

**IN THE MATTER OF
APPLICATION NO. PB22-04
OF JOHN & MARY SORIANO
BLOCK 1 LOTS 11.01 & 11.02**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, JOHN & MARY SORIANO, hereinafter the "Applicant", has proposed the development of property located at 82 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 1, Lots 11.01 & 11.02 on the Tax Map of the Borough of Atlantic Highlands; and

WHEREAS, the Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the construction of an inground swimming pool in a front yard area (Section 150-54.A.) along with additional relief to permit an accessory structure to be constructed on a lot with a nonconforming lot area (Section 150-49.1) lot coverage of 4,652 square feet where 3,307 square feet is permitted (Section 150-78.E.) along with the retention of preexisting nonconformities including front yard setback of 12.0 feet where 25 feet is required, useable floor area ratio of 0.20 where 0.175 is permitted (Section 150-29.A.)(2)(Exhibit 5-2) and encroachment of a fence upon public right-of-way (Section 150-70.B.); and

WHEREAS, the subject property is located in the R-3 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 May 5, 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 6, 2021, marked as Exhibit A-1 in evidence.

1.2 Steep Slope Review #3 of CME Associates, dated October 19, 2021, marked as Exhibit A-2 in evidence.

1.3 Variance Application with Checklist and Narrative of John & Mary Soriano, dated January 25, 2022, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Charles Surmonte, P.E. & P.L.S., dated March 29, 2021 revised April 12, 2022, marked as Exhibit A-4 in evidence.

1.5 Steep Slope Plan prepared by Engenuity Infrastructure, dated April 15, 2021, marked as Exhibit A-5 in evidence.

1.6 Pool Plan prepared by MC Engineering, dated November 12, 2021, marked as Exhibit A-6 in evidence,

1.7 Review #1 of CME Associates, dated March 4, 2022, marked as Exhibit A-7 in evidence.

1.8 Review #2 of CME Associates, dated April 29, 2022, marked as Exhibit A-8 in evidence.

1.9 Geotech Report of Whitestone Associates, Inc., dated March 17, 2021, marked as Exhibit A-9 in evidence.

1.10 Aerial Photograph of subject property by Engenuity, dated May 4, 2022, marked as Exhibit A-10 in evidence.

1.11 Series of 4 Photographs prepared by Engenuity, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 82 Bayside Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 1, Lots 11.01 & 11.02 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 premises in question has approximate dimensions of 282.63 ft. x 79.45 ft. x 142.25 ft. x 140.51 ft. x 89.58 ft. and is somewhat of an elongated rectangle with some curvature along its frontage on Bayside Drive. The lot is narrow in depth and is an undersized lot of record with 22,041 square feet of area where 30,000 square feet of area is required. The subject property is presently developed with an existing 2.5 story dwelling on the northwesterly portion of the site. The property is also impacted by significant steep slopes which severely limits the areas where accessory structures such as an inground swimming pool can be placed. Due to the location of the existing residence along with the existing rock wall on the property coupled with the steep topography leaves only a small area in the southeasterly portion of the property where a swimming pool can be located. However, this is within a front yard area.

5. The Applicant was represented by Kevin Kennedy, Esq. who presented the testimony of Lawrence Keller, a Professional Engineer specializing in geotechnical

engineering and Jaclyn Flor, a licensed Professional Engineer in the State of New Jersey practicing Civil Engineering. The Applicants John Soriano and Mary Soriano were also sworn and provided testimony in connection with the application.

6. The Applicants witnesses testified that although the property is significantly impacted by steep slopes, the area in which the proposed pool is to be located is relatively flat. Mr. Keller testified that soil test borings were taken to determine the stability of the soils and after performing calculations determined that the factor of safety to be provided in this application will be 1.72 which exceeds the required factor of safety of 1.5. He testified that the soils being removed and replaced by water within the swimming pool will actually provide for a greater level of safety than existing conditions as one cubic foot of soil weighs more than one cubic foot of water.. Thus, he opined that the proposed construction of the swimming pool will not have any adverse effect upon the stability of the slope.

7. Ms. Flor testified as to the existing conditions of the property and opined that due to the location of the existing home, the gabion wall and the existing septic system the proposed pool cannot be placed anywhere else on the property. Consequently, she opined that there is a hardship associated with this property insofar as the only place where the pool can be located is within a front yard area. She testified that the soil being removed to make room for the pool will be taken offsite and not redistributed on the subject property. She further testified that there will be no tree or landscape removal and that the Applicant will be installing landscaping to screen the proposed swimming pool from the street. The Planning Board notes Exhibit A-11, which is a series of photographs demonstrating that there is presently a line of evergreen trees along the streetscape that will also serve as a screen.

8. The Applicant agreed to have their Engineer provide stormwater calculations to confirm that runoff resulting from these improvements will not adversely impact upon the hydrostatic pressure against the existing gabion wall. The Applicant

testified that the swimming pool will be covered in winter and that a conforming pool fence will be installed. When questioned as to whether parking would occur in areas outside the driveway the Applicant responded that there will be no parking except within the existing driveway area.

9. The Applicant further agreed to provide an "as built" certified survey upon completion of the installation which will include a certification that the pool has been inspected during the course of construction and has been built according to the plan submitted. The Applicant further agreed to comply with the technical recommendations set forth in the reports of the Planning Board Engineer marked as Exhibits A-7 & A-8 in evidence.

10. The Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested Variance relief. With respect to the positive criteria the Planning Board finds that due to the location of existing structures on the property including the existing residence and septic system coupled with topography and the existing gabion wall there is a hardship associated with the property as the proposed swimming pool cannot be located in any other area than a front yard. If Variance relief is not granted to permit the pool in the front yard area a pool will not be allowed on this property.

11. The Planning Board further finds that the Applicant has satisfied the negative criteria. The Planning Board finds that the grant of the requested Variance relief will not result in substantial detriment to the public good. The Planning Board has viewed the Exhibits of the Applicant including the aerial photograph marked as Exhibit A-10 in evidence as well as the photographs of the subject property marked as Exhibit A-11 in evidence showing that there is a substantial amount of evergreen buffer along Bayside Drive that will screen the proposed swimming pool from view and mitigate any adverse visual impacts upon the streetscape. The swimming pool will be screened from the property to the northwest by the existing residence and trees and to the property to

the northeast by existing vegetation. Thus, there will be no substantial adverse impacts to the streetscape or neighborhood from grant of requested Variance relief.

12. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. As set forth previously the proposed pool will not be visible for the streetscape and will not have any adverse visual impacts upon the streetscape. The Planning Board further finds that homes within the R-3 Zone District are anticipated to have inground swimming pools as an amenity. The purpose of the Ordinance prohibiting swimming pools within a front yard area is to ensure that they do not have adverse visual impacts upon the streetscape. In this case the swimming pool will not be visible from the streetscape and will not offend the purposes for which the Zoning Ordinance was adopted. Therefore, any adverse impacts are insubstantial.

13. 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.

14. 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 support of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 2nd day of June, 2022 that the Application of **JOHN & MARY SORIANO**, 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. Detached accessory structure located within a front yard (Section 150-54.A)

b. Accessory structure constructed on a nonconforming lot with less than the required minimum lot area (Section 150-49.1)

c. Lot coverage of 4,652 square feet where 3,307 square feet is permitted (Section 150-78.E)

2. The Applicant shall provide additional landscaping to assist in screening the swimming pool from view of the street.

3. The Applicant shall provide stormwater calculations to the satisfaction of the Planning Board Engineer confirming that runoff from the proposed improvements will not adversely impact the hydrostatic structural integrity of the gabion wall.

4. The Applicant shall not park vehicles other than on the driveway.

5. The Applicant shall not empty the pool flowing water across the slope onto the Bayshore Trail below.

6. The Applicant shall provide an "as built" survey upon completion of the pool installation including inspections during the course of construction establishing that the swimming pool has been built in accordance with the specifications provided to the Planning Board with the application.

7. The Applicant shall comply with technical recommendations set forth in the reviews of the Planning Board Engineer marked as Exhibits A-7 & A-8 in evidence.


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. HAWLEY
SECONDED BY: MR. KRUPINSKI

ROLL CALL:
YES: ZUZULOCK, DOUGHERTY, HAWLEY, NEFF, CACCAMO, KRUPINSKI, CROWTHER, KURDES, BERTH
NO: NONE
ABSTAIN: NONE
ABSENT: MCGOLDRICK, JOSKO



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 June 2, 2022.



Secretary, Planning Board Borough of Atlantic Highlands