IN THE MATTER OF  
APPLICATION NO. PB19-02  
OF DANIEL & DARLENE MIRAGLIOTTA  
BLOCK 134 LOT 3

RESOLUTION GRANTING  
VARIANCE APPROVAL

WHEREAS, DANIEL & DARLENE MIRAGLIOTTA, hereinafter the "Applicant", has proposed the development of property located at 24 South Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 134, 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 an in-ground swimming pool and surrounding patio on an undersized Lot of record with the following existing non conforming elements:

1. Lot area of 6500 sq. ft. where 7500 sq. ft. is required.

2. Lot frontage of 50 ft. where 75 ft. is required.

3. Lot shape diameter of 30 ft. where 50 ft. is required.

4. Side yard setback of 7 ft. where 10 ft. is required.

5. Side yard combined setback of 14 ft. where 20 ft. is required.
6. Accessory side yard setback of 2 ft. where 5 ft. is required.

7. Accessory rear yard setback of 3.1 ft. where 5 ft. is required; and

**WHEREAS,** Chapter 150 Article VII Section 150-49 provides that principle or accessory buildings and structures may not be constructed on nonconforming Lots unless the Lot conforms to the minimum Lot area requirements; and

**WHEREAS,** The subject property is located in the R-1 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 September 12, 2019 due Notice of said meeting having been 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 Variance application of Daniel & Darlene Miragliotta with schedule "A" variance list marked as Exhibit A-1 in evidence.

1.2 Pool specification plan prepared by Swim-Mor Pools and Spas dated November 10, 2018, marked as Exhibit A-2 in evidence.

1.3 Narrative statement of Swim-Mor Pools and Spas with coverage calculations marked as Exhibit A-3 in evidence.

1.4 Zoning Officer Denial dated December 19, 2018, marked as Exhibit A-4 in evidence.

1.5 Existing Conditions Survey prepared by Main Street Surveying dated March 11, 2019, marked as Exhibit A-5 in evidence.

1.6 Proposed Conditions Survey prepared by Main Street Surveying dated March 11, 2019, marked as Exhibit A-6 in evidence.

1.7 Color Rendering of proposed pool and patio area marked as Exhibit A-7 in evidence.

1.8 Review #1 of CME Associates dated May 2, 2019, marked as Exhibit A-8 in evidence.
1.9 Planning Board Resolution adopted October 10, 1996 for Block 134 Lot 3 granting side setback variances marked as Exhibit A-9 in evidence.

1.10 Memorandum of Michael B. Steib, Esq. dated May 2, 2019, marked as Exhibit A-10 in evidence.

1.11 Review #2 of CME Associates dated July 17, 2019, marked as Exhibit A-11 in evidence.

1.12 Pool grading plan prepared by James E. Maccariella, A.I.A dated June 19, 2019, marked as Exhibit A-12 in evidence.

2. The premises in question are located at 24 South Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 134 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 homes with associated accessory structures are a permitted use in the Zone.

4. The property in question has approximate dimensions of 50.00 ft. x 130.00 ft. x 50.00 ft. x 130.00 ft. and is an elongated rectangle in shape with an approximate area of 6,500 sq. ft. The premises are presently developed with an existing two story single family residential home with driveways, walkways, a dog pen.
and a detached shed. As set forth previously all of these are pre-existing non conformities and do not require variance relief in connection with this application. A variance is required insofar as the Lot is undersized and the Zoning Ordinance prohibits the Construction of new principal or accessory structures on undersized Lots without variance approval.

5. The Applicant provided testimony that the swimming pool size was chosen so that this new structure will comply with all of the setback requirements of the Zone and not result in the creation of any new non-conformities. The Planning Board finds that this accessory pool structure is an appropriate amenity that is anticipated to be an accessory use for homes within the R-1 Zone District.

6. In addition to the foregoing the Planning Board finds that the Applicant has chosen a swimming pool of a size and location will conform with all the Ordinance requirements other than the pre-existing non conforming elements.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief as the property has a hardship due to its pre-existing undersized Lot area. Thus any new structure proposed to be placed on the property requires variance relief. The Planning Board finds that this results in an extraordinary and exceptional situation uniquely affecting this specific piece of property and the
structures existing thereon since the strict application of
the Atlantic Highlands Development Regulations would result
in peculiar and exceptional practical difficulties to and
exceptional and undue hardship upon the Applicant as it
would prevent the Applicant from having an in-ground
swimming pool of any size. The Planning Board also finds
that the grant of the requested variance relief will
provide sufficient space in an appropriate location for
this residential accessory use thus promoting the purposes
of the Municipal Land Use Law to justify the grant of
variance relief on a planning basis.

8. 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 relief will not result in
any substantial detriment to the public good. The Planning
Board notes that the swimming pool will not be visible from
the street as it will be blocked by the existing dwelling.
The swimming pool will be at ground level and therefore
will not have any visibility from the surrounding
properties. Teh Planning Board finds that any detriment
flowing from the grant of the variance will be
insubstantial.

9. 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 proposed swimming pool is a permitted use
in the Zone and will honor all of the setback requirements
of the Zone. But for the undersized nature of the existing
Lot no variance would be required. Since it does not result in the violation of any setback requirements the swimming pool to be located a sufficient distance from the adjacent properties, the same distance as would be required if the Lot was of a conforming Lot area. The Planning Board finds that there be no adverse impacts as this is a permitted use in the Zone and honors all of the dimensional requirements of the Zone. Any adverse impacts upon the Zone scheme are insubstantial.

10. As a result 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 variance can and should be granted at this time.

11. 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 October, 2019 that the Application of DANIEL & DARLENE MIRAGLIOTTA 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 approval granted in connection with this application is to permit the construction of an in-ground swimming pool and patio area on an undersized Lot.

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. PEPE

SECONDED BY: MR. NEFF

ROLL CALL:
YES: DR. KLOBY, MR. FLIGOR, MR. CACCAMO, DR. CETRON, MR. NEFF, MR. PEPE, MR. COLANGELO, MR. MCGOLDRICK

NO: NONE

ABSTAIN: MS. DREW

ABSENT: MR. HAMLEY, MRS. MURRAY, MR. DOUGHERTY, MR. ILLIANO

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 October 10, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands