

ORDINANCE NO. 7-2021

**ORDINANCE OF THE TOWNSHIP OF ABERDEEN AUTHORIZING THE
ACCEPTANCE OF A PERMANENT ROADWAY EASEMENT OVER AND THROUGH
PORTIONS OF LAND KNOWN AS LOT 11 IN BLOCK 162 IN THE TOWNSHIP OF
ABERDEEN, MONMOUTH COUNTY, STATE OF NEW JERSEY**

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Township of Aberdeen (the “Township”) is authorized to adopt an Ordinance for the preservation of public health, safety and welfare; and

WHEREAS, pursuant to N.J.S.A. 40A:12-5, the Township has the power to acquire any real property or property interests for a public purpose through negotiated agreement; and

WHEREAS, Micko Developer, LLC is the owner of property known as 79 Monica Street, also referred to as Lot 11 in Block 162, on the official tax map of the Township of Aberdeen, Monmouth County, State of New Jersey (the “Property”) which is under development pursuant to a resolution of approval allowing construction of a single family home with variances granted by the Board of Adjustment of the Township of Aberdeen dated November 18, 2020 (the “Resolution”); and

WHEREAS, the plans approved by the Resolution for the Property include a five (5) foot permanent roadway easement to grant the Township access to the Property to perform any construction, maintenance, or repairs to the curbs, gutters, sidewalks, roadway and appropriate drainage (the “Roadway Easement”) if and when same becomes necessary; and

WHEREAS, a form of Deed of Easement for the Property is attached hereto as Exhibit A,

BE IT ORDAINED by the Township Council of the Township of Aberdeen, County of Monmouth, State of New Jersey, as follows:

SECTION 1. In accordance with the authorization provided by the Local Land and Buildings Law under N.J.S.A. 40A:12-1 et. seq., the Township is hereby authorized to accept the Roadway Easement, subject to lawful conditions, restrictions and limitations of use as placed upon municipal governing bodies.

SECTION 2. The Township finds that the Roadway Easement is needed for the public purpose of continued construction, maintenance, operation and repair of the curbs, gutters, sidewalks, roadway and appropriate drainage and hereby authorizes the Township to accept the Roadway Easement.

SECTION 3. The Mayor and Municipal Clerk are authorized to accept the Roadway Easement, and to execute any documents as may be necessary in order to effectuate this Ordinance and the transaction contemplated herein, in such form and substance as attached hereto as Exhibit A.

SECTION 4. The property owner shall record the Roadway Easement with the County of Monmouth and provide the Township with a recorded copy.

SECTION 5. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 6. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 7. This Ordinance shall take effect after final passage and adoption according to the law.

Karen Ventura, Township Clerk

Fred Tagliarini, Mayor

EXHIBIT A

Deeds of Easement

PERMANENT ROADWAY EASEMENT

THIS INDENTURE, made this 6 day of May, 2021,

Between: **MICKO DEVELOPERS, LLC** whose address is 129 McKinley Street, South Plainfield, New Jersey 07080
(hereinafter designated as the "Grantor"),

And: **TOWNSHIP OF ABERDEEN**, a Municipal Corporation of the State of New Jersey, having its principal place of business located at One Aberdeen Plaza, Aberdeen, New Jersey 07747
(hereinafter designated as the "Grantee"),

WITNESSETH:

THAT for and in consideration of **ONE AND NO/100 DOLLARS (\$1.00)**, paid to the Grantor by the Grantee, at or before the ensealing of these presents, receipt whereof is hereby acknowledged, Grantor has granted and does by these presents grant to Grantee an easement for the purposes hereinafter set forth, through, over, upon, under, in, across and along the following described premises owned by the Grantor in the Township of Aberdeen, County of Monmouth, and State of New Jersey, more fully described on Schedule "A" attached hereto and made a part hereof.

THIS instrument conveys to Grantee, its successors and assigns, the perpetual and unrestricted right to utilize the lands described in Schedule "A" for the installation of curbs, gutters, sidewalks, roadways, and appropriate drainage therefor. Nothing in this instrument shall obligate Grantee to install curbs, gutters, sidewalks, roadways, drainage or any other improvements within the easement area described in Schedule "A." The parties hereto further recognize that it may be necessary, in the future, for the Township of Aberdeen, or its designees, to enter upon the above referenced lands of Grantor described on Schedule "A", to construct, re-construct, inspect, enlarge, repair, maintain, improve, operate or use such facilities.

TO HAVE AND TO HOLD the said easement unto the use of the Grantee, its successors and assigns, forever. It is the true intent and purpose of these presents that this easement shall run with the land.

PROVIDED that, upon the completion of any work related to the aforesaid purposes, the Grantee shall cause all vehicles, equipment, tools and implements used in such work and all materials not incorporated therein to be removed from said lands and shall cause said lands to be left in good and proper condition.

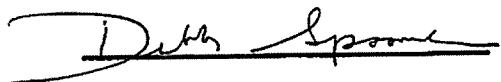
EACH PARTY shall indemnify and save harmless the other from and against any and all claims or demands for or in connection with any occurrence, accident, injury, damage, or dispute arising out of the exercise of the rights hereunder, and from and against any and all costs, expenses relating thereto, including but not limited to reasonable attorney's fees except when any of the foregoing arises out of the sole negligence of the party otherwise to be indemnified. Each party shall give prompt notice to the other of any claims or demands.

ALL of the provisions of this easement shall be binding upon Grantor, and Grantor's successors and assigns, forever.

THE provisions hereof are intended to be severable and the invalidity of any one of the covenants, conditions, or restrictions, by judgement or court order, shall in no way affect any other provisions which shall remain in full force and effect.

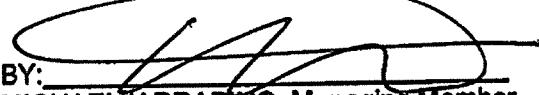
IN WITNESS WHEREOF, Grantor has hereunto set its hands and seals, or caused the corporate seal to be affixed, the day and year first above written.

WITNESS:



MICKO DEVELOPERS, LLC

BY:



MICHAEL TARRAPINO, Managing Member

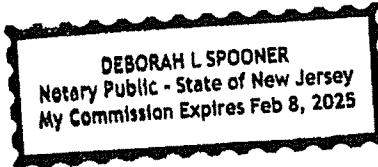
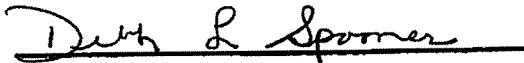
STATE OF NEW JERSEY, COUNTY OF MIDDLESEX: SS.:

I CERTIFY that on May 16th, 2021, MICHAEL IARRAPINO personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person is the Managing Member of MICKO DEVELOPERS, LLC, the limited liability company named in this document;
- (b) signed, sealed and delivered this document as the act and deed of the Company, for the purpose therein expressed; and;
- (c) made this easement for \$1.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)



Sworn and subscribed to before me
This 16th day of May, 2021.



Please Record and Return to:



ENGINEERING & SURVEYING P.C.

370 EAST MAIN STREET, SOMERVILLE, N.J. 08876
(908) 725 - 4400 - FAX (908) 722 - 4401

**5 FOOT ROAD WIDENING EASEMENT ON LOT 11 BLOCK 162
TO TOWNSHIP OF ABERDEEN**

BEGINNING at a point on the southwesterly side line of Monica Street, said point being the at the intersection of said side line and the division line between Lots 11 and 12 Block 162,

Thence (1) along said division line, South 56 degrees 58 minutes 50 seconds West 5.00 feet to a point;

Thence (2) North 33 degrees 40 minutes 10 seconds West 60.00 feet to a point;

Thence (3) North 56 degrees 58 minutes 50 seconds East 5.00 feet to a point on the southwesterly side line of Monica Street;

Thence (4) along said side line, South 33 degrees 40 minutes 10 seconds East 60.00 feet to the point and place of BEGINNING.

Said easement contains 299.98 SF.



Daniel E. Parker, New Jersey Professional Land Surveyor #35866

1/26/21
Date

Schedule "A"

Resolution prepared by:
Marc A. Leckstein, Esquire
Leckstein & Leckstein, LLC
463 Prospect Avenue
Little Silver, NJ 07739

**RESOLUTION OF APPROVAL ALLOWING
CONSTRUCTION OF SINGLE FAMILY HOME**

**BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN**

**BLOCK 62, LOT 11
Application # V 20-107
MICKO DEVELOPERS, LLC
79 MONICA STREET**

WHEREAS, Micko Developers, LLC has applied to the Board of Adjustment of the Township of Aberdeen for permission to construct a single family home on a vacant lot located at 79 Monica Street, which is officially designated as Block 62, Lot 11 on the Tax Map of the Township of Aberdeen; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and has caused notice to be published regarding said application in accordance with *N.J.S.A. 40:55D-1* et seq., this Board gaining jurisdiction thereunder; and

WHEREAS, a public hearing was held in the within matter at a regularly scheduled meeting of the Board of Adjustment held on October 14, 2020; and

WHEREAS, due to the ongoing covid-19 pandemic, the meeting was held utilizing an online virtual format which ensured all persons having an interest in said application were heard; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicants;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts and conclusions are made:

1. Throughout the subject application, the applicant was represented by its legal counsel, James F. Clarkin, III, Esquire of the law firm Clarkin & Vignuolo, P.C. whose office is located at 86 Washington Avenue, Milltown, New Jersey.
2. The subject premises is located in the Township's R-60 Zoning District in which single family homes are a permitted use.
3. It was the applicant's desire to be able to develop the lot with a single family dwelling.
4. The subject lot requires the following bulk variance relief, pursuant to the provisions of N.J.S.A. 40:55D-70(c), as follows:

Variance Condition	Ordinance Requirement	Applicant's Proposal
Minimum Lot Area	6,000 square feet required	4,324.37 square feet exists **
Minimum Lot Depth	90 feet required	72.1 feet exists **
Maximum Lot Coverage	25 % allowed	26.6 % proposed
Minimum Side Yard	8 feet required	6 feet proposed

** pre-existing variance conditions

5. The Board notes that this property has previously been the recipient of earlier approvals to construct a single family home back dating back more than a decade. None of those earlier approvals were acted upon. The most recent approval in 2012 was memorialized by the Board of Adjustment as Application # V12-100 on August 22, 2012. A copy of that Resolution was marked into evidence as **Exhibit B-2**.
6. In support of this application, the following exhibits were submitted into evidence:
Exhibit A-1 : Development Application
Exhibit A-2: "Variance Plan" dated July 8, 2020, as prepared by Stephen E. Parker, P.E. of Parker Engineering and Surveying (consisting of 2 sheets)
Exhibit A-3: Architectural Plan dated March 16, 2020, as prepared by Roger C. Winkle, A.I.A. (consisting of 2 sheets)
Exhibit A-4: Correspondence dated September 24, 2020 to Shirley and Macon Underwood, 124 Jersey Ave., Cliffwood, from James F. Clarkin, III, Esquire.
Exhibit A-5: Correspondence dated September 24, 2020 to Lauritta Simon, 124 Jersey Ave., Cliffwood, from James F. Clarkin, III, Esquire
7. In addition to the applicant's exhibits, the Board introduced the following exhibits of its own:
Exhibit B-1: Engineering Review Letter dated August 28, 2020, as prepared by Anthony Abbonizio, P.E. of CME Associates.
Exhibit B-2: Resolution of the Board of Adjustment dated August 22, 2012 granting approval to construct single family home to Real Estate Development Group of NJ, LLC.
8. As an initial point of discussion, as required by precedent set forth in cases such as Dallmeyer v. Lacey Tp. Bd. of Adjustment, 219 NJ Super. 134, 146 (Law. Div. 1987), an applicant should establish that they have attempted to either acquire adjacent property or offered to sell the nonconforming property to adjacent owners. In furtherance of this effort, **Exhibits A-4 and A-5** were submitted into evidence. These exhibits were correspondence written to adjacent property owners inquiring whether they wished to sell or buy any property. According to the applicant, no one responded to these inquiries.
9. In support of the application, sworn testimony was received from the applicant's engineer, Stephen E. Parker, P.E. of Parker Engineering and Surveying.
10. Mr. Parker testified that the applicant intended to construct the home indicated on the architectural plans marked into evidence as **Exhibit A-3**. He believed that if constructed the new home would create a benefit for the community since it would eliminate a long existing vacant lot in the Township and turn it into one developed as intended with a single family home upon it.

11. Mr. Parker noted that the proposed home could not be built absent the requested bulk variances, two of which are pre-existing conditions (Lot Area and Lot Depth) which the applicant has no control over and the others (Lot Coverage and Side Yard) which are required in order to build a proper home. The Board took note that these were the exact same variances requested and granted back in the 2012 approval (Exhibit B-2).
12. It was agreed that the applicant would comply with all of the recommendations contained within the engineering review letter which had been prepared on behalf of the Board (Exhibit B-1) with the exception of the following:
 - (a) Item 2.1: The applicant indicated that they would accommodate a 12 inch cover for the sanitary sewer main being installed by the applicant. That cover would be subject to the Board Engineer's review and approval.
 - (b) Item 3.1: Unless the applicant's engineer and the Board's Engineer can agree on an alternative, the applicant indicated that they would agree to a 10 foot mill and pave along Monica Street, the specifics of which would be worked out between the Applicant's engineer and the Board's Engineer.
13. The Board's Engineer had no objection to these exceptions to his review letter.
14. No one else testified on behalf of the applicant.
15. The Board did hear from Mr. Bradley Davis of 82 Cliffwood Avenue, Unit # E33, Cliffwood, who indicated that he owned the condominium unit directly behind the applicant's property. He was concerned about the direct line of sight between his condominium unit and the proposed new single family home as there does not appear to be any foliage to screen the view. In response, the applicant indicated that they would add trees to the final plan. The location and type of those trees would be subject to the review and approval of the Board's Engineer.
16. The Board also heard from Mr. Andrew Scibor of 26 Homestead Drive, Colts Neck, who is the owner of Block 162, Lots 8&9 which are also vacant lots further along Monica Street. It was Mr. Scibor's concern that unless the applicant would be extending the sanitary sewer main further down Monica Street so as to accommodate his two vacant lots, that the application should be denied as no public benefit would be received. The Board rejected this argument noting that the applicant is not required to provide amenities for other property owners. With that said, this application was still creating a benefit by extending the sewer system into the neighborhood. The applicant did indicate that it would be willing to speak with Mr. Scibor to see if anything could be worked out between them, however this would not be a condition of approval.
17. No one else spoke with respect to this application.

17. In considering this application, the Board finds that the applicant has met the necessary criteria for receiving variance approval pursuant to the provisions of N.J.S.A. 40:55D-70(c)(1) and (c)(2).
18. With regard to the (c)(1) "hardship" variance, the Board notes that it agrees with the applicant's engineer that development on the subject property is limited by its boundaries. Absent variance relief, it would be impossible for any development to occur on the site.
19. The Board finds that the variances necessitated by this application are a result of the unique shape of the property as demonstrated on the survey submitted into evidence as **Exhibit A-2**. The physical dimensions of the property create a natural hardship which make it impossible for the applicant to construct the proposed new home without receiving variance relief.
20. With regard to the (c)(2) "flexible" variance, the Board notes that granting the necessary variance relief will lead to both the sewer and water lines being extended into the neighborhood. This will not only benefit the applicant, but in theory should benefit surrounding properties. Additionally, absent the granting of the variance, the neighborhood will be denied the benefit of seeing a new single family home constructed on what is now and has long been a vacant property at the subject premises.
21. It is the determination of the Board that the benefits of granting variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2) will allow for a better zoning alternative than strict adherence to the zoning ordinance would otherwise allow.
22. The Board does not feel the granting of the requested variances would cause any detrimental impact to the neighborhood or the zoning ordinance should the application be approved. The Board is hard placed to understand how the construction of this new home would negatively impact anyone when considering that neighboring properties are already developed. Rather than negatively impacting the community, the proposed home will instead improve the neighborhood as the lot is being brought into more conformity with the zone than it previously had been, and the sewer and water lines will be extended. Absent the necessary relief being granted, none of these improvements will take place.
23. The Board finds the benefits of granting this application outweigh the detriments and the variances can be granted without impairing the public good, Zone Plan and Ordinance.

NOW THEREFORE, be it further resolved by the Board of Adjustment of the Township of Aberdeen, that the application of Micko Developers, LLC, for premises located at 79 Monica Street, and officially designated as Block 162, Lot 11, be granted subject to the following conditions:

1. The proposed home shall built in conformance with the plot plan and elevations submitted into evidence as **Exhibits A-2 and A-3**.
2. **Exhibit A-2** shall be revised to show the installation of trees, the type and location of which must be reviewed and approved by the Board's Engineer.

3. The applicant shall comply with all the comments contained within the Board Engineer's review letter marked into evidence as **Exhibit B-1** with the exception of the following which shall be resolved as indicated:
 - (a) Item 2.1: The applicant shall accommodate a 12 inch cover for the sanitary sewer main being installed by the applicant. That cover shall be subject to the Board Engineer's review and approval.
 - (b) Item 3.1: Unless the applicant's engineer and the Board's Engineer can agree on an alternative, the applicant shall perform a 10 foot mill and pave along Monica Street, the specifics of which shall be worked out between the Applicant's engineer and the Board's Engineer.
4. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within application would not be approved.
5. Subject to any and all other approvals as may be required by the Township or any other governmental agency, prior to the issuance of any permits.
6. Subject to the payment of any fees, escrows and taxes as may be due to the Township, prior to the issuance of any permits.
7. This approval shall be deemed void by abandonment if a building permit is not issued within a year of the date hereof.
8. All representations made under oath by the applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.
9. The action of the Board of Adjustment in approving this application shall not relieve the applicants of responsibility for any damage caused by this project, nor does the Board of Adjustment of the Township of Aberdeen or its reviewing professionals and agencies accept any responsibility for the structural design of the proposed improvements or for any damage that may be caused by the development.
10. The applicant must publish adequate notice of this Resolution in the official newspaper of the Township of Aberdeen at their sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

The foregoing was Moved by *Mr. Beeson*

Seconded by *Mr. Beeson* and on Roll Call, the following vote was recorded:

Affirmative: 3 (*Mr. Beeson, Mr. Beeson, Mr. Shelys*)

Negative: 0

Abstentions: 0

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Aberdeen as copied from the Minutes of its meeting on November 18, 2020

Maxine Rescorl
Maxine Rescorl, Secretary
Board of Adjustment

11/18/2020