

**IN THE MATTER OF
APPLICATION NO. PB 20-20
OF BONNIE LORDO
BLOCK 81 LOT 10**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, BONNIE LORDO, hereinafter the "Applicant", has proposed the development of property located at 42 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 81, Lot 10 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 install a backup generator in a front yard area (Section 150-54)(A)(II)) on a lot which does not conform to the minimum lot area requirements (Section 150-49.I.(III)(b)). The foregoing is contrary to the provisions 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 February 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 Denial of Zoning Officer Michelle Clark, dated November 5, 2020, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Bonnie & Gerard Lordo, dated October 8, 2020, marked as Exhibit A-2 in evidence.

1.3 Plan of survey prepared by Seneca Survey Company, Inc. dated December 9, 2016, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates dated December 18, 2020, marked as Exhibit A-4 in evidence.

2. The premises in question are located at 42 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 81, Lot 10 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 property in question has approximate dimensions of 50.00 ft. x 130.00 ft. x 50.00 ft. x 130.00 ft and is an elongated rectangle in shape with an approximate lot area of 6,500 sq. ft. where 7,500 sq. ft. are required.

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

A. Section 150-29 (A)(II)(Exhibit 5-2) - minimum required lot area is 6,500 feet where 7,500 sq. ft. is required.

B. Section 150-29 (A)(II)(Exhibit 5-2) - minimum lot frontage of 50 feet where 75 feet is required.

C. Section 150-29 (A)(II)(Exhibit 5-2)- front yard setback of 13.2 feet where 20 feet is required.

E. Section 150-29 (A)(II)(Exhibit 5-2) - side yard setback of 2.2 feet where 10 feet is required.

F. Section 150-29 (A)(II)(Exhibit 5-2) - accessory building side yard setback of 2.8 feet where 5 feet is required.

G. Section 150-29 (A)(II)(Exhibit 5-2) - accessory structure rear yard setback of 3.4 feet where 5 feet is required.

6. The Applicant, Bonnie Lordo, testified that she wishes to install an emergency generator as back up support for operating the residence in times of power outages. The

generator would utilize natural gas from the existing gas line to the home and will be screened by evergreen shrubs. The generator will have dimensions of 48 inches by 25 inches by 29 inches.

7. The Planning Board finds that the subject property is an elongated rectangle in shape and is an undersized corner lot with frontages on Asbury Avenue and 7th Avenue. The narrowness of the lot coupled with the dual frontages and the substantial front yard setbacks required from those streets provides for an extremely limited building envelope within which to locate structures. The Planning Board further finds that the existing residence coupled with the wood deck and other structures on the property leave no conforming area within which to locate the proposed generator for the first 90 feet of property running from the southerly property line along Asbury Avenue northward leaving an available unencumbered area within which to locate generator in a conforming position in a rectangle approximately 20 feet by 25 feet in dimension. Although that would be a conforming location the Applicant testified that the existing air conditioning unit, electric panel and access to gas line is located along the westerly wall of the southerly portion of the residence which is the location where the generator needs to be placed in order to have access to gas and electric. It is the only reasonable and logical place to locate this accessory structure and is remote from the available conforming location.

7. As a result of the foregoing conditions including the lot being undersized and an elongated rectangle in shape, a corner lot with dual front yard setbacks and the location of the existing structures on the property and access to gas and

electric, the Planning Board finds that there is a hardship associated with this property as it is impractical to require the proposed generator to be placed in a conforming location on the property. Therefore, a hardship does exist and the Applicant has satisfied the positive criteria for the grant of the requested variance relief.

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 generator is small in size and will be properly screened with evergreen shrubs so that it will not be visible to the Asbury Avenue or 7th Avenue streetscapes. Thus, it will have no impact upon the streetscape nor will it have impact upon the adjacent neighboring properties to the east and the north. This accessory structure will not be visible to the east or the north as it will be screened from view by the existing residence. Thus, there will be no negative impacts upon the neighboring properties or the neighborhood scheme. Therefore, the Planning Board finds that there is no substantial detriment to the public good flowing from the grant of this variance.

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 ordinance prohibiting accessory structures from being located in a front yard and requiring variance relief where the lot does not conform to the minimum lot area requirements of the zone are designed to insure that accessory structures will not be located in areas so visible to the streetscape and other properties as to have an imposing

appearance, an overly massive appearance or impede upon the light air and open space of the streetscape and adjacent properties. The Planning board finds that this small, low accessory structure will not have those impacts as it will be adequately screened from view and is di minimis in size. Consequently, any impacts that it may have are insubstantial and do not offend the purposes for which the ordinances were 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 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 4th day of March, 2021 that the Application of **BONNIE LORDO**, 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. (Not Applicable)

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. (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. (Not Applicable)

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 in connection with this application is as follows:
 - A. Section 150-54 (A)(II)- detached accessory structure (emergency generator) located in a front yard area with a front yard setback of 13 feet.
 - B. Section 150-49.L.(III)(b)-accessory structure located on a lot that does not conform to the minimum lot area requirements of the zone.
- 2) The following existing nonconforming elements will continue with the property:
 - A. Section 150-29 (A)(II)(Exhibit 5-2) - minimum required lot area is 6,500 feet where 7,500 sq. ft. is required.
 - B. Section 150-29 (A)(II)(Exhibit 5-2) - minimum lot frontage of 50 feet where 75 feet is required.
 - C. Section 150-29 (A)(II)(Exhibit 5-2)- front yard setback of 13.2 feet where 20 feet is required.
 - E. Section 150-29 (A)(II)(Exhibit 5-2) - side yard setback of 2.2 feet where 10 feet is required.
 - F. Section 150-29 (A)(II)(Exhibit 5-2) - accessory building side yard setback of 2.8 feet where 5 feet is required.

G. Section 150-29 (A)(II)(Exhibit 5-2) - accessory structure rear yard setback of 3.4 feet where 5 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 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:
SECONDED BY:
ROLL CALL:

YES: Mr. Dougherty, Mr. Hawley, Mr. Caccamo, Mr. McColdri,
Mr. Neff, Mrs. Murray, Mr. Colangelo
NO: None

ABSTAIN: None

ABSENT: Mr. Crowley, Mr. Pipe



**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 March 4, 2021.



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