

**IN THE MATTER OF  
APPLICATION NO. PB 21-05  
OF 73 3<sup>RD</sup> AVENUE, LLC  
BLOCK 99 LOT 15**

**RESOLUTION GRANTING  
VARIANCE AND MINOR  
SITE PLAN APPROVAL**

**WHEREAS, 73 3<sup>RD</sup> AVENUE, LLC**, hereinafter the "Applicant", has proposed the development of property located at 73 3<sup>rd</sup> Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 99, Lot 15 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 to convert an existing Church into a three-unit multi-family dwelling building. The total building area including basement, ground floor and mezzanine consisting of 9,128 square feet is proposed to remain and be converted into three single family residential dwelling units with off street parking spaces which requires the following Variances:

- a. Section 150-31 (Exhibit 5-4) – the proposed “multi-family” building is not a permitted use in the R-1 Single Family Residential Zone.
- b. Section 150-29 (A) (2) (Exhibit 5-2) – maximum lot coverage permitted is 50% and 63% is proposed.
- c. Section 150-29 (A) (II) (Exhibit 5-2) – maximum useable floor area of 0.90 where 0.40 is permitted.
- d. Section 150-89.B.(5) (c) – parking is not permitted in any front yard whereas the Applicant proposes parking in front yards area along 3<sup>rd</sup> Avenue and Highland Avenue.
- e. Section 150-89.D.(3) – the proposed driveway width will be 37 feet where 30 feet is permitted.

f. Section 150-85 E.(2) – buffers are required along side and rear property lines whereas the Applicant proposes landscaping along a portion of the side and rear property lines.

g. Section 150-85.E.(2)(b) – proposed garbage collection and parking areas are not screened whereas screening is required; and

**WHEREAS**, the following existing non-conformities will remain including:

a. Section 150-29 (A)(2) (Exhibit 5-2) – minimum front yard setback required is 20 feet whereas 0.8 feet exists and will remain along 3<sup>rd</sup> Avenue.

b. Section 150-29 (A)(2) (Exhibit 5-2) – minimum front yard setback required is 20 feet whereas 8.0 feet exists and is to remain along Highland Avenue.

c. Section 150-29 (A)(2) (Exhibit 5-2) – minimum required side yard setback is 10 feet where 6.3 feet exists and is to remain.

d. Section 150-29 (A)(2) (Exhibit 5-2) – minimum rear yard setback required is 20 feet whereas 6.6 feet exists and will remain.

e. Section 150-29 (A)(2) (Exhibit 5-2) – minimum rear setback for accessory structures is 5 feet where 4.5 feet exists and is to remain.

f. Section 150-29 (A)(2) (Exhibit 5-2) – maximum building coverage provided is 25% whereas 40.7% exists and will remain.

g. Section 150-29 (A)(2) (Exhibit 5-2) – maximum building height permitted is 35 feet whereas the existing building height is greater than 35 feet (Church steeple) and is to remain; and

**WHEREAS**, the subject property is located in the R-1 Residential Zone District and multi-family buildings are not a permitted use in the zone; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on July 1, 2021 and October 7, 2021, 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 January 5, 2021, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of 73 3<sup>rd</sup> Avenue, LLC, dated April 1, 2021, marked as Exhibit A-2 in evidence.

1.3 Minor Site Plan prepared by Eastpoint Engineering, dated October 8, 2020, marked as Exhibit A-3 in evidence.

1.4 Topographic Survey prepared by Richard E. Stockton & Associates, dated September 10, 2020, marked as Exhibit A-4 in evidence.

1.5 Change of Use Architectural Plans prepared by William Herchakowski, dated September 30, 2020, marked as exhibit A-5 in evidence.

1.6 Narrative of Intent, marked as Exhibit A-6 in evidence.

1.7 Technical Review #1 of CME Associates, dated May 27, 2021, marked as Exhibit A-7 in evidence.

1.8 Series of 4 Photographs of subject property on each of 3 sheets, marked as Exhibit A-8 in evidence.

1.9 Color Rendered Site Plan prepared by Eastpoint Engineering, marked as Exhibit A-9 in evidence.

1.10 Memorandum of Planning Board Attorney Steib, dated July 2, 2021, marked as Exhibit A-10 in evidence.

1.11 E-mail from Administrator Hubeny to Attorney Kennedy dated August 9, 2021, marked as Exhibit A-11 in evidence.

1.12 Minor Site Plan prepared by Eastpoint Engineering, dated October 8, 2020 revised September 20, 2021, consisting of 3 sheets with options A, B & C, marked as Exhibit A-12 in evidence.

1.13 Attorney Kennedy Letter to Administrator Hubeny, dated July 19, 2021, marked as Exhibit A-13 in evidence.

1.14 Attorney Kennedy Letter to Zoning Officer Clark, dated September 24, 2021, marked as Exhibit A-14 in evidence.

1.15 One Page Color Landscape Plan prepared by Katerina J. Majewski, marked as Exhibit A-15 in evidence.

2. The premises in question are located at 73 3<sup>rd</sup> Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 99, Lot 15 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-1 Residential Zone District and multi-family buildings are not a permitted use in the zone district.

