

**IN THE MATTER OF
APPLICATION NO. PB21-04
OF KAREN HENNESSEY
BLOCK 105 LOT 4.01**

**RESOLUTION GRANTING
USE VARIANCE APPROVAL**

WHEREAS, KAREN HENNESSEY, hereinafter the "Applicant", has proposed the development of property located at 21 West Lincoln Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 105, Lot 4.01 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 variance approval with site plan waiver to use a 3,450 square foot portion of a 15,200 square foot commercial building as a Cross Fit training facility which requires use Variance approval as commercial and/or athletic exercise facilities are not a permitted use in the LI Zone District. The Applicant also requires Variance relief to permit 46 parking spaces where 128 parking spaces is required. The foregoing are contrary to the provisions of Chapter 150, Article V, Section 150-31 and Article IX, Section 150-89 of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the LI Light Industrial Zone District and commercial indoor athletic or exercise facilities or health clubs are not a permitted use in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on May 6, 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 denial of Zoning Officer Michelle Clark dated March 5, 2021, marked as Exhibit A-1 in evidence.

1.2 Application of Karen Hennessey, dated March 23, 2021, marked as Exhibit A-2 in evidence.

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

1.4 Survey prepared by Charles V. Bell with hand drawn parking spaces and fenced outside area, marked as Exhibit A-4 in evidence.

2. The premises in question are located at 21 West Lincoln Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 105, Lot 4.01 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the LI Light Industrial Zone District and commercial indoor athletic or exercise facilities or health clubs are not a permitted use in the Zone.

4. The premises in question has approximate dimensions of 127.00 ft. x 270.00 ft. x 125.00 ft. x 275.00 ft. and is rectangular in shape with an approximate area of 34,335 +/- square feet. The subject property is presently developed with an existing 15,200 square foot commercial building. The Applicant proposes to utilize a 3,450 square feet portion of the

building for a cross fit facility. This requires a use Variance for a change in use along with a Variance to permit 46 parking spaces where 128 parking spaces are required.

5. The Applicant was represented by Kevin E. Kennedy, Esq. who presented the testimony of the Applicant Karen Hennessey, property owner Jay Factor and professional planner Christine Cofone. Ms. Hennessey testified that she is the sole member of Cross Fit 5 Points, LLC, is a certified personal trainer and dietician and has operated a Cross Fit facility for a number of years including in another building in the immediate vicinity of the subject property. She testified that training is conducted in classes of up to 16 participants with two coaches. The facility does not allow "walk-ins" and requires pre-registration for classes which are limited in size as set forth previously herein. The facility will have no locker rooms, no showers, no "shake" bar or food service so that members of the facility come to the class and leave immediately thereafter. There are no multiple classes occurring at the same time and there may be individual one-on one training during hours when classes are not occurring. She testified that the facility will not be open before 5 o'clock am and will close by 8 o'clock pm. She testified that Monday through Friday a typical day would include classes at 5 am, 6:15 am, 8:30 am, 9:30 am, 4:30 pm, 6pm and 7pm. On Saturdays classes will be conducted between 7am and 10 am. On Sunday classes will be conducted between 8 am and 10 am. She testified that, although occasionally members will do warm up runs on a local street, the majority of activity will be occurring indoors. She further testified that the only noise to be generated will be from indoors and could include some music, the sound of barbells and applause. She testified that in her 5 years of operation in the immediate vicinity she received no noise complaints. She further testified that there will not be any competitions conducted on the premises with other Cross Fit establishments. She further agreed that parking spaces will be provided to meet ADA requirements.

6. Mr. Factor testified that he is the owner of Reunion Realty which recently purchased the subject property. The other tenant of the property is a pharmaceutical business which packages and delivers dosages for nursing homes. The business is not a retail pharmacy and

therefore they do not have a significant parking demand. The maximum number of employees that they have at one time is 30 during the hours of 1pm to 3pm. During other hours there are normally 8 persons at the pharmaceutical facility. He testified that there are actually 61 total parking spaces on site and agreed to have the required minimum of 3 ADA parking spaces.

The Planning Board Engineer, Mr. Rohmeyer, testified that the pharmaceutical use is similar to other light manufacturing uses as opposed to a retail use which is the use that drives up the required number of parking spaces. He opined that, based upon the testimony of the witnesses, 48 parking spaces are actually needed for the site which has a total of 61 spaces. Therefore, although a technical Variance is required, it is his opinion that the parking on site for the proposed uses is adequate.

