

**IN THE MATTER OF
APPLICATION NO. PB21-18
OF ANTHONY RODRIGUEZ
BLOCK 84 LOT 11**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, ANTHONY RODRIGUEZ, hereinafter the "Applicant", has proposed the development of property located at 73 Memorial Parkway, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 84, Lot 11 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 installation of a 12 foot tall by 2 foot wide LED sign on the northeasterly façade of the existing building along the Memorial Parkway frontage. Pursuant to Chapter 150, Article VII, Section 150-69 signs containing self-contained light boxes can be no more than 6 square feet in area and no part of the sign shall be lower than 10 feet or higher than 18 feet above the sidewalk. The Applicant proposes to install a 24 square foot sign with the bottom of the sign 8 feet above ground level and the top of the sign 20 feet above the sidewalk; and

WHEREAS, the subject property is located in the OR Office Residential Zone District and signage is permitted as an accessory use in the zone; 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 9, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Anthony Rodriguez, dated September 9, 2021, marked as Exhibit A-2 in evidence.

1.3 Survey of Block 84, Lot 11, marked as Exhibit A-3 in evidence.

1.4 Installation detail of SignTech Signage, marked as Exhibit A-4 in evidence.

1.5 Photographs prepared by SignTech Signage of existing and proposed conditions, marked as Exhibit A-5 in evidence.

1.6 Photograph of custom supplied sign, marked as Exhibit A-6 in evidence.

1.7 Review #1 of CME Associates, dated October 21, 2021, marked as Exhibit A-7 in evidence.

1.8 Review #2 of CME Associates, dated November 4, 2021, marked as Exhibit A-8 in evidence.

1.9 5 Streetscape Photographs of subject property from various vantage points along Memorial Parkway, marked as Exhibit A-9 a-e in evidence.

1.10 Photograph of proposed sign at prior location in Asbury Park, New Jersey, marked as Exhibit A-10 in evidence.

2. The premises in question are located at 73 Memorial Parkway, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 84, lot 11 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the OR Office Residential Zone District and the existing tattoo parlor is a permitted use in the zone however, the proposed sign requires Variance relief as set forth previously herein.

4. The subject property has approximate dimensions of 134.50 ft. x 149.62 ft. x 125.00 ft. x 100.00 ft. and is somewhat irregular in shape with a lot area of 15,681.6 square feet (0.36 +/- acres). The subject property is presently developed with a two-story commercial building and the Applicant operates his tattoo business on the first floor. The Applicant presented the testimony of Anthony Rodriguez who testified that he has conducted the tattoo business on the property since November of 2007. He presented a series of photographs marked as Exhibit A-9 a-e which demonstrates that this portion of Memorial Parkway does not provide good visibility for travelers and motor vehicles after daylight hours. The Applicant testified that the highway is dark at night and the Planning Board finds that the photographs he presented demonstrates that fact. Mr. Rodriguez testified that the proposed sign would be only 2 feet wide and 12 feet high and will extend 2 foot 4 inches out from the building sidewall and will be beneath an existing overhang. It will not project past the property line.

5. Mr. Rodriguez testified that the sign will be 8 feet above ground level so that it will provide adequate clearance for patrons entering the site. He further testified that the level of lighting will not be excessive. The Planning Board's Engineer, Mr. Rohmeyer confirmed that the lighting level from the sign will be zero foot candles at the property line and therefore, will not interfere with visibility of motorists along Memorial Parkway. Nor will the lighting extend beyond property lines so as to adversely impact adjacent property owners. The Planning Board agrees.

6. The Planning Board notes from the report of it's Engineer that the subject property is adjacent to other Zone Districts. The subject property is zoned OR (Office Residential). On the opposite side of Memorial Parkway the Zoning changes to R-1 (Single Family Residential) and properties to the south are located in the RTH (Townhouse Residential) Zone. Thus, there is a mix of uses in the immediate vicinity of the subject property.

The Planning Board acknowledges that several residents appeared in opposition to the application who raised concern about the size of the sign, the light that would be emitted from it and that it would be out of character with other businesses along Memorial Parkway. The Planning Board acknowledges concerns but disagrees that the proposal of the Applicant will result in any significant adverse impacts. As noted by the Board Engineer, the light will emit 0.0 foot candles at the property line and therefore will not intrude upon the streetscape or properties in the vicinity of the subject parcel. The Planning Board finds that a two foot wide sign by 12 foot in height is not excessive along this area of Memorial Parkway and agrees with the Applicant that it is appropriate to have such signage in order to provide adequate site identification for motorists coming to the property.

The Applicant agreed that all signage will be extinguished at 10:30 pm in the evening so that it will not intrude upon any adjacent properties at inappropriate hours. That is a condition of this approval.

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 from the photographs provided that the existing signage for this business is at ground level and has low visibility to motorists driving along Memorial Parkway. This is particularly so in the evening and nighttime hours. The Planning Board agrees with the Applicant that the characteristics of this property with respect to its shape, the location of the existing building and improvements and parking areas limit the area where effective signage can be provided. The Planning Board agrees that the proposed signage is being placed in an appropriate location giving consideration to the existing development on the property. Therefore, the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exist such that the strict application of the Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as a significant portion of the Applicant's business does occur in evening or night time hours and adequate signage is necessary to provide better safety for motorists coming to the site.

The Planning Board further finds that the grant of the requested Variance relief will result in advancing the purposes in the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2 and that the benefits of permitting the deviations requested substantially outweigh any detriment. More particularly, the Planning

Board finds that this signage will promote public health and safety by providing better visibility of this site. It will also encourage free flow of traffic.

8. 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 grant of the requested Variance relief will not result in any substantial detriment to the public good. The Planning Board acknowledges concerns of residents as to the size and intensity of lighting. The Planning Board agrees with its Engineer that the lighting will not spill beyond the property lines and finds from the evidence and Exhibits presented that the larger sign will provide for safer vehicular movements. Therefore, the Planning Board finds that the grant of the requested Variance relief will result in an improved situation rather than resulting in a substantial detriment to the public good.

9. 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. As noted previously herein, the existing use of the property is a lawful, preexisting, nonconforming use which existed prior to the current Zoning revisions. The proposed signage will not increase the intensity of the use as the area of the building devoted to this use will not be increased and the intensity of the use will continue as a status quo. Thus, there will be no substantial impairment of the Zone Plan or Zoning Ordinance as the activities on the property will continue as they have over the past 14 years.

10. 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.

11. 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 **ANTHONY RODRIGUEZ** 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. Variance approval for construction of a sign with an area of 24 square feet where 6 square feet is permitted.

b. Variance approval permitting a sign 8 feet from ground level where 10 feet is required.

c. Variance approval permitting a sign to have the height at 20 feet above ground level where 18 feet is the maximum permitted.

2) All signage for the Applicant's business at this site shall be extinguished no later than 10:30 pm each night.

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. Hawley

SECONDED BY: Mr. McGoldrick

ROLL CALL:

YES: Mr. Dougherty, Mr. Hawley, Mr. McGoldrick, Mr. Pepe, Mr. Josko, Mr. Crowther

NO: Mr. Caccamo, Mr. Neff, Mr. Krupinski

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**