IN THE MATTER OF  
APPLICATION NO. PB19-04  
OF CHRISTINA HENDRICKSON  
BLOCK 36 LOT 10

RESOLUTION GRANTING  
VARIANCE APPROVAL

WHEREAS, CHRISTINA HENDRICKSON, hereinafter the "Applicant", has proposed the development of property located at 95 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 36, Lot 10 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 approval to construct an 800 sq. ft. in-ground swimming pool along with a pool filter/heater and a 6 ft. tall stockade fence along with a concrete cooking/patio area which requires the following variances:

A. Pool wall side yard setback of 5 ft. where 10 ft. are required (Section 150-54(G)(2))

B. Rear yard setback for pool wall of 5 ft. where 10 ft. are required (Section 150-54(G)(II))

The Applicant also proposes to retain existing nonconforming elements including:

A. Lot area of 5,750 sq. ft. where 7,500 sq. ft. are required.
B. Lot frontage and width of 50 ft. where 75 ft. are required
C. Lot shape diameter of 30 ft. where 50 ft. are required
D. Principle building front yard setback of 10.2 ft. where 20 ft. are required
E. Principle building side yard setback of 1.6 ft. where 10 ft. are required

F. Driveway side yard setback of 2.5 ft. where 5 ft. are required

The foregoing being contrary to the provisions of the Development Regulations of the Borough of Atlantic Highlands Chapter 150, Article V Section 150-29 and Article VII Section 150-54 respectively 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 August 8, 2019, 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 denial of Zoning Officer Michelle Clark dated April 2, 2019 marked as Exhibit A-1 in evidence.
1.2 Variance application of Christina Hendrickson dated March 21, 2019 marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Azimuth Land Surveying Company, Inc. dated February 12, 2012 marked as Exhibit A-3 in evidence.

1.4 Modified Survey/Variance plan prepared by Azimuth Land Surveying Co., Inc. dated February 12, 2012 (showing rectangular pool) marked as Exhibit A-4 in evidence.

1.5 Survey prepared by Azimuth Land Surveying Co., Inc. dated February 12, 2012 with handwritten notations and pool location (showing “L” shaped pool) marked as Exhibit A-5 in evidence.

1.6 Report CME Associates dated June 4, 2019 review #1 marked as Exhibit A-6 in evidence.


1.8 Survey of property prepared by the Cannon Group, P.C. dated June 21, 2019 marked as Exhibit A-8 in evidence.

1.9 Pool Grading Plan prepared by the Cannon Group, P.C. dated June 21, 2019 marked as Exhibit A-9 in evidence.

1.10 Drainage calculations of the Cannon Group, P.C. dated July 1, 2019 marked as Exhibit A-10 in evidence.

2. The premises in question are located at 95 Asbury Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 36, Lot 10 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 premises in question have approximate dimensions of 50.00 ft. x 115.00 ft. x 50.00 ft. x 115.00 ft. and are an elongated rectangle in shape with an approximate area of 5,750 sq. ft. (0.13+/− acres). The property is presently developed with a two-story dwelling, a concrete patio, paver patio, concrete slab from a prior garage, asphalt driveway and fencing. The subject property has the following pre-existing non-conforming elements

A. Lot area of 5,750 sq. ft. where 7,500 sq. ft. are required

B. Lot frontage and width of 50 ft. where 75 ft. are required

C. Lot shape diameter of 30 ft. where 50 ft. are required

D. Principle front yard set back of 10.2 ft. where 20 ft. are required

E. Principle building side yard set back of 1.6 ft. where 10 ft. are required

F. Existing driveway with 2.5 ft. setback from side Line where 5 ft. are required

5. The Applicant proposes to construct an 800 sq. ft. in-ground swimming pool along with a pool filter/heater, concrete cooking/patio area and a 6 ft. tall stockade fence. The proposed swimming pool will have a side yard and rear yard set back of 5 ft. where 10 ft. are required thus requiring Variance Relief for those non-conformities.
6. The Applicant Christina Hendrickson provided testimony that the property is an existing undersized lot of record and that in order to have a swimming pool on the property which is an amenity contemplated for properties located in the R-1 Zoning District, Variance Relief is necessary as, due to the elongated rectangular shape of the property coupled with the location of the existing residence and other improvements, there is no way to locate the swimming pool on the property in a conforming manner. The Planning Board finds that due to the foregoing factors 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 of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional undue hardship upon the Applicant as it would prevent the Applicant from having this swimming pool amenity on their property. Therefore, the Planning Board finds that a hardship does exist and that the Applicant has satisfied the positive criteria for the grant of the requested variance relief.

7. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board notes the Applicant's testimony that all of the surrounding homes are located a significant distance from the position of the proposed pool on the applicants Lot. Therefore, any impacts on the surrounding properties will be minimal. The Applicant further testified that there will be no further changes in grade at the property lines and that she will provide silt fencing during the construction along the side and rear property lines in order to prevent any runoff to the adjacent properties. The Applicant further testified that when the pool is backwashed or pumped out the water will be directed to the street and will not impact upon the adjacent neighbors' property. She further testified that any soil required to be excavated for the swimming pool will be removed from the property and not used to re-grade the property.
As a result of the foregoing the Planning Board finds that the grant of the variance relief will not result in any substantial detriment to the public as it will have minimal or no impact upon the adjacent properties or a Streetscape. The Planning Board finds that the pool will be at grade level and will be surrounded by stockade fence. Thus it will not be visible to the adjacent properties. In addition to the foregoing it will not be visible from Asbury Avenue as the existing residence will function to Block the view of the swimming pool from the street.

Therefore, the Planning Board finds that any impacts upon the surrounding neighborhood will be insubstantial.

8. 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 the side and rear yard setbacks of the Ordinance are designed to insure that structures are not placed so close to property lines as to have an over imposing appearance and impact upon adjacent properties and to provide for adequate light, air and open space in between properties. The Planning Board notes that the proposed swimming pool improvements will be at ground level and will not be visible from the adjacent properties and will not have the impacts sought to be avoided by the Ordinance. Therefore the grant of variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance.

9. 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 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 12th day of September, 2019 that the Application of CHRISTINA HENDRICKSON 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. Accessory side yard setback for proposed swimming pool of 5 ft. where 10 ft. is required (Section 150-54 (G)(II)) (Exhibit 5-2)

B. Accessory rear yard setback for proposed swimming pool of 5 ft. where 10 ft. is required (Section 150-54(G)(II)) (Exhibit 5-2)

2) The Applicant shall provide silt fencing along the side and rear property lines during the Construction of the swimming pool.
3) There shall be no change in the grading of the property at the property lines.

4) Any soil excavated for the Construction of the swimming pool shall be removed from the subject property and not re graded elsewhere on the property.

5) Any water from backwashing or pumping of the pool shall be directed to the Street and not toward neighboring properties.

6) The applicant shall comply with the technical recommendations set forth in the Report of the Planning Board Engineer CME Associates dated June 27, 2019 and marked as Exhibit A-7 in evidence.

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: Mrs. Murray

SECONDED BY: Dr. Cetron
ROLL CALL:

YES: Mr. Caccamo, Dr. Cetron, Mr. Pepe, Mrs. Murray, Mr. Colangelo, Mr. Dougherty, Ms. Drew, Mr. McGoldrick, Mr. Illiano

NO: None

ABSTAIN: None

ABSENT: Dr. Kloby, Mr. Neff

RECUSED: Mr. Fligor, Mr. Hawley

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 September 12, 2019.

Secretary, Planning Board Borough of Atlantic Highlands