The Applicant also presented the testimony of Christine Nazzaro Cofone, a licensed professional planner of the State of New Jersey. She testified that the proposed use is similar to a service establishment which is a permitted use in the LI Zone District. She testified that in her opinion the proposed Cross Fit facility will function similarly to a service use since it has limited classes by appointment only. She noted that there is no need for exterior improvements for the Cross Fit facility and that the subject property is "tucked into" an area with no through street outlet and would not generate any significant traffic issues.

Ms. Cofone testified that the LI Zone allows mixed use shared space buildings and that in her opinion there are special reasons for the grant of use Variance relief pursuant to N.J.S.A. 40:55D-2.g. and m. Ms. Cofone noted that the Master Plan encourages upgrade and revitalization of the business and entertainment areas of the community and opined that the grant of Variance relief in this case will promote those purposes by providing sufficient space in an appropriate location for a variety of uses in order to meet the need of residents. She opined that the proposed use is an appropriate use in this location and therefore will promote the purposes of the Master Plan.

7. Ms. Cofone further opined that the grant of Variance relief will encourage the coordination of various public and private procedures shaping land development and promote the efficient use of land. The Planning Board agrees with Ms. Cofone that the grant of requested Variance relief will promote the purposes of the Municipal Master Plan as well as those purposes of the Municipal Land Use Law to which she testified. Therefore, the Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief.

8. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that the grant of the variance relief will not result in any substantial detriment to the public good. The use is in a Light Industrial Zone. It is not in a residential area and there are no residential homes in the immediate vicinity. Thus, the use of this property as a Cross Fit facility located primarily indoors will not have any substantial negative impacts upon the surrounding neighborhood. As noted by the Applicant's Planner, the proposed use functions in a similar manner as a service establishment which is permitted in the zone. It will harmonize with the other uses in the neighborhood.

9. 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 agrees with Ms. Cofone's opinion that this proposed use is appropriate in the LI Zone. It is similar to other service uses which are permitted uses in the zone and will promote the purposes of the Master Plan by providing for additional expanded opportunities for members of the community.

10. The Planning Board further finds that it agrees with the Applicant's witnesses that the retail pharmaceutical standard for parking is not appropriate for this site as the pharmaceutical use is not a retail pharmacy and is much more limited in scope and intensity.

The Planning Board finds that, based on the testimony provided, there are a sufficient number of parking spaces on site to accommodate both uses at the property.

11. The Planning Board further finds that the Applicant is not proposing any changes to the exterior of the property other than providing for three ADA parking spaces, which is an improvement, and that the site plan approval can be waived under these circumstances since no other exterior site improvements are proposed.

12. 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 use variance and parking variance can and should be granted at this time.

13. The Planning Board further finds that the site plan approval can be waived under the circumstances as, other than providing three ADA compliant parking spaces, there are no exterior improvements proposed.

14. The Planning Board further finds that all property owners within 200 ft. of the premises in question have been given proper notice of the hearing of this application and were provided with an opportunity to present testimony in favor of, or in opposition to, the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 18th day of May, 2021, that the Application of **KAREN HENNESSEY**, 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.

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 approval granted in connection with this Application is to permit the Cross Fit use of 3,450 square feet of the existing structure with 61 parking spaces where 128 parking spaces is required.

2) Site plan approval is waived as there are no proposed exterior improvements.

- 3) The Applicant shall provide for three ADA compliant parking spaces on site.
- 4) The Cross Fit operations will be conducted as noted previously herein with operations Monday through Friday commencing no earlier than 5:00 am and continuing no later than 9:00 pm. Saturday operations will be from 7:00 am to 11:00 am and Sunday operations will be from 8:00 am to 11:00 am. Classes will be limited to 16 participants with 2 trainers and only one class will be conducted at a given time. Individual training sessions may be conducted when regular classes are not being conducted. There will be no locker rooms, no showers and no food service on premises.

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 should the Applicant not exercise this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9.J. these variances will expire.

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: MRS. MURRAY
SECONDED BY: MR. MCGOLDRICK

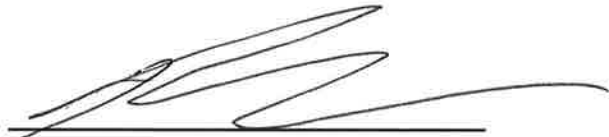
ROLL CALL: MR. DOUGHERTY, MR. CROWLEY, MR. HAWLEY, MR. CACCAMO, MR. MCGOLDRICK, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. JOSKO, MR. KRUPINSKI, MR. CURRY

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

NO: NONE

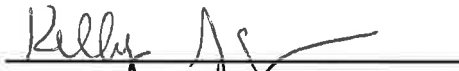
ABSTAIN: NONE

ABSENT: MR. CROWTHER



**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 May 18, 2021.



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