

**IN THE MATTER OF  
APPLICATION NO. PB21-14  
OF STARBUCKS COFFEE COMPANY  
BLOCK 106 LOT 3, 4 & 5**

**RESOLUTION GRANTING  
VARIANCE & SITE PLAN  
APPROVAL**

**WHEREAS, STARBUCKS COFFEE COMPANY**, hereinafter the "Applicant", has proposed the development of property located at 999 State Highway Route 36, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 106, Lot 3, 4 & 5 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 preliminary and final major site plan approval with variances to convert an existing vacant building previously occupied as a Burger King restaurant with drive-thru facility into a new Starbuck facility with a drive-thru requiring a Use Variance approval for a restaurant use with drive-thru service with 42 parking spaces where 61 spaces are required (Section 150-49.B(1)(h)(Exhibit 9-2)) wall signs exceeding 5 feet in height, a pylon sign with an area of 30 square feet with a height of 25 feet along with building signs exceeding 12 square feet in area (Section 150-69.I.). The foregoing is contrary to the provisions of Chapter 150, Article V. Section 150-31, Article VII, Sections 150-49 & 150-69 of the Development Regulations of the Borough of Atlantic Highlands; and

**WHEREAS**, the subject property is located in the CBD (Central Business District) Zone District and restaurant use with substantial carry out or deliveries or drive thru service are not a permitted use in the zone; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on February 3, 2022, 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 Officer Review of Zoning Officer Michelle Clark, dated August 23, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Starbucks Coffee Company, dated July 22, 2021, marked as Exhibit A-2 in evidence.

1.3 Preliminary & Final Site Plan prepared by Kimley/Horn & Associates Inc., dated August 20, 2021 consisting of 10 sheets, marked as Exhibit A-3 in evidence.

1.4 Display Packet prepared by Hilton Displays, dated June 10, 2021, with site plan, elevation renderings & signage, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated October 7, 2021, marked as Exhibit A-5 in evidence.

1.6 Kimley/Horn response to CME Review #1, dated November 22, 2021, marked as Exhibit A-6 in evidence.

1.7 Monmouth County Planning Board Letter of No Interest, dated September 13, 2021, marked as Exhibit A-7 in evidence.

1.8 Kimley/Horn Traffic Statement dated December 1, 2021, revised January 25, 2022, marked as Exhibit A-8 in evidence.

1.9 Review #2 of CME Associates, dated December 22, 2021, marked as Exhibit A-9 in evidence.

1.10 Freehold Soil Conservation District Certification, dated September 15, 2021, marked as Exhibit A-10 in evidence.

1.11 Email from Borough Tax Assessor Frotton, dated October 6, 2021, marked as Exhibit A-11 in evidence.

1.12 Kimley/Horn response to CME report #2, dated January 24, 2022 with sensitivity analysis, marked as Exhibit A-12 in evidence.

1.13 Zoning Map of Atlantic Highlands, marked as Exhibit A-13 in evidence.

1.14 Street view of existing conditions on State Highway Route 36, marked as Exhibit A-14 in evidence.

2. The premises in question are located at 999 State Highway Route 36, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 106, lot 3, 4, & 5 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the CBD Central Business District Zone of the Borough of Atlantic Highlands and restaurants with substantial carry-out or deliveries or drive-thru service are not a permitted use in the zone; and

4. The subject property has approximate dimensions of 188 +/- ft. x 260 +/- ft. with an approximate area of 50,901 square feet and is substantially rectangular in shape with some curvature along West Avenue.

5. The subject property is currently developed with an existing building with a drive-thru window formally utilized as a Burger King. The Applicant proposes to renovate the existing building for use as a Starbucks Restaurant with a drive-thru window.

