

**IN THE MATTER OF
APPLICATION NO. PB 21-17
OF KEVIN & ALLISON DUFFY
BLOCK 82 LOT 5.02**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, KEVIN & ALLISON DUFFY, hereinafter the "Applicant", has proposed the development of property located at 6 Wesley Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 82, Lot 5.02 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 484 +/- square foot addition to the second floor of the northeast side of the dwelling and remove an existing deck to construct a 227 square foot addition to the first floor along with a new 8 foot by 8 foot wood deck with steps resulting in a maximum useable floor area ratio of 0.51 where 0.40 is permitted (Section 150-29)(A)(2) (Exhibit 5-2)) on a nonconforming lot which does not meet the required minimum lot area (Section 150-49.1)(1)(b)). The foregoing is contrary to the provisions of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-1 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 April 7, 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 March 3, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Kevin & Allison Duffy, dated October 21, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Lakeland Surveying, dated May 26, 2021 with photograph, marked as Exhibit A-3 in evidence.

1.4 Soil Study prepared by MCH Engineering, Inc. undated, marked as Exhibit A-4 in evidence.

1.5 Architectural Elevation & Floor Plans prepared by PDR Designs, dated August 16, 2021, marked as exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated December 14, 2021, marked as Exhibit A-6 in evidence.

1.7 Letter from PDR Designs, LLC dated December 20, 2021 with diagram, marked as Exhibit A-7 in evidence.

1.8 Memorandum from Planning Board Attorney Steib, dated December 20, 2021 regarding standard review for FAR Variance, marked as Exhibit A-8 in evidence.

1.9 8.5" x 11" sheet with 4 photographs of subject property from front, back and deck, marked as Exhibit A-9 in evidence.

2. The premises in question are located at 6 Wesley Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 82, Lot 5.02 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 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 50.00 ft. x 105.00 ft. x 50.00 ft. x 105.00 ft. and is an elongated rectangle in shape with an area of 5,250 square feet (0.12 acres). The property is presently developed with a two story residential dwelling with a rear deck, a detached frame shed and concrete walkways.

5. The subject property has the following existing nonconforming elements:

a. Lot area of 5,250 square feet where 7,500 square feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

b. Lot frontage of 50 feet where 75 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

c. Lot shape diameter of 30 feet where 50 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

d. Front setback of 7.1 feet where 20 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

e. Side setback of 7.9 feet where 10 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

f. Accessory side setback of 2.2 feet where 5 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

g. Height of 3 stories where 2.5 stories is permitted (Section 150-29)(A)(II)(Exhibit 5-2))

6. The Applicant's, Kevin and Allison Duffy, provided testimony regarding the proposed improvements. The architectural elevation and floor plans demonstrated that the proposed improvements include enclosing the existing rear deck and making it a part of the house interior along with a second story addition to create a new master suite. These improvements will increase the useable floor area ratio to 0.51 where 0.40 is permitted. The Planning Board notes the memorandum from its attorney marked as Exhibit A-8 in evidence. Although floor area ratio Variances fall within N.J.S.A. 40:55D-70.d and are characterized as a "use" Variance, they are evaluated using a different criteria than a Variance under that section for a non-permitted use. More particularly it has been held that in establishing special reasons for an "FAR" Variance the case of **Coventry Square vs Westwood Zoning Board of Adjustment**, 138 NJ 285 (1994) is the standard that controls. In that case it was determined that an Applicant for an FAR Variance need not show that the site is particularly suited for more intense development. Instead, the Applicant need only show that the site will accommodate the problems associated with the larger floor area.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. The Planning Board finds that there is an existing single family home on the property that is a 3 bedroom home. Although the proposed addition will create a new master suite, the reconfiguration of the building will still accommodate only 3 bedrooms. The Planning Board notes that the Residential Site Improvement Standards (RSIS) evaluates the intensity of use based upon the number of bedrooms in a home. In this case, notwithstanding the increase of floor area ratio, the number of bedrooms will stay the same. This is an existing three bedroom single family residential home. After the improvements it will continue to be a three bedroom single family home. The intensity of the use will not be increased. Moreover, the added space will not result in any additional deviations from the bulk standards of the home. Consequently, the Planning Board finds that the subject property currently accommodates a three bedroom single family home and will also be able to accommodate a three bedroom single family home with the proposed additions. Therefore, the positive criteria for the grant of the requested Variance relief has been satisfied.

8. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested Variance relief. The Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. The Planning Board finds that these improvements will enhance the existing residence and provide a pleasing aesthetic improvement to the home. The increase in floor area ratio will not have any substantial impacts upon the adjacent properties to the east, north and west of the subject parcel and will not have any adverse impacts upon the streetscape as it will not be visible from the street since it is being placed to the rear of the existing residential building.

9. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial impairment to the Zone Plan or Zoning Ordinance. The Planning Board finds that the floor area ratio requirement is designed to ensure that excessively large structures are not permitted which will have adverse impacts on the

character of the zone. In this case the review of the Board Engineer indicated an FAR of 0.51 due to the Board Engineer including 50% of the basement level area in the floor area ratio calculation. However, the Applicant submitted the calculation of PDR designs marked as Exhibit A-7 in evidence which demonstrates that the basement is not includable in floor area ratio so that the deviation is for a 0.42 FAR where 0.40 is permitted. This is a difference of only 105 square feet and the Planning Board finds this deviation is di minimis such that the grant of the requested Variance relief will not substantially impact or impair the purpose of the Zone Plan or Zoning Ordinance.

10. The Planning Board further finds that the relief for allowing these improvements to an undersized lot is appropriate in this case as it is impossible to provide any improvements without the grant of Variance relief. Thus, a hardship does exist and, as previously set forth, the negative criteria has been satisfied.

11. 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.

12. 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 testimony 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 5th day of May, 2022 that the Application of **KEVIN & ALLISON DUFFY** 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. Maximum useable floor area ratio of 0.42 where 0.40 is permitted.
 - b. Construction of an addition on a nonconforming lot which does not conform with lot area.

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 this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9. 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: MR. McGOLDRICK
SECONDED BY: MR. KRUPINSKI

Roll Call:

Ayes: MR. HAWLEY, MR. PEPE, MR. McGOLDRICK, MR. NEFF, MR. CACCAMO,
MR. JOSKO, MR. KRUPINSKI, MR. CROWTHER, MR. BERTH

Nays: None

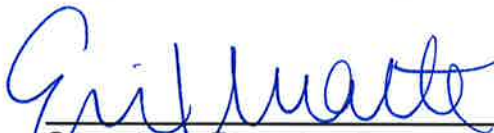
Abstain: None

Absent: MR. DOUGHERTY, MR. KURDES



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 May 5, 2022.



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