

**IN THE MATTER OF  
APPLICATION NO. PB18-05  
OF ATLANTIC HIGHLANDS  
REAL ESTATE PARTNERS, LLC  
BLOCK 102, LOTS 7 & 8**

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

**WHEREAS, ATLANTIC HIGHLANDS REAL ESTATE PARTNERS, LLC,** hereinafter the "Applicant", has proposed the development of property located at 188-190 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 102, Lots 7 & 8 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 Preliminary and Final Major Site Plan approval with the following variances and waivers:

**VARIANCES -**

1. Section 150-53(D)(1) - no structure to be located within 30 ft. of right-of-way of State Highway Route 36. Applicant proposes two (2) free-standing signs and one (1) refuse enclosure less than 30 ft. from the right-of-way. (3 variances)

2. Section 150-69(I)(3) - one (1) ground non-flashing sign per established business permitted, set back 10 ft. from property line where two (2) ground-mounted signs proposed with zero (0) setback. (2 variances)

3. Section 150-67(O)(1) - illumination beyond northern property line onto commercial Lot 9 exceeding 0.5 foot candles where 0.5 foot candles are the maximum permitted.

4. Section 150-29(A)(2) (Exhibit 5-2) - Excessive lot coverage of 78% where 75% is permitted

**WAIVERS -**

1. Section 150-89B (1) - eleven (11) off-street parking spaces provided where sixteen (16) off-street parking spaces are required.

2. Section 150-89B(5)(c) - two (2) parking spaces located in front yard area within 30 ft. of State Highway Route 36 where 30 ft. are required.

3. Section 150-89D(2) - driveways into commercial properties of paved width greater than 25 ft. require Division by physical barrier. Proposed driveway is 32 ft. in paved width with no physical barrier.

4. Section 150-89D(3) - no driveway shall exceed 30 ft. in width where 32 ft. are proposed for one-way drive along First Avenue.

5. Section 150-89D(3) - no commercial driveway may be located within 50 ft. of any intersection where Applicant proposes one-way exit driveway within 50 ft. of First Avenue and State Highway Route 36 intersection.

contrary to the provisions of Chapter 150, Articles VII and VIII, Sections 150-53, 150-67, 150-69 and 150-89 respectively, of the Development Regulations of the Borough of Atlantic Highlands; and

**WHEREAS**, the subject property is located in the CBD Central Business District and retail commercial uses including convenience stores are a permitted use in the Zone; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on June 14, 2018, July 12, 2018 and August 9, 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 review of Zoning Officer Michelle Clark, dated March 13, 2018, marked as Exhibit A-1 in evidence.

1.2 Application for Development of Atlantic Highlands Real Estate Partners, LLC, dated January 8, 2018, marked as Exhibit A-2 in evidence.

1.3 Survey of Block 102, Lots 7 & 8, prepared by Dynamic Survey, LLC dated November 20, 2017, marked as Exhibit A-3 in evidence.

1.4 Site Plan prepared by Dynamic Engineering, LLC dated February 1, 2018, marked as Exhibit A-4 in evidence.

1.5 Architectural Elevation and Floor Plans prepared by Monteforte Architectural Studios, dated January 25, 2018, marked as Exhibit A-5 in evidence.

1.6 Completeness and technical review #1 of CME Associates, dated April 16, 2018, marked as Exhibit A-6 in evidence.

1.7 Traffic study prepared by Nicholas Verderese, P.E. dated January 12, 2018, marked as Exhibit A-7 in evidence.

1.8 Service Packet with Notice of Hearing, proof of service, certified property owner list, certified return receipts and Affidavit of Publication, marked as Exhibit A-8 in evidence.

1.9 Drainage Statement prepared by Dynamic Engineering, LLC dated January, 2018, marked as Exhibit A-9 in evidence.

1.10 Aerial Exhibit dated June 2018, marked as Exhibit A-10 in evidence.

1.11 Photographic Exhibit dated June 4, 2018, marked as Exhibit A-11 in evidence.

1.12 Color-rendering of Site Plan prepared by Dynamic Engineering, LLC dated June 14, 2018, marked as Exhibit A-12 in evidence.

1.13 Colorized architectural rendering, marked as Exhibit A-13 in evidence.

1.14 New Jersey Department of Transportation Route 36 Jurisdictional Limit Map dated June, 1972, marked as Exhibit A-14 in evidence.

1.15 New Jersey Department of Transportation Completeness Letter dated April 9, 2018, marked as Exhibit A-15 in evidence.

1.16 Monmouth County Planning Board final approval dated June 19, 2018, marked as Exhibit A-16 in evidence.

1.17 Summary Statement of Operations dated June, 2018, marked as Exhibit A-17 in evidence.

1.18 Water and Sewer Engineering report of Dynamic Engineering, LLC dated June, 2018, marked as Exhibit A-18 in evidence.

1.19 Drainage Statement prepared by Dynamic Engineering, LLC, revised June, 2018, marked as Exhibit A-19 in evidence.

1.20 Traffic Impact Study prepared by Dynamic Traffic, LLC revised June, 2018, marked as Exhibit A-20 in evidence.

1.21 Architectural Elevation and Floor Plans prepared by Monteforte Architects, revised June 26, 2018, marked as Exhibit A-21 in evidence.

1.22 Preliminary and Final Site Plan prepared by Dynamic Engineering, LLC, revised through June 28, 2018, marked as Exhibit A-22 in evidence.

1.23 Technical Review #2 of CME Associates dated July 10, 2018, marked as Exhibit A-23 in evidence.

1.24 Site Plan prepared by Dynamic Engineering, LLC, revised through July 12, 2018, marked as Exhibit A-24 in evidence.

1.25 Colorized version of the proposed convenience store, sheets A102 and A103, marked as Exhibit A-25 in evidence.

2. The premises in question are located at 188-190 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 102, Lots 7 & 8 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the CBD Central Business Zone District and retail establishments including convenience stores are a permitted use in the Zone.

4. The premises in question have approximate dimensions of 100.67 ft. x 72.00 ft. x 34.50 ft. X 136.00 ft. x 151.00 ft. with an approximate area of 14,823 sq. ft. (0.340 acre). The premises in question are a corner property located at the intersection of New Jersey State Highway Route 36 and First Avenue. The property consists of two (2) Lots including Lot 7 which is a corner Lot with dual frontages on First Avenue

(Monmouth County Route 8) and Memorial Parkway (New Jersey State Highway Route 36) and Lot 8 which is an interior lot abutting Lot 7 to the north. The parcels will be merged as a part of this application as the parcel is being developed as a single unit.

5. The properties are presently developed with a one-story automotive service station with a one-story accessory structure on Lot 7 and a two-story commercial building presently utilized as a bicycle retailer and repair center "Toms Atlantic Cyclery" on Lot 8 along with associated asphalt driveway and parking areas.

6. The Applicant proposes to remove the existing buildings and structures on both Lots and construct a 3,085 sq. ft. one-story convenience store (referred to as 7-11) with eleven (11) on-site parking spaces, a truck loading area, a refuse enclosure structure, retaining walls, fencing, concrete sidewalks, signs, lighting, storm drainage, utility connections and landscaping. During the course of the application the Applicant revised the plans to reduce the overall impervious coverage to comply with the Zone requirements, reduce the building area to 2,800 sq. ft., to reduce the off-street parking requirement from sixteen (16) spaces to fourteen (14) spaces and removal of one (1) free-standing sign.

7. The application commenced at the meeting of the Planning Board on June 14, 2018. The Applicant was represented by Attorney Jason Tuvel, Esquire who advised the Planning Board that the application was for a 7-11 convenience store operating twenty-four (24) hours a day, receiving one (1) to two (2) box truck deliveries per day, taking approximately fifteen (15) minutes and one (1) WB50 (wheel base 50) delivery per week taking approximately thirty (30) to forty-five (45) minutes with

deliveries not occurring between the hours of 7:00 a.m. to 9:00 a.m.

8. The Applicant presented the testimony of James Henry, a licensed professional Engineer who oriented the Planning Board to the property and the existing conditions on the property of an auto repair facility and a bicycle shop with several driveway accesses to the site with existing impervious coverage of 98.3%. He also advised the Board that there were previously environmental issues on site which continue to be observed with no active remediation required due to natural attenuation. Observation will continue to be monitored by a licensed site remediation professional (LSRP) as required by NJDEP. Mr. Henry noted that there is sanitary sewer and public water available to the site. There is also an existing "Welcome to Atlantic Highlands" sign and a bus stop at the intersection of State Highway Route 36 and First Avenue. He noted that under existing conditions traffic circulation between the two Lots is not channelized due to the open curb cuts along Highway 36 and First Avenue.

9. Mr. Henry testified that the Applicant has met with NJDOT to discuss options as to what is the most appropriate driveway access for these properties. He noted that NJDOT has jurisdiction over this intersection for a distance of 400 ft. from the intersection and therefore NJDOT must approve all of the proposed ingress and egress to and from the site. He noted that the current plan has shifted an existing driveway next to the adjacent residential use on State Highway Route 36 with landscaping added to provide a buffer from that residential use. He testified that the proposed 32 ft. wide driveway width on the ingress from First Avenue is necessary to accommodate the WB50 sized vehicles coming to the site. Mr. Henry testified that

although not required the Applicant is providing a loading Zone along the westerly property line in order to provide for proper site circulation and avoiding the necessity to unload such vehicles along the curb of First Avenue. He testified that no WB50 size truck deliveries will be made between the hours of 7:00 a.m. and 9:00 a.m. He further noted that the Applicant is proposing fencing along the property line with a retaining wall behind the proposed building.

10. Mr. Henry testified that the proposed building complies with all of the bulk requirements of the Zone with the exception of maximum impervious coverage which was initially being reduced from 98.3% to 78% to be more compliant. However during the course of the application the Applicant revised the plan to reduce the impervious coverage below the allowable 75% and eliminated that variance requirement.

11. Mr. Henry further testified that a trash enclosure would be provided along the southerly property line. He testified that there would be a 6 ft. high masonry enclosure to provide adequate buffer from adjacent properties. He further testified that there would be sidewalks along both street frontages with a decorative sidewalk along First Avenue and concrete sidewalks to match existing conditions along State Highway Route 36. Mr. Henry testified that a waiver is required for the trash enclosure because it is within 30 ft. of Route 36, however he noted that it is actually 50 ft. from the curb line and requires a technical waiver because if the property line ran along the curb it would be compliant but because the NJDOT right-of-way cuts through the site it creates a waiver. The Planning Board finds that the waiver is appropriate due to the practical difficulties created by the dual street frontages and elongated triangular nature of the site and its consistency with



the intent and purpose of the ordinance to provide such amenities for commercial uses.

12. Mr Henry testified that the proposed lighting would be principally LED shoebox lights facing downward. He testified that the zero (0) footcandles spill over the property line with the exception of a small area along the northerly property line adjacent to the commercial building to the north where there is a slight overflow requiring a design standard waiver. He testified that this could be corrected but that the lighting is actually an improved condition in this case where there are adjacent commercial properties.

13. Mr. Henry testified that a row of evergreen trees has been added along the easterly and southerly side of the proposed building and along three (3) sides of the trash enclosure in order to provide additional screening. He further testified that two (2) oaks along with six (6) evergreen trees, seventy-two (72) evergreen shrubs and seventeen (17) deciduous shrubs were being provided throughout the site. In response to questions of Planning Board members, the Applicant conceded that the sign illumination may affect the residential home adjacent to the property and agreed to provide mature evergreens along the property line to avoid light from spilling onto the neighbors windows. The Applicant agreed to work with the Board Engineer with regard to the species of evergreen. The Board's Engineer Mr. Rohmeyer suggested a species of evergreen trees which the Applicant agreed to and which is a condition of this approval.

14. Mr. Henry testified that he had reviewed the site plan comments in the Planning Board Engineer's letter and stated that

the Applicant will comply specifically with the comments regarding grading and stormwater management and noted that the proposed improvements will significantly improve existing conditions of the site by adding landscaping and reducing pavement on site. They are not increasing impervious surface and will comply with NJDOT and Borough stormwater management requirements.

15. Board members expressed concerns regarding the architectural aesthetic of the proposed building and concern that its character was not consistent with the architectural styles along First Avenue and the Victorian style of the municipality.

16. Mr. Henry testified that there would be no food preparation performed on site. However, pre-prepared and/or pre-packaged food may be reheated. Trash will be picked up twice per week.

17. Mr. Henry noted that there would be two (2) building signs, one facing State Highway Route 36 and one facing First Avenue, which signs are compliant with the Ordinance and require no variances. With respect to the free-standing signs, he noted that the Ordinance allows only one sign per frontage and that the signs require variance relief since they are located within the NJDOT right-of-way. He noted that if they were to be set back from the right-of-way in a conforming location, there would be no place to locate them.

18. In response to Planning Board members inquiry Mr. Henry also stated that the Applicant will request NJDOT to extend the brick paver sidewalk further along the sidewalk for aesthetic purposes.

19. At the July 12, 2018 meeting the Applicant continued with the testimony of Mr. Henry who testified to certain plan changes that were made in response to Planning Board and public comments during the prior meeting, including a reduction in the size of the building from 3,080 sq. ft. to 2,800 sq. ft. eliminating the need for a lot coverage variance, as the lot coverage is now in compliance at 74.6% where 75% is permitted. Additional architectural features were added including a peaked roof that will not be used for habitable space. Those changes also reduced the parking requirement from sixteen (16) to fourteen (14) spaces. A waiver is still required for eleven (11) spaces where fourteen (14) are required however the magnitude of that waiver has now been reduced. The Applicant also provided additional landscaping based on Board member and neighbor comments and that the chain link fence at the rear property line would be replaced with a continuation of the vinyl fence along the entire property line to provide for better screening from adjacent properties. The changes also included revisions to the landscaping plan to add additional plantings as well as an additional shade tree to help screen the 7-11 sign on the frontage of Route 36.

20. Mr. Henry also noted that the directional signs along First Avenue for Sea Streak Ferry and Monmouth County were relocated as requested and that the CO2 tank has been relocated to the northwestern corner of the building as recommended. The Applicant also agreed to illuminate the "Welcome to Atlantic Highlands" sign at the corner of the property with a light fixture shining down onto the sign rather than an upward facing light.

21. The Applicant also provided additional architectural elements to the proposed building including a brick-like façade

and columns along with a pitched roof with dormers and fake windows to provide a more residential feel creating a more aesthetically pleasing transition to the residential Zone. The brick-like façade will carry around all sides of the building and there will also be a screen around the HVAC unit to shield noise. The trash enclosure will also match the brick-like façade of the building. Mr. Henry testified that the dormers would be for architectural aesthetic purposes only and that the upper area would not be used as an attic. Moreover there will be no activity to the rear of the building.

22. Mr. Henry also advised the Planning Board that, with respect to the revised CME Associates report dated July 10, 2018, the Applicant agreed to comply with all additional comments which is a condition of this approval.

23. Mr. Henry also testified that in reducing the square footage of the store the Applicant "pulled the back wall in" to reduce the building size thus creating additional rear access to the building for emergency purposes.

24. With respect to the light spillage on the property to the north, Mr. Henry advised that the light in question is located adjacent to the northerly property line and that the main driveway is the driveway on First Avenue and in order to light that adequately and the proximity to the adjacent garage and building, it is preferable to have the light spillage. The Applicant agreed that if the Board found the light spillage to be excessive, they would reduce it to the allowable amount if the waiver is not granted. The Planning Board finds that under the circumstances presented the waiver is appropriate.

25. The next witness introduced by the Applicant was Nicholas Verderese of Dynamic Traffic, LLC who is an expert

traffic Engineer in the State of New Jersey. Mr. Verderese described the various conditions at the intersection of New Jersey State Highway Route 36 and First Avenue and the existing conditions. He opined that the reconfiguration of ingress and egress to the site constitutes an improvement over existing conditions and noted that this would improve safety conditions at the property. Mr. Verderese testified that in doing their traffic calculations they provided a seasonal adjustment increasing their traffic numbers by 29% to account for seasonal traffic flow. He noted that convenience stores have certain characteristics including such that if it becomes self-policing as if it is not convenient to access the site, or egress from the site, patrons will simply pass the establishment and go to another nearby convenience store. He further noted that during some times of day there are failing levels of service and that the Applicant has suggested to NJDOT to modify some of the signal timing which would not eliminate but alleviate those conditions.

26. At the August 9, 2018 hearing the Applicant presented the testimony of Nicholas Verderese, a professional traffic Engineer who testified that although the Borough Ordinance requires fourteen (14) spaces for general retail use it does not have a specific standard for convenience store use. He opined that convenience stores have a faster turnover than general retail and on average expect a shopper to stay for only three to five minutes. They looked at Monmouth County 7-11 data and data from the Institute of Traffic Engineers (ITE) which recommend a parking requirement of 3.11 spaces per thousand square feet of convenience store space which would require nine (9) parking spaces for the subject site. He concluded that the eleven (11) spaces provided are more than adequate for the needs of this

use. He further opined that there are wide drive aisles proposed with plenty of room for vehicles to maneuver even with the larger truck delivery loading Zone, which he considered to be an improvement notwithstanding that it is not required. He further opined that the 32 ft. wide ingress from First Avenue provided better access than the 30 ft. wide ingress and that there is no need to have an island since it is a one-way ingress only driveway.

27. The Applicant's Attorney agreed that the Applicant would apply to the Governing Body for Title 39 application for the site so that traffic laws could be enforced.

28. The Applicant presented the testimony of Christine Nazzaro-Cofone, a licensed professional Planner of the State of New Jersey. Ms. Cofone noted that the proposed use is a permitted use and that the existing use is not permitted. Therefore there would be a benefit by eliminating a non-permitted use in favor of a permitted use on the property. She noted that the proposed Site Plan does not violate any bulk requirements of the CBD Zone. The only two variances being sought are for signage and lighting levels. During the course of the hearing the Applicant agreed to eliminate the second free-standing sign proposed for First Avenue and agreed to amend the plan to include a decorative brick base with some landscaping for the sign on Route 36. Consequently, the only variance associated with the application at that point was for the setback of the sign on Route 36 and for the lighting levels at the northerly portion of the property.

29. Ms. Cofone testified that the property line is set back 40 to 50 ft. from the roadway, which is a unique condition. Normally on commercial applications the Applicant is proposing signs with a property line at the roadway. Here the Route 36

sign is 18.25 ft. back from Route 36 and within the right-of-way. Ms. Cofone opined that this is a "text book example" of a C-1 variance due to the hardship created by the space between the property line and the roadway. She further opined that the grant of variance relief for the sign setback would be municipal action for the appropriate use of land promoting the public safety as appropriate signage at a location where it is visible to the roadway network insures that the traveling public has adequate advance notice of the location of the site so as to be able to navigate into the site.

30. Ms. Cofone further noted that, as to the negative criteria, it looks at the impact on the Zone plan and the impact on the public good and the area that surrounds it. She opined that the benefits of having signs that provide notice as to the site location is proper and appropriate signage meets the Master Plan goals of revitalizing under-utilized sites and insuring the safety of people coming to and from the site.

31. Ms. Cofone also testified that the northernmost location near adjacent parking spaces exceed the allowable light intensity. She opined that it is safer to keep that narrow area between the buildings well lit. She opined that a "C-2" variance is appropriate as it is a better alternative to keep lighting levels at the level proposed since it is a commercial area and an area in between commercial buildings.

32. Ms. Cofone also addressed the requested design waivers and opined that the waivers requested are reasonable due to the site characteristics and their grant will result in a site that functions safely and efficiently based on the traffic experts testimony, she opined that the proposed eleven (11) spaces are adequate to handle the anticipated traffic for the site. She noted that the Applicant could have more parking spaces in the

front of the building but that would require moving the loading Zone. Although the loading Zone is not required, she opined that the loading Zone is a better design for the site.

33. Ms. Cofone further opined that a design waiver to have parking in a front yard was a technical waiver due to the fact that the property has dual frontages. She noted that the building is set back 30 ft. from the property line and 80 ft. from the right-of-way so that this is a situation where the substantial right-of-way affects parking area and the waiver is justified. Ms. Cofone noted that the other three waivers for commercial driveway separation, commercial driveway width and commercial driveway location were necessary in order to provide for the safe and efficient circulation throughout the site. Therefore the waivers were all reasonable and were consistent with the intent and purpose of the Zoning Ordinance. The Planning Board finds that the testimony of Ms. Cofone was credible, practical and convincing.

34. At the conclusion of the presentation the Applicant's Counsel Mr. Tuvell noted the various modifications and conditions to be placed upon the application including but not limited to the following:

A. The architecture was revised to better reflect the character of the neighborhood.

B. The building size was reduced in order to eliminate the coverage variance and to permit additional landscaping and buffering.

C. The fence improvements were changed to a vinyl fence for the entire length of the property line to address concerns of neighbors.



D. The Applicant agreed to add a shade tree and additional landscaping to soften the impacts upon neighbors properties.

E. Additional streetscaping including new sidewalks and curbing along the two frontages.

F. Compliance with the technical comments in the review letters of the Planning Boards' Engineer.

G. The Applicant is to apply for Title 39 Police enforcement on site.

H. The Applicant to amend the application to eliminate the second free-standing sign on First Avenue.

I. The Applicant to provide a brick base with landscaping on the free-standing sign on Route 36.

J. The number of variances has been reduced to two (2) (free-standing sign within right-of-way and excess foot candle lighting on the side of property).

K. There will be no deliveries between the hours of 7:00 a.m. to 9:00 a.m.

L. Trash pick-up will not be conducted during overnight hours.

M. The Applicant will light the "Welcome to Atlantic Highlands" sign.

N. The Applicant will consolidate the two (2) Lots prior to the issuance of building permits.

35. The Planning Board finds that it agrees with the testimony of the Applicants witnesses with respect to the requested variance relief and that the Applicant has satisfied the positive and negative criteria for the grant of such relief and said variances can and should be granted at this time.

36. The Planning Board further finds that it agrees with the testimony of the Applicant's witnesses that the requested design standard waivers are reasonable and within the general purpose and intent of the provisions for site plan review and approval and therefore can and should be granted at this time.

37. 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 site plan approval and that Preliminary and Final Major Site Plan approval can and should be granted at this time.

38. 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 13<sup>th</sup> day of September, 2018 that the Application of **ATLANTIC HIGHLANDS REAL ESTATE PARTNERS, LLC** be and is hereby approved, which approval is expressly conditioned upon compliance with the following terms and conditions:

**GENERAL CONDITIONS -**

- 1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are

incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.

2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.

3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees, Temporary Certificate of Occupancy Guarantees, Safety and Stabilization Guarantees, Maintenance Guarantees, Inspection Fees and such other Guarantees or fees as may be required pursuant to the Municipal Land Use

Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract and private site improvements.

6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant with all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".

10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in

writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.

15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This

approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

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 -**

The approvals granted in connection with this application are as follows:

1. Preliminary and Final Major Site plan approval pursuant to plans prepared by Dynamic Engineering, LLC dated February 1, 2018 revised through June 28, 2018 and as further revised in accordance with the terms and conditions of this approval.

2. Variance to permit free-standing sign within 30 ft. of the right-of-way of State Highway Route 36 (Section 150-53(D)(1)); with a zero (0) ft. setback from the property line where 10 ft. are required (Section 150-69(L)(3))

3. Variance to permit artificial lighting footcandles exceeding 0.5 ft. footcandles beyond the northerly property line onto adjacent commercial Lot 9. (Section 150-67(O)(1))

4. Design Standard Waivers:

A. Eleven (11) off-street parking spaces where fourteen (14) spaces are required (Section 150-89B(1))

B. Parking located in a front yard area (Section 150-89B(5)(c))

C. Driveway of greater than 25 ft. in width without physical dividing barrier. (Section 150- 89D(2))

D. Driveway width exceeding 30 ft. (Section 150-89D(3))

E. Driveway located within 50 ft. of intersection. (Section 150-89D(3))

5. The building size was reduced in order to eliminate the coverage variance and to permit additional landscaping and buffering.

6. The fence improvements are changed to provide a vinyl fence for the entire length of the property line to address concerns of neighbors. The Applicant shall make the improvements as agreed with the neighboring property owner and as stipulated in the record.

7. The Applicant shall add a shade tree and additional landscaping to soften the impacts upon neighbors properties.

8. The Applicant shall provide the Additional streetscaping including new sidewalks and curbing along the two frontages and request approval from NJDOT to extend the brick paver sidewalk.

9. Compliance with the technical comments in the review letters of the Planning Boards' Engineer marked as Exhibits A-6 and A-23 in evidence.

10. The Applicant shall apply for Title 39 enforcement on site.

11. The Applicant has amended the application to eliminate the second free-standing sign on First Avenue.



12. The Applicant shall provide a brick base with landscaping on the free-standing sign on Route 36.

13. There will be no deliveries by large trucks (WB50) between the hours of 7:00 a.m. to 9:00 a.m.

14. Trash pick-up will not be conducted during overnight hours 10:00 p.m. to 7:00 a.m..

15. The Applicant will provide lighting for the "Welcome to Atlantic Highlands" sign to be approved by the Planning Board engineer.

16. The Applicant will record a deed consolidating the two (2) Lots prior to the issuance of building permits.

17. The Applicant shall provide mature evergreens along the property line to avoid light from spilling onto the neighbors windows. The Applicant shall provide the species of evergreen recommended by the Board Engineer

18. There will be no food preparation performed on site. However, pre-prepared and/or pre-packaged food may be reheated. Trash shall be picked up twice per week.

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

**BE IT FURTHER RESOLVED** that a written copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Applicant, the Code Enforcement Official of the Borough of Atlantic Highlands, and the Construction Code Official of the Borough of Atlantic Highlands. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any

interested party and available for public inspection during normal business hours.

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

OFFERED BY: Mr. Hawley

SECONDED BY: Mr. Colangelo

ROLL CALL:

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

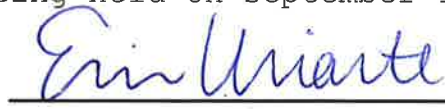
NO: None

ABSTAIN: None

ABSENT: Mr. Ilarazza

  
\_\_\_\_\_  
**Chairperson, Planning Board  
Borough of Atlantic Highlands**

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Atlantic Highlands at its meeting held on September 13, 2018.

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