

**IN THE MATTER OF
APPLICATION NO. PB20-27
OF MICHAEL & JENNIFER HILDEBRANDT
BLOCK 50 LOT 12**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, MICHAEL & JENNIFER HILDEBRANDT, hereinafter the "Applicant", has proposed the development of property located at 31 Navesink Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 50, Lot 12 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 second floor addition to the existing dwelling to be maintained within the existing foundation footprint requiring a maximum usable floor area ratio Variance of .42 where .40 is permitted, contrary to the provisions of Chapter 150, Article V, Section 150-29 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 April 1, 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 February 16, 2021, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Michael & Jennifer Hildebrandt, dated January 19, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Charles Surmonte, dated May 14, 2015, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation & Floor Plans prepared by Frank Joseph Bell, dated March 20, 2020, marked as Exhibit A-4 in evidence.

1.5 Technical Review #1 of CME Associates, dated March 15, 2021, marked as Exhibit A-5 in evidence.

2. The premises in question are located at 31 Navesink Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 50, Lot 12 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 has approximate dimensions of 50.00 ft. x 100.00 ft. x 50.00 ft. x 100.00 ft. with an approximate area of 5,000 sq. ft. and is an elongated rectangle in shape. The subject property is presently developed with an existing one-story single family dwelling

with an asphalt driveway, shed, wood patio and walkways. The Applicant proposes to construct a second floor addition to the existing dwelling. No other improvements or grading modifications are proposed. The addition requires Variance relief as the property has an existing non-conforming lot area and the maximum usable floor area ratio will be .42 where .40 is the maximum permitted.

5. The Applicant presented the testimony of property owner Michael Hildebrandt and Scott Eichlen who has a Bachelor of Arts degree in Architecture and has been working in the field of architecture for 25 years. They provided testimony that what is proposed is a second floor addition that will be entirely within the existing footprint of the home. There will be no horizontal expansion of the foundation and the two-story home will harmonize with other two story homes in the immediate vicinity of the subject property.

6. They provided testimony that the lower level does qualify as a cellar and not a basement and that the term basement on the proposed plans was incorrect and the level is actually a cellar. They further noted that the deck along the side of the home is at grade level and not more than 6 inches above the ground. Testimony was also provided that the attic area will not be habitable and will be used for storage only.

7. The Applicant noted that the shed as shown on the survey had been temporarily relocated in order to perform some maintenance repairs in the area where the shed previously existed. The shed will be relocated to its prior location as shown on the survey and that shall be a condition of this approval. The Applicant's witnesses noted that the proposed addition will be consistent with the neighborhood as there are many second floor additions on homes in the immediate vicinity.

8. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board notes that the positive criteria for the grant of a floor area ratio variance is to determine that, notwithstanding the deviation from

the Ordinance requirement, the property can still accommodate the proposed development. In this case, the Planning Board finds that there will be no expansion of the footprint of the existing building only an increase in building height. The Planning Board finds that this will permit the development of the home with additional bedrooms which will be consistent with the surrounding neighborhood and will not create any significant increase in the intensity of use of the property as it will continue to be used as a single-family home. The addition of bedrooms will not result in the requirement of additional parking area pursuant to the RSIS standards and the proposed two parking spaces existing on the property meet the RSIs standard for a four-bedroom home. The Planning Board notes that the added usable floor area ratio amounts to approximately 100 square feet of living space which is di minimis. Therefore, the Planning Board finds that the proposed addition is appropriate under the circumstances and that the property can accommodate this minor deviation from the usable floor area ratio requirement.

9. The Planning Board further finds that 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 of the public good. The Applicant provided testimony that the proposed second floor addition will be consistent with many other homes in the existing neighborhood and thus it will be consistent with the neighborhood scheme and will not adversely impact upon the streetscape or the adjacent properties. The Planning Board finds that this proposed addition will actually be an attractive upgrade for the neighborhood.

10. The Planning Board finds that the grant of the requested variance relief will not result in substantial impairment of the Zone Plan or Zoning Ordinance. As previously set forth herein, the proposed second story addition will be within the existing footprint of the residence. Moreover, it will be consistent with other homers in the vicinity and will be compatible with the existing zone scheme in the area. Finally, the Planning Board finds that the

100 square foot excess of floor area is di minimis in extent and thus any adverse impacts are insubstantial.

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 variance 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 6th day of May 2021, that the Application of **MICHAEL & JENNIFER HILDEBRANDT** 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 approval granted in connection with this application is to permit construction on a property which does not have the required area in the zone and for a maximum usable floor area ratio of .42 where .40 is permitted.
- 2) The Applicant shall return the shed to its location as shown on the survey marked as Exhibit A-3 in evidence.

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. HAWLEY

SECONDED BY: MRS. MURRAY

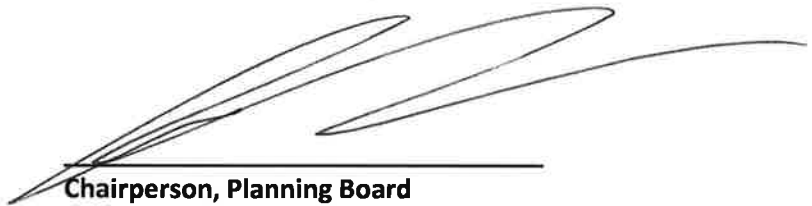
ROLL CALL: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. JOSKO, MR. CROWTHER, MR. KRUPINSKI, MR. CURRY

YES: MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. CROWTHER, MR. JOSKO, MR. KRUPINSKI

NO: NONE

ABSTAIN: NONE

ABSENT: 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 May 6, 2021.


Secretary, Planning Board
Borough of Atlantic Highlands