

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

WORKSHOP MEETING: 7:30 P.M.

Roll Call

Members Present – Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray (arrived at 7:31 pm), Chairman Neff, Mr. Pepe, Mr. McGoldrick (arrived at 7:34 pm), Mr. Dougherty

Members Absent – Mr. Ilarazza

Michael Steib was present as Board Attorney. Douglas Rohmeyer was present as Board Engineer.

Chairman Neff called the meeting to order and stated that the meeting is being held in compliance with the Open Public Meetings Act. Chairman Neff called for a moment of silent prayer followed by the Pledge of Allegiance.

Mr. Steib advised that Mrs. Murray has joined the Board.

Public Comment – No comments or questions were received.

Master Plan Update – Mr. Neff reported that the challenge to the Fair Share Housing Plan was dismissed. The Draft Affordable Housing Plan should be available in September.

Procedural Statement Revision – Mr. Neff stated that at last month's Board training there was indication that the Board would like the Procedural Statement amended to include the following: This meeting is a quasi-judicial proceeding, any comments or questions must be limited to issues that are relevant to what the Board may legally consider in reaching a decision. Decorum appropriate to a judicial hearing must be maintained at all time.

Mr. Steib advised that Mr. McGoldrick has joined the Board.

MR. HAWLEY OFFERED A MOTION THAT THE STATEMENT BE ADDED TO THE PROCEDURAL NOTICE ON THE PLANNING BOARD AGENDA, SECONDED BY DR. CETRON.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff

Nays: None

Abstain: None

Absent: Mr. Ilarazza

Mr. Neff directed the Board Secretary to include the statement as part of the procedural notice on future Agendas.

Mr. Steib noted that there is no pending litigation.

Mr. Neff noted there is no further business to be discussed during the Workshop Meeting.

MR. HAWLEY MOVED TO ADJOURN THE WORKSHOP MEETING, SECONDED BY MR. COLANGELO. BY VOICE VOTE ALL AGREED.

There being no further business to come before the Board, the Workshop Meeting Adjourned at 7:35 P.M.

Erin Uriarte
Planning Board Secretary

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

REGULAR MEETING: 7:35 P.M.

Roll Call **Members Present** – Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff, Mr. Pepe, Mr. McGoldrick, Mr. Dougherty
Members Absent –Mr. Ilarazza

Michael Steib was present as Board Attorney. Douglas Rohmeyer was present as Board Engineer. Matthew Kalwinsky was present as Conflict Attorney for the Planning Board.

Approval of Minutes for the July 31, 2018 Special Meeting

DR. CETRON MOVED TO APPROVE THE MEETING MINUTES FOR JULY 31, 2018, SECONDED BY MS. HOFFMAN.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff
Nays: None
Abstain: None
Absent: Mr. Ilarazza

Approval of Attorney’s Voucher for June 2018 in the amount of \$2,632.50

MS. HOFFMAN MOVED TO APPROVE THE ATTORNEY’S VOUCHER FOR JUNE 2018, IN THE AMOUNT OF \$2,632.50, SECONDED BY DR. CETRON.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff
Nays: None
Abstain: None
Absent: Mr. Ilarazza

PB15-03, Block 17, Lot 8.01, 170 Ocean Blvd (Thomas Paine House LLC) – Request for an Extension of Time – Mr. Pepe stepped down from hearing this application. Mr. Steib stated that this application was previously approved and the Board granted the first one-year extension of approval.

Chad Warnken, of Archer & Griener, appeared on behalf of the applicant. Mr. Warnken stated that there was a one year extension of a conditional use approval granted last year. His client bought the house in a foreclosure and is trying to sort through all of the approvals before they move forward.

Mr. Steib explained that the applicant can apply for up to three one-year extensions; they are not automatic. The Board must consider if there has been a change in the zoning that would alter the Board’s opinion, if there has been a change in the site or immediate vicinity.

DR. CETRON OFFERED A MOTION TO APPROVE A SECOND ONE-YEAR EXTENSION, SECONDED BY MS. HOFFMAN.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff
Nays: None
Abstain: None
Absent: Mr. Ilarazza

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

At this time, Mr. Pepe took his seat with the Board.

PB16-13, Block 8, Lot 23.01, 25 Bayside Drive (J&L Bayside Drive LLC) – Application for Bulk Variances – Mr. Steib advised this application has been carried a number of times. The neighbors and the applicant have reached a settlement and the application will be revised to be a subdivision application and attached it to the adjacent property owners. The new attorney has advised that a plan should be submitted and if the Board does not have anything by the September meeting, the Board may consider dismissing the application without prejudice. The applicant is confident that we will have the plan by September. The applicant will also have to re-notice for the hearing.

PB18-01, Block 19, Lot 1, 233 East Highland Avenue (Kozlowski) – Application for Bulk and Use “d” Variance – Mr. Fligor and Mr. Illiano stepped down from hearing this application.

Mr. Steib advised this is a continuation hearing of a matter that commenced in July. The applicant has obtained the additional information requested by the Board and has submitted a Geotechnical Review from Uzman Engineering LLC.

Mr. Kozlowski stated that he had the geotechnical report done to show the location of the septic system that indicates there is no significant risk posed by the proposed septic system. Mr. Kozlowski was reminded he is under oath.

Mr. Rohmeyer indicated a discrepancy between the Geotechnical Report and the proposed site plan. The calculation in the geotechnical report call for a 25 foot separation from the house to the septic system, while the plan only shows 15. The septic field is under County jurisdiction and if they require the full 25 feet, Mr. Kozlowski will have to come back to the Board for an amendment to the plan. Mr. Kozlowski agreed to that condition and noted that they intend to keep it at a fifteen foot distance. He added that they may even end up with a smaller septic system than proposed. The geotechnical report from Uzman Engineering, LLC, dated July 9, 2018 was marked as exhibit A-8.

Mr. Colangelo asked how many trees are being removed. Mr. Kozlowski advised 3 - 5 trees.

Mr. Rohmeyer advised that proper stabilization of the land will be required and verified before being able to move on to the next phase of the project. He reviewed the variances being requested. The maximum allowable lot disturbance is 3,748 square feet and the applicant is proposing 8,450 square feet. The maximum useable floor area ratio allowable is 0.175 and the applicant is requesting 0.242. The maximum lot coverage permitted is 12% and 13% is proposed. The minimum front yard setback is 25 feet where 7.5 feet is proposed.

Dr. Cetron asked if there is any plan to phase the project to help mitigate lot disturbance. Mr. Kozlowski indicated he would agree to construct either the septic system or the house first, depending on contractor availability. He has no problem with phasing the project.

Mr. Neff asked for any questions from the members of the public.

James Krauss, 77 Bayside Drive, and on behalf of the Atlantic Highlands Environmental Committee, asked if Mr. Kozlowski is aware that Gawen Road slopes down into Lenape Woods. Mr. Kozlowski replied yes. Mr. Krauss asked if there is a plan to address the drainage. Mr. Kozlowski replied no there is not. Mr. Steib explained that a grading plan will be required as part of the permitting process.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

MR. COLANGELO OFFERED A MOTION TO APPROVE THE APPLICATION WITH CONDITIONS AS DISCUSSED, SECONDED BY MR. DOUGHERTY.

Ayes: Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff, Mr. Pepe, Mr. McGoldrick
Nays: None
Abstain: None
Absent: Mr. Ilarazza

At this time, Councilman Fligor and Mr. Illiano took their seats with the Board.

PB18-07, Block 134, Lot 12, 97 Center Ave (Dougherty) – Application for Bulk Variance – Mr. Dougherty stepped down from hearing this application.

Mr. Steib advised he reviewed service and the Board has jurisdiction to hear this matter. A zoning denial letter, dated May 23, 2018 was marked as Exhibit A-1. The application of Brian & Erin Dougherty, dated June 9, 2018 was marked as Exhibit A-2. A property survey prepared by Leo Kalieta, dated April 6, 2018 was marked as Exhibit A-3. Architectural elevations and floor plan prepared by Maxine Giordano was marked as exhibit A-4. The review letter of CME Associates, dated July 3, 2018 was marked Exhibit A-5.

Erin & Brian Dougherty were sworn in as the applicants. Mrs. Dougherty stated that they are applying for bulk variances to add on a master bedroom, bathroom and closet above the existing first floor.

Mr. Steib noted that the variance being requested is for side yard setback because the existing residence has a 9 foot side yard setback and the same wall is being carried upward and will also be 9 feet from the setback.

Mr. Fligor asked what the previous approval on this property granted. Mr. Dougherty explained it was the previous owners who requested the variance and they were granted a variance for the 9 foot setback when the first floor addition was added.

A copy of the previous resolution of approval was submitted to the Board. Mr. Steib marked the Resolution, dated January 12, 2006 as exhibit A-6 and distributed copies to the Board.

Mr. Neff questioned the building height. Mrs. Dougherty referred to the rear elevation sheet that the existing height is shown at 25.7 feet. She noted the roofline will be continued at the existing height.

Mr. Rohmeyer asked if there are any proposed modifications to the foundation. Mrs. Dougherty replied no. Mr. Rohmeyer stated that all of his concerns have been addressed.

Dr. Cetron stated that the previous variance granted approval for the one-story addition and this request is to build on top of it. Mr. Dougherty replied that is correct.

Mr. Neff asked for questions and comments from the public and none were received.

Mr. Fligor stated this seems like a pretty straightforward design and he doesn't see any detriment in granting the variance.

Dr. Cetron stated that he reviewed the previous resolution and he feels the Board made the right decision then and he sees no reason to deny it.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

DR. CETRON OFFERED A MOTION TO APPROVE THE APPLICATION, SECONDED BY MR. FLIGOR.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Mrs. Murray, Chairman Neff
Nays: None
Abstain: None
Absent: Mr. Iarazza

Mrs. Murray left the meeting at 8:09 pm. At this time, Mr. Dougherty took his seat with the Board.

B18-05, Block 102, Lots 7 & 8, 188-190 First Avenue (Atlantic Highlands Real Estate Partners) – Application for Preliminary & Final Site Plan Approval & Bulk Variances – Mr. Steib advised this is a continuation hearing, as in previous hearings he has a conflict from hearing this case and Matt Kalwinsky will be filing in as Board Attorney.

Mr. Kalwinsky stated that there were 25 exhibits previously marked during the two hearings. He suggested that the Board allow the applicant to present all expert testimony first and then open the hearing to the public for questions of all experts at once. The Board agreed.

Jason Tuvel appeared on behalf of the applicant. He advised that every witness that has presented testimony is present and available for questions. He called the traffic engineer to finish the testimony that was started at the last hearing; he noted they left off with parking.

