

**IN THE MATTER OF  
APPLICATION NO. PB23-08  
OF DIANA & YOUNES GHANIAN  
BLOCK 54 LOT 7**

**RESOLUTION GRANTING  
VARIANCE APPROVAL**

**WHEREAS, DIANA & YOUNES GHANIAN**, hereinafter the "Applicant", has proposed the development of property located at 42 Hooper Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 54, Lot 7 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 Variance approval to remove portions of an existing driveway and walkway and to construct a new two-car garage, driveway and cellar below an existing dwelling requiring Variance relief for front yard setback of 14.90 feet where 25 feet is required (Section 150-29.A(2)(Exhibit 5-2), side yard setback of 1.67 feet where 15 feet is required (Section 150-29.A(2)(Exhibit 5-2), and accessory side yard setback of less than 1 foot where 10 feet is required and enlargement of a nonconforming building (Section 150-49.1 (2)(B). <sup>1</sup>; and

**WHEREAS**, the subject property is located in the R-2 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 Atlantic Highlands on December 7, 2023, 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:

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<sup>1</sup> Initially it was believed that an additional Variance was required for height of 3 stories where 2.5 stories is permitted. However during the course of the hearing substantial testimony was provided by the Applicant's architect to demonstrate that the lower level meets the criteria to be classified as a "cellar" so that no height Variance is required.

1. The Planning Board has received and reviewed the following documents, exhibits and reports:

1.1 Variance Application of Diana & Younes Ghanian, dated August 11, 2023, marked as Exhibit A-1 in evidence.

1.2 Zoning Review, dated July 24, 2023, marked as Exhibit A-2 in evidence.

1.3 Steep Slope Review of CME Associates, dated November 1, 2022, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates, dated October 9, 2023, marked as Exhibit A-4 in evidence.

1.5 Architectural Elevation & Floor Plans, prepared by S.O.M.E. Architects, dated June 23, 2023, marked as Exhibit A-5 in evidence.

1.6 Steep Slope Plan, prepared by Two River Engineering, dated May 11, 2022, revised through October 7, 2022 marked as Exhibit A-6 in evidence.

1.7 Carlin, Simpson & Associates, LLC Report, dated November 28, 2023, marked as Exhibit A-7 in evidence.

1.8 Two Photo Boards containing 4 photos on each, including existing conditions and aerial photos, marked as Exhibit A-8 in evidence.

1.9 Revised sheet A-200 prepared by S.O.M.E. Architects, marked as Exhibit A-9 in evidence.

1.10 Photograph of current drainage pipe at property frontage, marked as Exhibit A-10 in evidence.

1.11 Sheet A-500, Concrete Foundation Plan & Sheet A-501, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 42 Hooper Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 54, lot 7 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-2 Residential Zone District and single-family residential homes with associated accessory structures are a permitted use in the zone.

4. The subject property is substantially irregular in shape and has a lot frontage along Hooper Avenue of approximately 151.3 feet and a lot area of 27,015 square feet (0.619 acres). The property is presently developed with a single-family home with driveway, walkways and covered porches. The Applicant is proposing to remove portions of driveway and walkways and to construct a new subterranean two-car garage and cellar below the existing dwelling.

5. The Applicant was represented by John Anderson, Esq. who presented the testimony of Michael Simpson, a licensed Architect and Planner in the State of New Jersey, AJ Garito, a licensed Professional Engineer in the State of New Jersey, and Robert Simpson a licensed Professional Engineer in the State of New Jersey. Michael Simpson testified that he has been a licensed Architect since 1985 and a Professional Planner since 1987 and provided his background in giving expert testimony before numerous Zoning and Planning Boards throughout the state. He testified as to his preparation of the architectural plans and advised that this process has been ongoing since his retention in 2020 and that a variety of design concepts have been considered but options were substantially constricted due to the location and configuration of the existing home on the property coupled with some exceptional sloped areas on the property which is alongside a steep roadway. He testified that the owners currently have a one-car garage that is extremely small and difficult to maneuver into and out of. He noted that the Residential Site Improvement Standards (RSIS) require 2.5 parking spaces. The Planning Board notes that although 2.5 off-street parking spaces are required by RSIS, table 4.4 note A. provides that when determination of the required number of parking spaces results in a fractional space, any fraction of one half or less may be disregarded. Thus, the technical requirements of RSIS are for only two off-street parking spaces. The Applicant is proposing to replace the existing one-car garage and construct a two-car garage which will provide the two

off-street parking spaces and may also provide additional parking in the driveway area for additional vehicles. He testified that three trees will likely be removed, one of which is a 30-inch Oak Tree. Although not a condition of this approval, the Applicant indicated that they would consider some tree replacement following construction.

6. The testimony demonstrated that existing peanut stone walls will have to be disassembled in order to accommodate the new garage configuration. The Applicant agreed that they will use best efforts to retain the peanut stone walls on site and reuse the peanut stone being taken down either for new wing walls, new retaining walls or both. In addition, they indicated that there may be other peanut stone on site that will be found during the course of construction which can be used to recreate the peanut stone wall appearance. If there is insufficient peanut stone the Applicant agreed to provide similar "field stone" material to finish the new wing walls and/or retaining walls.

