

**IN THE MATTER OF
APPLICATION NO. PB#20-22
WASHINGTON ASSOCIATES, LLC**

**RESOLUTION GRANTING
SITE PLAN APPROVAL WITH
USE VARIANCE & DESIGN**

BLOCK 89, LOT 1.021

STANDARD WAIVERS

WHEREAS, WASHINGTON ASSOCIATES, LLC, hereinafter the "Applicant", has proposed the development of property located at 37 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as block 89 lot 1.021 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 site plan approval with variances so as to permit the expansion of a professional office use to the second floor of an existing three (3) story multi-family/office building requiring a use variance for the expansion of a nonconforming professional office use with bulk variances for one side yard setback of 9.5 feet where 10 feet is required (existing condition), building height of 3 stories/58 feet where 2.5 stories/35 feet is permitted (existing condition) and 8 parking spaces where 16 parking spaces are required. The Applicant also requires design waivers to permit a driveway 3 feet from the rear property line where 5 feet is required (Section 154-54 (F)) parking within a front yard setback (Section 150-89.B(I)(f)) gravel parking area where paved parking area with cast in place curbing is required (Section 150-89.B(III)(f)) not providing an ADA parking space where 1 space is required (Section 150-89.B(IV)(a)) and providing a "one-way" driveway where a "two-way" driveway is required (Section 150-89.D(I)). These items are contrary to the aforesaid provisions of the Borough of Atlantic Highlands Development Regulations; and

WHEREAS, the subject property is located in the R-1 Zone District and mixed use commercial/residential development is not a permitted principle use in the zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on February 4, 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 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 November 2, 2020, marked as Exhibit A-1 in evidence.

1.2 Application for variance dated December 23, 2020, marked as Exhibit A-2 in evidence.

1.3 Architectural Interior Renovation Plans prepared by Settembrino Architects dated October 16, 2020, marked as Exhibit A-3 in evidence.

1.4 Minor Site Plan prepared by Jaclyn Flor, P.E., P.P. dated December 18, 2020, marked as Exhibit A-4 in evidence.

1.5 Report of Avakian Engineers dated January 21, 2021, marked as Exhibit A-5 in evidence.

1.6 Drainage Statement prepared by Engenuity Infrastructure dated December 18, 2020, marked as Exhibit A-6 in evidence.

1.7 Custom Soil Resource Report from United States Department of Agriculture dated November 19, 2020, marked as Exhibit A-7 in evidence.

1.8 Architectural Floor Plan colorized prepared by Settembrino Architects, marked as Exhibit A-8 in evidence.

1.9 Colorized Architectural Plan entitled "Construction Plan" prepared by Settembrino Architects, marked as Exhibit A-9 in evidence.

1.10 One sheet with 2 photographs of street frontage marked as Exhibit A-10 in evidence.

1.11 Colorized proposed garage elevations prepared by Settembrino Architects marked as Exhibit A-11 in evidence.

1.12 Photograph of subject property with garage superimposed entitled "Proposed Garage/Main Building Elevation" prepared by Settembrino Architects marked as Exhibit A-12 in evidence.

2. The premises in question are located at 37 East Washington Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 89, Lot 1.021 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 Residential Zone District and mixed use commercial/residential is not a permitted use in the zone.

4. The premises in question have approximate dimensions of 115.40 ft. x 129.98 ft. x 150.45 ft. x 126.79 ft. with an approximate area of 14,816 square feet (0.340 acres). The Subject is presently developed with a three (3) story multi-family/office building (5,674 square feet) and is a corner lot with frontages on East Washington Avenue and Seventh Avenue. At present the property is occupied by three units. The first floor unit has been historically used as a Doctor's office, second floor is a three bedroom apartment and the third floor is a three bedroom apartment. The Applicant proposes to convert a portion of the second floor into additional office space and utilize the first floor and second floor office space for an architectural firm. The remainder of the second floor will be a one bedroom apartment and the third floor will continue to be a three bedroom apartment. This will be done principally through interior renovation/reconfiguration.

The Applicant was represented by Kevin Asadi, Esq. who presented the Applicant's case. The Applicant presented the testimony of Kevin Settembrino, the property owner, who is also a licensed Architect in New Jersey, New York and Pennsylvania, Jaclyn Flor, a licensed Professional Engineer in the State of New Jersey and Justin Auciello, a licensed Professional Planner of the Sate of New Jersey.

5. Mr. Settembrino presented testimony that he is an owner of the Applicant, Washington Associates, LLC and recently purchased the subject property. He testified that the property is currently developed with a three story historic eighteenth century Victorian home. He testified that the existing building is of Queen Ann Victorian architecture constructed in or about 1893 and that he used the historic architecture of Connelly-Hickey to provide advice and guidance to the historic consistency of exterior treatments and improvements. He testified that it is his desire to move his professional architecture office currently located in Red Bank, New Jersey to this site and to occupy the first floor of the building previously occupied as a Doctors office and expand that nonconforming professional element to a portion of the second floor creating two new

offices on that floor with the remainder of that floor being a one bedroom apartment. He further testified that the third floor three bedroom apartment unit will remain the same. He opined that at present the building is a three unit building with one office use and two residential units and that if this application is approved the same tenant mix will exist with three units with only a minor increase in the office component and minor decrease in the residential component.

6. Mr. Settembrino addressed the intensity of his proposed office use and that of the prior Doctors office and noted that the doctor's office had a kitchen sink, toilet and three sinks. He noted that the three sinks will be removed as they were associated with the three patient rooms which will no longer be needed. He stated that his staff of seven will be similar in size to that of the prior doctor's office and that, unlike a doctor's office, their clientele does not come to the building as the architect goes to the site in question to meet with clients. Thus, there will not be a steady flow of patients coming in and out of the building. Mr. Settembrino further testified that the business will operate Monday through Friday from 8:30 am to 5:30 pm which hours of operation are less than those of a doctor's office. He testified that the number of parking spaces on site are being increased from 5 to 8 notwithstanding that he anticipates less traffic coming to and going from the site than the prior doctor office use. He stated that at full capacity the building will have a need for three street parking spaces for staff members. He noted that from his observations, when the doctor office was not operating, there was no street parking and numerous parking spaces on the street were available. However, street parking was necessary when the doctors office was open. He anticipates a similar situation here with less street parking needed than when the doctors office was open due to the lower intensity of use for an architect's office.

7. Mr. Settembrino advised the Board that trash receptacles for the property will be maintained inside the garage and will not be exterior to the building. He further testified that trash and recycling services will be provided by the Borough of Atlantic Highlands.

8. Ms. Flor, a licensed Professional Engineer in New Jersey, New York and Pennsylvania as well as a Professional Planner in New Jersey provided testimony as to the physical site improvements. She testified that she prepared the proposed site plan which provides only for minimal exterior disturbance. The existing gravel driveway area will be improved by creating a more defined parking area with attractive landscaping along its perimeter. She noted that the only lighting proposed will be a light for the garage and two building mounted lights. She opined that this will be keeping with the existing conditions of the property and the surrounding neighborhood.

9. Ms. Flor further testified that there will be no discernable increase in runoff resulting from the proposed improvements. She agreed to work with the Planning Board Engineer with respect to concerns about water at the rear corner of the property and to provide grading, drywell or other means approved by the Planning Board Engineer to minimize or eliminate any adverse runoff impacts in that area.

10. Ms. Flor outlined the variance and waiver relief required noting that the side yard setback and building height variances are existing conditions and are not being exacerbated or altered in any way. She noted that with respect to parking the existing conditions are five onsite parking spaces where sixteen spaces are required. The Applicant is proposing to increase the number of spaces to eight parking spaces while reducing the intensity of use from a doctor's office to an architect's office and opined that this will be an improved condition to the property. Ms. Flor further addressed the waivers and noted that the three foot driveway setback is an existing condition that will be mitigated through a solid hedge along the driveway perimeter. She further noted that originally a fence had been proposed straddling the property line. That request was withdrawn at the time of hearing and the Applicant will comply with the required setback for the fence. She further noted that the parking space in a front yard area is also an existing condition that will not be adversely impacted by this application. She further opined that maintaining the existing gravel lot will provide for better water infiltration

than pavement and will operate to minimize site disturbance and stormwater runoff. She also noted that having a two-way driveway is not desirable as it will change the character of the site which is located within a historic Victorian neighborhood. She opined that retaining a one-way driveway will maintain a residential appearance more consistent with the neighborhood.

11. Ms. Flor further testified as to the Planning Board Engineer's review and noted that the Ordinance provides that where a 25 foot wide buffer is not feasible because of established development patterns the Board may consider alternative designs that will create an effective buffer. She opined that in this case the site is already fully developed and that the landscaping proposed is the maximum that can reasonably be provided and that the proposed landscaping meets the intent and spirit of the ordinance provision. The Planning Board agrees.

12. Ms. Flor addressed the lack of planting one additional tree for each five parking spaces noting that the property has existing trees that meet the spirit and intent of the ordinance and that adding supplemental trees would inappropriately crowd the site. The Planning Board agrees.

13. Ms. Flor also testified that the plans will be revised to show sight triangles in accordance with the recommendations of the Planning Board Engineer. Ms. Flor also agreed that any landscaping including "skip laurels" that could block the view of pedestrians, and particularly school children on the sidewalks, will be removed so that there will be a clear site triangle to insure safety of pedestrians and motorists.

14. Ms. Flor also testified that the exterior improvements have not been designed to comply with "ADA" requirements and there will be no "ramp" to get into the building. The applicant stated that the subject property qualifies as exempt from barrier free requirements under the New Jersey Rehabilitation Code. The Applicant agreed to

provide calculations to demonstrate that the Applicant qualifies for that exemption which is a condition of this approval.

15. As a result of all of the foregoing the Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested variance relief and that the variance can and should be granted at this time.

