IN THE MATTER OF
APPLICATION NO. PB18-12
OF RONALD & CYNTHIA SENZ
AND VIDAR & LAURIE BREKKE
BLOCK 89, LOT 1.01 and 1.02

RESOLUTION GRANTING
MINOR SUBDIVISION APPROVAL
WITH VARIANCES

WHEREAS, RONALD & CYNTHIA SENZ AND VIDAR & LAURIE BREKKE,
hereinafter the "Applicant", has proposed the development of
property located at the intersection of Seventh Avenue with
Lincoln Avenue and Washington Avenues, in the Borough of
Atlantic Highlands, County of Monmouth, and State of New Jersey
which property is further known and designated as Block 89, Lots
1.01 and 1.02 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 Minor Subdivision approval
"lot line adjustment" to relocate the lot line between existing
Lots 1.01 and 1.02 including the conveyance of approximately 763
sq. ft. from existing Lot 1.01 to existing Lot 1.02 which will
result in new Lot 1.011 with a lot area of 9,418 sq. ft. which
will retain an existing front yard setback of 19.8 ft. where 20
ft. are required and create a new accessory building rear yard
setback of 4.8 ft. where 5 ft. are required and existing
conditions are 0 ft. where 5 ft. are required. Proposed new Lot
1.021 will have a lot area of 14,816 sq. ft. and will require
variances to retain an existing side yard setback of 9 ft. where
10 ft. are required, existing building height of 3 stories where
2.5 stories are permitted and 50.8 ft. where 35 ft. are
permitted and a new variance for floor area ratio of 0.424 where
0.40 is permitted and 0.404 exists. With the exception of the
accessory rear setback variance on proposed new Lot 1.011, which
is an improvement over existing conditions, and the floor area ratio variance for proposed new Lot 1.021, all of the remaining variances are a continuation of existing conditions. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 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 December 13, 2018, 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 for development permit of Ronald and Cynthia Senz dated August 29, 2018, marked as Exhibit A-1 in evidence.

1.2 Application of Ronald and Cynthia Senz with narrative of intent and checklist, dated August 29, 2018, marked as Exhibit A-2 in evidence.

1.3 Review of Zoning Officer Michelle Clark dated September 6, 2018, marked as Exhibit A-3 in evidence.


1.5 Review #1 of CME Associates, dated October 5, 2018, marked as Exhibit A-5 in evidence.

2) The premises in question are located at the intersection of Seventh Avenue, Lincoln Avenue and Washington Street which properties have street addresses of 36 East Lincoln Avenue and 37 East Washington Street, which properties are further known and designated as Block 89, Lots 1.01 and 1.02 respectively, 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 on lots with an area of 7,500 sq. ft. or greater.
4) Lot 1.01 is presently developed with a 1.5 story frame dwelling with attached garage, wood deck, driveway, paver patio and detached accessory shed structure. Lot 1.01 has two (2) existing non-conforming conditions including a front yard setback of the residence from Seventh Avenue of 19.8 ft. where 20 ft. are required and a detached shed which currently encroaches over the existing property line onto Lot 1.02 by approximately .5 ft. The proposed subdivision application will retain the 19.8 ft. non-conforming front yard setback where 20 ft. are required but will improve the condition of the detached shed increasing the rear yard setback from 0 ft. to 4.8 ft. where 5 ft. are required.

5) Lot 1.02 has existing non-conforming conditions of side yard setback of 9 ft. where 10 ft. are required, building height of 3 stories where 2.5 stories are permitted, building height of 50.8 ft. where 35 ft. are permitted and floor area ratio of 0.404 where 0.40 are permitted. These non-conforming conditions are proposed to continue with regard to the proposed subdivision with the exception of floor area ratio which will be increased to 0.424.

6) The Applicant was represented by Kevin E. Kennedy, Esquire who presented the testimony of Richard Stockton, a licensed Land Surveyor and professional Planner in the State of New Jersey and Dr. Ronald Senz, one of the property owners. The evidence demonstrated that there is an existing fence located on Lot 1.02 leaving a strip of Lot 1.02 beyond the fence with a width ranging from 5.02 ft. to 8.21 ft. contiguous to Lot 1.01. There has been some disagreement between the parties over the years with respect to the maintenance of the referenced strip of
land and the parties have reached an agreement to adjust the boundary line between the properties eliminating the existing boundary line and utilizing the existing fence as the new boundary line between the properties so that each of the Lots are well defined. The area of land being transferred from Lot 1.02 to Lot 1.01 is 763 sq. ft. (0.018 acres) and will result in two (2) Lots which are fully conforming in area, frontage and width. The existing non-conforming elements previously referenced herein will not change with the exception of the accessory building rear yard setback which will now be substantially more conforming at 4.8 ft. where 5.0 ft. are required and 0 ft. currently exists on proposed Lot 1.011 and the floor area ratio of 0.424 for proposed Lot 1.021 where 0.404 exists and 0.40 are permitted which is a slight increase. During the course of the hearing it was also noted that the driveway for new lot 1.021 will be less than five (5) feet from the new property line. This requires a new variance from the provisions of Section 150-54.F.

7) The testimony confirmed that the grant of the requested subdivision lot line adjustment will not have any visual impacts as there is an existing fence and the new lot line will follow the existing fence which currently has the appearance of being the property line between the two parcels. There is no new construction proposed and there will be no impact upon utilities.

