

**IN THE MATTER OF
APPLICATION NO. PB18-07
OF ERIN & BRIAN DOUGHERTY
BLOCK 134, LOT 12**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, ERIN & BRIAN DOUGHERTY, hereinafter the "Applicant", has proposed the development of property located at 97 Center Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 134, Lot 12 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 bulk variance approval to construct a second floor master bedroom addition to an existing single family residence which will have a side yard setback of 9 ft. where 10 ft. are required contrary to the provisions of Chapter 150, Article V, Section 150-29 and Exhibit 5-2 of 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 August 9, 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 Zoning review of Zoning Officer Michelle Clark, dated May 23, 2018, marked as Exhibit A-1 in evidence.

1.2 Application of Erin and Brian Dougherty dated June 9, 2018, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Leo A. Kalieta, P.L.S., dated April 6, 2018, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation and Floor Plans prepared by Maxine Giordano, Architect, marked as Exhibit A-4 in evidence.

1.5 Report of CME Associates, dated July 3, 2018 marked as Exhibit A-5 in evidence.

1.6 Resolution of Atlantic Highlands Planning Board adopted January 12, 2006, marked as Exhibit A-6 in evidence.

2. The premises in question are located at 97 Center Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 134, Lot 12 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 Residential Zone District in the Borough of Atlantic Highlands and the proposed use of the property as a single family residence with associated accessory structures is a permitted use in the Zone.

4. The premises in question have approximate dimensions of 50 ft. x 130 ft. x 50 ft. x 130 ft. with a lot area of 6,500 sq. ft. where 7,500 sq. ft. are required and lot frontage of 50 ft. where 75 ft. are required. In addition to the foregoing, the existing residence has a side yard setback of 9 ft. where 10 ft. are required. The Applicant previously received variance approval to add a one-story addition to the rear of the then existing two-story dwelling which addition created new living space for the residence. That approval was memorialized by a Resolution of the Planning Board of the Borough of Atlantic Highlands adopted on January 12, 2006. The Applicant is now requesting to construct a second-story addition above the one-story addition approved in 2006. That second-story addition will follow the existing building lines and consequently the exterior wall will be the same 9 ft. setback from the side yard as the first floor.

5. The property presently has three (3) existing non-conforming elements, they are:

A. Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required. (Section 150-29A(2)) (Exhibit 5-2)

B. Lot frontage and width of 50 ft. where 75 ft. (Section 150-29A(2)) (Exhibit 5-2)

C. Lot shape diameter of 30 ft. where 50 ft. are required. (Section 150-29A(2)) (Exhibit 5-2)

These are existing conditions which are not altered by this application and which may continue without the requirement for variance relief.

6. The existing residence has a 9 ft. side yard setback along its westerly property line which was granted by variance in 2006 by Resolution of the Atlantic Highlands Planning Board adopted January 12, 2006 marked as Exhibit A-6 in evidence. The Applicant is proposing to place a second story above the existing one-story portion of the residence to create a master bedroom suite. The variance relief is necessitated due to the Applicant's desire to follow the existing building footprint. The proposed addition will not extend beyond the exterior wall of the existing residence. However it will increase the height of that wall which requires additional variance relief.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief as the existing Lot exhibits characteristics of a long narrow parcel coupled with the location of the lawfully existing structures. In order to place the second-story addition over the existing one-story portion of the residence,

following the existing building lines will require variance relief. The Planning Board finds that because of the location of the existing building coupled with the narrowness of the property, there is a hardship. Therefore the Planning Board finds 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 Borough of Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would require the Applicant to create an odd "stepped-back" second-story addition rather than to follow the existing building lines. This would also reduce the square footage of the addition and its functionality. The Planning Board finds that the subject parcel has a frontage and width of only 50 ft. where 75 ft. are required. Consequently the placement of a reasonably sized structure on the property imposes practical difficulties to an Applicant in maintaining conforming side yard setbacks. The Planning Board recognizes its prior grant of similar side yard setback relief in the prior application. The Planning Board notes that at this time the existing residence, as then, maintains a side yard setback of 9 ft. where 10 ft. are required. It is appropriate for the property owner to desire to continue the line of the existing structure in order to maintain an appropriate aesthetic appearance of the proposed addition and provide sufficient area in the second story for it to be functional. The Planning Board finds that to require the addition to be set back an additional 1 ft. would provide little or no benefit to the adjacent neighbors or the Zone scheme while imposing a substantial hardship upon the Applicant by not permitting the structure to

developed in a manner consistent with the existing conditions on site to provide for a uniform aesthetic appearance.

8. As a result of all of the foregoing the Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief.

9. The Planning Board finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that the proposed 1 ft. deviation from the side yard setback requirement is de minimis under the circumstances. This is particularly so due to the location of the existing residence which maintains that same setback. The Planning Board finds that, as a result of the existing conditions on the property, the 1 ft. deviation is de minimis in nature and will not impose any substantial detriment to the public good. The proposed addition will not be visible from Center Avenue and will have conforming setbacks from the properties to the east and south, will have only a 1 ft. deviation from the required setback from the property to the west and the addition will be placed over a structure which already exists. Thus any impacts will be minimal and insubstantial with respect to streetscape and the surrounding neighborhood.

10. The Planning Board further finds that the grant of the requested variance will not substantially impair the intent and purpose of the Zone Plan or Zoning Ordinance. The Zone plan and Ordinance contemplates residences of the size and style proposed by the Applicant. The Planning Board notes that the existing structure with the proposed additions will be

consistent with the size of other residential homes in the neighborhood. Thus the Zone plan and the existing Zone scheme contemplate residences of the size and style proposed by the Applicant. This modest addition will provide appropriate amenities for the home that are consistent with the surrounding area and the Zone scheme.

11. The Planning Board further finds that the setback requirements are designed to insure that there is adequate light, air and open space between properties and structures on properties and to further insure that structures are not built so close to a property line so as to have an overbearing and imposing appearance. The Planning Board finds that this minor addition to the existing building will not impede the light, air and open space and will not give the appearance of an overbearing structure too close to a property line as the deviation is de minimis. Consequently the Planning Board finds that the purposes for which the setback Ordinance was adopted are not offended by the grant of the requested variance relief. The Planning Board finds that this de minimis deviation will have no noticeable adverse aesthetic impact and will not result in inadequate light, air and open space.

12. 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.

13. 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 **ERIN & BRIAN DOUGHERTY** 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. Side yard setback for second story addition of 9 ft. where 10 ft. are required. (Section 150-29A(2)) (Exhibit 5-2)

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: Dr. Cetron

SECONDED BY: Councilman Fligor

ROLL CALL:

YES: Mr. Illiano, Councilman Fligor,
Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr.
Colangelo, Ms. Hoffmann, Mrs. Murray,
Chairman Neff

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**