

**IN THE MATTER OF
APPLICATION NO. PB18-09
OF DOMINIC T. MUSONE
BLOCK 143, LOTS 14 & 15**

**RESOLUTION GRANTING
MINOR SUBDIVISION
APPROVAL WITH VARIANCES**

WHEREAS, DOMINIC T. MUSONE hereinafter the "Applicant", has proposed the development of property located at 135 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 143, Lots 14 and 15 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 Minor Subdivision approval with variances to permit the consolidation of Block 143 Lots 14 and 15 and their re-subdivision into two (2) new Lots. Proposed new Lot 15.01 will have a lot area of 17,172 sq. ft. and will retain an existing two-story residential dwelling with an existing non-conforming rear yard setback of 5.7 ft. where 20 ft. are required. Proposed new Lot 15.02 will have a lot area of 9,880 sq. ft. and proposes to retain an existing two-story frame garage with a non-conforming side yard setback of 2.1 ft. where 5 ft. are required for an accessory building. This will also require use variance approval to retain an accessory garage on a Lot with no principal use. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 and Article VII, Section 150-54 (Exhibit 5-2) and Article IV, Section 150-21 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, but accessory buildings must be located on the same lot as the principal use to which they are accessory; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on October 11, 2018 and November 8, 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 July 5, 2018, marked as Exhibit A-1 in evidence.

1.2 Application for subdivision stamped "received" July 5, 2018, marked as Exhibit A-2 in evidence.

1.3 Variance application dated June 22, 2018, marked as Exhibit A-3 in evidence.

1.4 Durable Power of Attorney dated August 29, 2018, marked as Exhibit A-4 in evidence.

1.5 Affidavit of Ownership dated June 22, 2018, marked as Exhibit A-5 in evidence.

1.6 Development Plan Checklist dated June 18, 2018, marked as Exhibit A-6 in evidence.

1.7 Boundary and Topographic survey prepared by Newlines Engineering & Survey, dated May 31, 2018, marked as Exhibit A-7 in evidence.

1.8 Minor Subdivision Plan prepared by Newlines Engineering & Survey dated June 5, 2018 revised through September 12, 2018, marked as Exhibit A-8 in evidence.

1.9 Memorandum from Planning Board Attorney Steib, dated July 9, 2018, marked as Exhibit A-9 in evidence.

1.10 Email from Planning Board Attorney Steib, dated August 16, 2018, marked as Exhibit A-10 in evidence.

1.11 Review #1 of CME Associates dated July 27, 2018, marked as Exhibit A-11 in evidence.

1.12 Review #2 of CME Associates dated August 31, 2018, marked as Exhibit A-12 in evidence.

1.13 Monmouth County Planning Board Letter of Exemption, dated July 9, 2018, marked as Exhibit A-13 in evidence.

1.14 Photograph of Historic Plaque from Atlantic Highlands Historic Society, marked as Exhibit A-14 in evidence.

1.15 Photo-Board with eleven (11) photographs and Plot Plan of subject property, marked as Exhibit A-15 in evidence.

1.16 Email from neighboring homeowner in favor of application, marked as Exhibit A-16 in evidence.

1.17 Photograph of neighboring property owner, marked as Exhibit A-17 in evidence.

1.18 Letter from Architect Zero regarding building height, marked as Exhibit A-18 in evidence.

1.19 Consolidation & Minor Subdivision prepared by Newlines Engineering & Survey dated June 5, 2018 revised through November 6, 2018.

2. The premises in question are located at 135 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 143, Lots 14 and 15 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 on lots with an area of 7,500 sq. ft. or greater. However, accessory buildings must be located on the same lot as the principal use to which they are accessory.

4. Lots 14 and 15 are being consolidated for the purposes of this application and have approximate dimensions of 200.00 ft. x 115.00 ft. x 194.81 ft. x 143.66 ft. and is substantially rectangular in shape with it's depth from Center Avenue diminishing from a maximum of 143.66 ft. at it's western most property line to a depth of 115.00 ft. at its eastern most property line. The tract has an approximate area of 27,052 sq. ft. (.621 acres). Existing Lot 15 has the following existing non-conforming elements:

A. Principal building rear yard setback of 5.7 ft. where 20 ft. are required.

B. Principal building side yard setback of .7 ft. where 10 ft. are required. (Non-conformity is eliminated with proposed subdivision)

C. Accessory side yard setback of 2.1 ft. where 5 ft. are required.

D. Accessory garage height of 18 ft. where 16 ft. are permitted.

E. Existing driveway 4 ft. from easterly property line where 5 ft. are required.

The creation of new Lots 15.01 and 15.02 requires the following variance relief:

A. Use variance to permit two-story frame garage accessory building on a Lot without a principal use (Section 150-54). (New Lot 15.02)

B. Accessory building side yard setback of two-story frame garage of 2.1 ft. where 5 ft. are required. (New Lot 15.02)

C. Accessory building height of 18 ft. where 16 ft. are permitted.)New Lot 15.02

D. Driveway with a side setback of 4 ft. where 5 ft. are required. (New Lot 15.02)

E. Principal building rear yard setback of 5.7 ft. where 20 ft. are required. (New Lot 15.01)

In addition to the foregoing, the Applicant requires Minor Subdivision approval to create new Lots 15.01 and 15.02. The Planning Board notes that both new Lots will have lot area and dimensions that fully conform to the R-1 Zone requirements. It is the existing structures being retained on the new Lots that result in the need for variance relief. These deviations are existing conditions that are not being exacerbated by the subdivision.

5. With respect to the proposed Subdivision the Planning Board finds that the two lots to be created will be fully conforming with respect to lot area and bulk dimensions within the R-1 Zone District. The Planning Board requested the Applicant to provide revised plans to include information as to the location of existing utilities to confirm that no cross-easements would be needed. The Applicant complied and no easements will be required. The Planning board also requested that a new driveway and parking space location be shown for the existing residence on New Lot 15.01 since the existing driveway and parking spaces will be on New Lot 15.02. The Applicant also complied with that request. The Applicant agreed that the new driveway will be graded toward Center Ave., that the area of disturbance will be limited to the area shown on the revised plan plus 2 ft. and that tree clearing will be limited to the

required area of disturbance. The Planning Board finds that the Applicant has submitted a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. The Planning Board finds that they have been met. The Planning Board further finds that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for subdivision approval and that the subdivision can and should be granted at this time.

6. With respect to the variance required for new Lot 15.01 that variance is for a principal building rear yard setback of 5.7 ft. where 20 ft. are required. The Planning Board notes that this is an existing condition. The Applicant presented testimony that the existing residence was constructed in or about 1894 and that the residence is a "Century Home". The Applicant presented evidence by way of a photograph of the Atlantic Highlands Historical Society Plaque certifying that fact. The Applicant presented testimony that the Applicant's family purchased the property in or about 1963 and has owned the property for approximately fifty-five years. The Applicant raised his family including five daughters who have remained in their adult life as residents in the Borough of Atlantic Highlands. Although the Applicant needs to subdivide the property in order for it to continue to be economically feasible to retain, the Applicant wishes to subdivide it in a manner that also retains the existing historic residence and the existing historic two-story frame garage. The Applicant presented testimony that the garage was originally a horse barn and that the structure still retains the characteristics of the historic horse barn. The structure has been maintained over the years and is a good specimen of Atlantic Highlands history.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the requested rear yard setback relief. More particularly the Planning Board agrees with the Applicant that there is a hardship insofar as this is an existing structure and the grant of variance relief is merely to permit a longstanding non-conforming element to continue. Thus the Planning Board finds that, due to the existing location of the structure on 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 as it would require the destruction or major invasive relocation of this historic building in order to subdivide this property into two (2) fully conforming lots.

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 variance relief will not result in any substantial detriment to the public good. The non-conformity in question is located at the rear of the subject property behind the existing building. The non-conformity will not be visible from the streetscape of Center Avenue. Moreover this condition has existed on the subject property for over one-hundred years and the Applicant does not propose to change the existing conditions as the structure will simply remain in place. Requiring relocation of the building to conform would force it closer to Center Avenue and would change the historic appearance of the streetscape in that area of the Borough. The grant of variance relief in this instance will serve the general welfare by preserving the historic characteristics of this portion of Center Avenue and

promote the conservation of this historic site. This will further the intent and purposes of the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2.a.and j.

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. Once again, the Planning Board notes that this is an existing structure that has set the character of this area for over one-hundred years. There are no exterior changes proposed for the structure and therefore no adverse impacts will result from the grant of variance relief, only a continuation of a long-standing existing condition.

10. As to new Lot 15.02, the Planning Board finds that, with respect to existing non-conforming driveway, the Applicant has demonstrated a hardship since this is an existing structure that has been in place for many years and it's removal and relocation to create an additional 1 ft. of setback at the entrance to the driveway, would impose an exceptional, undue and unnecessary hardship upon the Applicant. This is an existing structure that would have to be removed and relocated in order to conform to the Ordinance provisions. The Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon (i.e. the existing driveway) 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 them to destroy a portion of the driveway and relocate it.

11. 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 with the existing residence,

this driveway has been in it's present location for many years and the extent of the deviation is limited to 1 ft. at the very entrance point of the driveway. The deviation decreases into conformity as the driveway extends further into the property. The Planning Board finds that this deviation is diminimis and unnoticeable and will not result in any substantial detriment to the public good. Any impacts are insubstantial.

12. The Planning Board further finds that the variance can be granted without substantial impairment to the intent and purpose of the Zone Plan and Zoning Ordinance. Once again, the Planning Board must recognize that this is an existing condition that has been in place for many years and has set the character along this area of Center Avenue. The driveway is being left in place and there will be no significant impact, only the continuation of the existing diminimis non-conforming condition. Therefore the Planning Board finds that the grant of the requested variance relief will not offend the purposes of the ordinance as any impacts are insubstantial.

13. With respect to the two-story frame garage, the Planning Board further finds that the Applicant has satisfied the positive criteria for the grant of the requested relief. As with the other structures on the property the building height and setback deviations are existing conditions that have been in place for over one-hundred years. This existing structure is of historic value and therefore 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 either the removal of the

structure in it's entirety or it's renovation (Height) and relocation (Setback).

14. 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 this structure has been in place for over one-hundred years in its current location, with a 2.1 ft. side yard setback which has set the character of the area. Since the structure is not being proposed to be moved its retention in its current location will not have any impact upon the surrounding properties nor will it have any impact upon the streetscape which presently exists and will continue to remain afterward.

15. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment to the Zone Plan and Zoning Ordinance. For all the reasons set forth with respect to the prior structures including the residence, the Planning Board finds that this diminimis variance of a 2.9 ft. deviation will not have any substantial impacts upon the Zone Plan and Zoning Ordinance. Moreover this structure has been in its present location for over one-hundred years and has set the character of the area and therefore there is no adverse impact upon the Zone Plan and Zoning Ordinance resulting from the grant of variance relief to allow this existing non-conforming condition to remain.

16. Finally, the Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of variance to permit the accessory garage structure to remain New Lot 15.02 with no principal structure. The Applicant desires to sell New Lot 15.02 to someone who will construct a new residence and retain the historic garage structure. Thus, it is not intended that the garage remain on the lot without a

principal use in perpetuity. The Applicant agreed that a reasonable condition of approval will be that the accessory garage building will not be utilized until such time as a principal building is constructed on the lot. The Planning Board finds that the retention of this historic structure satisfies the special reasons criteria as it will promote the purposes of the MLUL at N.J.S.A. 40:55D-2a. and j. as it will serve the general welfare by preserving the historic characteristics of this portion of Center Avenue and promote the conservation of this historic site.

17. 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 this structure has been in place for over one-hundred years in its current location which has set the character of the area. Its retention in its current location will not have any impact upon the surrounding properties nor will it have any impact upon the streetscape which presently exists and will continue to remain afterward.

18. 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. Once again, the Planning Board notes that this is an existing structure that has set the character of this area for over one-hundred years. There are no exterior changes proposed for the structure and therefore no adverse impacts will result from the grant of variance relief, only a continuation of a long-standing existing condition.

19. 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 as set forth above and that the variances can and should be granted at this time along with Minor Subdivision approval.

20. 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 December, 2018 that the Application of **DOMINIC T. MUSONE** 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 -

The approvals granted in connection with this application are as follows:

1. Minor Subdivision approval in accordance with the Consolidation and Minor Subdivision Plans prepared by Newlines Engineering & Survey, dated June 5, 2018 revised through November 6, 2018.

2. Variance for new Lot 15.01 for principal structure rear yard setback of 5.7 ft. where 20 ft. are required.

3. New Lot 15.02 driveway with side yard setback of 4 ft. where 5 ft. are required.

4. Accessory two-story frame garage to have side yard setback of 2.1 ft where 5 ft. are required.

5. Accessory two-story frame garage to have a height of 18 ft. where 16 ft. are permitted.

6. Use variance to permit the two story frame garage to be retained on new Lot 15.02 without a principal building subject to the condition that the building will not be used for any purpose until such time as a principal building is constructed on the lot.

7. With respect to the new driveway on New Lot 15.01:

A. It shall be graded toward Center Avenue.

B. The area of disturbance shall be limited to the area shown on the plans plus two feet around its perimeter.

C. Tree clearing shall be limited to the area shown on the plans.

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: Mr. Hawley

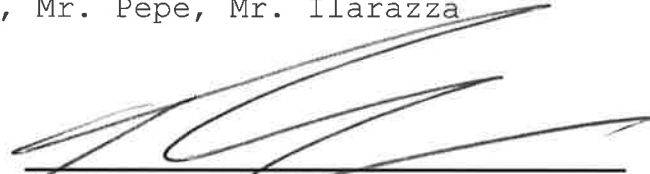
ROLL CALL:

YES: Mr. Hawley, Dr. Cetron, Mr. Colangelo,
Ms. Hoffmann, Mrs. Murray, Mr. McGoldrick,
Mr. Dougherty

NO: None

ABSTAIN: None

ABSENT: Mr. Illiano, Councilman Fligor, Chairman Neff,
Mr. Caccamo, Mr. Pepe, 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 December 13, 2018.



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