IN THE MATTER OF
APPLICATION NO. PB19-09
OF WINFIELD MANAGEMENT, LLC
AND PORTLAND REAL ESTATE, LLC
BLOCK 114 LOT 3

RESOLUTION GRANTING
CHANGE OF USE APPROVAL
and WAIVER OF SITE PLAN

WHEREAS, WINFIELD MANAGEMENT, LLC and PORTLAND REAL ESTATE, LLC, hereinafter the "Applicant", has proposed the development of property located at 89-93 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 114, Lot 3 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 change in use approval to permit a change in use increasing the number of non residential units in a structure requiring change of use approval along with a waiver of site plan requirements to permit approximately 1700 sq. ft. of the first floor of the subject building for general office use with minimal exterior improvements; and

WHEREAS, the subject property is located in the HISTORIC BUSINESS DISTRICT (HBD) Zone District which permits mixed-use, residential and commercial uses including offices which are a permitted use in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on August 8, 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 Application for variance for Winfield Management, LLC and Portland Real Estate, LLC dated July 18, 2018 marked as Exhibit A-1 in evidence.

1.2 Narrative of intent marked as Exhibit A-2 in evidence.

1.3 Survey prepared by James P. Deady, Surveyor, LLC dated June 10, 2015 marked as Exhibit A-3 in evidence.

1.4 Zoning review of Zoning Officer Michelle Clark dated July 24, 2019 marked as Exhibit A-4 in evidence.

1.5 Tenant fit-out plan prepared by S.O.M.E. architects dated July 22, 2019 marked as Exhibit A-5 in evidence.

2. The premises in question are located at 89-93 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 114, Lot 3 on the Tax Map of the Borough of
Atlantic Highlands.

3. The subject property is located in the HBD Historic
Business Zone District and mixed-use buildings with residential
and commercial uses including offices are a permitted use in the
Zone.

4. The premises in question have approximate dimensions of
81.00 ft. x 100.00 ft. x 81.00 ft. x 100.00 ft. and is an
elongated rectangle in shape with an approximate area of 8,100.
sq. ft.(0.185 acres). The premises are presently developed with
an existing three story building with first floor commercial
uses including a nail salon (Sue’s Nails) an eyeglass store
(Eyes on First) and a Pizza Restaurant (Una Pizza Napoletana)
and approximately 1,700 sq. ft. of vacant commercial space, with
a second floor with four residential apartments and a third
floor with four residential apartments. The Applicant proposes
to utilize the 1,700 sq. ft. vacant portion of the first floor
space for office use. The Applicant also proposes to construct
a handicapped ramp/lift to the rear of the building to provide
for ADA access to the building.

5. The applicant was represented by Kevin Kennedy, Esq.
who presented the testimony of Peggy Austin, a principle in the
management Company for the Applicant. She testified that the
current owner has owned the property for approximately five (5)
years and that the property is a thru-Lot between First Avenue
and Railroad Avenue. She testified that previously the entire
first floor was occupied by Julia’s Restaurant. That restaurant
closed some time ago and since then the first floor has been re
fitted and now houses a nail salon, an eye glass store and a pizza restaurant leaving approximately 1,700 sq. ft. of vacant space which the Applicant wishes utilize for office use.

6. The Applicant does not yet have a tenant and is requesting approval to have a general office use that is a permitted use in the Zone. The second and third floors are occupied by residential tenants with four apartments on each floor.

7. The Applicant anticipated that the office will have approximately five employees and will have office hours between 8 o'clock a.m. to 6 o'clock p.m. The offices are not large and therefore are not anticipated to be receiving deliveries from large trucks. Instead, they will be receiving deliveries from box trucks such as Fed-Ex and UPS.

8. Ms. Austin testified that the Applicant will be making only two potential changes to the exterior of the property including removing the existing original windows, which have aged into an unsatisfactory condition which will be replaced store front type windows. In addition the Applicant is removing the wood steps in the rear of the building and would like to provide ADA access for handicap individuals by way of either a ramp or, if possible, a lift to a landing. The Applicant also may provide some additional door lighting. The Applicant acknowledged that, due to not having decided whether to install a ramp or a lift, the Planning Board cannot grant site plan approval at this time. The Applicant requested that the Planning Board grant a waiver from the requirement for site plan approval due to the limited nature of the improvement. The
Applicant also agreed that whichever structure was chosen it would be fitted-out to accommodate access by an emergency gurney. The Applicant also agreed to the condition that the Applicant will submit the ramp or lift plans as well as any additional lighting plans to the Planning Board Engineer for review and approval prior to issuance of building permits for them. The Planning Board agrees that, due to the limited nature of the improvement, site plan approval can be waived subject to the aforesaid condition.

9. The Planning Board finds that the proposed ADA ramp/lift station is consistent with an individual application for accessory mechanical equipment so as to be considered as a sub-development and not subject to the requirement for separate site plan application and approval. Consequently the requirements for site plan approval can be waived subject to the conditions set forth previously herein.

10. Ms. Austin also testified that the parking demand created by the office use will be less intense in that which was previously generated by the restaurant use. She testified that the restaurant had 80 seats and that the new pizza restaurant will only have 46 seats. Moreover, the new office space will only be occupied by approximately 5 persons and will generate a parking demand of much less than the prior restaurant use. The Planning Board agrees.

11. As a result of all of the foregoing the Planning Board finds that the change of use in this case is appropriate under the circumstances and should be granted. The Planning Board further finds that the requirement for site plan approval can be
waived due to the nature of the very limited exterior improvements proposed subject to the conditions set forth herein.

13. 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 12th day of September, 2019 that the Application of WINFIELD MANAGEMENT, LLC and PORTLAND REAL ESTATE, LLC be and is hereby approved, which approval is expressly conditioned upon compliance with the following terms and conditions:

GENERAL CONDITIONS –

1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.
2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.

3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees, Temporary Certificate of Occupancy Guarantees, Safety and Stabilization Guarantees, Maintenance Guarantees, Inspection Fees and such other Guarantees or fees as may be required pursuant to the Municipal Land Use Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract and private site improvements.
6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant with all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words “SITE IMPROVEMENT EXCEPTIONS”.

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

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

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

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

14) All special conditions shall be included as notes on the plans.

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

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

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

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

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

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

SPECIAL CONDITIONS –

1) In the event that the Applicant chooses to construct either an ADA ramp or an ADA lift for rear access to the premises such plans shall be submitted to the Planning Board Engineer for review and approval prior to the issuance of Construction permits and installation. Said ADA access shall be adequately sized to accommodate a stretcher/gurney for emergency situations.

2) In the event that the Applicant decides to place additional lighting to the rear of the building, said lighting plans shall be presented to the Planning Board Engineer for
review and approval before the issuance of permits and installation.

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: Dr. Cetron

SECONDED BY: Mrs. Murray

ROLL CALL:

YES: Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Pepe, Mrs. Murray, Mr. Colangelo, Mr. Dougherty, Ms. Drew, Mr. McGoldrick

NO: None
ABSTAIN: None

ABSENT: Dr. Kloby, Mr. Neff

RECUSED: Mr. Fligor

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 September 12, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands