

**IN THE MATTER OF
APPLICATION NO. PB23-13
OF RENI & NANCY SICLARE
BLOCK 80 LOT 3**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, RENI & NANCY SICLARE, hereinafter the "Applicant", has proposed the development of property located at 52 Garfield Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 80, 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 construct a two story addition to an existing single family residence which requires Variance approval as the existing lot area is 6,750 square feet where 7,500 square feet is required and pursuant to Section 150-49 (1) a nonconforming lot may not be developed unless the lot conforms with the minimum lot area requirements. In addition, the proposed improvements will result in lot coverage of 59.1% where 50% is the maximum permitted. The proposed addition is contrary to Chapter 150, Article VII, Section 152-49 and Article V, Section 150-29 (A) (2) (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 March 7, 2024, 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 Application of Reni & Nancy Siclare, dated December 7, 2023 with checklist, marked as Exhibit A-1 in evidence.

1.2 Architectural Elevation, Floor Plans & Site Plan, prepared by S.O.M.E Architects, dated December 7, 2023, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Thomas Craig Finnegan, dated September 1, 2023, marked as Exhibit A-3 in evidence.

1.4 Zoning Review of Zoning Officer Michelle Clark, dated November 30, 2023, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated January 15, 2024, marked as Exhibit A-5 in evidence.

2. The premises in question are located at 52 Garfield Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 80, lot 3 on the Tax Map of the Borough of Atlantic Highlands.

3. 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.

4. The subject property has approximate dimensions of 50.00 ft. x 135.00 ft. x 50.00 ft. x 135.00 ft. and is an elongated rectangle in shape with a lot area of 6,750 square feet (0.155 acres). The subject property is presently developed with a two-story residential home with a detached shed, covered patio, wood deck, gravel and sand recreation area and associated driveways and walkways.

5. The subject property has the following existing, nonconforming elements, which will remain that are not exacerbated by the application:

a. Lot area of 6,750 square feet where 7,500 square feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

b. Lot frontage and width of 50 feet where 75 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

c. Lot shape diameter of 20 feet where 50 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

d. Front yard setback of 19.6 feet where 20 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

e. Accessory side yard setback of 3.2 feet where 5 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

f. Accessory rear yard setback of 2.8 feet where 5 feet is required (Section 150-29 (A)(2)(Exhibit 5-2)).

6. The Applicant provided testimony from Reni Siclare, the property owner, and Edward O'Neill, a licensed Architect and Planner in the State of New Jersey whose credentials were accepted by the Planning Board. Mr. Siclare testified that this is an older structure constructed in or about 1908, which has an awkward layout and limited living area. The

Applicant desires to construct a two-story addition for a better functioning interior of the home, particularly to remove the existing staircase which is severely out of code and which Mr. O'Neill testified from an architectural standpoint, is a dangerous condition. Mr. O'Neill testified that the proposed addition will be an attractive and functional improvement to the existing residence. The Planning Board agrees with Mr. O'Neill's testimony.

7. Question was raised by the Board Engineer as to whether Variance is necessary for exceeding lot coverage. Mr. O'Neill did not include the gravel and sand surfaced area in his calculations, which indicated that the Variance would not be required. The Planning Board Engineer included that in his calculations indicating that the development would exceed allowable impervious lot coverage requiring a Variance. Mr. Siclare testified that the gravel and sand surface is used as a play area for grandchildren and is a pervious surface. It was agreed that as a condition of approval, the Applicant will confirm with the Board Engineer that the impervious coverage is not being exceeded. Alternatively, if it is determined that the area is impervious, the Applicant can either remove the gravel and sand surface, returning it to a grass area or provide a drywell system to be approved by the Board Engineer to prevent any adverse stormwater runoff impacts from the excessive impervious coverage.

8. The Applicant testified that there will be no tree removal in connection with the proposed improvements which are going over existing impervious surfaces where there is an existing wooden deck and slate patio area. The Applicant further provided testimony that there is sufficient area in the driveway to park three (3) vehicles which will meet the RSIS requirement for a home with up to four (4) bedrooms. The Applicant noted that there will be three (3) upstairs bedrooms and there will be one (1) downstairs guest room which could be used as an additional bedroom in the future. Consequently, the Board finds that it should classify that room as a fourth bedroom.

9. Mr. O'Neill testified as to the Variance issues. He testified that the property meets both the hardship and planning criteria for Variance relief. With respect to hardship, he

noted the existing out of code staircase which is dangerous and requires replacement which will be accommodated in part by the proposed addition. He further testified that a planning Variance is justified pursuant to N.J.S.A. 40:55D-2 a, i, & l as the grant of the Variance relief will promote the public health and safety by replacing a dangerous staircase with a code compliant staircase, will promote a desirable visual environment and will encourage senior citizen housing as the Siclares are senior citizens and the purposes of the renovations include replacement of this dangerous staircase making it possible for them to continue to reside in the home rather than have to relocate. Mr. O'Neill further opined that there will be no negative impacts as the proposed addition does not create any new nonconformities and will not exacerbate any existing nonconforming elements. Therefore, he opined that there will be no negative impacts to the surrounding properties of the neighborhood or the Zone Plan or Zoning Ordinance as the proposed addition will not alter the character of the neighborhood.

10. 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 Planner that the purposes of the Municipal Land Use Law are promoted by the proposed addition which will create a safer interior of the home, permit these senior citizens to remain in their current residence and that the proposed addition is attractive in appearance and will provide for a desirable visual environment. The Planning Board further finds that it agrees that the existing, nonconforming staircase should be replaced with a code compliant staircase.

11. 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 proposed addition will comply in all respects with the requirements of the Zoning Ordinance. It will be located entirely within the permitted building envelope, will not exceed the allowable building coverage, will not exceed the allowable building height and will not exceed the allowable usable floor area ratio. Therefore, the

Planning Board finds that the proposed addition will fit in with the neighborhood and the surrounding properties and will not result in any substantial negative impacts.

12. 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. As noted previously, the proposed addition will be fully in compliance with all of the Zoning requirements and will fit in with the character and neighborhood scheme. Thus, it will not result in any substantial impairment of the Zone Plan as it will be consistent with the Zone Scheme for this area of the Borough.

With respect to the impervious coverage issue, the Planning Board finds that any impacts resulting from excessive impervious coverage will be controlled by virtue of conditions previously referenced in this resolution which will either result in a compliant impervious coverage as determined by the Board Engineer or as a result of reversion of the gravel and sand surface to grass area or will be addressed with the provision of a drywell system approved by the Board Engineer.

13. 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.

14. 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 to present testimony in support of, or in opposition to the appeal. Two neighbors did appear who supported the application as being a positive improvement to the area.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 4th day of April, 2024, that the Application of **RENI & NANCY SICLARE** 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. Permit the construction of the proposed two-story addition as set forth in the architectural plans marked as Exhibit A-2 in evidence on a lot not conforming to the minimum lot area requirements.

b. Impervious lot coverage of 59.1% where 50% is permitted.

2) The Applicant shall consult with the Planning Board Engineer to determine whether the existing gravel and sand surface area is pervious or impervious. If pervious then the Variance noted in 1 b. above will be withdrawn as unnecessary. Conversely, if the area is determined to be impervious coverage then the Applicant shall either remove the gravel and sand surface and replace it with grassed area in which case the Variance set forth in 1 b. above will be rescinded as unnecessary or shall provide a drywell system approved by the Planning Board Engineer in which case the Variance set forth in 1 b. shall continue.

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:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAIN:
ABSENT:

John McGoldrick, Chair
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 April 4, 2024.

Nancy Tran, Secretary
Planning Board Borough of Atlantic Highlands