

**IN THE MATTER OF
APPLICATION NO. PB20-13
OF CHARLES & JEANNE NILES
BLOCK 97 LOT 28**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, CHARLES & JEANNE NILES , hereinafter the "Applicant", has proposed the development of property located at 31 Second Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 97, Lot 28 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 the construction of a 461 square foot deck with access stairs to the rear of an existing residence requiring variance approval for side setback (one side) 3.9 feet where 10 feet is required and side setback (combined) of 17.0 feet where 20 feet is required, contrary to the provisions of Chapter 150, Article V, Section 150-29(A)(II) and (Exhibit 5-2) 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 January 7, 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 May 21, 2020, marked as Exhibit A-1 in evidence.

1.2 Application for variance of Charles & Jeanne Niles dated May 18, 2020, marked as Exhibit A-2 in evidence.

1.3 Renovation Plan prepared by Robert Gorski dated March 17, 2016 including site plan, floor plan and deck plan, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates dated July 2, 2020, marked as Exhibit A-4 in evidence.

1.5 Series of five photographs of existing conditions in area of proposed deck from various vantage points marked as Exhibit A-5 a-e in evidence.

1.6 Hand written area calculations marked as Exhibit A-6 in evidence.

1.7 Four page schematic stair drawings, marked as Exhibit 7 in evidence.

1.8 Survey prepared by Thomas Finnegan dated August 18, 2011, marked as Exhibit A-8 in evidence.

1.9 Review #2 of CME Associates dated July 28, 2020, marked as Exhibit A-9 in evidence.

1.10 Finnegan Survey and Gorski floor plan revised August 11, 2020, marked as Exhibit A-10 in evidence.

1.11 Review #3 of CME Associates dated September 8, 2020, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 31 Second Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 97, Lot 28 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 premises in question has approximate dimensions of 50.00 ft. x 100.00 ft. x 50.00 ft. x 100.00 ft. and is a narrow,

elongated rectangle in shape. The lot has existing nonconforming elements as follows:

1. Lot area 5,000 sq. ft. where 7,500 sq. ft. is required.
2. Lot frontage and width 50 ft. where 75 ft. is required.
3. Lot shape diameter 30 ft. where 50 ft. is required.
4. Front setback 9.9 ft. where 20 ft. is required.
5. Accessory side setback 2.6 ft. where 5 ft. is required.
6. Principle side setback (one side) 3.9 ft. where 10 ft. is required.
7. Side setback (combined) 17.9 ft. where 20 ft. is required.

The property is presently developed with a two story residential dwelling with a covered front porch, a detached shed, a paved driveway and associated walkways. The Applicant proposes to construct a 461 square foot deck with access stairs to the rear of the existing residence. The proposed deck will extend out holding the same side yard setback as the existing exterior side walls of the residence. Since the deck will maintain same side yard setback deficiencies as the principle

residence two variances are required as set forth previously herein.

5. The Applicant presented the testimony of Jeanne Niles. She testified that the proposed deck will start at the rear wall of the existing residence and extend out approximately 14 feet into a flat rear yard area. It will be 6 feet above ground and of wood construction. The surface beneath the deck will remain pervious. The deck will have gaps so that rainwater may pass through so that there will be no significant alteration in the existing stormwater runoff flows or patterns. There will be no roof over the deck as it will be an open structure. There will be no changes to the drains or other stormwater devices on the property so there will be no alteration in the stormwater patterns. Board member and Fire Marshall Hawley advised the board that there are no fire concerns with the deck.

6. The Planning Board Engineer confirmed through the Applicants testimony that the proposed addition will continue to maintain the existing 2.4 ft. side yard setback and that the gutters and leaders will be piped into the ground toward the front of the house to East Garfield Avenue.

7. The subject property is bordered to the south by an existing dwelling which also has reduced side yard setbacks and a similar deck structure to what is being proposed by the Applicant. The property to the north has a driveway and garage adjacent to the property line with a hedge alongside the driveway from the street proceeding along the adjacent property line beyond the area where the deck is proposed.

8. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The subject property is an undersized lot of record and in the shape of an elongated rectangle. This creates a hardship upon the property as the narrowness of the lot makes it difficult to comply with the side yard setbacks as the lot is 25 foot narrower than what the ordinance requires. In addition, the property is already developed with the existing two story residential dwelling. The Planning Board finds that the only reasonable location available on the property for the placement of a deck amenity is to the existing dwelling and that the practical location for it is to follow the existing building line. Therefore, 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 require the placement of the deck to be "skewed" from the existing residence creating an odd and less functional deck structure. Therefore a hardship exists.

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 grant of the requested variance relief will not result in any substantial detriment to the public good. The Planning Board finds that the deck is modest in size and will only be 6 feet in height. Therefore, it will have minimal visual impact upon the adjacent properties. Due to the location of the existing dwelling and

the deck being placed to the rear of it, it will have no visual or other impact upon the streetscape as it will not be visible from the street due to the existing residential home. The proposed deck will have no adverse impacts upon the properties to the north (rear) as the setback will exceed that which is required by the ordinance. Finally, the Planning Board finds that it is appropriate for the deck to follow the existing building lines of the property. The Planning Board also notes that the adjacent property to the south has a similar deck with the similar side setback deficiencies and the adjacent property to the north has a driveway, detached garage and a hedge providing open space and buffering between where the deck is proposed and the residence on that parcel. As the result of the foregoing the Planning Board finds that any impacts upon the surrounding area and neighborhood are diminimis and insubstantial.

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 and Zoning Ordinance. The Planning Board finds that decks such as that proposed by the Applicant are anticipated amenities for homes in the R-1 Zone District and that other homes including the home directly adjacent to the subject property have similar decks to that which the Applicant proposes with similar side yard deficiency. Thus, what the Applicant proposes is not inconsistent with the neighborhood scheme and surrounding properties. The Planning Board further finds that the side yard setbacks requirements of the ordinance are intended to ensure that there is adequate light, air and open space between properties and that structures aren't placed so close to property lines as to have an imposing or massive

appearance. In this case the Planning Board finds that the proposed deck structure will not impede upon light, air and open space between the subject property and adjacent properties. The deck will be modest in size and 6 feet in height with no roof structure. Consequently, there will be minimal visual impact upon the adjacent properties no significant adverse impact upon light, air and open space. Nor will it have the impact of an imposing or massive structure as it will only be 6 feet in height and small in area. Thus, the grant of the requested variance will not offend the purposes for which the zoning standards were adopted.

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 variances 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 4th day of February 2021, that the Application of **CHARLES & JEANNE 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. (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 approvals granted in connection with this application are as follows:

The Applicant is granted variances to construct a 461 square foot deck with access stairs to the rear of the existing residence with a single side yard setback of 3.9 feet on one side and a combined side yard setback of 17.9 feet where 10 feet and 20 feet respectively are 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. NEFF

SECONDED BY: MR. MCGOLDRICK

ROLL CALL: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK

YES: MR. NEFF, MR. COLANGELO, MR. CROWTHER, MR. JOSKO

NO: NONE


ABSTAIN: NONE

ABSENT: NONE



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 February 4, 2021.



Secretary, Planning Board
Borough of Atlantic Highlands