WHEREAS, URBAN MANE, LLC, hereinafter the "Applicant", has proposed the development of property located at 44-48 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 97, Lot 17 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 a portion of the first floor area of an existing building for a non-permitted personal service use (hair salon) contrary to the provisions of Chapter 150, Article V Sections 150-29.A(III) and Section 150-31 of the Development Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the Applicant has also requested Minor Site Plan approval or a waiver from the required Minor Site Plan submission requirements insofar as the application does not involve any exterior improvements or work on the property; and

WHEREAS, the subject property is located in the HBD and R-1 Zones and is a "split-zone" property and personal service uses are not a permitted use in either zone (Exhibit 5-4 schedule of uses) and any use not specifically listed as a permitted use in 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 May 7, 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 by means of electronic communication (i.e. Zoom format with public access and participation available through video and audio participation and/or telephonic participation) pursuant to N.J.S.A. 10:4-8.b. the application was heard; and

WHEREAS, the Applicant’s witnesses were sworn and the Planning Board having heard 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 January 22, 2020, marked as Exhibit A-1 in evidence.

1.2 Application for variance of Urban Mane, LLC, dated January 22, 2020 with narrative of operations, marked as Exhibit A-2 in evidence.

1.3 Survey prepared by Richard E. Stockton and Associates dated September 27, 2018, revised November 1, 2018, marked as Exhibit A-3 in evidence.
1.4 Floor Plan prepared by Mellilo Architecture dated January 3, 2020, marked as Exhibit A-4 in evidence.


1.6 Affidavit of ownership of Timothy McDaniel, marked as Exhibit A-6 in evidence.

1.7 Conditional Completeness Letter dated March 5, 2020, marked as Exhibit A-7 in evidence.

1.8 Site Plan Waiver Request dated January 27, 2020, marked as Exhibit A-8 in evidence.

2. The premises in question are located at 44-48 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 97, Lot 17 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is a “split-zoned” parcel located in the HBD Historic Business District Zone and the R-1 Residential Zone District and personal service uses are not a permitted use in either of those zones. The surrounding properties to the north, west and south of the subject property are similarly zoned HBD and contain a mix of residential, commercial, mixed-use commercial/residential and public uses. The properties to the east are zoned R-1 and contain single family residential homes.
4. The property in question has approximate dimensions of 65 ft. x 95 ft. x 40 ft. x 100 ft. x 25 ft. x 195 ft. and is a "flag lot" with the flag pole portion of the lot fronting on Second Avenue with a 25 ft. frontage and width extending 100 ft. in depth in the R-1 Zone, then widening to the flag portion of the site which has a width of 65 ft. and a depth of 100 ft. in the HBD Zone District. The premises have an approximate area of 8,675 sq. ft. (0.199 acres). The building on the property is new construction for which preliminary and final major site plan approval with variances for deviating from the conditional use standards in the zone and for having a mixed use commercial/residential use in the R-1 Zone District along with a 4-story building where 3 stories are permitted was granted by resolution of the Planning Board adopted on January 14, 2016. The building improvements are located entirely within the HBD Zone portion of the site. Accessory structures such as bench seating, trash enclosure and two parking spaces are located within the R-1 Zone District portion of the site.

5. The prior approval was granted to construct a 4-story mixed-use commercial/residential building with up to three (3) commercial units on the first floor and thirteen (13) single family apartments on the three upper floors. That building is now constructed and the Applicant desires to utilize approximately 1,334 sq. ft. of the first floor for a hair salon which is a personal service establishment that is not expressly permitted within the HBD or R-1 Zones.

6. The Applicant was represented by Christopher Hanlon, Esq. who presented the testimony of Michael Valeriani, the sole member of the Applicant, Urban Mane, LLC and Timothy McDaniel,
the owner of the property. The Applicant provided testimony and an application with description of operations demonstrated that the services to be provided by the business will be hair cutting, hair styling and hair coloring for women and men. He provided an architectural floor plan showing that there will be eight (8) stations in the salon and that he expects to have four (4) "licensed stylists" utilizing the space. The proposed hours of operation are as follows:

Sunday - Closed
Monday - Closed
Tuesday 9:00 am - 7:00 pm
Wednesday 1:00 pm - 9:00pm
Thursday 10:00 am - 9:00 pm
Friday 10:00 am - 6:00 pm
Saturday 9:00 am to 3:00 pm

Testimony demonstrated that the only ingress/egress to the facility will be from First Avenue and that the entrance will serve only the Applicant’s unit. Other tenants will have separate entrances and exits. There will be no common access between the residential component of the building and the commercial units.

The Applicant testified that the type of refuse generated by the facility is minimal, one to two bags per day consisting of paper towels, foil, empty containers from products used in styling and waste products from meals consumed on site by employees. The facility anticipates only one delivery per week from Fed Ex with no large items.
7. It is anticipated that the maximum number of persons within the applicant’s area at any given time will be between 8 and 12 and that client visits last from one to two hours depending upon procedures that they are receiving. Mr. Valerianis advised that he has a large local clientele and is looking forward to serving the local community from this facility.

8. The hair salon will be operated entirely within the confines of the leased space and will not extend beyond the partition walls within the building. The Applicant has not yet designed signage for the property but testified that any signage will be pursuant to permits and will be consistent with the requirements of signage in the zoning ordinance. No variance will be requested to deviate from the signage provisions of the Ordinance.

9. Issue was raised during the course of the hearing as to whether the Applicant is required to either provide additional parking within the Borough or contribute a parking fund fee in the sum of $25,000.00 for deficient parking spaces as the subject property only has two spaces on site where 51 spaces are required. The Planning Board notes that the parking fund fee ordinance was adopted in 2019 after the grant of the site plan approval for the existing building which has now been constructed. The Board Engineer, Mr. Rohmeyer opined that this new section of ordinance 15G-19.F.II. applies only to new construction or reconstructed, redeveloped projects where the ground floor ratio of an existing structure is increased. In this case he noted that there is no new,
reconstructed/redeveloped, or increased ground floor area ratio. In this case the building has already been constructed and this application does not propose the enlargement of the building. He further noted that, although the Planning Board is entitled to consider the impacts of the proposed use in the context of the negative criteria for the grant of variance relief, in this case the proposed personal service use has the same parking requirement as a permitted use. Therefore from a parking standpoint this Applicant’s operations are no different than a permitted use which would not require variance or site plan approval. The Planning Board agrees with the analysis of its Engineer that the parking demand of the Applicant is no different than a permitted use and does not affect the negative criteria for the grant of variance relief. The Planning Board also notes the testimony of several interested residents who testified that there are no parking issues and their observations that the nearby municipal lot is not used to capacity. The Planning Board finds those residents testimony to be credible and reliable.

10. 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. and g. The Planning Board finds that the type of service being proposed will promote the public health and general welfare by providing these personal services which the Applicant proposes. The Planning Board finds that this is an appropriate location for this type of commercial use in order to meet the needs of New Jersey citizens and particularly the needs of the residents of the Borough. Thus,
the Planning Board finds that this application will assist in providing sufficient space in an appropriate location for the variety of uses contemplated in the statute.

11. 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 also finds that the grant of the requested variance will promote the principles, 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 will generate similar volume of patrons to permitted uses in the zone. In fact, some permitted uses such as restaurants would generate more intense volume during certain times. The Planning Board further finds that the proposed use will encourage a viable economic base by providing for an appropriate use of this building in the midst of this 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 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.

12. 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 by the Applicant the Planning Board finds that 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 a limited number of clients being serviced at any given time during normal business hours. Thus, any impact on the surrounding properties are di minimis in nature and insubstantial.

13. 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. As set forth previously, the proposed use will satisfy the principles, goals and objectives of the Master Plan as well as promote the purposes if the Municipal Land Use Law. Thus, the Planning Board finds that the proposed use will not result in any substantial impairment to the Zone Plan or Zoning Ordinance of the Borough and will promote the purposes of the Borough Master Plan.

14. 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.

15. The Planning Board also notes that the Applicant has requested a waiver from the requirements of providing a full Minor Site Plan. The Planning Board notes that this property was improved pursuant to a site plan granted by resolution adopted on January 14, 2016. There is no proposal for any new
construction or improvements to the exterior of the property. The Planning Board notes that section 150-7.I.(IX)(d) provides that the Planning Board may, when reviewing applications for approval of subdivision plats, site plans or conditional uses, to grant:...(d) waiver of site plan approval where the Planning Board finds that the application does not involve or require improvements that effect chapter standards or requirements relating to :(1) preservation of existing natural resources on the site (2) safe and efficient vehicular and pedestrian circulation parking and loading (3) screening, landscaping and location of structures (4) exterior lighting needed for safety reasons in addition to any requirements for street lighting (5) conservation of energy and use of renewable energy sources (6) recycling of designated recyclable materials. The Planning Board finds that all of these items were dealt with in the previous site plan approval, have been constructed in accordance therewith and therefore this application does not involve or require improvements that effect those items. Thus, the Planning Board finds that it is appropriate to waive the requirement for Minor Site Plan approval in this instance.

16. The Planning Board further finds that all property owners within 200 ft. of the premises in question have been 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 4th day of June, 2020 that the Application of URBAN MANE, 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. (Not Applicable)

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. (Not Applicable)

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. Not Applicable)

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. (Not Applicable)

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. (Not Applicable)

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 for a hair salon occupying approximately 1,334 sq. Ft. of the first floor of the subject property.

   B. Waiver of site plan approval as no exterior improvements or impacts are proposed.

2) The hours and manner of operation of the hair salon shall be as set forth in the body of this resolution.

   **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: Mr. McGoldrick
ROLL CALL:

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

NO: None
ABSTAIN: None
ABSENT: None

[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 June 4, 2020.

[Signature]
Secretary, Planning Board Borough of Atlantic Highlands