

**IN THE MATTER OF
APPLICATION NO. PB 23-05
OF MATT & SARA SOHL
BLOCK 74 LOT 7**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, MATT & SARA SOHL, hereinafter the "Applicant", has proposed the development of property located at 64 Prospect Circle, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 74, Lot 7 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 the construction of a one-story addition to an existing dwelling along with a covered porch, new driveway and retaining wall requiring Variance relief for front yard setback of 20.95 feet where 25 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)) and building coverage of 16.9% where 15% is permitted (Section 150-29 (A)(2)(Exhibit 5-2)) along with lot coverage in a steep slope area of 3,031.99 square feet where 2,767.81 square feet is permitted (Section 150-78.E). In addition, the following existing nonconformities will remain, lot area of 10,072.74 square feet where 15,000 square feet is required, lot frontage and width of 96.86 feet where 100 feet is required, side yard setback of 4.23 feet where 10 feet is required, side yard setback for accessory structure of 0.3 feet where 10 feet is required and rear yard setback for accessory structures of -35.5 feet where 5 feet is required. 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 October 5, 2023, 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 Variance Application of Matthew & Sara Sohl, undated, marked as Exhibit A-1 in evidence.

1.2 Survey prepared by Najarian Associates, dated June 8, 2022, marked as Exhibit A-2 in evidence.

1.3 Proposed Addition Plans, prepared by Insite Engineering with Steep Slope Analysis, dated June 21, 2023, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation Floor Plans, prepared by Parnagian Architects, dated June 28, 2023, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated September 13, 2023, marked as Exhibit A-5 in evidence.

1.6 Four Pages with Photographs, Floor Plans & Diagrams, marked as Exhibit A-6 a-d in evidence.

1.7 Colorized Site Rendering, prepared by Insite Engineering, dated September 9, 2023, marked as Exhibit A-7 in evidence.

1.8 Photoboard with 4 Photographs of Subject Property, marked as Exhibit A-8 in evidence.

2. The premises in question are located at 64 Prospect Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 74, Lot 7 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 109.95 ft. x 135.00 ft. x 39.27 ft. x 135.00 ft. and is triangular in shape with an approximate area of 10,072.74 square feet (0.25 acres). The property is presently developed with an existing one-story residential dwelling with driveway, deck with greenhouse area, walkways, a shed and firepit area. The Planning Board notes that the rear walkway, shed and firepit are outside of the property lines of the subject parcel and makes no findings with respect to those elements.

5. The Applicant presented the testimony of Brian Parnagian, a licensed Architect in the State of New Jersey whose credentials were accepted by the Board. He testified that the home was constructed in 1973 as a "raised ranch". He testified that the property is in need of substantial updating and that the principal proposal before the Board is to expand the approximately 400 square feet of living space for a primary suite for the owners. That addition will be placed over the existing garage and replace the existing greenhouse area on a deck. There is an additional deviation of front setback of 1.05 feet from 22 feet to 20.95 feet where 25 feet is required. That is due to the curvature along the frontage of the property and continuing the addition along the plane of the front residence wall. The Applicant advised that they have not performed a soil analysis regarding the existing foundation to confirm that it can accommodate the added weight. The Applicant agreed to provide a soil analysis for that purpose as a condition of approval.

6. The Applicant also presented the testimony of Douglas Clelland, a licensed professional Engineer in the State of New Jersey whose credentials were accepted by the Planning Board. He reviewed the various preexisting nonconforming conditions. He noted that the improvements will eliminate one existing nonconforming condition for total floor area, thus making the building more conforming in that respect. He further testified that the actual steep slope lot coverage will be 2,904 square feet where 2,776 square feet is permitted for a slight excess of 128 square feet. He further noted that the undersized nature of the lot is what causes the necessity for Variance. He also noted that the total impervious surface for the lot will be 30.10% where 40% is permitted, thus demonstrating that the lot will not be overdeveloped.

Mr. Clelland further advised the Board that the property presently has three bedrooms existing and that the proposed addition will not increase the number of bedrooms. He further testified that the de minimis increase will have no detrimental stormwater impacts as all stormwater is being directed to the street.

7. The Applicant agreed that in the event of tree removal, a tree removal permit will be secured from the Borough. The Applicant also agreed to provide retaining wall onsite calculations and weep holes on the retaining walls to ensure its stability. The Applicant further agreed to comply with Sections 163, 150-89 and 150-52 of the Ordinance.

8. The Applicant also presented the testimony of Barbara Ehlen, a licensed professional Planner in the State of New Jersey who noted that the proposed use is a permitted use in the zone and that there is a hardship with respect to this property due to its unusual shape, coupled with its undersized area. She noted that the Borough Master Plan encourages reinvestment in neighborhoods and opined that the Variances can be granted under a hardship standard noting that the front yard setback deviation is due to the existing building line and the road curvature. She further opined that the building coverage and steep slope lot coverage deviations are due to the undersized lot. Thus, she concluded 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 Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulty to and exceptional and undue hardship upon the Applicant as it would prevent the Applicant from making these improvements to the home which will bring it into closer compliance with the size of homes anticipated in the zone. She further opined that the location of the proposed improvements makes sense in the context of this existing residence and its unique shape and configuration. Thus, she opined that the grant of the Variances herein will promote the purposes of the Municipal Land Use Law by providing sufficient space in an appropriate location for this residential use. Pursuant to the provisions of N.J.S.A. 40:55 d-2. g. the Planning Board finds that this property is unique property due to the conditions set forth previously herein which demonstrate satisfaction of the positive criteria for the grant of the requested Variance relief.

9. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. It will result in a residence in closer conformance with the size

of residences anticipated in the zone. The Planning Board finds that the additional 1.05-foot deviation from front yard setback is di minimis and will have no substantial impact upon the streetscape or the adjacent properties. Similarly, the building coverage excess, and steep slope lot coverage excess are di minimis as well and will not have substantial negative impacts on the property provided that the Applicant complies with the conditions with this approval to ensure that the improvements will be properly and safely completed.

10. The Planning Board further finds that the grant of the requested Variance relief will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. As noted previously herein, the proposed improvements will result in a home more conforming to the requirements of the zone and with other residences in the area and the di minimis deviations requested are insubstantial and do not offend the zone scheme in this area.

The Planning Board notes the aerial photograph Exhibits marked as Exhibit A-7 and A-8 which demonstrate that the the proposed improvements will bring the subject property into closer conformance with existing development around it and will not be inconsistent with the zone scheme.

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. One neighbor did appear who supported the application as being a positive improvement to the neighborhood.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 9th day of November, 2023 that the Application of **MATT & SARA SOHL**, 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 Applicant shall provide a soils analysis for approval by the Planning Board Engineer prior to the issuance of construction permits.

- 2) The Applicant shall comply with the Borough Ordinance and obtain any required tree removal permits prior to removal of trees.

- 3) The Applicant shall provide retaining wall design calculations with weep holes for approval by the Planning Board Engineer prior to the issuance of permits.

- 4) The Applicant shall comply with Section 163 of the Borough of Atlantic Highland Development Regulations.

- 5) The Applicant shall comply with Section 150-89 of the Borough of Atlantic Highland Development Regulations.

- 6) The Applicant shall comply with Section 150-52 of the Borough of Atlantic Highland Development Regulations Ordinance.

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. Krupinski

SECONDED BY: Ms. Majewski

ROLL CALL:

YES: Councilmember Dougherty, Mr. Hawley, Mr. Josko, Mr. Krupinski, Ms. Majewski,
Dr. Zuzulock, Ms. Walter, Vice Chair Neff, Chair McGoldrick

NO: None

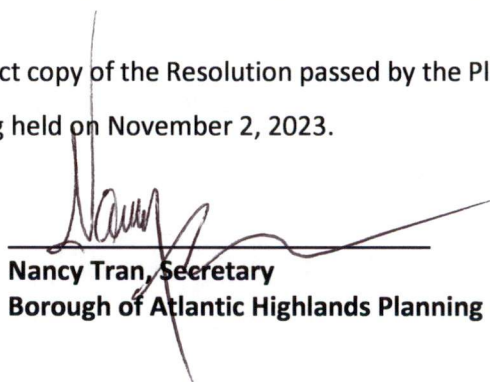
ABSTAIN: None

ABSENT: Mr. Boms, Mr. Caccamo, Mr. Kurdes, Mr. Berth



John McGoldrick, Chair
Borough of Atlantic Highlands Planning Board

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 November 2, 2023.



Nancy Tran, Secretary
Borough of Atlantic Highlands Planning Board