

**IN THE MATTER OF
APPLICATION NO. PB21-15
OF LITTLE CHICKEN KIDS, LLC
BLOCK 117 LOT 8.01**

**RESOLUTION GRANTING
VARIANCE & MINOR SITE
PLAN APPROVAL**

WHEREAS, LITTLE CHICKEN KIDS, LLC, hereinafter the "Applicant", has proposed the development of property located at 35 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 117, Lot 8.01 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 perform various interior renovations to the first floor of an existing building including the addition of an activity center within existing retail space constituting a change of use through the addition of a second use within the retail store and requiring minor site plan approval or waiver. The foregoing is contrary to the provisions of Chapter 150, Article IV, Section 150-21 of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the HBD Historic Business Zone District and retail sales establishments are a permitted use in the Zone. However, where there is a change in use in the structure which would result in two or more units for nonresidential occupancy and remodeling or conversion of building space Minor Site Plan and Variance approval is required; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on January 26, 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 Review of Zoning Officer Michelle Clark, dated September 30, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Little Chicken Kids, LLC, dated July 22, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Morgan Engineering & Surveying, dated August 27, 2018, marked as Exhibit A-3 in evidence.

1.4 Architectural Plan prepared by James D. Daly, Architect, dated July 15, 2021, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated November 12, 2021, marked as Exhibit A-5 in evidence.

1.6 Photograph of activity room, marked as Exhibit A-6 in evidence.

1.7 Second photograph of activity room, marked as Exhibit A-7 in evidence.

2. The premises in question are located at 35 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 117, lot 8.01 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the HBD Historic Business District Zone and retail establishments are a permitted use in the Zone.

4. The subject property has approximate dimensions of 28.67 ft. x 27.00 ft. x 4.00 ft. x 30.00 ft. x 26.00 ft. x 50 +/- ft. with a lot area of 3,549 +/- square feet. The existing building is a three-story

condominium building consisting of retail space on the first floor and residential units on the second and third floors. Mixed use retail and residential is permitted in the zone.

5. Pursuant to the report of the Planning Board Engineer, the property surrounding the subject site to the north, east and south are similarly zoned HBD and contain various mixed use, commercial and residential uses as well several restaurants. The property directly to the west is zoned CBD Central Business District and contains a three-story condominium building consisting of residential units. The subject property has an existing nonconforming element for lot frontage and width of 28.67 feet where 35 feet is required. This situation will continue to exist as a preexisting nonconforming situation and does not require Variance relief.

6. The Applicant was represented by Henry Wolff, Esq. who presented the testimony of Megan O'Donnell. Ms. O'Donnell currently operates a retail shop dedicated to children and is principally engaged in the retail sale of children's items such as clothing, toys, arts, crafts, décor, books and similar items.

7. Ms. O'Donnell's store has been in operation since November of 2021 and she desires to have a small area to the rear of the retail store with tables and chairs where children may engage in activities while their parents are shopping in the store or with their parents during shopping in the store such that their parents may purchase books, arts, crafts and other items that the children can utilize in the activity area. Thus, the activity room is ancillary and accessory to the principal retail business conducted on the premises.

Ms. O'Donnell testified that the activity area would be used for children's activities and assembly such as to engage in arts and crafts purchased in the store or to listen to an author present their books and other child activities. Ms. O'Donnell noted that children might have a small event such as a birthday party and the like but will not have large numbers due to the code limitations of building occupancy. Thus, the space involved can only host smaller groups.

8. The Planning Board notes that the changes in the building are interior renovations only and that there are no modifications proposed to the exterior of the property. The Applicant also provided

testimony that there will be two entrances and exits along with a handicapped exit as well in order to comply with all of the required building codes. The Planning Board finds that there will be little or no exterior impacts resulting from this modest amenity to the existing retail store.

9. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested relief. The Planning Board finds that the grant of Variance relief will promote the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55d-2 including promoting a public health safety and welfare by providing a healthy environment for children and families. Moreover, the Planning Board finds that this facility will contribute to the wellbeing of persons and neighborhoods in the community by providing unique space for children and families to purchase and enjoy children's items. The Planning Board further finds that the grant of relief here will provide sufficient space and appropriate location for a variety of recreational and commercial uses and will provide an amenity that will enhance this retail store as well as provide recreational area for the citizens of the Borough.

10. The Planning Board finds from the foregoing that the Applicant has satisfied the positive criteria for the grant of the requested relief as the activity provided for will promote the purposes of the Municipal Land Use Law which benefits substantially outweigh any detriments.

11. 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 this proposed amenity will not result in any substantial detriment to the public good. Instead, it will provide a benefit to the public good for the reasons set forth previously herein. Therefore, there is no substantial detriment.

12. 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 the Zoning Ordinance. The Planning Board notes that the Municipal Land Use Law encourages uses such as that proposed by the Applicant. Moreover, the Atlantic Highlands Master Plan goals and objectives include efforts to upgrade and revitalize the business and entertainment district to attract businesses and customers and encourages human scale and pedestrian friendly small town/small-shops. The Planning Board finds that these objectives are promoted by this application and therefore the application does not result in any substantial impairment of the Zone Plan or Zoning Ordinance.

13. 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.

13. The Planning Board further finds from the report of its Engineer that there are no exterior improvements proposed or required by this application. Consequently, the Planning Board finds that minor site plan approval can be granted without the requirement for any exterior improvements as they are not necessitated by this use.

14. 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 favor of, or in opposition to the appeal.

NOW THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Atlantic Highlands on this 3rd day of March 2022, that the Application of **LITTLE CHICKEN KIDS, LLC** 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 –

None

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. McGoldrick

SECONDED BY: Mr. Neff

ROLL CALL:

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

NO: None

ABSTAIN: Mr. Hawley

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**