

**IN THE MATTER OF
APPLICATION NO. PB18-01
OF STEVEN KOZLOWSKI
BLOCK 19, LOT 1**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, STEVEN KOZLOWSKI, hereinafter the "Applicant", has proposed the development of property located at 233 East Highland Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 19, Lot 1 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 demolish an existing residential dwelling and to construct a new residential dwelling on the property including a two-story single family residence, attached garage, attached deck, driveway, sidewalk and a proposed septic system which will require variances for front yard setback of 7.5 ft. where 25 ft. are required, building coverage of 13% where 12% is permitted, steep slope Lot disturbance of 8,450 sq. ft. where 3,748 sq. ft. are permitted, and usable floor area ratio of 0.242 where 0.175 is permitted, contrary to the provisions of Chapter 150, Article V, Sections 150-29(A) and Section 150-29(E) and Exhibit 5-2 of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-3 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 May 10, 2018 and August 9, 2018, respectively, due notice of said meetings 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 denial of Zoning Officer Michelle Clark, dated November 27, 2017, marked as Exhibit A-1 in evidence.

1.2 Application for variance of Steven Kozlowski, dated December 18, 2017, marked as Exhibit A-2 in evidence.

1.3 Existing Conditions, Demolition and Zoning plan prepared by Boundary Stone Associates, LLC dated November 10, 2017 and revised December 7, 2017 with further revision dated March 9, 2018, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation and Floor Plans prepared by Thomas J. DiNardo, Architect, undated, marked as Exhibit A-4 in evidence.

1.5 Review No. 1 of CME Associates, dated February 9, 2018, marked as Exhibit A-5 in evidence.

1.6 Review No. 2 of CME Associates, dated March 28, 2018, marked as Exhibit A-6 in evidence.

1.7 Resume' of William R. Cudjik, P.E., L.S., P.P., marked as Exhibit A-7 in evidence.

1.8 Septic System Review of Uzman Engineering, LLC, dated July 9, 2018, marked as Exhibit A-8 in evidence.

2. The premises in question are located at 233 East Highland Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 19, Lot 1 on the Tax Map of the Borough of Atlantic Highlands

3. The subject property is located in the R-3 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 240.40 ft. x 98.40 ft. x 178.25 ft. x 44.82 ft. with an approximate area of 13,199.3 sq. ft. The property is an undersized corner Lot with Road frontages on three sides including East Highland Avenue, Gawen Road and Ronald Way (unimproved). The subject property has existing non-conforming elements including:

A. Lot area of 13,199.3 sq. ft. where 30,000 sq. ft. are required. (Section 150-29A(2)) (Exhibit 5-2)

B. Lot frontage and width of 44.82 ft. where 100 ft. are required (Section 150-29A(2)) (Exhibit 5-2)

C. Lot Shape Diameter of 12.5 ft. where 60 ft. are required (Section 150-29A(2)) (Exhibit 5-2)

These are existing conditions which do not require variance approval and may continue without variance relief. (Section 150-49)

5. The proposed improvements require the following variance relief:

A. Front yard setback of 7.5 ft. from Gawen Road where 25 ft. are required (Section 150-29A(2)) (Exhibit 5-2)

B. Building coverage of 13% where 12% is permitted (Section 150-29A(2)) (Exhibit 5-2)

C. Usable floor area ratio (UFAR) of 0.242 where 0.175 is permitted (Section 150-29A(2)) (Exhibit 5-2)

D. Steep slope area lot disturbance of 8,450 sq. ft. where 3,748 sq. ft. is permitted (Section 150-29A(4)) (Exhibit 5-2)

6. The Applicant proposes to remove the existing one-story dwelling, attached deck, detached garage and concrete driveway

and replace it with a new two-story single family dwelling, attached garage, attached deck, driveway, sidewalk and new septic system which requires the variance relief described above.

7. The Applicant presented the testimony of the property owner Steven Kozlowski and William Cudjik, a licensed professional Engineer, Surveyor and Planner in the State of New Jersey. They presented the existing conditions and proposed conditions on the property. The Planning Board notes that the property is a substantially undersized Lot which is irregularly shaped with frontage on East Highland Avenue and widening as it recedes from East Highland Avenue. The property is further impacted by the fact that it has three frontages on East Highland Avenue, Gawen Road and Ronald Way. Finally the property is impacted on its southerly portion by significant steep slopes. All of these factors significantly limit the ability to develop the subject property without the requirement of variance relief. Consequently, the Planning Board finds that there is a hardship associated with this property as a reasonably sized residential dwelling cannot be placed on this property without the requirement for variance relief. More particularly due to the narrowness of the property and the limited developable area, it is impossible to construct a reasonably sized residence without the front yard setback variance from Gawen Road as applying the required setbacks would leave virtually no building footprint within which to place the structure. Similarly due to the undersized nature of the parcel, the construction of a reasonably sized structure on the property consistent with other homes within the neighborhood requires some relaxation of the building coverage requirement. In this case the Applicant is

requesting a 1% deviation. The Planning Board finds that there is a hardship with respect to the floor area ratio limitation. Finally due to the extent of the steep slopes on the property there is a hardship with respect to the minimum allowable Lot disturbance as compliance with those requirements would not permit the property to be developed with a reasonably sized residence and necessary associated structures, including the septic system. As a result of the foregoing, the Planning Board finds that there is a hardship associated with the subject property.

8. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested bulk variance relief. The Planning Board finds that the front yard setback and building coverage variances will not result in any substantial detriment to the public good. The Planning Board finds that Gawen Road is lightly used and separates the property line of the subject property from properties on the opposite side of Gawen Road by 40 ft. The Planning Board finds that any impacts are de minimis and insubstantial and further finds that the development of this property with an attractive new single family residence will be an improvement to the area and the proposed home will be in character with the surrounding neighborhood. Therefore any perceived detriments are insubstantial. Similarly the Planning Board finds that exceeding the building coverage by 1% will not be perceptible to the surrounding properties and streetscape and therefore will not have any substantial negative impacts.

9. The Planning Board further finds that the bulk variances for front setback and building coverage will not

result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board finds that the purpose of these Ordinance provisions is to insure that there is adequate light, air and open space between structures and the structures are not so close to the street or so excessive in coverage as to have an overbearing appearance upon the streetscape and the neighborhood. The Planning Board finds that, in this case, the proposed residence is modest in size and it's proximity to Gawen Road will not result in having an overbearing appearance as that Road is very lightly used and will separate the subject property from properties to the east on the opposite side of Gawen Road. Moreover the increase in building coverage is de minimis in nature and will not be perceptible, consequently the grant of these variances is de minimis in nature and will not offend the purposes for which the ordinances were adopted.

10. With respect to the usable floor area ratio the Planning Board finds that, notwithstanding the increase in usable floor area ratio, the property is presently used for single family residence and will be used in the future as a single family residence. The site has demonstrated that it can accommodate the proposed new home, notwithstanding it's exceeding the UFAR limitation. The larger home will not significantly increase the intensity of use of this Lot and the Planning Board finds that this Lot can accommodate any problems associated with the increased floor area as it has accommodated a single family home previously and will continue to accommodate a sign family home and the associated intensity of use thereafter.

11. The Planning Board did express concern regarding the allowable lot disturbance for this property which is located in a steep slope area. The Applicant, in response to those concerns, provided the report of Uzman Engineering, LLC marked as Exhibit A-8 in evidence which report concluded that the proposed septic system would not pose a significant risk to the existing slope and that the construction may be continued as planned. During the course of the hearing the Planning Board's Engineer noted that there appeared to be a discrepancy between the Uzman Engineering, LLC report and some of the plan drawings with respect to the separation of the septic system from the proposed residence. Mr. Rohmeyer recommended that the Board require as a condition of approval that the septic system be placed no further than 15 ft. from the proposed residence. Based upon his recommendations the Planning Board is making that a condition of this approval. The Planning Board will also require that the Applicant comply with the technical recommendations set forth by the Planning Board's Engineer in his reports marked as Exhibits A-5 and A-6 in evidence. In addition to the foregoing, the Applicant agreed to stage the construction of the improvements, separating the septic system phase from the house phase so that both will not be conducted at the same time. The Applicant may choose which phase (septic or house) to complete first and the second phase may not commence until the first phase has been fully stabilized and approved by the Borough Engineer.

12. With the foregoing safeguards in place the Planning Board is satisfied that the variance from the lot disturbance requirements of the steep slope regulations can be granted.

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 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 13th day of September, 2018 that the Application of **STEVEN KOZLOWSKI** 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 approvals granted in connection with this application are as follows:

A. Front yard setback of 7.5 ft. from Gawen Road where 25 ft. are required (Section 150-29A(2) (Exhibit 5-2)

B. Building coverage of 13% where 12% is permitted (Section 150-29A(2) (Exhibit 5-2)

C. Usable floor area ratio (UFAR) of 0.242 where 0.175 is permitted (Section 150-29A(2) (Exhibit 5-2)

D. Steep slope area lot disturbance of 8,450 sq. ft. where 3,748 sq. ft. is permitted (Section 150-78(E)(4)) -

2) The new septic system shall be located no further than 15 ft. from the new residence.

3) The Applicant shall comply with the technical recommendations set forth in Review number 1 and Review number 2, marked in evidence as Exhibits A-5 and A-6 respectively.

4) The Applicant shall stage the construction of the new improvements into phases. One phase will consist of the septic system and one phase shall consist of the residence. The Applicant may choose which phase to commence first. Whichever phase is commenced first shall be completed and fully stabilized which stabilization shall be approved by the Borough Engineer prior to the commencement of the second phase.

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: Mr. Dougherty

ROLL CALL:

YES: Mr. Hawley, Mr. Caccamo, Dr. Cetron,
Mr. Colangelo, Ms. Hoffmann, Mrs. Murray,
Chairman Neff, Mr. Pepe, Mr. McGoldrick

NO: None

ABSTAIN: None

ABSENT: 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 September 13, 2018.



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