

**IN THE MATTER OF  
APPLICATION NO. PB17-11  
OF GREEN LEAF EAST, LLC  
BLOCK 112, LOT 1**

**RESOLUTION GRANTING  
MINOR SITE PLAN AND  
BULK VARIANCE APPROVAL**

**WHEREAS, GREEN LEAF EAST, LLC**, hereinafter the "Applicant", has proposed the development of property located at 135 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 112 Lot 1 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 Minor Site Plan approval for the construction of an exterior sliding door to access an outdoor seating area, to permit the retention of a non-conforming building mounted sign, a variance to permit three (3) existing off-street parking spaces where twelve (12) off-street parking spaces are required and a variance for exceeding impervious coverage. The exterior building modifications associated with the application including an outdoor seating area, construction of exterior sliding door to access outdoor seating and retention of building mounted sign along West Washington Avenue. The improvements also require a variance to permit three (3) existing off-street parking spaces where twelve (12) off-street parking spaces are required and a variance for exceeding impervious coverage with Lot coverage of 89.3% where 75% is permitted, contrary to the provisions of Chapter 150, Article V, Section 150-29, Article VII, Section 150-69 and Article IX, Section 150-89, respectively of the Development Regulations of the Borough of Atlantic Highlands

**WHEREAS**, the subject property is located in the CBD Central Business Zone District and the existing uses on the property are permitted uses in the Zone pursuant to Ordinance Exhibit 5-4 and prior variance approval; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on May 10, 2018 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 denial of Zoning Officer Michelle Clark, marked as Exhibit A-1 in evidence.

1.2 Application of Green Leaf East, LLC dated May 10, 2018, marked as Exhibit A-2 in evidence.

1.3 Narrative of Intent, undated, marked as Exhibit A-3 in evidence.

1.4 Owners' Letter of Consent, dated May 9, 2017, marked as Exhibit A-4 in evidence.

1.5 Minor Subdivision/Boundary Line Adjustment Plan prepared by Richard E. Stockton & Assocs., Inc., dated October 23, 2012 revised June 30, 2014, marked as Exhibit A-5 in evidence.

1.6 Floor Plan and Elevation drawings, prepared by CDZ Architects, LLC, dated March 17, 2017, marked as Exhibit A-6 in evidence.

1.7 Report of CME Associates dated June 9, 2017, marked as Exhibit A-7 in evidence.

1.8 Elevation drawing of "take-out" window, marked as Exhibit A-8 in evidence.

1.9 Elevation drawing of front and side of building, marked as Exhibit A-9 in evidence.

1.10 Location Plan of "take-out" window, marked as Exhibit A-10 in evidence.

1.11 Second completeness and technical review of CME Associates, dated September 1, 2017, marked as Exhibit A-11 in evidence.

1.12 Site Plan for JUS Organic prepared by Richard E. Stockton & Assoc., Inc., dated February 23, 2018, marked as Exhibit A-12 in evidence.

1.13 Photograph of building with façade sign, marked as Exhibit A-13 in evidence.

1.14 Photograph of patio area adjacent to existing building, marked as Exhibit A-14 in evidence.

1.15 Technical Review No. 3 of CME Associates dated March 29, 2018, marked as Exhibit A-15 in evidence.

2. The premises in question are located at 135 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 112 Lot 1 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the CBD Central Business Zone District and the existing uses on the property are permitted uses in the Zone pursuant to Ordinance Exhibit 5-4 and prior variance approval.

4. The subject property has approximate dimensions of 45.66 ft. x 93.98 ft. x 45.66 ft. x 93.98 ft. and is rectangular in shape with an approximate area of 4,278 sq. ft. (0.098 acres).

5. The subject property is currently developed with an existing two-story masonry building, three (3) parking stalls and an exterior patio. The Applicant previously, in August of 2013, received Minor Subdivision, Use Variance, Bulk Variance and Site Plan approval to convert two (2) existing upstairs apartments into a single apartment which contains two (2)

bedrooms and one (1) office/study where only two (2) bedrooms are permitted as a conditional use in the Zone. The granted Bulk Variance relief related to existing non-conforming setbacks to remain and the Minor Subdivision approval adjusted the common lot line with adjacent Lot 2.01. The properties surrounding the subject property are similarly zoned CBD and contain a mix of residential, commercial and public uses.

