

**IN THE MATTER OF
APPLICATION NO. PB24-01
OF WYRD WITCH
BLOCK 97 LOT 10**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, WYRD WITCH, hereinafter the "Applicant", has proposed the development of property located at 78 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 10 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 provision of personal services within its existing retail store/metaphysical shop including individual counseling services and group meetings covering a variety of women's personal, metaphysical, astrological, historical and other topics which constitute a personal service use. The foregoing is contrary to the provisions of Chapter 150, Article V, Section 150-29 (A)(3)(Exhibit 5-4) of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the HBD Historic Business District Zone and retail sales establishments are a permitted use in the zone. However, the Applicant proposes a change in use to provide personal services as previously referenced herein and personal services are not expressly permitted in the HBD Zone District; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on May 2, 2024, 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 Application for Variance of Wyrd Witch, dated November 30, 2023, marked as Exhibit A-1 in evidence.

1.2 Survey prepared by Richard Stockton, dated November 4, 2006, marked as Exhibit A-2 in evidence.

1.3 Undated Layout Plan, marked as Exhibit A-3 in evidence.

1.4 Review #1 of CME Associates, dated January 22, 2024, marked as Exhibit A-4 in evidence.

1.5 Series of Four 8.5 in. x 11 in. Photograph Sheets with Various Photographs of the Exterior of the Subject Premises, Interior of the Subject Premises & Various Products offered for Sale, marked as Exhibit A-5 a-d in evidence.

2. The premises in question are located at 78 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 10 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. However, personal service establishments are not a permitted use in the zone and a use Variance is required for proposed personal service uses to be combined with the retail sales establishment.

4. The subject property has approximate dimensions of 19.58 ft. x 95.00 ft. x 19.58 ft. x 95.00 ft. and is an elongated rectangle in shape with an approximate area of 1,860 square feet (0.04 acres). The subject property is presently developed with an existing two-story building. The first floor is presently occupied by the Wyrd Witch retail store. The second floor is occupied as an office. The Applicant

proposes to add a personal services component providing individual counseling, group counseling and classes with respect to metaphysical, historical, astrological and related subjects.

5. The Applicant was represented by Robert Schillberg, Esq. who presented the testimony of Tiffany Berryman and Jaclyn Berryman, who are the principals of Berryman Group, LLC which is the owner/operator of Wyrd Witch. They provided testimony that Tiffany Berryman is the operator of the retail facility and proposed operator of the facility with the added personal service component. They testified that there will be no change in the current hours of operation which may be conducted between the hours of 12 o'clock noon and 8 o'clock p.m. seven (7) days per week. They further provided testimony that there will be no change in the current business operations, there will be additional services provided through individual counseling, classes and meeting groups. It will be conducted either individually in an office area on the premises or collectively in the open areas to the rear of the building and in the courtyard area, outside the rear of the building. Counseling for individuals may last from 30 to 60 minutes and classes and meeting groups will be for a variety of duration times, dependent upon the particular interests.

6. They provided testimony that the existing premises were chosen as being uniquely suited to their use. The premises are centrally located on First Avenue in the Historic Business District. They noted that the existing retail facility contains murals with views of Atlantic Highlands and the vicinity, emphasizing its historic character. They also noted that area businesses such as the nearby theatre, provide a unique set of business opportunities with enhanced ideas and they believe that their business will partner with their neighbors to provide for a more vibrant and attractive business community on First Avenue.

7. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. The Planning Board notes that the Master Plan goals and objectives include encouraging improvements in the business and entertainment and the light industry fields to strengthen the commercial attraction, promote a viable economic base and expand the choice of goods, services and employment opportunities available within the Borough, This includes upgrading and revitalizing the business and entertainment districts to attract businesses and customers. The Master Plan encourages the provision of sufficient space in appropriate locations for commercial, residential, light, industrial and open space and recreational uses. The Master Plan encourages the establishment of a

viable and economic base and encourages commercial areas to support existing businesses and attract new businesses which can provide new opportunities for goods and services, employment and customers. It encourages the expansion for the choice of beneficial goods and services and employment opportunities in order to maintain a viable, economic base.

Based upon the foregoing, given the objectives of the Master Plan and coupled with the testimony of the Applicants witnesses, the Planning Board finds that the grant of the requested Variance relief will constitute municipal action to guide the appropriate use and development of lands within the Borough, promote the general welfare and will provide sufficient space in an appropriate location for a variety of uses including this proposed commercial use which will provide for a greater variety of uses within the HBD Zone District, which will promote and encourage business opportunities within the First Avenue corridor. Thus, the proposed Variance will promote the purposes if the Municipal Land Use Law at N.J.S.A. 40:55-D-2.a.g. The Planning Board agrees with the Applicant that this use will harmonize with other uses in the vicinity and will provide enhanced services to residents of the Borough and the surrounding community.

8. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good. The Planning Board finds that there is an existing conforming retail commercial establishment in the subject property which will continue. This added amenity will provide additional services, attract more customers to its establishment and to those in the proximity to it. The hours of operation will be unchanged from the current business hours so as not to have a more intense impact upon the surrounding neighborhood and the change in use to accommodate the personal services component does not create greater parking need which is already provided in the existing public parking area. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any significant change to the existing conditions in the area and will have di minimis, if any, negative impacts upon the public good. In fact, the Planning Board anticipates that the impacts will be positive by encouraging a more vibrant commercial environment.

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 Zoning Ordinance. As noted previously herein, the Master Plan is replete with goals and objectives that encourage broadening the goods and services available to the residents of the Borough, as well as residents of the surrounding community. The grant of

the requested Variance relief here will serve to promote the purposes of the Master Plan and will be consistent with Zone Plan and Zoning Ordinance.

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 Variance can and should be granted at this time.

11. The Planning Board further finds that there are no exterior improvements proposed or required by this application and the proposed new use does not require any. Thus, the Planning Board finds that plan approval can and should be granted without the requirement for any exterior improvements as they are not necessitated by this use.

12. 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 testimony and evidence in support of, or in opposition to, the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 6th day of June 2024, that the Application of **WYRD WITCH** 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 approval granted herein in to permit the personal service use described herein as a component of the existing retail establishment.

- 2) The hours of operation for the service use shall be limited to the hours of 12 o'clock noon through 8 o'clock p.m.

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 should the Applicant not exercise these Variances within the required time period pursuant to Chapter 150, Article III, Section 150-9.J these Variances will expire.

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: Ms. Majewski

SECONDED BY: Mr. Hawley

ROLL CALL:

YES: Mr. Caccamo, Mr. Hawley, Mr. Josko, Ms. Majewski, Mr. Kurdes, Mr. Bearmore,
Mr. Krupinski

NO: None

ABSTAIN: None

INELIGIBLE: Ms. DePasco, Councilman Dougherty

ABSENT: Mr. Neff, Mr. McGoldrick, Dr. Zuzulock, Ms. Walter

**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 June 6, 2024.

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