IN THE MATTER OF 
SUBDIVISION 
APPLICATION NO. PB19-14 
BLOCK 87 LOTS 12 & 13

RESOLUTION GRANTING 
APPROVAL WITH VARIANCES

WHEREAS, BRIAN GILL D/B/A MONMOUTH BUILDERS, hereinafter the "Applicant", has proposed the development of property located at 29 East Garfield Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 87, Lots 12 & 13 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 subdivision and variance approval to subdivide an existing 13,000 sq. ft. parcel containing an existing single family residence with detached garage and driveway into two (2) single family residential home lots which require subdivision approval along with the following variance relief:

Proposed lot 12:

1. Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II)) (Exhibit 5-2)
2. Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
3. Lot shape diameter of 30 ft. where 50 ft. are required (Section 150-29 A (II))
4. Front yard setback of 13.3 ft. (existing) where 20 ft. are required (Section 150-29 A (II))
5. Side yard setback of 7.9 ft. where 10 ft. are required (Section 150-29 A (II))
6. Combined side yard setback of 16.9 ft. where 20 ft. are required (Section 150-29 A (II))
7. Driveway setback of 1.4 ft. where 5 ft. are required (Section 150-54 (F))

Proposed lot 13:
1. Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II))
2. Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
3. Lot shape diameter of 30 ft. where 50 ft, are required (Section 150-29 A (II))

The foregoing is contrary to the provisions of Chapter 150 Article V Section 150-29 and Chapter 150 Article VII Section 150-54 respectively 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 December 12, 2019 and February 6, 2020 due notice of said meetings 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 Brian Gill D/B/A/ Monmouth Builders dated
October 2, 2019, marked as Exhibit A-1 in evidence.

1.2 Narrative on Intent prepared by Attorney Kennedy marked as Exhibit A-2 in evidence.

1.3 Review of Zoning Officer Michelle Clark dated September 3, 2019, marked as Exhibit A-3 in evidence.

1.4 Location Survey prepared by Richard E. Stockton, Surveyor dated July 8, 2019, marked as Exhibit A-4 in evidence.

1.5 Subdivision Plan prepared by Richard E. Stockton, Surveyor, dated July 8, 2019, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates dated November 18, 2019, marked as Exhibit A-6 in evidence.

1.7 Review #1 of CME Associates revised November 19, 2019, marked as Exhibit A-7 in evidence.

1.8 200 ft. and 500 ft. Radius Tax Map with Identification of Parcels Having Non-Conforming Areas marked as Exhibit A-8 in evidence.

1.9 200 ft. and 500 ft. Radius Tax Map Identifying Parcels with Non-Conforming Frontages marked as Exhibit A-9 in evidence.

1.10 Revised portion of Subdivision Plan for lot 13 marked as Exhibit A-10 in evidence.
1.11 Elevation and Floor Plans prepared by Anthony Condouris, Architect dated December 11, 2019, marked as Exhibit A-11 in evidence.


1.13 Review #2 of CME Associates dated February 6, 2020, marked as Exhibit A-13 in evidence.

1.14 Two 8.5 in. x 11 in. Photos of existing garage marked as Exhibit A-14 a & b in evidence.

1.15 8.5 in. x 11 in. Photograph of fence to be replaced marked as Exhibit A-15 in evidence.

1.16 Three Photographs including older home being refurbished, front elevation photograph, and photograph of rear yard marked as Exhibit A-16 a, b & c in evidence.

1.17 Twelve 8.5 in. x 11 in. Photographs of properties in the vicinity of subject parcel of similar size marked as Exhibit A-17 a – l in evidence.

2. The premises in question are located at 29 East Garfield Avenue in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 87 lot (s) 12 & 13 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 has approximate dimensions of 100.00 ft. x 130.00 ft. x 100.00 ft. x 130.00 ft. and is rectangular in shape with an approximate lot area of 13,000 sq. ft. The subject property is presently developed with an existing 2-story residential dwelling located entirely on lot 12, along with a driveway and a detached frame garage which straddles the rear property line across lots 12 & 13. Both lots 12 & 13 individually are undersized lots with an area of 6,500 sq. ft. where 7,500 sq. ft. are required, frontages of 50 ft. where 75 ft. are required and lot shape diameter of 30 ft. where 50 ft. are required.

