

**IN THE MATTER OF
APPLICATION NO. PB18-08
OF BRUCE COHN & DENISE MUMM
BLOCK 71 LOT 2**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, BRUCE COHN & DENISE MUMM, hereinafter the "Applicant", has proposed the development of property located at 9 Grand Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 71, Lot 2 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 a 6 ft. high fence in a front yard area where a maximum 4 ft. is permitted contrary to Chapter 150, Article VII, Section 150-70 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 July 12, 2018 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 Application for variance of Bruce Cohn and Denise Mumm, dated June 1, 2018, marked as Exhibit A-1 in evidence.

1.2 Survey prepared by Paul K. Lynch, dated September 1, 2008, marked as Exhibit A-2 in evidence.

1.3 Review of Zoning Officer Michelle Clark dated June 4, 2018, marked as Exhibit A-3 in evidence.

1.4 Series of eleven (11) photographs on two (2) sheets showing subject property existing conditions and proposed fencing, marked as Exhibit A-4 in evidence.

2. The premises in question are located at 9 Grand Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 71, Lot 2 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 premises in question have approximate dimensions of 99.58 ft. x 154 ft. x 100.00 ft. x 12 ft. x 45.60 ft. x 18.71 ft. x 42.00 ft. x 20.88 ft. x 88.00 ft. x 99 ft. and is an irregularly shaped parcel with frontage on three (3) streets including Cross Avenue, 8th Avenue and Grand Avenue.

5. The subject premises are currently developed with an existing 1.5 story residential home, the front of which is oriented toward Grand Avenue. Although the portions of the property along Cross Avenue and 8th Avenue are technically front yards pursuant to Ordinance, they function as the rear yard of the property. The property adjacent to the subject parcel to the north has an existing 6 ft. high fence along its 8th Avenue frontage. The Applicant proposes to construct a 6 ft. high fence along it's frontages on Cross Avenue and 8th Avenue where 4 ft. is the maximum fence height permitted in front yards.

6. The Applicant presented the testimony of property owner Bruce Cohn and his fence contractor Ed Thorn. They provided testimony that the frontages along Cross Avenue and 8th Avenue function as the rear yard of the property where children play and where the family gathers. Although the Applicant testified that the existing house is at least 60 ft. from the roadway, it appears from the survey provided that the residence is approximately 100 ft. from the street line. The Applicant testified that the headlights of vehicles at the intersection of Cross Avenue and 8th Avenue shine into the yard and residence. In addition, they would like some privacy from the streetscape and noted that a 4 ft. fence would not provide adequate screening. The Applicant testified that a 6 ft. high fence is more appropriate. The Applicant noted that the adjacent property has a 6 ft. fence along 8th Avenue and presented photographs of it. The Applicant also noted that there was previously a 6 ft. high fence along their property line that was removed. The Applicant believed that they would be able to replace it. However, once removed any new fencing is required to be in conformity with the Ordinance or a variance is required. Consequently, the Applicant is requesting variance relief.

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 the property has unique characteristics of three (3) street frontages, such that the shape of the property combined with the multiple frontages results in a lack of privacy in the functioning rear yard of the residence and also allows vehicle headlights to shine into the property at night. The Planning Board finds that this creates a hardship upon the Applicant. Thus, the Planning Board finds that, due to the shape and multiple street frontages of the property, 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 Borough of Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant.

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 will not result in any substantial detriment to the public good. The Planning Board notes that the subject property previously had a 6 ft. high fence and that the adjacent property has a 6 ft. high fence. The additional two (2) ft. in height will not have any adverse impacts upon the adjacent property owners who have similar height fences and will not change the character of the area since there previously was a 6 ft. high fence on the subject property and the property next door. During the course of the hearing the Planning Board members noted that the Applicant will have to maintain the required sight triangle at the intersection of Cross Avenue and 8th Avenue. The Applicant agreed to comply with that requirement

as a condition of approval. Therefore it is a condition of this approval that the Applicant not violate the sight triangle requirements at the intersection of Cross Avenue and 8th Avenue.

9. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board finds that in this case there are 6 ft. fences in front yards in the vicinity of the property and there was previously a 6 ft. fence on the subject property. Consequently, the grant of variance relief in this case will not alter the character of the area. The Planning Board further finds that the fence height limitation is designed to insure that front yard areas do not appear to be enclosed, gated communities. In this case the roadways along which the 6 ft. high fence is requested, function as the rear yard to the subject property rather than the front yard and will not have the impact sought to be avoided by the Ordinance provision.

10. 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 variance can and should be granted at this time.

11. 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 31st day of July, 2018 that the Application of **BRUCE COHN & DENISE MUMM** 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.

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 approval granted herein is to permit a 6 ft. high fence along the subject property frontages of Cross Avenue and 8th Avenue.

2. The proposed fence shall not violate the sight triangle requirements at the intersection of Cross Avenue and 8th Avenue and shall maintain the required sight triangle.

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. Colangelo

SECONDED BY: Dr. Cetron

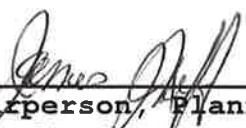
ROLL CALL:

YES: Mr. Illiano, Mr. Hawley, Mr. Caccamo,
Dr. Cetron, Mr. Colangelo, Ms. Hoffman, Mr.
Neff, Mr. Pepe, Mr. McGoldrick

NO: None

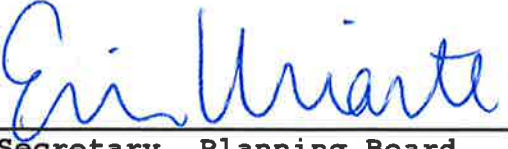
ABSTAIN: None

ABSENT: Councilman Fligor, Mrs. Murray, Mr. Ilarazza



**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 July 31, 2018.



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