6. The Applicant has requested Minor Site Plan approval to install a sliding door on the side of the building adjacent to the patio area and to utilize the patio area during favorable weather in conjunction with the existing juice bar that also sells light food fare. The Applicant also wishes to retain one (1) wall non-flashing sign placed on the structure by the property owner without required approvals. More particularly, the Ordinance requires that signage be related to the business conducted on the premises and not exceed 10% of the building face. In this case the Applicant proposes to retain a sign that is not related to the business as it simply states the street address and the sign also exceeds 10% of the building façade (Section 150-69). The Applicant also proposes impervious Lot coverage of 89.3% where 75% is permitted (Section 150-29). Finally the site requires two (2) parking spaces for the second floor residential use and ten (10) parking spaces for the 1,000 sq. ft. juice bar and 750 sq. ft. outdoor area. There are only three (3) parking spaces existing on site and the Applicant does not propose any additional parking spaces (Section 150-89).

7. The Applicant presented the testimony of Renee Dorski, a principal of the Applicant and operator of the existing juice bar. She testified that the juice bar is on the ground level

and that the upstairs continues to be a single apartment. The juice bar has been open for approximately one year and sells healthy beverages, along with organic food, health food and locally sourced sandwiches, salads and smoothies.

8. Ms. Dorski testified that the hours of operation of the juice bar are from 8:00 a.m. to 4:00 p.m. on weekdays and from 9:00 a.m. to 4:00 p.m. on weekends. The juice bar has an open floor plan with twenty-two (22) seats and a child area.

9. The juice bar employs eight (8) part-time persons and seeks to expand its operations to include the outdoor patio area by placing seating areas to the exterior along with some movable planters to improve it's aesthetic appearance. The outdoor seating will accommodate approximately twelve (12) persons and will be open seasonally during warmer months except during inclement weather. There will be no exterior amplified entertainment although it is possible that there may be occasional non-amplified music such as a single acoustic guitar.

10. Ms. Dorski testified that the exterior patio will be an accommodation to patrons but is not anticipated to result in any significant change in the volume of persons coming to the establishment. Therefore, there will not be an increase in parking demand. Refuse recycling and storage will continue to be maintained indoors.

11. The Planning Board finds that the outdoor patio area is an existing condition and that it is appropriate to permit the commercial establishment to utilize that area in connection with its operations. The Planning Board is satisfied that this

amenity will not result in any substantial increase in patronage but will provide an attractive amenity for existing patrons that will contribute to the First Avenue streetscape and pedestrian friendly atmosphere. The Planning Board notes that no improvements are proposed within the public right-of-way.

12. The Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of variance relief to permit excessive impervious lot coverage of 89.3% where 75% is permitted. The Planning Board notes that this is an existing condition which is not being exacerbated by this application. These conditions have existed for a significant period of time and serve to enhance the public streetscape and pedestrian friendly atmosphere.

13. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of impervious lot coverage variance. As set forth previously herein, the improvements are existing have existed for some time. The proposal is to improve the patio area which will be an aesthetic enhancement of the First Avenue streetscape. Consequently, the Planning Board finds that there will not be any negative impacts. Instead there will be a positive impact with regard to improved aesthetics and a thriving business with additional amenities. Therefore there is no substantial detriment to the public good flowing from the grant of the requested variance relief.

14. The Planning Board further finds that the grant of the requested variance for impervious lot coverage will not result in any substantial impairment of the Zone Plan or Zoning

Ordinance. The Planning Board finds that this is an existing condition which is not exacerbated by the present application. Moreover this will serve to aesthetically improve the streetscape of First Avenue which the Master Plan and Zoning Ordinance proposes to be a center for commercial businesses within the Borough. The impervious coverage requirements are designed to insure that properties are not over-developed and that properties do not have excessive stormwater run-off. The Planning Board finds that in this case the grant of the variance will not result in conditions that will increase stormwater runoff or over-develop the subject property. Therefore the purposes of the Zoning Ordinance are not offended by the grant of the requested variance relief.

15. With respect to the requested variance relief for parking, the Planning Board finds that it agrees with the Applicant that the proposed improvements will not significantly increase the volume of patrons to the establishment but will provide an additional amenity for patrons to enjoy. Consequently, the proposed changes will not have the impact of increasing demand for additional parking. Since this is an existing establishment and the parking demand will continue to be the status quo the Planning Board finds that requiring it to provide additional spaces is not necessary in this case. In addition to the foregoing, there is no available space on this site, which is fully developed, to provide additional parking spaces. Therefore there is a hardship associated with the subject property. Therefore, the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Borough



of Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as the Applicant could not include this patio outdoor amenity to it's business without the requirement for variance relief.

16. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief from parking requirements. The Planning Board finds that there will be no substantial detriment to the public good as the grant of variance relief will not change the existing conditions of the property. The property will continue to have approximately the same number of patrons during the same time periods and therefore the failure to add parking spaces will not exacerbate existing deficiencies on the property. It will not result in more vehicles requiring parking spaces in limited parking areas proximate to the site. Therefore there is no substantial detriment to the public good.

17. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Master Plan and Zoning Ordinance envision the CBD Zone as a center for commercial businesses within the Borough and the proposed improvements to the property will facilitate the existing commercial business and improve its amenities. Consequently it is consistent with the goals and objectives of the Master Plan and the Zoning Ordinance.

18. The Planning Board further finds that the variance required to retain the existing signage is appropriate under the

circumstances. Although the message on the sign does not identify the actual business on site, it does identify the property noting that it is at the corner of "Washington and First". Moreover the Planning Board agrees that the sign and its style functions as an attractive landmark and promotes the desirable visual environment through creative development techniques as well as providing identification of the subject property. As a result of the foregoing the Planning Board finds that the subject property is a specific piece of property for the purposes of the Municipal Land Use Law with respect to signage and identifying this corner parcel and permitting the sign to remain will advance the purposes of the Municipal Land Use Law without any significant detriment. Therefore the Applicant has satisfied the positive criteria for the grant of the requested variance relief.

19. The Planning Board further finds that the Applicant has satisfied the negative criteria with respect to the request to retain the existing sign. The Planning Board finds that the sign is an attractive and appropriate identification sign for the subject property. It will not have any negative impact upon the streetscape but will provide good identification for the subject property. Therefore the Planning Board finds that there is no substantial detriment to the public good flowing from the grant of the requested variance relief.

20. The Planning Board further finds that the grant of the requested variance relief for signage will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board finds that the sign does identify the building although not the actual business on the premises.

Nevertheless it does serve the purpose of identifying the property and persons coming to the property will know the address of the commercial establishment on the first floor and the occupants of the residential unit above and therefore will serve the purpose of identifying those uses. The Planning Board further finds that any excess in the size of the signage is de minimis and insubstantial. Consequently there is no substantial impairment to the Zone Plan and Zoning Ordinance.

21. The Planning Board further finds that the Applicant has submitted a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for the grant of site plan approval have been met. The Planning Board finds that the site plan submitted is adequate and that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for approval and that the variance requested can be granted and the site plan approval should be granted at this time.

22. The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper notice of the Hearing of this Application and were provided with an opportunity to present testimony 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 14th day of June, 2018 that the Application of **GREEN LEAF EAST, 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 and/or Maintenance Guarantees 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 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.

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 relief granted in connection with this application is as follows:

A. Minor Site Plan approval.

B. Variance approval to permit impervious Lot coverage of 89.3% where 75% is permitted.



C. Variance approval to permit the site to have three (3) off-street parking spaces where twelve (12) off-street parking spaces are required.

D. Variance approval to permit the retention of the existing non-flashing wall sign identifying the streets comprising the corner on which the property is located and not identifying the business establishment within the building on site and exceeding 10% of the building façade.

E. The Applicant will not have any amplified exterior entertainment.

F. The Applicant will insure that the sliding access door to the patio will be ADA compliant.

**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: Dr. Cetron

SECONDED BY: Mr. Colangelo

ROLL CALL:

YES: Mr. Illiano, Mr. Hawley, Mr. Caccamo,  
Dr. Cetron, Mr. Colangelo, Ms. Hoffman,  
Mrs. Murray, Mr. Neff, Mr. Pepe

NO: None

ABSTAIN: None

ABSENT: Councilman Fligor

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**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 14, 2018.

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