

**IN THE MATTER OF
APPLICATION NO. PB22-05
OF CHARLES LESHER
BLOCK 52 LOT 27**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, CHARLES LESHER, hereinafter the "Applicant", has proposed the development of property located at 125 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 52, Lot 27 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 remove an existing rear porch and walkway and the construction of a two-story addition with new deck and steps to the rear of an existing building changing its use from a nonconforming contractor garage to a conforming single family residential dwelling with a useable floor area ratio of 0.57 where 0.40 is permitted. contrary to Chapter 150, Article V, Section 150-29 and Chapter 150, Article VII, Section 150-49 and Chapter 150, Article VII, Section 150-72 of the Development Regulations of the Borough of Atlantic Highlands to permit an excess in floor area ratio, development of a nonconforming lot which does not conform to minimum lot area, which does not conform to the zoning standards in effect constituting an enlargement, does not conform with all requirements of the zone and permitting two garage spaces where one space is permitted (Sections 150-29, 150-49, and 150-72) 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 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 February 7, 2022, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Charles Leshner, dated February 7, 2022 with narratives for change in use and site plan waiver, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Thomas Craig Finnegan, dated February 3, 2022, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation and Floor Plan prepared by Lawrence Borges, dated January 30, 2022, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated March 4, 2022, marked as Exhibit A-5 in evidence.

1.6 Seven Photographs of 129, 127 and 125 East Washington Avenue, marked as Exhibit A-6 in evidence,

1.7 Square footage analysis of 125 East Washington Avenue consisting of 3 sheets, marked as Exhibit A-7 in evidence.

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

2. The premises in question are located at 125 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 52, Lot 27 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 premises in question has approximate dimensions of 43.44 ft. x 123.70 ft. x 49.42 ft. x 131.24 ft and is substantially rectangular in shape with an approximate area of 5,889.85square feet (0.135 acres). The property is presently developed with an existing 1.5 story building utilized as a contractor garage with a driveway extending from East Washington Avenue along with a rear porch with steps and a walkway. The Applicant proposes to remove the existing rear porch and walkway and to construct a two-story addition with a new deck and steps to the rear of the existing structure. The Applicant further proposes to change the use from the nonconforming contractor garage to a permitted single family residential dwelling. The property will continue the following existing nonconforming elements:

- a. Lot area of 5,889.85 square feet where 7,500 square feet is required.
- b. Lot frontage of 43.44 feet where 75 feet is required.
- c. Lot width of 46 feet where 75 feet is required.
- d. Front yard setback of 12.01 feet where 20 feet is required.
- e. Side yard setback of 9.91 feet where 10 feet is required.
- f. Combined side setback of 19.91 feet where 20 feet is required.
- g. Lot shape diameter of 23 feet where 50 feet is required.

The forgoing are existing nonconforming elements which are not altered by this application.

5. The Applicant presented the testimony of the property owner Charles Leshner, Jr. who testified that the existing structure is a two-car garage that has been maintained as a contractor's garage for many years predating current zoning. The Applicant wishes to place a two-story addition to the rear of the existing building and change the use to a permitted single family residential home. Some discussion was conducted to ascertain the actual increase over permitted floor area ratio which was determined to be 0.49 based upon the plans submitted to the Planning Board.

The Applicant testified that there will be no landscaping provided in connection with the application and that the proposed residence will be a two-bedroom home. Based upon the plans submitted the useable floor area ratio proposed will be 0.49 where 0.40 is permitted. With respect to the Variances for permitting construction on a nonconforming lot that does not meet the area requirements and providing for an enlargement that does not conform to all requirements of the zone the Planning Board finds that this is an undersized lot and that without the grant of Variance relief it is impossible to place additions to this property that will make it a useable, functioning, single family home which is what is anticipated and desired for the zone. Therefore, a hardship exists as to those items. With respect to continuing a two-car garage where only a one car garage is permitted the Planning Board finds that there is a hardship insofar as the building exists and conformity would require demolition of a portion of the structure which creates a hardship. Based on the foregoing the Planning Board finds that 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 Borough of 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 repurposing this existing nonconforming use into a conforming single family residential use. Thus, a hardship does exist with respect to this property. In addition, the Planning Board finds that the

grant of the requested Variance relief will promote the purposes of the Municipal Land Use Law by encouraging Municipal action to guide the appropriate use and development of land so as to change a nonconforming use to a conforming use for this zone. In addition, it will promote the establishment of an appropriate use for the neighborhood promoting the purposes of the Municipal Land Use Law. (N.J.S.A. 40:55D-2)

6. With respect to the useable floor area ratio, the Applicant has presented Exhibit A-6 which demonstrates that the proposed improvements, although exceeding the permitted floor area ratio, will be consistent with the other homes along East Washington Avenue and will harmonize with existing development. Moreover, the Planning Board finds that a two-bedroom home will be consistent with other homes in the neighborhood. With respect to the intensity of use the Planning Board finds that the subject property can accommodate a two-bedroom residential home on the lot as do the surrounding properties on the street. As a result of all of the foregoing 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 Applicant has satisfied the negative criteria for the grant of the requested Variance relief. The Planning Board finds that the grant of the requested Variances will not result in a substantial detriment to the public good. Instead, it will constitute a benefit to the public good as it will change the existing, nonconforming commercial use as a contractor garage into a conforming, single family residential home use which is what is contemplated by the Zone District. The Planning Board finds that converting an existing nonconforming use to a permitted single family residential home will be a benefit to the streetscape and the neighboring properties as it will bring this nonconforming use into conformity with zoning.

7. 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. Instead, the grant of Variance relief will permit the subject property to be converted from

a nonconforming commercial use into a permitted single family residential use which is consistent with the zoning of the subject property.

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 Variances 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 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 **CHARLES LESHNER**, 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 to permit a maximum useable floor area ratio of 0.49 where 0.40 is permitted, to permit the use of a nonconforming lot not conforming to minimum lot area; to permit the use of a nonconforming lot which fails to comply to the required zoning standards; to permit the enlargement of an existing nonconforming building which does not conform to all requirements of the zone district and to permit two garages on a lot which only permits one garage.

2. The Applicant shall work with the Planning Board Engineer to ensure that any increase in stormwater will be mitigated to an acceptable level.

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. NEFF

SECONDED BY: MR. HAWLEY

ROLL CALL:

YES: HAWLEY, PEPE, NEFF, CACCAMO, KRUPINSKI,
CROWTHER, KURDES, BERTH, MAJEWSKI

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**