

**IN THE MATTER OF
GRANTING
APPLICATION NO. PB 21-08
OF MICHAEL & MARY LISBETH COLLINS
BLOCK 101 LOT 12**

**RESOLUTION
VARIANCE APPROVAL**

WHEREAS, MICHAEL & MARY LISBETH COLLINS, hereinafter the "Applicant", has proposed the development of property located at 93 3rd Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 101, 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 permit various improvements to the property including first floor alterations, a second story addition, a new side yard porch, replacement of an existing side yard porch which require Variance approval as a non-conforming lot may not be used for any purpose unless the lot conforms to the minimum lot area requirements. The subject property has a lot area of 5,817 square feet where 7,500 square feet is required which is contrary to the provisions of Chapter 150, Article VII, Section 150-49 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 August 5, 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 April 5, 2021, marked as Exhibit A-1 in evidence.

1.2 Variance Application of Michael & Mary Lisbeth Collins, dated April 21, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Michael S. Lynch, P.L.S., dated March 16, 2021, marked as Exhibit A-3 in evidence.

1.4 Architectural Elevation & Floor Plans prepared by Robert Algarin, Architect dated April 12, 2021, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated June 4, 2021, marked as exhibit A-5 in evidence.

1.6 3 Photographs showing carport and front of residence, marked as Exhibit A-6 in evidence.

1.7 5 Photographs of the subject property from front, side and rear perspectives, marked as Exhibit A-7 in evidence.

2. The premises in question are located at 93 3rd Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 101, 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 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 117.74 ft. x 50.08 ft. x 114.96 ft. and is substantially an elongated rectangle in shape with a lot area of 5,817 square feet. The subject property has a number of existing non-conforming elements all of which are contrary to Section 150-29 and Exhibit 5-2 of the Development Regulations including:

- a. Lot area of 5,817 square feet where 7,500 square feet is required.
- b. Lot frontage and width of 50 feet where 75 feet is required.
- c. Lot shape diameter of 30 feet where 50 feet is required.
- d. Side yard setback of 2.3 feet where 10 feet is required.
- e. Total side yard setback of 13.2 feet where 20 feet is required.
- f. Side yard setback for accessory building of 2.05 feet where 5 feet is required.
- g. Accessory rear yard setback of 1.2 feet where 5 feet is required.
- h. Building coverage of 44.13% where 25% is permitted.
- i. Impervious coverage of 55.41% where 50% is permitted.
- j. Usable floor area ratio of 0.51 where 0.40 is permitted.

These are all existing conditions which will continue with the exception of side yard setback, total side yard setback, building coverage, impervious coverage and usable floor area ratio. All of those non-conformities will be reduced by this application.

5. The Applicant presented the testimony of Mary Lisbeth Collins, the property owner and Robert Algarin, a licensed architect in the State of New Jersey. They provided testimony that Ms. Collins purchased the property in March of 2021 and that the existing building is in poor condition, requiring substantial repair and updating in order to bring it to current standards. Although the property will receive a second story addition, the alterations to the first floor will actually reduce the building footprint and total floor area resulting in the

reductions in existing deviations for building coverage, total impervious coverage, side yard setback, total side yard setback and floor area ratio. Thus, the proposed improvements will result in a more conforming property than currently exists. They provided further testimony that the home will now be four bedrooms and will have adequate parking as vehicles can drive through the existing carport and park beyond it thus, providing parking for three cars which complies with RSIS requirements..

6. 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, due to the existing undersized condition of the lot, no improvements can be made to the property without the requirement for Variance relief. Therefore, a hardship exists. 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 upon the Applicant, as it would prevent the Applicant from performing any improvements to the home. In this case, the improvements will result in more conforming conditions and bring the home into closer conformity with the Zoning requirements. Therefore, the Planning Board finds that a hardship does exist with respect to this property. The Planning Board further finds that this is a specific piece of property whereby the grant of Variance relief will advance the purposes of the Municipal Land Use Law by bringing the property into closer conformity with the Ordinance requirements, will provide greater light, air and open space and will promote a more desirable, visual environment.

7. The Planning Board further finds that the Variance relief can be granted without substantial detriment to the public good. The Planning Board finds that the proposed improvements will result in a more attractive home meeting current building standards in closer conformity with the Zoning regulations of the Borough. The proposed improvements are not expanding the existing structure. Instead, they are reducing its impacts upon adjacent properties and therefore will not have any substantial negative impact upon the surrounding properties or

the neighborhood. In fact, it will have a positive impact by reducing four existing nonconformities.

8. 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 the Zoning Ordinance. As noted previously herein, the proposed improvements will bring the subject property into closer conformance with the Zoning requirements. Therefore, it is an improvement over existing conditions and does not impair the Zoning Plan or Zoning Ordinance in any way. Instead, it has a positive impact upon it.

8. 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.

9. 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 2nd day of September, 2021 that the Application of **MICHAEL & MARY LISBETH COLLINS**, 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 relief granted in connection with this application is a Variance for a non-conforming property to be renovated in accordance with the plans prepared by Robert Algarin, dated April 12 , 2021 and marked as Exhibit A-4 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. KRUPINSKI

SECONDED BY: MR. DOUGHERTY

ROLL CALL: MR. DOUGHERTY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE, MR. CROWTHER, MR. KRUPINSKI, MR. CURRY

YES: MR. DOUGHERTY, MR. CACCAMO, MR. MCGOLDRICK, MR. PEPE, MR. CROWTHER, MR. KRUPINSKI, MR. CURRY

NO: NONE

ABSTAIN: NONE

ABSENT: MR. CROWLEY, MR. COLANGELO, MRS. MURRAY, MR. HAWLEY, MR. JOSKO, 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 September 2, 2021.


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