IN THE MATTER OF  
APPLICATION NO. PB19-08  
OF MYLES STOUT  
BLOCK 144 LOT 1

RESOLUTION GRANTING  
VARIANCE APPROVAL

WHEREAS, MYLES STOUT, hereinafter the "Applicant", has proposed the development of property located at 57 Avenue D, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 144, Lot 1 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 retain a 10 foot by 14 foot shed in the northwest corner of the property with a side yard setback of 2 ft. where 5 ft. are required and a rear yard setback of 1.5 ft. where 5 ft. are required 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 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 November 14, 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 review of Zoning Officer Michelle Clark, dated June 17, 2019, marked as Exhibit A-1 in evidence.

1.2 Variance application of Myles Stout, dated March 21, 2019, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Charles Surmonte, P.E., P.L.S., dated March 31, 2019, marked as Exhibit A-3 in evidence.

1.4 Survey prepared by Charles Surmonte, P.E., P.L.S., dated March 31, 2016 with hand drawn shed location, marked as Exhibit A-4 in evidence.

1.5 Review No. 1 of CME Associates, dated July 15, 2019, marked as Exhibit A-5 in evidence.

1.6 Board Exhibit with photograph and enlarged plot plan, marked as Exhibit A-6 in evidence.
2. The premises in question are located at 57 Avenue D, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 144, Lot 1 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 60.00 ft. x 131.00 ft. x 72.05 ft. x 131.55 ft. and is substantially rectangular in shape with an approximate area of 8,646 +/- sq. ft. The property is presently developed with a one-story residence with wood deck, stone Drive, vinyl perimeter fence and a detached shed which has a side yard setback of 2 ft. where 5 ft. are required and a rear yard setback of 1.5 ft. where 5 ft. are required. The Applicant provided testimony that prior to purchasing the shed he inquired of the Borough whether a permit was required to install it. He was advised that no construction permit was required since there is no foundation for the structure. The vendor of the shed further advised the Applicant that the shed could be located where it was ultimately placed on the property. The Applicant later learned that, although no construction permit was required, a zoning permit was required to insure that the zoning regulations were complied. He further learned that the structure was located in violation of the setback requirements of the Zone and therefore variances are required.
5. The Planning Board notes that the subject property is unique in that it has frontages both on Avenue D and Highland Avenue. Therefore, it has two front yards that and Section 150-54.A.(2) prohibits detached accessory buildings being placed within a front yard. Thus those prohibitions coupled with the location of the existing dwelling leave a minimal area within which an accessory shed can be placed on the subject property. As a result of the foregoing, the Planning Board finds that a hardship does exist due to the dual frontage and the location of the existing residence on the property. Therefore, the Planning Board finds that 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 and practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent the Applicant from having this type of amenity, which is contemplated by the Ordinance to be accessory to single family residential homes in the R-1 Zone District.

6. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial detriment to the public good. The Planning Board notes that several neighborhood residents appeared in support of the Application. They advised the Planning Board of, and the Applicant produced a photograph of, the white vinyl fence that surrounds the area of the property in question such that the only a small portion of the roof of the shed can be seen from the street or adjacent neighbors. In addition, the immediately adjacent neighbor testified that if the shed were located in a
more conforming location it would impede upon their privacy as it would be in an area of visibility where one could look into the neighbors windows. Thus, the neighboring residents found that the proposed location with the grant of variances is preferable to placing the shed in a more conforming area. The Planning Board agrees and finds that any adverse impacts arising from the grant of variance relief are insubstantial.

7. The planning Board further finds that the grant of requested variance relief will not result in any substantial impairment of the Zone plan or Zoning Ordinance. The Planning Board finds that the setback requirements are designed to insure that buildings and structures are not placed so close to the property line as to impede upon the light, air and open space of adjacent neighbors, or to have an overly imposing appearance upon neighboring properties. In this case, the shed is modest in size and is almost entirely blocked from view of the neighboring residences by the existing vinyl fence. Thus, it will not have the impacts sought to be avoided by the Ordinance.

8. 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.

9. 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 December, 2019 that the Application of MYLES STOUT, 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. Side yard setback for shed structure of 2.0 ft. where 5.0 ft. are required.

   B. Rear yard setback for shed of 1.5 ft. where 5 ft. are required.

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. Neff
SECONDED BY: Mr. McGoldrick

ROLL CALL:

YES: Mr. Caccamo, Mr. Neff, Mr. Colangelo, Mr. Dougherty
Ms. Drew, Mr. McGoldrick
NO: None

ABSTAIN: None

ABSENT: Dr. Kloby, Mr. Murphy, Mr. Hawley, Dr. Getron,
Mr. Pepe, Mrs. Murray, 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 December 12, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands