

**IN THE MATTER OF
APPLICATION NO. PB21-23
OF DAVID WICKERSHAM/TRUE NORTH
MANAGEMENT, LLC
BLOCK 97 LOT 13**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, DAVID WICKERSHAM/TRUE NORTH MANAGEMENT, LLC, hereinafter the "Applicant", has proposed the development of property located at 68 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 97, Lot 13 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 for noncompliance with sign ordinances, Section 150-69.E(3) and Section 150-69.I(1) along with a variance from providing the required number of parking spaces on site. The foregoing is contrary to the provisions of Chapter 150, Article VII, Section 150-69 and Article IX, Section 150-89 of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the HBD Zone District and the proposed interior renovations to remove certain existing commercial uses and replace them with a medical use is a permitted use in the zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on August 4, 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 July 17, 2021, marked as Exhibit A-1 in evidence.
 - 1.2 Survey prepared by Thomas P. Santry, P.A., dated October 3, 2017, marked as Exhibit A-2 in evidence.
 - 1.3 Application for Variance dated October 21, 2021, marked as Exhibit A-3 in evidence.
 - 1.4 Minor Site Plan prepared by Eastern Civil Engineering, dated January 26, 2022 revised April 1, 2022, marked as Exhibit A-4 in evidence.
 - 1.5 Review #1 of CME Associates, dated February 25, 2022, marked as Exhibit A-5 in evidence.
 - 1.6 Operations Plan of True North Management, LLC, dated July 15, 2021, marked as Exhibit A-6 in evidence.
 - 1.7 Review #2 of CME Associates, dated June 8, 2022, marked as Exhibit A-7 in evidence.
 - 1.8 Series of 12 Photographs of exterior and interior of existing building, marked as Exhibit A-8 in evidence.
 - 1.9 Ordinance 07-2018, marked as Exhibit A-9 in evidence.
 - 1.10 Floor Plan of building with red highlighted area for change of use, marked as Exhibit A-10 in evidence.
2. The premises in question are located at 68 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 97, lot 13 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the HBD Historic Business District Zone, and the proposed uses are permitted uses in the zone.

4. The subject property has approximate dimensions of 64.00 ft. x 95.00 ft. x 64.00 ft. x 95.00 ft. and is rectangular in shape with an approximate area of 6,080 square feet (0.13 acres). The subject property is presently developed with an existing one-story commercial building which covers 99% +/- of the lot.

5. The Applicant was represented by Henry Wolff, Esq. who presented the testimony of Frederick Rast, prior owner of the subject property, Brendan Sole, current Property Manager and Andrew Stockton, a Licensed Professional Engineer, Surveyor and Planner in the State of New Jersey. Mr. Rast testified as to the history of the property and that the building is approximately 62 years old and that prior owner Mohammed Hannafey developed the building as a medical center with twelve (12) examination rooms in approximately 1997. That medical use continued over the years but evolved to include several Physical Therapists and a Chiropractor. Mr. Rast testified that there has never been on-site parking for this building as previously the parking requirement was satisfied by Ordinance which permitted businesses within 600 feet from the public lot to satisfy its parking requirements through the use of that parking lot. The Ordinance was revised in 2018 to provide that parking requirements could be satisfied by the public parking lot provided that the premises are located within 300 feet walking distance of the principal use as measured from the geometric center of the parking facility located on Railroad Avenue. The question was raised as to whether this facility is within 300 feet walking distance from the geometric center of the parking facility. If not, the Applicant is requesting variance relief to permit no on-site parking. Mr. Rast testified as to the Covid-19 testing center created when the Covid-19 pandemic hit which center continues and will now be enhanced by the proposed new medical use.

6. Mr. Sole testified that he is the Property Manager employed by True North Management, LLC and that he oversees all property maintenance, negotiates leases and is familiar with the tenants in the building. Current tenants include a Hair Salon, a Travel Company, Beacon Hill Realty, the True North Management Offices, the Atlantic Highlands Chamber of Commerce, Straight Wick Holding offices and Covid-19 Test offices. The remaining area in the building shown in Exhibit A-10 with a red marker will be

utilized as a medical office. Mr. Sole's testimony and the letter narrative accompanying the application demonstrates that the proposed use will be a "point-of-care" office for non-critical patients. Services will be catered to occupational health and wellness needs including pre-placement screening and drug testing, return to work exams and non-surgical, non-opioid treatment for injuries. The hours of operation will be Monday through Friday from 9 am to 5 pm, closed from 12 noon until 1 pm for staff lunch/break. Weekends will be open by emergency appointment only. Patients are required to schedule an appointment in advance. The facility will not entertain walk-in clientele. The facility will have a staggered scheduling calendar to allow for four (4) patients to be seen within an hour in 30-minute blocks using two (2) examination rooms. The office will be staffed by a nurse practitioner and an office administrator daily with the chief medical officer available by appointment. The area to be renovated for this use is 760 square feet.

7. Mr. Stockton presented his credentials to the Planning Board as a Licensed Professional Engineer, Professional Land Surveyor and Professional Planner in the State of New Jersey and his credentials were accepted. Mr. Stockton went through his calculation of the existing use on the property and the amount of square footage that they consume and determined that the uses in the property require thirty six (36) parking spaces. He further noted that this number is reduced by footnote 2 on Exhibit 9-2 of the Ordinance which provides that a building of mixed office uses may include a maximum of 1/3 medical or dental floor area which will be calculated based on general office use thus reducing the required number of spaces to twenty seven (27). The proposed uses here provide for less than 1/3 of the gross area to be utilized for medical/dental purposes and qualify for treatment under this section of the Ordinance. Mr. Stockton further opined that the subject property is within 300 feet of walking distance to the geometric center of the public parking area along Railroad Avenue. Consequently, the parking requirements are satisfied from that public parking. This testimony was questioned by the Board Engineer as the information as to the existing uses, proposed use and the areas of the building utilized by each were not included on his plans marked as Exhibit A-4 in evidence. The Applicant agreed that as a condition of approval the plan will be updated to include each of the existing uses, the square footage of those uses, the proposed use and the square footage of the proposed use showing the calculation to confirm that the number of spaces required is twenty seven (27). Further, it shall show the walking distance from the entrance of the existing building to the geometric center of the public parking area along Railroad Avenue to confirm that it is within 300 feet. If not, then the Applicant has requested a variance from the Ordinance to permit it to rely on the

public parking area as it has for many years. Finally, the Applicant advised the Planning Board that it was not requesting any variances for signage and that the signage for the uses will be in compliance with the Zoning Ordinance. Therefore, they withdrew their request for signage variances and those are not considered within this resolution.

8. In light of the foregoing, the posture of the current application is a request for minor site plan approval for a change of use and if applicable a variance to deviate from the parking space requirement.

9. The Planning Board finds that the Applicant has satisfied the requirements for minor site plan approval. The Planning Board notes that there will be no exterior renovations to the subject property with the possible exception of revising its signage to comply with the requirements of the Ordinance. As noted previously herein, the building covers 99 +/-% of the lot area. Consequently, there is no opportunity for additional improvements to the site and the site plan submitted with the exception of the added information referenced previously herein with respect to parking along with the other information provided by the Applicant is adequate for the Planning Board 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 and the many years that the subject property has operated satisfactorily 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 lighting requirements necessary to provide safety on the site. The Planning Board further finds that the detailed drawings, specifications and estimates of the application for approval conform with the standards established by Ordinance and that site plan approval is appropriate under the circumstances subject to the conditions set forth herein.

10. The Planning Board further finds that should the revised plans demonstrate compliance with the Ordinance for utilizing the public parking area along Railroad Avenue to satisfy the parking requirements no on-site parking will be required. Conversely, in the event that the revised plans do not demonstrate compliance the Planning Board finds that it agrees with the testimony presented that historically this property has been serviced by the public parking area on Railroad Avenue with similar uses

to that proposed and that this change in use will not affect the parking demands of this building which have been historically satisfied by off-site parking within the Borough and it constitutes continuation of the status quo. Therefore, the Planning Board finds that a hardship exists with respect to the subject property due to its existing conditions, the fact that the property is fully developed and has no ability to entertain onsite parking such that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Borough of Atlantic Highlands 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 continuing to maintain the same uses and intensity of use on the subject property notwithstanding that there has been a change in the tenant.

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 the grant of the requested relief will not result in any substantial detriment to the public good. As noted previously herein this building has historically been utilized for medical purposes and the proposed new tenant will not alter the functioning of the building or the demand for parking which has previously been satisfied that off-site parking within the Borough. The Planning Board further notes that the Applicant's testimony and Exhibits demonstrate that they will be seeing only four (4) patients within a one-hour period which will generate minimal need for parking such that the impacts for parking are di minimis and in substantial.

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 this building has been in existence for approximately 62 years and has set the character for this portion of First Avenue. The proposed change in tenancy will not alter any of the existing zoning characteristics and therefore will have no substantial impact upon the Zone Plan or Zoning Ordinance as it will be a continuation of the status quo.

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 Variance can and should be granted at this time along with site plan approval.

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 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 1st day of September, 2022 that the Application of **DAVID WICKERSHAM/TRUE NORTH MANAGEMENT, 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 –

- 1) The approvals provided herein are as follows:
 - a. Minor site plan approval.
 - b. Variance approval as may be required for not providing on-site parking.
2. The Applicant shall submit a revised minor site plan identifying each proposed use and the square footage of same and a calculation to confirm that the number of spaces required is twenty seven (27). The plan should be further revised to demonstrate the walking distance from

the entrance of the subject property to the geometric center of the public parking area along Railroad Avenue to demonstrate whether or not the parking in that area may be utilized to satisfy the Applicant's parking requirements or whether the variance referred to herein must be granted.

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.

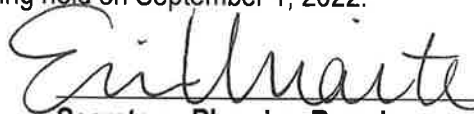
BE IT FURTHER RESOLVED that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.

OFFERED BY:	MR. HAWLEY
SECONDED BY:	MR. NEFF
ROLL CALL:	
YES:	ZUZULOCK, DOUGHERTY, HAWLEY, McGOLDRICK, NEFF, JOSKO, KRUPINSKI, CROWTHER, KURDES
NO:	NONE
ABSTAIN:	NONE
ABSENT:	PEPE, CACCAMO, MAJEWSKI



**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 September 1, 2022.



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