

**IN THE MATTER OF
APPLICATION NO. PB23-12
OF DINA ROVERE
BLOCK 98 LOT 8**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, DINA ROVERE, hereinafter the "Applicant", has proposed the development of property located at 29 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 98, Lot 8 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 garage and construct a new garage on the same footprint requiring Variance relief for accessory side yard setback of 3.5 feet where 5 feet is required (Section 150-29)(A)(2)(Exhibit 5-2)) and accessory rear yard setback of 2.9 feet where 5 feet is required (Section 150-29)(A)(2)(Exhibit 5-2)). The foregoing is contrary to 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 April 4, 2024, 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 October 5, 2023, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Dina Rovere, dated September 8, 2023, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Lakeland Surveying, dated September 26, 2023, marked as Exhibit A-3 in evidence.

1.4 Elevation & Floor Plan Drawings, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated December 14, 2023, marked as Exhibit A-5 in evidence.

1.6 Series of 6 Photographs showing existing conditions of property, marked as Exhibit A-6 a-f in evidence.

2. The premises in question are located at 29 East Mount Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 98, lot 8 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 100.00 ft. x 105.00 ft. x 100.00 ft. x 105.00 ft. and is rectangular in shape with an approximate area of 10,500 square feet (0.24 acres). The subject property is presently developed with a 2.5 story residential dwelling with a detached framed garage and a gravel driveway, covered porch and walkways. The Applicant proposes to demolish the existing framed garage building and replace it with a new garage on the same foundation. Although, pursuant to N.J.S.A. 40:55D-68 the existing garage is allowed to remain notwithstanding its nonconforming side and rear yard setbacks, once the building is demolished a new replacement structure is required to conform

with the requirements of the zone. Therefore replacing the new garage on the old garage foundation requires Variance approval.

5. The Planning Board notes that the immediately adjacent properties have either framed garages or sheds closer to the subject property line than the proposed framed garage. The Planning Board also notes that the existing driveway entering from Third Avenue is aligned with the existing garage. As a result of the foregoing, due to the location of the existing garage, residence and driveway improvements, the appropriate place to construct a new garage is on the footprint of the existing garage. In addition, the Applicant will be able to utilize the foundation of the existing garage which will result in less property disruption and lower cost.

6. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief as 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 Ordinance would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would not permit this new garage to be placed in the same location as the existing structure which is the most functional portion of the property for the garage building. The Planning Board further finds that, pursuant to the principles set forth in **Hawrylo v. Board of Adjustment , 249 N.J. Super. 568 (App. Div. 1991)**, the reconstruction of a structure on an existing foundation and the savings therefrom may be considered as a factor in the grant of variance approval in addition to it being an appropriate location due to other factors such as those set forth above.

7. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. As noted previously herein, the property borders in the vicinity of the proposed new garage, contains framed garage and framed shed structures that are closer to the property line than what is proposed by the Applicant. They will shield the new garage from the surrounding properties. Moreover, the garage will not be out of character with existing conditions in the area and has been in existence for many years setting the character of the area. Consequently, any adverse impacts upon the surrounding properties and the neighborhood are di minimis and insubstantial.

8. 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. As noted previously herein, this is a structure that has been in existence for many years and has set the character of the neighborhood and the area. Consequently, constructing a new, more attractive modern garage structure in its place will only serve to improve existing conditions and will not have any substantial, adverse impacts upon the Zone Plan and Zoning Ordinance. Moreover, as set forth previously the neighborhood is characterized by similar nonconforming accessory structures that set the neighborhood scheme. The Planning Board finds that the accessory side and rear yard setbacks are designed to ensure that structures are not built so close to property lines as to impede upon light, air and open space or have the appearance of being such a massive structure as to be uncharacteristic of the neighborhood. In this case the replacement of the existing deteriorated garage with a new garage structure will not have the impacts sought to be avoided by the Ordinance. instead, it will be an improvement of existing conditions.

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 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 6th day of June 2024, that the Application of **DINA ROVERE** 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. Accessory side yard setback of 3.5 feet where 5 feet is required.
 - b. Accessory rear yard setback of 2.9 feet where 5 feet is required.

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 these Variances 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: Ms. Majewski

SECONDED BY: Dr. Zuzulock

ROLL CALL:

YES: Mr. Hawley, Ms. Majewski, Mr. Neff, Dr. Zuzulock, Ms. Walter, Mr. Bearmore, Mr. Krupinski

NO: None

ABSTAIN: None

INELIGIBLE: Mr. Caccamo

ABSENT: Ms. DePasca, Councilman Dougherty, Mr. McGoldrick, 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 June 6, 2024.

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