8) The Applicant also presented testimony that the existing condition within the easement area creates title impediments for both Lots 1.01 and 1.02 which will be eliminated by the subdivision.
9) The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested bulk variance relief. The Planning Board finds that the grant of variance relief will encourage appropriate use and development of the subject property pursuant to N.J.S.A. 40:55D-2.a. as it will acknowledge the manner in which the properties are currently being utilized with the existing fence effectively operating as a dividing line between the properties. The Planning Board further notes that the grant of variance relief will acknowledge the existing conditions of the property and will improve those conditions as they relate to the accessory shed for new Lot 1.011.

10) The Planning Board further finds that, pursuant to N.J.S.A. 40:55D-2.c.&i., there will be adequate light, air and open space between the properties and setting the property line at the existing fence line will promote good civic design by not having several feet of property beyond the property line of lot 1.02 left to grow unattended imposing potentially unkempt conditions contiguous to lot 1.01.

11) The Planning Board finds that the Applicant has also satisfied the negative criteria for the grant of the requested bulk variance relief. The Planning Board finds that there will be no substantial detriment to the public good flowing from the grant of the requested variances as there will be no impacts upon the streetscape or the surrounding properties. There is no development proposed and the shifting of the property line will be unnoticeable as the fence is an existing condition that already gives the impression that it is the location of the
dividing line between these two Lots. Consequently, the Planning Board finds that there will be no adverse impact upon the public good as the result of the grant of the requested variance relief.

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 or Zoning Ordinance. The Planning Board finds that, with the exception of the rear yard setback of the accessory shed which non-conformity is being improved and the driveway setback from the side yard, all of the bulk non-conformities are existing conditions which will not be altered. The setback requirements of the Ordinance are designed to insure that there is adequate distance between structures on properties so as not to impede upon light, air and open space and not allow structures to be so close to property lines so as to have an overbearing impact and give the appearance of excessively large structures and over development of property. In this case all of the structures are existing conditions and there will be no change in those conditions with the exception of an improvement to the non-conformity of the detached shed. Therefore the grant of the requested variances will not offend the purposes for which the Ordinance provisions were adopted.

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 bulk variance relief.

14) The Planning Board further finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested floor area ratio and building height variances.
pursuant to N.J.S.A. 40:55D-70.d.(4)&(6). The Planning Board notes that the criteria to be applied for this variance is to determine whether, notwithstanding the deviation from the Ordinance requirements, the property nevertheless can accommodate the deviation. In this case the property already accommodates the deviation for building height as it is an existing condition which has been in place for many years. Thus, the property has accommodated that condition for many years without difficulty and the Planning Board finds that it can continue to do so. With respect to the floor area ratio the Planning Board finds that the deviation of 0.02 is diminimis and, in the context of the entire subdivision, results in no net change to the existing conditions of the property. The fence line has been in existence for many years such that effectively the floor area ratio between floor area and useable lot area for Lot 1.02 has been the requested 0.424 as the strip of property beyond the fence proposed to be attached to Lot 1.01 has been visually separated from Lot 1.02 and not used by Lot 1.02. Thus, Lot 1.02 has effectively accommodated the requested floor area ratio for many years without incident. The Planning Board finds that it will continue to do so.

15) The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief for the same reasons set forth with regard to the bulk variance relief. The building height and floor area ratio conditions are existing conditions which have been in place for many years and set the character of this area. There is no construction being proposed and the result of the lot line adjustment will have no visual or other impacts upon the streetscape or the surrounding properties. Consequently
there is no substantial detriment to the public good flowing from the grant of the requested variance relief.

16) In addition to the foregoing, the Planning Board finds that the grant of the requested relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. The building height is an existing condition that has set the character of the area for many years. Thus the grant of the variance relief requested herein simply acknowledges existing conditions as there is no proposed change. Similarly, the floor area ratio deviation will be imperceptible as it is, in effect, an existing condition as the existing fence creates the perception that the area outside of the fence is not part of lot 1.02. Thus there is no impact upon the Zone plan since these are existing conditions that have set the nature and character of the area which are not being changed.

17) 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 building height and floor area ratio variances.

18) The Planning Board further finds that the Applicant has submitted a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. The Planning Board further finds that finds that the detailed drawings, specifications and estimates of the Application conform to the standards established by Ordinance for final approval and that the application for minor subdivision approval can and should be approved at this time.
19) 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 support of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 10th day of January, 2019, that the Application of RONALD & CYNTHIA SENZ AND VIDAR & LAURIE BREKKE 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 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
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. Minor Subdivision Approval in accordance with the Minor Subdivision Plan Boundary Line Adjustment for Senz and Brekke, Lots 1.01 and 1.02 Block 89, prepared by Richard E. Stockton & Associates, Inc. dated July 25, 2017 and marked as Exhibit A-4 in evidence.

B. Variance for new Lot 1.011 for front yard setback of 19.8 ft. where 20 ft. are required.
C. Variance for new Lot 1.011 for accessory rear yard setback of 4.8 ft. where 5 ft. are required.

D. Variance for new Lot 1.021 for side yard setback of 9 ft. where 10 ft. are required.

E. Variance for new Lot 1.021 to permit a building height of 3 stories and 50.8 ft. where 2.5 stories and 35 ft. are permitted.

F. Variance for new Lot 1.021 to permit the floor area ratio of 0.424 where 0.4 is permitted.

G. Variance for new Lot 1.021 to permit a driveway side yard setback of less than five (5) ft.

**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: Dr. Cetron

SECONDED BY: Mrs. Murray

ROLL CALL:
YES: Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Mrs. Murray, Mr. Neff, Mr. Pepe
NO: None
ABSTAIN: None
ABSENT: Mr. Illiano, Councilman Fligor, Ms. Hoffman

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 January 10, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands