

**IN THE MATTER OF
APPLICATION NO. PB18-06
OF DENHOLTZ CUSTOM HOMES, LLC
BLOCK 142 LOT 5**

**RESOLUTION GRANTING
PRELIMINARY AND FINAL
MAJOR SUBDIVISION
APPROVAL PURSUANT TO
"WHISPERING WOODS"
SETTLEMENT**

WHEREAS, DENHOLTZ CUSTOM HOMES, LLC hereinafter the "Applicant", has proposed the development of property located at 17 Avenue D, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 142, Lot 5 on the Tax Map of the Borough of Atlantic Highlands; and

WHEREAS, the Applicant previously applied for, and by Resolution adopted June 13, 2019 received, Preliminary and Final Major Subdivision Approval of a 308,885 sq. ft. (7.09 acre) parcel into sixteen (16) single family residential Lots and a remainder open space Lot on a new cul-de-sac roadway, with associated sidewalks, temporary construction signage, stormwater management facilities, utility connections, lighting, landscaping and a public utility sanitary pump station; and

WHEREAS, thereafter on July 30, 2019 Neighbors for Waterfront Preservation and Corey Wingerter filed a complaint In Lieu of Prerogative Writs docket number MON-L-2262-19 challenging the decision of the Planning Board; and

WHEREAS, a trial was subsequently held on February 4, 2020; and

WHEREAS, on September 8, 2020, the Honorable Owen C. McCarthy, J.S.C. rendered a decision reversing in part and

affirming in part, the decision of the Planning Board and remanding the application to the Planning Board for further proceedings; and

WHEREAS, on September 28, 2020, the Applicant filed a motion seeking reconsideration of the Judge's decision and, on October 22, 2020, Neighbors for Waterfront Preservation and Corey Wingerter filed a cross motion for reconsideration; and

WHEREAS, prior to the hearing of the cross motions for reconsideration the Applicant and Neighbors for Waterfront Preservation and Corey Wingerter conducted negotiations and the parties agrees that the case would be remanded to the Planning Board for a public hearing on the terms of a settlement agreement pursuant to revised plans prepared and submitted by the Applicant; and

WHEREAS, Hearings were conducted on the application previously on July 31, 2018, August 29, 2018, September 27, 2018, November 27, 2018, January 16, 2019, March 25, 2019, March 26, 2019 and April 29, 2019. Due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act and Municipal Land Use Law with a quorum of the Planning Board being present.

WHEREAS, the Applicant reappeared before the Planning Board of Atlantic Highlands on June 3, 2021, 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 settlement proposal was heard by the Planning Board pursuant to

requirements and procedures set forth in the case of Whispering Woods vs Middletown Township 220 NJ Super 161 (law div 1987); and

WHEREAS, Due notice of the aforesaid meeting was 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 in favor of or in opposition to the application the Planning Board has made the following findings of fact:

1. This hearing was conducted as a continuation hearing of the above referenced application and all Board members voting on the settlement agreement were present at all prior meetings of the Planning Board considering the application or either listened to the audio tapes or read the transcripts of the prior meetings in full and executed certificates.

2. The Planning Board has received and reviewed the following documents, exhibits and reports in connection with this application:

2.1 Application for variance of Denholtz Custom Homes, LLC, with checklist, dated May 10, 2018, marked as Exhibit A-1 in evidence.

2.2 Stormwater Management report prepared by Kennedy Consulting Engineers, LLC dated May 3, 2018, marked as Exhibit A-2 in evidence.

2.3 Geotechnical Engineering Report prepared by Craig Testing Laboratories, Inc. dated February 8, 2018, marked as Exhibit A-3 in evidence.

2.4 Portion Topographical Survey Map prepared by Yorkanis & White Surveyors, dated March 19, 2018, marked as Exhibit A-4 in evidence.

2.5 Boundary and Topographical Survey Map prepared by Yorkanis & White Surveyors, dated September 26, 2017, marked as Exhibit A-5 in evidence.

2.6 Preliminary and Final Subdivision Plans prepared by Kennedy Consulting Engineers, LLC, dated March 26, 2018 revised July 10, 2018, marked as Exhibit A-6 in evidence.