16. The Planning Board heard the testimony of its Engineer, Mr. Avakian, who opined that the requested variances and waivers are principally the result of the Applicants efforts to preserve the existing character of the property and the neighborhood and opined that such efforts justify variance and waiver relief.

17. The Applicant also presented the testimony of professional Planner Justin Auciello. He testified that he considered the use variance to fall within N.J.S.A. 40:55D-70.d.(II) as an expansion of an existing nonconforming use. He cited the Burbridge v. Mine Hill Township case which provides that the Applicant is not required to demonstrate special reasons in this type of case. Instead, the Board conducts a "benefits/detriments" analysis. He opined that the present use is a mixed residence/office use with three units and that the proposed use will continue to be a mixed residence/office use with three units. He further opined that the proposed architect's office use will be significantly less intense than that of the doctor's office. He noted that doctor's offices invite patients to come to the office and attract a steady stream of patients whereas an architect normally goes to the client's site to obtain the necessary information and then return to the office by themselves to work on the architectural plans.

18. Mr. Auciello also opined that although the onsite parking is deficient, the proposed development will be an improvement over existing conditions and that the parking and driveway improvements provide for a more defined and better organized

parking area which, along with the landscaping provided, will maintain and improve the present character of the property.

19. Mr. Auciello testified that, as to the positive criteria for the grant of the variance and waiver relief, the application promotes the purposes of the Municipal Land Use Law at N.J.S.A. 40:55D-2.a. to guide the appropriate use and development and lands within the state as well as N.J.S.A. 40:55D-2.g and i. providing sufficient space in an appropriate location for a variety of uses to meet the needs of all New Jersey citizens and to promote a desirable visual environment through creative development techniques and good civic design and arrangement. Mr. Auciello opined that those purposes of the Municipal Land Use Law are served by the proposed improvements by the Applicant.

20. Mr. Auciello further testified that the grant of the requested variance relief would not result in any substantial detriment to the public good or substantial impairment of the zone plan or zoning ordinance as the property has historically been used as a mixed use office/residence with three units and this proposal is consistent in that historic context and due to the type of office use proposed will be less intense than the prior use. Thus, he found that there will be no detriment to the public good as the grant of variance relief will allow this use to continue in the same character as it has for many years providing consistency and continuity to the neighborhood. Similarly, he opined that it will not result in any substantial impairment of the zone plan or zoning ordinance insofar as it will simply continue the same use of the property that has existed.

21. The Planning Board notes that its Engineer/Planner Mr. Avakian agreed that the testimony provided by Mr. Auciello meets the criteria for the grant of variance relief. The Planning Board further notes that the grant of relief for use variance may also justify relief for the accompanying bulk variance and design waiver relief as being subsumed in

the variance relief since the additional requested relief is consistent with the requirements for such a mixed use development.

22. The Planning Board accepts the testimony of the Applicant's witnesses and finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested use variance and design standard waiver relief and finds that the variances and waivers can and should be granted at this time.

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

24. 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 4th day of March 2021, that the Application of **WASHINGTON ASSOCIATES, 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 –

1. The relief granted in connection with this application is as follows:

a. Use variance for the expansion of a nonconforming professional office use

b. Bulk variances for one side yard setback of 9.5 feet where 10 feet is required (existing condition), building height of 3 stories/58 feet where 2.5 stories/35 feet is permitted (existing condition) and 8 parking spaces where 16 parking spaces is required.

c. Design waivers to permit a driveway 3 feet from the rear property line where 5 feet is required (Section 154-54 (F)), parking within a front yard setback (Section 150-89.B(I)(f)), gravel parking area where paved parking area with cast in place curbing is required (Section 150-89.B(III)(f)), not providing an ADA parking space where 1 space is required (Section 150-89.B(IV)(a)) and providing a “one-way” driveway where a “two-way” driveway is required (Section 150-89.D(I)).

2. All air conditioning units will be placed in a conforming location with no setback relief required.

3. The proposed fence will be placed off the property line in a conforming location.

4. The plans shall be revised to show sight triangles as recommended by the Planning Board Engineer.

5. The Applicant shall provide calculations to the Planning Board Engineer to demonstrate and confirm that the Applicant qualifies for exemption from the “ADA” requirements.

6. The Applicant shall work with the Planning Board Engineer to ensure through grading, dry well or other means that there will be no adverse stormwater runoff impacts to the rear corner of the property.

7. There shall be no landscape vegetation including “skip laurels” blocking views of pedestrians within the site triangle.

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. McGoldrick
SECONDED BY: Mrs. Murray

ROLL CALL:

Mrs. Murray, Mr. Colangelo, Mr. Crowther, Mr. Josko
YES: Mr. Hawley, Mr. Caccamo, Mr. McGoldrick, Mr. Neff,
NO: None
ABSTAIN: None
ABSENT: Mr. Pepe



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 March 4, 2021.


Secretary, Planning Board

Borough of Atlantic Highlands