

**IN THE MATTER OF
APPLICATION NO. PB20-18
OF MICHAEL ZLATA & KEVIN CLANCY
BLOCK 61 LOT 4**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, MICHAEL ZLATA & KEVIN CLANCY, hereinafter the "Applicant", has proposed the development of property located at 87 Memorial Parkway, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 61, Lot 4 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 construct a two-car detached garage on a 6,250 sq. ft. lot where private garage space may be provided for one motor vehicle for each 5,000 sq. ft. of lot area with an accessory side yard setback of 3.3 feet where 5 feet is required and accessory rear yard setback of 3 feet where 5 feet is required and building height of 16.17 ft. where 16 ft. is permitted. The foregoing is contrary to the provisions of Chapter 150, Article VII, Sections 150-72, 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 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 March 4, 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 review of Zoning Officer Michelle Clark dated September 16, 2020, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Michael Zlata & Kevin Clancy, dated August 26, 2020, marked as Exhibit A-2 in evidence.

1.3 Plan of Survey prepared by Seneca Survey Co., Inc., dated June 26, 2000, marked as Exhibit A-3 in evidence.

1.4 Elevation and Floor Plan Drawing of proposed garage, marked as Exhibit A-4 in evidence.

1.5 Technical Review #1 of CME Associates, dated October 23, 2020, marked as Exhibit A-5 in evidence.

1.6 Series of 8 Photographs of subject property, marked as Exhibit 6 A - H in evidence.

2. The premises in question are located at 87 Memorial Parkway, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 61, Lot 4 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 Zone District and single-family homes with associated accessory structures are a permitted use in the Zone.

4. The premises in question has approximate dimensions of 50.00 ft. x 125.00 ft. x 50.00 ft. x 125.00 ft. with an approximate area of 6,250 square feet. The property is presently developed with a two-story residential home with porches and walkways with a detached garage structure in the rear yard. The property is accessed by vehicles from a lot to the rear owned by JCP&L. the Applicant testified that he has an access easement through that parcel to his property for access purposes.

5. The property has the following existing nonconforming elements which are proposed to remain:

A. Lot area of 6,250 square feet where 10,000 square feet is required (Section 150-29 (A)(II), Exhibit 5-2).

B. Lot frontage and width of 50 feet where 100 feet is required (Section 150-29 (A)(II), Exhibit 5-2).

C. Minimum lot shape diameter of 20 feet where 40 feet is required (Section 150-29 (A)(II), Exhibit 5-2).

D. Principle building side yard setback of 13.02 feet where 15 feet is required (Section 150-29 (A)(II), Exhibit 5-2).

E. Principle building combined side yard setback 29.02 feet where 30 feet is required (Section 150-29 (A)(II), Exhibit 5-2).

F. Accessory side yard setback of 3.3 feet where 10 feet is required (Section 150-29 (A)(II), Exhibit 5-2) (this condition is exacerbated by the proposed new garage which will increase the nonconformity requiring variance relief).

G. Accessory rear yard setback of 2.0 feet where 10 feet is required (Section 150-29 (A)(II), Exhibit 5-2). (this condition is exacerbated by the proposed new garage which will increase the nonconformity requiring variance relief).

6. The Applicant also requires variance for a building height of 16.17 feet where 16 feet is the maximum permitted (Section 150-72)

7. The Applicant was represented by Henry Wolf, Esq. who presented the testimony of Michael Zlata in support of the Application. Mr. Zlata testified that the existing garage structure is in dilapidated condition and needs to be replaced. At present the existing structure is in such poor condition that it is used only for storage and not for vehicles. The Applicant testified that the proposed new building will accommodate two vehicles and provide adequate storage for the dwelling, which is very small with virtually no storage space, along with his pick-up truck vehicle. He testified that the existing dilapidated structure will be demolished and a new two-car garage structure constructed. The Applicant testified that the garage will not be used as living space and that it will be provided with electric service but no water service or sewer service. He further testified that the proposed new garage structure will not exceed allowable lot coverage as the resulting lot coverage will be 40.5% where 70% is permitted.

8. With respect to building coverage the Planning Board notes that the property is an undersized lot of record having an area only approximately two thirds of that which is required for the zone. Therefore, in order to put a building of reasonable size on the property a building coverage variance is necessary. The Planning Board finds that these conditions limit the extent to which the property can be used for permitted residential purposes in the zone resulting in a hardship to the Applicant.

9. The Applicant testified that the garage will have gutters and leaders in order to direct runoff into the Applicant's yard and away from adjacent properties. He further testified that

the construction of a new garage structure will not interfere with the post and rail fence on neighboring lot 5 along the northwesterly property line.

10. The Planning Board notes that an adjacent property owner Paulette Mueller was represented by Larry Loigman, Esq. He cross-examined the Applicant who conceded that the new garage structure could be placed in a conforming location on the property. The Planning Board finds that this would force the structure to be placed in the center of the rear yard resulting in minimal rear yard open space.

11. 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 this is an existing undersized lot which is developed with an existing two-story dwelling that leaves minimal rear yard area within which to locate a garage structure. Moreover, to locate the garage structure honoring the required setbacks would force the structure into the center of the rear yard eliminating existing open space that can be used for recreational purposes by the homes residents and permit maximum light, air and open space to the rear of the existing structure. As a result of the foregoing 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 require the Applicant to place the structure in an inappropriate location diminishing the light, air and open space in the rear yard of the subject property as the areas around the structure in that location would be insufficient for the property owner to utilize for a normal single family residential recreational purposes.

In addition to the foregoing, the Planning Board finds that, based upon the foregoing, this property is a specific piece of property where the purposes of the Municipal Land Use Law at N.J.S.A. 40:55D-2.C. & I. would be promoted. The Planning Board finds that locating the

garage in the proposed location will provide for greater light, air and open space around the existing residence to provide a contiguous open area to the rear of the structure for single family home recreational purposes which will also promote an improved and more desirable visual environment.

12. The Planning Board further finds that the grant of the requested variances will not result in any substantial detriment to the public good. The Planning Board notes the objection of neighbor Paulette Mueller but finds those objections not to be persuasive. The Planning Board finds that there will be no impact upon the streetscape of Memorial Parkway as the structure will be located as far as possible on the property from that street and will be substantially blocked from visibility by the existing residence. The proposed structure will be located a significant distance from adjacent lot 3 to the east and adjacent lot 2 to the southwest is an open JCP&L right-of-way that will not be impacted by the variance relief. With respect to adjacent lot 5 to the northwest the proposed garage will be located well behind the existing residential structure which also will be screened from view by an existing fence. It will have only di minimis impact upon that property. Thus, the Planning Board finds that any adverse impacts to the public good are di minimis and insubstantial.

13. 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. The Zoning Ordinance provisions for accessory setbacks are designed to ensure that accessory structures are not constructed so close to property lines as to have an overbearing appearance and to impede upon light, air and open space of adjacent properties. In this case, there is already an existing structure in the location of the proposed garage. Thus, the character of this area is to have an accessory structure in that location. Although the proposed garage will be slightly larger than the existing structure, it will replace an existing dilapidated building with a new, more aesthetically appealing and more functional building. Thus, the Zone scheme will be improved by this new, more aesthetically pleasing and better functioning building which in the

view of the Planning Board is being placed in the best location for both the subject property and the neighboring properties.

14. The Applicant has also requested a building height of 16.17 feet. This is 2 inches higher than that permitted by Ordinance. The Applicant testified that this minimal additional height will better facilitate the storage of the Applicant's pick-up truck and other storage purposes. The Planning Board finds that this deviation is so di minimis as to be imperceptible and only effect a tiny portion at the peak of the roof line thus, the Planning Board finds that the grant of variance relief is justified from a positive criteria standpoint for the same reasons set forth previously herein and from the negative criteria standpoint that it is imperceptible and has no negative impact upon the public good or the Zone Plan or Zoning Ordinance.

15. 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.

16. The Planning Board further finds that all property owners within 200 ft. of the premises in question have been given proper notice of the hearing of this application and were provided with an opportunity to present testimony in favor of, or in opposition to, the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 1st day of April 2021, that the Application of **MICHAEL ZLATA & KEVIN CLANCY** 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 will 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. (Not Applicable)

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. Not Applicable)

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. (Not Applicable)

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 herein is to permit the construction of a two-car garage on a lot with 6,250 square feet of lot area with accessory side yard setback of 3.3 feet

where 10 feet is required and accessory yard setback of 2.0 feet where 10 feet is required along with a height of 16.17 inches where 16 feet is permitted.

- 2) The new garage building will not cause the property to exceed allowable lot coverage.
- 3) The construction of the new garage shall not result in any damage to the fence of the adjacent property owner.
- 4) The new garage structure shall be used for vehicle and other storage purposes and shall not be used as living space. There will be no water and no sewer connected to the building.

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 should the Applicant not exercise this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9.J. these variances will expire.

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. NEFF

SECONDED BY: MR. CACCAMO


ROLL CALL: MR. DOUGHERTY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MRS. MURRAY, MR. COLANGELO, MR. CROWTHER, MR. JOSKO, MR. KRUPINSKI, MR. CURRY

YES: MR. DOUGHERTY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MRS. MURRAY, MR. COLANGELO, MR. CROWTHER, MR. JOSKO

NO: NONE

ABSTAIN: NONE

ABSENT: MR. CROWLEY, MR. PEPE



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 April 1, 2021.



Secretary, Planning Board
Borough of Atlantic Highlands