IN THE MATTER OF
APPLICATION NO. PB20-08
OF ANDREW LASHCHYK AND PAS 3, LLC
BLOCK 122 LOT 1

RESOLUTION GRANTING
VARIANCE AND WAIVER
OF SITE PLAN SUBJECT TO
CONDITIONS

WHEREAS, ANDREW LASHCHYK AND PAS 3, LLC, hereinafter the "Applicant", has proposed the development of property located at 26 West Highland Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 122, Lot 1 on the Tax Map of the Borough of Atlantic Highlands; and

WHEREAS, the Applicant previously applied to the Planning Board of the Borough of Atlantic Highlands for approval to convert an existing building in the light Industrial Zone to permit 5,031 sq. ft. to be used for a marble and granite facility with retail showroom, to convert and permit 2,963 sq. ft. to be used for a cross-fit gym facility and to convert the remaining 2,985 sq. ft. into office space which application was approved by the Planning Board of the Borough of Atlantic Highlands by resolution adopted on March 12, 2015; and

WHEREAS, the Applicant has now applied to the Planning Board of the Borough of Atlantic Highlands for use variance approval to expand the cross-fit gym facility to include the 2,985 sq. ft. previously approved and used for office space and now to be used as part of the cross-fit gym facility which is an expansion of the use variance previously granted in March of 2015 along with a waiver of site plan approval. The requested expansion of use is contrary to the provisions of Chapter 150, Article V, Section 150-29 and Exhibit 5-4 "Schedule of Uses" of
WHEREAS, the subject property is located in the LI Light Industrial Zone District and commercial indoor athletic facilities, exercise facilities or health clubs are not permitted uses in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on September 3, 2020 due Notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act and the Municipal Land Use Law and a quorum of the Planning Board being present the application was heard; and

WHEREAS, the Applicant’s witnesses were sworn and the Planning Board having heard the testimony of the Applicant's witnesses and having examined the exhibits submitted by the Applicant and having considered all of the evidence presented in favor of or in opposition to the application the Planning Board has made the following findings of fact:

1. The Planning Board has received and reviewed the following documents, exhibits and reports:

1.1 Zoning Review of Zoning Officer Michelle Clark dated March 16, 2020, marked as Exhibit A-1 in evidence.

1.2 Application of Andrew Lashchyk and PAS 3, LLC dated March 2, 2020, marked as Exhibit A-2 in evidence.
1.3 Survey prepared by Azimuth Land Surveying Company Inc. dated December 19, 2014, marked as Exhibit A-3 in evidence.

1.4 Ground Floor Plan and Details prepared by Zimbler Architecture dated October 24, 2019, marked as Exhibit A-4 in evidence.

1.5 Review #1 of CME Associates dated April 29, 2020 marked as Exhibit A-5 in evidence.

1.6 Consent of Owner dated September 2, 2020, marked as Exhibit A-6 in evidence.

2. The premises in question are located at 26 West Highland Avenue, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 122 Lot 1 on the tax map of the Borough of Atlantic Highlands.

3. The subject property is located in the LI Light Industrial Zone District and commercial indoor athletic facilities, exercise facilities and health clubs are not a permitted use in the Zone.

4. The subject property has approximate dimensions of 484.86 ft. x 21.97 ft. x 104.97 ft. x 106.50 ft. x 54.70 ft. x 411.25 ft. x 32.18 ft. x 59.43 ft. x 122.84 ft. x 23.27 ft. and is an irregularly shaped parcel with an approximate area of 100,976 sq. ft. The property is bordered to the south by West Highland Avenue, to the east
by West Avenue, to the north by unimproved Mount Avenue and to the west by Many Mind Creek.