Nick Verderese was reminded that he is still under oath. Mr. Verderese referred to exhibit A-24 and noted they are proposing 11 parking stalls. The Borough Ordinance requires 14 spaces for a general retail use, however it does not call out a specific standard for a convenience store use, which generally has a faster turnover of parking than a general retail store. On average they expect each shopper to stay, on average, 3- 5 minutes. They came up with their number by looking at other Monmouth County 7-11s as well as data from the ITE, which recommends 3.11 spaces per 1,000 square feet. In applying that data they came up with a requirement of 9 parking spaces so he feels the 11 proposed is more than adequate. In terms of the loading zone, he noticed that none of the other businesses along First Avenue have a loading zone. The loading zone is designated for the larger truck deliveries and will not take away from the viability of the circulation of the site. There are wide drive aisles and plenty of room for other vehicles to maneuver. A waiver will be required for the ingress only driveway on First Avenue, which was designed at 32 feet where 30 is permitted. Mr. Verderese advised the applicant is reducing the existing wider driveway and they are well under what the NJ DOT would allow. A waiver will also be requested from installing an island in the 32' driveway and because it is ingress only, he feels there is no need to make it a separated driveway. The design proposed is in conformance with the requests of the DOT and he is comfortable with requesting the waivers.

Mr. Neff stated that he would like to do Board member questions before moving to the next witness. He referred to the ingress only on Route 36 and asked if there will be anything in place to deter a driver from trying to exit back on to the highway. Mr. Verderese replied that there is no physical barrier to keep anyone from exiting out the driveway however they did design it narrowly with an angle to deter drivers from driving the wrong way. They will also add directional striping on the roadway.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Mr. Colangelo referred to the seasonal adjustment to the traffic counts that was testified to at the last meeting and asked if the ferry traffic was taken into consideration in that adjustment. Mr. Verderese replied that Atlantic Highlands is very unique with the seasonal beach traffic and the commuter traffic for the ferry. He feels that they were conservative in using the 29% adjustment because there are usually less people commuting in the summertime. Mr. Colangelo replied that there are more people using the Harbor in the summer months. Mr. Verderese advised that the recreational traffic is all taken into consideration in the seasonal adjustment. He noted that they did the counts a few lights up the road at Laurel Ave and Route 36 for another project and they found the seasonal adjustment to actually be a 10% increase. Mr. Colangelo indicated with the streets off Route 36 before they get to the 7-11 site and the current cut-through situation that take place. He asked if Mr. Verderese has any experience with this type of use increasing the cut-through situation. Mr. Verderese stated that the nature of the traffic coming to this site is not going to be drivers going out of the way for this use; he doesn't anticipate drivers circling the blocks to get in to the site. If it isn't convenient, they will just drive up the road two miles to the next 7-11. Mr. Colangelo referred to the testimony that drivers exiting the site will have to time the light and his concern is that they will come west on 36 and down Third Avenue to get to the ferry, in order to avoid the traffic at First and 36. Mr. Verderese stated those drivers are already on the road as it exists now. Discussion was held regarding the speculated traffic movements that could take place.

Mr. Tuvel stated that the off-site traffic is not part of the Board's purview and he feels that the traffic study has gone above and beyond to report on the off-site impact of the intersection however they were not obligated to address that.

Mr. McGoldrick asked what happens when someone pulls in with a boat trailer. Mr. Verderese stated that there is the curb line towards the front of the site and the loading zone will only be occupied one a week so they could also pull in there as well. He added that the stalls are designed at 9 feet by 18 feet. Mr. McGoldrick indicated concern with any back-up on site spilling out into the intersection. He noted it wouldn't just be an inconvenience, it would cripple this intersection.

A discussion was held relating to how a driver with a trailer would utilize the site. Mr. Tuvel explained the case law relating to permitted uses and the traffic associated with it. The site is designed to accommodate a WB50 tractor trailer. He added that the applicant is compliant with traffic impact and with the lot size.

Board members indicated concern with the type of traffic that will be using this site. Mr. Tuvel reminded the Board of case law related to it being a permitted use.

Mr. Caccamo asked about an island in the northern driveway. Mr. Verderese stated that he feels this is the safest design, noting that the driveway was pushed back as far as possible from the stop bar. The island requirement is applied to driveways over 30 feet in width. The islands have been known to cause tripping hazards for pedestrians.

Mr. Colangelo questioned a "No Trailers" sign for the site. A discussion was held regarding trailers utilizing other businesses along First Avenue.

Mr. McGoldrick reiterated his concern with the domino effect of traffic jamming up because of an inexperienced trailer driver trying to maneuver the site. Any stacking of vehicles will spill out into the intersection and it becomes a safety issue. Board members indicated concern with trailers pulling in not being able to maneuver the site or not being able to exit easily. Mr. Verderese replied

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

that they have designed the site so that a WB50 tractor trailer, which is 30 feet longer than a boat or landscaping trailer, can adequately maneuver the site.

Mr. Pepe questioned having three ingresses and only one egress. Mr. Verderese replied that this is the safest design for this site. He indicated that he wanted to keep the exiting traffic as far from the intersections as possible. Dr. Cetron suggested removing the egress only on First Avenue or making the egress a right turn only. Board members indicated concern with other problems that could cause.

Mr. Colangelo asked for the opinion of the traffic expert about making the egress an egress only. Mr. Verderese replied that it would create more problems at the southern ingress.

Mr. Caccamo questioned if the emergency services department would need to plan for alternate routes should this intersection become too congested. Dr. Cetron indicated he is not concerned with it from an emergency management standpoint. He explained that the biggest problem they have, is accidents occurring in the intersection regardless of what business is there; people run in to each other every single week.

Mr. Tuvel offered to grant Title 39 to the Police Department as part of a condition of approval. That would allow for the enforcement of on-site signage and is not an uncommon condition for a Land Use Board to impose on an applicant. Board members held a discussion regarding signage and enforcement.

Mr. Pepe clarified that the applicant will consider the issues discussed during the break. He is not a traffic engineer so he would like their input.

Mr. Rohmeyer referred to traffic study and stated that it has been given a level of service C; he asked for testimony regarding the anticipated trips being generated and the staking that would result. Mr. Verderese replied that it comes out to about 1.1 vehicles. Mr. Rohmeyer asked if there were a second car in the queue to exit, would it block any stalls. Mr. Verderese replied the northern most stall would have a delay in backing out.

Mr. Fligor questioned the striping and marking at the egress. Mr. Verderese replied they can paint them on the surface. He clarified that the egress allows for both left and right turns out of the site. Mr. Fligor asked if he is correct in understanding the DOT has jurisdiction going back 400 feet from Route 36. Mr. Verderese advised that is correct, they have jurisdiction over the whole U-turn. Traffic flow around this entire site is within DOT jurisdiction, which is rare, but they will comment on all of that and provide a detailed analysis. Any significant changes required by the DOT will bring the applicant back to the Board. The applicant does not expect any significant changes, as they have given input as to the design of the site.

The Board took a brief recess at 9:05 pm and reconvened at 9:15 pm.

Christine Nazzaro-Cofone was sworn in and accepted as an expert Planner. Ms. Cofone advised that she reviewed the Borough's Ordinances, the application in question and all associated documents involved with the application. She added that she lives close by, she frequents the First Avenue businesses and is very familiar with this site. The proposed use is a permitted use in the zone. She listed the other permitted uses, noting that the use that exists is currently not permitted. In addition to the proposed use being a permitted use, they do not violate any bulk requirements of the CBD zone. The only two variances being sought are for signage. In the commercial district you are allowed to have one monument sign and they are proposing two. In Atlantic Highlands

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

there is no allowance for a second sign when you are a corner lot, but she can tell you more often than not, the towns will allow for a second sign on the corner lot. The other variance needed is for the sign location in the DOT right of way.

Ms. Cofone referred to exhibit A-24 and explained that the property line is set back 40 to 50 feet from the roadway so that is a unique condition. Most of the commercial applications that come before this board do not have 40 -50 feet between the property line and the roadway. The applicant is proposing the signs to be located ten feet from First Avenue and 15 feet back from Route 36 and they are in the right-of-way. She explained the mechanisms for granting a variance and the criteria that must be met by an applicant to grant a hardship variance. It is her professional opinion, that this is a text book example of a c-1 variance case due to the hardship created by that space between the property line and the roadway. Dr. Cetron stated that does not address two signs versus one. He understands why it needs to be in the right-of-way but that does not mitigate the issue of two signs. Ms. Cofone explained that in the absence of any hardship, the second part of the criteria for granting a "C" variance is if one or more purposes of the land use law advanced by granting the variance, you can still grant the variance. The benefit of granting the variance, aside from the hardship condition, would be the concern with wanting to get vehicles in and out of the site is great concern to everyone. One way to make sure everyone navigates the site properly is to have appropriate signage to get them in. This would fall under criteria H of the Land Use Law.

Mr. Colangelo asked how a sign saying "7-11" is improving the traffic flow. Ms. Cofone explained that it allows drivers to know where the site is. Mr. Colangelo doesn't see how a sign that says "7-11" will improve the traffic flow, when there is signage on both sides of the building as well as another sign 80 feet to the east.

Dr. Cetron added that if it were a directional sign he would agree with that. He agrees with having the sign on Route 36 but he sees no valid criteria for granting a variance for another 7-11 sign. By the time you see that sign on First Avenue, you will be able to see the actual building.

Mr. Tuvel stated that this has been discussed and he asked that the Board allow Ms. Cofone to finish her testimony. Ms. Cofone stated that the negative criteria looks at the impact on the zone plan and the impact on the public good and the area that surrounds it. The MLUL requires that the benefit must outweigh the detriment. The benefits of having the signs is that they provide advertisement and there is nothing wrong with that; the Borough's own Master Plan recommends underutilized sites revitalized and having appropriate signage is great for that. Secondly, they want to make sure they are getting people to and from the site. She feels there is no substantial detriment to the zone plan or to the public good. As far as the second sign, she understands the Board concerns and she agrees that out of the two signs, the one on Route 36 is the more important of the two but having two frontages, it is not unusual to having the second sign. As an applicant, she can discuss it with her client during the break however her testimony is that the variances meet the c-2 criteria.

Mr. Tuvel clarified that the applicant is also requesting a variance for lighting, although the applicant can comply they feel this is a better planning alternative. Ms. Cofone explained that they exceed the lighting requirements along the northern most location near the parking spaces. The intensity of the lighting is exceed however the applicant feels it is safer to keep that narrow area between the buildings well lit. This falls under the C-2 variance because it is a better alternative

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

to keep the lighting levels where they are especially since it is a commercial area. The applicant can comply if the Board does not agree with that.

In regard to design waivers being requested, Ms. Cofone explained that the criteria that must be met is that the applicant must demonstrate that the waivers are reasonable and the site will still function safely and efficiently. In Atlantic Highlands, the parking requirement falls under a waiver. The applicant is proposing 11 spaces where 14 spaces is required. Based on ITE, they would really only need 9 spaces. Also in looking at other 7-11s, the ratio is usually about 4 spaces per 1,000 square feet of floor area. These spaces are known to turn over quickly so the waiver is justifiable. The applicant could put a few more spaces in the front of the building if they remove the loading zone, since the loading zone is not required however she feels that the loading zone is a better design for the site. A design waiver is also required for having parking in the front yard; this is a technical waiver due to the dual frontages. The building is setback 30 feet from the property line and 80 feet from the right-of-way so this is a situation where the substantial right-of-way affects the parking area. The other three waivers being requested are for commercial driveway separation, commercial driveway width and commercial driveway location. Certainly the applicant is improving the driveway conditions that exist today and the traffic engineer has testified that this is safe, efficient and appropriately located. The waivers are all reasonable in her opinion and she feels that the application meets its burden of proof.

