

**IN THE MATTER OF
APPLICATION NO. PB 22-07
OF BARBARA & THOMAS PASKEWICH
BLOCK 34 LOT 5**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, BARBARA & THOMAS PASKEWICH, hereinafter the "Applicant", has proposed the development of property located at 104 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 34, Lot 5 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 two story addition above the southerly portion of an existing single family residential dwelling along with removal and replacement of an existing patio and addition of a covered front porch requiring variance relief for front yard setback of 5.7 feet where 20 feet is required (Section 150-29.A (2) Exhibit 5-2), side yard setback of 2.3 feet for second story addition where 10 feet is required (Section 150-29.A (2) Exhibit 5-2), and accessory rear yard setback for existing garage of 3.7 feet where 5 feet is required (Section 150-29.A (2) Exhibit 5-2), which conditions are contrary to the provisions of Chapter 150, Article V, Section 150-29 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 July 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 February 16, 2022, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Barbara & Thomas Paskewich, dated March 12, 2022, marked as Exhibit A-2 in evidence.

1.3 Survey & Description prepared by McBurnie Land Surveying, dated August 10, 2020, marked as Exhibit A-3 in evidence.

1.4 Four Photographs of existing home on 8.5 in. x 11 in. sheet, marked as Exhibit A-4 in evidence.

1.5 Elevation and Floor Plans prepared by Minkler Architecture and Design, dated February 9, 2022, marked as Exhibit A-5 in evidence.

1.6 Review #2 of CME Associates, dated April 21, 2022, marked as Exhibit A-6 in evidence.

2. The premises in question are located at 104 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 34, Lot 5 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 property in question has approximate dimensions of 125.00 ft. x 110.00 ft. x 125.00 ft. x 110.00 ft. and is a rectangular shaped parcel with an approximate lot area of 13,750 square feet. The subject property is currently developed with a 1.5 story residential dwelling with detached garage, concrete driveway, and paver patio. The property has three existing nonconforming elements including principle building front setback of 9.7 feet where 20 feet is required, a principle building side yard setback of 2.3 feet

where 10 feet is required and accessory garage rear yard setback of 3.7 feet where 5 feet is required. The Applicant is proposing to construct a second story addition above the existing southerly portion of the residential dwelling. That addition will maintain the existing 2.3 foot side yard setback but will increase the height of the building in that area thus requiring variance relief for that addition. The Applicant also proposes to construct a covered porch over the existing front stoop which will extend 4 feet beyond the existing building resulting in a front yard setback for the covered porch of 5.7 feet where 20 feet is required. The Applicant also proposes to retain the existing garage with a rear yard setback of 3.7 feet where 5 feet is required. This will be the continuation of an existing nonconforming element not requiring additional variance relief.

5. The Applicant presented the testimony of property owner Barbara Paskewich. She advised the Planning Board that the existing residence is modest in size and that the Applicant desires to enlarge the upper floor in order to provide a master bedroom that will make the house more functional and livable. She also testified as shown in the architectural renderings that the upper floor addition coupled with the relocation of the front porch to the center of the building will provide a more balanced view of the home from the streetscape and improve its aesthetic appearance "curb appeal". In addition, the relocation of the front porch will provide for a better functioning interior first floor.

6. In response to questions of the Planning Board Engineer Ms. Paskewich confirmed that there will not be any change from existing runoff flow patterns and roof leader locations. The roof area with the exception of the small covered porch will remain the same and not produce any perceptible increase in runoff. She further advised that there will be no tree removal or added landscape in connection with the proposal. She further testified that the existing driveway is adequate to provide parking for up to four vehicles which exceeds the RSIS two parking space requirement.

Ms. Paskewich also noted that the surrounding properties are similarly zoned R-1 containing single family residential homes and that the proposed improvements are architecturally and visually consistent with the surrounding neighborhood and neighborhood landscape.

