

**IN THE MATTER OF
APPLICATION NO. PB24-04
OF JOHN & SAMANTHA KEENAN
BLOCK 28 LOT 9**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, JOHN & SAMANTHA KEENAN, hereinafter the "Applicant", has proposed the development of property located at 164 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 28, 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 permit the construction of a 276 square foot, three story addition requiring Variances for front yard setback of 14.70 feet where 20 feet is required and a building height of 3 stories where 2.5 stories is permitted. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 (A)(2)(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 March 7, 2024, 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 25, 2024, marked as Exhibit A-1 in evidence.

1.2 Application of John & Samantha Keenan, dated January 18, 2024, marked as Exhibit A-2 in evidence.

1.3 Architectural Elevation & Floor Plans, prepared by Kevin C. Roy, Architect, dated January 9, 2024, marked as Exhibit A-3 in evidence.

1.4 Topographical Survey, prepared by Martin A. Grant, Surveying, Inc., dated April 12, 2023, marked as Exhibit A-4 in evidence.

1.5 Area of Disturbance Plan, prepared by Alice Kupper, P.E., dated January 27, 2024, marked as Exhibit A-5 in evidence.

1.6 Steep Slope Plan, prepared by Alice Kupper, P.E., dated May 23, 2023, marked as Exhibit A-6 in evidence.

1.7 Review #1 of CME Associates, dated February 6, 2024, marked as Exhibit A-7 in evidence.

2. The premises in question are located at 164 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 2, 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 residential homes with associated accessory structures are a permitted use in the zone.

4. The subject property has approximate dimensions of 125.42 ft. x 115.00 ft. x 124.67 ft. x 115.00 ft. with an approximate area of 14,380 square feet (0.33 acres). The subject property is presently developed with an existing two-story residential home with wood deck, detached shed and detached garage, patio, walkways and a stone parking area. The subject property is substantially impacted by steep slopes and has dual frontages on East Washington Avenue and North Avenue. The existing home is "L" shaped and is at a slight angle to the North Avenue property line with the northwesterly corner of the existing home getting slightly closer to the North Avenue property line as one proceeds in an easterly direction.

5. The testimony of John Keenan and Samantha Keenan was taken and they testified that the existing residence is a small, two bedroom home and their family has two children resulting in a need for an additional bedroom. They testified that the logical place for an addition would be to the northerly side of the home and "square off" the "L" shape of the building. They also testified that the proposed location will be over an existing impervious patio area and that the existing shed in that same area will be removed. Thus, the impervious surface in a steep slope area will actually be reduced from existing conditions. Moreover, the location of the addition will have no impact upon East Washington Avenue which is the more travelled road as North Avenue only services several homes and has limited traffic. The Applicants also testified that they have an existing roof runoff system into which the new addition will direct stormwater to release runoff in several points within the yard area so that it will allow for infiltration prior to runoff reaching adjacent properties or the street. In addition, the Applicants testified that there will be no tree or shrub disturbance acquired.

6. The Applicant also provided a Steep Slope Area of Disturbance plan marked as Exhibit A-6 in evidence and agreed to adhere to the requirements and conditions set forth in

that plan and in the Area of Disturbance Plan marked as Exhibit A-5, to ensure that there are no adverse impacts to the steep sloped area.

7. Question was raised by the Board Engineer as to whether the proposed addition would be 2.5 stories or 3 stories in height. After colloquy between the Applicant, the Board Engineer and Board Members, it was determined that a height Variance is required and that, based upon the architectural drawings from the existing home configuration, it is appropriate to have the addition continue the existing building lines and elevations.

8. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. With respect to the front yard setback, the existing residence is at 15.20 feet where 20 feet is required. The proposed addition will only change that dimension by .5 feet (6 inches). The Planning Board finds that due to the topography of the property, coupled with the location and “L” shape of the existing building as well as the fact that the proposed addition will be over currently impervious area, a hardship does exist with respect to this property as the proposed location of the addition is the most appropriate and cannot be achieved without Variance approval. Thus, a hardship exists. With respect to building height, the topography of the site coupled with the location and configuration of the existing residence creates practical difficulties such that an appropriate addition in the best location cannot be achieved without the height deviation.

9. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested Variance relief. The requested Variance will not result in any substantial detriment to the public good. The addition will not be visible from East Washington Avenue and will have no impact upon the streetscape in that area. the addition will not be visible to the adjacent property to the west as it will be blocked by the existing residence. The addition will have only minimal impact, if any, upon the property to the east as it will be blocked by the detached garage and also will be at a distance that substantially exceeds the side yard setback. The addition will have little impact to the north as it will be at a

lower elevation than North Avenue, which is not heavily traveled and will be a sufficient distance from the properties on the opposite side of North Avenue and at a lower elevation so as to have di minimis impact upon them. Consequently, the grant of the requested Variance relief will not have substantial negative impacts upon the surrounding properties in the neighborhood or the streetscape and any impacts will be insubstantial.

10. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board finds that with respect to the front yard setback, the Ordinance is intended to ensure that buildings are not located so close to the front setback line as to have an overly imposing appearance or massive appearance upon the streetscape. In this case, due to the topography of the property and the lightly trafficked North Avenue, coupled with the current location of the existing residence, the addition will not have impacts sought to be avoided by the Ordinance provision. In addition, with respect to the height Variance, as noted previously, the proposed addition makes sense with respect to the existing structure and will have an appearance architecturally that is consistent with the area and will not appear to be excessive in height due to the topography of the property and the architectural design of the addition. Consequently, it will not have the impacts sought to be avoided by the Ordinance, which once again seek to avoid overly imposing structures and impeding light, air and open space. This proposed addition will not have those impacts.

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 feet 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.

Two neighbors did appear who supported the application as being a positive improvement to the area.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 4th day of April, 2024, that the Application of **JOHN & SAMANTHA KEENAN** 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 –

- 1) The approvals granted in connection with this application are as follows:
 - a. Front yard setback from North Avenue of 14.70 feet where 20 feet is required (Section 150-29(A)(2)(Exhibit 5-2)).
 - b. Building height of 3 stories where 2.5 stories is permitted (Section 150-29(A)(2)(Exhibit 5-2)).

- 2) The existing shed will be removed.

- 3) The Applicant shall adhere to the requirements set forth in Exhibits A-5 “Area Disturbance Plan” and A-6 “Steep Slope Plan”.

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:
SECONDED BY:
ROLL CALL:
YES:
NO:
ABSTAIN:
ABSENT:

John McGoldrick, Chair
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 April 4, 2024.

Nancy Tran, Secretary
Planning Board Borough of Atlantic Highlands