Although this is a permitted use, Ms. Cofone indicated that she wanted to point out a couple items from the Master Plan. She read from the Principals and Objectives section of the Master Plan and noted that this is a beneficial commercial application for the zone that eliminates an existing non-conforming use that is expressly prohibited in this zone.

Mr. Neff asked for questions from the Board.

Mr. Fligor indicated that he does not see a need for a second sign. Dr. Cetron agreed. Ms. Cofone stated that they have heard the Board's concerns loud and clear.

Mr. McGoldrick asked why the Board should grant the waiver for parking, when there is no off-street parking available for this site. Ms. Cofone replied that the applicant does not feel they need the parking. When the Institute of Transportation Engineers looks at a site and a use like this, they anticipate the number of parking spaces to be 9. The applicant compiles their parking design based on data that is compiled based on hundreds of stores throughout the nation. In addition, the applicant's engineers have designed dozens of 7-11s so they know the actual demand based on actual performance is only 4 spaces per 1,000 square feet of store space. Mr. Tuvel added that the Borough's Ordinance is for general retail and in this situation convenience retail has a quicker turn around than a general retail store. Ms. Cofone agreed that she is getting in and out of 7-11 a lot quicker than going in to Bungalow Road. Dr. Cetron clarified that Bungalow Road is a clothing store.

Mr. McGoldrick expressed concern with having a full parking lot, or something happens to encumber the exit onto First Avenue in some way, and there is no other outlet or off-street parking. If that one exit is compromised and it backs up into the intersection, it will affect the flow of the whole area. Mr. Tuvel stated that the traffic expert can come back to discuss that during the public question period.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Mr. Hawley asked if the loading zone is removed, the delivery trailer will park on First Avenue and the parking spaces can go in the that area. Mr. Tuvel replied that is correct but the applicant's testimony is that the 11 spaces are more than adequate so they feel that the loading zone is a much better plan for the site. Ms. Cofone stated that the even with a boat trailer and all the parking spaces with cars, a passenger vehicle can still maneuver the site.

Mr. Neff opened the meeting to questions from the public.

Laurie Zydel, 39 East Lincoln Avenue, asked questions regarding employee parking and ADA compliant parking. Mr. Verderese explained that the parking calculations include everyone who will be using the site. Historically they have found that not all 7-11 employees will drive their vehicle to the site. Mr. Tuvel confirmed that the requirement includes employees and customers. The testimony was that 9 would be sufficient but they are providing 11. Ms. Zydel asked follow up questions about site circulation. Mr. Verderese referred to A-24 noting that there is a 25 foot drive aisle. Ms. Zydel indicated that she feels the testimony has changed since the last meeting and stated she will look into that.

Laurie Brekke, 36 East Lincoln Avenue, made comments regarding traffic and was reminded this is the time for questions only. She asked if the Board will conduct a traffic study to examine the impact on the community. Mr. Neff explained that the Board will not be commissioning studies of that nature. Mr. Tuvel explained that the Board Engineer has reviewed the Traffic Study and has confirmed it was done with proper methodology and the NJ DOT has complete jurisdiction over the traffic and the roadways. The traffic study was provided the same study as well. Ms. Brekke asked if the members of the public should be reaching out the DOT with their concerns. Dr. Cetron stated that is correct. Mr. Colangelo added that the Board cannot order a study be done to contest the applicant's testimony. Ms. Brekke stated that she wants to understand the impact. Mr. Colangelo stated that is what the traffic study addresses. Ms. Brekke made comments indicating that she does not agree with the traffic study.

Mr. Neff asked about the timing of the DOT application. Mr. Verderese stated that he is hoping to have a review letter in the next week or so.

James Krauss, 77 Bayside Drive, asked the exact dates of the traffic study. Mr. Verderese replied that they were conducted Thursday November 2, 2017. Those counts were adjusted by 29% to account for the seasonal traffic impact. Mr. Krauss asked if the industry statistics have been reconciled with the applicant's financial predictions. Mr. Tuvel advised that financial predictions are not a part of the Land Use Application process.

Penelope Morris, 14 Hennessey Boulevard, asked if the Police Department was consulted during this application. Mr. Verderese replied that if the Board felt that the Police Department should be consulted, they would forward that to them. He added that they were in contact with the Police Department in order to compile crash data and statistics for that intersection.

MaryAnn McCormick, 202 First Avenue, asked if a pedestrian study was done. Mr. Verderese advised pedestrian traffic was taken into consideration during the traffic study.

John Bellavance, 8 Memorial Parkway, asked about the sidewalk on the Route 36 side of the site and whether DOT will have to approve that. Mr. Tuvel explained yes, DOT will have to approve it. Mr. Bellavance stated that adding a sidewalk is probably the best part of the plan.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Laurie Zydell, 39 East Lincoln Avenue, referred to the internally illuminated signs that were testified to at the last meeting. She asked if there are any changes to the plan in that regard. Dr. Cetron added that there was discussion about exterior illumination signs, similar to the Westfield sign. Mr. Tuvel stated that the applicant has enhanced the architecture even though it wasn't required. The internal illumination is permitted and is consistent with other retailers in the area so no, it has not been changed. Mr. Pepe indicated concern with an internally illuminated plastic sign as the entry way to the town.

Mr. Colangelo asked if landscaping located in the DOT right-of-way is under DOT jurisdiction as well; he is concerned if they do not approve it. Mr. Henry was reminded that he is under oath and stated that the vegetation is also subject to DOT approval. If they are not approved or it changes significantly, they will have to come back to the Board. Mr. Tuvel advised that the Board Engineer will determine if it is a significant or minor change. Mr. Henry added that if they complied with the setback requirements for the Route 36 sign, it would be next to the adjacent residence.

Mark Fisher, 91 Third Avenue, stated that the original public notice indicated the plan was deficient because 16 spaces were required and only 11 proposed. Mr. Tuvel explained that the building size was reduced so the parking requirement went from 16 spaces to 14 parking spaces, but 11 spaces have been proposed all along. Mr. Fisher asked why the Board would even consider ITE calculations if the Ordinance already has a requirement. Mr. Verderese explained that the Ordinance doesn't have a convenience store requirement, they have a general retail requirement so the applicant felt that the ITE requirement is more appropriate for this use. Mr. Tuvel advised it is up to the Board if they agree with that. Mr. Fisher asked why the 32' driveway cannot be reduced to 30'. Mr. Verderese replied that it is a de minimis variance and it is safer to have the extra 2 feet. Mr. Fisher asked why the other driveway is 25 feet if 32 feet is safer. Mr. Verderese replied that it is a different driveway location and a different design.

Tom Barry, 8 Memorial Parkway, referred to the storms we had this week and asked if the drainage has been designed to accommodate run-off. Mr. Rohmeyer explained that the plan includes drainage around the greenspace that ties into the existing storm drains on Route 36. There is also a reduction in impervious surface which will help reduce run-off.

John White, Center Avenue, asked if this will be good for the town or is it good for 7-11. Mr. Colangelo explained that is not a question the Board can answer.

Mr. Pepe explained that the Board has to follow the Municipal Land Use Law. They cannot decide 7-11 is bad and Kmart is good, they cannot review the tenants of the site, they have to review the application as it is presented, under the Municipal Land Use Law or they can be faced with legal action.

Mr. White indicated he had a statement to make and was reminded that comments and statements will be received under oath after the question period.

Erin Drew, Counsel with the Law Offices of Susan Schleck-Kleiner and resident of 11 East Garfield, referred to the traffic study and asked several questions regarding the calculations and when they were done. Mr. Verderese replied accordingly, noting they expect approximately 87 cars during the peak hour of traffic. He expects each user to remain on site for 3 – 5 minutes. The average delay of cars exiting the site is 22 second delay. There were no traffic counts done on the existing traffic of the site. Mr. Tuvel explained the traffic study was done to examine the projected

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

traffic. Ms. Drew asked questions regarding traffic circulation, which were answered by Mr. Verderese. Ms. Drew referred to the sign on Route 36 noting that the engineer had stated that the sign was needed for safety reasons and asked for an explanation of that. Mr. Verderese explained that if you were coming west on Route 36, you would not be able to see the building so rather than a person seeing it at the last minute and making an unsafe movement to enter at the last minute, the sign allows them to see the site ahead of time. Ms. Drew asked questions about the site design of the Westfield 7-11. Mr. Tuvel stated that is irrelevant, testimony only referred to the architecture of the Westfield 7-11. Ms. Drew asked about the tree line on Route 36 and asked if the sign will be visible. Mr. Tuvel explained the sign is compliant as far as height and the objecting neighbor's concerns have all been satisfied. Ms. Drew questioned box truck deliveries and was advised they will deliver 1-2 times a day.

Rose Loder, 32 Center Avenue, asked about the hours of operation. Mr. Tuvel replied that they will be open 24 hours a day and that they comply with the Ordinance.

Tom Barry, 8 Memorial Parkway, asked if deliveries will also be restricted during the night. Mr. Tuvel stated that they will restrict deliveries from occurring between 7 and 9 am. The garbage collection will be done in off-peak hours. Mr. Colangelo stated that if they hear the truck outside of normal hours, there is a noise ordinance in place so a member of the public can make a complaint.

Tara Shah, 96 East Avenue, asked if any one does post-construction studies to confirm the projected numbers. Mr. Verderese stated that they do go back and look at parking on other sites but they do not go back and recount driveways and parking spaces.

Steve Mautone, Asbury Avenue, indicated that he is very confused by the traffic study and asked when the counts were done. Mr. Verderese replied that it was done on November 2, 2017 and explained the analysis that was done. Mr. Mautone indicated that he disagrees with the traffic study and stated that the math was done wrong. Mr. Verderese further explained the calculations used.

Laurie Zydell, 39 East Lincoln Avenue, questioned the level of service for the egress driveway. Mr. Verderese replied that it is a Level of Service C for egress during the peak hours.

The Board took a recess at 10:45 pm and reconvened at 10:52 pm.

Mr. Tuvel advised the Board that he has consulted with his client and they will eliminate the second freestanding sign proposed for First Avenue. They will amend the plan to include a decorative brick base with some landscaping for the sign on Route 36. This eliminates the need for the variance for the second sign on First Avenue. The only variances associated with the application at this time are for the setback of the sign on Route 36 and for the lighting levels at the northern property.

Mr. Neff asked for public comments at this time. Mr. Kalwinsky reminded the public they will need to state their name, spelling their last names and he will swear each person in.

Steven Mautone was sworn in and offered comments indicating the traffic study was not done when it says it was done. It is not indicative of the conditions in the town as the truly exist.

