WHEREAS, 69 FIRST AVENUE REALTY, LLC, hereinafter the "Applicant", has proposed the development of property located at 69 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 115, Lot 6 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 use variance approval to permit the use of a portion of existing first floor area for a non-permitted personal service use (estheitician) contrary to the provisions of Chapter 150, Article V, Sections 150-31 of the Development Regulations of the Borough of Atlantic Highlands; and,

WHEREAS, The Applicant also requests a waiver from requiring required site plan submissions insofar as the application does not involve any exterior improvements or work on the property.

WHEREAS, the subject property is located in the HBD Historic Business Zone District and personal service uses are not a listed permitted use in the Zone (Exhibit 5-4 Schedule of Uses) and any use not specifically listed as a permitted use on the Schedule of Uses shall be deemed a prohibited use (Section 150-31); and
WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on March 14, 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 Zoning denial of Zoning Officer Clark, dated October 17, 2018, marked as Exhibit A-1 in evidence.

1.2 Application for variance of 69 First Avenue Realty, LLC, dated November 28, 2019, marked as Exhibit A-2 in evidence.

1.3 Narrative of Intent of 69 First Avenue Realty, LLC, marked as Exhibit A-3 in evidence.

1.4 Survey for 67 First Avenue, prepared by Thomas Craig Finnegan, P.L.S., dated July 14, 2017, marked as Exhibit A-4 in evidence.
1.5 Floor Plan for Block 115, Lot 6 dated November 12, 2018, marked as Exhibit A-5 in evidence.

1.6 Review #1 of CME Associates, dated December 19, 2018, marked as Exhibit A-6 in evidence.

1.7 Site Development Plan prepared by Richard E. Stockton & Associates, Inc., dated January 16, 2019, marked as Exhibit A-7 in evidence.

1.8 Review #2 of CME Associates, dated February 14, 2019, marked as Exhibit A-8 in evidence.

2. The premises in question are located at 69 First Avenue, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 115, Lot 6 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the HBD Historic Business Zone District and personal service uses are not a permitted use in the Zone.

4. The premises in question have approximate dimensions of 17.00 ft. x 100.00 ft. x 17.00 ft. x 100.00 ft. and is an elongated rectangle in shape with an approximate area of 1,700.00 sq. ft. The subject property has three (3) existing non-conforming elements as follows:

   A. Lot area 1,700 sq. ft. where 4,000 sq. ft. is required.
B. Lot frontage and width of 17 ft. where 35 ft. are required.
C. Lot Shape Diameter of 17 ft. where 35 ft. are required.

These are pre-existing non-conforming elements which are proposed to continue.

5. The property is presently developed with a two-story masonry building and a rear paved area with two parking spaces. The building is adjacent to, and fronts on, First Avenue. The rear parking area of the building is contiguous to Railroad Avenue. The first floor of the existing building includes vacant retail uses. The second floor of the building is a two-bedroom residential apartment.

6. The Applicant proposes to utilize a portion of the first floor area consisting of approximately 130 +/- sq. ft. for a personal service use by an esthetician. This use will require interior partitions only and the application does not propose any exterior improvements.

7. The properties surrounding the subject site are similarly zoned HBD (Historic Business District) and contain a mix of commercial and residential uses.

8. The Applicant was represented by Kevin Kennedy, Esquire who presented the testimony of Erica Ruotolo, a principal of 69 First Avenue Realty, LLC and Marlena McGee, a principal of Skin and Grace, LLC, the proposed esthetician occupant. Ms. Ruotolo testified that the Applicant has owned the subject property
since October of 2018 and that the Applicant intends to use the major portion of the first floor of the existing building for "Oyster General Home Goods", a retail store selling hand-crafted items including furniture, custom goods, photography and art. That permitted retail use will occupy the major portion of the first floor immediately adjacent to First Avenue.

9. The property owner has additional space available and would like to use this area of 130 +/- sq. ft. for the esthetician use. The testimony demonstrated that the services to be provided by the esthetician will be facials and waxing along with the sale of skin products associated to that use. There will be no hair styling, manicuring or pedicuring, nor will there be any massage therapy or technicians on site other than a single esthetician. The proposed hours of operation will be seven (7) days per week between the hours of 9:00 a.m. and 8:30 p.m. The Applicant anticipates that the services provided, depending upon the type of service requested, will require between one-half hour to one and one-half hours per customer. The Applicant anticipates four (4) to five (5) customers per day and the scheduling of customers is by appointment only. "Walk-in" service will not be provided.

10. The testimony demonstrated that there will be no noise associated with the proposed use that will extend beyond the partition walls within the building. There will be no medical equipment, medical use or medical waste involved. All deliveries will be minor in size and made by standard UPS/FED EX box type vehicles that will not require loading or unloading facilities. Anticipated trash will consist principally of paper towels, cotton, waste products from meals consumed on site and
are not anticipated to exceed one (1) bag of trash per day, which will be stored within the building and collected four (4) times per week.

11. Ms. McGee testified that she is a New Jersey licensed esthetician and is licensed by the New Jersey Board of Cosmetology to provide skin care therapy. She will also provide for sale cosmetology products related to the services she provides.

12. The Planning Board notes that the residential off-street parking requirement for the existing two-bedroom apartment pursuant to the Residential Site Improvement Standards (RSIS) is 1.8 parking spaces (rounded up to two (2) spaces). The Applicant is satisfying this off-street residential parking requirement by providing two (2) on-site parking spaces which shall remain. The off-street commercial parking requirement for the existing retail and proposed personal service use on the first floor require one (1) parking space per 200 sq. ft. of gross floor area (GFA). Thus six (6) parking spaces are required. The Applicant proposes to provide these spaces in a public parking lot available for general public use which is located within 300 ft. of the site and thereby satisfies the parking requirements.

13. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested use variance relief. The Planning Board finds that the proposed use will promote the purposes of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2.a.g. The Planning Board finds that the type of service being proposed will promote public
health and general welfare by providing these skin care services which the Applicant proposes. In addition to the foregoing, it will provide space in an appropriate location for this type of commercial use in order to meet the needs of New Jersey citizens.

14. The Planning Board further finds that the grant of the requested variance will promote the goals and objectives of the Master Plan including expanding the choice of goods, services and employment available within the Borough, including the promotion of employment activities within the Borough (commerce goals and objectives). The Planning Board further finds that the grant of the requested variance will promote the principals, objectives and policies of the Master Plan including maintaining the present intensity of land use. As revealed during the course of the proceedings the proposed use is significantly less intense than was the prior restaurant use of the subject premises. It will also encourage a viable economic base by providing for an appropriate use of this building in the midst of the business District. It will also serve to attract a beneficial commercial use and will add to the variety of uses available to the citizens of the community. The use also promotes the purposes of the Municipal Land Use Law by expanding the variety of uses available in an appropriate location. As a result of the foregoing, the Planning Board finds that the Applicant has satisfied the Special Reasons for the grant of approval.

15. The Planning Board further notes that the **Medici** enhanced proofs were satisfied as well. This became clear through the testimony presented at the hearing. The practice of
an esthetician appears to be a use that was likely not considered by the Governing Body when the Ordinance provisions were adopted, as it is clearly a “boutique” type of use. In fact, the Board members had to ask the applicant to describe what service an esthetician provides.

16. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that the grant of the variance will not result in any substantial detriment to the public good. Based upon the testimony provided by the Applicant there will be virtually no external impacts of this proposed use upon the adjacent surrounding community. All activities will be conducted indoors, will be minimal in nature with only one client being serviced at any given time on an appointment basis during normal business hours. Thus, any impacts upon the surrounding properties are de minimis in nature and insubstantial.

17. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. As set forth previously, the proposed use will satisfy the principals, goals and objectives of the Master Plan as well as promote the purposes of the Municipal Land Use Law. The Planning Board further finds that the omission of this use from the permitted uses in the Zone is likely an inadvertent one due to the “boutique” nature of the use. Thus, permitting this use will not result in any substantial impairment to the Zone Plan or zoning ordinance of the Borough.
18. 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 variance can and should be granted at this time.

19. The Planning Board further finds that the request for site plan waiver can and should be granted as this application involves no exterior physical improvements and the use will have no exterior impacts that need to be addressed through site plan review.

20. 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 11th day of April, 2019 that the Application of 69 FIRST AVENUE REALTY, 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”.

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10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.
15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

Affordable units in inclusionary developments shall have at least 50% low income units (of which at least 13% are very low income). The remaining affordable units shall be moderate income units. The bedroom distribution for affordable units shall be a minimum of 20% three-bedroom units and a maximum of 20% one-bedroom units.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required prior to the commencement of any development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and
all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality's approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

19) The scope of the review of this application is necessarily limited to planning, zoning and land use review of the site as compared to the requirements of the Municipality. The grant of this approval and of any permit or approval in connection therewith shall not constitute a representation, guarantee or warranty of any kind or nature by the Municipality or by any Municipal official or employee thereof with respect to the practicability or safety of any structure, use or other plan proposed and shall create no liability upon or cause of action against the Board, the Municipality or any officials or employees of the Municipality for any damage or injury that result from the construction of the improvements for which this Zoning approval is granted.

SPECIAL CONDITIONS -

1) The approvals granted in connection with this application are as follows:
A. Use variance approval to permit a personal service establishment of an esthetician occupying approximately 130 +/- sq. ft. in area of the first floor of the building.

B. Waiver of Site Plan approval as no exterior improvements or impacts are proposed.

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

BE IT FURTHER RESOLVED that a written copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Applicant, the Code Enforcement Official of the Borough of Atlantic Highlands, and the Construction Code Official of the Borough of Atlantic Highlands. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

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

BE IT FURTHER RESOLVED that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.
OFFERED BY: Mr. Pepe
SECONDED BY: Dr. Cetron

ROLL CALL:
YES: Mr. Caccamo, Dr. Cetron, Mr. Pepe,
      Mr. Colangelo, Mr. Dougherty, Ms. Drew,
      Mr. McGoldrick, Mr. Illiano
NO: Mr. Hawley
ABSTAIN: None
ABSENT: Councilman Fligor, Mrs. Murray, Mr. Neff

[Signature]
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 April 11, 2019.

[Signature]
Secretary, Planning Board
Borough of Atlantic Highlands