

**IN THE MATTER OF
APPLICATION NO. PB 20-03
OF JONATHAN & RACHEL SMYTH
BLOCK 11 LOT 2**

**RESOLUTION GRANTING
BULK VARIANCE AND USE
VARIANCE APPROVAL**

WHEREAS, JONATHAN & RACHEL SMYTH, hereinafter the "Applicant", has proposed the development of property located at 251 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 1, Lot 2 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 approval to construct a 100 +/- square foot addition to an existing dwelling including the replacement of existing deteriorated decks requiring the following variance relief:

1. Section 150-49.I. (I) (b) to permit the construction of an addition on a non-conforming (undersized) lot.

2. Section 150-29 (A) (II) (Exhibit 5-2) side yard setback of 4.1 feet where 15 feet is required.

3. Section 150-29 (A) (II) (Exhibit 5-2) - combined side yard setback of 13.4 feet where 30 feet is required.

4. Section 150-29 (A) (II) (Exhibit 5-2) - building coverage of 14.6% where 12% is permitted.

5. Section 150-29 (A) (II) (Exhibit 5-2) - usable floor area ratio of .255 where .175 is permitted (use variance).

The foregoing are contrary to the provisions of Chapter 150, Articles V & VII respectively 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 July 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 March 15, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Jonathan & Rachel Smyth, dated March 12, 2021, marked as Exhibit A-2 in evidence.

1.3 Limited Geotechnical Investigation prepared by Whitestone Associates, Inc. dated January 28, 2021, marked as Exhibit A-3 in evidence.

1.4 Architectural Plans prepared by Parnagian Architects, LLC., dated March 9, 2021 revised April 23, 2021, further revised June 23, 2021 marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated April 14, 2021, marked as exhibit A-5 in evidence.

1.6 Partial Topographic and Location Survey prepared by Rodolfo Pierri, P.L.S. dated November 20, 2020 revised June 17, 2021, marked as Exhibit A-6 in evidence.

1.7 Variance Review Response from Whitestone Associates Inc., dated April 21, 2021, marked as Exhibit A-7 in evidence.

1.8 Variance Review response of Parnagian Architects, dated May 5, 2021, marked as Exhibit A-8 in evidence.

1.9 Series of 10 photographs of existing residence from various vantage points, marked as Exhibit A-9 in evidence.

1.10 Review #2 of CME Associates, dated May 27, 2021, marked as Exhibit A-10 in evidence.

1.11 Existing Conditions Steep Slope Analysis prepared by Insite Engineers, dated June 22, 2021, consisting of 2 sheets, marked as Exhibit A-11 in evidence.

1.12. Correspondence from Insite Engineering, dated June 24, 2021, marked as Exhibit A-12 in evidence.

1.13 E-mail from CME Associates, dated June 30, 2021, regarding revised building coverage and steep slope calculations, marked as Exhibit A-13 in evidence.

1.14 Series of 5 photographs of subject property, marked as Exhibit A-14 a-e in evidence.

2. The premises in question are located at 251 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 11, Lot 2 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 49.10 ft. x 49.16 ft. x 42.70 ft. x 125.00 ft. x 135.00 ft. x 80.26 feet and is substantially irregular in shape with frontages on both Prospect Road and Ocean Boulevard. The property is an undersized lot of record with a lot area of 13,617 square feet where 30,000 square feet is required. This is an existing condition which will continue. The subject

property has an existing lot frontage and width of 80.26 feet where 100 feet is required. This condition will be unchanged. The premises also have a lot-shape diameter of 50 feet where 65 feet is required. This is an existing condition that will continue. The subject property has a principle building front yard setback of 22.5 feet where 25 feet is required. This is an existing condition that will continue. The property has an existing side yard setback (easterly) of 4.0 feet where 15 feet is required, and 4.1 feet is proposed. This is an existing condition that will be improved and continued. The property has an existing side yard setback (southerly) of 19.4 feet where 15 feet is required. This will be reduced to 9.3 ft. where 15 ft. is required and will result in combined side yard setbacks of 13.4 ft. where 30 ft. is required. The property has a building height of 3 stories where 2.5 stories is permitted. This is an existing condition that will continue. The foregoing side setbacks require new Variance relief. The Applicant does require Variance relief for the items set forth previously in this resolution.

5. The subject property is presently developed with a 3-story single family dwelling with front and side yard wood decks, driveway, slate patio, concrete pads, retaining walls and paver walkways. The Applicant proposes to construct a 100 +/- square foot addition to the existing dwelling along its southerly side and new replacement decks along the easterly and northerly sides of the existing structure.

6. The Applicant presented the testimony of Jonathan Smyth, the Applicant, Brian Parnagian, a licensed architect in the state of New Jersey and Patrick Ward, a licensed

professional engineer and professional planner in the state of New Jersey. They provided testimony that the existing building is in disrepair and that the siding and decks are dangerous with rotting wood and need replacement. The Applicant proposes to re-side the structure and install a new roof. The Applicant also proposes to construct new exterior decks. The witnesses testified that the new decks will be brought down from the structure slightly lower than the existing deck and that helical piles will be utilized so that the decks will not be load-bearing on the house for support. The witnesses testified that that soil stability testing was performed by Whitestone Associates, Inc. which investigation indicates that the proposed helical piles will improve slope stability with minimal disturbance. The Applicant provided testimony that the addition along the southerly side of the home will result in reduced side yard setback to 9.3 feet where 15 feet is required. That addition will also increase the usable floor area ratio from the existing .248 to a proposed .255 where .175 is permitted. It will also increase building coverage to 14.6% where 13.8% exists and 12% is permitted.

7. The Applicant provided testimony as to roof runoff and that the runoff will be utilizing the existing roof leader and gutter system. The Applicant will make repairs required to provide for efficient functioning of the runoff system and will, as a condition of approval, define where the pipes into its stormwater runoff goes ultimately meets daylight for water release. The Applicant testified that the methods utilized for construction will employ techniques to minimize disturbance. The Applicant also presented testimony that the decking will be fiberglass and pitched toward the house tying into the existing

drainage system utilizing steel bracing. There will be a trough along the building directing the water to downspouts. The Applicants witnesses testified that the change in the stormwater system does not require a steep slope approval.

7. The Applicant presented the testimony of Patrick Ward, a licensed professional engineer and professional planner in New Jersey. He noted that the subject property is impacted by substantial steep slopes in the northerly portion of the property. This limits the location where improvements to the property can be made including the proposed addition and the proposed replacement decking. Mr. Ward testified as to the justification for the grant of the requested Variance relief. With respect to the floor area ratio, he noted that the standard for positive criteria is to determine whether, notwithstanding the deviation from the Ordinance requirement, the property can adequately accommodate the proposed improvements. He opined that in the case of floor area ratio the site can still accommodate the proposed improvements. Mr. Ward testified that as to the view shed, both streets will remain unchanged. To the south of the residence will be a slight bump out which will have little visibility. He noted that this is the appropriate location on the home as it is the proper place for a front door which is what is proposed and is opposite from the steep slope areas to the north. He further noted that impacts upon the adjacent property lot 3 will be minimal as the residence on that property is 82 feet from the proposed addition. The Applicant provided testimony that the existing residence is a four bedroom home and that with the proposed improvements it will continue to be a four bedroom home. Consequently, the intensity of use of the site will not increase. Based upon the foregoing, Mr. Ward

opined that the subject property could accommodate these modest improvements which will provide a significant upgrade to the appearance and functionality of the existing home. The Planning Board agrees.

8. Mr. Ward further testified as to the bulk Variances and opined that there is a hardship associated with the subject property as it is a substantially undersized lot of record. Moreover, the subject property is affected by substantial steep slopes which leave only a modest area in the northerly portion of the property to place improvements. This also places constraints upon the ability to comply with setbacks including the single and combined side yard setbacks. Also due to the undersized nature of the lot it is difficult to comply with the building coverage requirements and construct a home of a size consistent with the R-3 Zone designation and also comply with the usable floor area ratio. Based upon the forgoing, Mr. Ward opined 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 having a residence of a size and style consistent with the R-3 Zone district and with the neighborhood surrounding the subject property. The factors relating to this hardship include the steep slope area which limits the available building footprint, the unusual shape of the property which now is substantial as the property recedes from Ocean Boulevard from north to south leaving the available space for the building in the narrowest,

shallowest portion of the property, dictating the location of the existing structure. The Planning Board agrees.

9. The Planning board further agrees with the opinion of Mr. Ward that Variance relief can fall under the "Planning Variance" section of the statute and that this application relates to a specific piece of property where the purposes of the Municipal Land Use Law will be advanced by deviating from the Zoning Ordinance requirements and that the benefits of the deviation substantially outweigh any detriment. More particularly, the purposes of the Municipal Land Use Law are set forth in N.J.S.A. 40:55D-2 which encourage development that will promote public health safety and general welfare, will secure safety from panic and other natural man-made disasters and will promote a desirable and visual environment. In this case Mr. Ward opined that the improvements will improve a deteriorating home with deteriorated decks and will reduce overall deck and impervious coverage as well as provide new decking with improved stormwater management to secure safety from flooding which promotes public health, safety and welfare. Moreover, Mr. Ward opined that the proposed improvements will provide for adequate light, air and open space and provide a more desirable visual environment. The Planning Board agrees.

10. 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 grant of Variance relief will not result in any substantial detriment to the public good. The Planning board agrees with the Applicant's witnesses that the proposed improvements will result in a more aesthetically pleasing residence and that other

than the improved aesthetic appearance will not have any adverse impacts upon the streetscape which will remain unchanged as will the views from adjacent properties. In addition, the improved runoff system will have no adverse impacts upon the surrounding properties and may improve conditions. Thus, the Planning Board finds that any impacts upon the surrounding properties and neighborhood will be positive and any adverse impacts insubstantial.

11. 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 usable floor area ratio limitations are designed to ensure that homes are not constructed which are so large and expansive as to be out of character with the area. The Planning Board finds that in this case a modest, 100 square foot addition will have di minimis impact upon the streetscape and surrounding properties and will result in a more functional home which will not offend the purposes for which the Ordinance was adopted. The existing residence with this modest addition will continue to be in character with the surrounding neighborhood and area. With respect to the bulk Variances, the Planning Board notes that the building coverage requirements are also designed to ensure that excessively large structures are not built. The Planning Board finds that the proposed improvements will not result in a structure that offends that purpose of the Ordinance and is modest in character such that it will not result in the impacts sought to be avoided by the Ordinance. With respect to the setback Variance, the Ordinance is designed to ensure that there is adequate light, air and open space between properties and structures and that structures are

not located so closely to property lines as to have an excessive or overbearing appearance. The Planning Board finds that in this case these modest improvements will not have those impacts. Therefore, 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 Variances 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 5th day of August, 2021 that the Application of **JONATHAN & RACHEL SMYTH**, 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 150-49.I. (I)(b) to permit the construction of an addition on a non-conforming (undersized) lot.

b. Section 150-29 (A)(II) (Exhibit 5-2) side yard setbacks of 4.1 feet and 9.3 ft. where 15 feet is required.

c. Section 150-29 (A)(II) (Exhibit 5-2) - combined side yard setback of 13.4 feet where 30 feet is required.

d. Section 150-29 (A)(II) (Exhibit 5-2) - building coverage of 14.6% where 12% is permitted.

e. Section 150-29 (A)(II) (Exhibit 5-2) - usable floor area ratio of .255 where .175 is permitted (use variance).

- 2) The Applicant will make the repairs testified to in order to provide an efficient, functioning runoff system and provide information as to the termination point of the stormwater system pipe.
- 3) The Applicant will use construction techniques to minimize disturbance in the steep slope area.
- 4) The Applicant shall add to the plans the limits of disturbance which will be complied with.
- 5) Access for construction equipment shall be marked out and approved by the Planning Board's Engineer prior to commencement of construction.



**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 December , 2021.



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

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. Neff

SECONDED BY: Mr. Krupinski

ROLL CALL:

YES: Dougherty, Neff, Pepe, Colangelo, Crowther, Josko
Krupinski

NO: None

ABSTAIN: None

ABSENT: Crowley, Hawley, Caccamo, McGoldrick, Murray