

**IN THE MATTER OF  
APPLICATION NO. PB21-02  
OF JUDITH ROSENTHAL & DAVID NILES  
BLOCK 25 LOT 1**

**RESOLUTION GRANTING  
MINOR SUBDIVISION  
APPROVAL WITH VARIANCES**

**WHEREAS, JUDITH ROSENTHAL & DAVID NILES,** hereinafter the "Applicant", has proposed the development of property located at 2 Keystone Drive Road, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 25, 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 minor subdivision approval to subdivide an existing 48,915 square foot (1.12 acres) property into two residential lots. Proposed lot 1.01 will retain an existing one-story dwelling and proposed lot 1.02 will be developed with a new one-story single family dwelling. The subdivision requires the following Variances:

a) Principal dwellings not to be located on a street improved to Borough standards (Section 150-52).

b) Maximum lot disturbance for proposed lot 1.02 of 20,177 square feet where 10,523 square feet is permitted (Section 150-78.E.).

c) Detached accessory building (existing garage) located in a front yard on proposed lot 1.01 (Section 150-54.D.).

The foregoing are contrary to Chapter 150, Article VII, Sections 150-52, 150-78 and 150-54 respectively of the

Development Regulations of the Borough of Atlantic Highlands;  
and

**WHEREAS**, the subject property is located in the R-2 Zone District and single family residential homes with associated accessory structures are a permitted use in the zone on lots of 15,000 square feet or larger in area; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on September 2, 2021 and November 4, 2021, respectively, due Notice of said meetings 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 11, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Judith Rosenthal & David Niles, dated February 12, 2021, marked as Exhibit A-2 in evidence.

1.3 Minor Subdivision Plan prepared by Two River Engineering, dated January 21, 2021 revised through January 11, 2021, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates, dated April 21, 2021, marked as Exhibit A-4 in evidence.

1.5 Stormwater Management Report prepared by Two River Engineering, dated January 19, 2021, marked as Exhibit A-5 in evidence.

1.6 Review #2 of CME Associates, dated July 9, 2021, marked as Exhibit A-6 in evidence.

1.7 Geotechnical Report prepared by Carlin Simpson & Associates, LLC, dated July 29, 2021, marked as Exhibit A-7 in evidence.

1.8 Tax Assessor email advising the proposed lot numbers are acceptable, marked as Exhibit A-8 in evidence.

1.9 Email from citizen Vasto indicating no objection to prior subdivision in 2016, marked as Exhibit A-9 in evidence.

1.10 Tax Collector detail regarding taxes paid, marked as Exhibit A-10 in evidence.

1.11 Color Rendered Subdivision Sheet 4 of 8 dated January 21, 2021 revised June 11, 2021, marked as Exhibit A-11 in evidence.

1.12 8.5 in. x 11 in. Photograph's on Board six (6) per side, marked as Exhibit A-12 in evidence.

1.13 Color Rendered Elevation Drawing side view board mounted, marked as Exhibit A-13 in evidence.

1.14 Architectural Elevation and Floor Plans prepared by CDZ, dated July 12, 2021 consisting of 12 sheets, marked as Exhibit A-14 in evidence.

1.15 Board Exhibit with 8 landscaping concepts, marked as Exhibit A-15 in evidence.

1.16 Architectural Elevation & Floor Plans prepared by CDZ, dated July 12, 2021 revised September 7, 2021, marked as Exhibit A-16 in evidence.

1.17 Stormwater Management Report, prepared by Two River Engineering, dated January 19, 2021 revised October 19, 2021, marked as Exhibit A-17 in evidence.

1.18 Architectural Elevation & Floor Plans prepared by CDZ, dated October 14, 2021, marked as Exhibit A-18 in evidence.

1.19 Minor Subdivision Plans, prepared by Two River Engineering, dated January 21, 2021 revised October 4, 2021, marked as Exhibit A-19 in evidence.

1.20 Color Rendered Sheet 4 of Subdivision Plans, prepared by Two River Engineering, dated January 21, 2021 revised October 21, 2021, marked as Exhibit A-20 in evidence.

1.21 Sheet A-5 of Architectural Plans as revised, marked as Exhibit A-21 in evidence.

1.22 Landscape Exhibit, marked as Exhibit A-22 in evidence.

2. The premises in question are located at 2 Keystone Drive, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 25, lot 1 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-2 Residential Zone District and single-family residential homes with associated accessory structures are a permitted use in the zone on lots with an area of 15,000 square feet or greater.

4. The subject property has approximate dimensions of 300.04 ft. x 214.03 ft. x 70.03 ft. x 50.00 ft. x 66.67 ft. x 213.89 and is irregularly shaped with an approximate area of 48,915 square feet. The property is presently developed with a one-story single family residential home and ancillary improvements including, but not limited to, a stone driveway extending from Keystone Drive, a detached garage, a rear yard deck, retaining walls, a gazebo and concrete walkways. Keystone Drive in this area exists as an unimproved gravel road that does not meet Borough standards. No roadway improvements are proposed in connection with this development and Section 150-52

of the Ordinance requires that every principal building be built upon a lot with frontage on a public street improved to meet the Municipal requirements. Consequently, a Variance is required from that Section as well as N.J.S.A. 40:55D-35. The subject property is also in a steep slope zone and the maximum lot disturbance permitted for proposed lot 1.02 is 10,523 square feet whereas lot disturbance of 20,177 square feet is proposed, contrary to Section 150-70.E. of the Ordinance and a Variance is required. In addition to the foregoing, detached accessory buildings are not permitted to be located in a front yard. Upon subdivision approval, the existing garage will be located in the front yard of proposed lot 1.01 contrary to the provisions of Section 150-54.D. which will also require Variance relief.

5. The Applicant proposes to subdivide this lot into two new lots 1.01 and 1.02. The existing dwelling on lot 1.01 will remain and a new one-story single family dwelling is proposed to be constructed on lot 1.02 which will require the Variances previously set forth herein.

6. The Applicant presented the testimony of the Applicant Judith Rosenthal, professional Engineer, A.J. Garito and professional Engineer Robert Simpson. Mr. Garito testified that the subject property is somewhat triangular in shape in the R-2 Zone District. He testified that the two proposed lots will comply with the bulk requirements of the Zone District and will not require any Variances in that respect. The existing gazebo will be either relocated to a conforming location or removed. The existing barbeque grill will also be removed. He noted that the garage does not conform to the front yard setback requirements. However, it is an existing condition for many

years and that structure cannot conform to the zoning requirements without removal. He testified that the new residence will have two underground stormwater systems that will contain all runoff from the roof of the new home. He testified that improving the road to eliminate the Variance for not having frontage on an improved street would increase runoff and change the character of the area. He testified that this area of Keystone Drive can accommodate the largest firetruck in the Municipal system.

7. Mr. Garito further testified that, in order to provide a conforming frontage on an improved street, 900 feet of roadway would be required which will be extremely expensive and not warranted for one new single-family residence as the existing conditions are adequate to provide access for emergency and firefighting equipment.

8. Mr. Garito went through the report of the Planning Board's Engineer and particularly paragraph 7 A through R providing the foregoing reasons for not improving this area of Keystone Drive. He further advised that the tax assessors office has approved the proposed lot numbers and that dry wells are proposed so that there will be no increase in runoff from the new improvements. He testified that existing flow patterns will be maintained without change, and that there will be significant landscaping performed on the property, which was also testified to at length by Ms. Rosenthal. He testified that onsite parking is being provided in accordance with RSIS standards, and that the Applicant will not be proposing curbs and sidewalks in order to preserve the existing character of the area.

9. On cross examination by the Board's Engineer, Mr. Garito agreed to tighten up the grading to minimize "cut and fill" as well as site disturbance. He also agreed that the development can be phased to minimize disturbance. He also agreed that the topsoil stockpile will be placed in an area that will be disturbed in any event to minimize disturbance of the lot. Mr. Garito also agreed to revise the plans to replace proposed recharge systems with alternative methods for stormwater control.

10. Ms. Rosenthal testified as to the proposed landscaping and plantings that promote slower water runoff. She advised that there will be 10 additional trees placed on the property and that the final landscaping will be presented to the Planning Board Engineer for review and approval.

11. At the November 4, 2021 meeting, Mr. Garito testified that the plans had been revised to remove the proposed dry wells through the use of swales and a rain garden. He also noted the plans have been revised to minimize steep slope disturbance and advised that the proposed new home will be two-stories. He noted that pursuant to the revised plans, runoff will be reduced. A drainage easement will be provided for the rain garden which will be recorded.

At the November 4, 2021 meeting, Robert Simpson provided testimony as a Geotechnical Engineer. He advised that soil borings were taken to determine conditions with respect to the property and that he reviewed the ability of the property to be safely developed with a new home. He opined that the



development with a new house will not have an adverse impact on soil stability and noted that the vibratory roller for soil compaction will be no greater than the impact of a garbage truck.

12. 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 the Applicant has demonstrated that the existing conditions of Keystone Drive and this area can support access to and from the proposed site of regular passenger vehicles as well as emergency vehicles for emergency services and firefighting purposes. The Planning Board further finds that it would not be appropriate to require the development of 900 square feet of asphalt and the accompanying potential adverse impacts upon stormwater runoff. Therefore, it is appropriate to grant the approval for construction on a lot without frontage on an improved public street. The Planning Board further finds that the proposed lot disturbance is reasonable under the circumstances and that the property cannot be reasonably developed without the grant of Variance relief for lot disturbance. The Planning Board further finds that the Variance for the garage in a front yard area is appropriate as it is an existing condition that has been in place for many years and characterizes this area of Keystone Drive. The Variance cannot be avoided without removal of the existing building which is inappropriate under the circumstances. As a result of all of the foregoing, the Planning Board finds that an extraordinary and exceptional situation uniquely effecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Atlantic Highlands Development

Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent the development of this substantially oversized lot into two oversized lots and would require destruction of an existing garage building.

13. 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 is satisfied that the existing unimproved Keystone Drive can support an additional residential home and will provide adequate access for emergency and firefighting vehicles. Moreover, based on the testimony of the Applicant's Geotechnical Engineer, the proposed lot disturbance will not result in soil instability. Finally, the retention of the existing garage in a front yard area will not have any adverse impact upon the surrounding properties as it is an existing structure which has set the character of the area for many years.

14. 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 notes that the Zone scheme for this property is to permit single family residential homes to be constructed on lots with an area of 15,000 square feet or greater. The proposed lots are substantially greater than that which is required by the Ordinance and therefore the proposed improvements are within the character of the zone scheme called for in the Municipal Master Plan and the Ordinance. Consequently, the requested Variances will not result in any substantial detriment to the Zone Plan or Zoning Ordinance.

15. The Planning Board further finds that the Applicant has submitted a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. The Planning Board further finds that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for final approval and that the application for minor subdivision approval can and should be granted at this time.

16. The Planning Board further finds that all property owners within 200 feet of the premises in question were given proper Notice of the hearing of this application and were provided with an opportunity 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 2<sup>nd</sup> day of December 2021, that the Application of **JUDITH ROSENTHAL & DAVID NILES** 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 approvals granted in connection with this application are as follows:

a. Minor subdivision approval in accordance with the minor subdivision plan submitted by the Applicant, prepared by Two River Engineering, dated January 21, 2021 revised October 4, 2021, marked as Exhibit A-19 in evidence as may



be revised to comply with the requirements of this resolution.

b. Variance to permit these two residential lots without frontage upon a public street improved to Municipal standards.

c. Maximum lot disturbance for proposed lot 1.02 of 20,177 square feet where 10,523 square feet is permitted.

d. Variance to permit the retention of the existing garage structure on proposed lot 1.01 in a front yard.

2) The Applicant shall provide an easement for the proposed rain garden for mitigating stormwater runoff.

3) Tree removal will be 4 trees as testified to by the Applicant with 27 new trees including evergreens to be provided and approved by the Planning Board's Engineer.

4) No heavy vibratory rollers will be utilized in connection with the development of the property and the Planning Board Engineer shall determine the maximum size machines permitted for those purposes.

5) The Applicant shall eliminate the recharge wells.

6) The Applicant shall utilize crushed stone or shells for driveway surfaces.

**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 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: MRS. MURRAY

ROLL CALL:

YES: MCGOLDRICK, NEFF, MURRAY, COLANGELO, JOSKO, KRUPINSKI

NO: NONE

ABSTAIN: NONE

ABSENT: DOUGHERTY, CROWLEY, HAWLEY, CACCAMO, CROWTHER, CURRY

ABSENT:



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**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 2, 2021.



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