



Borough of Atlantic Highlands Planning Board Meeting Minutes
Borough Hall, 100 First Ave., Atlantic Highlands, NJ
January 4, 2024

REORGANIZATION MEETING: 7:00pm

Roll Call:

PRESENT: Ms. DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Hawley, Mr. Josko (arrived at the end of roll call), Mr. Krupinski, Ms. Majewski, Mr. McGoldrick, Mr. Neff, Dr. Zuzulock, Mr. Kurdes, Ms. Walter, Mr. Bearmore

ABSENT: None

Also Present: Board Attorney Michael Steib, Esq., Board Engineer Douglas Rohmeyer, Jessica McLane to operate the Zoom technology for those seeking to attend remotely, and Board Secretary Nancy Tran.

Mr. McGoldrick called the meeting to order at 7:00pm, stated that the meeting is being held in compliance with the Open Public Meetings Act, and read the meeting notice. He stated that formal action would be taken.

Board took a moment of silence and did pledge of allegiance.

Mr. Steib took the oaths of office of Councilman Dougherty, Ms. DePasca, Mr. Hawley, Mr. McGoldrick, Mr. Bearmore, Ms. Walter, and Mr. Kurdes.

Appointment of Chair

Mr. Hawley nominated Mr. McGoldrick as Chair and Mr. Josko seconded the motion. Mr. McGoldrick abstained and all were in favor. Mr. McGoldrick thanked the Board.

Appointment of Vice Chair

Dr. Zuzulock nominated Mr. Krupinski as Vice Chair and Mr. Neff seconded the motion. Mr. Krupinski abstained and all were in favor. Mr. Krupinski thanked the Board.

Chair McGoldrick read the Board appointments of Ms. DePasca, Mr. Hawley, Councilman Dougherty, Mr. Kurdes, Ms. Walter, Mr. Bearmore, and himself.

Appointment of Completeness Review Sub-Committee and Alternate Sub-Committee

Mr. Steib explained the role of the Completeness Review Sub-Committee with Mr. Rohmeyer. Mr. Hawley, Ms. Walter, and Dr. Zuzulock volunteered and Ms. DePasca and Mr. Josko volunteered to be Alternates.

Appointment of Board Attorney

Mr. Hawley motioned for Mr. Steib as Board Attorney and Vice Chair Krupinski seconded. All were in favor. Mr. Steib thanked the Board.

Appointment of Board Engineer

Mr. Neff motioned for Mr. Rohmeyer of CME as Board Engineer and Mr. Hawley seconded. All were in favor. Mr. Rohmeyer thanked the Board.

Appointment for Designated Planner on an As-Needed Basis

Mr. Neff motioned for Thomas & Thomas for planning services and Mr. Hawley seconded. All were in favor.

Appointment of Board Secretary

Mr. Josko motioned for Ms. Tran as Board Secretary and Ms. Majewski seconded. All were in favor. Ms. Tran thanked the Board.

Appointment of Official Newspaper

Mr. Neff motioned for the Asbury Park Press and Two River Times as the official newspapers for the Board and Vice Chair Krupinski seconded. All were in favor.

Approval of 2024 Meeting Dates and 2025 Reorganization Date

Chair McGoldrick asked the board to let Ms. Tran know by January 11th regarding their availability for July and November meeting dates. Vice Chair Krupinski motioned to approve the other meeting dates and Ms. Majewski seconded. All were in favor.

Mr. Neff motioned to adjourn Reorganization and Vice Chair Krupinski seconded. All were in favor. Reorganization adjourned at 7:17pm.

WORKSHOP MEETING: 7:17pm**Roll Call:**

PRESENT: Ms. DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Hawley, Mr. Josko, Mr. Krupinski, Ms. Majewski, Mr. McGoldrick, Mr. Neff, Dr. Zuzulock, Mr. Kurdes, Ms. Walter, Mr. Bearmore

ABSENT: None

Also Present: Board Attorney Michael Steib, Esq., Board Engineer Douglas Rohmeyer, Jessica McLane to operate the Zoom technology for those seeking to attend remotely, and Board Secretary Nancy Tran.

Chair McGoldrick invited newly elected Mayor Lori Hohenleitner to say a few words. Mayor Hohenleitner thanked Chair McGoldrick and welcomed newly appointed members, Ms. DePasca and Mr. Bearmore. She thanked all the Board Members, Mr. Rohmeyer, Mr. Steib, and Ms. Tran and congratulated Chair McGoldrick and Vice Chair Krupinski. She then left the meeting.

Public Comment: There were no public comment.

Litigation: Mr. Steib stated that there were no pending litigation.

Other Business:

Ordinance Subcommittee – Mr. Krupinski gave an update from the Ordinance Subcommittee and Chair McGoldrick thanked the Subcommittee members for volunteering extra time.

Annual Report – Mr. Steib prepared the annual report for the Board’s review. He asked that Members email him any revisions or edits they may have at their earliest convenience so that it can be discussed and voted on at the next meeting.

July and November Meeting Dates – was already discussed.

Workshop Adjournment

Vice Chair Krupinski made a motion to adjourn workshop and Mr. Neff seconded. All were in favor. Workshop adjourned at 7:29pm.

REGULAR MEETING: 7:29pm**Roll Call:**

PRESENT: Ms.DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Hawley, Mr. Josko, Mr. Krupinski, Ms. Majewski, Mr. McGoldrick, Mr. Neff, Dr. Zuzulock, Mr. Kurdes, Ms. Walter, Mr. Bearmore

ABSENT: None

Also Present: Board Attorney Michael Steib, Esq., Board Engineer Douglas Rohmeyer, Jessica McLane to operate the Zoom technology for those seeking to attend remotely, and Board Secretary Nancy Tran.

Approval of November 27, 2023 Special Meeting Minutes

Ms. Tran stated that the minutes were not ready.

