

**IN THE MATTER OF
APPLICATION NO. PB18-11
OF CRAIG REINAUER/CRH,LLC
BLOCK 128 LOT 13.01**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, CRAIG REINAUER, sole member of CRH, LLC, hereinafter the "Applicant", has proposed the development of property located at 53 Bay Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 128, Lot 13.01 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 new frame deck attached to the existing dwelling which will have a side yard setback of 2.7 ft. where 10 ft. are required, contrary to the provisions of Chapter 150, Article I, 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 October 11, 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 June 4, 2018, marked as Exhibit A-1 in evidence.

1.2 Application of Craig Reinauer, dated August 1, 2018, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Morgan Engineering & Surveying, dated January 8, 2018 with handwritten notations of Architect Jerry Lemega, dated September 26, 2018, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation Plans sheet 11 of 12, prepared by Jerry Lemega, Architect, undated, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates dated August 31, 2018, marked as Exhibit A-5 in evidence.

1.6 Series of five (5) 8.5" x 11" photographs showing side and rear of existing building, and rear yard area, marked as Exhibit A-6 (a-e) in evidence.

2. The premises in question are located at 53 Bay Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 128, Lot 13.01 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 premises in question have the following existing non-conforming elements:

A. Lot area of 6,492 sq. ft. where 7,500 sq. ft. are required

B. Lot frontage/width of 50 ft. where 75 ft. are required

C. Front yard setback of 13. ft. where 20 ft. are required

D. Lot Shape Diameter of 30 ft. where 50 ft. are required

E. Rear yard setback to accessory structure of 4 ft. where 5 ft. are required (the Applicant proposes to remove the presently encroaching wood deck which eliminates this existing non-conforming condition)

The foregoing are all pre-existing conditions which do not require additional variance relief.

5. The subject property is an elongated rectangle in shape which is narrow and deep. The parcel is an undersized Lot of record. The subject property is presently developed with a two-story frame residential dwelling with an existing non-conforming side yard setback of 2.7 ft. where 10 ft. are required. The property is also developed with an existing asphalt driveway and a rear yard detached shed with a wood deck with a non-conforming rear yard setback. The wood deck is proposed to be removed thus eliminating that non-conformity.

6. The Applicant proposes to construct a new frame deck attached to the rear of the home that will follow the side line of the existing dwelling. It will have a side yard setback of 2.7 ft. where 10 ft. are required. The proposed deck will then extend across the rear of the existing structure and wrap around the opposite side of the structure.

7. The Applicant was represented by Kevin Kennedy, Esquire who presented the testimony of Craig Reinauer who is the sole member of CRH, LLC. He testified that the existing residence was previously a two-family home when it was purchased by the present owner in January of 2018. The present owner agreed that any rights based upon prior two-family use are being abandoned as part of this application and that the house is being renovated to a one-family use.

8. Mr. Reinauer further testified that there was previously a wood deck at grade level behind the existing

residence in the same location that the new deck is being proposed. However that deck was in dilapidated condition and was removed. Consequently variance relief is necessary for the construction of the new deck which has approximate dimensions of 10 ft. extending into the rear yard by 26 ft. across the rear of the existing home wrapping around along the easterly side of the residence with approximate dimensions of 4 ft. x 18 ft. which portion does not violate any setback requirements. Although the new deck will have an approximate area of 332 sq. ft. only 73 sq. ft. will encroach upon the side yard setback.

9. The Applicant testified that there will be walls around the deck structure which will be raised only several inches above grade. The Applicant also advised the Board that a small "jut-out" area to the rear of the structure which protrudes approximately 2 to 4 inches into the rear yard, is being removed so that there will be a flush rear wall to the building. Above that wall there is an existing "shed roof" type structure existing to the rear of the house which will now be extended to the east to cover the balance of the structure. The new portion of this "shed roof" will not encroach upon any setback requirements.

10. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. More particularly the Planning Board finds that there is a hardship associated with the subject property due to the narrowness of the lot and the location of the existing residence on the Lot. These factors make it difficult to provide an adequately sized, properly functioning deck to the rear of the subject home without the requirement for variance

relief. The Planning Board finds that it agrees with the Applicant that it makes sense to have the new deck follow the side line of the existing dwelling which is already at 2.7 ft. This type of amenity is an anticipated amenity in the R-1 Zone District. As a result of the foregoing 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 deprive the Applicant of having a fully functioning deck along the entire rear of the existing residence.

11. 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 proposed deck will be located entirely behind the existing residential structure and therefore will have no visibility from the streetscape. Moreover the deck will have conforming setbacks from the adjacent properties to the east and south of the subject parcel. The only property impacted is to the west of the subject property. the Planning Board notes that that impact will be diminimis insofar as the deck structure will only rise inches above the existing ground level and will be visually shielded from the adjacent property by the existing fence structure which, based upon Exhibit A-6, will completely screen the deck structure from the adjacent property to the

west. Thus any impacts to the surrounding properties and streetscape are insubstantial.

12. 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 Planning Board finds that the side setback requirements of the Ordinance are designed to insure that there is adequate light, air and open space between properties and that structures are not built so close to a property line as to have an overbearing appearance to adjacent properties. In this case the deck structure will be close to ground level, will not be visible to adjacent properties and therefore will not have any substantial impact upon light, air and open space. Nor will it appear to be overbuilding of the subject property. Therefore the purposes for which the Ordinance requirements were adopted are not offended by the grant of the requested variance relief in this case.

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 variance 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 8th day of November, 2018

that the Application of **CRAIG REINAUER, SOLE MEMBER OF CRH, LLC** 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 the proposed new frame deck to the rear of the existing dwelling with a side yard setback of 2.7 ft. where 10 ft. are required.

2. The Applicant shall eliminate the existing non-conforming wood deck to the rear of the existing detached shed.

3. The Applicant shall comply with the technical recommendations set forth in the report of the Planning Board's Engineer dated August 31, 2018 marked as Exhibit A-5 in evidence.

4. As testified to by the Applicant the deck will have gaps and not be a solid monolithic structure so that water can go through to the soil below.

5. Any former use of the property as a two-family home is abandoned.

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. Colangelo

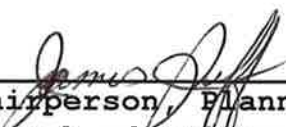
ROLL CALL:

YES: Mr. Illiano, Councilman Fligor, Dr. Cetron, Mr. Colangelo, Chairman Neff, Mr. Pepe, Mr. McGoldrick

NO: None

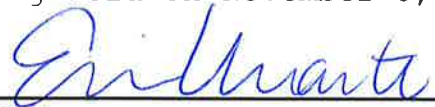
ABSTAIN: Mr. Dougherty

ABSENT: Mr. Hawley, Mr. Caccamo, Ms. Hoffmann, 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 November 8, 2018.



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