

**IN THE MATTER OF
APPLICATION NO. PB20-21
OF ROBIN GINSBURG & MICHAEL PADO
BLOCK 9 LOT 1**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, ROBIN GINSBURG & MICHAEL PADO, hereinafter the "Applicant", has proposed the development of property located at 321 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 9, Lot 1 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 additions to an existing home including a second story, front and rear yard covered porches, a two-car garage, a second driveway along Highland Avenue, a front access walk, a rear hot tub and outdoor shower requiring the following variances:

1. Front yard setback from Cedar Place of 16 feet where 25 feet is required. Rear yard setback of 15.5 feet where 30 feet is required. Building coverage of 18.2% where 12% is permitted and usable floor area ratio of 0.178 where 0.175 is permitted. The foregoing is contrary to the provisions of Section 150-29 (A)(II) (Exhibit 5-2) of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-3 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 May 18, 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 Completeness Review #1 of CME Associates dated February 1, 2021, marked as Exhibit A-1 in evidence.

1.2 Report of Zoning Officer Clark dated June 30, 2020, marked as Exhibit A-2 in evidence.

1.3 Application for Variance dated December 28, 2020, marked as Exhibit A-3 in evidence.

1.4 Variance Plan prepared by Richard Stockton and Associates dated December 3, 2020 revised February 26, 2021, marked as Exhibit A-4 in evidence.

1.5 Architectural Plans prepared by Robert W. Adler, Architect dated June 23, 2020 consisting of seven sheets, marked as Exhibit A-5 in evidence.

1.6 Variance Plan prepared by Richard Stockton and Associates dated December 23, 2020, marked as A-6 in evidence.

1.7 Steep Slope review #1 of CME Associates dated November 10, 2020, marked as Exhibit 7 in evidence.

1.8 Correspondence from Architect Robert W. Adler regarding calculation of floor area ratio dated February 26, 2021, marked as Exhibit A-8 in evidence.

1.9 Series of 12 photographs of subject property from various viewpoints, marked as Exhibit A-9 A-L in evidence.

1.10 Technical Review #1 of CME Associates dated March 12, 2021, marked as Exhibit A-10 in evidence.

2. The premises in question are located at 321 Ocean Boulevard, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 9, Lot 1 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-3 Residential 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 144.22 ft. x 154.85 ft. x 81.10 ft. x 51.53 ft. x 192.06 ft. and is a parallelogram in shape with an approximate area of 22,818 square feet (0.5238 acres). The property has three frontages on Ocean Boulevard, Cedar Place and Highland Avenue and is presently developed with an existing single-family residential home with an asphalt driveway, rear concrete and asphalt parking space along Cedar Place. The Applicant proposes to construct several additions to the existing home including a second story, front and rear covered porches, a two-car garage, a second driveway along Highland Avenue, a front access walk, a rear hot tub and outdoor shower. The second story addition will continue to have a 16 foot front yard setback from Cedar Place as it will follow the existing building wall. The proposed outdoor shower will have a rear yard setback of 15.5 feet where 30 feet is required, and total building coverage will be 18.2 % where 12 % is permitted. The additions will result in a maximum usable floor area ratio of 0.178 where 0.175 is permitted.

5. The Applicant was represented by Mark Aikens, Esq. who presented the testimony of Robert W. Adler, Jr. a licensed Architect in the State of New Jersey and Barbara Ehlen, a licensed Professional Planner in the State of New Jersey. During the course of the testimony, it was determined that the lower level of the home qualifies as a cellar rather than a basement and therefore that portion of the home is not included in the calculation of the floor area ratio. Thus, the floor area ratio complies with the requirements of the Ordinance and a Variance is not requires for that.

6. The Applicant's witnesses testified that the existing driveway from Cedar Place is to be removed which will be an improvement and that vehicles will now access the property from Highland Avenue.

7. Ms. Ehlen testified that the subject property is an undersized lot with three frontages and that the surrounding area consists principally of three-story residential homes. She opined that the master plan promotes the upgrade of homes in the area and that the proposed improvements to the existing residence are consistent with the purposes of the master plan. She testified that the proposed improvements will allow for adequate light, air and open space and will promote a desirable visual environment and the coordination of creative design techniques such that the purposes of the Municipal Land Use Law pursuant to N.J.S.A. 40:55 D-2 will be advanced by the grant of the Variances requested. The Planning Board notes that several of the Applicant's neighbors appeared in support of the application, testifying that the proposed improvements will be a harmonious enhancement to the neighborhood.

8. The Planning Board finds that there is a hardship associated with the subject property as it has three frontages on an existing undersized lot. those features coupled with the location of the existing residence makes it impossible to place a second story on the home without the requirement for variance relief. In addition, because of the undersized nature of the parcel a Variance is appropriate to allow adequate building coverage for a reasonably sized home in this area of the municipality. 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 Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship on the Applicant as it would prevent the development of the property with a modest sized residential home.

9. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. The Planning Board finds that the proposed improvements are consistent with other homes in the neighborhood and will result in a home that harmonizes with the existing development in the area. Thus, there will be no substantial adverse impacts as a result of the Variances being granted with this approval. Instead, the improvements will result in a home that is consistent with the surrounding neighborhood.

10. 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. As noted previously, the proposed improvements to this home will result in a residence that is consistent with existing development in the area. The Planning Board agrees with the Applicant's witnesses based upon the architectural renderings provided that the proposed improvements will be an aesthetic improvement to the area and will result in a home that is consistent in appearance with the neighborhood. Consequently, there will be no substantial impairment of the Zone Plan or Zoning Ordinance.

12. 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.

13. 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 3rd day of June 2021, that the Application of **ROBIN GINSBURG & MICHAEL PADO** 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 approvals granted in connection with this application is to permit the construction of additions to the property as shown on the Variance Plan and Architectural Plan marked as Exhibits A-4, A-5 & A-6 in evidence with a front yard setback from Cedar Place of 16.0 feet where 25 feet is required, a rear yard

setback of 15.5 feet where 30 feet is required and building coverage of 18.2% where 12% is permitted.

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: MRS. MURRAY
SECONDED BY: MR. NEFF


ROLL CALL: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. JOSKO, MR. KRUPINSKI, MR. CURRY

YES: MR. HAWLEY, MR. CACCAMO, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. JOSKO, MR. KRUPINSKI, MR. CURRY

NO: NONE

ABSTAIN: NONE

ABSENT: MR. MCGOLDRICK, MR. CROWTHER



**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 June 3, 2021.



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