

**IN THE MATTER OF
APPLICATION NO. PB22-08
OF EDWARD & RHONDA KELLEY
BLOCK 87 LOT 15**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, EDWARD & RHONDA KELLEY, hereinafter the "Applicant", has proposed the development of property located at 35 East Garfield Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 87, Lot 15 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 permit demolition of an existing detached garage and its replacement with a new detached garage on the existing garage footprint on a non-conforming lot requiring variances for rear yard setback of 1.4 feet where 5 feet is required (Section 150-29.A(2)(Exhibit 5-2)) accessory building height of 20 feet where 15 feet is permitted (Section 150-29.A(2)(Exhibit 5-2)) (Section 150-72.A) and useable floor area ratio of 0.50 where 0.40 is permitted (Section 150-29.A(2)(Exhibit 5-2)). In addition, principal or accessory buildings or structures may not be constructed on non-conforming lots unless the new structure or building conforms to all requirements of Chapter 150 (Section 150-49.1(3)(d)). The foregoing is contrary to the provisions of the aforesaid Sections of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-1 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 August 4, 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 August 31, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for development, dated August 31, 2021, marked as Exhibit A-2 in evidence.

1.3 Variance Application of Edward and Rhonda Kelley marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Richard E. Stockton, dated August 5, 2019, marked as Exhibit A-4 in evidence.

1.5 Architectural Elevation and Floor Plans prepared by Minkler Architecture & Design dated July 7, 2021, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated April 29, 2022, marked as Exhibit A-6 in evidence.

1.7 Series of 4 Photographs 8.5 x 11 Inch, marked as Exhibit A-7 a-d in evidence.

2. The premises in question are located at 35 East Garfield Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 87, lot 15 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 subject property has approximate dimensions of 50.00 ft. x 130.00 ft. x 50.00 ft. x 130.00 ft. with an approximate area of 6,500 square feet and is an elongated rectangle in shape with

frontage on East Garfield Avenue. The property is an existing non-conforming lot with the following non-conforming elements that will remain:

- a. Lot area of 6,500 square feet where 7,500 square feet is required.
- b. Lot frontage of 50 feet where 75 feet is required.
- c. Lot width of 50 feet where 75 feet is required
- d. Side yard setback of 6.8 feet where 10 feet is required.
- e. Combined side yard setback of 14.1 feet where 20 feet is required.
- f. Building coverage of 30.2% where 25% is permitted.
- g. Impervious coverage of 73.9% where 50% is permitted.
- h. Lot shape diameter of 30 feet where 50 feet is required.
- i. Front setback of 17 feet where 20 feet is required.
- j. Driveway abuts property line where 5-foot setback is required.
- k. Driveway width of 11 feet where 12 feet is required.

All of the foregoing are pre-existing conditions which will continue and do not require variance approval.

5. The subject property is presently developed with an existing 2.5 story residential dwelling with a detached masonry garage, concrete driveway and slab areas, stone areas with a covered front porch and rear wood deck with associated walkways. The Applicant proposes to demolish and replace the existing masonry garage pursuant to the architectural elevation and floor plans prepared by Minkler Architecture and Design dated July 7, 2021, marked as Exhibit A-5 in evidence. The new garage will be placed upon the same footprint as the existing garage.

6. The Applicant presented the testimony of property owner Edward Kelley, who testified as to the existing conditions on the property and who noted that the existing garage is very old and has deteriorated substantially over the years. The new garage will be consistent with modern construction techniques and codes and is architecturally designed to complement the architectural style of the existing residence. The new garage will have electricity but will not have plumbing, heating or air conditioning such that it will not be habitable space. That will be a condition of this approval. The Applicant testified that roof

runoff currently flows freely as there are no gutters or drains on the existing structure. The new building will have gutters and drains and runoff will be directed to dissipate on the subject property and not flow onto neighboring properties. Mr. Kelley further advised that the concrete slab in front of the garage will be removed. It is approximately 17 feet by 22 feet in dimension and will be converted to gravel which will also serve to reduce runoff. He further testified that the new garage will have a "loft" area above which is considered in the calculation of floor area ratio. Although that area will not be used as habitable living space and only for storage, it does result in the requirement of a floor area ratio variance.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. More particularly, the subject property is an undersized lot and is an elongated rectangle in shape. It is already developed with the existing residence and garage. There is insufficient area available to place the proposed garage in a conforming location. In addition, there is an existing garage slab footprint upon which the new garage can be placed. Furthermore, the Planning Board notes that pursuant to N.J.S.A. 40:55D-68 any non-conforming structure existing at the time of the passage of the ordinance may be continued upon the lot and any such structure may be restored or repaired in the event of partial destruction thereof. In this case, the Applicant could restore the existing structure. Instead the Applicant proposes to construct a new garage more aesthetically pleasing and consistent in architectural design with the existing residence. Thus, the Planning Board finds that the grant of approval for the rear yard setback will promote a desirable and visual environment thus promoting the purposes of the Municipal Land Use Law. With respect to building height the new building will replace an existing building with the same approximate height and is appropriate as the Applicant desires to have a loft area for needed storage space. With respect to placing structure on a non-conforming lot, the Board acknowledges that this is an existing condition, and that no construction of any kind can be placed on this lot without variance approval. In this case the proposed garage simply replaces an existing condition resulting in an improvement to the property which cannot be accomplished without variance approval.

8. 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 relief for rear setback, building height and new structure on a non-conforming lot will not result in any substantial detriment to the public good. The existing masonry garage has been in existence for many years and its replacement with a new building of the same size and height will not result in any significant

new impact to the surrounding neighborhood. With respect to the rear yard setback the Planning Board specifically notes Exhibit A-7 d which shows the rear yard area and shows that a similar garage on the property to the rear has a similar setback. Therefore, the Planning Board finds that the grant of variance relief will allow the construction of a structure which will substantially retain the status quo and not have any substantial impact upon the surrounding properties and neighborhood.

9. The Planning Board further finds that the relief requested can be granted without substantial impairment of the Zone Plan or Zoning Ordinance. The rear setback, height and placing the structures on a non-conforming lot are intended to ensure that oversized buildings crowding a non-conforming lot and placed too close to the property lines will have adverse impacts upon neighboring properties. However, in this case that is not the situation. The Applicant could restore the existing structure and continue the status quo. Instead, the Applicant proposed to construct an attractive, new garage structure in the same location with the same dimensions essentially continuing the status quo with an approved new, current building code compliant structure. Thus, there is no substantial impairment of the Zone Plan or Zoning Ordinance as the grant of variance relief will result in substantially retaining the status quo condition with an improved structure consistent with current codes and more aesthetically attractive.

10. With respect to the floor area ratio variance, the Planning Board finds that the floor area ratio variance is a result of the "loft" area in the garage. That area will be used for storage purposes only and will not be habitable area. Therefore, it will not increase the intensity of the use of the subject property which will continue as a single-family residential home. Therefore, the Planning Board finds that the subject property can accommodate this additional floor area for storage purposes such that the floor area ratio variance can and should be granted.

11. The Planning Board further finds that the grant of the floor area ratio variance will not result in any substantial detriment to the public good as the additional floor area "loft" for storage will not increase the intensity of the use of property and will have no impacts upon the surrounding properties.

12. The Planning Board further finds that the grant of the floor area ratio variance will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The floor area ratio requirement is designed to limit the intensity to which property can be utilized. In this case, the increase in the intensity of

the use of the property will be di minimis and insubstantial and will not result in a “overuse” of the subject property that will have impacts that the provisions of the Zone Plan and Zoning Ordinance were intended to prevent.

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 Variances can and should be granted at this time.

14. The Planning Board further finds that all property owners within 200 feet of the premises in question were given proper Notice of the hearing of this application and were provided with an opportunity present evidence 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 1st day of September 2022, that the Application of **EDWARD & RHONDA KELLEY** 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 for rear yard setback of 1.4 feet where 5 feet is required (Section 150-29.A(2)(Exhibit 5-2)).
 - b. Variance for accessory building height of 20 feet where 15 feet is permitted (Section 150-29.A(2)(Exhibit 5-2)) (Section 150-72.A).
 - c. Variance for useable floor area ratio of 0.50 where 0.40 is permitted (Section 150-29.A(2)(Exhibit 5-2)).
 - d. Variance to permit a garage where principal or accessory buildings or structures may not be constructed on non-conforming lots unless the new structure or building conforms to all requirements of Chapter 150 (Section 150-49.1(3)(d)).

2) The new garage shall have electric service only, it shall not be serviced for plumbing, heating or air conditioning and shall not be habitable space.

3) The new structure will have gutters and downspouts directing roof runoff to dissipate on the subject property and not upon neighboring properties.

4) The concrete slab in front of the existing garage with approximate dimensions of 17 feet by 22 feet will be removed and converted to gravel.


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.

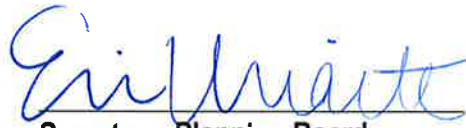
BE IT FURTHER RESOLVED that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.

OFFERED BY: MR. NEFF
SECONDED BY: MR. HAWLEY
ROLL CALL:
YES: HAWLEY, McGOLDRICK, NEFF, JOSKO, KRUPINSKI, CROWTHER,
KURDES, BERTH
NO: NONE
ABSTAIN: NONE
ABSENT: PEPE, CACCAMO, MAJEWSKI



**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 September 1, 2022.



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