

**IN THE MATTER OF
APPLICATION NO. PB22-25
OF CROCKER ENTERPRISES, LLC
BLOCK 115 LOT 7**

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

WHEREAS, CROCKER ENTERPRISES, LLC, hereinafter the "Applicant", has proposed the development of property located at 67 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 115, Lot 7 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 and Minor Site Plan approval to enclose a 200 square foot open dining area on the second story of the building resulting in a front yard setback encroaching along First Avenue 0.66 feet where 0 feet is permitted (Section 150-29A(2))(Exhibit 5-2) and encroachment along Center Avenue of 0.64 feet where 0 feet is permitted (Section 150-29A(2))(Exhibit 5-2) which is contrary to the provisions of the aforesaid sections of the ordinance; and

WHEREAS, the subject property is located in the HBD Historic Business District Zone and restaurants are a permitted use in the zone, and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on April 6, 2023, 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 July 18, 2022, marked as Exhibit A-1 in evidence.

1.2 Application for Variance of Crocker Enterprises, LLC, dated November 16, 2022, with checklist, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Thomas Craig Finnegan, dated December 13, 2017, marked as Exhibit A-3 in evidence.

1.4 Roof Deck Alteration Plan prepared by Mode Design, dated April 8, 2022, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates, dated January 27, 2023, marked as Exhibit A-5 in evidence.

2. The premises in question are located at 67 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 115, lot 7 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the HBD Historic Business Zone District and restaurants are a permitted use in the zone.

4. The subject property has approximate dimensions of 27.00 ft. x 100.00 ft. x 27.00 ft. x 100.00 ft. with an approximate area of 2,700 square feet and is an elongated rectangle in shape with frontages on First Avenue, Center Avenue and Railroad Avenue to the east, north and west respectively.

5. The subject premises are currently developed with an existing restaurant within a two-story building. The current use on both floors is the Atlantic House restaurant.

6. The subject property has the following existing non-conforming elements:

A. Lot area of 2,700 square feet where 4,000 square feet is required (Section 150-29)(Exhibit 5-2).

B. Frontage of 27 feet where 40 feet is required (Section 150-29) (Exhibit 5-2).

C. Lot shape diameter of 27 feet where 35 feet is required (Section 150-29) (Exhibit 5-2).

D. Front yard setback encroachment of 0.16 feet along First Avenue where 0 feet is permitted, and 0.66 feet of encroachment is proposed.

E. Front yard setback encroachment along Center Avenue of 0.14 feet where 0.64 feet is proposed.

7. The Applicant proposes to enclose a 200 square foot area on the second story of the building which is currently an open air rooftop dining area of the restaurant.

8. The Applicant was represented by Richard Stone, Esq. who presented the testimony of Daniel Condatore. Mr. Condatore testified that the Applicant proposes to enclose a small open outside dining area. He testified that the experience over the past several years has demonstrated that enclosure of the upstairs will be an improvement to the restaurant eliminating area that would be unusable during colder months and inclement weather. The Applicant is proposing a roof with the same folding doors along the sides of the structure using the same materials as currently exist on the remainder of the second floor. Thus, the architecture will be the same. The enclosure will not alter operations and there will not be any increase in the number of employees, the number of deliveries, the use of the basement for storage and

there will be no change in signage. The Planning Board finds that the enclosure of the upstairs will be an improvement to the restaurant.

9. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief. The Planning Board notes that the subject property is currently fully developed and that the enclosure of the small area of the upstairs is simply placing walls along the perimeter of the existing building that cannot be placed anywhere else on the property as this is an existing condition. Consequently, the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prohibit the Applicant from enclosing this open area so as to make the restaurant more functional. Thus, a hardship does exist. The Planning Board further finds that the grant of Variance relief will promote the purposes of the Municipal Land Use Law as it will serve to provide sufficient space in an appropriate location for this permitted commercial restaurant use and will promote a desirable, visual environment and serve to provide for all operations of the restaurant to be conducted indoors so as to not have adverse impacts upon the streetscape from noise and other aspects of the restaurant use.

10. 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 requested variance relief will not result in any substantial detriment to the public good. The increase in encroachment is di minimis and insubstantial and will not be noticeable from the sidewalk and the streetscape thus, it will have no adverse impacts upon the neighborhood or surrounding properties.

11. 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. Restaurant

use is a permitted use in the zone and this restaurant has now been in existence for several years at this location and has set the character of the neighborhood and the zone scheme. The enclosure of the side areas will not alter these conditions in any significant way. Thus, any changes to the zone scheme are imperceptible and insubstantial. The Planning Board finds from the architectural renderings provided that the proposed enclosure will result in a pleasing aesthetic appearance which is consistent with this area of the Borough and the existing conditions of the subject property.

12. The Planning Board finds that the proposed improvements fall within the definition of a Minor Site Plan and do not result in any substantial adverse impacts. 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 estimate of the application conform to the standards established by the Ordinance for final approval and that Site plan approval can and should be granted at this time based upon the plans submitted and marked as Exhibit A-4 in evidence.

13. 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 along with Site Plan approval.

14. The Planning Board further finds that all property owners within 200 feet of the premises in question were given proper Notice of the hearing of this application and were provided with an opportunity present evidence 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 May 2023, that the Application of **CROCKER ENTERPRISES, 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 approvals granted in connection with this application are as follows:

2) Variance approvals for encroachment into the First Avenue and Center Avenue rights-of-way as set forth previously herein.

3) Site Plan approval in accordance with the roof deck alteration prepared by Mode Design, dated April 8, 2022, marked as Exhibit A-4 in evidence.

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 these Variances 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:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAIN:

ABSENT:

**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 4, 2023.

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