MaryAnn McCormick was sworn in and offered comments indicating concern with pedestrian safety, especially with the children walking to school.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Laurie Zydel was sworn in and requested that the Board not accept the ITE calculations recommended by the applicant. If the Board is not allowed to vote on traffic, she suggested that the Board take into consideration the lack of parking and deny the waiver for parking.

James Krauss was sworn in and gave parking counts for various convenience stores in the area. He offered comments about traffic in Rumson when the train would come in, the 7-11 parking lot would be chaos. He added that he has to laugh when someone uses the phrase “courtesy gap” and ferry traffic in the same sentence. The fishing season is about 9 months long. He sees a few positives of the design relating to drainage and the convenience of having a store open after hours. The negatives include traffic, danger to pedestrians and what he feels is an undersized parking lot.

John Lollo was sworn in and stated that for the last three hours he has felt like he is in a shoe store with the guy next to him trying to fit a size 11 foot in a size 8 sneaker.

John White was sworn in and expressed concerns with traffic. He understands the applicant has rights but this town is growing and it is having growing pains. Most of that pain is traffic.

Mark Fisher was sworn in and stated that the people who came to the hearings have expressed they want the Board to vote no.

Tara Shah was sworn in and echoed the concerns related to traffic and this being a gateway to the town. She asked for the mission statement of the Planning Board. Mr. Kalwinsky explained that the Board acts as a judge. There is a case called Pizzo Mantin which tells you that the town sets forth a set of Ordinances and the Planning Board’s job is to take those Ordinances and apply them. The Board is limited when there is a permitted use being proposed; they are not allowed to say “we don’t like that there” even though that may be the reality or sentiment of the Board, they do not have the option to do that. What they need to do, is strictly look at the Ordinances that are in place and apply them to the application. There are deviations from those Ordinances and depending on what section of the Ordinance the requirement is in, it’s either going to be a waiver or a variance. If it is a variance, there are different standards that must be met that are called the positive and the negative criteria. If it is a waiver, the standard that has to be met is whether it is reasonable under the circumstances. The Pizzo Mantin Case says that if you don’t deviate from the Ordinances the Board cannot say no, but they can impose reasonable conditions upon an application. Tonight’s big issue is traffic and there is case law that says if it is a permitted use, a Planning Board cannot deny it for the mere fact that it will generate traffic or create a traffic problem. What they can do as a Board, is to look at the different solutions to what issues there might be and impose reasonable conditions. For example, the ingress and egress locations, safer ways to do it and it is clear the Board is deliberating those type of issues. Ms. Shah asked if there is a safety Ordinance. Mr. Kalwinsky stated that safety will fall into the category of imposing reasonable conditions. Dr. Cetron indicated that the Board has to follow the development ordinances. He used the example of the lighting variance of this application to show an example of the positives outweighing the negatives.

Laurie Brekke was sworn in and thanked the Board for the clarification. The parking deficiency is not reasonable when they expect 87 cars at peak hour. The Wawa up the road has over 60 parking spaces and is always packed. She feels it is not unreasonable to deny the parking waiver.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Tom Barry was sworn in and thanked all the people from town who participated in the meeting. He added that the Board knows the issues, they know the people don't want it and if the Board can stop it then he hopes they will.

Mr. Colangelo asked for clarification regarding the Title 39 condition as well as whether they will restrict the one egress to egress only. Mr. Tuvel replied that it will remain full movement and they will grant Title 39 as a condition of any approval.

Mr. Tuvel thanked the Board for holding the three long meetings. He thanked the public as well for their valuable input. In addition to the case law cited by Board Counsel, there is also the Shim vs. Washington Township case that talks about the Board's ability to impose reasonable conditions. There have been a number of modifications and conditions placed to make this application better than when they originally came in. The architecture has been revised after the first meeting to fall in line with the character of the neighborhood, they also reduced the size of the building, which allowed for additional landscaping and buffering. The fence improvements were changed to a vinyl fence for the length of the property, at the request of the neighbor. They also agreed to adding the additional shade tree and landscaping to the neighbor's satisfaction. The streetscaping has been added at the Board's request, they provided brand new sidewalks and curbing along with both frontages, they have complied with all of the comments of the Board Engineer's review letter as well as the Shade Tree Commission. The applicant has agreed to provide Title 39 for Police enforcement on site. The second sign on First Avenue has been eliminated due to the comments and concerns received. They also agreed to put a brick base with landscaping on the freestanding sign on Route 36. They are left with an application that only has one variance. If the Board feels the variance is necessary they will leave it as is, but if the Board prefers the applicant comply on lighting they will do so. There are several waivers being requested, mostly related to the driveways which are subject to DOT approval. The experts have testified the waivers are reasonable and provide a better planning alternative. He noted that the Board Engineer did not make any comments about changing the driveways. In terms of parking, they have testified extensively about ITE and actual field experience from experts who have dealt with properties like this. The applicant can provide the extra parking spaces to comply, but the applicant feels the loading zone is much more important. Normally waivers are blown over during a review process and this applicant has testified extensively to justify that they are better planning alternatives. Again, if the DOT doesn't agree with it, the applicant will be back to the Planning Board for an amendment.

Mr. Tuvel added that he would like the record to reflect his agreement with the objecting neighbor's attorney and the fact that they will not deliver between the hours of 7 am and 9 am. Garbage will be picked up will be restricted from being picked up in the overnight hours. The tractor trailer will only come once per week and the other box truck would be one to two a day. Based on the testimony presented, this is a clean case from a site plan standpoint. The Board and the public have done their jobs, resulting in better conditions from when they first started the application.

Dr. Cetron asked if the applicant is still proposing the internally illuminated signs. Mr. Tuvel replied yes that is correct, they conform to the ordinance and they are consistent with the area.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Mr. Hawley asked if the applicant will still agree to light the Atlantic Highlands sign. Mr. Tuvel replied yes and clarified that any conditions he may have missed that have been testified to, the applicant will agree to those conditions.

Mr. Rohmeyer questioned the timing of the lot consolidation. Mr. Tuvel stated that the applicant is the contract purchaser and it would be done post-closing or at closing. It would occur after any outside agency approvals but before a shovel is put in the ground.

Mr. Pepe asked Mr. Tuvel if it is his professional opinion that the law prohibits the Board from denying the application based on traffic impact outside the four corners of this site. Mr. Tuvel replied that is 100% correct and referred to case law, Dunkin Donuts v. North Brunswick 193 NJ Super 513. Mr. Pepe asked the Board Counsel to confirm. Mr. Kalwinsky confirmed and added that when you are talking about traffic, when you are dealing with an approved use you can consider traffic as far as imposing reasonable conditions but not to affirm or deny the application.

Dr. Cetron stated that the parking waiver is the one waiver than concerns him but he has to consider the loading zone for the larger vehicles. Mr. Illiano added that if they take out the loading zone, they will lose some additional landscaping and gain more asphalt. Mr. Pepe stated this is waiver the applicant can comply with but does the Board really want to impose that condition. Mr. Neff stated that if there is not enough parking, they will go to the next convenience store up the road.

Mr. Colangelo stated that he is not big on putting a 7-11 in town, but all things considered, they have adjusted the architecture, they removed the second sign, the addressed the parking situation and considering what's there now; it would be great to say "let's put in something beautiful" but the Board cannot consider that. They are taking a non-permitted use and making it a permitted use. Mr. Hawley added that they applicant has agreed to almost 18 conditions. Mr. Colangelo stated that every single day he will be driving past that gas station and that is no great gateway to our town either.

Mr. Pepe stated that he takes Counsel's advice very seriously and he doesn't want to see the town get sued because he votes no. The applicant is not asking for very much. In his opinion, he feels the loading zone is a much better alternative than having a compliant parking lot.

Dr. Cetron stated that if the Board says no to the design waiver on the parking spaces, the applicant will remove the loading zone and the tractor trailer will be parking on First Avenue. Mr. McGoldrick stated that it is a double yellow line and, he believes, no parking on that section of the road. Dr. Cetron stated that it is done all the way down First Avenue; PFG does whatever they need to do to deliver. Mr. McGoldrick asked how is it okay to double park to deliver to the stores. Dr. Cetron stated that there is no ordinance that says you cannot double park to unload. Mr. Colangelo stated that is not true, you cannot double park but that is out of the Board's control. Mr. Neff added that it would be a parking ticket and the delivery company usually chalks that up to the cost of doing business.

Mr. Pepe stated that they have looked at other applications along First Avenue that should have a loading zone and now this applicant is proposing one, he doesn't see a reason to take it away. Mr. Illiano stated that the loading zone is extremely important from a traffic standpoint, but with removing that they would also be losing a lot of the landscaping and greenspace that the applicant has proposed. We want the town to look better and they are proposing green space; if the Board requests more asphalt he doesn't feel that is a good trade off.

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
AUGUST 9, 2018**

Mr. Colangelo stated that this is what the Board is meant to do, if they are asking for a waiver to make the site safer, it makes sense to do it. Mr. Pepe added that they gave great testimony about the parking use for a 7-11 as opposed to a restaurant.

Dr. Cetron stated that they are considering whether the design waiver is a better alternative to get a tractor trailer off of First Avenue. Mr. Fligor replied absolutely, they do not want that tractor trailer sitting at that intersection during deliveries. Mr. Caccamo indicated concerns with a tractor trailer being able to pull in to the site. Mr. Tuvel advised there was a truck turning template submitted with the site plan. Also, the tenant would not approve the site if they could not get a truck in to the site. Mr. Rohmeyer referred to sheet 14 of the site plan noting the demonstration of the truck pulling into the site.

Dr. Cetron stated that the lighting variance is a good thing. If there was a residence back there it would be different but it is brick building full of batteries. The variance for the sign on Route 36 is a no-brainer, where else would you put the sign? Mr. Neff added that the neighbor is okay with it.

Mr. Pepe stated that the look and feel changes that the applicant made go a long way, in his opinion.

Dr. Cetron stated that the parking was the biggest thing for him but he feels the design waiver is reasonable. As a first aider, he has spent a lot of time in that intersection and with or without a 7-11 there, stupid drivers are stupid drivers.

Mr. Pepe stated that if he had the power to vote based on traffic patterns, he might, but if Counsel is telling him he can't consider that, then he will not violate the law.

Members of the public began yelling out at this time.

Mr. Kalwinsky discussed the conditions and advised that any approval would be specific for a convenience store, if they change the use they will have to come back to the Board.

MR. HAWLEY OFFERED A MOTION TO APPROVE THE APPLICATION WITH THE CONDITIONS DISCUSSED, SECONDED BY MR. COLANGELO.

Ayes: Mr. Illiano, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Ms. Hoffmann, Chairman Neff, Mr. Pepe

Nays: None

Abstain: None

Absent: Mr. Ilarazza

DR. CETRON MOVED TO ADJOURN THE REGULAR MEETING, SECONDED BY MR. PEPE. BY VOICE VOTE ALL AGREED.

There being no further business to come before the Board, the Regular Meeting was adjourned at 11: 45 P.M.

Erin Uriarte
Planning Board Secretary