The subject parcel is presently developed with an existing one-story masonry building with associated paved driveways, parking areas and drainage structures. Pursuant to approvals received in March of 2015 the property has been developed to accommodate the approved uses including 5,031 sq. ft. being utilized as a marble and granite facility with retail showroom, 2,963 sq. ft. used as a cross-fit gym facility and 2,985 sq. ft. utilized as office space. The Applicant now seeks approval to convert the 2,985 sq. ft. office space into a cross-fit gym facility which will be merged with the existing cross-fit gym facility previously approved. This requires a use variance to permit the expansion of this non permitted use previously granted by variance. The Applicant also seeks a waiver of site plan approval insofar as there are no exterior changes proposed in connection with the application.

5. The Applicant was represented by Kevin Kennedy Esq. who presented the testimony of Frank Delaney, the sole member of Power Pack Cross Fit, LLC which operates the existing cross-fit gym facility on the property. He testified that he has been operating the facility on the site since 2015 and that the facility is engaged in the business of providing core strength conditioning and cardio conditioning with weightlifting and additional personal training. The facility is a members-only facility and
there are specified class times with instructors for all classes who are required to be properly certified.

6. Mr. Delaney testified that the cross-fit gym facility has been very successful and has now outgrown the existing space. He further testified that the office space adjacent to it has become available and desires to expand the cross-fit gym into that space which will add more space to the gym along with a small office area for administrative purposes of operating the business.

Mr. Delaney testified that typical classes are 1 hour in length and include warm up period, a strength period and a workout period. There are no "walk-ins" and all persons utilizing the facility must be members. He testified that his membership principally comes from the Atlantic Highlands, Rumson, Middletown area as well as from adjacent communities and that the facility operates Monday through Friday from 5:00 am to 9:30 pm, on Saturdays from 7:00 am to 10:00 am and on Sundays from 9:30 am to 10:30 am.

7. Mr. Delaney further testified that the class sizes will accommodate 15-20 people and that registration for classes is made in advance. Classes are only held one at a time. However personal training can go on between individuals and their instructors while classes are being conducted.

8. Mr. Delaney testified that he has eight part time employees all of whom are certified trainers and that, if approved, he will add up to two additional employees. He
further testified that he anticipates no more than three employees on premises at any given time.

9. Mr. Delaney testified that there are currently four showers and two bathrooms in the facility. If approved, the new facility will increase to five showers and three bathrooms.

10. Mr. Delaney testified that the cross-fit gym has hosted competitions in the past which are approximately once per year. Those competitions attract 80 to 100 individuals. That type of event will not change as a result of this application.

11. Mr. Delaney testified that no improvements are proposed for the exterior of the premises. There will be no change to the existing entrance to the gym. There are 50 existing parking spaces that are paved and striped and the maximum number of persons on site at any given time is not anticipated to exceed 33 in number. He testified that during the 5 years that the cross-fit gym has been in existence they have experienced no parking problems with patrons or 3rd persons. He presented a 2014 parking survey and opined that there is adequate parking on premises to accommodate all the uses on the property. He further agreed that, as a condition of approval, the Applicant will create the necessary ADA parking spaces with compliant striping and signage.

12. Mr. Delaney testified that there will be only minimal outdoor storage other than several tires and chairs
and that there will be no changes in the garbage/recycling currently existing for the property. In addition, there will be no new signage for the property. Thus no exterior changes other than the ADA parking is proposed.

13. The Planning Board notes that an interested citizen did express concern regarding amplified music early and mid-morning. He conceded that this has only been a problem since the Covid-19 pandemic and Mr. Delaney testified that this is due to the pandemic forcing the opening up of the building and activities to be more spaced. He will exercise efforts to keep the noise levels acceptable. The Planning Board notes that noise levels are controlled by State Administrative Code Regulations and the Applicant understands that violating those Regulations could result in enforcement proceedings.

The Applicant’s counsel noted for the record findings contained in the previous resolution of the Board and particularly paragraphs 14 and 15 respecting the testimony of Planner Christine Cofone contained in the resolution dated March 12, 2015. Mr. Kennedy urged the Board that the findings and conclusions set forth in that resolution continue to apply to the current application and provide justification for the grant of variance relief. The Planning Board Counsel advised the Board that this is a new application and that, although hose findings applied to the prior application, the Board is not bound by those findings in this application to expand the use. The Planning Board understands and, nevertheless, finds that it agrees that the findings and conclusions contained in its prior
resolution still apply under the circumstances presented by the Applicant including but not limited to:

a. The proposed cross-fit gym, due to the nature of its limited membership and class numbers, operates similarly to a personal service establishment. Personal service establishments are a permitted uses in the LI Zone District.

b. The proposed use would promote the purposes of the municipal land use law by providing sufficient space in an appropriate location for a variety of recreational uses to New Jersey citizens.

c. The proposed use is consistent with the goals and purposes of the municipal Master Plan which provides a vision for the future development of the Borough including maintaining its character as a small town and at the same time continuing as an active, livable, waterfront community with diverse housing, ample recreation, a healthy environment, adequate infrastructure and quality education while maintaining a positive economic climate.

d. A Master Plan goal includes encouraging and permitting a viable economic base and expanding the choice of goods, services and employment opportunities available within the Borough. The expansion of this use will promote those goals and purposes.

e. The grant of the requested variance relief will not result in any substantial detriment to the public good
or substantial impairment of the Zone Plan or Zoning Ordinance. With respect to the public good, the Planning Board agrees that the proposed cross-fit gym is of an equal or lessor intensity to other permitted uses in the Zone District and will not create any significant adverse impacts to the neighborhood provided that the conditions set forth in its prior resolution and set forth herein and agreed to by the Applicant are complied with.

f. The Planning Board further finds that this proposed use is consistent with the Zone Plan and Zoning Ordinance as it will have similar impacts as those uses permitted in the Zone and will not have substantial detrimental impacts.

14. As a result of all of the forgoing the Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested use variance relief.

15. The Planning Board further notes that the Ordinances of the Borough permit a waiver of site plan approval under certain circumstances. The Ordinance permits such a waiver without Planning Board review for a change in use to a permitted use not involving a standard greater or more restrictive than the prior use and provided that the new use is in compliance with the performance standard requirements of Section 150-167 at the property maintenance requirements of section 150-68. In this case, although the proposed expansion of the nonconforming use would not qualify for an administrative waiver the Planning Board
finds that it is appropriate for the Planning Board to grant a waiver from the requirement for submission of a full formal site plan as the proposed improvements are limited such that they do not significantly affect the design and layout of the subject property which is already developed and that site plan approval under the circumstances may be waived.

16. 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 favor of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 1st day of October, 2020 that the Application of ANDREW LASCHYK AND PAS 3, 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.

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 relief granted herein is the expansion of the previously granted use variance approval to permit the expansion of the existing cross-fit gym facility to include an additional 2,985 sq. ft. previously utilized as office space now to be utilized as part of the cross-fit gym facilities.
2. All conditions of prior resolutions in connection with the application shall be continuing conditions of this resolution except as expressly modified herein.

3. The Applicant shall provide compliant striping and signage for the ADA parking spaces on site.

4. The facility shall not open prior to 5:00 am Monday through Friday and shall not remain open passed 9:30 p.m. Operations will be conducted on Saturday commencing with classes at 7:00 am and ending with the 10:00 a.m. class. Hours of operation on Sunday will commence with the 9:30 a.m. class and will end at the conclusion of the 10:30 a.m. class.

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. Hawley
SECONDED BY: Mr. Neff

ROLL CALL: Mr. Hawley, Mr. Caccamo, Mr. McGoldrick, Mr. Neff, Mr. Pepe, Mr. Colangelo, Mr. Sonnek-Schmelz, Mr. Burke, Mr. Krupinski

YES: Mr. Hawley, Mr. Caccamo, Mr. McGoldrick, Mr. Neff, Mr. Pepe, Mr. Colangelo, Mr. Sonnek-Schmelz, Mr. Burke, Mr. Krupinski

NO:

ABSTAIN:

ABSENT: Mrs. Murray

Recused: Mr. Dougherty, Mr. Boms

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 October 1, 2020.

Secretary, Planning Board
Borough of Atlantic Highlands