

**IN THE MATTER OF  
APPLICATION NO. PB 21-07  
OF 98 FIRST AVENUE, LLC  
BLOCK 97 LOT 4**

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

**WHEREAS, 98 FIRST AVENUE, LLC**, hereinafter the "Applicant", has proposed the development of property located at 98 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 97, Lot 4 on the Tax Map of the Borough of Atlantic Highlands; and

**WHEREAS**, the subject property is located in the HBD Historic Business District and mixed use office and residential is a permitted use in the zone; and

**WHEREAS**, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on October 7, 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 Letter of Zoning Officer Michelle Clark, dated April 20, 2021, marked as Exhibit A-1 in evidence.

1.2 Planning Board Application of 98 First Avenue, LLC, dated March 31, 2021, marked as Exhibit A-2 in evidence.

1.3 Development Plan Checklist, dated March 31, 2020, marked as Exhibit A-3 in evidence.

1.4 Location Survey of block 97, lots 2 & 4, prepared by Thomas Craig Finnegan, P.L.S., dated May 12, 2016, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated June 4, 2020, marked as exhibit A-5 in evidence.

1.6 Location Survey of block 97 lots 2 & 4 prepared by Thomas Craig Finnegan, P.L.S., dated July 14, 2021, marked as Exhibit A-6 in evidence.

1.7 Letter from Attorney Crowther to Mayor & Council, dated July 1, 2021, marked as Exhibit A-7 in evidence.

1.8 Drawing of proposed rear office, dated October 7, 2021, marked as Exhibit A-8 in evidence.

1.9 Photograph of hallway of rear office toward back door, dated October 7, 2021, marked as Exhibit A-9 in evidence.

1.10 Photograph of portion of waiting room dated October 7, 2021, marked as Exhibit A-10 in evidence.

1.11 Photograph of additional waiting room area, dated October 7, 2021, marked as Exhibit A-11 in evidence.

1.12 Photograph looking into rear office from hallway, dated October 7, 2021, marked as Exhibit A-12 in evidence.

1.13 Photograph looking into rear office, dated October 7, 2021, marked as Exhibit A-13 in evidence.

1.14 Photograph looking out of rear office from windows, dated October 7, 2021, marked as Exhibit A-14 in evidence.

1.15 Photograph of hallway to law office with bathroom, dated October 7, 2021, marked as Exhibit A-15 in evidence.

1.16 Inside view of hallway from Law office to rear room, dated October 7, 2021, marked as Exhibit A-16 in evidence.

1.17 Copy of Survey depicting 9 possible parking spaces 10 feet wide and proposed handicapped spot marked with an "X", dated October 7, 2021, marked as Exhibit A-17 in evidence.

1.18 Photograph of entrance to parking lot from Mount Avenue, dated October 7, 2021, marked as Exhibit A-18 in evidence.

1.19 Photograph of proposed office entrance door, dated October 7, 2021, marked as Exhibit A-19 in evidence.

1.20 Photograph of west side of parking lot showing proposed handicapped spot dated October 7, 2021, marked as Exhibit A-20 in evidence.

1.21 Photograph of east side of parking lot showing right turn for ingress and egress for lot 6, dated October 7, 2021, marked as Exhibit A-21 in evidence.

1.22 Photograph of back door close-up, dated October 7, 2021, marked as Exhibit A-22 in evidence.

1.23 Photograph of side door entrance for upstairs apartments, dated October 7, 2021, marked as Exhibit A-23 in evidence.

1.24 Photograph of beginning of 10 foot alley way, dated October 7, 2021, marked as Exhibit A-24 in evidence.

1.25 Photograph of 10 foot alley way as extended to edge of lot 6 (94 First Avenue), dated October 7, 2021, marked as Exhibit A-25 in evidence.

1.26 Photograph of dumpsters used for trash removal, dated October 7, 2021, marked as Exhibit A-26 in evidence.

1.27 Photograph close up of lot access from driveway, dated October 7, 2021, marked as Exhibit A-27 in evidence.

1.28 Photograph of view from dumpsters showing drive and access through lot 2, dated October 7, 2021, marked as Exhibit A-28 in evidence.

2. The premises in question are located at 98 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 97, Lot 4 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the HBD Historic Business District and mixed-use office and residential buildings are a permitted use in the zone.

4. The property in question has approximate dimensions of 25.07 ft. x 63.32 ft. x 25.01 ft. x 65.00 ft. and is substantially rectangular in shape with an approximate area of 1,604.59 square feet. The property is presently developed with a three-story building housing a first floor law office, second floor office and two bedroom apartment and third floor two bedroom apartment. The subject property is a corner lot with frontages on First Avenue and East Mount Avenue. The Applicant proposes to convert a portion of the first floor law office into a separate office space. The total first floor building area of 1,588.59 square feet and the proposed office space will occupy approximately 600 square feet. No other improvements or site grading modifications are proposed on the subject property.

