

**IN THE MATTER OF  
APPLICATION NO. PB21-01  
OF ROBERT HOWE, JR.  
BLOCK 66 LOT 9**

**RESOLUTION GRANTING  
VARIANCE APPROVAL**

**WHEREAS, ROBERT HOWE, JR.,** hereinafter the "Applicant", has proposed the development of property located at 69 East Lincoln Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 66, Lot 9 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 first and second floor addition to an existing dwelling along with porch addition requiring Variance relief to permit a principle building side yard setback of 4.9 feet where 10 feet is required and 5.5 exists and combined side yard setbacks of 14.7 feet where 20 feet is required and 15.9 feet exists. The forgoing is 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 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 6, 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 10, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Robert Howe, Jr., dated February 21, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey with topography prepared by Vallee Surveying, Inc., dated September 15, 2016, marked as Exhibit A-3 in evidence.

1.4 Site Plan with architectural elevation and floor plans prepared by CDZ Architects, LLC, dated February 16, 2021, marked as Exhibit A-4 in evidence.

1.5 Completeness/Technical Review #1 of CME Associates, dated March 19, 2021, marked as A-5 in evidence.

2. The premises in question are located at 69 East Lincoln Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 66, Lot 9 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 135.00 ft. x 50.00 ft. x 135.00 ft. and is an elongated rectangle in shape. The subject property has the following pre-existing non-conforming elements:

1. Lot area of 6,750 square feet where 7,500 square feet is required.
2. Lot frontage and width of 50 feet where 75 feet is required.
3. Lot shape diameter of 30 feet where 50 feet is required.
4. Principal side yard setback of 5.5 feet where 10 feet is required.
5. Combined principal side yard setback of 15.9 feet where 20 feet is required.
6. Accessory building side yard setback of 0.07 feet where 5 feet is required.
7. Accessory building rear yard setback of 3.6 feet where 5 feet is required.

The subject property is presently developed with a two-story frame residential dwelling with a detached garage and associated driveways, walkways and patios.

5. The Applicant proposes to construct a first and second floor addition to the existing dwelling along with a front porch addition which will result in a principle building side yard setback of 4.9 feet where 10 feet is required and 5.5 feet currently exists and combined side yard setback of 14.7 feet where 20 feet is required and 15.9 feet currently exists.

6. The Applicant provided the testimony of Robert Howe, Jr. the property owner who testified that the family needs a larger family room in order to have adequate living space in the family room and a larger master bedroom on the second floor. He testified there will be no new bedrooms added to the home and that the property will have two 10 ft. x 20 ft. parking spaces in compliance with the RSIS standards. He further testified that the front porch addition will be consistent with other properties on the street all of which have front porches as architectural elements of their homes.

7. Mr. Howe further testified that the drainage patterns for the property will remain unchanged and that the existing runoff patterns directing stormwater to the street will continue.

8. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. More particularly, the Planning Board notes that the subject property is an elongated rectangle shape with an existing structure that encroaches into the side yard setback. Due to the location and orientation of the existing structure coupled with the narrowness of the lot additions to the home cannot be constructed without violating the side yard setbacks. Therefore, the Planning Board finds because of the shape of the property coupled with the location and orientation of the existing residence 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 upon the Applicant as it would prevent the Applicant from placing additions to the existing residence in order to provide for improved living quarters.

9. 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 variance relief can be granted without substantial detriment to the public good. The Planning Board notes that the deviation from existing conditions of the side yard is only 6/10ths of 1 foot on one side and 1.2 feet total change in the side yard setback. The Planning Board finds that these changes are di minimis. Moreover, the proposed addition will follow existing building lines, are modest in size and will be consistent with the architectural elements of the surrounding properties in the area. Therefore, the Planning Board finds that any adverse impacts are insubstantial and will allow the subject property to be more architecturally compatible with other homes in the 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 herein the Planning Board finds that the deviation from existing conditions is di minimis. The Planning Board further finds that it agrees with the Applicants testimony that the

addition, and particularly that of the front porch, will harmonize with the character of other homes in the area and therefore will not have any significant impact on the zone scheme but will be consistent with existing conditions.

11. 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 18<sup>th</sup> day of May, 2021, that the Application of **ROBERT HOWE, JR.**, 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 the property as shown in Exhibit A-4 in evidence with a side yard setback of 4.9 feet where 10 feet is required and total side yard setbacks of 14.7 feet where 20 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: MR. DOUGHERTY

SECONDED BY: MRS. MURRAY

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

YES: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO

NO: NONE

ABSTAIN: NONE

ABSENT: 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 May 18, 2021.

  
Secretary, Planning Board  
Borough of Atlantic Highlands