IN THE MATTER OF
APPLICATION NO. PB19-06
OF MITCHELL DAITZ
BLOCK 1 LOT 21

RESOLUTION GRANTING
VARIANCE APPROVAL

WHEREAS, MITCHELL DAITZ, hereinafter the " Applicant", has
proposed the development of property located at 46 Bayside
Drive, in the Borough of Atlantic Highlands, County of Monmouth,
and State of New Jersey which property is further known and
designated as Block 1, Lot 21 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 single family dwelling with an attached garage
and site improvements, including driveways, walkways, new septic
system, tree removal, drainage improvements and re-grading of
disturbed Lot area which require the following variances:

A. Side yard setback of 5.33 ft. where 15 ft. is required
   (Section 150-29(A)(2)) (Exhibit 5-2)

B. Combined side yard setback of 20.33 ft. where 30 ft.
   is required (Section 150-29(A)(2)) (Exhibit 5-2)

C. Building coverage of 21.6% where 12% is permitted
   (Section 150-29(A)(2)) (Exhibit 5-2)

D. Floor area ratio (FAR) of 0.39 where 0.175 is permitted
   (Section 150-29(A)(2)) (Exhibit 5-2)
E. Lot coverage in steep slope area of 3,330 sq. ft. where 2,189 sq. ft. is permitted (Section 150-29(A)(2)) (Exhibit 5-2)

F. Impervious coverage in steep slope area of 2,705 sq. ft. where 2,586 sq. ft. is permitted (Section 150-78(E)(4))

G. Lot disturbance in steep slope area of 5,731 sq. ft. where 3,362 sq. ft. is permitted (Section 150-78(E)(4))

The following existing non-conforming elements will continue:

A. Lot area of 10,479.52 sq. ft. where 30,000 sq. ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

B. Lot Shape Diameter of 29.9 ft. where 65 ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

C. Lot frontage of 60.07 ft. where 100 ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

Contrary to the provisions of the Development Regulations of the Borough of Atlantic Highlands, and

**WHEREAS**, the subject property is located in the R-3 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 July 11, 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 Steep Slope Plan prepared by Insite Engineering, LLC dated March 20, 2019 revised through June 26, 2019, marked as Exhibit A-1 in evidence.

1.2 Steep Slope Review #1 prepared by CME Associates, dated April 12, 2019, marked as Exhibit A-2 in evidence.

1.3 Steep Slope response to CME Review #1 prepared by Insite Engineering, LLC dated April 23, 2019, marked as Exhibit A-3 in evidence.

1.4 Zoning review of Zoning Officer Michelle Clark dated May 9, 2019, marked as Exhibit A-4 in evidence.
1.5 Variance application of Mitchell Daitz with Narrative of Intent dated April 26, 2019, marked as Exhibit A-5 in evidence.

1.6 Architectural Elevation and Floor Plans prepared by Virtuoso Architecture, dated March 20, 2019 consisting of nine (9) sheets, marked as Exhibit A-6 in evidence.

1.7 Review #1 of CME Associates dated June 14, 2019, marked as Exhibit A-7 in evidence.

1.8 Elevation Rendering prepared by Virtuoso Architecture, marked as Exhibit A-8 in evidence.

1.9 Color site rendering of proposed conditions, prepared by Insite Engineering, marked as Exhibit A-9 in evidence.

1.10 Aerial photograph showing Lot layout prepared by Insite Engineering, marked as Exhibit A-10 in evidence.

1.11 Site rendering overlaid on aerial photograph combining Exhibits A-9 and A-10, marked as Exhibit A-11 in evidence.

1.12 NJDEP Coastal Jurisdictional Determination of Non-applicability, marked as Exhibit A-12 in evidence.

1.13 Flood Hazard applicability determination indicating non-applicability, marked as Exhibit A-13 in evidence.
2. The premises in question are located at 46 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 1, Lot 21 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-3 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 60.07 ft. x 163.99 ft. x 63.12 ft. x 187.68 ft. and is an elongated rectangle in shape with an approximate area of 10,479.52 sq. ft. (0.241 acres). The premises are presently developed with an existing single family residential dwelling with detached garage and walkways.

5. The Applicant proposes to construct a new four (4) bedroom home pursuant to plans prepared by Virtuoso Architects which were marked in evidence as Exhibit A-6. The new home will provide for a two-car garage along with a two-parking space driveway in order to provide adequate off-street parking. The testimony demonstrated that, due to the width of Bayside Drive in this area, parking on the street is extremely difficult and therefore having adequate parking on site is an improvement to the existing conditions. The Architect Mr. Grabowski testified as to the basic architectural elements and floor plan of the proposed home noting that the one-half story attic will not be habitable space. That is a condition of this approval. Mr. Grabowski further noted that the building height will be 33 ft. 6 in. which is less than the permitted 35 ft. height in the
Zone. He further testified that the area labeled on Exhibit E-1 as a basement will actually conform to the Zoning Ordinance requirements for a cellar.

6. Mr. Ward testified from an Engineering standpoint as to the physical characteristics of the subject property and noted that no CAFRA permit is required for the project. He further testified that application has been made to NJDEP for a Letter of Interpretation (LOI) which has not yet been received but which he believes from an Engineering standpoint will not interfere with the proposed improvements.

7. Mr. Ward testified as to the two-car garage and two-car driveway noting that the proposed improvements will be placed in a "fairly level" area of the site. He opined that it is not possible to construct a reasonably sized home on the subject property and comply with the required side yard setback requirements due to the limited lot width. The Planning Board agrees that the subject property is an elongated rectangle with limited lot width that constitutes a hardship to develop the property in compliance with the zoning requirements regarding side yard setback. Thus the Applicant has satisfied the positive criteria for the grant of those requested variances. The Planning Board notes Mr. Ward's testimony with respect to maintaining the optimum setbacks practicable providing for the maximum distance from adjacent homes to the east and west. He further testified as to the three (3) tier retaining wall along the left side of the property and the landscape stone surfacing for more stable runoff on the right side of the property along with downspouts into the ground with discharge at the rear of the property in order to maintain proper stormwater runoff. Mr.
Ward further testified that eliminating the existing non-conforming detached garage will improve the conditions for side setback and the new side setbacks will be increased over existing conditions.

8. Mr. Ward further testified that the building coverage proposed is consistent with other homes in the area. He noted that this is a substantially undersized Lot and that, in order to construct a home that is consistent with other homes in the immediate vicinity, it is necessary to exceed building coverage and floor area ratio limitations. He opined that the grant of relief for these variances will promote the purposes of the Municipal Land Use Law including those set forth at N.J.S.A. 40:55D-2.b.,c. and i. by securing safety from fire, flood, panic and other natural man-made disasters by replacing an existing dilapidated residence with a new home that is constructed to current codes; providing adequate light, air and open space with greater side yard setbacks than currently exist and promoting a desirable visual environment by constructing an attractive new home consistent with other homes in the vicinity in place of the existing run-down building. The Planning Board agrees and finds that the Applicant has met the positive criteria for the grant of this variance relief.

9. Mr. Ward also testified as to the variances related to steep slope requirements, including lot coverage, impervious surface and lot disturbance. He opined that, due to the undersized condition of the subject property coupled with the topography of the property, these limitations cannot be complied with. He further testified that the proposed development will be consistent with the intent and purpose of the steep slope
provisions. The Planning Board agrees and finds, for the same reasons set forth previously herein, that the Applicant has satisfied the positive criteria for the grant of the requested variance relief, both on the basis of hardship due to the physical conditions of the property as well as promoting the purposes of the Municipal Land Use Law.

10. 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 variances will not result in any substantial detriment to the public good. The Planning Board finds that the proposed development will actually be an improvement to the subject property and the neighborhood by providing a new home up to current code standards with a two (2) car garage and two (2) parking spaces in the driveway so as to alleviate congestion on Bayside Drive. The Planning Board finds that the proposed improvements will provide substantial benefits to the neighborhood and that any potential adverse impacts are insubstantial. The Planning Board notes that an adjoining property owner was represented by Attorney Joel Davies who opined that the proposed home is too large for the Lot and changes the character of the area. The Planning Board disagrees.

11. 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 it agrees with the Applicant’s witnesses and from the Applicant’s exhibits that the proposed improvements will be consistent with other improvements along Bayside Drive and will not result in changing the character of the area. The
Planning Board finds that the proposed improvements will be consistent with other developed properties in the vicinity and in the R-3 Zone District and therefore there will be no substantial adverse impacts to the Zone plan and Zoning ordinance.

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 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 8th day of August, 2019 that the Application of MITCHELL DAITZ 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”.

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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.

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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 of 5.33 ft. where 15 ft. is required
   (Section 150-29(A)(2)) (Exhibit 5-2)

B. Combined side yard setback of 20.33 ft. where 30 ft.
   is required (Section 150-29(A)(2)) (Exhibit 5-2)

C. Building coverage of 21.6% where 12% is permitted
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   ft. where 2,586 sq. ft. is permitted (Section 150-78(E)(4))

G. Lot disturbance in steep slope area of 5,731 sq. ft.
   where 3,362 sq. ft. is permitted (Section 150-78(E)(4))

   2) The following existing non-conforming elements will
   continue:

A. Lot area of 10,479.52 sq. ft. where 30,000 sq. ft. is
   required (Section 150-29(A)(2)) (Exhibit 5-2)

B. Lot Shape Diameter of 29.9 ft. where 65 ft. is
   required (Section 150-29(A)(2)) (Exhibit 5-2)
C. Lot frontage of 60.07 ft. where 100 ft. is required
(Section 150-29(A)(2)) (Exhibit 5-2)

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. Caccamo

SECONDED BY: Mrs. Murray

ROLL CALL:

YES: Mr. Caccamo, Mr. Neff, Mrs. Murray, Mr. Colangelo, Mr. Dougherty,
NO: Mr. Hawley, Dr. Cetron, Mr. Illiano

ABSTAIN: None

ABSENT: Mr. Pepe, Ms. Drew, Mr. McGoldrick

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 August 8, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands