

Re: PB#2013-3

Mr. Colby offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING PRELIMINARY AND FINAL SITE PLAN, MAJOR
SUBDIVISION, VARIANCES AND DESIGN WAIVER APPLICATION OF NAVESINK
CAPITAL PARTNERS, LLC, FOR BLOCK 101, LOTS 17.02, 27, 27.01, 30 & 30.02 AND
BLOCK 102, LOTS 8 & 9**

WHEREAS, the applicant Navesink Capital Partners, LLC, (hereinafter referred to as the “applicant”) is the owner of Lots 30 & 30.02 in Block 101, Lots 8 & 9 in Block 102 located in the Borough of Highlands, and a portion of Lot 1 a/k/a Lot 1.02 in Block 7 in the Borough of Atlantic Highlands and Sandy Hook Developers, L.L.C. is the owner of Lots 17.02, 27 & 27.01 in Block 101 located in the Borough of Highlands Mixed Use Zone District (hereinafter referred to as the “MXD” district), and James Bollerman is the Majority Member of both entities; and

WHEREAS, the applicant has filed an application with the Planning Board of the Borough of Highlands, (hereinafter referred to as the “Board”), seeking approval for preliminary and final major site plan, lot consolidation and a two (2) lot subdivision, bulk variances and design waivers for the above mentioned properties as listed below:

1. Preliminary and Final Site Plan. The applicant has demolished the existing mobile home structures and a two story building on the subject site and proposes to construct forty-nine (49) townhomes; one (1) commercial structure containing a restaurant; one (1) accessory structure lighthouse, containing a ground level marina office, a retail store, a tool shop, men’s and women’s lavatory facilities; a covered veranda on the second level; a captain’s bridge on the third level, and a widow’s walk on the fourth level; 129 boat slips; an accessory swimming pool available for the membership of residents in the residential component of this application and marina slip lessees and associated surface parking areas to support the foregoing uses all of which are depicted in detail on the plans and maps submitted into evidence at the public hearings of this application which are or will be consistent with the testimony of the applicant’s witnesses at the aforementioned public hearings.

2. Lot Consolidation and Subdivision. The applicant proposes to consolidate the existing lots contained in Blocks 101 and 102, together with Lot 1.02 in Block 7 in the Borough of Atlantic Highlands, and subdivide that area into two (2) lots; one containing the residential component, being proposed Lot 27.02 (hereinafter referred to as the “townhouse parcel”) of the project and one containing the commercial component, being the restaurant, marina, swimming pool, and marina office, as proposed Lot 27.03 (hereinafter referred to as the “marina basin parcel”) of the project.

3. Bulk Variances.

a. Intentionally omitted.

b. Setback from tract boundaries and right of way- townhouse parcel has an average setback of 4.0 feet and the marina basin parcel has an average setback of 3.0 feet, the smallest setback is 0.93 feet to adjacent Lot 12.01, where a 20 foot average but not less than 15 feet is required.

c. Maximum Impervious Coverage- marina basin parcel has an 89.33% coverage proposed where 80% is the maximum permitted.

d. Building Height- the lighthouse structure containing the office and other facilities is 43 feet to the peak of the structure pursuant to architectural plans submitted where the maximum height permitted for an accessory structure in the zone is 15 feet. This structure was found to be an accessory structure pursuant to the applicable provisions of the Borough Zoning and Development Ordinances by the Board and supported by the testimony of the Board Planner, Martin Truscott. Therefore the variance is a Bulk “c” variance not Use “d” variance in nature.

e. Maximum Number of Units Per Building- the townhouse parcel area has two buildings with six units in each building where five is the maximum permitted.

f. Variation in Building Setbacks- the townhouse parcel area has a block of six units and a block of three units that are proposed without a variation in the building setbacks where a maximum of two units without variation are permitted.

g. Building Spacing- the ordinance requires 75 feet between the front of one building to the front of another building; the applicant proposes 59.25 feet on Road C (as depicted on the plans submitted into evidence).

h. Building Spacing- the ordinance requires end to end window walls to be located a minimum distance of 30 feet. Multiple buildings have approximately 15 feet of separation and do not meet the minimum distance (as depicted on the plans submitted into evidence) therefore a variance is required.

i. Buildings Facing the Street. The building façade must be a minimum of twenty (20') feet from a residential curb, whereas the applicant proposes only 7.9 feet (which dimension shall be indicated on the final site plan submitted by the applicant) to the building located to the East by the main entrance.

k. Temporary Storage Shed Setback. The applicant proposes to utilize a temporary storage shed during construction as a construction office and temporary office for SeaTow marine services as represented on the record by the applicant’s witnesses (approximately 44 feet

by 20 feet) with a zero foot setback from the easterly property line along lot 12.01, where a minimum of 7.5 feet is required.

L. Vehicle Parking Space Variance. The ordinance requires 129 spaces for the marina, with the lighthouse facility being incidental to the marina, 2.4 spaces for the marina accessory swimming pool, and 51 spaces for the restaurant for a total of 182 parking stalls where 100 are proposed.

4. Design Waivers.

- a. The applicant does not propose to install any curbing as is required by the ordinance.
- b. The applicant proposes to install a parking area less than 20 feet from the residential structure which is not permitted by the ordinance.
- c. The applicant proposes townhouse dwelling unit widths of 18 feet for the A and A-1 models where the ordinance requires a minimum unit with of 24 feet as set forth on the plans submitted into evidence on behalf of the applicant.
- d. The applicant proposes some parallel parking where parallel parking is not permitted by the ordinance.
- e. Two of the townhouse structures will contain 2 units, where 3 units is the minimum permitted by the ordinance.
- f. Several of the proposed townhouse units have side entrances where the ordinance requires front entrances.
- g. Garages for the townhouse units are proposed on the front/street side of the structures where the ordinance requires access to the garages from the rear of a building.

All of the technical details of the aforementioned site plans, lot consolidation and subdivision, variances and waivers are set forth in the application and plans, maps, diagrams and reports and testimony submitted to the Board in support of the application and entered into evidence at the public hearings held on this application by the Board; and

WHEREAS, the Board conducted public hearings on this application on November 14, 2013, December 12, 2013 and January 9, 2014; and

WHEREAS, all jurisdictional requirements have been met and proper notice has been given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board has jurisdiction to consider this application; and

WHEREAS, the applicant called numerous witnesses to testify in support of the application, which witnesses introduced numerous documents, maps and charts in support of the application which were entered into evidence; and

WHEREAS, the witnesses called on behalf of the applicant; their credentials and area of expertise are as follows:

James Bollerman, Majority Member of the applicant who testified on the details of the overall concept of the application and the need for the quantity units and the layout of the project.

Sean Savage, a licensed Professional Engineer in the State of New Jersey from the firm of Matrix New World Engineering. Mr. Savage is the overall engineering project manager and prepared the site plans for the project.

Scott T. Kennel, an associate with McDonough & Rea Associates, Inc., Traffic and Transportation Consulting firm. Mr. Kennel presented a traffic study conducted by said firm and parking testimony on its contents at the meeting held on December 12, 2013.

Glenn Chervery, a licensed Architect testified on the overall architectural details of the project.

Kaitlyn Walsh, a licensed Planner in the State of New Jersey was called to testify on the planning and zoning issues related to the application including testimony in support of the variances and design waivers; and

WHEREAS, there were no objections made by the objector's Counsel to the credentials and expertise of the above mentioned witnesses and the Board accepted all of them as expert witnesses in the fields listed above; and

WHEREAS, the residential component of 49 townhouses complies with the parking requirements of RSIS of 117 spaces of which 25 stalls are for common usage of the condominium unit owners based upon revised plans applicant submitted during the course of the hearings; and

WHEREAS, Mr. Charles McCabe, opposed a portion of the application that related to the location of one of the townhouse structures near his single family rental property and drainage elements of the project. He was represented throughout the proceedings by Sean Burns, Esquire; and

WHEREAS, there were comments and testimony by witnesses called on behalf of the Board as well as reports issued by these witnesses, which reports are listed in Exhibit 1, annexed

hereto and made a part hereof. The witnesses called on behalf of the Board; their credentials and areas of expertise are as follows:

Robert R. Keady, Jr., a licensed Professional Engineer and Certified Municipal Engineer in the State of New Jersey from the firm of T & M Associates. Mr. Keady is the Board Engineer.

Mr. Martin Truscott, a Licensed Professional Planner in the State of New Jersey from the firm of T & M Associates. Mr. Truscott is the Board Planner; and

WHEREAS, there were no objections to the credentials and areas of expertise of the above mentioned Board witnesses; and

WHEREAS, the public and Legal Counsel were given the opportunity to cross examine all of the witnesses called in connection with this application; and

WHEREAS, the public was given the opportunity to give testimony and comment on the application and submit evidence in support of their position to the Board; and

WHEREAS, the Board accepted into evidence the attached list of exhibits (which is herein designated as Exhibit 1), which list contains the exhibits of the applicant, objector, members of the public and the Board, all of which are incorporated herein by reference thereto; and

WHEREAS, the Board held three public hearings on this application and analyzed all of the evidence, testimony and positions submitted in connection with this application. Many of the witnesses were recalled to give additional testimony and submit additional documentation requested by the Board and/or its technical staff; and

WHEREAS, the Board after considering the evidence and testimony presented by the applicant, objector, Charles McCabe and interested citizens, has made the following findings of facts and conclusions based thereon:

1. The property is located in the MXD, Mixed Use Zone District.
2. The use requested by the applicant is a permitted use in the aforementioned zone pursuant to the Borough Zoning and Land Use Regulations.
3. The Board finds as fact that the subject property and the surrounding properties must be elevated to accommodate all future development due to the applicable regulations imposed by the Federal Emergency Management Act ("FEMA"), the New Jersey Department of Environmental Protection ("NJDEP") and by the

Coastal Area Facilities Review Act (“CAFRA”), the United States Army Corps of Engineers and the State of New Jersey post super-storm Sandy.

4. The Board accepts the representations of James Bollerman in support of the quantity of residential units proposed and quantity of boat slips and the need for the office structure containing the lighthouse and the restaurant.
5. The Board accepts the testimony of Sean Savage on the engineering details for the project and his willingness to work with the Board Engineer to resolve any outstanding engineering issues for this project.
6. The Board accepts the representation of Mr. Bollerman that he will not sell any marine or motor fuel at the site.
7. The Board finds that this will not be a gated community based on the representations of the witnesses of the applicant.
8. The Board finds that based on the testimony, sidewalks will not be required along the proposed streets or frontage.
9. The Board finds that the basis for the objection to the project by Mr. McCabe is not correct since he too will at some point in the future have to elevate any residential structure on his property.
10. The Board finds that based on the testimony and evidence submitted that the proposed roadway classification as multi-family is in accordance with RSIS standards.
11. The Board finds that any approvals given in connection with this application must be contingent on the applicant resolving the land use issues and applicable development regulations to that portion of the site that is located in the Borough of Atlantic Highlands, New Jersey.
12. The Board accepts the testimony submitted on behalf of the applicant that the trailer adjoining Lot 12.01 will be just that- a temporary facility that will be removed when the project is completed.
13. The Board finds as fact that the proposed restaurant will not have a roof deck for patron usage.
14. The Board accepts the representation on behalf of the applicant that all winter boat storage in the parking area on the commercial portion of the site will not

restrict the parking for the proposed restaurant. A minimum of 51 spaces will be available for the restaurant use.

15. The Board finds that based on the testimony of Board Planner, Martin Truscott that the marina office and lighthouse structure is an accessory structure pursuant to the Borough development and zoning ordinances and therefore its proposed height exceeding the maximum permitted by the aforementioned ordinance triggers a bulk variance not a use or "d" variance.
16. The applicant demonstrated by a preponderance of the evidence both the "C.1 and C.2" criteria for the granting of bulk "C" variances.
 - a. The Board accepts as fact, the testimony of the applicant's planner, Kaitlyn Walsh, as to the "C.1" criteria that the variances and waivers requested are necessitated by the topographical conditions of the site, thereby meeting the requirements of N.J.S. 40:55D-70.c.(1) (a) (b) (c). The actual shape, size and topographical conditions of the site are set forth in numerous documents submitted into evidence by Ms. Walsh and Mr. Savage.
 - b. As to the "C.2" standard, the applicant demonstrated that there are substantial benefits derived from the deviation from the zoning ordinances and the benefits derived from the deviation substantially outweighed any detriment.
 - c. The applicant's planner, Kaitlyn Walsh, P. P., set forth on the record numerous purposes of the municipal land-use law set forth in section 40:55D-2 as being advanced by this application.
 - d. The Board weighed the benefits versus the detriments in arriving at its findings of fact and conclusions of law associated with this application and determined that the benefits substantially outweigh any detriment by reason of the deviation from the zoning ordinance.
 - e. The applicant's planner further opined that the granting of the variances would not be a substantial detriment to the public good by reason of fact that the use as proposed by the applicant is a permitted use in the zone and there are no activities which would occur on the site which would be different than activities which are general for these permitted uses.
 - f. The applicant's planner also opined that the granting of the variances would not be a substantial detriment to the zone plan and the zoning ordinance by reason the fact that the proposed uses are permitted and any

deviation from the standards is minor in nature and/or justifiable by reason of the establishment of the criteria are under “C.1” and “C.2.”

g. The Board arriving at its findings found the testimony of the planner credible and supported by other credible testimony in the record.

17. The Board further finds from the testimony of Ms. Walsh and Mr. Savage that the elevation of the site and the layout of the project on the site is due to the elevation and site requirements imposed by applicable governmental agencies after Hurricane Sandy.
18. The Board further accepts as fact that the elevation of the project and its layout will not have any significant negative impact on the surrounding properties so long as the proposed landscaping features, “tie-backs”, retaining walls and grading/drainage are implemented as represented on the record by the witnesses for the applicant.
19. The Board accepts the testimony of the project Architect and the exhibits and plans prepared by him for this project.
20. The Board considered the testimony of applicant’s traffic engineer, Scott Kennel, PE, who testified as to the ordinance requirements for the required parking stalls for the restaurant and marina uses.
 - a. The Board considered Mr. Kennel's testimony as to the requirements of the New Jersey Department of Environmental Protection (“N.J.D.E.P.”) parking regulations under the Coastal Area Facilities Review Act ("CAFRA") which requires 0.62 parking spaces per boat slip. This translates to 80 parking spaces for the 129 boat slips. Mr. Kennel also testified that approximately 15 of the boat slips are anticipated to be dedicated for transient use and the remaining both slips being accessed by private vehicles to the parking spaces, reducing the demand to 71 spaces under the "CAFRA" regulations.
 - b. Mr. Kennel further testified that the parking lot would be shared between the marina use and the restaurant use.
 - c. Mr. Kennel further testified that the restaurant will contain 140 indoor seats and 50 outdoor or seasonal seats. Based upon the ordinance in the Borough, the requirement of one space per four (4) seats totals 48 spaces.
 - d. Mr. Kennel further testified as to the shared nature of the parking regarding the restaurant and marina use which will utilize the same

parking lot consisting of 100 parking stalls. Mr. Kennel opined that each use peaks at different times of the day. Particularly, the restaurant and marina use would peak in the summer months, typically on weekends. However, the peak time of day was different for each use, with the marina peak time at approximately 2 p.m. to 3 p.m. and the restaurant peak time in the evening after 6 p.m.

e. Furthermore, Mr. Kennel testified that the marina would be closed in the winter months, however, part of the parking lot would be used for boat storage. There would then be 51 parking spaces available for the restaurant during the winter months when the marina is closed. He opined that this would be more than adequate in light of the fact the outdoor seating consisting of fifty (50) seats would not be in use, reducing the parking requirement to 35 spaces.

f. The Board accepts the testimony of the applicant's traffic engineer and incorporates within its findings the justification for the parking stall variance for the marina/restaurant use.

21. The Board finds based on the testimony of Ms. Walsh and Mr. Savage that this applicant will suffer a hardship, as that term is defined in the Municipal Land Use Law (MLUL) if the variances and design waivers requested are not granted. The Board finds that granting the requested variances and waivers are appropriate and reasonable.
22. The Board accepts the testimony of the site engineer, Mr. Savage, and his office and the exhibits and plans prepared by him and his staff for this project.
23. The Board finds that the variances and waivers requested are insignificant or minor in nature when reviewed in the context of the overall scale and impact of the development on the surrounding area and the Borough in general.
24. The Board finds that, due to the shape of the property and existing and proposed topography, hardship and practical difficulties exist in order to comply with the design standards; and
25. The Board finds that the project is consistent with the Borough Master Plan and that the granting of the variances and waivers will not have any significant negative impact on the Master Plan or the Zoning Ordinances applicable to this project and Zone District.
26. The Board finds that the benefits far outweigh any detriment to the residents in the immediate area and the Master Plan and Zoning Ordinances of the Borough.

27. The Board finds that with the conditions hereinafter imposed on the applicant (i.e. the approved project), that the design waiver(s) requested pursuant to Section 21-65.4A of the Zoning Ordinance are necessary, appropriate and reasonable; and
28. The Board further finds that the granting of the variances and design waivers will not have a substantial impairment of the zoning ordinances and the Master Plan of the Borough.
29. The Board finds that the granting of the variance and design waivers will not be a substantial detriment to the public good; and

WHEREAS, the Board has determined based on the testimony and evidence in the record that the variances and design waivers requested by the applicant can be granted without any substantial detriment to the public good and without substantially impairing the intent and purposes of the zone plan and zoning ordinance of the Borough. Furthermore, the Board has determined that the applicant has substantially complied with the applicable requirements of the Borough site plan and subdivision ordinances, subject to the applicant complying with Board imposed conditions hereinafter set forth; and

WHEREAS, this resolution shall memorialize the Board's action taken to approve the application with conditions at its meeting held on January 9, 2014;

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands that the application for preliminary and final site plan and bulk variance(s) and design waivers and lot consolidation and subdivision by the applicant, Navesink Capital Partners, LLC, for the aforementioned Blocks and Lots is hereby approved contingent upon the following conditions being met:

1. All testimony, evidence and representations made by the applicant and its witnesses are incorporated herein.
2. Taxes, fees and escrow accounts shall be current.
3. The applicant shall post guarantees, performance bond and inspections fees as determined by the Board Engineer for all bondable activities at the site in amounts approved by the Borough as a condition of final approval consistent with the MLUL.
4. The applicant shall enter into a developer's agreement with the Borough as a condition of this approval.

5. The applicant shall pay for all on-tract and its share of off-tract improvements related to this project as determined by the Board Engineer, which include, but are not limited to, sanitary sewer improvements, if necessary; curbing and sidewalk along contiguous roadways and utility connections in accordance with the MLUL
6. The applicant shall comply with all comments and conditions set forth in the board engineer's letter dated November 8, 2013 and all supplements thereto if any, except as modified herein which letter is annexed hereto and made a part hereof and designated as Exhibit 2.
7. The applicant shall install site and contiguous property protection measures as directed by the Board Engineer and Borough personnel during the construction of this project.
8. The applicant and any successors shall be responsible for trash and recyclable pick-up at the site.
9. All equipment installed on the rooftop of any structure at the site shall be adequately screened and said screening shall be approved by the Board Engineer.
10. The condominium Master Deed and/or By-laws shall provide that the Condominium association shall be required to maintain the following improvements made to the site at its own cost and expense such improvements to include interior roadways, sanitary and storm sewers, facilities and street lights in accordance with the requirements of the various agencies or entities that own, regulate or oversee the aforementioned improvements.
11. The applicant shall be required to maintain the driveway to the property during the construction of the project.
12. The cost of all monitoring, inspections and personnel required to oversee this project shall be paid for by the applicant. No expense for the foregoing shall be charged to the Borough for this project unless paid for by the applicant.
13. The applicant shall maintain any and all excavations, such as, but not limited to, pumping of water and stabilization of fill material.
14. The applicant shall submit amended plans and documents showing the following items and all other items contained elsewhere in this resolution to the Board Engineer for his review and approval:
 - a. Identification of the public access through the site and signage along that pathway.

- b. Location and installation of a “gate arm” between the two subdivided lots for emergency access.
- c. Provision for common area parking for the residential component which consists of 18 parking stalls in the area labeled as “D” units. The two units labeled “D” on the site plan facing Road C through approval herein shall not be constructed until such time as an alternate site on the property shall be designated for common area parking by way of formal amendment to site plan approval.
- d. The applicant shall amend the stormwater report to include a discussion of the potential for a strong flow of water effect during tide fluctuations between the site along the south and side slope of Shore Drive. The applicant shall not increase the run-off to adjacent properties.
- e. The applicant shall provide additional as-built survey data within and adjacent to the site and correct any and all drainage issues created by the proposed development. This is a continuing condition.
- f. The applicant shall install Tide Flex or similar valves at all existing and proposed outfalls leaving the site.
- g. The enhancement of the sidewalk crossings.
15. The applicant shall obtain all approvals necessary for the project from all local, county, state and federal agencies that have jurisdiction over the project and supply copies thereof to the Board and the Board Engineer. In the event any outside agency approves the project with any changes, amendments and/or adds or detracts from any of the conditions of this approval the applicant must submit those approvals to this Board for its review and approval.
16. The applicant shall pay all the applicable fees associated with the project.
17. This approval is subject to the approval of the project by the Atlantic Highlands, Highlands Regional Sewerage Authority and the Borough of Highlands and any conditions imposed on the applicant by said Authority and the Borough, as well as any other agencies that will supply utilities to this project prior to final approval.
18. The approval contained herein and the conditions attached to this approval are hereby imposed on this applicant and this project and any and all successors to the applicant’s interest in this project and/or the real property on which it is located.

19. The applicant shall confer with the Board Engineer and investigate the sanitary sewer issue relating to Locust Street raised at the public hearings.
20. The applicant shall confer with the Board Engineer and attempt to revise the flow of the sanitary sewer from the Waterwitch Pump Station to the system along Shore Drive. This issue requires submission of additional documentation from the applicant which must be reviewed by the Board Engineer. In the event the Board Engineer determines that the re-routing of the flow is not possible along Shore Drive this matter will be re-submitted to the jurisdictional authority for its determination.
21. The foundation for the proposed building adjacent to Lot 7 shall also be used as a retaining wall in order to eliminate the proposed retaining wall at that location. The unit types for the building at this location shall conform to the revised architectural drawings submitted into evidence on behalf of the applicant at the meeting held on January 9, 2014.
22. The applicant shall confer with the Borough Police Department and/or related Borough departments to resolve any traffic issues that arise during the construction of this project.
23. The applicant shall obtain all necessary easements for construction of this project and any continued maintenance of the project.
24. The installation of the storage shed during construction of this project shall be on a temporary basis.
25. The applicant shall conform to the finding fact set forth above (in addition to all of the other findings of fact) that addresses the winter boat storage in the parking area and its affect on the restaurant parking spaces.
26. As indicated above the restaurant will not be permitted to have a roof deck for patron usage.
27. This approval is contingent on the applicant obtaining the approval of the Borough of Atlantic Highlands permitting the annexation to the Borough of Highlands of the small westerly area depicted on the plans submitted into evidence which are incorporated herein by this approval with no need to return to the Board unless same shall not be approved by Atlantic Highlands Planning Board or de-annexed from the Borough of Atlantic Highlands and annexed to the Borough of Highlands or should approved site plans be substantially modified than as approved herein. The applicant is under a continuing duty to keep this Board informed of the progress or lack thereof of this item. This approval may

need to be amended or modified as determined by this Board based on the determination of this issue by the Borough of Atlantic Highlands.

Seconded by Mr. Gallagher and adopted on the following roll call vote:

Ayes: Mr. Gallagher, Mr. Hill, Mr. Redmond, Mr. Colby, Mr. Korn, Mr. Stockton

Nays: None

Abstain: None

March 13, 2014.

Carolyn Cummins, Board Secretary

I certify this to be a true copy of a Memorialization Resolution adopted by the Borough of Highlands Planning Board on March 13, 2014.

Carolyn Cummins, Board Secretary