

**IN THE MATTER OF
GRANTING
APPLICATION NO. PB20-10
OF ROBERT BURNS & LENORE MANICIOTO
BLOCK 72, LOT 2**

**RESOLUTION
VARIANCE APPROVAL**

WHEREAS, ROBERT BURNS & LENORE MANICIOTO, hereinafter the "Applicant", has proposed the development of property located at 60, 8TH Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 72, 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 approval to install a Generac whole house generator on a lot which does not conform to the minimum lot area requirements of the zone district with a side yard setback of 0 ft. where 10 ft. is required. The foregoing is contrary to the provisions of Chapter 150, Article VII, Section 150-49.1 and Article V, Section 150-29 respectively of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-2 Single Family Residential Zone District and single- family 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 5, 2021, 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 denial of Zoning Officer Michelle Clark, dated April 27, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Robert Burns & Lenore Manicioto, dated May 24, 2021, marked as Exhibit A-2 in evidence.

1.3 Excerpt of Borough Tax Map, dated January 1966, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Thomas Finnegan Land Surveying, dated May 3, 2021, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates dated July 9, 2021, marked as Exhibit A-5 in evidence.

2. The premises in question are located at 60, 8th Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 72, 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 has approximate dimensions of 80.02 ft. x 100.00 ft. x 110.80 ft. x 100.00 ft. and is somewhat rectangular in shape with its width narrowing as the lot recedes from 8th Avenue toward Prospect Avenue. The lot has an approximate area of 9,293 square feet where 15,000 square feet is required. Therefore, it is an undersized lot which triggers the requirement for a Variance to place a new accessory building or structure on the premises. This is a pre-existing condition which cannot be improved as the parcels adjacent to the subject property are developed.

5. The property is presently developed with an existing 2.5 story single family dwelling with a covered front porch, detached shed, concrete driveway, retaining wall, wood deck, concrete patio, walkways and other ancillary improvements. The existing improvements are located principally in the northeasterly quadrant of the lot.

6. The Applicant desires to install a Generac whole house generator adjacent to the home in order to insure power to the home during periods when electrical service is interrupted. The Applicant testified that the location for the proposed generator is dictated by the location of the existing residence and the existing gas line as it needs to be fueled by the natural gas line. Thus, the gas line needs to be in close proximity to the location of the generator. The existing residence is located only 10.7 feet from the property line and the proposed generator is required to be a minimum of 5 feet away from that building. Consequently, the generator cannot be placed in the optimum location without the requirement for Variance relief. The Applicant testified that although the generator will be close to the side property line, the home on the adjacent property is located more than 200 feet from the side property line and is on a slope such that the generator will not be at the same elevation as the adjacent residence.

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 based upon the shape of the lot, the location of the existing dwelling and the location of the existing gas line that the only practical location for the proposed generator is where the

Applicant has proposed to place it. Without the grant of Variance relief the Applicant will be deprived of having a generator. The use of this property for an intended amenity will be unreasonably limited. Therefore, the Planning Board finds that an extraordinary and exceptional situation uniquely effecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the development regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent the Applicant from having this amenity for their home.

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 Variances will not result in any substantial detriment to the public good. The Planning board notes that the generator will be substantially screened from 8th Avenue and from the properties to the south by the existing residence and will not have any visual or noise related adverse impacts to those properties or the streetscape. The generator is the required distance from Prospect Avenue and will not have any adverse impacts to the west. With respect to the property immediately adjacent to the generator the Planning Board accepts the Applicant's testimony that the adjacent residence is over 200 feet from the proposed location of the generator and is at a different elevation such that the generator will not have any adverse visual or noise impacts upon the adjacent residence. As a result of the foregoing the Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good as it will not have any significant impacts upon the neighboring surrounding properties or streetscape.

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 or Zoning Ordinance. The Planning Board finds that the restriction against construction on an undersized lot is designed to ensure that lots are not overbuilt with structures that are so close to property lines as to have an overbearing appearance, an appearance of over development and

impede upon light , air and open space. In this case, the proposed Generac generator is of minimal dimension and will not have the impacts sought to be avoided by the Ordinance as it will not result in an overbuilding of the property or an appearance of an overbearing large structure along property lines. With respect to the side yard setback variance, the purposes of the Ordinance are similar. It is intended to avoid having structures to close to property lines so as to have an overbearing impact upon adjacent properties. In this case the structure proposed is small in size and the adjacent property to the north has a structure which is over 200 feet from the property line such that the small generator will not have any significant impacts that would be contrary to the intent and purpose of the Zoning Ordinance. It does not offend the purposes for which the Ordinance was adopted.

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 Variances 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 2nd day of September, 2021 that the Application of **ROBERT BURNS & LENORE MANICIOTO**, 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.

Affordable units in inclusionary developments shall have at least 50% low income units (of which at least 13% are very low income). The remaining affordable units shall be moderate income units. The bedroom distribution for affordable units

shall be a minimum of 20% three-bedroom units and a maximum of 20% one-bedroom units.

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 relief granted in connection with this application is for Variance approval to permit the installation of a Generac whole house generator on an undersized lot with a side yard setback of 0 feet where 10 feet is required.

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. CACCAMO

SECONDED BY: MR. MCGOLDRICK

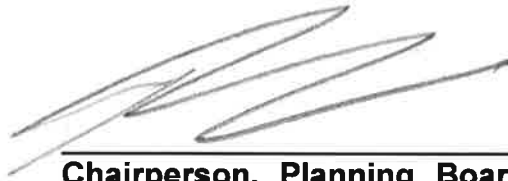
ROLL CALL: MR. DOUGHERTY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE,
MR. CROWTHER, MR. KRUPINSKI, MR. CURRY

YES: MR. DOUGHERTY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE, MR.
CROWTHER, MR. KRUPINSKI, MR. CURRY

NO: NONE

ABSTAIN: NONE

ABSENT: MR. CROWLEY, MR. COLANGELO, MRS. MURRAY, MR. HAWLEY, MR. JOSKO, MR. NEFF



**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 2, 2021.



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