

**IN THE MATTER OF
APPLICATION NO. PB 21-20
OF JODY MAGER
BLOCK 27 LOT 3**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, JODY MAGER, hereinafter the "Applicant", has proposed the development of property located at 12 Summit Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 27, Lot 3 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 construct a 264 square foot covered front porch and a 200 square foot rear porch, a second story addition atop the existing dwelling requiring variance relief from Section 150-49.1(III) to permit construction on a nonconforming lot which does not conform to the minimum lot area requirements with existing nonconformities to remain including building coverage of 15.1% where 15% is permitted (Section 150-29(A)(2)(Exhibit 5-2), lot area of 11,788 square feet where 15,000 square feet is required (Section 150-29(A)(2)(Exhibit 5-2) and lot shape diameter of 62.7 feet where 65 feet is required (Section 150-29(A)(2)(Exhibit 5-2). The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 and Article VII, Section 150-49 of the Development Regulations of the Borough of Atlantic Highlands; 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 March 3, 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 December 10, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Jody Mager, dated December 6, 2021, marked as Exhibit A-2 in evidence.

1.3 Site Plan with Architectural Elevation & Floor Plan prepared by Jeremiah J. Regan, Architect, dated December 1, 2021, marked as Exhibit A-3 in evidence.

1.4 Steep Slope Review #1 of CME Associates, dated January 20, 2022, marked as Exhibit A-4 in evidence.

1.5 Review #3 of CME Associates, dated January 20, 2022, marked as Exhibit A-5 in evidence.

2. The premises in question are located at 12 Summit Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is

further known and designated as Block 27, Lot 3 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 property in question has approximate dimensions of 100.25 ft. x 117.70 ft. x 100.00 ft. x 120.00 ft. and is rectangular in shape with an approximate area of 11,788 square feet. The lot is presently developed with a one-story single family residential home with ancillary improvements including but not limited to a stone driveway extending from Summit Avenue, a front porch with steps, a covered rear patio, chain link fence and brick walkways. The Applicant proposes to construct 264 square foot front covered porch and 260 square foot rear porch as well as a second story addition atop the existing dwelling. No grading modifications are proposed. The property presently has an existing nonconforming building coverage of 16.4% where 15% is permitted. The proposed improvements will actively reduce building coverage on the property to 15.1% thus reducing the extent of the existing nonconformity. The subject property also has a nonconforming lot shape diameter of 62.7 feet where 65 feet is required and a lot area of 11,788 square feet where 15,000 is required. Although the proposed improvements conform with all of the bulk standard requirements of the R-2 Zone, Section 150-29.1(III) provides that buildings or structures may not be constructed on nonconforming lots. Since the subject property is an undersized lot, that section requires variance relief. The Applicant presented the testimony of Evan Mager who testified that the proposed second story will permit the home to accommodate five bedrooms for family members and guests. That entire second story addition will be within the existing conforming building footprint and will comply with all of the required bulk setbacks, frontage, width, impervious coverage, building height and useable floor area ratio requirements. The proposed front porch will not extend beyond the current front porch and the proposed rear porch will be over a portion of what was previously a

covered patio which is being removed and actually decreasing the building coverage nonconformity resulting in an improvement over existing conditions.

5. Mr. Mager testified, and the Planning Board Engineer Mr. Rohmeyer agreed, that the existing driveway can accommodate the parking of three vehicles required by the Residential Site Improvement Standards (RSIS). He also noted that the downspouts and gutters will continue to flow as currently directed so that there will be no change in stormwater runoff as the second story addition will not increase the impervious surfaces for runoff but will continue existing conditions.

6. The Applicant advised that they will be adding one new air conditioning compressor which will be located adjacent to the existing air conditioner compressor. The Applicant agreed to provide adequate landscaping to screen the air conditioning units from view from the street and adjacent properties. The Applicant also agreed to add some additional landscaping including shrubs in the front yard and trees and shrubs along the side yards.

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 the variance requirement is triggered by the undersized nature of the lot. The Planning Board finds that this 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 Applicant as it would prevent the Applicant from adding living space to the structure notwithstanding that the proposed improvements will not violate any setback requirements and will result in less building coverage than currently exists and will be significantly under the permitted impervious coverage and useable floor area ratio. Thus, the Planning Board finds that this does result in a hardship to the Applicant.

7. The Planning Board further finds that grant of the requested Variance relief will not result in any substantial detriment to the public good. As noted previously herein, the proposed improvements will not violate any of the bulk standards and will not constitute an overbuilding of the site insofar as the proposed improvements will result in impervious coverage and useable floor area ratio well below that which is permitted and will actually reduce the existing nonconforming building coverage to be in closer conformance with the ordinance. The Planning Board has reviewed the architectural drawings submitted by the Applicant and finds that the proposed improvements will enhance the overall appearance of the structure upon the streetscape and to the surrounding properties. Therefore, there will be no substantial detriment to the public good flowing from the grant of the requested variance relief.

8. 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 finds that the intent of the ordinance in question is to ensure that overly massive structures are not placed on undersized properties. In this case the Planning Board finds that the proposed additions will not result in the violation of any bulk requirement and will result in a structure conforming in impervious coverage, lot coverage, useable floor area ratio, all the bulk setback requirements along with conforming with the lot frontage and width requirements. Thus, the proposed improvements will not offend the purposes for which the ordinance was adopted.

8. 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 Variance can and should be granted at this time.

9. 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 4th day of April, 2022 that the Application of **JODY MAGER**, 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 construction on a nonconforming lot which does not meet the minimum lot area requirements for the R-2 Zone District.

2) The following existing nonconforming elements will continue. Lot area of 11,788 square feet where 15,000 square feet is required, lot shape diameter of 62.7 feet where 65 feet is required and building coverage of 15.1% where 15% is permitted.

3) The Applicant shall provide landscape screening for the exterior air conditioning units adjacent to the house and will provide supplemental shrubs in the front yard area and trees and shrubs to the side yard areas.

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.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: MR. JOSKO
SECONDED BY: MR. DOUGHERTY

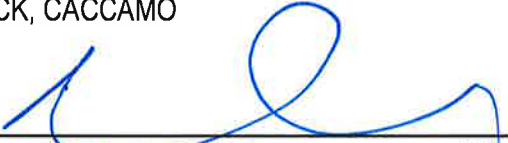
ROLL CALL:

YES: DOUGHERTY, NEFF, JOSKO, KRUPINSKI, CROWTHER, KURDES, BERTH, MAJEWSKI

NO: NONE

ABSTAIN: HAWLEY

ABSENT: ZUZULOCK, PEPE, McGOLDRICK, CACCAMO



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 April 7, 2022.



Secretary, Planning Board Borough of Atlantic Highlands