4. The property in question has approximate dimensions of 105.00 ft. x 100.00 ft. x 105.00 ft. x 100.00 ft. and is rectangular in shape with an approximate area of 10,494 square feet (0.24 acres).

5. The Applicant was represented by Kevin Kennedy, Esq. who presented the testimony of Marc Leber, a Licensed Professional Engineer and Professional Planner in the State of New Jersey, Philip Herchakowski, a Licensed Architect in the State of New Jersey, Jacqueline Greco, a Principal of the Applicant and Michael Marzuvilla, a Principal of the Applicant. The Applicant presented testimony that the existing development on the property is a Church with a community center and parish house. The Church was built in approximately 1890 and features gothic stained glass windows and bell tower. It is an historic structure listed on the County Historic Registry. It was previously utilized as a Church, Nursery School, Religious Instruction facility and Parsonage. The Church has since closed and the Applicant desires to preserve the historic structure by re-purposing it as a 3-dwelling unit building. The Applicant does not propose any exterior expansion of the building or construction of additional structures other than to provide parking and landscaping.

6. Architect Herchakowski testified that the building contains 3 attached sections. The Church Chapel itself is a one-story unit which will become a 1-bedroom single-family dwelling unit. The community center is a one unit which will become a 2-bedroom single-family

residence and the parish house is a 2.5-story section of the building which will become a single-family 4-bedroom residence. He testified that the intent is to maintain the look and feel of the Church structure within the neighborhood. The basement will be utilized as storage space with laundry and mechanical equipment. He testified that there will be no change to the footprint of the building and no change to the exterior. He further noted that the building will be sprinklered throughout for fire safety purposes. He further testified that there will be an increase in floor area due to the mezzanine in the Church portion of the building. He testified that there will be no interior trash storage. Trash will be facilitated by three pads for containers. He noted that the Church will not be utilized for worship so there will be no ringing of bells. He further testified that the mechanical equipment for the air conditioning and the utility meters will be screened.

7. The Planning Board suggested to the Applicant that the 6 parking spaces proposed on the property appeared excessive and that there is a municipal parking lot in immediate proximity to the subject property. The Applicant adjourned the hearing and communicated with the governing body of the Borough inquiring whether it would be possible to work out an agreement for the residents of the subject property to utilize the adjacent municipal parking area. That request was rejected as that parking area is being reserved for a possible well required by the Borough to be constructed in the future. Consequently, that is not a possibility and parking must be provided either on-site or on-street. The Applicant presented Exhibit A-12 which demonstrated 3 possible options for parking on the property. The Planning Board notes that the RSIS regulations require 6 parking spaces for this site. One of the options was to provide for the 6 parking spaces on-site. A second option was to provide for only 4 parking spaces on-site. A third option was street parking. The Applicant proposed that the 4 parking space option was his preferred plan and proceeded on that basis.

8. The Applicant agreed to provide concrete apron-sidewalks at the street and for parking spaces and agreed to work with the Planning Board Engineer with respect to landscaping and street trees.

9. At the October 7, 2021 hearing Mr. Leber provided additional testimony as to the revised plan and that the Applicants preferred plan was with 4 parking spaces which will save one street tree. The Planning Board noted the concern of residents that the on-site parking will require the loss of some street parking. Mr. Leber testified that the subject property cannot be developed with parking on-site without losing some street parking.

10. Mr. Leber testified that additional landscaping could be provided along the westerly sideline with Skip Laurel or similar vegetation. This was the subject of substantial discussion, and it was determined that as a condition of approval the Applicant will consult with their neighbor, Ms. Roselle and the Planning Board Engineer to arrive at an acceptable landscaping scheme. The Applicant also agreed to pull the proposed landscaping along parking stalls further from the parking stalls to allow for adequate access to and from vehicles.

11. The Applicant further agreed to utilize porous pavers for the surface of the parking stalls and to delineate between the individual stalls with brick or stone rather than utilizing painted lines. The Applicant further agreed to remove the bollard lighting from the plans.

12. Mr. Leber testified as a Planner with respect to the Variances. He testified that the proposal is consistent with the 2019 Master Plan of the Borough which encourages the preservation of historic sites and the enhancement of historic architecture. He also noted that the purposes of the Municipal Land Use Law N.J.S.A. 40:55D-2 A and J will be promoted by the grant of the requested Variance relief as retaining the existing structure will preserve the character of the neighborhood and conserve this historic site. He noted that due to the location of the existing building the only place the parking can be provided is in the front yard area and since this property is a corner property there are two front yards. He noted that the excessive lot coverage cannot be eliminated if there is to be parking on site. He further testified that the proposed site plan will maintain the aesthetics existing on the property with improved landscaping. Thus, he opined that there will be no substantial detriment to the public good as this will preserve the existing character of the neighborhood. Nor will there be any

substantial impairment of the zone plan or zoning ordinance since this is retaining an existing historical structure that has set the character of the area for approximately 130 years.

13. The Applicant did note that there is an existing ADA sign on the property that appears not to be a conforming legal sign. The Board engineer concurred. Therefore the Applicant agreed to remove that sign from the property.

14. The Planning Board finds that the Applicant has satisfied the positive criteria for the requested Variance relief. Although the Planning Board acknowledges that there are a significant number of Variances required this is principally the result of the existing conditions of the property including the existing Church building and the corner lot resulting in two front yard areas. This places severe constraints on further development of the property without the grant of Variance relief and the Planning Board therefore finds that the Applicant has satisfied the positive criteria for the grant of the requested Variances.

15. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested Variance relief. The Planning Board notes that this is a structure which will be maintained in substantially the same condition as it has been for approximately 130 years. Thus, there is no substantial detriment to the public good as this will retain the character of the neighborhood. The Planning Board acknowledges that there will be parking spaces on site that didn't previously exist. However, it is necessary to provide some on-site parking. The Planning Board finds that the Applicant's proposal to have 4 on-site parking spaces is the best compromise in order to provide some on-site parking without excessive on-site parking and excessive loss of on- street parking spaces. The Planning Board further finds that the enhanced landscaping on the property will also be a mitigating factor resulting in a more attractive environment for the neighborhood.

16. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial impairment to the Zone Plan or Zoning Ordinance. As noted previously herein the Church has set the character of this area for a long period of time and is



an historic structure which should be preserved based upon the principles set forth in the Municipal Master Plan as well as the Municipal Land Use Law. Therefore, the Planning Board finds that there will be no substantial impairment of the Zone Plan or Zoning Ordinance resulting from the grant of the requested Variance relief.

17. 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 Variances can and should be granted at this time subject to the conditions set forth previously in this resolution and hereinafter.

18. The Planning Board further finds that the Applicant has submitted a site plan and such other materials as are necessary to determine whether the application meets the standards required by the ordinance for site plan approval. The Planning Board finds that the site plan is appropriate as submitted and subject to the conditions contained herein and that site plan approval can and should be granted at this time as well.

18. 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 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 4th day of November, 2021 that the Application of **73 3<sup>RD</sup> AVENUE, 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.

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 relief granted herein is as follows:

a. Section 150-31 (Exhibit 5-4) – the proposed “multi-family” building is not a permitted use in the R-1 Single Family Residential Zone.

b. Section 150-29 (A) (2) (Exhibit 5-2) – maximum lot coverage permitted is 50% and 63% is proposed.

c. Section 150-29 (A) (II) (Exhibit 5-2) – maximum useable floor area of 0.90 where 0.40 is permitted.

d. Section 150-89.B.(5) (c) – parking is not permitted in any front yard whereas the Applicant proposes in front yard area along 3<sup>rd</sup> Avenue and Highland Avenue.

e. Section 150-89.D.(3) – the proposed driveway width will be 37 feet where 30 feet is permitted.

f. Section 150-85 E.(2) – buffers are required along side and rear property lines whereas the Applicant proposes landscaping along a portion of the side and rear property lines.

g. Section 150-85.E.(2)(b) – proposed garbage collection and parking areas are not screened whereas screening is required.

2) Site plan approval.

3) the applicant shall remove the ADA sign from the property.

4) There will be no bollard lighting on the property.

5) The parking spaces on-site will be constructed of porous pavers with the parking spaces delineated with brick or stone.

6) The Applicant shall pull the landscaping away from the parking stalls to provide for improved access to and from vehicles.

7) The Applicant shall provide additional landscaping along the westerly side of the property. The Applicant shall consult with the neighbor Ms. Roselle and the Planning Board Engineer to provide an appropriate landscape buffer along that sideline.

8) There will be no exterior construction.

9) The Church bell shall not be wrung.

10) The mechanical equipment for air conditioning and utility meters will be screened.

11) The Applicant shall provide concrete apron/sidewalk at the street and along parking spaces.

12) The Applicant's professionals shall consult with the Planning Board Engineer with respect to the landscaping and street trees.

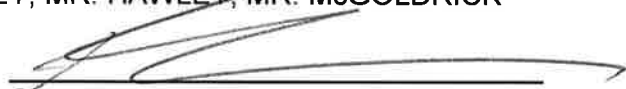
**BE IT FURTHER RESOLVED** that nothing herein shall excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

**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.

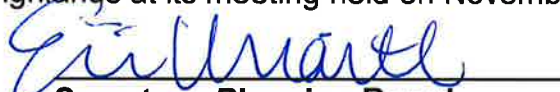
**BE IT FURTHER RESOLVED** that should the Applicant not exercise this variance within the required time period pursuant to Chapter 150, Article III, Section 150-9.J. these variances will expire.

**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. PEPE
ROLL CALL:	
YES:	MR. CACCAMO, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO, MR. CROWTHER, MR. JOSKO, MR. KRUPINSKI, MR. CURRY
NO:	NONE
ABSTAIN:	NONE
ABSENT:	MR. CROWLEY, MR. HAWLEY, MR. McGOLDRICK

  
**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 November 4, 2021.

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