5. Pursuant to Section 150-56 of the Borough of Atlantic Highlands Development Regulations, where two or more lots have contiguous lines and are in single ownership and one or more of the lots is non-conforming, the lots shall be considered to be an undivided parcel for the purposes of zoning and no portion of said parcel shall be conveyed or divided except through the filing of an approved subdivision. Based upon that Section of the Ordinance the two lots have merged for Zoning purposes. Moreover, based upon applicable case law, insofar as existing improvements including the existing asphalt driveway and the existing frame garage straddle the properties, an intent has been demonstrated by prior owners to utilize the two parcels as a single lot, and the lots have merged for zoning purposes.

6. The Applicant proposes to subdivide the existing property into two (2) new lots. Proposed new lot 12 will have a lot area of 6,500 sq. ft. where 7,500 sq. ft are required, lot frontage and width 50 ft. where 75 ft. are required, lot shape diameter of 30 ft. where 50 ft. are required, front yard setback for the existing dwelling of 13.3 ft. where 20 ft. are required, side yard setback of 7.9 ft. where 10 ft. are required and combined side yard setbacks of 16.9 ft. where 20 ft. are required. That lot will retain the existing two story frame dwelling with a new proposed driveway located entirely on lot 12. The existing asphalt driveway and frame garage which straddle the two properties will be removed. Proposed new lot 13 will have a lot area of 6,500 sq. ft. where 7,500 sq. ft. is
required, Lot frontage and width of 50 ft. where 75 ft. is required and lot shape diameter of 30 ft. where 50 ft. is required. It will be developed with a new single family home.

7. The Applicant was represented by Kevin Kennedy, Esq. who presented the testimony of Brian Gill, the property owner, and Richard E. Stockton, a licensed Surveyor and Professional Planner in the State of New Jersey. Mr. Gill presented Testimony as to the condition of the lots composing the proposed two lot subdivision. He described the refurbishment of the existing residence including new windows, new vinyl siding, front porch and the removal of a failing deck. He testified that there will be no tree removal in connection with the Application. He did note that one diseased tree in the front of the lot will be removed.

Mr. Stockton testified that the proposed residential use of the two lots is permitted in the zone. He testified as to the history of the lots that were created in the 1800’s at which point the area was subdivided into 50 ft. wide lots. The two lots merged due to the provision of the Ordinance set forth previously and due to the driveway and garage being constructed straddled across both lots. He noted that the lands surrounding the subject property are developed with a mix of lots, some conforming and a substantial amount of others being undersized in area, frontage, width and lot shape diameter. He presented an analysis of surrounding parcels not conforming in area, frontage, width and lot shape diameter marked as Exhibits A-8 and A-9 and opined that approximately 50 percent or more of the lots in the vicinity exhibit similar characteristics to the proposed subdivided lots. He opined that grant of subdivision approval with variances would reintroduce these lots once again as separate building lots.

Mr. Stockton testified that the renovation of the existing home is a benefit to the community as the home was in a deteriorated state. He testified that the grant of variance approval to permit the subdivision would have additional benefits of providing for an appropriate residential use in an appropriate area and opined that the proposed improvements would not constitute overdevelopment of the property. He opined that
the proposed subdivided lots will be consistent in character with the surrounding neighborhood and community.

Mr. Stockton agreed that the subdivision will be perfected by a deed and that the garage and existing driveway will be removed prior to the filing of the subdivision deeds. He further testified that the roof drains of the homes will be directed to the front of the house toward East Garfield Avenue and storm water shall not be directed toward adjacent properties.

The first hearing was carried to February 6, 2020 for the Applicant to consider plan revisions. The revised plan shows new driveway locations moving the proposed driveway adjacent to new lot 14 to the westerly side of the proposed home, locates trees on the property and provides buffering between the new lots 12 and 13 as well as between lot 13 and lot 14. The Applicant further agreed to place the air conditioning unit for the new residence to the west of lot 13 away from adjacent lot 14. Mr. Stockton once again opined that the subject property is the largest parcel in block 87 and is out of character with the other smaller lots on the block and that the proposed subdivision will be more in character with the surrounding area. Mr. Stockton also noted that the proposed arborvitae screens will be 6 ft. minimum in height and 5 ft. on center. He also agreed that the arborvitae closest to the street will be moved to the rear in order to allow better sight lines along East Garfield Avenue from the driveways.

8. The Applicant agreed to comply with the technical recommendations set forth in the report of the Planning Board's Engineer CME Associates dated February 6, 2020 marked as Exhibit A-13 in evidence. These recommendations included but are not limited to:

a. Removal of the existing driveway and garage and the construction of a new driveway on lot 12 prior to the filing of minor subdivision deeds.
b. All trees over 6 inch in diameter are to be shown on the subdivision plan. Trees to be removed shall be shown with a "strike through X".

c. The roof leaders of the home will direct runoff towards the right of way of East Garfield Avenue.

d. Parking on site shall be located behind the front yard setback line.

e. The northernmost arborvitae to the right of way will be moved to the south end of the row in order to provide better visibility to the street.

f. The air conditioning for the proposed dwelling will be located on its westerly side adjacent to lot 12 and not adjacent to lot 14.

9. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board agrees with its Planner that, notwithstanding the technical merger, the properties exhibit the characteristics of the original subdivision in the 1800's and the existing character of the surrounding area of lots with 50 ft. frontages and smaller lot areas. The Planning Board finds that the grant of the requested variance relief will be consistent with the characteristics of the surrounding community and will establish appropriate population densities that will contribute to the well being of persons, neighborhoods and communities as the subdivision will result in appropriate density and provide an additional residence within this neighborhood consistent with existing neighborhood development. The Planning Board further finds that the grant of the variances will provide sufficient space in an appropriate location for this residential use. The Planning Board further finds that the grant of the variances will promote a desirable visual environment by encouraging the restoration of the existing residence on the property and permitting the construction of an attractive new residence in the neighborhood that will fill an existing vacant lot. As a result of all of the foregoing the Planning Board finds
the subject property is a specific piece of property as contemplated by the Statute and that the purposes of Municipal Land Use Law will be advanced by permitting a deviation from these Zoning Ordinance requirements and the benefits of this deviation do substantially outweigh any detriment.

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 finds that it agrees with the Applicant's Planner that the proposed lots will be consistent with lots in the vicinity of the subject property and will harmonize with the existing neighborhood. The Planning Board finds that the proposed new residence on lot 13 will result in an improvement to the neighborhood by taking what appears to be a vacant, unused parcel and developing it with a new single family home consistent with the neighboring homes in the area. Thus there is no substantial detriment to the public good.

10. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Planners Zoning Ordinance. The Planning Board finds that the proposed subdivision will be consistent with the neighborhood scheme and will not have the effect of changing or impairing the existing character of the Zone in this area.

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 the Applicant has submitted a Plat and such other information as reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. The Planning Board further finds that the detailed drawings, specifications and estimates of the application
conform to the standards established by ordinance for approval and that subdivision approval with the variances requested 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 5th day of March 2020, that the Application of BRIAN GILL D/B/A MONMOUTH BUILDERS 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 relief granted in connection with this application is for minor subdivision approval with the following variances:

Proposed lot 12:

Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II)) (Exhibit 5-2)
Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
Lot shape diameter of 30 ft. where 50 ft. are required (Section 150-29 A (II))
Front yard setback of 13.3 ft. (existing) where 20 ft. are required (Section 150-29 A (II))
Side yard setback of 7.9 ft. where 10 ft. are required (Section 150-29 A (II))
Combined side yard setback of 16.9 ft. where 20 ft. are required (Section 150-29 A (II))
Driveway setback of 1.4 ft. where 5 ft. are required (Section 150-54 (F))

Proposed lot 13:

Lot area of 6,500 sq. ft. where 7,500 sq. ft. are required (Section 150-29 A (II))
Lot frontage of 50 ft. where 75 ft. are required (Section 150-29 A (II))
Lot shape diameter of 30 ft. where 50 ft, are required (Section 150-29 A (II))

2) The Applicant shall comply with the technical recommendations set forth in the report of the Planning Boards Engineer dated February 6, 2020, marked as Exhibit A-13 in evidence which shall include the following:

   a. Removal of the existing driveway and garage and the construction of a new driveway on lot 12 prior to the filing of minor subdivision deeds.

   b. All trees over 6 inch in diameter are to be shown on the subdivision plan. Trees to be removed shall be shown with a “strike through X”.

   c. The roof leaders of the home will direct runoff towards the right of way of East Garfield Avenue.

   d. Parking on site shall be located behind the front yard setback line.

   e. The northernmost arborvitae to the right of way will be moved to the south end of the row in order to provide better visibility to the street.
f. The air conditioning for the proposed dwelling will be located on its westerly side adjacent to lot 12 and not adjacent to lot 14.

3) The arborvitae buffer screen to be provided shall consist of arborvitae a minimum of 6 ft. in height and placed 5 ft. on center.

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: Mr. McGoldrick

ROLL CALL:

YES: Mr. Boms, Mr. Hawley, Mr. Caccamo, Mr. McGoldrick, Mr. Neff, Mr. Colangelo, Mr. Krupinski

NO: Mrs. Murray
ABSTAIN: None

ABSENT: 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 March 5, 2020.

Secretary, Planning Board
Borough of Atlantic Highlands