

**IN THE MATTER OF
APPLICATION NO. PB 22-26
OF JAVIER TORRES & DORA DILLMAN
BLOCK 1 LOT 7**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, JAVIER TORRES AND DORA DILLMAN, hereinafter the "Applicant", has proposed the development of property located at 148 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 1, Lot 7 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 two dormer additions along with elevated rear decks on the second and third floors and expansion of the ground floor rear deck requiring Variance relief for construction on an undersized lot with a proposed height of 3 stories where 2.5 stories are 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-3 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 September 7, 2023, 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 Michelle Clark, dated November 21, 2022, marked as Exhibit A-1 in evidence.
- 1.2 Application for Variance of Javier Torres, dated December 5, 2022, with checklist marked as Exhibit A-2 in evidence.
- 1.3 Survey prepared by Charles Surmonte, dated March 18, 2019, marked as Exhibit A-3 in evidence.
- 1.4 Dormer addition & Deck addition Plans with Elevation & Floor Plans, prepared by Thomas Dore, Architect, dated October 24, 2022, marked as Exhibit A-4 in evidence.
- 1.5 Review #1 of CME Associates, dated January 30, 2023, marked as Exhibit A-5 in evidence.
- 1.6 Steep Slope Analysis & Site Plan, prepared by Alice Kupper, P.E., dated April 26, 2023, marked as Exhibit A-6 in evidence.
- 1.7 Correspondence from Engineer Kupper, dated June 5, 2023, marked as Exhibit A-7 in evidence.
- 1.8 Review #2 of CME Associates, dated July 14, 2023, marked as Exhibit A-8 in evidence.
- 1.9 Freehold Soil Conservation District Letter of Exemption, dated July 25, 2023, marked as Exhibit A-9 in evidence.
- 1.10 Application for Coastal Area Applicability Determination of A. Kupper, P.E., dated July 28, 2023, marked as Exhibit A-10 in evidence.
- 1.11 Topographic Survey, prepared by Charles Surmonte, P.E., dated February 22, 2023, marked as Exhibit A-11 in evidence.

1.12 Preliminary & Final Plan, prepared by A. Kupper, P.E., dated August 3, 2023, marked as Exhibit A-12 in evidence.

1.13 Lot Grading & Sewage Disposal Plan, prepared by French Parelo & George Cooper Rudolph, Architects, dated 2004, marked as Exhibit A-13 in evidence.

1.4 Topographic & Boundary Survey, prepared by Charles Surmonte, P.E., dated February 22, 2023, marked as Exhibit A-14 in evidence.

1.15 Photograph from deck to rear of property, marked as Exhibit A-15 in evidence.

1.16 Photograph of wall on property, marked as Exhibit A-16 in evidence.

1.17 Photograph of railing facing north, marked as Exhibit 17 in evidence.

2. The premises in question are located at 148 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 1, Lot 7 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 is a permitted use in the Zone.

4. The property in question has approximate dimensions of 51.68 ft. x 49.66 ft. x 250.10 ft. x 97.90 ft. x 299.31 ft. and is quadrilateral in shape with angular front and rear property lines. The property has an existing lot area of 26,594 square feet which is an undersized lot in the zone which requires 30,000 square feet of lot area. The property is presently developed with a 2.5 story dwelling with a covered front porch, detached garage, two paver driveways and rear deck. The Applicant proposes to construct two dormer additions to the existing home as well as additional elevated rear decks on the second and third floors and expansion of the ground floor deck requiring Variance relief as previously noted herein.

5. Testimony was provided the Applicant, his Engineer Alice Kupper, a licensed professional Engineer in the State of New Jersey and Jeffrey Dunn, a licensed Contractor and Builder. They provided testimony that the existing home was constructed in approximately 2005, at which time it complied with the zoning regulations of the Borough. The home is a built slab on grade. The proposed dormers will not exceed the existing maximum roof height and will add decks to enhance views.

6. The Applicant advised that, although the property is within the CAFRA Zone, they have received a non-applicability determination and do not require a CAFRA approval. The Applicant agreed that the plans will be consistent with the report of the Planning Boards Engineer marked as Exhibit A-8 in evidence. The Applicant provided testimony that there will be no additional landscaping and no tree removal in connection with this application. The Applicant further confirmed that the property has six parking spaces plus two garage spaces which are sufficient for the five-bedroom home that is proposed as RSIS requires only three spaces.

7. Engineer Kupper testified that stormwater will be contained with an onsite system and no runoff through adjacent properties. The Applicant's Engineer agreed to provide plans to demonstrate and confirm no adverse stormwater impacts prior to the issuance of construction permits. The Applicant provided testimony that the current septic system is designed for a five-bedroom home and will not require modification to accommodate the proposed improvements.

The Applicant's builder testified that there will be care exercised in connection with the proposed construction. Material will be staged onsite in the driveway area and there will be no storage of equipment within the construction area. He testified that the footings for the improvements will be hand dug without the use of heavy equipment and that the dormers will require only exterior framing and sheathing. The Applicant testified that concrete for any foundation or footings will be brought by wheel barrel and not by trucks. Mr. Dunn further testified that a dumpster for the minimal debris that will result from construction will be maintained on site.

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 this is an existing structure and that the proposed amenities cannot be incorporated into the building without the requested Variance relief. Therefore, the

Planning Board finds that an extraordinary and exceptional situation uniquely effecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Borough of 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 having these appropriate amenities. Thus, the Planning Board finds that a hardship does exist with respect to this property.

8. 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 the proposed addition complies with all of the dimensional Zoning standards including front, side and rear setbacks, building coverage, impervious coverage and floor area ratio. The Planning Board further notes that, although technically three stories in height, the structure has an actual building height of 31.5 feet which is less than the 35 foot height permitted within the R-3 Zone District. Based on the foregoing, the Planning Board finds that the proposed additions will have little or no impact upon the surrounding properties and neighborhood and will have no impact upon the streetscape as the building is set back more than three times the required 25 feet. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good as any impacts to the surrounding properties and the neighborhood are minimized.

8. 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. In this case the Planning Board notes that the Ordinance sets two height standards, one by stories and one by feet. Although exceeding the allowable number of stories the building will be 10% lower than the allowable height in feet. The Planning Board finds that the Ordinance provisions were designed in order to ensure that buildings and structures do not appear to be overly imposing upon the streetscape and surrounding properties and will not impede light, air and open space. In this case the Planning Board finds that the proposed improvements will not have the impacts sought to be avoided by the Ordinance provisions and therefore does not offend the intent or purpose of the Ordinance provision.

8. 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 Variance can and should be granted at this time.

9. 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 and evidence 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 October, 2023 that the Application of **JAVIER TORRES AND DORA DILLMAN**, 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 for Variance to permit the construction of the proposed two dormer additions, elevated rear decks and expansion of ground floor rear

deck with a height of 3 stories where 2.5 stories is permitted with lot area provided of 26,594 square feet where 30,000 square feet is required.

2) The Planning Board notes that, pursuant to the steep slope Ordinance, maximum lot coverage of 5,639 square feet is permitted however, 6,196 is an existing condition which will not be exacerbated by this application.

3) The plans shall be revised to reconcile all inconsistencies with respect to the building coverage calculations as requested in the Planning Board Engineers review #2 at paragraph 9. (b).

4) The Applicant shall provide such structural analysis for approval as may be required by the Planning Board Engineer and Borough Construction Department Office.

5) The Applicant shall provide such runoff calculations as may be required by the Planning Board Engineer to confirm adequate stormwater management design to prevent adverse impacts to adjacent properties.

6) Construction of the improvements shall be performed using techniques consistent with those testified to by the Applicants building contractor, including that materials will be stored in the driveway area, there will be no equipment stored in the construction area, footings will be hand dug and concrete brought to them by wheel barrel. There will be no trucks or heavy equipment utilized in the process and the Applicant shall maintain a dumpster on site.

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 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:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAIN:

ABSENT:

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 October 5, 2023.

**Secretary, Planning Board
Borough of Atlantic Highlands**