IN THE MATTER OF
APPLICATION NO. PB18-14
OF CHELSEA BUILDING & DEVELOPMENT, LLC
BLOCK 35, LOT 13

RESOLUTION GRANTING
VARIANCE APPROVAL

WHEREAS, CHELSEA BUILDING & DEVELOPMENT, LLC, hereinafter
the "Applicant", has proposed the development of property
located at 87 E. 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 35, Lot 13 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 new two-story dwelling with an attached garage on an
undersized Lot with a 12 ft. wide driveway and an attached wood
deck, requiring bulk variance approval for the following:

1. Lot area of 5,550 sq. ft. where 7,500 sq. ft. is
   required (Section 150-29 and Exhibit 5-2) (existing
   condition);

2. Lot frontage and width of 50 ft. where 75 ft. is
   required (Section 150-29 and Exhibit 5-2) (existing
   condition);

3. Lot Shape Diameter of 30 ft. where 45 ft. is required
   (Section 150-29 and Exhibit 5-2) (existing condition);

Contrary to the provisions of Chapter 150, Article V,
Section 150-29 of the 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 variance of Chelsea Building & Development, LLC, undated, marked as Exhibit A-1 in evidence.

1.2 Plot Plan prepared by Charles Surmonte, P.E., P.L.S., dated November 3, 2018, marked as Exhibit A-2 in evidence.

1.3 Architectural Plans prepared by Jerry Miceli, R.A. dated November 2, 2018, marked as Exhibit A-3 in evidence.
1.4 Zoning Review of Zoning Officer Michelle Clark, dated November 9, 2018, marked as Exhibit A-4 in evidence.

1.5 Technical Review #1 of CME Associates dated November 20, 2018, marked as Exhibit A-5 in evidence.

1.6 Zoning Officer completeness letter dated November 28, 2018, marked as Exhibit A-6 in evidence.

1.7 Information packet regarding historic ownership of subject property, marked as Exhibit A-7 in evidence.

1.8 Property Tax Assessor record, marked as Exhibit A-8 in evidence.

1.9 Photo-board with three (3) 8.5” x 11” photographs of existing cottage, marked as Exhibit A-9 in evidence.

1.10 Tax Map Sheets 11 & 14 showing lots with deficient area, width and lot shape diameter, marked as Exhibit A-10 in evidence.

1.11 Five (5) photographs of existing trees on subject property, marked as Exhibit A-11 (a-e) in evidence.

1.12 Letter to adjacent property owner Higgins dated November 29, 2018, marked as Exhibit A-12 in evidence.

1.13 Response letter from neighbor Higgins, undated, marked as Exhibit A-13 in evidence.
2. The premises in question are located at 87 E. 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 35, Lot 13 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 Applicant was represented by John Anderson, Esquire who presented the testimony of Charles Surmonte, a licensed professional Engineer and land Surveyor in the State of New Jersey, William Brooks a certified Arborist in the State of New Jersey and Robert Conti, a principal of the Applicant and licensed builder in the State of New Jersey. They presented testimony and exhibits to demonstrate that the subject property has three (3) existing non-conforming conditions for which variance relief is requested, including lot area, lot frontage/width and lot shape diameter. With the exception of those pre-existing non-conforming conditions, the proposed residence will meet all of the requirements of the R-1 Zone District. Mr. Surmonte also testified that a substantial number of properties within the immediate vicinity of the subject property exhibit similar non-conforming elements with respect to lot area, frontage and lot shape diameter, such that those elements of the subject property are consistent. The Applicant presented Exhibit A-10 demonstrating that the proposal is consistent with the Zone scheme and the surrounding neighborhood.
5. The Applicant provided testimony that the roof discharge of storm water will be directed to the street and to a dry well on the property and will not result in any adverse drainage impacts upon adjacent properties.

6. The Applicant agreed to comply with the technical comments and recommendations set forth in the report of the Planning Board's engineer dated November 20, 2018 marked as Exhibit A-5 in evidence as a condition of approval. The Applicant also provided testimony that appropriate soil conservation and erosion control measures will be utilized during construction to prevent any adverse impacts to adjacent property owners. The Applicant further provided testimony that the proposed building will comply with the floor area ratio requirements of the R-1 Zone and opined that this demonstrates that the proposed building is not too excessive in size or overdevelopment of the site notwithstanding that it is going to be placed on a lot with non-conforming conditions.

7. The Applicant also presented the testimony of William Brooks, a certified ISA Arborist, who testified as to the proposed tree removal on the property. He presented Exhibit A-11 which is a series of photographs demonstrating that the trees to be removed are in fair to poor condition with limb failures and present the possibility of major failure that could result in damage to the proposed building on the property as well as to the building on an adjacent parcel.

8. Mr. Brooks testified that the Applicant proposes to remove three (3) Black Locusts and two (2) Norway Maples and the Applicant agreed to replace landscaping in the front of the
property and along adjacent Lot 12 to replace the trees being removed. That replacement will be submitted as a plan to the Planning Board Engineer for review and approval.

9. Mr. Conti, a building contractor with thirty-one years of construction experience, testified that the residence will be approximately 2,200 sq. ft. in area and will be of a modern farm house appearance which fits with the character of the surrounding development. He testified that the property will have a cellar that will be in conformity with the requirements of the Borough of Atlantic Highlands Ordinance.

10. The Applicant also provided testimony as to the existing cottage on the property which is aged and in run-down condition and which violates the required setbacks. Conversely, the proposed new dwelling will offer substantial visual and aesthetic improvements and conform to all of the setback requirements of the R-1 Zone and will be an improvement to the subject property moving the building away from buildings on adjacent properties and providing for greater light, air and open space. The Planning Board agrees.

11. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board finds that the non-conforming elements are existing conditions that have been in place for many years. Moreover the property is presently developed with an existing run down residence that will be removed and replaced with a new residence with conforming setbacks. The Planning Board notes that, due to the existing conditions of the property there is a hardship associated with
the property as the property cannot be developed without the grant of variance relief.

12. The Planning Board notes that the Applicant presented testimony with respect to the requirements of the case of Dahlmeyer v. Lacey Township for the grant of variance relief for undersized lots and presented some proofs in that regard with respect to adjacent oversized Lot 14. The Planning Board notes that the Dahlmeyer case applies only to vacant undeveloped Lots. The subject property is a developed Lot with an existing home. Consequently, the Planning Board finds that the Dahlmeyer case does not apply and does not base a grant of variance relief upon the principals set forth in that case as they are inapplicable.

13. For the reasons stated previously herein, the Planning Board finds that a hardship does exist that satisfies the positive criteria for the grant of the variances on the basis of a “c(1)” hardship. The Planning Board further finds that the testimony and exhibits presented by the Applicant were sufficient to satisfy the positive criteria for the grant of a “c(2)” planning variance as the grant of variance will promote the purposes of the Municipal Land Use Law of promoting greater light, air and open space from adjacent properties and a more desirable visual environment by replacing the existing nonconforming residence with a new residence with conforming setbacks.

14. The Planning Board further finds that Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that there will be no substantial detriment to the public good flowing from the grant
of this variance. Instead there will be a positive impact upon the public good as it will remove an existing aged, deteriorated structure from the property which is located within the front and side yard setbacks and replace it with a new attractive structure which will conform to all of the required setbacks of the Zone. Therefore this is an improved condition creating greater light, air and open space in the area. Furthermore, the Applicant presented testimony and exhibits demonstrating the proposed development is consistent with existing development in the neighborhood which has numerous lots with similar characteristics. In addition, the removal of the existing residence and the construction of the new residence will result in the removal of existing deteriorating trees that present a hazard to the subject property and adjacent property and will be replaced with new healthy vegetation. This will further improve the subject property and provide a safer condition for the neighboring property. Based upon the foregoing, the Planning Board finds that the grant of variance relief will not result in any substantial detriment to the public good as it will actually result in an improvement to the subject property and the surrounding neighborhood.

15. 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 notes that the property has been developed for many years with the existing residence which has significant non-conforming elements with respect to setbacks. The grant of the requested variance relief will result in a new home that will comply with all of the setback requirements of the Zone. Therefore it will be more conforming than the existing conditions on the property
and will be an improvement to the Zone Plan and Zoning Ordinance. The Planning Board finds that the negative impacts upon the Zone Plan and Zoning Ordinance are insubstantial and are outweighed by the positive impacts of removing an existing, non-conforming, aged, deteriorated dwelling and replacing it with a new, more conforming dwelling.

16. 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.

17. 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 CHELSEA BUILDING & DEVELOPMENT, LLC, 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 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. Variance for lot area of 5,550 sq. ft. where 7,500 sq. ft. is required.

B. Variance for lot frontage/width of 50 ft. where 75 ft. is required.
C. Variance for Lot shape diameter of 30 ft. where 45 ft. is required.

2) The Applicant shall provide a roof discharge system so that stormwater will be directed to the street and to a dry well.

3) The Applicant shall comply with the technical comments and recommendations set forth in the report of the Planning Board’s Engineer CME Associates marked as Exhibit A-5 in evidence.

4) The Applicant shall employ soil conservation and erosion control measures during the course of construction.

5) The Applicant shall comply with the floor area ratio requirements of the R-1 Zone District.

6) The Applicant shall remove three (3) Black Locusts and two (2) Norway Maple trees and replace them with new trees and landscaping pursuant to a plan to be submitted to, and approved by, the Planning Board Engineer.

7) The new residence shall have a cellar in full conformity with the Borough of Atlantic Highlands Development Regulations Ordinance.

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: Mr. Colangelo
SECONDED BY: Dr. Cetron

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

[Signature]
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.

[Signature]
Secretary, Planning Board
Borough of Atlantic Highlands