Approval of December 7, 2023 Meeting Minutes

Motion to approve: Mr. Neff

Second: Ms. Majewski

Ayes: Mr. Caccamo, Councilman Dougherty, Mr. Josko, Ms. Majewski, Mr. Neff, Mr. Kurdes, Ms. Walter, Vice Chair Krupinski

Nays: None

Abstain: None

Ineligible: Ms. DePasca, Mr. Hawley, Chair McGoldrick, Dr. Zuzulock, Mr. Bearmore

Absent: None

Approval of Attorney Vouchers for October 2023

Motion to approve: Ms. Majewski

Second: Mr. Neff

Ayes: Ms. DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Hawley, Mr. Josko, Ms. Majewski, Mr. Neff, Vice Chair Krupinski, Chair McGoldrick

Nays: None

Abstain: None

Absent: None

Approval of Attorney Vouchers for September 2023

Motion to approve: Mr. Josko

Second: Mr. Neff

Ayes: Ms. DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Hawley, Mr. Josko, Ms. Majewski, Mr. Neff, Vice Chair Krupinski, Chair McGoldrick

Nays: None

Abstain: None

Absent: None

Resolution for PB23-02: Kalian – 160 First Ave., B101 L4.01

**IN THE MATTER OF
APPLICATION NO. PB23-02
OF KALIAN MANAGEMENT, LLC
BLOCK 101 LOT 4.01**

**RESOLUTION DENYING MAJOR SITE
PLAN & VARIANCE APPROVAL**

WHEREAS, KALIAN MANAGEMENT, LLC, hereinafter the "Applicant", has proposed the development of property located at 160 First Avenue (County Route 8), in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 101, 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 preliminary and final major site plan approval with variances and design waivers including variance for a deviation from the specification or standard pertaining solely to conditional use (three-bedroom apartment where maximum of two-bedroom units are permitted) (Section 150-42.A), variance for lot coverage of 96.8% where 75% is permitted (Section 150-29.A(2)(Exhibit 5-2), variance for building height of four stories where three stories is permitted (Section 150-29.A(2)(Exhibit 5-2), variance for building height if 46.38 feet to roof parapet and 57.92 feet to elevator tower where 40 feet is permitted(Section 150-29.A(2)(Exhibit 5-2), waiver for 43 parking spaces provided where 54 parking spaces are required (Section 150-42.A(1)/Section 150-89.B(1)(h)(Exhibits 9-1 and 9-2), waiver for inadequate or no buffer where buffer is required alongside properties zoned or used for residential purposes (Section 150-85.E(2), waiver for open space provided of 5.63% where 30% is required (Section 150-87.A(1), waiver for ADA parking spaces not complying with required 12 feet in width and 20 feet in length (Section 150-89.B(2), waiver for failure to provided loading space where one loading space is required (Section 150-89.C(1), variance for elevator tower height of 57.92 feet where 55 feet is permitted (Section 150-57.C(2), variance for stair tower height of 53.42 feet where 50 feet is permitted (Section 150-57.C.(2), waiver for failure to provide 5% of the interior parking area with landscape and one tree for every five parking stalls (Section 150-85.F and waiver for providing only 1,749 square foot of recreational area where 6,250 square feet of recreation area is required (Section 102-87.B(2). All of the foregoing are contrary to the provisions of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the Central Business District (CBD) Zone and mixed use, commercial, residential is a permitted conditional use in the zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on July 18, 2023, September 19, 2023 and November 21, 2023 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 December 21, 2022, marked as Exhibit A-1 in evidence.

1.2 Monmouth County Planning Board Application for Site Plan Approval, dated February 7, 2023, marked as Exhibit A-2 in evidence.

1.3 Application for Variance of Kalian Management, LLC, dated February 6, 2023, marked as Exhibit A-3 in evidence.

1.4 Boundary & Topographic Survey prepared by Insite Surveying, dated June 23, 2022, revised July 6, 2022, marked as Exhibit A-4 in evidence.

1.5 Preliminary & Final Major Site Plan, prepared by Insite Engineering, dated January 24, 2023, revised July 6, 2023 marked as Exhibit A-5 in evidence.

1.6 Stormwater Management Report, prepared by Insite Engineering, dated January 30, 2023, revised April 6, 2023, marked as Exhibit A-6 in evidence.

1.7 Architectural Elevation & Floor Plans, prepared by GRO Architects, dated January 27, 2023, revised July 5, 2023, marked as Exhibit A-7 in evidence.

1.8 Review #1 of CME Associates, dated April 5, 2023, marked as Exhibit A-8 in evidence.

1.9 Traffic & Parking Study prepared by Dolan & Dean, dated February 14, 2023, marked as Exhibit A-9 in evidence.

1.10 Review #2 of CME Associates, dated May 25, 2023, marked as Exhibit A-10 in evidence.

1.11 Stormwater Management Area Evaluation, prepared by Whitestone, dated December 13, 2022, marked as Exhibit A-11 in evidence.

1.12 160 First Avenue, Atlantic Highlands, NJ 07716 VRO Architects, PLLC, dated July 18, 2023, marked as Exhibit A-12 in evidence.

1.13 Material Selection Board, prepared by GRO Architects, marked as Exhibit A-13 in evidence.

1.14 Resolution #2023-01 of Environmental Commission, marked as Exhibit A-14 in evidence.

1.15 Preliminary & Final Major Site Plan, prepared by Insite Engineering, dated January 24, 2023, revised September 1, 2023, marked as Exhibit A-15 in evidence.

1.16 Architectural Plans prepared by GRO Architects, dated January 27, 2023, revised September 1, 2023, marked as Exhibit A-16 in evidence.

1.17 Traffic & Parking Study, prepared by Dolan & Dean, dated February 14, 2023, revised August 29, 2023, marked as Exhibit A-17 in evidence.

1.18 Stormwater Management Report, prepared by Insite Engineering, dated January 30, 2023, revised September 1, 2023, marked as Exhibit A-18 in evidence.

1.19 Review #3 of CME Associates, dated September 15, 2023, marked as Exhibit A-19 in evidence.

1.20 Report of Millstone Shade Tree Commission, dated September 19, 2023, marked as Exhibit A-20 in evidence.

1.21 Power point Presentation, prepared by GRO Architects, dated September 19, 2023, marked as Exhibit A-21 in evidence.

1.22 Updated Color Rendering of Site on Aerial Photograph, marked as Exhibit A-22 in evidence.

1.23 Comparison Chart regarding Revisions & Zoning Compliance, marked as Exhibit A-23 in evidence.

1.24 Green-Grid Roof Diagram, marked as Exhibit A-24 in evidence.

1.25 Transmittal Correspondence from Insite Engineering, dated November 19, 2023, marked as Exhibit A-25 in evidence.

1.26 Preliminary & Final Site Plan, prepared by Insite Engineering, dated September 25, 2023, marked as Exhibit A-26 in evidence.

1.27 Stormwater Management Report, prepared by Insite Engineering, revised through November 3, 2023, marked as Exhibit A-27 in evidence.

1.28 Architectural Plans, prepared by GRO Architects, Inc. revised through November 7, 2023, marked as Exhibit A-28 in evidence.

1.29 Traffic Report prepared by CME Associates, dated November 20, 2023, marked as Exhibit A-29 in evidence.

1.30 Color Rendered Site Plan Exhibit, prepared by Insite Engineering, dated November 21, 2023, marked as Exhibit A-30 in evidence.

1.31 Review #4 of CME Associates, dated November 21, 2023, marked as Exhibit A-31 in evidence.

1.32 Power Point Drawing, prepared by GRO Architects, with 5 slides marked as Exhibit A-32 in evidence.

2. The premises in question are located at 160 First Avenue (County Route 8), in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 101, lot 4.01 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the CBD Central Business District Zone and mixed commercial and retail establishments is a permitted conditional use in the zone.

4. The subject property has approximate dimensions of 170.40 ft. x 117.00 ft. x 170.40 ft. x 117.00 ft. and is rectangular in shape with an approximate area of 19,905 square feet (0.457 acres). The site is located at the northeast corner of the First Avenue and East Garfield Avenue intersection and provides 170.4 feet of frontage on First Avenue and 117 feet of frontage along East Garfield Avenue. The site is presently developed with a 3,600 (+/-) square foot one story building consisting of various retail uses with an associated parking area. The Applicant is proposing to demolish and remove the existing building and construct a new 12,412 square foot, four-story, mixed-use building containing 870 +/- square feet of retail space on the first floor and twenty five

(25) residential apartment units consisting of one, two and three bedroom units distributed throughout the second, third and fourth floors. Additional improvements ancillary to the residential units are also proposed within the first-floor area including a gym, lobby, refuse room, mechanical room and trash room. Four (4) existing access drives extending to and from the site will be removed and one (1) full movement ingress/egress access drive extending to and from East Garfield Avenue is proposed. A total of forty-three (43) parking spaces are proposed on the site plan. Twenty-six (26) spaces are located beneath the upper living areas of the building. The remaining proposed parking spaces are outside the building envelope and principally along the easterly property line adjacent to the residential zone district. Water and sanitary sewer service is proposed by way of new connections to the off-site utility mains within the First Avenue right-of way. Landscaping, lighting and right-of-way improvements including, but not limited, to new sidewalks and curbing are proposed along with an approximately 97.85 square foot area at the southwesterly corner of the property dedicated to the county.

5. The Applicant was represented by Rick Brodsky, Esq. who presented the testimony of Richard Garber, a licensed Architect in the State of New Jersey, Patrick Ward, a licensed Engineer in the State of New Jersey, Elizabeth Dolan, a licensed Engineer in the State of New Jersey specializing in traffic, and Andrew Janiw, a licensed Professional Planner in the State of New Jersey. Mr. Garber testified as to the proposed building and the number of parking spaces provided. He testified that, although the proposed number of spaces are deficient from the Ordinance requirements, they meet a ratio of 1.6 parking spaces per unit which he considered adequate. He testified that the Applicant wanted higher ceilings which resulted in the building exceeding the allowable height pursuant to the Zoning Ordinance. He testified that the Applicant provided him with their concept and vision of what they wanted to develop on the site. He was not requested to design a development to comply with the provisions of the Ordinance or within the standards established by the Ordinance. Numerous residents questioned various aspects of the architectural design and why the provisions of the Ordinance could not be complied with. His responses revealed a theme which was reiterated throughout the presentation of the application. Essentially the Applicant had a vision for the site and, regardless of the provisions of the zoning ordinance, their professionals were directed to create that vision to achieve the Applicant's economic goals rather than design a development consistent with the goals, objectives and principles of the Master Plan conforming to the Ordinance that was adopted to accomplish those goals, objectives and principles. More particularly, when asked what efforts were made to meet the Zoning Ordinance requirements the response of the Applicant's and counsel was that the Applicant had a vision for the site, the economic return that they required, and that is what they were directed to design and present. Upon questioning by citizens, Mr. Garber explained his design process and his rationale in designing the property to meet the vision and direction of the Applicant and not to comply with the zoning regulations. This was echoed by the Applicants attorney, Mr. Brodsky who noted several times throughout the presentation of the application that the Applicant's economic objectives dictated the design of the plan.

6. Patrick Ward, a professional Engineer provided testimony as to the existing conditions of the site and the current commercial operations contained therein. He testified that the Applicant intended to remove all current improvements. Mr. Ward testified that he designed the site after receiving the architectural plans and did not design the site to meet the limitations of the Zoning Ordinance. Instead the plans were engineered to accommodate the architectural plans

provided to him. Upon cross examination he conceded that conforming development plan could be designed.

7. At the September 19, 2023 meeting, the Applicant provided additional testimony from his architect and engineer that the plans had been altered in order to reduce the number of units, the roof area devoted to tenant use, the removal of the floor area ratio deviation, the removal of compact vehicle parking stalls, additional pedestrian access, a bike storage area and the addition of a three bedroom apartment unit in order to comply with affordable housing requirements.

At the September 19, 2023 meeting, Mr. Ward testified as to the removal of four street trees on First Avenue and one tree along East Garfield Avenue. He also discussed the height of the elevator and stair towers as requiring a Bulk "C" Variance rather than a Use "D" Variance. He further testified that the proposed building would be 43.92 feet in height where 40 feet is permitted and that the elevators would be 57.92 feet in height where 55 feet is permitted. He further testified that a buffer of 16.9 feet is required along the east property line adjacent to residential properties and that 0.5 feet was proposed. As to the parking lot he noted that the ADA parking spaces continued to be noncompliant with the Ordinance requirements but believed that they were adequate and complied with other ADA standards. Various interested citizens raised questions and comments as to the adequacy of the plan.

8. Mr. Garber testified further that the retail component had been reduced from 1,400 + square feet to 870 square feet and a variety of other plan revisions.

9. The Applicant then presented Elizabeth Dolan, a licensed professional Engineer specializing in traffic who provided testimony that the current uses of the property are more intense than the proposed use as all of the current uses are commercial and the proposed use is primarily residential. She conceded that the number of parking spaces proposed is deficient with respect to the Ordinance requirements and opined that, due to the availability of mass transit, the reduced number would properly function.

10. At the November 21, 2023 hearing, the Applicants architect and engineer presented further design changes including the relocation of some electrical vehicle parking spaces, addressed tree removal and tree replacement and the removal of some parking spaces. Otherwise, the building was unchanged. At the November 21, 2023 meeting, the Planning Board Engineer, Douglas Rohmeyer presented his report noting the excessive roof height of 43.9 feet where 40 feet is permitted, the absence of additional buffer to the residential properties to the east, a deficiency of six (6) parking stalls, the absence of a loading zone, the excessive height of the stair tower, the undersized ADA parking spaces and the revised ADA parking spaces.

11. At the November 21, 2023 meeting, the Applicant concluded its presentation with the testimony of Andrew Janiw, a licensed Professional Planner in the State of New Jersey. Mr. Janiw noted the number of Variances required, including lot coverage (impervious surface), building height in feet, building height in stories, deficiency in number of parking spaces, deficiency in providing buffer, deficiency in open space, deficiency in loading space, excessive elevator tower height, excessive stair tower height, deviation from landscaping and tree requirements, deviation from recreation area requirements and deviation from handicapped "ADA" parking space size.

12. Mr. Janiw conceded the proposed Variances did not meet the requirements or criteria for the grant of a "C-1" hardship Variance. However, he opined that the Variance relief could be granted based upon a "C-2" planning justification. In his opinion, the grant of Variance relief would promote the purposes of the Municipal Land Use Law at N.J.S.A. 40:55-D-2. a. by providing affordable housing, g. by providing sufficient space in an appropriate location for the proposed development, i. providing a desirable, visual environment, and m. providing for the more efficient use of land. Mr. Janiw, in his testimony, referenced a number of principles and objectives of the current Atlantic Highlands Master Plan. However, those principles and objectives were primarily directed at attracting commercial uses expanding the choice of goods, services and employment opportunities in the Borough. He failed to explain how the elimination of 3,600 sq. ft. of thriving commercial uses and replacing them with only 870 sq. ft. of commercial space accomplished that goal. The Planning Board finds that the proposed development would create only 4.4% utilization for retail commercial uses with the balance for residential. That is entirely contrary to the objectives and principles of the Master Plan and Zoning Ordinance. Mr. Janiw further devoted substantial time in his testimony to urging that current state, county and local community objectives include increasing residential density within commercial districts. However, as will be stated hereinafter, these objectives and principles are contrary to those set forth in the Atlantic Highlands Master Plan. Mr. Janiw testified that he disagrees with the requirements set forth in the residential site improvement standards (RSIS) for parking. He noted other studies that had been performed indicating a lower required ratio. However, the Planning Board notes that those studies have not been accepted and that the RSIS requirements remain intact.

13. Mr. Janiw testified that the impervious lot coverage Variance could be granted due to the testimony of the Applicants Engineer that there would be no adverse stormwater impacts. However, there was no testimony that there were existing adverse impacts that had to be rectified. He did not illuminate how the increase in lot coverage will be an improvement to the property promoting the purposes of the land use law. The Planning Board agrees with the long-standing principle that zoning should be done by Ordinance and not by Variance. Variances must be justified based upon the specific conditions pertaining to a particular property. Mr. Janiw testified that the subject property is a "specific property" pursuant to N.J.S.A. 40:55D-70.c.(2). However, he failed articulate how the subject property is different from any other property in the CBD Zone. The Planning Board further notes that where one has a "blank slate" for a new development it is appropriate to reduce or eliminate the number of deviations from the Zoning Ordinance and Zoning Scheme rather than to create numerous new deviations. The Planning Board finds that these principles also relate to the Variances and waivers relief requested. Here the Applicant is proposing to remove all existing improvements on the property. They have a blank slate upon which to design their development. Their engineer conceded that a fully conforming project could be designed. The Planning Board finds that only advantage of granting of the requested relief is the economic advantage of the Applicant and not to the promotion of the Borough, its residents, its Master Plan or its zoning ordinance. It is not proper to grant relief solely for the economic benefit of the applicant.

14. With respect to building height, Mr. Janiw testified that the height requirements related to the amount of light, air and open space which is provided as well as massiveness of the building. Mr. Janiw relied on the testimony of architect Barber that he has "stepped back" the upper floors

of the building so that they would have minimal visual impacts. However, the Planning Board notes that much of Mr. Garbers testimony related to diagrams showing the visual impacts from the immediate sidewalk streetscape. However the Planning Board cannot ignore the Exhibits submitted by the Applicant showing the view from further distances which demonstrate that the proposed structure and height would have a substantial visual impact and is inconsistent with the height of other buildings in the vicinity including, but not limited to, the 7-11 building at the intersection of First Avenue and State Highway Route 36, the Verizon Building, the Atlantic Highlands Elementary School and the Carton Brewing Company buildings. The Planning Board finds that the Applicants Exhibits demonstrate a substantial deviation from what is existing, what is designed for by the Zoning Ordinance and what is desired by the Master Plan.

15. With respect to the proposed buffer of 0.5 feet where 16.9 feet is required, Mr. Janiw testified that it is necessary in order to provide sufficient parking to accommodate the proposed development. He stated that the coverage is only 1% in excess of what is permitted. The Planning Board disagrees. Section 150-29.A (Exhibit 5-2) limits lot coverage to 75%. In this case the Applicant proposes lot coverage, that is 131% of what is permitted. The Planning Board finds that to be a substantial deviation from what the zone contemplates and violates intent and purpose of the Master Plan vision objectives and principles. Those objectives and principles were articulated by the Planning Boards Planner Andrew Thomas in his testimony. The Planning Board notes that, at the November 21, 2023 hearing, Mr. Thomas testified as to his experience with respect to the current Master Plan and noted that the Planning Board spent the better part of two years updating it to provide a vision for the future of the Borough. He noted a number of goals and objectives of the Master Plan including the first goal of "Housing" to "limit future development of population density". Further objectives under that goal are to "develop town-wide policies to restrain additional housing development so as to maintain in the small-town character of the Borough". These objectives further include discouraging overdevelopment as much as possible. He further noted the principles of restricting multi-family residential use to the existing units, to limit future land development increasing population density, to maintain a shore neighborhood community and protecting the environment. He opined that the intent of the Master Plan for the CBD Zone is to enhance the central business district to strengthen the commercial attraction and expand the choice of beneficial goods, services and employment opportunities, not to increase residential development. Mr. Thomas also noted that the foregoing objectives of the Master Plan and Ordinance are accomplished by requiring land to be preserved for open space that limits the amount of housing development by requiring recreational and open space to accommodate residents to retain the small town character and openness of the Borough.

16. Mr. Thomas testified that the land use plan has a specific description of the CBD Zone including less emphasis on pedestrian orientation, required on-site parking and an expanded range of general commercial uses. He noted that mixed use commercial/residential development provisions are designed such that residential units are confined to upper stories and the ground floor spaces are restricted to commercial activities. He further noted that specific sites within the CBD Zone have been designated as affordable housing sites within the Housing Element and Fair Share Plan adopted by the Borough and approved by the Court in the Borough's declaratory judgment proceeding. He further noted the important objective of "preserving and enhancing the environment by maintaining existing buffers and establishing new buffers where necessary".

17. Mr. Thomas opined that when you look at what is being proposed versus what it says in the Master Plan you will see there are major differences. The mixed use commercial/residential building envisioned for this zone is to have commercial uses on the first floor and residential on the upper floors. What is proposed in this development is less than 5% of the first floor being proposed for retail and the balance of the first floor for parking to accommodate residential uses along with a gym, and other residential amenities. Thus, more than 95% of the first floor is not utilized for commercial purposes.

18. Mr. Thomas further observed what is currently on site. He opined that what is being proposed results in a substantial reduction of a 3,600 square foot commercial building to 807 square feet which is only 4.8% of the first floor. Mr. Thomas opined that this is not what was contemplated under the mixed-use designation pursuant to the Master Plan. The mixed-use designation in the CBD Zone states that residential units “are confined to upper stories of mixed use buildings. Moreover, only two upper stories are permitted, not three. Ground floor space is intended to provide commercial activities”.

19. Mr. Thomas opined that the Master Plan speaks of encouraging a viable, economic base and strengthening and enhancing the CBD Zone to expand the choice of goods, services and employment opportunities. He opined that the proposed development is reducing commercial uses significantly from what is existing while increasing the extent of residential uses by adding a fourth story. Mr. Thomas opined that the downtown HBD and CBD Zones permit a maximum of three-story buildings in order to limit the population density and maintain and preserve the traditional character of the downtown. He noted that looking along First Avenue in these Zones development is of two and three story buildings. He noted that there are one or two smaller mixed-use buildings with a fourth story, which are located in the northern downtown area and not in proximity to the subject property.

20. Mr. Thomas noted that the proposal does not meet the buffer requirement along the easterly side of the proposed development and reiterated the Master Plan goal to preserve and enhance the small -town environment by maintaining existing buffers and establishing the new buffers where necessary. He noted that parking encompasses the entire length of the eastern portion of the property and is 0.5 feet from the proper line which is adjacent to the R-1 Residential Zone District where 16.9 feet is required. The Planning Board finds that, pursuant to Section 150-6, the term “open space” is any parcel of land or water essentially unimproved and set aside, dedicated or reserved for public or private use and enjoyment of owners and occupants of land adjoining or neighboring such a space provided that such areas being improved only with those buildings, structures, streets or other improvements that are designed to be incidental to the natural openness of the land. Section 150-87.A(1) provides that at least 30% of the developable acreage of the tract shall be set aside as common space. In this case, the area supposedly devoted to open space does not meet the definition. By definition “open space” must be a parcel of land that may be improved only with improvements designed to be incidental to the natural openness of the land. In this case the Applicant does not propose open space with incidental buildings and structures. Instead, it proposes open space to be inside or on top of the building or structure as an accessory amenity and not as a separate open space parcel. Exhibit 5-4 of the Ordinance lists open space as a permitted “principle use” in every Zone except the R-3 Zone where it is a permitted “conditional use”. In this case, the developable acreage is the entire lot area of 19,807 square feet. The required 30% of that

area to be set aside for open space is 5,942.1 square feet. The Applicant has proposed preserving zero (0) square feet. It is a 100% deviation from the requirement of the Ordinance. The Planning Board hardly finds the proposed deviation to be insubstantial. Mr. Thomas further testified that the purposes of zoning include providing adequate light, air and open space. In this case the lack of buffering along the easterly property line and the lack of open space is contrary to this purpose of the land use law. Buffering from the adjoining neighborhood is nonexistent and the "open space" that is purportedly provided on the roof which does not qualify as "open space" under the ordinance does nothing to buffer the neighborhood or adjacent uses. Neither the ordinance deviations or Variances and Waivers requested promote the establishment of appropriate population densities, In fact they are contrary to the population densities envisioned by the Borough Master Plan and Zoning Ordinance. Mr. Thomas also testified that a desirable visual environment is not met by simply building a new building. If that were the standard, then every developer would always meet that purpose. A desirable, visual environment is met by looking at the scale of the proposed development in relation to the surrounding uses and neighborhood. In this case the Planning Board finds that that exercise leads to a finding that the proposed plan violates those principles.

With respect to the failure to provide adequate buffer area, the Planning Board notes Section 150-85.E(2) requires a 25 foot wide buffer along side and rear property lines which abut areas zoned residentially or used for residential purposes. Buffers shall not exceed 10% of the lot area. In this case the 25-foot buffer is required along the easterly lot line adjacent to residential properties. However reducing that to 10% of the lot area reduces the required buffer to 16.9 feet. Here the Applicant proposes only 0.5 feet with a 6-foot fence to screen the building that reaches 57.92 feet in height from the adjacent Residential Zone District. The Planning Board finds that the Applicants paltry buffer proposal is inconsistent with the objectives of the Master Plan and the Zoning Ordinance.

21. The Planning Board notes that Mr. Janiw attempted to justify the deviations from the buffer and open space requirements by stating that the subject property is within proximity of other parks and recreation areas. However, the Planning Board finds that the intent of the Master Plan and the Zoning Ordinance is to create those features on site in order to preserve small-town character of the Borough. Mr. Janiw did not explain how the gym inside the building and the rooftop deck were consistent with his opinion that the inhabitants of the building should be encouraged to leave the site for recreational opportunities. Apparently, Mr. Janiw does not agree with the objectives and principles set forth in the Master Plan and believes that the Borough Master Plan vision should be ignored and replaced with the Applicants vision of how the property should be developed.

22. Mr. Janiw attempted to justify the absence of a loading space stating that it is due to the small retail component for the building. As noted previously, the limitation of the retail component of the building to less than 5% is contrary to the intent and purpose if the Master Plan and the Zoning Ordinance. Although and 870 square foot retail space may not warrant separate loading space, if the subject property ere properly designed to conform to the vision of the Master Plan and Zoning Ordinance, there would be a much greater retail space for which a loading zone would be appropriate.

23. With respect to the elevator tower height and stair tower height Mr. Janiw testified that the architectural technique of "stepping them back" from the building edge would sufficiently soften

their impact and noted allowing the deviation would promote affordable housing. The Planning Board notes that on numerous occasions, the Applicant used affordable housing as a justification for deviating from the zoning requirements. However, the Planning Board cannot ignore that the municipality has in place a housing element and fair share plan which provides for specific sites within the municipality to meet the Boroughs affordable housing obligation. That plan has been approved by the Superior Court of New Jersey. The Planning Board agrees that the provision of affordable housing does promote the purposes of the Municipal Land Use Law. However, it does not constitute a justification to wholesale “ignore impervious lot coverage provisions, building height provisions, elevator tower height provisions and stair tower height provisions, buffer provisions, open space provisions and landscape provisions of the Ordinance”

24. Finally, Mr. Janiw justified the lack of landscaping to a significant amount of parking being placed beneath the building. The Planning Board finds that it disagrees with Mr. Janiw. Essentially the proposed development is overdevelopment of this site placing 10 pounds in a 5 pound bag in order to promote the economic goals of the Applicant rather than to promote Municipal Master Plan and Zone Scheme. In this case the Planning Board finds that it disagrees with the Applicants witnesses that the substantial requested Variances and Waivers are the result of the subject property be a specific property. Instead, the Planning Board finds that the Variances and waivers requested in this case are designed solely to promote the purposes of the Applicant to develop the property to promote the Applicants economic vision rather than to accomplish the vision of the Borough Master Plan and Zoning Ordinance. By definition no C (2) Variance should be granted when nearly the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a C(2) case will not be on the characteristics of the land that in light of current zoning requirements to create a “hardship” on the owner warranting a relaxation standard on the characteristics of the land that present an opportunity for improved zoning and planning will benefit the community”**

The Applicant has failed to present any credible testimony that the subject property is a “specific piece of property” that exhibits any characteristics different from than any other property within the CBD Zone. The Planning Board finds that, based on the reasons set forth previously herein, the grant of the Variances requested will only advance the purposes of the Applicant and not the purposes of the Municipal Land Use Law or Master Plan and Ordinance of the Borough of Atlantic Highlands. Finally, the Planning Board finds that the grant of the requested Variance relief will constitute overbuilding of the subject property, excessive lot coverage where the opportunity of a “blank slate” should result in conforming lot coverage, excessive height which the Planning Board finds is inconsistent with this area of the municipality and constitutes a substantial deviation which does have substantial detrimental impact to the Master Plan, Zone Scheme and Zoning Ordinance. Moreover, the inadequate buffer will have substantial detrimental impacts upon the adjacent residential zone. The lack of buffer, lack of landscaping and lack of open space intended to be provided pursuant to the Master Plan and Zoning Ordinance vision result in substantial detriment to the public good and impairment of the zone plan and zoning ordinance.

25. As a result of all of the foregoing, the Planning Board finds that the Applicant has failed to satisfy the positive and negative criteria for the grant of the requested Variance and Waiver relief which cannot and should not be granted. The Planning Board further finds that the developer has not 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. Instead, the Planning Board finds that based upon all of the deviations from the Zoning requirements, the application has not satisfied those requirements and must be denied.

26. 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 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 January 2024, that the Application of **KALIAN MANAGEMENT, LLC** be and is hereby denied.

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.

Motion to approve: Mr. Josko

Second: Ms. Majewski

Ayes: Mr. Hawley, Mr. Josko, Ms. Majewski, Dr. Zuzulock, Ms. Walter, Chair McGoldrick

Nays: None

Abstain: None

Ineligible: Ms. DePasca, Mr. Caccamo, Councilman Dougherty, Mr. Neff, Vice Chair Krupinski, Mr. Kurdes, Mr. Bearmore

Absent: None

Resolution for PB23-08: Ghanian – 42 Hooper Ave., B54 L7

**IN THE MATTER OF
APPLICATION NO. PB23-08
OF DIANA & YOUNES GHANIAN
BLOCK 54 LOT 7**

**RESOLUTION GRANTING
VARIANCE APPROVAL**

WHEREAS, DIANA & YOUNES GHANIAN, hereinafter the "Applicant", has proposed the development of property located at 42 Hooper Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 54, 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 approval to remove portions of an existing driveway and walkway and to construct a new two-car garage and basement below an existing dwelling requiring Variance relief for front yard setback of 14.90 feet where 25 feet is required (Section 150-29.A(2)(Exhibit 5-2), side yard setback of 1.67 feet where 15 feet is required (Section 150-29.A(2)(Exhibit 5-2), and accessory side yard setback of less than 1 foot where 10 feet is required and enlargement of a nonconforming building (Section 150-49.I (2)(B).¹; and

WHEREAS, the subject property is located in the R-2 Residential Zone District and single family residential homes with associated accessory structures are a permitted use in the zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on December 7, 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 Variance Application of Diana & Younes Ghanian, dated August 11, 2023, marked as Exhibit A-1 in evidence.
 - 1.2 Zoning Review, dated July 24, 2023, marked as Exhibit A-2 in evidence.
 - 1.3 Steep Slope Review of CME Associates, dated November 1, 2023, marked as Exhibit A-3 in evidence.
 - 1.4 Review #1 of CME Associates, dated October 9, 2023, marked as Exhibit A-4 in evidence.
 - 1.5 Architectural Elevation & Floor Plans, prepared by S.O.M.E. Architects, dated June 23, 2023, marked as Exhibit A-5 in evidence.
 - 1.6 Steep Slope Plan, prepared by Two River Engineering, dated May 11, 2022, revised through October 7, 2022 marked as Exhibit A-6 in evidence.
 - 1.7 Carlin, Simpson & Associates, LLC Report, dated November 28, 2023, marked as Exhibit A-7 in evidence.
 - 1.8 Two Photo Boards containing 4 photos on each, including existing conditions and aerial photos, marked as Exhibit A-8 in evidence.
 - 1.9 Sheet A-200 prepared by S.O.M.E. Architects, marked as Exhibit A-9 in evidence.

1.10 Photograph of current drainage pipe at property frontage, marked as Exhibit A-10 in evidence.

1.11 Sheet A-500, Concrete Foundation Plan & Sheet A-501, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 42 Hooper Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey which property is further known and designated as block 54, lot 7 on the Tax Map of the Borough of Atlantic Highlands.
3. The subject property is located in the R-2 Residential Zone District and single family residential homes with associated accessory structures are a permitted use in the zone.
4. The subject property is substantially irregular in shape and has a lot frontage along Hooper Avenue of approximately 151.3 feet and a lot area of 27,015 square feet (0.619 acres). The property is presently developed with a single-family home with driveway, walkways and covered porches. The Applicant is proposing to remove portions of driveway and walkways and to construct a new subterranean two-car garage and basement below the existing dwelling.
5. The Applicant was represented by John Anderson, Esq. who presented the testimony of Michael Simpson, a licensed Architect and Planner in the State of New Jersey, AJ Garito, a licensed Professional Engineer in the State of New Jersey, and Robert Simpson a licensed Professional Engineer in the State of New Jersey. Michael Simpson testified that he has been a licensed Architect since 1985 and a Professional Planner since 1987 and provided his background in giving expert testimony before numerous Zoning and Planning Boards throughout the state. He testified as to his preparation of the architectural plans and advised that this process has been ongoing since his retention in 2020 and that a variety of design concepts have been considered but options were substantially constricted due to the location and configuration of the existing home on the property coupled with some exceptional sloped areas on the property which is alongside a steep roadway. He testified that the owners currently have a one-car garage that is extremely small and difficult to maneuver through. He noted that the Residential Site Improvement Standards (RSIS) require 2.5 parking spaces. The Planning Board notes that although 2.5 off-street parking spaces are required by RSIS, table 4.4 note A. provides that when determination of the required number of parking spaces results in a fractional space, any fraction of one half or less may be disregarded. Thus, the technical requirements of RSIS are for only two off-street parking spaces. The Applicant is proposing to replace the existing garage and construct a two-car garage which will provide the two off-street parking spaces and may also provide additional parking in the driveway area for additional vehicles. He testified that three trees will likely be removed, one of which is a 30-inch Oak Tree. Although not a condition of this approval, the Applicant indicated that they would consider some tree replacement following construction.
6. The testimony demonstrated that existing peanut stone walls will have to be disassembled in order to accommodate the new garage configuration. The Applicant agreed that they will use best efforts to retain the peanut stone walls on site and reuse the peanut stone being taken down. In addition, they indicated that there may be other peanut stone on site that will be

found during the course of construction which can be used to recreate the peanut stone wall appearance. If there is insufficient peanut stone the Applicant agreed to provide similar "field stone" material to finish the new retaining walls.

7. The Applicant also provided testimony that all drainage will be directed to Hooper Avenue and that a drainage plan will be provided in order to demonstrate that all stormwater will be directed to the street and not over the steep sloped area to the rear. The Applicant also agreed to revise the plans to show a limit of disturbance and to require silt-fencing around the area beyond the area of disturbance so that it is not disturbed. The Applicant further agreed to provide spot grades on the roof in order to confirm the projection of water to the street. The Applicant also agreed that if a sloped area with a one-to-one ratio is disturbed, the Applicant will regrade it to a three-to-one ratio.
8. With respect to the front yard setback Variance, the Applicant provided testimony that the 14.90 feet setback is an existing condition. However, that condition will be increased due to the increase in the size of the building that will continue along the front of the structure. That is necessary as the Applicant cannot push the new construction further to the rear of the property due to the existing steep slope area which they wish not to disturb. The Planning Board agrees and finds that it is preferable not to intrude upon the steep slope areas and finds that the existing location of the structure coupled with the extreme topography of the property constitutes an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon such that the strict application of the Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the developer as it would require the disturbance of sensitive steep slope area and greater land disturbance to comply. Moreover, the grant of Variance relief will promote the purposes of the Municipal Land Use Law by preserving sensitive environmental features which will promote the public health, safety and welfare. Thus, the Planning Board finds that the grant of the requested Variance relief will be a better zoning result to relieve a hardship which would prevent this additional improvement to the property and promote the purposes of the Municipal Land Use Law. The Planning Board notes the difficulty in parking along Hooper Avenue due to its steepness and agrees that the additional parking offered by the additional garage and driveway area will be an improvement to the neighborhood.

With respect to the side yard setback of the house, this is an existing condition which has been in place for many years and is not proposed to change. Thus it is a preexisting, nonconforming condition which is not being exacerbated by this construction. Similarly, the accessory side setback is an existing condition which is not being exacerbated by the proposed construction.

9. The Applicant also presented the testimony of a geotechnical engineer who testified that the subject property is not in the vicinity of slump blocking within the borough. He further testified that construction is proposed on the "flat" portion of the site and that in his opinion, the new construction will not affect the steep slopes. He supplied a report marked as Exhibit A-7 in evidence that contains recommendations set forth on page two. He noted that cuts of up to 7-feet and fills up to 3-feet will be required to achieve the planned grades. The proposed grading plan indicates

that the existing slopes on the property will remain or be graded flatter. The plan grading also does not change the current drainage around the home. He noted an area of concern with regard to the one-to-one ratio portion of the slope that will remain undisturbed. He noted that it is critical that the vegetation and integrity of the remaining slope be left undisturbed during construction. In the event that the planned undisturbed one-to-one ratio portion of the slope is compromised during construction; it shall be graded flatter to a three-to-one slope. That is a condition of this approval.

10. The Applicant also was questioned regarding landscaping of the property and agreed to provide a landscape plan for approval by the Planning Board Engineer which is also a condition of this approval.

11. With respect to the negative criteria for the grant of the requested Variance relief, the Planning Board finds that the grant of the Variances will not result in any substantial detriment to the public good. The Planning Board finds that the proposed improvements will result in an attractive improvement of the property which will be consistent in appearance with other homes along the street and will actually provide a benefit with additional off-street parking available. The proposed addition with the peanut stone front will provide a pleasing aesthetic appearance visually consistent with other homes in the area. Thus, the Planning Board finds that the proposed construction will be an improvement to existing conditions and will not have adverse impacts upon the surrounding neighborhood or streetscape.

12. 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 notes that the Variance conditions are already preexisting and that the proposed improvements will not exacerbate that situation. The Planning Board finds that these are existing conditions that have set the character of this lot and the surrounding area for many years and that the proposed improvements are consistent with existing conditions and will continue rather than disturb the existing neighborhood scheme. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial impairment to the Zone Plan or Zoning Ordinance.

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.

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 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 January 2024, that the Application of **DIANA & YOUNES GHANIAN** 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 Applicant shall use best efforts to retain and use the peanut stone from the walls being removed as well as additional peanut stone existing onsite to construct the new walls to be constructed in connection with the improvements. In the event insufficient peanut stone is available for the entirety, similar "field stone" material will be utilized.
- 2) The Applicant shall provide a drainage plan to demonstrate and to confirm that all stormwater will be directed to the street and not to the steep slope area to the rear.
- 3) The Applicant shall provide plans which clearly depict the limits of disturbance and note that they are to be identified by stake and/or silt fence around the perimeter in order to prevent disturbance.
- 4) In the event that there is disturbance to one-one ratio slopes, they will be regraded with slopes of a ratio of three-to-one.
- 5) The Applicant shall provide spot grades on the roof area in order to confirm that water will be directed to the street.
- 6) The Applicant shall provide a landscape plan to be approved by the Planning Board Engineer.
- 7) The Applicant shall provide an as-built survey with topography to confirm that construction conforms to the approved plans and conditions set forth herein.

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.

Motion to approve with conditions: Vice Chair Krupinski

Second: Mr. Josko

Ayes: Mr. Caccamo, Councilman Dougherty, Mr. Josko, Ms. Majewski, Mr. Neff, Dr. Zuzulock, Mr. Kurdes, Vice Chair Krupinski

Nays: None

Abstain: None

Ineligible: Ms. DePasca, Mr. Hawley, Chair McGoldrick, Ms. Walter, Mr. Bearmore

Absent: None

PB22-18: Baker – 170 Ocean Blvd., B17 Ls 8.01 & 8.02

Mr. Steib announced that the applicant asked to be carried to the February 1, 2024 meeting and that re-noticing would not be required. A member from the public asked if there will be any advanced notice if the applicant asks to be carried again. Mr. Steib responded. Mr. Hawley noted that the address was mislabeled and that it should be Blvd. rather than Ave.

PB23-09: Messercola – 43 Avenue C, B125 L8

Mr. Steib reported that the Board has jurisdiction and listed the exhibits so far. Mr. Hawley and Ms. Walter recused themselves and stepped down from the dais.

John Anderson, attorney for the applicant, stated that the applicant was not seeking approval for any building plans, only for approval of a subdivision. He proceeded to describe the vacant property, lot and its surrounding lots. Mr. Anderson stated that they submitted a conceptual rendering as a stylistic idea. Future building plans would need to be submitted through the proper process. He listed the variances sought and the justification of the lot size to be in line with the neighborhood characteristics. He listed additional exhibits.

Christian Cuetto, applicant's engineer, was sworn in and described the exhibits he passed out. He described each proposed subdivided lots, noting that there were no building or structure on the proposed lots yet. Mr. Anderson stated that the variances sought would allow acceptable construction similar to the neighboring properties. He addressed the existing encroachment on one of the proposed lots and third party approvals required. Mr. Cuetto proceeded to address points from the CME report. Mr. Rohmeyer asked for clarification of proposed Lot 8.03 and clarification that the applicant is not seeking variance for building height or FAR. He asked about the grading and the letter to Mr. Kennedy. Mr. Steib noted that the Board cannot rely on anything on that letter. Councilman Dougherty asked for clarification of access to the field. Dr. Zuzulock asked for the total number of variances sought and clarification of the proposed lot areas, lot widths, and lot diameter. Mr. Neff asked if the applicant planned to build homes. Mr. Kurdes asked

about the storm drain, the manhole, asbestos, and oil tanks. Chair McGoldrick asked if there was any consideration of subdividing into two lots rather than three. Ms. DePasca expressed concern about lot sized, aesthetics, and vision of Borough with three lots. Ms. Majewski asked reconsideration of proposed trees and shrubs. She suggested the applicant ask the Shade Tree Committee for recommendations.

Chair McGoldrick opened the floor for public questions.

Mark Fisher, Third Ave., asked about the discrepancies of the number of variances sought. He asked if there was consideration of a subdivision without needing variance. He further asked that if the subdivision were to be approved, would building plans comply.

Britney Bless, Avenue C, asked if there were any traffic study done and why the applicant submit set building plans with the application.

John Montagna, Washington Ave., asked about the asbestos removal and remediation process. He asked why the conceptual drawing exhibit was different than the one he was shown. He asked that if the subdivision was approved, would there be any input regarding building design. Mr. Steib stated that the Board has no jurisdiction regarding building design. Mr. Kurdes stated that it's in the builder's interest to build houses similar to neighboring properties.

Chair McGoldrick reviewed the Planning Board procedures for those who were new to the Planning Board meeting.

Mr. Fisher asked why the conceptual renderings weren't shared with the public.

Garbriel Bailor was sworn in as the applicant's planner and proceeded to describe the building and property in comparison with the neighborhood. He explained the justification for the subdivision of three lots rather than 2 lots. Mr. Rohmeyer asked whether visual improvements would be made with two lots as well. Mr. Steib clarified that the use of "oversized" was in comparison with the neighboring properties and not with zoning code. The Board discussed the conformity of ordinance vs. conformity of neighborhood. Mr. Rohmeyer asked about on-street and off-street parking and if applicant could lock in driveway dimensions to maximize street parking. Mr. Anderson stated that the applicant is willing to work with the Borough to preserve the number of street parking. Ms. Majewski suggested taking the potential of the AHFD response to the applicant's letter off the table in considering the application and asked for clarification for property and field access. Vice Chair Krupinski asked for clarification of the dimensions for variance. Mr. Kurdes asked for ownership of the street depression.

Mr. Fisher asked if it were a two lot subdivision, would the driveway question be necessary. Mr. Neff asked why some of these questions did not come up when they purchased the property from the AHFD?

Mr. Anderson asked for a break to confer with his client. The Board took a break at 9:24pm and returned at 9:33pm.

Chair McGoldrick opened the floor for public comment.

Mark Fisher, 3rd Ave., was sworn in and read a written statement that he had prepared.

Brittany Bless, Avenue C., was sworn in and stated that the building is an eyesore. She voiced her opposition to the application with its many unknowns.

Mr. Anderson made his closing statement and the Board discussed the application.

Mr. Kurdes stated that his property is a couple of streets behind this property and that his property is larger than neighboring properties. Based on his experience, he believes that a 3-lot subdivision is better than a 2-lot subdivision. Vice Chair Krupinski noted that each application is unique and should not be based on previous applications. Councilman Dougherty agreed with Mr. Kurdes. Mr. Caccamo noted that the property is a disaster and agreed with Mr. Kurdes. Ms. Majewski agreed with Mr. Kurdes and added that it is important to have affordable housing. Vice Chair Krupinski added that if the builder wants to deviate from what is approved, they would then have to come back to the Board. Chair McGoldrick voiced his concern of creating a hardship with the undersized lots. Mr. Josko shared his similar experience to and agreed with Mr. Kurdes but has issues with the variances. Vice Chair Krupinski noted that not all variances are equal. The Board discussed approving variances for a property with a clean slate and what happens after an approval for undersized lots and different professionals coming back for more variances on top of these variances that are sought.

Mr. Caccamo motioned to approve with conditions and Vice Chair Krupinski seconded.

Motion to approve with conditions: Mr. Caccamo

Second: Vice Chair Krupinski

Ayes: Mr. Caccamo, Councilman Dougherty, Ms. Majewski, Dr. Zuzulock, Vice Chair Krupinski

Nays: Ms. DePasca, Mr. Josko, Mr. Neff, Chair McGoldrick

Abstain: None

Recused: Mr. Hawley, Ms. Walter

Absent: None

Adjournment: Councilman Dougherty motioned and Mr. Neff seconded. All in favor. Meeting adjourned at 10:14pm.