5. The Applicant was represented by Wendy Crowther, Esq. who presented the testimony of Deborah Goggins, who has been the manager of the building for 26 years. She testified that the building's first floor is utilized as a law office. It is proposed to take the rear one third of the first floor and convert it to a separate office space thus resulting in two offices in that space which qualifies as a change of use which requires minor site plan approval. She provided a series of photographs of the interior and exterior of the building. The interior photos demonstrated that the space will function properly with two office spaces rather than one. The exterior photos show adequate access, circulation and parking.. She testified that the anticipated tenant for that office will likely be a second law office or similar use generating the same parking requirement.

6. The Planning Board notes that the property surrounding the subject site to the north and west are similarly zoned HBD, Properties to the south were located in the CBD (Central Business District) Zone District and properties to the east are in the R-1 Residential Zone. The Planning Board notes from the report of its Engineer marked as Exhibit A-5 in evidence that other than the change of use the Applicant has not requested any new/additional Variances and/or Design Waivers and no new exterior site improvements are proposed.

The Applicant's witnesses confirmed that the proposed operations will be consistent with the current law office operations on the first floor and that the second and third floor occupants will remain unchanged. The Planning Board acknowledges the following existing non-conformities which will remain and do not require Variance relief:

a. Section 150-29 (A)(2) (Exhibit 5-2) – the minimum required lot area is 4,000 square feet and the Applicant proposes 1,604.59 square feet to remain.

b. Section 150-29 (A)(2) (Exhibit 5-2) – the required minimum lot frontage is 40 feet and 25.07 feet is to remain along First Avenue.

c. Section 150-29 (A)(2) (Exhibit 5-2) – the minimum required lot shape diameter for a corner lot is 35 feet where 25.07 feet exists and will remain.

d. Section 150-89.B.(2)(h) – the minimum required parking dimensions for standard and handicapped parking spaces are 9 feet wide by 18 feet long and 12 feet wide by 20 feet long respectively. In the instant application the Applicant does not provide any on-site parking.

7. The Planning Board questioned how parking is to be provided for this site. The Applicant provided testimony that the subject property, existing lot 4, is separated by a 10 foot wide alley right-of-way from lot 2, which has approximate dimensions of 48.00 ft. x 50.02 ft. x 48.00 ft. x 50.02 ft. as shown on the Finnegan Survey marked as Exhibit A-6 in evidence. She testified that this stoned surface lot is utilized for parking. The Applicant's witness presented Exhibit A-17 in evidence demonstrating the availability of nine 10 foot wide parking spaces on lot 2. The Planning Board notes the testimony of the Board Engineer that the subject application does not trigger any ADA parking requirements and consequently, the proposed handicapped space which was

demonstrated not to be feasible will not be necessary for parking. The Applicant's witness testified that lot 2 has been utilized for parking for the subject property for many years and that lot 4 and lot 2 have an interrelated ownership as lot 2 is owned by the sole member of the owner of lot 4. The Planning Board is satisfied that parking for this application is satisfied on lot 2 and that it should be a condition of approval that a deed notice be recorded providing that should lot 2 cease to provide parking for lot 4 the Applicant, or any successor in interest to lot 4, will be required to return to the Planning Board to address a parking issue.

8. The Planning Board finds that the Applicant has provided adequate proof to justify the grant of the parking Variance which requires 11 on site parking spaces where none are provided. The Applicant is providing 9 spaces on adjacent lot 2 and has demonstrated that this has been adequate to handle the parking needs for lot 4 for many years. The Planning Board is satisfied that the use of lot 2 for parking will satisfy the parking requirements for lot 4 and that the positive criteria for the grant of requested Variance relief is satisfied as on-site parking cannot feasibly be provided on lot 4 since the entirety of the lot is covered by the existing building. The Planning Board notes that the ownership of the 10 ft. wide alley way between lots 4 and 2 is in question and makes no findings with respect to ownership or its use as the necessary parking for this application is provided on lot 2. The Planning Board further finds that the negative criteria for the grant of the requested Variance relief has been provided as the application will not result in any exterior changes and therefore will have no impacts upon the surrounding neighborhood and thus no substantial detriment to the public good. Moreover, the approval will not result in any substantial impairment to the Zone Plan or Zoning Ordinance as there are no changes to the zoning of the property or their functioning.

9. The Planning Board finds that the Applicant has submitted a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for site plan approval have been met. The

Planning Board further finds that the detailed drawings, specifications and estimates of the application for approval conform to the standards established by ordinance and that therefore site plan approval can and should be granted at this time.

10. 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 **98 FIRST 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) This approval is for Minor Site Plan approval with Variance from the on-site parking requirements .
- 2) The Applicant shall record a deed notice with the Monmouth County Clerk stating that, in the event lot 2 becomes unavailable to satisfy the parking requirements for lot 4 in the future, the Applicant shall reapply to the Planning Board to address the parking requirements for this property.

**B E I T 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, 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:	MR. KRUPINSKI
SECONDED BY:	MR. NEFF
ROLL CALL:	
YES:	MR. DOUGHERTY, MR. CACCAMO, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. JOSKO, MR. KRUPINSKI, MR. CURRY
NO:	NONE
ABSTAIN:	NONE
ABSENT:	MR. CROWLEY, MR. HAWLEY, MR. McGOLDRICK

  
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**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.

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