

**IN THE MATTER OF
APPLICATION NO. PB22-12
OF MICHAEL ZLATA & KEVIN CLANCY
BLOCK 61 LOT 4**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, MICHAEL ZLATA & KEVIN CLANCY, hereinafter the "Applicant", has proposed the development of property located at 87 Memorial Parkway/NJ State Route 36, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 61, Lot 4 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 for construction of a garage addition to convert an existing one car garage into a two car garage requiring Variances for side yard setback of 3.3 feet where 10 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)); rear yard setback of 1 foot where 10 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)); enlargement of a non-conforming building (Section 150-49.l (2)(B); and two private garage spaces proposed where one private garage space is permitted (Section 150-72.(A)). The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 and Article VII, Sections 150-49 and 150-72 respectively of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the OR Office Residential Zone District and single family homes with associated accessory structures are a permitted use in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on August 3, 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 Michelle Clark received May 10, 2022, marked as Exhibit A-1 in evidence.

1.2 Application for Variance & Checklist of Michael Zlata & Kevin Clancy, dated November 22, 2021 received May 10, 2022 , marked as Exhibit A-2 in evidence.

1.3 Architectural Elevation & Floor Plans for proposed garage, received May 10, 2022, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Thomas Craig Finnegan, dated April 28, 2022, marked as Exhibit A-4 in evidence.

1.5 Review of CME Associates, dated March 31, 2023, marked as Exhibit A-5 in evidence.

1.6 Review of CME Associates, dated April 20, 2023, marked as Exhibit A-6 a-h in evidence.

1.7 Settlement Agreement between Zlata/Clancy & Moller, dated June 2023, marked as Exhibit A-7 in evidence.

1.8 Series of 3 Photographs of Subject Property from various viewpoints, marked as Exhibit A-8 a-c in evidence.

2. The premises in question are located at 87 Memorial Parkway/NJ State Route 36, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 61, Lot 4 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the OR Office/Residential Zone District and single-family homes with associated accessory structures are a permitted use in the Zone.

4. The premises in question have approximate dimensions of 50.00 ft. x 125.00 ft. x 50.00 ft. x 125.00 ft. with an approximate area of 6,250 square feet. The property is presently developed with a two-story residential home with associated porches, walkways and a detached frame garage structure in the rear yard. The property is accessed by vehicles from a lot to the rear owned by JCP&L via a stone surface drive. The Applicant testified that he has an access easement through that parcel which services the subject property from its rear.

5. The property has the following existing nonconforming elements which are proposed to remain:

A. Lot area of 6,250 square feet where 10,000 square feet is required (Section 150-29 (A)(II), Exhibit 5-2).

B. Lot frontage of 50 feet where 100 feet is required.

C. Lot width of 50 feet where 150 feet is required.

D. Lot shape diameter of 20 feet where 40 feet is required.

- E. Principle building side yard setback of 13.4 feet where 15 feet is required.
- F. Combined side yard setback of 29.6 feet where 30 feet is required.
- G. First floor gross area of 536 square feet where 1,200 square feet is required.
- H. Total gross floor area of 1,072 square feet where 1,800 square feet is required.
- I. Use of a non-conforming lot which does not conform to the minimum lot area requirements of the Ordinance.

6. The Planning Board notes that during the course of the hearing the Applicant withdrew its request for building height of 16.2 feet where 16 feet is required thus, that Variance is no longer required and the Applicant will comply with the height requirement.

7. The Applicant was represented by Henry Wolff, Esq., who presented the testimony of Michael Zlata in support of the Application. Mr. Zlata testified that the existing garage structure is in poor condition and needs to be repaired/replaced. He further testified that the Applicant will comply with the technical recommendations set forth in the report of the Planning Board's Engineer, dated April 20, 2023 and marked as Exhibit A-6 in evidence. He further testified that the home is approximately 150 years old and has little or no closet or storage space. The Applicant needs the storage space and is proposing a larger garage in order to provide that amenity. He presented Exhibit A-8 showing in photographs the existing garage from three sides and showed that the Applicant has constructed an attractive wood fence along the property line with the deficient side yard setback in order to screen the proposed structure from view of the neighbor. The photographs also show that there is substantial vegetation cover screening the proposed structure from view of the adjacent neighbor which vegetative cover substantially exceeds the height of the proposed structure.

8. The Applicant also agreed that the new structure will have gutters and leaders which will lead to a drywell to be approved by the Planning Board Engineer. There will be electric service to the building but there will be no water or sewer and the proposed building will not be utilized as "living space" or a "habitable room". Mr. Zlata noted that the overhead door entry to the proposed garage will face to the south and the stone surface drive. Mr. Zlata testified that in order to meet the required side and rear setbacks, the structure would have to be placed in the middle of the rear yard which would effectively eliminate any use of that area. He also testified that having the driveway enter from Memorial Parkway would not be practical due to high traffic volume on that roadway coupled with the speed limit. The Planning Board also notes that such a driveway would require curb cuts and crossing of a walkway.

9. Mr. Zlata also testified that a motion detector light facing the south would be placed on the new structure and that the lighting would comply with the requirements of the Ordinance.

10. The Applicant also presented the testimony of John Taikina, a licensed professional Planner in the State of New Jersey since 1992, who has provided expert planning testimony before numerous Zoning and Planning Boards throughout the State, including the Atlantic Highlands Planning Board. The Planning Board accepted his credentials. Mr. Taikina testified that he reviewed the Master Plan, the Ordinance, the report of the Board Engineer, CME Associates and visited the site. He noted that the subject property is in the O-R District and is an undersized lot which coupled with the existing improvements on the property result in a hardship due to its size, dimensions and location of existing structures. He further testified that the Variances could be granted based upon the C-2 Planning criteria of the statute. He opined that the grant of the requested Variance relief would promote the purposes of the Municipal Land Use Law by promoting a desirable, visual environment through good civic design and arrangement by refurbishing an existing, dilapidated structure and replacing it with a new building. He further testified that the grant of the Variance relief would promote a more efficient development and use of this particular piece of property. He opined that the subject parcel is a specific piece of property, due to its size, dimension and access from the stone surface driveway to the rear, which is a more appropriate access than from its frontage on Memorial Parkway. He opined that the need for the dimensional Variances for side and rear yard are appropriate in order to permit an adequate rear yard for recreational use due to the busy shallow Memorial drive frontage. He further noted that the setbacks currently exist and that the proposed new structure will not have any substantial or significant adverse impacts but will simply continue an existing condition. Therefore, he opined that there would be no substantial detriment to the neighboring properties arising from the grant of the Variance relief as the property would essentially maintain the current intensity of use. He further opined that the Borough Master Plan encourages the redevelopment of properties and in this case that purpose would be satisfied

11. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board agrees with the Applicants and their Planner that due to the size and dimension of the subject property, coupled with its shallow frontage along busy Memorial Parkway, and available access through a low intensity rear stone drive 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 compliance would require the garage to be placed in an area on the property that would deprive it of any functional rear yard area. The Planning Board further finds that the grant of Variance relief will promote the Municipal Land Use Law and the Municipal Master Plan. The Planning Board agrees with Mr. Taikina that the proposed expanded garage in the same location will promote a more desirable visual environment through good civic design and arrangement and will promote the more efficient use of land permitting the subject property to have a functioning rear yard area. The Planning Board finds that the benefits of renovating the existing garage in substantially the same location will advance the purposes of the Municipal Land use Law and that the benefits of the deviation substantially outweigh any detriment. The Planning Board also finds that the

addition of a second garage space will encourage the functionality of this lot as the Planning Board recognizes that this is an old small home with little or no storage space that will be benefited by having the additional garage space for storage purposes, which is also a more efficient use of the land.

12. 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 will not result in any substantial detriment to the public good. The Planning Board notes that the side and rear yard setbacks are existing and that the deviations will not be increased. With respect to the side yard setback, the Planning Board agrees that the existing setback will remain and that the Applicant has provided an attractive fence adjacent to the property line which has substantial vegetation on the neighboring property which will screen it from having any significant impact upon the property owner to the north. The property to the rear is a right-of-way of JCP&L. This has an existing stone surface drive which will not be impacted by the setback Variances. The proposed structure will have a sufficient distance from the adjacent property to the south. As a result of all of the foregoing, the Planning Board finds that any detrimental impacts to the neighborhood are insubstantial and di minimis.

13. The Planning Board further finds that the Variance relief requested can be granted without substantial impairment to the Zone Plan and Zoning Ordinance. As noted previously herein, this is an existing undersized lot that is developed with a very modest home. The proposed garage improvements to the rear of the home, not visible to Memorial Parkway on a lot where the structures have existed for many years and have set the character of the neighborhood, these modest improvements will not change that character and will promote the goals of the Municipal Master plan to maintain current use intensity and redevelopment of existing properties. The Planning Board finds that the setback requirements and garage space requirements are designed to ensure that buildings and structures are not built so close to the property lines and so large in size as to have an overly imposing appearance upon adjacent properties or the streetscape and impede upon the light, air and open space. The Planning Board finds that the proposed improvements are di minimis in nature and the development will not result in the impacts sought to be avoided by the Ordinance.

14. 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.

15. 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.

16. The Planning Board notes Exhibit A-7 in evidence which is a settlement agreement between the Applicant and their neighboring property owner setting forth that the proposed garage structure will not be utilized as a residence and that a deed restriction will be recorded

with respect thereto. Moreover, it provides that during construction or renovation of the new garage structure, construction vehicles, building materials, garbage bins and debris shall be confined to the Applicants property and not on the neighbor's property. The Planning Board notes that this agreement is between two private property owners and the agreement provides that the parties will be bound by the terms regardless of whether or not they are included in the Planning Board resolution. The Planning Board finds that the conditions that were discussed for inclusion in this resolution are sufficient to protect the Borough and its citizens. The conditions set forth in the private agreement between the property owners should remain a private agreement between them and not incorporated in this resolution as the Borough should not be responsible for enforcing an agreement between private property owners.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 7th day of September, 2023 that the Application of **MICHAEL ZLATA & KEVIN CLANCY** 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 will 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 herein is to permit the construction of a two-car garage on a lot with 6,250 square feet of lot area with accessory side yard setback of 3.3 feet where 10 feet is required and accessory rear yard setback of 1 foot where 10 feet is required with the enlargement of an existing non-conforming lot not in conformance with all requirements of the Ordinance.
- 2) The Applicant has withdrawn its request for building height Variance and shall comply with the requirements of the Ordinance as to height.
- 3) The Applicant shall comply with the technical recommendations set forth in the report of the Planning Board Engineer, dated April 22, 2023 and marked as Exhibit A-6 in evidence.
- 4) The Applicant will install gutters and leaders on the new garage which shall be directed to a new drywell to be designed and submitted to the Planning Board Engineer for approval.
- 5) There will be no water or sewer service to the garage structure.
- 6) The garage structure shall not be used as “living space” or as a “habitable room”.
- 7) The lighting for the new structure shall be on the south side of the building and shall be a motion detector light complying with Ordinance requirements as to foot candles.

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 September 7, 2023.

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