IN THE MATTER OF RESOLUTION GRANTING
APPLICATION NO. PB20-10 VARIANCE APPROVAL
OF MICHAEL HRBEK & ERICA MANGANELLI
BLOCK 133 LOT 9

WHEREAS, MICHAEL HRBEK & ERICA MANGANELLI, hereinafter the
"Applicant", has proposed the development of property located at
95 Bay Avenue, in the Borough of Atlantic Highlands, County of
Monmouth, and State of New Jersey which property is further
known and designated as Block 133, Lot 9 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 461 sq. ft. addition to an existing single family
residential home with an associated covered porch which requires
the following variances:

1. Front yard setback of 14.1 ft. where 20 ft. is
required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing
condition)

2. Side yard setback of 2 ft. where 10 ft. is required
(Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)

3. Combined side yard setback of 16.7 ft. where 20 ft. is
required (Section 150-29)(A)(2)) (Exhibit 5-2) (New
variance)
4. Lot area of 6,500 sq. ft. where 7,000 sq. ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)

5. Lot frontage of 50 ft. where 75 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)

6. Lot shape diameter 30 ft. where 50 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition)

Contrary to the provisions and regulations of the Borough of Atlantic Highlands; and

WHEREAS, The subject property is located in the R-1 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 2, 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 Review of Zoning Officer Michelle Clark dated March 11, 2020 marked as Exhibit A-1 in evidence.

1.2 Application for variance of Michael Hrbek & Erica Manganelli dated March 21, 2020 marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Thomas Craig Finnigan dated October 25, 2019 marked as Exhibit A-3 in evidence.

1.4 Elevation and Floor Plan Drawings prepared by EP Architectural Designs, LLC dated March 21, 2020 marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates dated May 19, 2020 marked as Exhibit A-5 in evidence.

2. The premises in question are located at 95 Bay Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 133 Lot 9 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 homes with associated accessory structures are a permitted use in the Zone.
4. The property in question has approximate dimensions of 50.00 ft. x 130.00 ft. x 50.00 ft. x 130.00 ft. and is an elongated narrow rectangle in shape with an approximate area of 6,500 sq. ft. The property has several existing non-conforming elements including a front yard setback of 14.1 ft. where 20 ft. is required, a side yard setback of 2 ft. where 10 ft. is required, lot area of 6,500 sq. ft. where 7,500 sq. ft. is required, lot frontage of 50 ft. where 75 ft. is required and lot shape diameter of 30 ft. where 50 ft. is required. The proposed addition does not affect any of these conditions which will remain unchanged. The adjacent properties are developed with single family homes such that there is no land available from adjacent properties to mitigate these existing non-conforming elements.

5. The subject property is presently developed with a combined one-story and two-story residence with covered porch, wood deck, masonry block patio and paved driveway with a detached shed. The Applicant provided testimony that the existing residence is approximately 95 years old, has three bedrooms and a single bathroom and is small, outdated and has many elements which are not up to current code standards. The Applicant desires to construct a 461 sq. ft. addition to the building in order to make it larger and more livable. However, the Applicant will not be increasing the number of bedrooms.

6. The Planning Board finds that with the exception of the combined side yard setback all of the other
conformities of the property are pre-existing conditions and will not be exacerbated by the proposed addition. Two conditions will require variance relief. The first of those is the combined side yard setback of 16.7 ft. where 20 ft. is are required. The second is 2 ft. side yard setback for the new second story that will be placed over the existing one-story portion of the building.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board finds that due to the elongated rectangular shape of the property, coupled with its being an undersized lot and its narrowness coupled with the location of the existing building on the property it is not possible to construct a reasonably sized addition to this residence without the requirement of variance relief. The Planning Board finds that the only realistic location to place an addition to this small dwelling is where the Applicant proposes it, which will result in requiring the variance relief for combined side yard setback. In addition, in order to construct a second floor over the existing one story portion of the residence it is necessary to follow the existing building line with the 2 ft. side yard setback. Therefore, the second story now requires a variance for side yard setback in order to follow the existing building line. Based upon the foregoing, 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 Atlantic Highlands Development Regulations would result in
peculiar and exceptional practical difficulties to exceptional and undue hardship on the Applicant as it would prevent the Applicant from constructing a reasonably sized addition modernizing the existing small home.

8. 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 this is an existing small home and that the modest proposed improvements will make the home consistent with other homes in the neighborhood and will not have any adverse impacts upon them but will serve to update and improve this area of Bay Avenue. The Planning Board finds that the proposed addition will not result in having an appearance of overcrowding on the site as the side yard variances will be consistent with other homes on Bay Avenue. The Planning Board notes that the adjacent lot to the west of the subject property similarly has side yard setback deviations. The Planning Board further finds that the second story will have only minor impact as it is only a small portion of the residence that will be accommodating the second story and is diminimis in scope.

9. 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 as set forth previously herein. The proposed dwelling, after the addition is constructed, will be consistent in
size with the other structures along Bay Avenue. Therefore, will not have any significant impact on the streetscape or upon the neighborhood scheme but will be consistent with it. The Planning Board finds that the combined side yard setback of 16.7 ft. where 20 ft. is required is only a 3.3 ft. deviation which is diminishes and will not have the impact of substantially reducing light, air and open space which is what the ordinance intends to create through the use of side yard setback requirements. The Planning Board makes the same findings as to the 2 ft. setback for the modest second story addition. The Planning Board finds that these deviations are diminishes and will not have the impacts sought to be avoided by the ordinance requirement.

10. 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.

11. 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 16th day of July, 2020 that the Application of MICHAEL HRBEK & ERICA MANGANELLI 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 with 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 -

A. The following relief is granted to the Applicant:

1. Front yard setback of 14.1 ft. where 20 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition to remain)

2. Side yard setback of 2 ft. where 10 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition to be expanded for second floor over one story portion of building)

3. Combined side yard setback of 16.7 ft. where 20 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (New variance)

4. Lot area of 6,500 sq. ft. where 7,000 sq. ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition to remain)

5. Lot frontage of 50 ft. where 75 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition to remain)
6. Lot shape diameter 30 ft. where 50 ft. is required (Section 150-29)(A)(2)) (Exhibit 5-2) (Existing condition to remain)

B. The roof leaders of the house shall be directed to the bay.

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. McGoldrick

ROLL CALL:
YES: Mr. Boms, Mr. McGoldrick, Mr. Neff, Mrs. Murray, Mr. Colangelo, Mr. Sonnek-Schmelz, Mr. Krupinski, Mr. Curry

NO: None

ABSTAIN: Mr. Dougherty

ABSENT: Mr. Hawley, Mr. Caccamo, Mr. Pepe, 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 16, 2020.

Secretary, Planning Board
Borough of Atlantic Highlands