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 both of the requested variances result from the

location of the lawfully existing single-family home on the property. The existing residence is located in the southwesterly corner of the property with existing nonconforming front yard and side yard setbacks. In particular with respect to the second story addition the Planning Board notes that such additions cannot be placed on the property without the requirement for variance relief as the existing residence has a 2.3 foot side yard setback and the second story addition will follow the existing building line and the same setback line. Thus, a second story addition cannot be placed on the subject structure without the variance relief requested. Similarly with respect to the front yard setback for the covered porch, the existing residence does have an existing covered front porch with steps that extend an additional 4 feet toward the southerly property line which are presently not covered. The Applicant is proposing to move the front porch to the center of the building and to extend the existing cover for the front porch an additional 4 feet so that it covers the steps as well. Once again due to the location of the existing structure this cannot be accomplished without variance relief. As a result of all of the foregoing the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exists 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 having these reasonable amenities. Consequently, the Planning Board finds that a hardship does exist with respect to this property and the Applicant has satisfied positive criteria for the grant of the requested variance relief.

7. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief and that the grant of relief will not result in any substantial detriment to the public good. More particularly with respect to the second floor addition the Planning Board finds from the architectural drawings provided that the second floor addition will be an attractive improvement to the existing residence and will not result in an overly massive appearing structure that will adversely impact the streetscape or the adjacent properties. With respect to the most affected property, which is lot 6 to the west, the Planning Board notes that immediately adjacent to the subject property lot 6 has an existing driveway so that there remains a significant separation between the proposed addition and the neighboring property owner's home. The Planning Board agrees with the testimony of the Applicant that the proposed additions will be consistent with the neighborhood scheme and will not result in any significant negative impacts. The Planning Board finds that the proposed additions will be visually and aesthetically pleasing and will not result in any adverse stormwater runoff impacts to adjacent properties and will be an attractive

improvement to existing conditions on the streetscape. In addition, there will be no tree removal. Thus, the Planning Board finds that any adverse impacts are de minimis and insubstantial. With respect to the covered front porch the Planning Board also finds that this will be an aesthetic improvement to the property with the relocation of the front porch to the center of the building and to add functionality by extending the front porch over the steps to improve ingress and egress from the residence during inclement weather. In addition to the foregoing the Planning Board notes that this proposed additional 4 foot extension over the front steps does not extend across the entire front of the building but is only in a small limited area. This will have a pleasing aesthetic impact and provide better functionality for the home. Thus, any adverse impacts to the public good are de minimis and insubstantial.

8. The Planning Board further finds that the requested variance relief can be granted without substantial impairment of the Zone Plan or Zoning Ordinance. The Planning Board finds that both the front yard setback requirement and the side yard setback requirement were designed principally to ensure that there is adequate light, air and open space between structures and the streetscape and that structures are not constructed so close to the street or to adjacent properties so as to have an overbearing appearance. In this case the Planning Board finds that these modest additions will not have the impacts sought to be avoided by the ordinance. The Planning Board finds that the second-floor addition will not significantly increase the height of the building along the westerly property line so as to result in substantial adverse impacts to the adjacent property. The Planning Board further finds that with respect to the covered front porch this will be a relocation of that porch in a better position which addition is also de minimis in size and will have de minimis and insubstantial impact upon the streetscape. Thus, the Planning Board finds that the grant of the requested variance relief will not offend the purposes for which the ordinances were adopted and can be granted without substantial impairment of the Zone Plan or Zoning 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 Variances 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 4th day of August 2022 that the Application of **BARBARA & THOMAS PASKEWICH**, 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 side yard setback for proposed second floor addition of 2.3 feet where 10 feet is required.
- b. Front yard setback for proposed covered front porch of 5.7 feet where 20 feet is required.
- c. Continuation of existing nonconforming element for a rear yard setback to accessory garage of 3.7 feet where 5 feet is required.

2) The proposed covered front porch will not be enclosed it will remain as an open-air porch.

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. DOUGHERTY

SECONDED BY: MR. PEPE

ROLL CALL:

YES: ZUZULOCK, DOUGHERTY, HAWLEY, PEPE, McGOLDRICK, NEFF, CACCAMO, JOSKO, KRUPINSKI

NO: NONE

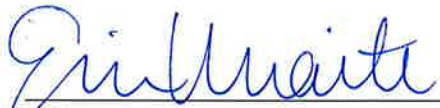
ABSTAIN: NONE

ABSENT: 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 August 4, 2022.



**Secretary, Planning Board
Borough of Atlantic Highlands**