2.7 Application for subdivision of Denholtz Custom Homes, LLC, marked as Exhibit A-7 in evidence.

2.8 Affidavit of Ownership of McConnell Realty Company Corp., dated April 4, 2018, marked as Exhibit A-8 in evidence.

2.9 Waiver Request justification, marked as Exhibit A-9 in evidence.

2.10 "Will-Serve" Letters from Verizon, (11/29/2017), N.J. Natural Gas (12/4/2017), JCP&L (12/12/2017) and Comcast (12/1/2017), marked as Exhibit A-10 in evidence.

2.11 CME Associates Completeness/Technical Review #1 dated June 13, 2018, marked as Exhibit A-11 in evidence.

2.12 Boundary and Topographical Survey Map prepared by Yorkanis & White Surveyors, dated April 12, 2018, marked as Exhibit A-12 in evidence.

2.13 Letter from Kennedy Consulting Engineers, LLC dated July 17, 2018, marked as Exhibit A-13 in evidence.

2.14 Letter from Attorney Giunco, dated July 27, 2018, marked as Exhibit A-14 in evidence.

2.15 Correspondence from Attorney Giunco, dated July 25, 2018 with service packet, marked as Exhibit A-15 in evidence.

2.16 Report of CME Associates, dated July 27, 2018, marked as Exhibit A-16 in evidence.

2.17 Zoning Review of Zoning Officer Michelle Clark dated May 23, 2018, marked as Exhibit A-17 in evidence.

2.18 Letter from Attorney Giunco regarding RSIS dated August 29, 2018, marked as Exhibit A-18 in evidence.

2.19 Color Rendered Site Plan prepared by Kennedy Consulting Engineers, LLC, dated July 20, 2018, marked as Exhibit A-19 in evidence.

2.20 Aerial Exhibit of Project Site prepared by Kennedy Consulting Engineers, LLC, marked as Exhibit A-20 in evidence.

2.21 Aerial View of Site from Microsoft 2018, marked as Exhibit A-21 in evidence.

2.22 Two-sided photo-board with photographs on each side, (8.5" x 11") of subject property and nearby properties, marked as Exhibit A-22 in evidence.

2.23 Board Exhibit with upper left aerial of R-1 Zone District, upper right Zone Map above proposed Lot layout showing Tax Map Sheets 26, 27, 28, 29 & 30, marked as Exhibit A-23 in evidence.

2.24 Elevation and Floor Plan drawings prepared by Monteforte Architects ("Starboard"), marked as Exhibit A-24 in evidence.

2.25 Elevation and Floor Plan drawings prepared by Monteforte Architects ("Spinnaker"), marked as Exhibit A-25 in evidence.

2.26 Service packet of Applicant, marked as Exhibit A-26 in evidence.

2.27 Preliminary and Final Major Subdivision Plan prepared by Kennedy Consulting Engineers, LLC, dated March 26, 2018 revised November 8, 2018, marked as Exhibit A-27 in evidence.

2.28 Technical Review of CME Associates, dated October 25, 2018, marked as Exhibit A-28 in evidence.

2.29 Technical Review #4 of CME Associates, dated November 21, 2018, marked as Exhibit A-29 in evidence.

2.30 Sewer Pump Station Plan prepared by Maser Consulting, P.A., dated November 16, 2018, marked as Exhibit A-30 in evidence.

2.31 Service Packet of Applicant, marked as Exhibit A-31 in evidence.

2.32 Color-rendered Subdivision Plan prepared by Kennedy Consulting Engineers, LLC, dated November 27, 2018, marked as Exhibit A-32 in evidence.

2.33 11" x 17" cross-Section of Revetment prepared by Kennedy Consulting Engineers, LLC, dated November 27, 2018, marked as Exhibit A-33 in evidence.

3. The Planning Board also received and reviewed the following additional documents, exhibits and reports:

3.1 Color-rendered boundary and topographic survey map prepared by John T. Lutz, dated September 28, 2017 revised April 12, 2018, marked as Exhibit J-1 in evidence.

3.2 Deed from State of New Jersey to Standard Oil Company of New Jersey dated July 21, 1930, recorded July 2, 1973, marked as Exhibit J-2 in evidence.

3.3 Letter from Attorney Asadi for "Neighbors for Waterfront Preservation" dated July 25, 2018, marked as Exhibit O-1 in evidence.

3.4 Letter from Attorney Asadi for "Neighbors for Waterfront Preservation" dated July 31, 2018, marked as Exhibit O-2 in evidence.

3.5 Biennial groundwater sampling results of McConnell Fuel Inc., prepared by BSTI, marked as Exhibit FISHER-1 in evidence.

3.6 Atlantic Highlands Environmental Commission Resolution, marked as Exhibit KRAUSS-1 in evidence.

3.7 Four-pages consisting of aerial photographs, drawings and text, marked as Exhibit KEOUGH-1 in evidence.

3.8 Memorandum of Attorney Steib regarding RSIS requirements dated July 23, 2018 marked as Exhibit PB-1 in evidence.

3.9 Memorandum of Attorney Steib dated July 26, 2018 regarding jurisdictional issues marked as Exhibit PB-2 in evidence.

3.10 Supplemental Memorandum of Attorney Steib dated July 31, 2018 regarding jurisdictional issues marked as Exhibit PB-3 in evidence.

4. The Planning Board has also received the following documents, exhibits and reports in connection with the Whispering Woods Hearing regarding the settlement agreement:

4.1 Preliminary and final major subdivision plan entitled "The Aegean" prepared by Kennedy Consulting Engineers, LLC dated March 26, 2018, revised through May 13, 2021 consisting of 12 sheets marked as Exhibit WW-1 in evidence.

4.2 Stormwater Management Engineering Report for The Aegean prepared by Kennedy Consulting Engineers dated June 25, 2019 revised January 21, 2021, marked as Exhibit WW-2 in evidence.

4.3 Color rendered 16 Residential Lot Subdivision Rendering prepared by Kennedy Consulting Engineers, dated June 3, 2021, marked as Exhibit WW-3 in evidence.

4.4 Technical Review #5 prepared by CME Associates dated June 2, 2021 revised June 3, 2021, marked as Exhibit WW-4 in evidence.

4.5 Settlement Agreement between Neighbors for Waterfront Preservation et. al. vs Planning Board of the Borough of Atlantic Highlands and Denholtz Custom Homes, LLC Docket Number: MON-L-2262-19, marked as Exhibit WW-5 in evidence.

5. Subject property is located in the R-1 Residential Zone District and single-family residential homes with associated accessory structures are a permitted use in the zone.

6. The premises in question is an irregularly shaped parcel with a lot area of 308,885 square feet (7.09 acres).

7. The subject property is presently developed with an existing one-story masonry building and detached two-story metal structure along with driveways, lighting and a variety of accessory structures all of which are proposed to be removed. The existing use of the subject property is a non-conforming principal use marine storage and/or repair facility.

8. The Applicant proposes to remove all existing structures and subdivide the existing parcel to create sixteen (16) proposed single family residential Lots, one (1) open space Lot and a fifty (50) foot wide municipal right-of-way (cul-de-sac road). The plans also depict additional improvements including but not limited to concrete sidewalks, storm drainage, utility connections, lighting and landscaping.

9. The following modifications have been made to the plans previously provided and approved:

A. The open space lot area has been increased to 112,574 square feet (2.54 acres).

B. Lot 5.16 has been oriented to have lot frontage on Avenue D.

C. A ten-foot pedestrian walkway is proposed along the waterfront portion of the site on lot 5.17 and extends from Avenue D to the end of the cul-de-sac.

D. A two-inch HDPE sanitary force main is proposed to connect to the existing sewer main at the intersection of Avenue D and Harborview Drive. Thirteen (13) lots will have a force main lateral connecting to the two-inch sewer force main.

E. The proposed pump station has been removed.

F. Street trees spaced at a maximum of fifty (50) feet have been provided.

10. Properties surrounding the site to the south, east and west are similarly zoned R-1. To the north property is zoned MC (Marine Conservation). The property located to the south of the site is Center Avenue Park. The municipal recreational play fields are a public use located on adjacent lot 4.01. In addition the Sandy Hook Bay Catamaran Club, also located in lot 4.01, is an existing non-conforming use located directly to the west of the site. The Planning board finds that the following provisions of the settlement agreement pertain to the planning aspects of this proceeding:

i. The plan proposes 16 fee simple lots (lots 5.01-5.16) for residential single-family home development all substantially in compliance with the plan reviewed and agreed to by the parties which is shown on Exhibit WW-3. Due to site grading, the Applicant is requesting to permit building homes with a height up to thirty seven (37) feet from the pre-development grade requiring Variance relief.

ii. The Applicant is dedicating approximately 2.5 acres of open space to the Borough which is in excess of the 1.9 acre ordinance requirement, the use of which is subject to the following limitations:

a. Daytime gatherings are permitted until one half hour after sundown.

b. No amplified live music or recorded music will be allowed except by permit issued by the Borough of Atlantic Highlands.

c. No storage of boats, watercraft or equipment.

d. The Borough of Atlantic Highlands shall maintain the landscaping in the dedicated open space lands.

e. No parking of motor vehicles.

iii. A 10-foot-wide public pedestrian access will extend from Avenue D along the bulkhead to the terminus of the bulkhead on the westerly side of the site. Barrier free access

will be provided at the westerly access point unless the Borough or other reviewing agency objects or restricts site access in which event the Applicant will be relieved of such development requirement.

iv. The Applicant will deed restrict buffer areas as shown on the plan in a form acceptable to the Board. Such buffer areas are located on lots to the north and south of the new roadway. A fence may be constructed along the northerly property line notwithstanding that the restricted buffer area will be south of the fence line.

v. Location of proposed lot 5.16 will have frontage on Avenue D.

vi. Bulkhead will be replaced approximately 20 feet landward of the existing bulkhead location with material selection in discretion of the Applicant and subject to NJDEP required approvals.

vii. Fencing in accordance with Borough ordinance shall be permitted along the side and rear yard of each fee simple residential lot.

viii. Removal of the previously approved sewage pump station. Each single-family residence will be served by gravity where possible or force main connected to utilities within the public right-of-way.

11. At the public hearing, counsel for Neighbors for Waterfront Preservation and Wingerter and counsel for the

Applicant acknowledged and confirmed the accuracy of the settlement agreement as being the agreement between those respective parties. The Applicant presented testimony of James Kennedy, a licensed Professional Engineer in the State of New Jersey. Mr. Kennedy introduced Exhibit WW-3 and went through the revisions to the plan pursuant to the Settlement Agreement. He also addressed technical review #5 prepared by the Planning Board Engineer, CME Associates, and marked as Exhibit WW-4 in evidence. He confirmed that the plans will fully comply with all technical comments set forth in that review which shall be a condition of this approval.

12. Mr. Kennedy also addressed the Variances. He noted that a Variance is necessary for the open space lot frontage on Avenue D and opined that this is an open space lot and not a residence. Consequently, there is no need to have the required minimum frontage that would apply to a lot containing a residential home. He further noted that the property has access from the westerly side of the property and does not require access from Avenue D.

13. With respect to building height, Mr. Kennedy testified that the need for Variance relief is due to the existing topography of the lot. He testified that, due to the redistribution of the topography in order to properly engineer the street, a Variance is needed because the Atlantic Highlands Ordinance measures height from pre-existing grade and not from finished grade. Mr. Kennedy testified that, from a visual and engineering standpoint, the change in height will be imperceptible as all of the homes in the development will be of compatible architectural design and will have a consistent

appearance so that no individual building will appear uncharacteristic to other buildings in the development.

14. Mr. Kennedy testified that the proposed cul-de-sac road will be dedicated to the township and that, if the Borough utility does not wish to accept responsibility for maintenance of the pressure line, a homeowners association will be formed to maintain it. He further testified that, from an engineering perspective, the proposed system complies fully with all requirements of the ordinance and the Department of Environmental Protection regulations. Similarly, he testified that the proposed bulkhead will comply with all Department of Environmental Protection regulations as it is NJDEP that will oversee the permitting for that structure.

15. The Applicant further presented the testimony of Andrew Janiw, a licensed Professional Planner in the State of New Jersey with respect to the requested Variances for frontage and building height. Mr. Janiw opined that the lot frontage requirement is designed to ensure that lots for construction and development of residential homes are consistent. However, the lot in question is an open space lot and the purpose of the ordinance is not offended by deviating from the minimum frontage requirement which is designed to insure that lots developed with single-family homes are consistent in size and dimension. Moreover, he testified that the lot opens to significant width beyond the access point. The Planning Board agrees with the Applicant's witnesses. The Planning Board finds that the grant of the requested Variance for lot frontage will help facilitate the provision of open space within the Borough. Therefore, it promotes the purposes of the municipal Land Use law at N.J.S.A.

40:55 D-2.g. by providing sufficient space in an appropriate location for open space. In this case, the open space provided is in an ideal location along the shoreline providing for access and use by the public to the waterfront. Thus, the Planning Board finds that the Applicant has satisfied the positive criteria for the grant of that requested Variance.

16. The Planning Board further finds that the Applicant has satisfied the negative criteria for the requested Variance relief. More particularly, the Planning Board finds that the grant of the Variance will not result in any substantial detriment to the public good. The Planning Board finds that the opposite is the case and the grant of the Variance will facilitate this development maintaining a significant portion of open space in excess of that required by the ordinance. Thus, the grant of the Variance will not result in any substantial detriment to the public good. Instead, it will result in a benefit to the public good by providing greater open space area.

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 or Zoning Ordinance. The Planning Board finds that the purposes of the ordinance are advanced by granting this Variance to permit the creation of more open space within the Borough. The Zoning Ordinance calls for open space in this type of development and the Applicant, using this configuration, is providing a larger portion of open space than is required by ordinance which is a benefit to the Zone Plan and Zoning Ordinance and not a detriment.

18. Mr. Janiw further testified with respect to the height Variance and corroborated Mr. Kennedy's testimony that the need for the Variance is the result of (i) necessary grading on the property in order to create the development coupled with (ii) the provision of the Borough Ordinance which requires height to be measured from pre-existing grade rather than finished grade. Mr. Janiw opined that the height Variance would qualify for either:

a. C1 Variance on the basis of hardship due to the exceptional topographic conditions and physical features uniquely effecting this specific piece of property, or

b. C2 Variance promoting the purposes of the Municipal Land Use Law at N.J.S.A. 40:55 D-2 by providing adequate light, air and open space and by providing sufficient space in an appropriate location for residential use which is a permitted use in this zone. Moreover, it will eliminate an existing non-conforming use and replace it with the conforming residential development. He further opined that granting the variance will promote a desirable and visual environment as these residential dwellings will replace an unsightly nonconforming use with an attractive, conforming permitted residential use. Mr. Janiw opined that the proposed use is conforming and will provide a benefit due to the removal of an existing non-conforming use, which is encouraged by the Municipal Land Use Law. He further opined that the height change of 2 feet at the peak of the roof is di minimis in impact and will not result in a substantial detriment to the public good or a substantial impairment of the Zone Plan. The Planning board agrees with Mr. Janiw's testimony and opinions.

19. The Planning Board notes that Mr. Janiw testified that the Atlantic Highlands Master Plan calls for single family homes on the subject property and that the principles and objectives of the Master Plan include maintaining the present density and lot size of the neighboring community. He opined that the proposed development does precisely that. He further opined that the proposed development is consistent with the State Development and Re-development Plan (SDRP) as the Borough of Atlantic Highlands is located in the Metropolitan Planning Area 1 which is a smart growth area with a "center" designation where growth is encouraged because of available infrastructure. He further opined that the Borough's Zone Plan has a goal of maintaining and preserving the existing single-family neighborhood and the restoration of sub-standard sites. This proposed development will accomplish those objectives. Mr. Janiw further noted that the plan is entirely in compliance with RSIS standards and Borough Ordinances noting that, with the exception of the height Variance granted herein, the individual lots meet or exceed the lot area minimum and meet or exceed all of the bulk standard requirements of the Zone district. He opined that the plan is consistent with what is envisioned in the Ordinance in terms of density, lot size, configuration and the provision of open space and will have no detrimental impacts upon the Zone Plan or the community. He also opined that the Municipal Land Use Law encourages development of the site that will convert a site with an unsightly non-conforming use to an attractive conforming use. He opined that doing so is a benefit to the community. The Planning Board finds that it agrees with these opinions of the Applicant's Planning Expert.

20. The Planning Board finds that the Applicant's witnesses, testimony and opinions as set forth herein are credible and adopts them as part of its findings of fact.

21. The Planning Board finds that the Applicant has submitted a subdivision plat in substantial compliance with the requirements of the Zoning Ordinance. The Planning Board finds that the Applicant has submitted a plat and such other information as reasonably necessary to make an informed decision as to whether the requirements necessary for approval have been met. The Planning Board further finds that the detailed, drawings, specifications and estimates of the application for preliminary and final approval also conform to the standards established by Ordinance and that the application for preliminary and final major subdivision approval can and 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 1st day of July, 2021 that the Application of **DENHOLTZ CUSTOM HOMES, LLC**, pursuant to the Settlement Agreement referenced herein, for preliminary and final major subdivision approval with Variances for lot frontage and building height 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". **(None Required)**

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. **(None Required)**

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

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

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

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

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

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

Affordable units in inclusionary developments shall have at least 50% low income units (of which at least 13% are very low income). The remaining affordable units shall be moderate income units. The bedroom distribution for affordable units shall be a minimum of 20% three-bedroom units and a maximum of 20% one- bedroom units.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required prior to the commencement of any development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality's approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

19) The scope of the review of this application is necessarily limited to planning, zoning and land use review of the site as compared to the requirements of the Municipality. The grant of this approval and of any permit or approval in connection therewith shall not constitute a representation, guarantee or warranty of any kind or nature by the Municipality or by any Municipal official or employee thereof with respect to the practicability or safety of any structure, use or other plan proposed and shall create no liability upon or cause of action against the Board, the Municipality or any officials or employees

of the Municipality for any damage or injury that result from the construction of the improvements for which this Zoning approval is granted.

SPECIAL CONDITIONS -

1) The Applicant shall comply with the technical recommendations set forth in the report of the Planning Board Engineer dated June 3, 2021, marked as Exhibit WW-4 in evidence.

2) The Applicant shall comply with all of the terms and conditions set forth in the body of this resolution including but not limited to:

a. The Applicant shall obtain approval for its proposed sewage disposal system. If the municipal utility authority declines to maintain those facilities the Applicant shall create a home-owners association for that purpose.

b. The Variance approval for building height will permit building height to be 37 feet from existing grade and no greater than 35 feet from finished grade.

c. The open space parcel shall be subject to restrictive covenants recorded prior to the dedication or within the deed of dedication limiting the use of the dedicated open space land as follows:

i. Daytime gatherings are permitted until one half hour after sundown.

ii. No amplified live music or recorded music except by permit issued by the Borough of Atlantic Highlands.

iii. No storage of boats, watercraft or equipment.

iv. The Borough of Atlantic Highlands will maintain landscaping in the dedicated open space land.

v. The Applicant shall comply with the conditions of this approval in accordance with applicable ordinances, statutes, regulations and laws.

vi. There will be no parking of motor vehicles.

d. Any damage to existing roadways shall be repaired in accordance with the requirements of the Borough Engineer.

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: MRS. MURRAY

ROLL CALL: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MRS. MURRAY, MR. COLANGELO, MR. CROWTHER, MR. KRUPINSKI, MR. CURRY

YES: MR. DOUGHERTY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MRS. MURRAY, MR. COLANGELO, MR. KRUPINSKI

NO: MR. CROWLEY

ABSTAIN: NONE

ABSENT: MR. PEPE, MR. JOSKO



**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 July 1, 2021.



**Secretary Planning Board
Borough of Atlantic Highlands**