IN THE MATTER OF
APPLICATION NO. PB19-10
OF T. MICHAEL & ELIZABETH FORTIER
BLOCK 94 LOT 17

RESOLUTION GRANTING
VARIENCE APPROVAL

WHEREAS, T. MICHAEL FORTIER & ELIZABETH FORTIER,
hereinafter the "Applicant", has proposed the development of
property located at 37 Fourth Avenue, in the Borough of Atlantic
Highlands, County of Monmouth, and State of New Jersey which
property is further known and designated as Block 94, Lot 17 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
permit the Construction of a three story addition to an existing
single family residential home that requires the following
variance relief:

A. Front yard setback for a third-floor addition of 9.2
ft. where 20 ft. is required (Section 150-29 (A)(2)).

B. Side yard setback of third floor addition of 4.2 ft.
where 10 ft. is required (Section 150-29 (A)(2)).

C. Total side yard setbacks of 15.4 ft. where 20 ft. is
required (Section 150-29 (A)(2)).

D. Building coverage of 38% where 25% is permitted
(Section 150-29 (A)(2)).
E. Building height of 39 ft. where 35 ft. is permitted (Section 150-29 (A)(2)).

F. Building height of 3 stories where 2.5 stories is permitted (Section 150-29 (A)(2)).

G. Floor area ratio of 0.604 where 0.40 is permitted (Section 150-29 (A) (2)).

Contrary to the provisions of Chapter 150 Article V, Section 150-29 (A) 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 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 October 10, 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 Application for variance of T. Michael & Elizabeth Fortier dated May 6, 2019, marked as Exhibit A-1 in evidence.

1.2 Location survey prepared by Richard E. Stockton & Associates dated June 7, 2018, revised September 26, 2019, marked as Exhibit A-2 in evidence.

1.3 Site Plan with Elevation and Floor Plans prepared by CJ Stone, Architect dated July 29, 2019, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates dated September 4, 2019, marked as Exhibit A-4 in evidence.

1.5 Review #1 A of CME Associates dated September 5, 2019, marked as Exhibit A-5 in evidence.

1.6 Review #1 B of CME Associates dated October 1, 2019, marked as Exhibit A-6 in evidence.

1.7 Color Photograph of subject property 11 in. by 17 in. and showing two properties to the east of the subject property, marked as Exhibit A-7 in evidence.
1.8 Photo Board with Site Plan and seven 8.5 in. x 11 in. photographs of subject property and adjacent properties, marked as Exhibit A-8 in evidence.

1.9 Cellar/basement volume calculations prepared by Architect Stone, marked as Exhibit A-9 in evidence.

1.10 Eight 8.5 in. x 11 in. photographs of property drains, marked as Exhibit A-10 a-h in evidence.

2. The premises in question are located at 37 Fourth Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 94, Lot 17 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 100.00 ft. x 50.00 ft. x 100.00 ft. with an approximate area of 5,000 sq. ft. and is an elongated rectangle in shape. The subject property is a pre-existing under sized Lot having 5,000 sq. ft. of Lot area where 7,500 sq. ft. is required (existing condition). The property also has Lot frontage and Lot width of 50 ft. where 75 ft. is required (existing condition). The subject property also has a Lot shape diameter of 30 ft. where 50 ft. is required (existing condition). The property also has a front yard setback of 9.2 ft. where 20 ft. is required (existing condition). The property
also has a side yard setback of 4.2 ft. where 10 ft. is required (existing condition). These existing nonconformities will continue and the front and side yard setback deviations will be increased as the third floor addition will also maintain those same setbacks.

5. In addition to the foregoing, there are several existing, non-conforming, elements that will be increased in their deviation as a result of the proposed improvements including;

a) Combined side yard setback of 15.4 ft. where 20 ft. is required and 18.6 ft. exist.

b) Building coverage of 38% where 25% is permitted and 36% exists.

c) Building height of 3 stories where 2.5 stories is permitted and 3 stories exist.

d) Building height of 39 ft. where 35 ft. is permitted and 38 ft. exist.

e) Floor area ratio of 0.604 where 0.40 is permitted and 0.511 exists.

The Applicant presented the testimony of property owner Elizabeth Fortier and Christopher Stone, a licensed Architect in the State of New Jersey. The Applicant's witnesses provided testimony that the existing property is on an undersized Lot which creates difficulties in terms of complying with the yard
setbacks, building coverage and floor area ratio issues. They provided further testimony that the existing residence is very "tight" as it was constructed many years ago and the room sizes, hallways and stairways are undersized and not consistent with modern building standards. The Applicant wishes to place additions to the property which will permit these conditions to be alleviated creating larger bedrooms, hallways, stairways and bathrooms provide a better functioning home. The Planning Board finds that there is a hardship associated with the subject property and that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board finds that the size and dimensions of the property, coupled with the characteristics of the existing residence result in an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon such that 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 placing these modest additions on the home to make it a more modern, better functioning residence. Such improvements can not be accomplished without requirement of variance relief.

6. 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 for the requested variances will not result in any substantial detriment to the public good. The Planning Board has reviewed the architectural elevation and floor plans presented by the Applicant along with the exhibits showing the
subject property and properties in the immediate vicinity of the subject property. The Planning Board finds that with respect to the Lot area, Lot frontage, Lot width and Lot shape diameter non-conformities, there will be no change from existing conditions and therefore, they will have no adverse impacts. With respect to the front yard and side yard setback deviations, the proposed addition will follow the same building lines as currently exist. Thus, the Planning Board finds that any impacts will be de minimis. Similarly, with respect to the combined side yard setbacks, that result from a small "bump-out" of the existing structure to permit the enlargement of the staircase area that is necessary to provide reasonable access between the floor levels. The Planning Board finds that this is only a small portion of the house that is reducing the side yard setback on one side of the home and that the impacts will be minor in nature given the extent of the additional deviation and the attractive architectural appearance of the structure.

7. The Planning Board further finds that the increased deviations in building coverage and floor area ratio are de minimis in nature and the Planning Board finds that these provisions of the Ordinance are intended to ensure that structures are not built that are so large, or have such an imposing appearance that it appears to be overbuilding of the site. The Planning Board finds that the proposed improvements will be consistent with the surrounding neighborhood and will not offend the purposes for which the provisions were adopted in this instance. The Planning Board finds that the existing Lot can accommodate the increase of floor area ratio as the increase in floor area ratio does not result in an increase number of
bedrooms or bathrooms and is consistent with other developments on Fourth Street in the vicinity of the subject property.

8. The Planning Board further notes that during the course of the hearing, it was determined that the bottom level of the structure will qualify as a basement thus making the building 4 stories. The application was amended at the time of hearing to permit the variance of 4 stories where 2.5 stories are permitted and the 39 ft. height where 35 ft. are permitted. The Planning Board notes that the height is greater than 10% above that which is permitted and thus a “D” variance is required. The Planning Board notes that the criteria for the grant of such variance is the same as with floor area. That is, that the Lot can nevertheless accommodate the development not withstanding the deviation. The planning Board notes that the excess in height is only in a small portion of the building accommodating the spire for the stairwell and that, given the architectural components of the plan, the increased height fits well with this home and is also consistent with some of the other Victorian homes in the neighborhood.

9. The Planning Board further finds that the variances requested can be granted without substantial impairment of the Zoning Ordinance. As noted previously, the Planning Board finds that the ordinances in question are designed principally to ensure that a property is not overbuilt and that structures placed on the property are not so large as to be overbearing and out of character with the neighborhood. In this case, the Planning Board finds that the variances in question are minor in nature and will result in an attractive and more modern, functioning home on the property and will be an asset to the
community. The variance relief requested will not result in the negative impacts that are sought to be avoided by the Ordinances.

10. During the course of the hearing, concerns were raised as to whether there would be any inappropriate runoff resulting from the proposed improvements. The Applicant provided testimony that the existing runoff is directed across the property and to storm sewers and is not run into the sanitary sewer system. Instead, there will be an infiltration system for stormwater runoff recharging it to below grade. In addition, concern was raised as to the visibility of the air conditioning system. The Applicant provided testimony that the air conditioning unit will be off the ground, out of sight and will have a sound baffle to insure minimal impact upon the adjacent properties.

11. 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.

12. 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 14th day of November, 2019 that the Application of T. MICHAEL AND ELIZABETH FORTIER 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. Front yard setback for a third-floor addition of 9.2 ft. where 20 ft. is required (Section 150-29 (A)(2)).

B. Side yard setback of third floor addition of 4.2 ft. where 10 ft. is required (Section 150-29 (A)(2)).

C. Total side yard setbacks of 15.4 ft. where 20 ft. is required (Section 150-29 (A)(2)).

D. Building coverage of 38% where 25% is permitted (Section 150-29 (A)(2)).

E. Building height of 39 ft. where 35 ft. is permitted (Section 150-29 (A)(2)).

F. Building height of 3 stories where 2.5 stories is permitted (Section 150-29 (A)(2)).

G. Floor area ratio of 0.604 where 0.40 is permitted (Section 150-29 (A)(2)).
2) The top level of the stair tower shall not be used for occupancy.

3) The Applicant shall confirm to the satisfaction of the Planning Board Engineer that existing and proposed runoff will not be directed to the sanitary sewer system.

4) The Applicant shall provide an infiltration system for storm water runoff recharge below grade subject to approval of the Planning Board Engineer.

5) The air conditioning system shall be off ground level, out of sight and shall have an appropriate sound baffle to avoid any inappropriate noise levels.

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: MR. DOUGHERTY

ROLL CALL:

YES: MR. HAWLEY, MR. CACCAMO, DR. CETRON, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO

NO: NONE

ABSTAIN: NONE

ABSENT: NONE

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 November 14, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands