

**IN THE MATTER OF  
APPLICATION NO. PB21-13  
OF BLAKE DEAKIN  
BLOCK 9 LOT 4**

**RESOLUTION GRANTING  
VARIANCE APPROVAL**

**WHEREAS, BLAKE DEAKIN**, hereinafter the "Applicant", has proposed the development of property located at 307 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 9, Lot 4 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 permit the construction of a 375 square foot addition consisting of a new sun room and covered porch with steps along the southerly side of the existing dwelling requiring Variances for building coverage of 13% where 12% is permitted, lot impervious coverage of 33.7% where 30% is permitted, maximum useable floor area ratio of 0.217 where 0.175 is permitted and maximum lot coverage in steep slope area of 6,200 square feet where 5,526 square feet is permitted. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 and Article VII, Section 150-49 and 150-78 of the Development Regulations of the Borough of Atlantic Highlands; and

**WHEREAS**, the subject property is located in the R-3 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 January 26, 2022, 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:

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

1.1 Zoning Review of Zoning Officer Michelle Clark, dated August 16, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Blake Deakin, dated August 11, 2021, marked as Exhibit A-2 in evidence.

1.3 Topographical Survey prepared by Richard E. Stockton & Associates, Inc., dated May 11, 2021, marked as Exhibit A-3 in evidence.

1.4 Topographical Survey prepared by Richard E. Stockton & Associates, Inc., dated May 11, 2021 showing addition, marked as Exhibit A-4 in evidence.

1.5 Architectural Plans prepared by Cirangle Architects, dated August 9, 2021, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated September 29, 2021, marked as Exhibit A-6 in evidence.

1.7 Memorandum from Board Attorney regarding Certificate of Non-Conforming Use, dated December 20, 2021, marked as Exhibit A-7 in evidence.

1.8 Steep Slope Review #1 of CME Associates, dated June 12, 2021, marked as Exhibit A-8 a-e in evidence.

1.9 Copy of 1964 Atlantic Highlands Master Plan excerpt, marked as Exhibit A-9 in evidence.

1.10 Copy of 1964 Master Plan Zoning Map R-1 Zone showing subject property, marked as Exhibit A-10 in evidence.

- 1.11 1964 Master Plan Zoning Legend for proposed uses, marked as Exhibit A-11 in evidence.
- 1.12 1964 Proposed R-1 Permitted Uses including 2 and 3 family dwellings, marked as Exhibit A-12 in evidence.
- 1.13 1964 Bulk Requirements Schedule showing subject property as conforming in lot area, marked as Exhibit A-13 in evidence.
- 1.14 Septic Tank Installation Permit from 1970, marked as Exhibit A-14 in evidence.
- 1.15 Application to construct new Septic Tank, dated August 1, 1986, marked as Exhibit A-15 in evidence.
- 1.16 Landlord Registration Statement, dated June 5, 1997 for 2 units, marked as Exhibit A-16 in evidence.
- 1.17 Atlantic Highlands Tax Assessor Record Property Card showing apartment conversion of subject property, marked as Exhibit A-17 in evidence.
- 1.18 2020 Aerial Photograph of subject property, marked as Exhibit A-18 in evidence.
- 1.19 Photograph of frontage along Ocean Boulevard of subject property, marked as Exhibit A-19 in evidence.
2. The premises in question are located at 307 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 9, lot 4 on the Tax Map of the Borough of Atlantic Highlands.
3. The subject property is located in the R-3 Residential Zone District and single-family residential homes with associated accessory structures are a permitted use in the zone.

4. The subject property has approximate dimensions of 15.27 ft. x 106.28 ft. x 133.20 ft. x 149.77 ft. x 151.00 ft. and is substantially quadrilateral in shape with an approximate area of 18,421 square feet (0.42298 acres). The subject property has a preexisting non-conforming lot area of 18,421 square feet where 30,000 is required. The subject property also has dual frontages on Ocean Boulevard and Highlands Avenue with driveway access from each of those roads. The lot is presently developed with a two-story residential home with associated driveways, detached garage with steps, stone walls and walkways. The Applicant proposes to construct a 375 square foot addition consisting of a new sun room and covered porch with steps along the northerly side of the existing dwelling. No grading modifications are proposed on the subject property. This will result in the requirement of Variance relief for building coverage of 13% where 12% is permitted, lot impervious coverage of 33.7% where 30% is permitted, maximum useable floor area ratio of 0.217 where 0.175 is permitted and maximum lot coverage in a steep slope area of 6,200 square feet where 5,526 square feet is required.

5. The Applicant was represented by Kevin Asadi, Esq. who presented the testimony of Blake Deakin the Applicant, Barbara Ehlen, a licensed professional Planner in the State of New Jersey, Larry Cirangle, a licensed Architect in the State of New Jersey and citizen Heinz Manger.

6. Mr. Asadi first addressed the issue of whether the existing conditions on the property constitute a lawful pre-existing non-conforming use. He first presented the testimony of Ms. Ehlen who testified that she had reviewed the prior Master Plans of the Borough and opined that based upon the material she was able to obtain from the Borough prior to 1975 the Municipal Ordinance permitted two-family homes in the R-3 Zone. She opined that the subject property was constructed prior to the 1975 Ordinance that revised the R-3 Zone so as to not to permit two-family homes. Thus, she opined that the existing conditions are a lawful pre-existing non-conforming use.

The Applicant also presented the testimony of Blake Deakin who testified that he has resided in the property since 2008 and that it has always had two apartments, one on the first floor and one on the second floor. It has been consistently used as a two-family dwelling. He also submitted a septic tank installation permit from 1970 issued by the Borough which states that the septic tank would service a two-family dwelling. He also submitted a septic tank replacement permit from 1986 also confirming that the Borough considered the property to be a two-family dwelling.

7. The Applicant also presented the testimony of Heinz Manger who has resided in Atlantic Highlands since 1955 and testified from his personal knowledge that the subject home has been used as a two-family residence since at least 1958.

8. The Planning Board notes from the memorandum provided to it by its attorney that the Applicant has the burden of demonstrating to the Planning Board's satisfaction that the two-family use existed on the property in question prior to the adoption of the Zoning Ordinance that now prohibits two-family homes. The Planning Board is satisfied that the Applicant has met this burden. The Applicant has presented the testimony of a live witness who is familiar with the property since the 1950's and who testified that the property was continuously utilized as a two-family residential home since then. The Applicant's Planner presented the information from the Master Plan from which she opined from the available materials that the R-3 Zone permitted two-family homes prior to 1975. In addition, the Applicant presented documentation from the Municipality that the subject property has been recognized and acknowledged as a two-family dwelling for many years and particularly prior to 1975 as he produced a septic tank installation permit acknowledging the property as a lawful two-family dwelling. In addition, he presented the subsequent 1986 permit conceding the same. Based on the foregoing the Planning Board is satisfied that the subject property was utilized as a two-family home prior to the 1975 Ordinance which revised the R-3 Zone to prohibit two-family residential homes. Therefore, the residence is a lawful, pre-existing non-conforming use.

9. Notwithstanding that the existing home is a lawful, pre-existing non-conforming use, the Applicant now proposes to expand that use by approximately 375 square feet requiring the new Variances set forth previously herein for building coverage, lot impervious coverage, maximum useable floor area ratio and maximum steep slope lot coverage. It also requires a variance for expansion of a nonconforming use.

10. The Applicant presented the testimony of Larry Cirangle, a licensed professional Architect in the State of New Jersey since 1991, who designed the sun room and porch improvement. He testified that although the subject property was located in a steep slope area of the Borough, the subject property is relatively flat and has no steep slopes. He described the type of foundation to be utilized and that it would not disturb the steep slope areas.

11. Ms. Ehlen provided testimony as to the justification for the Variance relief. Ms. Ehlen testified that the existing conditions of the property including its dual frontages on Ocean Boulevard and Highland Avenue with a driveway leading to each passing through the property results in the lot coverage and steep slope lot coverage deviations. The building coverage and useable floor area ratio Variances are the result of the lot being undersized. She opined that the Master Plan promotes the preservation of residential areas by allowing reasonable improvements to homes, so that they may be updated and modernized. She opined that the grant of the requested Variances will promote the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2 as it will allow the property to be developed to promote a desirable visual environment by adding an attractive porch and sunroom to the existing dwelling. It will also allow for the establishment of an appropriate improvement in an appropriate location and would encourage coordination of public and private procedures and activities shaping land development with a view toward the more efficient use of land.

Ms. Ehlen testified that this is a small addition of only 375 square feet on a modest home. She further opined that the proposed addition will soften the appearance of the home. She also opined that it is the undersized lot condition that creates a hardship. Therefore, she opined that the positive criteria for the grant of the requested Variance relief can be satisfied both under a C1 Hardship Variance or a C2 Planning Variance.

12. Ms. Ehlen further testified that the proposed addition will have no impacts upon the steep slope since there are no steep slopes on the property. Moreover, it will not create any stormwater issues and will not add bedrooms to the home so as to increase traffic, noise and other impacts upon surrounding properties. Thus, she opined that there is no substantial detriment to the public good flowing from the grant of the requested Variance relief for this modest addition.

13. Ms. Ehlen further testified that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. She testified that this home is consistent with the surrounding community with the added square footage. She further noted that with respect to the floor area ratio issue that this type of addition would not add intensity to the single family use of this home and that the lot can accommodate the added usage.

14. The Planning Board also notes the testimony of citizen James Krauss who lives within 200 feet of the subject property. He supported the application testifying that the property is flat, that the residence is significantly set back from either roadway and this modest addition will not result in any steep slope or runoff issues. Neighbor Michael Pado also testified in support of the application opining that the proposed addition will enhance the property.

15. The Planning Board agrees with the testimony outlined herein from Ms. Ehlen, Mr. Cirangle and the other witnesses. The Planning Board agrees and finds that the grant of the requested Variance relief is justified due to the undersized nature of the property coupled with the existing conditions on the site with a full driveway extending to both roadways. The Planning Board also agrees with Ms. Ehlen that the requested Variance relief can be granted as it will advance the purposes of the Municipal Land Use Law set forth previously herein. Thus, the Planning Board finds that the Applicant has satisfied that positive criteria for the grant of Variance relief.

16. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested Variances. The Planning Board finds that this modest 375 square foot addition will have minimal impacts with respect to steep slope, stormwater management, traffic or noise and instead will provide a pleasing aesthetic amenity to this existing lot as a residential home. The Planning Board agrees with Mr. Krauss that the existing improvements are set back substantially from either roadway and will have little or no impact upon the streetscape or the surrounding properties. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good.

17. 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 the Zoning Ordinance. The Planning Board agrees with Ms. Ehlen with respect to the subject property being able to accommodate this modest addition as it will not increase the intensity of the property which will remain as a two-family residential home with no new bedrooms. Moreover, the Planning Board agrees with Ms. Ehlen's Testimony as to purposes of the Master Plan to encourage the continuation of residential uses in residential Zones and allow them to be properly upgraded consistent with other homes in the neighborhood. Therefore, 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.

18. 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.

19. 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 present evidence in favor of, or in opposition to, the appeal.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Atlantic Highlands on this 3<sup>rd</sup> day of March 2022, that the Application of **BLAKE DEAKIN** 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 approvals granted in connection with this application are as follows:

a. Variance to permit building coverage of 13% where 12% is permitted. (Section 150-29)(A)(II)(Exhibit 5-2)

b. Lot coverage of 33.7% where 30% is permitted. (Section 150-29)(A)(II)(Exhibit 5-2)

c. Maximum useable floor area ratio of 0.217 where 0.175 is permitted. . (Section 150-29)(A)(II)(Exhibit 5-2)

d. Permitting increased use of a non-conforming lot. (Section 150-49)(I)(1)(b)

e. Steep Slope lot coverage of 6,200 square feet where 5,526 square feet is permitted (Section 150-78.A.)

f. Permitting the expansion of this pre-existing nonconforming use

**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 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: Mr. McGoldrick

SECONDED BY: Mr. Neff

ROLL CALL:

YES: Mr. Hawley, Mr. Caccamo, Mr. McGoldrick, Mr. Neff, Mr. Pepe, Mr. Josko,  
Mr. Crowther

NO: None

ABSTAIN: None


ABSENT: None



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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 March 3, 2022.



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