

**IN THE MATTER OF  
APPLICATION NO. PB24-03  
OF KATE MURRAY  
BLOCK 27 LOT 5**

**RESOLUTION GRANTING  
VARIANCE APPROVAL**

**WHEREAS, KATE MURRAY**, hereinafter the "Applicant", has proposed the development of property located at 1 Observatory Place, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 27, Lot 5 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 expansion to an existing one story dwelling by adding a 1,330 square foot second story over the existing first floor and rear patio and a 837 two story addition along with a covered side porch and raised patio requiring Variances for side yard setback of 10.3 feet where 15 feet is required, rear yard setback of 11.3 feet where 30 feet is required and maximum lot coverage of 23.9% where 15% is permitted. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 (A)(2)(Exhibit 5-2) of the Development Regulations of the Borough of Atlantic Highlands. The Applicant also proposes to retain existing, nonconformities for lot frontage of 78 feet where 100 feet is required, lot shape diameter of 59.5 feet where 65 feet is required and accessory side yard setback of 2.9 feet where 5 feet is required; and

**WHEREAS**, 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; 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 Zoning Review of Zoning Officer Michelle Clark, dated August 10, 2023, marked as Exhibit A-1 in evidence.

1.2 Application of Kate Murray, dated December 12, 2023, marked as Exhibit A-2 in evidence.

1.3 Architectural Site Plan Elevation & Floor Plans, prepared by Anthony Condouris, dated November 29, 2023, marked as Exhibit A-3 in evidence.

1.4 Steep Slope Permit Application, dated December 12, 2023, marked as Exhibit A-4 in evidence.

1.5 Steep Slope Plans, prepared by RT Land Surveying, dated September 20, 2023, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated February 7, 2024, marked as Exhibit A-6 in evidence.

1.7 Series of 7 Photographs of Existing Residence from various vantage points, marked as Exhibit A-7 in evidence.

2. The premises in question are located at 1 Observatory Place, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 27, lot 5 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.

4. The subject property has approximate dimensions of 95.33 ft. x 185.81 feet x 78.00 ft. x 185.00 ft. and is substantially an elongated rectangle with an approximate area of 16,033.0 square feet (0.368 acres). The property is presently developed with a one-story residential home, covered patio, detached shed, driveway and walkways. The Applicant proposes to add a 1,330 square foot second story over the existing first floor and rear patio and an 837 square foot two story addition on the easterly side of the property as well as adding a covered porch and raised patio.

5. The Applicant presented the testimony of Kate Murray and Deborah Murray, the Board also heard testimony from its engineer, Doug Rohmeyer. Testimony demonstrated that the existing home is a two-bedroom house. The Applicant has three (3) children and needs to expand the home to accommodate the family. The side yard setback is caused by the new two-story addition which will follow the same building wall line of the existing studio as the design is to provide better access to the studio portion of the existing improvements. The rear yard setback is triggered by the new improvements to the rear of the building including the covered porch and raised patio areas. The existing studio currently encroaches into the rear yard setback at 11.3 feet where 30 feet is required. The new elements will be within the setback but a greater distance than the existing studio, 24.1 feet at its closest point. The lot coverage Variance is driven by the desire to have an improved, more functional residence that requires the requested additions.

6. The Applicant presented a series of seven (7) photographs showing the existing conditions of the property along with architectural elevation and floor plans showing proposed additions. He testified that these additions will make the home more functional and livable to accommodate the family and will create an attractive exterior for the home. The Applicant also testified that roof lines will be redone and designed to direct stormwater runoff to the east and west side yards of the property in order to allow stormwater to percolate into the ground and avoid any adverse stormwater runoff impacts upon adjacent properties. One neighbor expressed concern with regard to stormwater and after a dialogue between the Applicant, the Board Engineer and Board Members, it was determined that the Applicant will direct stormwater from the building to the side yards and show that the downspouts will accomplish this on the plans which are to be approved by the Board Engineer, in order to ensure that there will be no adverse water runoff impacts from the improvements. The Applicant also provided testimony that there is sufficient parking to accommodate the required RSIS parking spaces for a four (4) bedroom home.

7. 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 elongated rectangle in shape and it is difficult to provide full side yard setbacks for a reasonably sized home. In addition, the location of the existing dwelling limits where additions can be placed. In this case, in order to provide an addition to the easterly side of the property to connect with the existing studio and to follow the existing wall line of the studio, which is nonconforming, requires Variance relief and imposes a hardship upon the Applicant to comply with the side yard setbacks as the two-story addition needs to be aligned with the existing improvements on the property. Thus, a hardship does exist with respect to the side yard setbacks for the property. Similarly, a hardship exists with respect to the rear yard setbacks as the existing residence is constructed in the southern portion of the property with a minimal rear yard and the existing studio already has a nonconforming setback of 11.3 feet. Thus, any additions to the rear of the property, of reasonable size, will intrude into the rear yard. Therefore, a hardship exists with respect to the rear yard setback as well.

8. As a result of the foregoing, 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 Ordinance 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 prevent reasonable additions to be placed on the existing structure to produce an appropriate functioning home.

9. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. With respect to the side yard setback of the proposed two-story addition, the Planning Board notes that the adjacent property to the east is developed with a water tank structure. Any impact upon this property will be minimal. The addition will have no adverse impacts on the properties to the south as it will be fully blocked by the existing studio building and will have minimal or no impact upon the streetscape of Observatory Place as it is setback nearly four times the required front yard setback. Similarly, it will have little or no impact upon the properties to the west as it will be mostly blocked by the existing residence and will well exceed the side yard setback requirement on that side of the property, which will meet the combined side yard setback requirements. With respect to the rear yard setback, the nonconforming rear yard setback is an existing condition. While the deviation will be increased due to providing for additional construction, that construction will not be as large a deviation as existing condition. These additions will not be visible from the property to the east, from Observatory Place or to the north as it will be substantially blocked by the existing residence and will be adequate distance from properties to the east so as to have little or no impact upon them. Impacts upon the property to the south will be less than existing conditions and the proposed improvements are small in scale. Thus there will be no substantial detriment to the public good as the proposed improvements will not have substantial negative impacts on the surrounding properties and neighborhood.

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 the setback requirements are designed to ensure that buildings are not placed so close to the property line as to have an overbearing appearance of being too large and imposing or impeding light, air and open space. The Planning Board finds from the survey and architectural plans that the proposed improvements will not have those impacts and will not offend the purposes for which the Ordinance was designed. Nor will they change the character of the area or the neighborhood zoning scheme.

11. With respect to the lot coverage, the Planning Board finds that this is triggered by the existing conditions of the property, including the location of the existing improvements which dictate where appropriate additions can be placed. The Planning Board notes that the proposed improvements will not exceed the usable floor area ratio. Thus, the proposed home is not oversized for what is contemplated by the zone. In addition, the Applicant has designed the home with a stormwater system to avoid excessive runoff to adjacent properties which is a principal purpose of the lot coverage limitations in the zone. The Planning Board finds that the grant of the requested variance relief will not result in a property that appears to be overdeveloped. This is particularly so as the existing home and the proposed improvements are setback a substantial distance from the front property line along Observatory Place and will not have the visual impacts of overbuilding on the property due to the substantial setback of the buildings from the streetscape.

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 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 4<sup>th</sup> day of April, 2024, that the Application of **KATE MURRAY** 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. Side yard setback for proposed addition of 10.3 feet where 15 feet is required.
  - b. Rear yard setback of 11.3 feet where 30 feet is required.
  - c. Lot coverage of 23.9% where 15% is permitted.

2) The Applicant shall provide revised plans to demonstrate downspout runoff going to the east and west sides of the property, which plan is to be approved by the Planning Board Engineer.

**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:

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**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.

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