adjustment will have no visual impact and will not be noticeable from the Buena Vista Avenue streetscape. The Applicant, through Mr. Surmonte, agreed to comply with the technical recommendations set forth in the Completeness and Engineering review of the Planning Board Engineer marked as Exhibit A-5 in evidence.

12. Professional Planner Janiw described the existing conditions on site and identified the encroachments of structures associated with the existing residence on lot 2 that extend onto existing lot 3. He testified that the lot line

adjustment is designed to resolve those encroachments and to place them on lot 2 which is the lot they service. He characterized new lot 2.01 with the cabana and swimming pool now located on it along with an equestrian paddock area in the southwest corner of the tract as an “equestrian estate”. He testified that the purpose of the Ordinance with respect to lot shape diameter is to maintain a streetscape and to maintain consistency of homes along the streetscape. Mr. Janiw testified that the variance placing the encroaching accessory structures on the lot which they service promotes the purposes of the Municipal Land Use Law. He opined that the grant of variance approval to permit the subdivision will promote the Rumson Master Plan goals of maintaining the existing neighborhood character and will promote the purposes of the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2c. to provide adequate light, air and open space. With respect to the other variances for accessory structures and orientation of garage doors, Mr. Janiw opined that these are existing conditions and therefore constitute a hardship upon the Applicant. Mr. Janiw further opined with respect to all of the variances requested that they are existing conditions which make the subject property a specific piece of property as contemplated by N.J.S.A. 40:55D-70.c.(II) and that retaining these non-conforming conditions and permitting the adjustment of the lot line to permit all accessory structures to be on the lot which they serve is a better zoning alternative.

13. Mr. Janiw further opined that the grant of the requested variance relief will not result in any substantial detriment to the public good as there is no new construction proposed and the lot line adjustment will not result in any visual impacts upon the adjacent properties or the streetscape as the same conditions will exist post approval as pre-approval. Mr. Janiw further opined that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. He reiterated the purposes of the Municipal Master Plan to maintain the character of existing neighborhoods. The grant of this application will not result in any change to the existing neighborhood which

will be maintained. Therefore, it was his opinion that there will be no substantial impairment of the Zone Plan or Zoning Ordinance.

14. The Planning Board finds the testimony of the Applicant's witnesses to be credible and agrees with the opinions and conclusions presented and therefore the Planning Board finds that the Applicant has satisfied criteria for the grant of variance relief and that the variances can and should be granted.

15. The Planning Board notes that the Applicant requested a design standard waiver from providing street trees. The Planning Board accepts the testimony of the Applicant's witnesses that the entire property frontage is a wooded area and that there is no need for additional street trees. Thus, the design standard waiver is appropriate under the circumstances.

16. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief for lot shape circle diameter. The Planning Board finds that the Applicant has demonstrated that there is a hardship associated with the property insofar as the lot line adjustment is driven due to the location of the existing structures on the property in order that all accessory structures will be located on the same lot as the principle dwelling which they serve. That cannot be reasonably accomplished without the requested variance relief. Therefore the Planning Board finds that an extraordinary and exceptional situation uniquely effecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Development Regulations of the Borough of Rumson would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent accessory structures from being located on the same lot as the dwelling which they serve. Similarly, the Planning Board finds that permitting the subdivision with the required variances is a better planning alternative than compliance with the requirements of the Zoning Ordinance.

17. The Planning Board further finds that the subject property is a specific piece of property within the intent of N.J.S.A. 40:55D-70c(2) as the grant of the requested variance relief will promote the purposes of the Municipal Land Use Law by providing appropriate use of the subject properties to promote the general welfare by having two distinct parcels with all accessory structures serving the residence on the lot in which they are located. This will be a preferable planning alternative to having accessory structures on a parcel other than that of the principal residence it serves.

18. The Planning Board further finds that the applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board agrees with the Applicant's witnesses that the lot line adjustment will have no impacts upon the streetscape or the surrounding properties since, other than the proposed driveway, there will be no new construction on the site. Thus, there will be no substantial detriment to the public good flowing from the grant of the requested variance relief. The Planning Board further finds that there will be no substantial impairment of the Zone Plan and Zoning Ordinance as the subject property is already developed with residential homes. Moreover, unlike other situations such as those where such a variance is requested in order to facilitate the creation of new lots for development, this will not create a new non-conforming lot for development as the subject property is already fully developed.

19. 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 to permit the subdivision as proposed.

20. 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 subdivision 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 and that approval of the application is appropriate at this time.

21. 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 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 12<sup>th</sup> day of April 2021, that the Application of **STEVEN SCOPELLITE** be and is hereby approved, which approval shall be subject to 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.

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 approval granted herein is for subdivision/lot line adjustment pursuant to plans prepared by Charles Surmonte, P.E., P.L.S. dated February 15, 2016 revised through May 2, 2017 along with variance approval to permit lot shape circle diameter on proposed lot 3.01 of 94.3 feet where 115 feet is required. Accessory structures on proposed lot 2.01 of 84.2% of the principal structure where 30% is permitted and accessory structures on 3.01 of 41.2 % of the principal structure where 30% is permitted. Garage doors facing Buena Vista Avenue and a design standard waiver from the requirement of providing street trees.

2) The Applicant shall comply with the technical recommendations set forth in the report of T&M Associates dated January 11, 2021, marked as Exhibit A-5 in evidence and as set forth previously in the body of this resolution.

**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:

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**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 April 12, 2021.

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**Secretary, Planning Board  
Borough of Rumson**