IN THE MATTER OF
APPLICATION NO. PB20-04
OF ATILLA KETT
BLOCK 8 LOT 36

RESOLUTION GRANTING
VARIANCE APPROVAL

WHEREAS, ATILLA KETT, hereinafter the "Applicant", has proposed the development of property located at 24 Belvidere Road, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 8, Lot 36 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 demolish an existing single family home and to construct a new two story residential structure within the footprint of the existing structure requiring variances for minimum lot area of 22,939.75 sq. ft. (existing) where 30,000 sq. ft. are required, lot shape diameter of 43.5 ft. (existing) where 65 ft. are required, front yard setback of 9 ft. (existing) where 25 ft. are required and maximum lot coverage of steep slope area of 3,384 sq. ft. where 1,814 sq. ft. is permitted, contrary to the provisions of Chapter 150, Articles V & VII, Sections 150-29 & 150-78 respectively 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 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 June 4, 2020 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 January 16, 2020, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Atilla Kett, dated January 25, 2020, with Narrative of Intent marked as Exhibit A-2 in evidence.

1.3 Location Survey prepared by Richard E. Stockton & Associates, dated September 30, 2019, marked as Exhibit A-3 in evidence.

1.4 Site Plan, Elevation & Floor Plans prepared by Architect Ludwig, dated February 9, 2019 revised through September 17, 2019, marked as Exhibit A-4 in evidence.


1.6 Review #1 of CME Associates, dated March 6, 2020, marked as Exhibit A-6 in evidence.

2. The premises in question are located at 24 Belvidere Road, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 8, Lot 36 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 79.80 ft x 56.91 ft x 55.00 ft x 47.00 ft x 139.00 ft x 207.28 ft x 203.82 ft and is substantially irregular in shape as its frontage is along a curvature in Belvidere Road.
5. The property is presently developed with an existing one-story single-family dwelling with paver driveway, rear concrete patio and block retaining walls. The existing dwelling is located on an area of the lot which is relatively flat beyond which the slope recedes steeply to the rear (north) portion of the property.

6. The Applicant proposes to demolish the existing building and construct a new two-story residential home within the footprint of the existing structure. The Applicant was represented by Kevin Kennedy, Esq. who presented the testimony of the property owner Atilla Kett, Architect Kurt Ludwig, Structural Engineer Ray Girgis and Planner Richard Stockton. Mr. Kett testified that he has been the owner of the subject property for fifteen (15) years. The subject property is an undersized lot of record due to a Zoning change that increased the minimum required lot size to 30,000 sq. ft. in the R-3 Zone. The Applicant testified that they have an existing sophisticated septic system and drainage system. The existing residence has a 1900 sq. ft. of floor area in the upper level and 1900 sq. ft. of floor area in the lower level. The house was constructed in or about 1953 and was built close to the street in order to keep it as far as possible from the Steep Slope Area. The lower level of the existing structure has a very low ceiling and the entire structure is energy inefficient and requires significant roof and window repairs. The Applicant also testified that the existing layout is impractical and not consistent with modern standards. As a result of all of the foregoing the Applicant has decided to demolish the existing structure and build a new structure on the same foundation. Thus, the proposed building will have the same footprint as the existing house with the same number of levels. However, the height of the building will increase from 20 ft. to 25.5 ft. in order to allow for higher ceilings and a stair tower feature. The new building will have four bedrooms, three bathrooms and one powder room where the existing building has four bedrooms and three bathrooms.

7. The Applicant testified that the property has a sophisticated drainage system which directs all runoff to a Borough drainage system. The property also has a stable retaining wall system that has remained intact without issue during the entire period that the Applicant has been the owner of the property. He testified that demolition of the existing structure will be by hand so as to minimize any impact upon the steep slope area. The Applicant testified that there is only one Holly Tree that may require removal during construction. No other trees will be impacted.
8. Mr. Ludwig testified that the proposed new home will be energy efficient and comply with all current codes. He advised that he has observed the foundation and opined that the foundation is sufficient to hold the proposed new structure notwithstanding that it is slightly higher and slightly heavier due to the stair tower feature. He also testified that electric service will be upgraded and that all roof runoff will be transmitted to the existing Borough system.

9. Mr. Girgis, a Licensed Structural Engineer, testified that he has inspected the foundation and the structure and has no structural concerns. He witnessed no evidence of movement and no change in the footprint of the building and opined that the proposed “loads” would remain substantially the same with the exception of a stair tower which will add only a small amount of weight. Notwithstanding that weight, he opined that the site will be geotechnically stable.

10. The Applicant also presented the testimony of Richard Stockton, a Licensed Surveyor and Professional Planner in the State of New Jersey. Mr. Stockton discussed the variance relief required. He opined that the new home will be built to code and increase its safety. He further opined that the new home will provide for an equal amount of light, air and open space as the existing home and will present a modern, more desirable visual environment. Therefore, he opined that the proposed new residence qualifies for a “C2” planning variance under the statute. The Planning Board further finds that due to the various factors relating to the subject property including its unique shape, its location on the curvature of Belvidere Road and its steep slope topography that there is a hardship with respect to the property as the steep slope requires the structure to be placed close to Belvidere Road necessitating the front yard setback variance. The other variances are triggered by the fact that the property is an undersized lot of record with an irregular shape. Thus, the Planning Board finds that there is a hardship associated with this lot and that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board finds that, due to the foregoing factors, an extraordinary and exceptional situation uniquely affecting this specific piece 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 and undue hardship upon the applicant as the property cannot be reasonably developed without variance relief.
11. 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 Applicant has exerted best efforts to protect the steep slope area by utilizing the existing foundation and by constructing a new home that is within the same footprint as the existing home so as to have the minimum disturbance and impact on the steep slope area. The Planning Board agrees with the Applicant’s Planner that the new structure will have a positive impact upon the surrounding area and upon the streetscape and that there will not be any substantial detriment to the public good flowing from the grant of the requested variance relief.

12. The Planning Board further finds that the grant of the requested variance relief will not substantially impair the Zone Plan or the Zoning Ordinance. The proposed residence is a permitted use in the Zone and will be on the same footprint as the prior residence and will have similar impacts as existing conditions. It will not change the Zone scheme of the area but will be consistent with what presently exists. Therefore, there will not be any substantial impairment of the Zone Plan or the Zoning Ordinance from the grant of the requested variance relief.

13. 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.

14. 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 favor of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 2nd day of July, 2020 that the Application of ATILLA KETT 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 of 9 ft. where 25 ft. is required (Section 150-29) (Exhibit 5-21).

B. Maximum lot coverage on a lot with steep slope area of 3,384 sq. ft. where 1,814 sq. ft. is permitted (Section 150-78).

C. Lot area of 22,939 sq. ft. where 30,000 sq. ft. are required (Section 150-29) (Exhibit 5-2).

D. Lot shape diameter of 63.5 ft. where 65 ft. is required (Section 150-29) (Exhibit 5-29).

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 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 should the Applicant not exercise this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9. J. these variances will expire.

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. Hawley

ROLL CALL:

YES: Mr. Dougherty, Mr. Boms, Mr. Hawley, Mr. McGoldrick, Mr. Pepe
      Mrs. Murray, Mr. Colangelo, Mr. Sonnek-Schmelz

NO: None

ABSTAIN: None

ABSENT: Mr. Caccamo, Mr. Neff, Dr. Kloby

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 July 2, 2020.

Secretary, Planning Board
Borough of Atlantic Highlands