

**IN THE MATTER OF
APPLICATION NO. PB 23-03
OF PATRICK RUANE & LINDSEY DEWIS
BLOCK 17 LOT 3**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, PATRICK RUANE & LINDSEY DEWIS, hereinafter the "Applicant", has proposed the development of property located at 6 Bonnie Brae Path, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 17, Lot 3 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 first floor and second floor additions to enlarge the kitchen area and to build a new bathroom and new primary closet retaining the existing nonconforming elements as follows:

- a. Lot area of 10,051 square feet where 30,000 square feet is required (Section 152-29.A.(2)(Exhibit 5-2)).
- b. Lot shape diameter of 10 feet where 65 feet is required (Section 152-29.A.(2)(Exhibit 5-2)).
- c. Accessory side yard setback of 8 feet where 10 feet is required (Section 152-29.A.(2)(Exhibit 5-2)).
- d. Building coverage of 15.5% where 12% is permitted (Section 152-29.A.(2)(Exhibit 5-2)).

In addition the Applicant requires the following Variance relief:

- a. Principal front yard setback of 4.4 feet where 25 feet is required (existing to remain with additional volume) (Section 152-29.A.(2)(Exhibit 5-2)).
- b. Principal side yard setback of 0.8 feet where 15 feet is required (Section 152-29.A.(2)(Exhibit 5-2)).
- c. Combined side yard setback of 2.1 feet where 30 feet is required (Section 152-29.A.(2)(Exhibit 5-2)) proposed to remain with additional volume.
- d. Floor area ratio of .28 where 0.175 is permitted (Section 152-29.A.(2)(Exhibit 5-2)).

- e. Enlargement of nonconforming building (Section 150-49.B.).
- f. Alteration of building increasing degree of nonconformance (Section 150-49.G.).
- g. Enlargement of nonconforming building not conforming to all zoning requirements (Section 150-49.1 (2) (b)).

The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 and 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-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 September 7, 2023, 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 Clark, dated February 17, 2023, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Ruane & Dewis, dated March 27, 2023, marked as Exhibit A-2 in evidence.

1.3 Site Plan, Floor Plans & Elevation Drawings, prepared by Paul A. Damiano, Architects, LLC, dated March 31, 2023, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by R&L Land Surveying, dated January 4, 2023, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated May 19, 2023, marked as Exhibit A-5 in evidence.

1.6 Additions & Alterations Plan, prepared by Paul A. Damiano, Architect, dated May 22, 2023, marked as Exhibit A-6 in evidence.

1.7 Letter from Architect Damiano, dated May 30, 2023, marked as Exhibit A-7 in evidence.

1.8 Survey prepared by R&L Land Surveying, dated January 4, 2023, marked as Exhibit A-8 in evidence.

1.9 Plan prepared by Architect Damiano with photographs, dated March 31, 2023, marked as Exhibit A-9 in evidence.

1.10 Review #2 of CME Associates, dated July 7, 2023, marked as Exhibit A-10 in evidence.

2. The premises in question are located at 6 Bonnie Brae Path, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 17, Lot 3 on the Tax Map of the Borough of Atlantic Highlands.

3. 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.

4. The subject property has approximate dimensions of 48.72 ft. x 4.00 ft. x 274.00 ft. x 41.62 ft. x 230.06 ft. and is a long narrow quadrilateral shaped property with a lot area of 10,051 square feet. The property is currently developed with a two-story residential dwelling with ancillary improvements, including a concrete driveway, decks, block walls, brick patio and walkways. As noted previously, the subject property is a substantially undersized lot with an approximate area of only one third of that required in the zone and is an elongated rectangle in shape.

5. The Applicants presented the testimony of Lindsey Dewis, Patrick Ruane and Paul Damiano. Mr. Damiano testified that he is a licensed Architect in the State of New Jersey and has been so for 30 years and has testified numerous times before local Zoning and Planning Boards and been recognized as an expert in the field of architecture. They provided testimony that the subject property is an existing undersized lot with an existing residence only 28 feet in width with a full lot width of only 40 feet. Thus, to comply with the combined side yard setback requirement would leave only room for a 10 feet wide building. They provided testimony that the proposed additions will all be retained within the current building envelope and there will be no change in drainage patterns or to roof discharge. They provided additional testimony that there is substantial landscaping on site and that the building has low visibility from the street and other properties in the neighborhood. The existing home has three bedrooms and with the proposed improvements it will continue to have three bedrooms as the added space will not be utilized for bedrooms but for additional living space. Since no additional bedrooms are proposed, there is no additional demand for onsite parking. Although the subject property presently does not conform with RSIS requirements for two spaces and only has a single garage space, the intensity of use of property will not be increased by the proposed improvements and thus parking demand is not being increased.

6. The Planning Board further finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. More particularly, this is a substantially undersized lot with numerous existing nonconforming elements. This, coupled with its unique elongated rectangular shape makes it virtually impossible to comply with the single side yard and combined side yard requirements. Moreover, the existing structure on the property is located such that additions to the structure will necessarily encroach on the side yard and front yard setbacks. In addition, the undersized nature of the lot makes it extremely difficult to provide a reasonably sized structure consistent with what is anticipated for the R-3 Zone with a conforming useable floor area ratio.

7. 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 reasonable additions to the subject property and prevent a structure with living area consistent with that which is contemplated by the R-3 Zone District. Thus, the Planning Board finds that a hardship does exist with respect to this piece of property.

8. 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 finds that the proposed additions do not extend beyond the existing building footprint and, although additional building volume may exist within the front setback, principal side setback and combined side back, those impacts are di minimis, will have little or no visual impact upon the streetscape and will have di minimis impacts upon the adjacent properties to the east and west as the structures located thereon are sufficiently distant from the subject property so as not to be substantially negatively impacted by these modest additions. To the rear of the subject property is the Bayshore trail which is several hundred feet from the subject parcel and at a significantly lower elevation such that the additions will have no impact upon that property. As a result of the

foregoing, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good as it will have no substantial negative impacts upon the streetscape, the immediate surrounding properties or the neighborhood.

9. 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 purpose of the required lot area, setbacks and floor area ratio requirements are designed to ensure that properties are not overly developed so as to have an overbearing appearance upon adjacent properties and the streetscape, have adverse impacts regarding stormwater management or unreasonably impede upon light, air and open space between properties. The Planning Board finds that the circumstances presented here are an existing residence the setbacks which are not being diminished and the impacts upon light, air and open space and volume of the structure are insubstantial and will not have the impacts sought to be avoided by the Zone Plan and Zoning Ordinance. In addition, the Planning Board finds that this modest increase in useable floor area ratio will not increase the intensity use of the home which will remain a three bedroom, single family residence. Thus, the subject property can accommodate these minor additions. The Planning Board finds that these proposed additions will simply provide for a more comfortable living space and that it will not increase the intensity of use of this lot. Therefore the lot will continue to accommodate any potential problems associated with the increased floor area. The Planning Board finds that any such impacts are di minimis and insubstantial.

10. 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.

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 October, 2023 that the Application of **PATRICK RUANE & LINDSEY DEWIS**, 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. Front yard setback of 4.4 feet where 25 feet is required (Section 150-29.A.(2)) (Exhibit 5.2).
- b. Principal side yard setback of 0.8 feet where 15 feet is required (Section 150-29.A.(2)) (Exhibit 5.2).
- c. Combined side yard setback of 2.1 feet where 30 feet is required (Section 150-29.A.(2)) (Exhibit 5.2).
- d. Useable floor area ratio of 0.28 where 0.175 is permitted (Section 150-29.A.(2)) (Exhibit 5.2).
- e. Enlargement of a nonconforming building which enlargement is not conforming (Section 150-49.B.).
- f. Alteration of nonconforming building increasing the degree of nonconformance (Section 150-49.G.).
- g. Enlargement of nonconforming building increasing habitable space which addition does not conform to all requirements of the Ordinance (Section 150-49.I (2)(b)).
- h. Di minimis exception from the RSIS requirements for parking spaces.

2) The Applicant shall comply with the technical comments and recommendations set forth in Review #2 of the Planning Board Engineer, marked as Exhibit A-10 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:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAIN:
ABSENT:

**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 October 5, 2023.

Secretary, Planning Board

Borough of Atlantic Highlands