

**IN THE MATTER OF  
APPLICATION NO. PB17-12  
OF P&C 2, LLC  
BLOCK 101, LOTS 4.02 & 5**

**RESOLUTION GRANTING  
PRELIMINARY AND FINAL  
SITE PLAN APPROVAL  
WITH VARIANCES**

**WHEREAS, P&C 2, LLC**, hereinafter the "Applicant", has proposed the development of property located at 158 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 101 Lots 4.02 & 5 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 approval to construct a three-story mixed use residential and commercial building. The first floor will contain a 4,340 sq. ft. commercial retail space and 3,983 sq. ft. of accessory shared residential uses. The second and third floors will contain ten (10) one-bedroom dwelling units and eight (8) two-bedroom dwelling units with a rooftop activity area, which requires a variance for parking in a Zone where parking Lots are not permitted and twenty-eight (28) off-street parking spaces where fifty-six (56) off-street parking spaces are required. The Applicant also requires variance relief for not providing a loading space for the commercial component along with bulk variance relief for Lot coverage of 76.1% where 75% is permitted, accessory side yard setback of 2 ft. where 5 ft. are required, rear yard setback of 2 ft. where 5 ft. are required, and impervious coverage of 77% where 50% is permitted, contrary to the provisions of Chapter 150, Articles V and IX, Sections 150-29 and 150-89, respectively of the Development Regulations of the Borough of Atlantic Highlands; and

**WHEREAS**, the subject property is "split-zoned" with a portion of the property located adjacent to First Avenue in the CBD Central Business District Zone and a portion of the property in the R-1 Residential Zone District; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on December 14, 2017 and March 8, 2018, respectively, due notice of said meetings 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 dated May 18, 2017, marked as Exhibit A-1 in evidence.

1.2 Application for development permit dated May 9, 2017, marked as Exhibit A-2 in evidence.

1.3 Application for variance dated May 31, 2017, marked as Exhibit A-3 in evidence.

1.4 Narrative of Intent for P&C 2, LLC, undated, marked as Exhibit A-4 in evidence.

1.5 Preliminary and Final Site Plan prepared by InSite Engineering, LLC dated May 3, 2017 consisting of nine (9) sheets revised through September 21, 2017, marked as Exhibit A-5 in evidence.

1.6 Architectural Elevation and Floor Plans prepared by Sonnenfeld and Trocchia Architects, P.A. dated September 11, 2017 consisting of six (6) sheets, marked as Exhibit A-6 in evidence.

1.7 Completeness/Technical Review No. 1 of CME Associates, dated July 12, 2017, marked as Exhibit A-7 in evidence.

1.8 Stormwater Management Report prepared by InSite Engineering, LLC dated September 21, 2017, marked as Exhibit A-8 in evidence.

1.9 Completeness/Technical Review No. 2 of CME Associates, dated October 24, 2017, marked as Exhibit A-9 in evidence.

1.10 Memorandum from Planning Board Attorney dated October 27, 2017, marked as Exhibit A-10 in evidence.

1.11 Color-rendered Elevation Drawing prepared by Sonnenfeld and Trocchia Architects, P.A. dated December 14, 2017, marked as Exhibit A-11 in evidence.

1.12 Traffic and Parking Study prepared by Dolan and Dean Consulting Engineers dated February 22, 2018, marked as Exhibit A-12 in evidence.

1.13 Memorandum of CME Associates regarding Traffic and Circulation dated March 8, 2018, marked as Exhibit A-13 in evidence.

1.14 Color-rendered Site Plan dated March 8, 2018, prepared by InSite Engineering, LLC, marked as Exhibit A-14 in evidence.

1.15 Brinkerhoff Environmental Services, Inc. Memorandum dated February 2, 2018, marked as Exhibit A-15 in evidence.

2. The premises in question are located at 158 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 101 Lots 4.02 and 5 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is "split-zoned" with it's frontage along First Avenue being in the CBD Central Business District Zone and the remainder of the property being in the R-1 Residential Zone District. Parking in a mixed use development is not a permitted use within the R-1 Zone District.

4. The subject property has approximate dimensions of 100.90 ft. x 195.00 ft. x 100.90 ft. x 195.00 ft. with an approximate area of 19,644 sq. ft. The subject property is an elongated rectangle with frontages on First Avenue to the west and East Lincoln Avenue to the north.

5. The subject property is currently vacant and has been the subject of an environmental clean-up due to prior use of the property. During the course of the application the Applicant provided a Memorandum from Brinkerhoff Environmental Services, Inc. which revealed that the site is currently managed under direct supervision by a NJDEP, Licensed Site Remediation Professional (LSRP). The subject property is currently covered with asphalt pavement soil piles. The Brinkerhoff report stated that it is unlikely that any residual TCE concentrations within the soil is acting as an on-going source of groundwater contamination. Consequently no further soil investigation is required. In addition the report found that any TCE groundwater contamination is naturally attenuating and does not require further attention. Thus, the report concluded that no further investigation or action is required for soil on the site and no further investigation is required with respect to vapor intrusion. The site will continue to be monitored in accordance with NJDEP standards and any development of the property shall be subject to NJDEP review and approval.

6. The Applicant was represented by Kevin Kennedy, Esquire who presented the testimony of Peter Sabat, a principal of the Applicant, Richard Arzberger, a licensed professional Architect, Patrick Ward, a licensed professional Engineer and Planner and Elizabeth Dolan, a licensed professional Traffic Engineer. They

provided testimony that the subject property had previously been contaminated by hazardous substances and was the subject of a fire resulting in the property being vacant and the subject of an environmental clean-up during the last sixteen years. The Applicant is proposing to construct a mixed-use building with commercial use on the first floor along with some residential amenities including a fitness center and reception area, with residential apartments in the upper two floors consisting of ten (10) one-bedroom apartments and eight (8) two-bedroom apartments. The Applicant also proposes that the roof top of the building will provide amenities for residents including a garden area, lounge chair area and similar amenities for the residents of the building and their guests.

7. The Applicant's witnesses noted that the subject property is in close proximity to State Highway Route 36 where public transportation is available and is also within close proximity to the Atlantic Highlands Harbor where commuter ferry service to New York City is available.

8. The Applicant's Architect noted that the one-bedroom apartments will be 725 sq. ft. in size which are 25 sq. ft. less than that required by Ordinance. The Applicant's Architect testified that the reduction in square footage is appropriate under the circumstances as the additional amenities including the fitness center and the roof top lounging area along with the increased ceiling height of the units mitigates the de minimis shortage in area. The Applicant's witnesses provided testimony that the units will be "luxury apartments" close to transit opportunities, shops and restaurants within the Borough. He further testified that the building will be fully sprinklered

which will be a condition of this approval. The Applicant also agreed to conceal the utility boxes, which is also a condition of this approval. In addition any awnings on the building will be in accordance with the ordinance requirements and under no circumstances extend more than three (3) feet beyond the building face. The Planning Board finds that under the circumstances the reduced size of the units is a de minimis deviation from the requirements of the Zoning Ordinance and is justified by the additional amenities being provided to the of the building, including the fitness center, the reception area and roof top lounge area. The Planning Board finds that under the circumstances the location of the subject property along First Avenue in the Central Business District, that the proposed development will promote the general welfare by providing residential units consistent with the residential, recreational and commercial attributes of this area of the Municipality so as to provide sufficient space in an appropriate location for this mixed residential and commercial use. The Planning Board further finds from the Architectural Plans provided by the Applicant that that proposed development will promote a desirable visual environment of good civic design and arrangement and that the subject property is a specific property wherein the grant of the requested variance relief for apartment size of 725 sq. ft. where 750 sq. ft. are required is appropriate and the benefits substantially outweigh any detriment. Based on all of the foregoing the Planning Board finds that the site can accommodate the proposed development notwithstanding the de minimis deviation from the conditional use standard. Moreover, the deviation will be imperceptible from the exterior of the building and will have no adverse impact on the surrounding neighborhood so that there will be no substantial detriment to

the public good and no substantial impairment of the zone plan. In fact, it will be consistent with the Borough Master Plan Goal of revitalizing the First Avenue corridor.

9. The Applicant provided testimony that the anticipated commercial uses on the first floor will be similar to other uses on First Avenue and will not require a separate loading space as they will not be dealing with large volumes of merchandise requiring tractor trailer deliveries. Instead it is anticipated that deliveries will be made by smaller "box trucks" which can park along the street to make deliveries. The Planning Board agrees with the Applicant's witnesses that it is preferable to utilize the area on the site for Tenant parking rather than using that area for a loading Zone which would be infrequently used.

10. The Planning Board finds that it agrees with the Applicant that the side yard setback, rear yard setback and impervious coverage deviations are necessary in order to provide the maximum amount of parking available for the tenants. The Applicant has provided one (1) parking space for each one-bedroom unit and two (2) parking spaces for each two-bedroom unit at the site. In addition there will also be two handicap parking spaces. Although this does not meet the Ordinance requirement, the Planning Board finds that the Applicant has provided as much parking on site as is reasonably available and notes the traffic and parking study provided by the Applicant's traffic experts Dolan & Dean marked as Exhibit A-12 in evidence. The study demonstrates that the parking provided is adequate for the residential component of the development and that the retail component can be supported by available on-street parking. The



Planning Board incorporates the traffic and parking study prepared by Dolan & Dean as part of this Resolution. The Planning Board agrees with the applicant's witnesses that the proposed mixed use development of this site with parking located in the residential zone promotes the purposes of the MLUL. It permits a benign parking use in the residential zone to support an attractive mixed use building in a zone in which it is permitted. The Planning Board agrees with the Applicant's witnesses that the grant of variance relief will promote the purposes of the MLUL by providing sufficient space in an appropriate location for a variety of uses, in this case mixed use development which meets the intent and purpose of the Borough Master Plan to revitalize the First Avenue corridor. The Planning Board further finds from the architectural elevation drawings and the site plan submitted that the proposed building and site development will provide a desirable visual environment and good civic design consistent with N.J.S.A. 40:55D-2.g.&i.

11. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested use variance to permit parking in a residential Zone. The Planning Board finds that Lot 5 is particularly suited to be combined with Lot 4.02 for development as a unit and that providing parking on Lot 5 will maintain a separation between the residential use to the east and the commercial use of the subject property along First Avenue. It will also assist in permitting Lot 4.02 along First Avenue to be developed in accordance with the vision of the Master Plan for the CBD Zone with mixed commercial and residential uses and will enhance development along First Avenue. The Planning Board notes the concern of citizens with respect to parking and potential

traffic on this property which is opposite the elementary school. The Planning Board finds that it is satisfied with the traffic and parking study prepared by Dolan & Dean that traffic and parking congestion only occurs during the a very limited period of time during the morning hours and is for a very brief period of time. The Planning Board also acknowledges that traffic flow is controlled by Police Officers during the opening and closing of the elementary school which mitigates and minimizes any traffic delays. The Planning Board is satisfied with the conclusions of the traffic and parking study that there will be adequate on-street parking to accommodate the commercial use of the site and finds that this proposed development will be a benefit to the community providing adequate parking on-site for the residential units and adequate parking on the street for commercial patrons.

12. The Applicant's Engineer provided testimony as to stormwater management on site and is providing for a porous pavement parking lot in order to minimize any stormwater run-off issues. He further provided testimony that LED lights will be utilized in the parking lot with no spillage onto adjacent properties. The Applicant will be providing for parking lot trees along with attractive shrubs around the building and a 6 ft. fence along its property line. The Applicant agreed to provide an Operation and Maintenance Manual for the porous pavement and also agreed that there will be no down spouts from the building onto the sidewalk. The Planning Board agrees with the Applicant's traffic Engineer that the driveway for the development will be adequate and that the added volume of traffic is insignificant according to the Institute of Traffic Engineer's standards. Moreover he demonstrated that the

driveway and adjacent intersections will operate at acceptable levels of service.

13. The Applicant's Engineer provided testimony that the proposed impervious coverage of 76.1% where 75% is permitted is de minimis in nature and that, due to the porous pavement, any adverse stormwater runoff impacts from the increased lot coverage are mitigated. Moreover, the Planning Board agrees that it is appropriate to have an additional parking space on site and to grant the variance as it is a better design alternative to have an additional parking stall with a minimal variance in Lot coverage.

14. The Planning Board also agrees with the Applicant's witnesses that granting the variances for setbacks and lot coverage to permit the parking area along the easterly portion of the site will provide additional buffer between the residential use to the east which is an improved situation over developing Lot 5 for residential use. The Planning Board notes the concerns of the neighbors with respect to potential lack of privacy due to the roof top lounging area. However, the Planning Board notes the testimony of the Architect that the inside wall will be set back so that the residents will not be able to observe the properties directly below and adjacent to the subject property.

15. The Planning Board finds that the Applicant has provided testimony through its civil engineer and traffic engineer that there will be safe and efficient vehicular and pedestrian circulation, parking and loading on site along with adequate screening, landscaping and structural location. The

Planning Board further finds from the testimony of the Applicant's civil engineer that there will be adequate lighting to provide for safety on-site with no spillage off-site and that the site will function in a safe and efficient manner.

16. The Applicant's witnesses also testified that no trash will be stored outside the building and that trash pickup would be by private hauler. They also testified that it is not possible to place trees along First Avenue and that the trees provided on Lincoln Avenue are adequate to satisfy the intent and purpose of the Ordinance. Therefore the Applicant's request for waiver from the strict design standard requirements is appropriate and can be granted.

17. The Planning Board 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 further finds that the detailed drawings, specifications and estimates of the application, conform to the standards established by Ordinance for approval and that Preliminary and Final Major Site Plan approval can and should be granted at this time.

17. 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 12th day of April, 2018 that the Application of **P&C 2, 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. Preliminary and Final Major site Plan approval pursuant to Plans prepared by InSite Engineering, dated May 3, 2017 revised September 21, 2017, marked as Exhibit A-5 in evidence and Architectural Plans prepared by Sonnenfeld & Trocchia Architects, dated September 11, 2017 marked as Exhibit A-6 in evidence.

B. Use Variance to permit a parking lot in the R-1 Zone District.

C. Off-street parking of twenty-eight (28) spaces where fifty-six (56) spaces are required.

D. Not providing loading space where one (1) loading space is required.

E. Lot coverage in the CBD Zone of 76.1% where 75% is permitted.

F. Lot coverage in the R-1 Zone of 77% where 50% is permitted.

G. Accessory side yard setback of 2 ft. where 5 ft. are required.

H. Accessory rear yard setback of 2 ft. where 5 ft. are required.

I. The building shall be fully sprinklered.

J. The utility will be concealed.

K. Awnings will be in accordance with the ordinance requirements and shall not extend beyond three (3) feet from the building face.

L. All trash and recycling shall be stored indoors and trash pickup shall be by private hauler.

M. All construction shall be in accordance with the requirements of, and approved by, NJDEP and comply with any NJDEP remedial action or other plan required by NJDEP.

N. The Applicant shall provide an Operation and Maintenance Manual for the porous pavement driveway and parking areas.

O. No downspouts shall be discharged onto the sidewalk.

P. Other than for emergency exit, doors exiting to the street shall open inward.

**BE IT FURTHER RESOLVED** that nothing herein shall excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

**BE IT FURTHER RESOLVED** that a written copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Applicant, the Code

Enforcement Official of the Borough of Atlantic Highlands, and the Construction Code Official of the Borough of Atlantic Highlands. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

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

OFFERED BY: Mr. Pepe

SECONDED BY: Mrs. Murray

ROLL CALL:

YES: Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Mrs. Murray, Chairman Neff, Mr. Pepe, Mr. McGoldrick, Mr. Dougherty

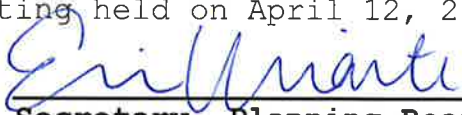
NO: None

ABSTAIN: Mr. Illiano, Councilman Fligor

ABSENT: Ms. Hoffman

  
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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 April 12, 2018.

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