IN THE MATTER OF
APPLICATION NO. PB18-05
OF ATLANTIC HIGHLANDS
REAL ESTATE PARTNERS, LLC
BLOCK 102, LOTS 7 & 8

RESOLUTION GRANTING
DEVIATION TO PRELIMINARY AND
FINAL MAJOR SITE PLAN
APPROVAL WITH VARIANCES AND
WAIVERS

WHEREAS, ATLANTIC HIGHLANDS REAL ESTATE PARTNERS, LLC, hereinafter the "Applicant", has previously applied for and received Preliminary and Final Major Site Plan approval with variances and waivers by Resolution adopted by the Planning Board of the Borough of Atlantic Highlands on September 13, 2018 for approval to remove the existing buildings and structures on both of the subject lots and construct a 3,085 sq. ft. one-story convenience store, with eleven (11) on-site parking spaces, a truck loading area, a refuse enclosure structure, retaining walls, fencing, concrete sidewalks, signs, lighting, storm drainage, utility connections and landscaping; and

WHEREAS, the Applicant has now applied to the Planning Board of the Borough of Atlantic Highlands for a deviation from the prior approval with respect to one (1) free-standing sign which was granted variance relief to permit it to be constructed within 30 ft. of the right-of-way of State Highway Route 36 and with a zero (0) ft. property line setback where 10 ft. are required. The Applicant is now requesting the sign to be relocated out of the right-of-way of State Highway Route 36 onto the subject property at the property line with a setback of zero (0) ft. where 30 ft. (from the right-of-way) and 10 ft. (from the property line) are required contrary to the provisions of Chapter 150, Article VII, Sections 150-53, 150-69, respectively, of the Development Regulations of the Borough of Atlantic Highlands; and
WHEREAS, the subject property is located in the CBD Central Business District and retail commercial uses including convenience stores are a permitted use in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on May 9, 2019 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 Preliminary and Final Site Plan prepared by James E. Henry, P.E., dated February 1, 2018 revised through February 12, 2019 consisting of seventeen (17) sheets, marked as Exhibit A-1 in evidence.

1.2 Resolution of the Atlantic Highlands Planning Board granting Preliminary and Final Major Site Plan approval with Variances and Waivers dated September 13, 2018, marked as Exhibit A-2 in evidence.
1.3 Report of CME Associates dated April 29, 2019, marked as Exhibit A-3 in evidence.

2. The premises in question are located at 188-190 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 102, Lots 7 & 8 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the CBD Central Business Zone District and retail establishments including convenience stores are a permitted use in the Zone.

4. The premises in question have approximate dimensions of 100.67 ft. x 72.00 ft. x 34.50 ft. x 136.00 ft. x 151.00 ft. with an approximate area of 14,823 sq. ft. (0.340 acres). The premises in question are a corner property located at the intersection of New Jersey State Highway Route 36 and First Avenue (Monmouth County Route 8). The property consists of two (2) lots including Lot 7 which is a corner lot with dual frontages on First Avenue (Monmouth County Route 8) and Memorial Parkway (New Jersey State Highway Route 36) and Lot 8 which is an interior lot abutting Lot 7 to the north with frontage on First Avenue. The parcels will be merged as a part of this approval as the parcel is being developed as a single unit.

5. The properties are presently developed with a one-story automotive service station and a one-story accessory structure on Lot 7 and a two-story commercial building presently utilized as a bicycle retailer and repair center "Toms Atlantic Cyclery"
on Lot 8 along with associated asphalt driveway and parking areas.

6. The Applicant proposes to remove the existing buildings and structures on both lots and construct a 3,085 sq. ft. one-story convenience store (referred to as 7-11) with eleven (11) on-site parking spaces, a truck loading area, a refuse enclosure structure, retaining walls, fencing, concrete sidewalks, signs, lighting, storm drainage, utility connections and landscaping. The Applicant received Preliminary and Final Major Site Plan approval with Variances and Waivers for the aforesaid development by Resolution adopted by the Planning Board on September 13, 2018. That approval included variances to permit the location of one (1) free-standing sign within the right-of-way of State Highway Route 36 which required variance relief from Section 150-53 which provides that no structure shall be located within 30 ft. of the right-of-way of State Highway Route 36 and a variance from Section 150-69 which requires the sign to be set back 10 ft. from the property line where zero (0) ft. are provided.

7. General Condition No. 8 of the Resolution of approval provides that nothing in the approval will excuse compliance by the Applicant with any and all other requirements of any other governmental entity.

8. The Applicant was represented by Jason Tuvel, Esq. who presented the testimony of James Henry, a licensed professional engineer in New Jersey and Christine Cofone, a licensed professional planner in New Jersey. Their testimony revealed that the process of obtaining approval from the New Jersey
Department of Transportation (NJDOT) has become a lengthier and more involved process than had been anticipated and that, for a variety of reasons, the Applicant has decided that it is preferable to locate the sign on the subject property rather than in the NJDOT right-of-way.

9. Ms. Cofone opined, and the Planning Board agrees, that the requested variance relief diminishes the degree of variance relief previously granted. The magnitude of the deviation will be reduced. The sign will not be in the NJDOT right-of-way and, although still requiring variance relief for distance from the right-of-way, this proposal is more conforming than what was previously approved. The variance relief for distance from the subject property line remains the same as previously granted.

10. The Planning Board finds that the positive criteria for the grant of variance relief has been satisfied. It agrees with the Applicants professionals that the subject property is unique in its location and has a hardship due to the configuration of the intersection of Highway 36 and First Avenue and the distance of the subject property line from the actual roadway. The Planning Board finds that it is appropriate to place the sign in a location where it will have adequate visibility to the public traveling on Highway 36. The Planning Board agrees that placing the sign further into the property to fully conform will reduce its visibility and effectiveness. The Planning Board agrees with the Ms. Cofone’s testimony that the purpose of this signage is to promote the success of permitted businesses and to provide safe ingress to, and egress from, the business. Thus, a hardship exists under N.J.S.A. 40:55D-70.c.(1) due to the particular characteristics of the property as compliance with the Ordinance
would result in less effective signage. Moreover, locating the sign closer to the property line will provide better visibility and safety to motorists and will advance the purposes of the Municipal Land Use Law (MLUL) set forth in N.J.S.A. 40:55D-2.a. providing appropriate signage that will promote public safety. Thus the criteria for a "planning variance" pursuant to N.J.S.A. 40:55D070.c.(2) is also satisfied.

11. The Planning Board further finds that the variances can be granted without a substantial detriment to the public good. The Planning Board finds that the Applicant is proposing a permitted commercial use with free standing signage that is typically associated with this type of use and is anticipated in the Ordinance to be a component. The Planning Board finds that the negative criteria looks at the impact on the Zone plan and the impact on the public good and the area that surrounds it. The benefits of having signs that provide notice as to the site location is proper, appropriate, and promotes the Master Plan goals of revitalizing under-utilized sites and insuring the safety of people coming to and from the site. Any negative impacts of the proposed sign on the surrounding properties and streetscape are those that are anticipated for commercial uses in this zone. Thus, any such impacts are insubstantial. The Planning Board finds that any such impacts will be little or no different than the signage previously approved.

12. Similarly the Planning Board finds that the requested variances will not result in any substantial impairment of the zone plan or zoning ordinance as they serve to allow a permitted and anticipated use to be placed on the property in an appropriate location that will promote public safety. Moreover,
due to the depth of the right-of-way the location will have a distance from the improved roadway that will appear to comply with the Ordinance requirements.

13. The Planning Board notes that the only plan change in this application is the sign location. The remainder of the site plan is as previously approved. 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 the grant of site plan approval have been met. The Planning Board further finds that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for site plan approval and that Preliminary and Final Major Site Plan approval can and should be granted at this time.

14. The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper notice of the Hearing of this Application and were provided with an opportunity to present testimony in 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 13th day of June, 2019 that the Application of ATLANTIC HIGHLANDS REAL ESTATE PARTNERS, 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 will 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.

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**

The approvals granted in connection with this application are as follows:
1. Deviation to Preliminary and Final Major Site plan approval pursuant to plans prepared by Dynamic Engineering, LLC dated February 1, 2018 revised through February 12, 2019 and as may be further revised in accordance with the terms and conditions of this approval.

2. Variance to permit free-standing sign within 30 ft. of the right-of-way of State Highway Route 36 (Section 150-53(D)(1)); with a zero (0) ft. setback from the property line where 10 ft. are required (Section 150-69(L)(3))

3. Compliance with the technical comments in the review letter of the Planning Boards’ Engineer marked as Exhibit A-3 in evidence.

4. Except as modified herein, the Applicant shall comply with all conditions set forth in the prior resolution granting Preliminary and Final Site Plan Approval with Variances and Waivers adopted on September 13, 2018 and marked as Exhibit A-2 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 a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.

OFFERED BY: Mr. Neff

SECONDED BY: Mr. Dougherty

ROLL CALL:

YES: Dr. Kloby, Mr. Fligor, Mr. Hawley, Dr. Cetron, Mr. Neff, Mr. Pepe, Mr. Colangelo, Mr. Dougherty

NO: Mr. Caccamo

ABSTAIN: None

ABSENT: Mrs. Murray, Mr. McGoldrick, Mr. Illiano

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 June 13, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands