

**IN THE MATTER OF
APPLICATION NO. PB 22-01
OF MAXINE KATCHEN
BLOCK 70 LOT 2**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, MAXINE KATCHEN, hereinafter the "Applicant", has proposed the development of property located at 88 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 70, Lot 2 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 install a generator with a 5 foot side yard setback where 10 feet is required (Section 150-29(A)(II) (Exhibit 5-2)). 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-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 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 Development Permit Application of Maxine Katchen, dated October 27, 2021, marked as Exhibit A-1 in evidence.

1.2 Zoning Review of Zoning Officer Michelle Clark, dated January 20, 2022, marked as Exhibit A-2 in evidence.

1.3 Application for Variance of Maxine Katchen, dated January 18, 2022, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by JY Land Surveying Inc. dated April 3, 2017, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated February 17, 2022, marked as exhibit A-5 in evidence.

1.6 Photographs showing utility equipment and distance between structures, marked as Exhibit A-6 in evidence.

1.7 Letter from citizen Alonso, marked as Exhibit A-7 in evidence.

1.8 Photograph of subject property, marked as Exhibit A-8 in evidence.

1.9 Photograph of existing property, marked as Exhibit A-9 in evidence.

1.10 Photograph of existing property, marled as Exhibit A-10 in evidence.

2. The premises in question are located at 88 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 70, Lot 2 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 has approximate dimensions of 56.51 ft. x 70.94 ft. x 50.00 ft. x 40.00 ft. x 100.00 ft. x 85.00 ft. x 25.00 ft. and is an irregular "L" shaped property which has its principle frontage on East Mount Avenue with a secondary frontage on Eighth Avenue. The property has an approximate area of 7,870 +/- square feet (0.18 acres). The subject property is currently developed with a 2.5 story single family residential home with ancillary improvements including a stone driveway extending from Eighth Avenue, a front covered porch, front deck, brick patio, shed, chain link fence and walkways.

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

a. Lot area of 7,871 square feet where 15,000 square feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

b. Lot frontage and width of 56.5 feet regarding East Mount Avenue frontage where 100 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

c. Lot frontage and width along Eighth Avenue of 40 feet where 100 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

d. Lot shape diameter of 26 feet where 65 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

e. Front yard setback of 1 foot where 25 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

f. Side setback of 7.67 feet where 15 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

g. Combined side yard setback of 19.7 feet where 30 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

h. Accessory building (shed) side yard setback of 1.5 feet where 10 feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

i. First floor gross floor area of 640 square feet where 1,200 square feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

j. Total floor area of 1,600 square feet where 1,800 square feet is required (Section 150-29)(A)(II)(Exhibit 5-2))

6. The Applicant desires to place a generator along the easterly side of the structure. The Planning Board notes that this is an odd shaped lot and the existing residence is located in the southeasternmost portion of the property. The Applicant provided testimony that the generator needs to be placed in an area proximate to utility service which is on the easterly side of the existing dwelling. Due to the narrow width of the property and the location of the existing residence and utility service, the generator cannot be placed on the property in conformity with the side yard setback requirements. Based on those facts 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 due to the location of the existing structure on the property and the location of the utility service, coupled with the irregular shaped lot and narrowness of the lot width an extraordinary and exceptional situation uniquely effecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent the Applicant from having an emergency generator which has become a desirable accessory amenity for single family residential homes due to power outages experienced during storm and other emergent events.

7. 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 will not result in any substantial detriment to the public good. The side yard setback deviation is adjacent to Lot 9 to the east of the subject property. The testimony demonstrated that the residence on Lot 9 is 35 feet from the lot line which is more than double the required setback. In addition to the foregoing, the Applicant agreed as a condition of this approval to screen the generator to mitigate any side setback impacts. Therefore, the Planning Board finds that any adverse impacts of the side yard setback deviation are mitigated and are insubstantial. The Planning Board finds that the generator will not have any significant visual impact upon the streetscape of East Mount Avenue as it will be screened by the existing residence. It will not be visible at all from Eighth Avenue nor will it be visible from the properties to the north and east as it is blocked by the existing residence and existing shed. Thus, the Planning Board finds that 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 side yard setback requirements are designed to ensure that structures are not placed so close to adjacent properties as to impede upon

light, air and open space or have an overly imposing appearance upon surrounding neighboring properties. In this case there is also concern as to potential noise that could flow from the generator. However, the generator will only be used during emergent circumstances and limited for that period of time. Consequently, those periods of noise from generation will be of limited duration and not a constant circumstance. Moreover, the Applicant has agreed to screen the generator in order to mitigate the side yard impacts. Therefore, the Planning Board finds that the grant of the requested Variance relief will not substantially impair the Zone Plan or Zoning Ordinance.

9. During the course of the hearing, Planning Board members indicated concern as to whether the side yard setback deviation of the shed had been granted approval. The Applicant was unaware as to whether a formal approval had been received and at the suggestion of the Planning Board amended the application to include a request for the nonconforming side yard setback of the shed. The Planning Board finds that this is an existing condition which has been in place for some time and sets the character of the lot and therefore is an appropriate accessory structure for single family residential homes. In addition, it is placed in proximity to the existing residence to provide a functional shed area.

10. In addition to the foregoing, the shed is approximately 8 feet x 8 feet in dimension and is of minimal size such that it does not have any substantial impact upon the adjacent property to the east and will have no impacts upon the streetscape or the other properties surrounding the subject property. Thus, there will be no substantial detriment to the public good flowing from the grant of this Variance relief. In addition to the foregoing, there will be no substantial impairment to the Zone Plan or Zoning Ordinance as the shed is minimal in size and any impacts of the deviation from the side yard setback are di minimis.

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 **MAXINE KATCHEN** 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 the construction of a generator with a side yard setback of 5 feet where 10 feet is required.

b. Variance to permit the retention of an existing shed structure with a side yard setback of 1.5 feet where 10 feet is required.

2. The Applicant shall screen the generator along the side yard area to mitigate any negative impacts from the generator which screening shall be approved by the Planning Board Engineer.

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. NEFF
SECONDED BY: MR. HAWLEY

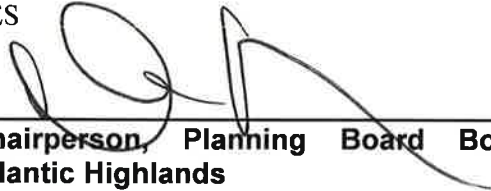
Roll Call:

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