

**IN THE MATTER OF  
APPLICATION NO. PB 21-21  
OF JEFFREY & STEPHANIE PASSMAN  
BLOCK 127 LOT 17**

**RESOLUTION GRANTING  
VARIANCE APPROVAL**

**WHEREAS, JEFFREY & STEPHANIE PASSMAN**, hereinafter the "Applicant", has proposed the development of property located at 49 Center Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 127, Lot 17 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 approval to construct a new 193 +/- linear feet, six foot (6') high vinyl fence requiring a Variance as walls and fences located in a front yard that are not open shall not exceed 48" in height (Section 150-70.A (1)) on property with the following existing nonconforming elements:

1. Lot frontage and width of 65' to remain where 75' is required (Section 150-29 (A)(2) (Exhibit 5-2))
2. Lot shape diameter of 25 feet to remain where 45 feet is required (Section 150-29 (A) (2) (Exhibit 5-2))
3. Side yard setback of 3.1 feet to remain where 10 feet is required (Section 150-29(A)(2) (Exhibit 5-2)).
4. Accessory side yard setback for existing shed of 3.1 feet to remain where 5 feet is required (Section 150-29 (A) (2) (Exhibit 5-2))
5. 864 square foot first floor gross floor area to remain where 900 square feet is required (Section 150-29 (A)(2) (Exhibit 5-2))

The aforesaid non-conforming elements will continue unchanged. The foregoing are contrary to the provisions of the Development Regulations of the Borough of Atlantic Highlands as set forth herein; and

**WHEREAS**, 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; 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 December 15, 2021, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Jeffrey & Stephanie Passman, dated December 7, 2021, marked as Exhibit A-2 in evidence.

1.3 Location Land Survey prepared by Thomas Finnegan Land Surveying, dated November 7, 2017, marked as Exhibit A-3 in evidence.

1.4 Red Lined Location Land Survey prepared by Thomas Finnegan Land Surveying, dated November 7, 2017, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated January 18, 2022, marked as exhibit A-5 in evidence.

1.6 3 Photographs of subject property marked as Exhibit A-6 a-c in evidence.

2. The premises in question are located at 49 Center Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 127, Lot 17 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 homes with associated accessory structures are a permitted use in the zone district.

4. The property in question has approximate dimensions of 65.00 ft. x 130.00 ft. x 65.00 ft. x 130.00 and is an elongated rectangle in shape with a lot area of 8,450 square feet (0.19 acres). The property is a corner lot with 65.00 feet of frontage on Center Avenue and 130.00 feet on Avenue A.

5. The subject property is presently developed with a 2.5 story residential dwelling with wood deck, detached shed, block patio and front walkway. The existing dwelling is oriented toward Center Avenue however, since this is a corner lot, the lot line along Avenue A is also considered a front yard and therefore requires that solid fences not exceed 4' in height.

The Applicant provided testimony that directly across the street on Avenue A are more intense commercial uses such as the Swanton Fuel Oil Company. Consequently, in order to gain some privacy from these commercial uses, the Applicant is proposing to construct a solid 6' high white vinyl fence in order to provide privacy in the yard area along Avenue A. that portion of the property is the largest open area available for the Applicants to recreate.

6. As noted in the Planning Board Engineer's report, there are no grading modifications proposed and thus no stormwater impacts are implicated by this application. In addition, the surrounding uses are Zoned R-1 and are single family residential uses except directly across Avenue A to the east where the Zoning changes to CBD (Central Business District) Zone. That zone permits and contains various commercial, industrial and retail uses. The Applicant testified that the proposed fence in the front yard area will not interfere with the site triangle at the intersection of Avenue A and Center Avenue. Nor will it interfere with the site triangle for its existing driveway. Thus safe vehicular movements can be made at those intersections.

The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. N.J.S.A. 40:55D-70.c. provides that where there is an extraordinary and exceptional situation uniquely affecting a 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 or exceptional and undue hardship upon the Applicant a Variance may be granted. In this case the Planning Board finds that the conditions of the property are extraordinary and exceptional in that the subject property is located at the zone line which divides the R-1 Residential Zone and the CBD (Central Business District) Zone such that its front yard is directly across the street from commercial, industrial and retail uses which are inconsistent with residential use. The Planning Board finds that it is entirely appropriate for the applicant to want to have a solid 6' fence in the front yard along Avenue A in order to provide privacy for the Applicant and screening from the commercial industrial uses directly

across the street. The Planning Board further finds that Avenue A is a well-traveled roadway and that the fence will provide mitigation of the traffic impacts. Therefore, an extraordinary and exceptional situation does exist that imposes a hardship upon the Applicant and warrants the grant of the Variance.

7. The Planning Board further finds that the grant of the variance will not result in any substantial detriment to the public good. In this case the Planning Board finds that there will be no detriment to the commercial and industrial uses across the street which will be most affected by this fence. Instead, the fence will insulate both the commercial and industrial uses on the opposite side of Avenue A from the residential use and similarly insulate the residential use from the adverse impacts of the commercial/industrial uses across the street. The adjacent residential properties to the south and west will not be impacted by the proposed fence as the property to the south will not have fencing in the front yard area located next to it but only along its side yard and the property to the west will be substantially blocked from view of the encroaching fence by the existing residence and deck structures.

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 Ordinance in question was designed to prevent properties from being fenced in and appearing as a gated community. It is also intended to prevent visibility at site triangles from being impeded and to prevent diminished light, air and open space in front yard areas along streetscapes. The Planning Board finds that in this case it is only a limited portion of fence that is proposed along the streetscape and that there are significant other front yard areas on the site that will not be impacted by the fence. It will not impinge upon site triangles or upon the light, air and open space insofar as there are significant unimpeded portions of the front yard of the subject property outside the fence so that it will not have the impacts that the Ordinance is designed to avoid and will not offend the intent and purpose of the Ordinance.

9. 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.

10. 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 5<sup>th</sup> day of May, 2022 that the Application of **JEFFREY & STEPHANIE PASSMAN** 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.

**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. HAWLEY  
SECONDED BY: MR. McGOLDRICK

Roll Call:

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

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**