7. The Applicant also provided testimony that all drainage will be directed to Hooper Avenue and that a drainage plan will be provided in order to demonstrate that all stormwater will be directed to the street and not over the steep sloped area to the rear. The Applicant also agreed to revise the plans to show a limit of disturbance and to require silt-fencing around the area beyond the area of disturbance so that it is not disturbed. The Applicant further agreed to provide spot grades on the roof in order to confirm the projection of water to the street. The Applicant also agreed that if the sloped area with a one-to-one ratio identified in Exhibit A-7 is disturbed, the Applicant will regrade it to a three-to-one ratio in accordance with the recommendations set forth in Exhibit A-7.

8. With respect to the front yard setback Variance, the Applicant provided testimony that the 14.90 feet setback is an existing condition. However, that condition will be increased due to the lateral expansion of the building along the front of the property. That is necessary as the Applicant cannot push the new construction further to the rear of the property due to the existing steep slope area which they wish not to disturb. The Planning Board agrees and finds that it is preferable not to intrude upon the steep slope areas and finds that the existing location of the structure coupled with the extreme topography of the property constitutes an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon such that the strict application of the Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue

hardship upon the developer as it would require the disturbance of sensitive steep slope area and greater land disturbance to comply. Moreover, the grant of Variance relief will promote the purposes of the Municipal Land Use Law by preserving sensitive environmental features which will promote the public health, safety and welfare. Thus, the Planning Board finds that the grant of the requested Variance relief will be a better zoning result to relieve a hardship which would prevent this additional improvement to the property and promote the purposes of the Municipal Land Use Law. The Planning Board notes the difficulty in parking along Hooper Avenue due to its steepness and agrees that the additional parking offered by the additional garage and driveway area will be an improvement to the neighborhood.

With respect to the side yard setback of the house, this is an existing condition which has been in place for many years and is not proposed to change. Thus it is a preexisting, nonconforming condition which is not being exacerbated by this construction. Similarly, the accessory side setback is an existing condition which is not being exacerbated by the proposed construction.

9. The Applicant also presented the testimony of a geotechnical engineer who testified that the subject property is not in the vicinity of slump blocking within the borough. He further testified that construction is proposed on the "flat" portion of the site and that in his opinion, the new construction will not affect the steep slopes. He supplied a report marked as Exhibit A-7 in evidence that contains recommendations set forth on page two. He noted that cuts of up to 7-feet and fills up to 3-feet will be required to achieve the planned grades. The proposed grading plan indicates that the existing slopes on the property will remain or be graded flatter. The plan grading also does not change the current drainage around the home. He noted an area of concern with regard to the one-to-one ratio portion of the slope that will remain undisturbed. He noted that it is critical that the vegetation and integrity of the remaining slope be left undisturbed during construction. In the event that the planned undisturbed one-to-one ratio portion of the slope is compromised during construction; it shall be graded flatter to a three-to-one slope. That is a condition of this approval.

10. The Applicant also was questioned regarding landscaping of the property and agreed to provide a landscape plan for approval by the Planning Board Engineer which is also a condition of this approval.

11. With respect to the negative criteria for the grant of the requested Variance relief, the Planning Board finds that the grant of the Variances will not result in any substantial detriment to the public good. The Planning Board finds that the proposed improvements will result in an attractive improvement of the property which will be consistent in appearance with other homes along the street and will actually provide a benefit with additional off-street parking available. The proposed addition with the peanut stone front will provide a pleasing aesthetic appearance visually consistent with other homes in the area. Thus, the Planning Board finds that the proposed construction will be an improvement to existing conditions and will not have adverse impacts upon the surrounding neighborhood or streetscape.

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 the Variance conditions are already preexisting and that the proposed improvements will not exacerbate that situation. The Planning Board finds that these are existing conditions that have set the character of this lot and the surrounding area for many years and that the proposed improvements are consistent with existing conditions and will continue rather than disturb the existing neighborhood scheme. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial impairment to the Zone Plan or Zoning Ordinance.

13. 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.

14. The Planning Board further finds that all property owners within 200 feet of the premises in question were given proper Notice of the hearing of this application and were provided with an opportunity to present testimony 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 4<sup>th</sup> day of January 2024, that the Application of **DIANA & YOUNES GHANIAN** 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 Applicant shall use best efforts to retain and use the peanut stone from the walls being removed as well as additional peanut stone existing onsite to construct the new walls to be constructed in connection with the improvements. In the event insufficient peanut stone is available for the entirety, similar "field stone" material will be utilized.
  
- 2) The Applicant shall provide a drainage plan to demonstrate and to confirm that all stormwater will be directed to the street and not to the steep slope area to the rear.
  
- 3) The Applicant shall provide plans which clearly depict the limits of disturbance and note that they are to be identified by stake and/or silt fence around the perimeter in order to prevent disturbance.

4) In the event that there is disturbance to one-one ratio slopes identified in Exhibit A-7, they will be regraded with slopes of a ratio of three-to-one.

5) The Applicant shall provide spot grades on the roof area in order to confirm that water will be directed to the street.

6) The Applicant shall provide a landscape plan to be approved by the Planning Board Engineer.

7) The Applicant shall provide an as-built survey with topography to confirm that construction conforms to the approved plans and conditions set forth herein.

**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 these Variances 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:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAIN:

ABSENT:

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**Chairperson, 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 January 4, 2024.

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