6. The Applicant was represented by Duncan Prime, Esq. who presented the testimony of Rick Procanik, a licensed professional engineer in the State of New Jersey, Kathryn Gregory, a licensed professional planner in the State of New Jersey, Mr. Gibson, a licensed professional engineer in the State of New Jersey specializing in traffic and Rich McElvey a representative of the Applicant. Mr. Procanik testified as to the site conditions and operations. He testified that there will be 25 to 30 employees operating in 6 to 8 hour shifts with the premises opening at 5:30 am and closing at 10:00 pm. Deliveries will be made once per day by private hauler. Trash and recycling will also be handled through a private hauler on a daily basis. The property in question presently consists of 3 lots which will be consolidated into 1 single lot as a condition of this approval. There will be only one drive-thru window and the Applicant intends to provide an outdoor patio with 8 tables covering 770 square feet of the property. The Applicant will be providing landscaped islands. The islands are intended to separate parking areas and to reduce impervious surfaces by providing for grass and trees within the islands. The site will provide two ADA parking spaces and will comply with the ADA requirements. The Applicant is also proposing five (5) short term "pick-up" spaces immediately in front of the building.

7. The Planning Boards Engineer noted that there are current low areas in the parking lot and the Applicant agreed to correct those low spots during construction which is also a condition of this approval. Mt. Procanik testified that the Applicant has received a letter of no interest from the New Jersey Department of Transportation (NJDOT). The Applicant has analyzed fire truck and delivery truck movements within the site and provided testimony that the site to be adequate to handle such vehicles. Vehicle height will be limited to 8'6" for passenger vehicles or shuttle vans. He indicated that Monmouth County Planning Board has provided a letter of no interest and that the Applicant has received certification from the Freehold Soil Conservation District. In addition, the development is exempt from the requirements of the Coastal Area Facilities Review Act (CAFRA).

8. Mr. Gibson testified as to the traffic aspects of the proposed use. He testified that he utilized automatic and live traffic counts along with the standards and methodology set forth in the Institute of Traffic Engineers (ITE) manual and the NJDOT access system. He also applied the NJDOT growth rate to project future traffic increase for the driveway and nearby intersections. He also performed a sensitivity analysis to account for increased summer traffic. Mr. Gibson testified that the driveways and nearby intersections will function at acceptable levels of service. He opined that the number of parking spaces

provided at 42 meet the required parking based on the number of seats provided in the establishment. He also agreed as a condition of approval to include "do not block" striping between the proposed islands and to place a "lane line" separating the traffic lanes in the lanes closest to the parking adjacent to the building.

9. Ms. Gregory testified as to justification for the requested variance relief. More particularly, she noted that although a Use Variance is requested, restaurants are a permitted use in the zone. It is the drive-thru aspect of the facility that triggers a variance. However, she opined that this is a unique property as it is an existing building with an existing drive-thru facility that has been used as such for a number of years. She also noted that the subject property is located on a State Highway and that on the opposite side of the highway drive-thru facilities are permitted. Thus, in her opinion it is appropriate to continue a drive-thru facility on the subject site as it is simply a continuation of what has previously existed on the site for a number of years.

10. Ms. Gregory also discussed the signage on the property. She testified that the proposed sign height and directional signs are appropriate for this type of use and that it makes better sense to place the signs on the building as they provide better visibility and reduces the clutter of signage on site. The Applicant also agreed to place the words "no idling" on the 5 minute parking signs for pre ordered pick-up. The Applicant also agreed to work with the Planning Board Engineer to add pavement markings to address any potential drive-thru que overflow. The Applicant also agreed to delete the reference to "drive-thru" on the Route 36 building façade. Finally, it was determined that the pylon sign should remain in a "lollypop" style as proposed in order to avoid obstructing visibility along state highway Route 36 which sign will have a height lowered to 15 feet. Finally, the Applicant agreed to place a crosswalk sidewalk along the Route 36 portion of the site for pedestrian access.

11. With respect to the number of parking spaces, 61 are required based upon square footage of the facility and 42 are proposed, Ms. Gregory testified that the parking requirement was based on a no drive-thru facility standard. However, in this case the drive-thru facility substantially reduces the need for parking spaces as it is anticipated that approximately 60% of the patrons will use the drive-thru facility.

12. Finally, Ms. Gregory testified to the proposed Use Variance promoting the purposes of the Municipal Land Use Law N.J.S.A. 40:55D-2. More particularly, she testified that the grant of the Variance

relief will promote the purposes of the Municipal Land Use Law N.J.S.A. 40:55D-2 including purpose a. encouraging municipal action to guide appropriate use and development of lands. In this case, the use Variance will result in the redevelopment of an existing, vacant facility. She further testified that the grant of the Variance relief would promote purpose c. to provide adequate light, air and open space by redeveloping the existing deteriorated site with a new facility with islands that will include grass and treed areas promoting this purpose. Moreover, she testified that the grant of Variance relief will also serve purpose i. to promote a desirable, visual environment as the property is currently a vacant fallow lot. The proposed redevelopment will result in a more desirable, visual environment. Finally, she testified that the proposed use would promote purpose h. the free flow of traffic. She also noted the Borough of Atlantic Highlands Master Plan goals encouraging structural and architectural improvements which will also provide for a more viable economic base. She opined that this application satisfies that goal and is consistent with the Master Plan.

13. As a result of all of the foregoing, the Planning Board finds that it agrees with the testimony of Ms. Gregory and the other witnesses that the proposed improvements will promote the purposes of the Municipal Land Use Law and the goals of the Borough of Atlantic Highlands Master Plan such that the Applicant has satisfied the positive criteria for the request of use Variance relief. The Planning Board further finds that additional Variances requested for parking and signage flow naturally from the proposed Starbucks use of the property and can be subsumed in the grant of the use Variance for the property.

14. 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 proposed development along with the improvements to the existing structure and the proposed signage will result in improved conditions on this property rather than detrimental conditions from both a visual impact through redevelopment of the site as well as based upon the Applicant's witness testimony that the site will function properly and will not result in any substantial adverse impacts upon the surrounding roadway network and area.

15. 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. The Planning Board agrees with the testimony of Ms. Gregory that the grant of Variance relief will actually promote the goals of the

Municipal Master Plan by encouraging structural and architectural improvement through the redevelopment of this site which will result in the expansion of viable economic space within the Borough.

16. 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.

17. The Planning Board finds that the Applicant has submitted a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for site plan approval have been met. The Planning Board finds from the testimony of the Applicant's witnesses and the exhibits submitted that the proposed development will provide for safe and efficient vehicular and pedestrian circulation, parking and loading within the site. The Planning Board further finds that the Applicant has provided adequate screening and landscaping as well as location of structures along with the lighting requirements necessary to provide safety on the site. The Planning Board further finds that detailed drawings, specifications and estimates of the application for approval conform to the standards established by Ordinance and that preliminary and final major site plan approval is appropriate under the circumstances subject to the conditions set forth herein.

17. 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 evidence in support of, or in opposition to the application.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Atlantic Highlands on this 3<sup>rd</sup> day of March 2022, that the Application of **STARBUCKS COFFEE COMPANY** 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 Applicant shall merge the existing 3 lots into a single lot and record an appropriate deed to accomplish this subject to review and approval by the Planning Board's attorney and engineer.

2) Deliveries, trash removal and recyclable removals shall be handled by a private hauler.

3) The Applicant shall correct the low spots in the driveway and parking areas to facilitate proper stormwater management.

4) Vehicles entering the property shall not exceed 8'6" in height.

5) The Applicant shall include "do not block" striping between the islands in the parking area.

6) The Applicant shall place "lane lines" separating the lanes in the parking area adjacent to the building.

7) The Applicant shall provide for a crosswalk/sidewalk along the Route 36 side of the building for pedestrian access.

8) The Applicant shall add pavement markings to address any potential drive-thru que overflow which shall be approved by the Planning Board Engineer.

9) The Applicant shall include the words "no idling" on the 5 minute parking space signs.

10) The plans shall be revised to eliminate the "drive-thru" language on the Route 36 façade of the building.

11) The proposed pylon sign shall be of a "lollipop" design and shall have a maximum height of 15 feet and shall not obstruct visibility along state highway Route 36.

**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. Neff

SECONDED BY: Mr. McGoldrick

ROLL CALL:

YES: Mr. Hawley, Mr. Pepe, Mr. McGoldrick, Mr. Neff, Mr. Caccamo, Mr. Josko,  
Mr. Krupinski, Mr. Crowther, Mr. Kurdes

NO: None

ABSTAIN: None

ABSENT: None



**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 3, 2022.



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