

BOARD OF ZONING APPEALS
VILLAGE OF ATLANTIC BEACH

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In the Matter of the Application of

**1846 PARK STREET REALTY LLC
1846-1850 Park Street
Atlantic Beach, New York**

**For relief in respect of
Village Code §250-125(D)(3)**

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WHEREAS, 1846 Park Street Realty LLC ("Applicant") submitted plans seeking to convert a portion of the building at 1846-1850 Park Street, Atlantic Beach, from retail occupancy to restaurant occupancy, and

WHEREAS, the Building Department determined that the proposal did not comply with the following Village Code sections: (a) Village Code §250-4(B) in that the physical area occupied by any legal nonconforming use shall not be expanded, (b) Village Code §250-4(C) in that no legal nonconforming building may be expanded unless the use is expressly permitted in the regulations applicable to the zoning district and not a legal nonconforming use, (c) Village Code §250-125(A)(8), to permit 16 on-site parking spaces, where a minimum of 30 spaces is required, (d) Village Code §250-125(D)(3), to provide a parking aisle width of 22 and 13 feet, where a minimum of 24 feet is required, (e) Village Code §250-125(F), in that no parking space is permitted in a front yard, except where the Board of Zoning Appeals grants a special exception, and (f) Village Code §250-108, to permit HVAC rooftop equipment, where such structure requires a special exception from the Board, and

WHEREAS, the application for variances of the aforesaid provisions has been referred to the Nassau County Planning Commission in accordance with the General Municipal Law, and the Planning Commission has not responded timely to the referral, and

WHEREAS, the Board has separately rendered a SEQRA determination, and

WHEREAS, the Board held a public hearing on the application for variances, and

WHEREAS, the Board has determined that the application does not require variances of Village Code §§250-4(B) or (C) for reasons explained in that determination, and

WHEREAS, the Board has determined to consider each of the remaining variances individually,

NOW, THEREFORE, BE IT RESOLVED, that the Board makes the following findings and determination with respect to the variance of Village Code Village Code §250-125(D)(3), to provide a parking aisle width of 22 and 13 feet, where a minimum of 24 feet is required:

1. The premises are located at 1846-1850 Park Street, Atlantic Beach (the "Premises").

2. The Premises is located on the north side of Park Street, and bounded by Ithaca Avenue on the west and Jefferson Boulevard on the east.

3. The Applicant proposes to convert a portion of the building on the Premises to provide for an expansion of the restaurant occupancy in the existing

building, reconfigure the parking area on the eastern side of the property to provide for 16 tandem parking spaces with valet parking, and to relocate a rooftop HVAC unit further east and south. Regarding the interior renovation, as shown on the plans and as expressed by the Applicant, the kitchen area will be expanded, the dining area will be expanded to accommodate more space between tables and a separation of the dining area from the bar area, and a separate waiting area. The Applicant further testified that the restaurant business is financially challenging and the rearrangement of the interior with the additional 18 seats will provide better financial viability. The underlying benefit for these proposed modifications is to create a more pleasurable and spacious dining and waiting experience, with more space between tables, separation between the bar and dining area, and a larger kitchen providing improved spacing and cooking equipment for the kitchen staff. The Applicant also proposes to include occasional private parties, but will not be used as a catering hall for a significant number of events. The proposal includes no building expansion and no exterior physical building changes (other than the relocation of the rooftop HVAC unit and the redirecting of the HVAC venting towards Park Street).

4. The Applicant proposes a maximum seating occupancy of 93 customers. Presently, the restaurant provides for a seating capacity of 75. Thus, there is a net increase in seating of 18 people. The proposed renovation also eliminates a part of the retail occupancy for the part of the building that will be occupied by the restaurant.

5. The current parking lot configuration provides for driveway aisles of 24, 22 and 13 feet. Thus, based on the existing parking lot configuration the aisle widths of 13 and 22 are deficient.

6. Applicant submitted revised plans dated 10-6-25 providing for an alternate tandem parking arrangement to be serviced by valet parking via Ithaca Avenue. The tandem parking plan depicts 16 parking spaces and an aisle width of 24 feet. Accordingly, the alternate parking layout provides for a zoning compliant 24 foot wide aisle.

7. The Board has approved the variance for the number of parking spaces in accordance with the alternate parking layout. Thus, on account of the approval of the alternate parking layout, the proposed parking aisle width is now compliant with the 24 foot minimum requirement and no variance is required.

BOARD OF ZONING APPEALS
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In the Matter of the Application of

**1846 PARK STREET REALTY LLC
1846-1850 Park Street
Atlantic Beach, New York**

**For relief in respect of
Village Code §250-125(F)**

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WHEREAS, 1846 Park Street Realty LLC ("Applicant") submitted plans seeking to convert a portion of the building at 1846-1850 Park Street, Atlantic Beach, from retail occupancy to restaurant occupancy, and

WHEREAS, the Building Department determined that the proposal did not comply with the following Village Code sections: (a) Village Code §250-4(B) in that the physical area occupied by any legal nonconforming use shall not be expanded, (b) Village Code §250-4(C) in that no legal nonconforming building may be expanded unless the use is expressly permitted in the regulations applicable to the zoning district and not a legal nonconforming use, (c) Village Code §250-125(A)(8), to permit 16 on-site parking spaces, where a minimum of 30 spaces is required, (d) Village Code §250-125(D)(3), to provide a parking aisle width of 22 and 13 feet, where a minimum of 24 feet is required, (e) Village Code §250-125(F), in that no parking space is permitted in a front yard, except where the Board of Zoning Appeals grants a special exception, and (f) Village Code §250-108, to permit HVAC rooftop equipment, where such structure requires a special exception from the Board, and

WHEREAS, the application for variances of the aforesaid provisions has been referred to the Nassau County Planning Commission in accordance with the General Municipal Law, and the Planning Commission has not responded timely to the referral, and

WHEREAS, the Board has separately rendered a SEQRA determination, and

WHEREAS, the Board held a public hearing on the application for variances, and

WHEREAS, the Board has determined that the application does not require variances of Village Code §§250-4(B) or (C) for reasons explained in that determination, and

WHEREAS, the Board has determined to consider each of the remaining variances individually,

NOW, THEREFORE, BE IT RESOLVED, that the Board makes the following findings and determination with respect to the variance of Village Code §250-125(F), in that no parking space is permitted in a front yard, except where the Board of Zoning Appeals grants a special exception:

1. The premises are located at 1846-1850 Park Street, Atlantic Beach (the "Premises").

2. The Premises is located on the north side of Park Street, and bounded by Ithaca Avenue on the west and Jefferson Boulevard on the east.

3. The Applicant proposes to convert a portion of the building on the Premises to provide for an expansion of the restaurant occupancy in the existing

building, reconfigure the parking area on the eastern side of the property to provide for 16 tandem parking spaces with valet parking, and to relocate a rooftop HVAC unit further east and south. Regarding the interior renovation, as shown on the plans and as expressed by the Applicant, the kitchen area will be expanded, the dining area will be expanded to accommodate more space between tables and a separation of the dining area from the bar area, and a separate waiting area. The Applicant further testified that the restaurant business is financially challenging and the rearrangement of the interior with the additional 18 seats will provide better financial viability. The underlying benefit for these proposed modifications is to create a more pleasurable and spacious dining and waiting experience, with more space between tables, separation between the bar and dining area, and a larger kitchen providing improved spacing and cooking equipment for the kitchen staff. The Applicant also proposes to include occasional private parties, but will not be used as a catering hall for a significant number of events. The proposal includes no building expansion and no exterior physical building changes (other than the relocation of the rooftop HVAC unit and the redirecting of the HVAC venting towards Park Street).

4. The Applicant proposes a maximum seating occupancy of 93 customers. Presently, the restaurant provides for a seating capacity of 75. Thus, there is a net increase in seating of 18 people. The proposed renovation also eliminates a part of the retail occupancy for the part of the building that will be occupied by the restaurant.

5. The Applicant submitted revised plans dated 10-6-25 providing for an alternate tandem parking arrangement to be serviced by valet parking via Ithaca Avenue. The tandem parking plan depicts 16 parking spaces utilizing an existing on-site parking area along Ithaca Avenue.

6. The existing front yard parking area will be reconfigured within its existing space, as shown in the alternate layout plan approved by the Board in connection with the determination regarding the number of parking spaces. This reconfiguration does not expand the parking area and utilizes the same front yard area for parking. The only changes are the reconfiguration of the parking area to provide for tandem parking spaces and relocation of the curb cut immediately south of the existing curb cut. Valet parking will be provided during the hours of operation of the restaurant, with the valet staff remaining on site for receiving and delivering cars to patrons and parking patrons' vehicles on-site.

7. Access to the parking area is to remain along Ithaca Avenue, with no access directly from Park Street. The Premises is bounded by three (3) roadways, including Ithaca Avenue, Park Street and Jefferson Boulevard, and the existing building location (which was constructed in or around the 1920s) provides for no on-site area for vehicular parking.

8. Park Street is a Nassau County road, with on-street parking spaces available to the public, including customers of the Premises, for restricted hours in front of the Premises. On-street public parking spaces also are available along the west side of Ithaca Avenue and the north side of Park Street between Ithaca Avenue and Hamilton Avenue subject to time restrictions. The property

immediately west of the premises is occupied by a utility company (with a sewer pumping station on site), and includes the entirety of the block between Park Street, Ithaca Avenue, Hamilton Avenue and Bay Boulevard.

9. Ithaca Avenue is a one-way northbound street and Jefferson Boulevard is a 2 way street with a signal controlled access at Park Street. Customers of the Premises who arrive by motor vehicle can park in any available on-street parking space or utilize the valet service for on-site parking.

10. In or around 2023, the Applicant applied to utilize the entire building as part of the proposed restaurant, which proposal required variances including variances related to parking. In June 2025, the Board denied the variances due to insufficient parking and impacts on the community resulting from the use of off-site parking using a valet parking system. The proposed use only uses a portion of the additional building space for restaurant purposes, increases the on-site parking spaces to 16 as part of a proposed valet parking system, and limits the proposed valet parking to on-site parking.

11. During the hearing on the current application, much discussion was had relative to the direction of travel along Ithaca Avenue and whether the Applicant should consider making a request of the Village Board of Trustees to change the direction of travel on Ithaca Avenue. The permitted direction of travel is solely within the jurisdiction of the Board of Trustees and this decision does not address or advocate for any such change.

12. The current on-site parking location and configuration allows for 10 parking spaces on the Premises for all on-site uses. The proposed site

renovation will accommodate an additional 6 parking spaces within the area existing for parking, for a total of 16 on-site tandem parking spaces and include valet parking during all hours when the restaurant is open. The Building Inspector determined that the tandem spaces configuration qualifies as 16 lawful on-site spaces, subject to approval by the Board as to whether to permit the tandem spaces for purposes of the proposed renovation. Additionally, the proposed valet parking will require a license in accordance with Article III of Chapter 130 of the Village Code.

13. Prior to the incorporation of the Village, as reported by the Building Inspector, the use of the Premises received approval from the Town of Hempstead to provide for relief to permit a reduction in on-site parking spaces on account of 25 spaces being available off-site. According to the Building Inspector, the proposed renovation would result in an overall on-site parking requirement of 55 spaces, including the 25 for which a previous approval had been granted. Thus, the existing on-site parking configuration of 10 spaces, where 30 on-site parking spaces would be required, results in an on-site parking deficiency (when solely applying the Village Code) of 20 spaces. The proposal provides for six (6) additional spaces to accommodate the increase in capacity, as testified to, of 18 patrons. Based on the parking calculation provided in the Village Code (1 space for 3 restaurant patrons), the proposed increased occupancy would require six (6) additional spaces, as determined by the Building Inspector. Thus, the increase in parking spaces (6) equates to the number of additional parking spaces required (6) on account of the proposal.

14. The approval requested is a special exception, as provided in Village Code §§250-125(F) and 250-100(D)(2). While the Village Code provides no guidelines for the Board's consideration relative to a special exception, the underlying consideration, as set forth in Village Law §7-725-b is to determine whether the proposed use is in harmony and will not adversely affect the neighborhood. In considering whether the proposed front yard parking area is in harmony and will not adversely impact the neighborhood, the Board considers many of the same factors utilized for an area variance in relation to the potential adverse impact on the neighborhood.

15. For the reasons set forth herein, the Board finds and concludes that the proposed (and continued) use of the parking area in the front yard for parking as shown in the alternate layout plan is in harmony with the existing neighborhood and will not adversely impact the neighborhood. In reaching this conclusion, the Board makes the following findings.

16. The special exception is merely a continued use of an existing parking lot, a condition that has existed for decades. The parking lot exists presently and has been used for commercial purposes. The evidence sufficiently demonstrates that the continued use of this parking area with 16 spaces fronting on Ithaca Avenue will not produce an adverse impact in the neighborhood character or detriment to nearby properties. There has been a restaurant at the premises for many years and the parking lot at the corner of Ithaca and Park, with access solely from Ithaca and no access from Park, has not changed. The current on-site parking arrangement accommodates 10 on-site spaces for the

Applicant's customers to use. Patrons also utilize the available off-site, on-street parking spaces, which spaces are available to any person, including restaurant patrons. These conditions exist currently. The Applicant now seeks to enlarge the restaurant space within the existing building, and in so doing, proposes an increased occupancy of 18 patrons. Based on the Village Code parking formula calculation, an additional 6 on-site parking spaces would be required to accommodate the additional proposed occupancy. This is the exact number of on-site tandem parking spaces proposed to be added at the Premises within the existing parking area, controlled by a valet parking arrangement during restaurant use hours.

17. By using the same parking area, without any expansion of the parking area, the result is the addition of parking spaces, in a tandem alignment, in the very same parking area as exists currently. As the parking area already exists, utilizing this area for continued parking to accommodate additional on-site parking without using any additional on-street parking in the abutting residential neighborhood, and actually reducing the on-street parking at times, minimizes any adverse or detrimental impact to the immediate neighborhood. Subject to compliance with the conditions of this decision, as set forth below, the proposed special permit to permit the front yard parking area to continue would not have an adverse or detrimental impact on either the neighborhood character or on nearby properties.

18. The Board finds that the requested special exception, when considered in relation to the existing conditions and the entire proposal (including

all variances), is not substantial. In reaching this conclusion, the Board views substantiality should not be viewed solely in the abstract based on the numerical variation, based on the entire proposal, the existing condition, and the impact on the neighborhood, the neighboring properties, and the public. As noted above, the parking area exists. Moreover, the Board finds that the purpose of limiting front yard parking is to minimize the aesthetic view from the streetscape and the proposed reconfiguration retains the area for parking purposes with no aesthetic change. By continuing to permit this area to serve as the on-site parking area, the Board finds that the special exception to permit the parking area to continue to be used for parking in a front yard to include 16 spaces is not substantial.

19. The building was built in the 1920s. There is no side or rear yard in which to provide parking on-site as the only open areas are the existing parking area and the corner of the property along Jefferson Boulevard and Park Street, both of which are front yard areas. Thus, there is no feasible zoning compliant alternative to provide on-site parking to accommodate the Applicant's benefit in expanding the restaurant, thus mandating a special exception to permit on-site parking in a front yard. As the on-site parking also takes vehicles off of the street, the on-street traffic impact is reduced.

20. As noted previously, the main purpose of limiting parking in a front yard is to reduce the aesthetic impact from the roadway and from those with views of the parking area. Here, the location of the parking area is not changing. While there will be a reallocation of the parking spaces, from the perspective of Park Street, the parking area will have the same visual impact as it does

currently and the Ithaca Avenue perspective will add only one additional car parallel with Ithaca Avenue. The main viewpoint to this parking area is on the west side of Ithaca Avenue. That parcel is a utility property (owned by the Atlantic Beach Water Reclamation District) with no buildings and contains only sewer pumping utility structures and open space. There is absolutely no visual impact to the owners of this property. And the property immediately north of the parking area contains an existing residence with an existing view onto and over the existing parking area. The border fence and hedges between the properties minimizes the existing impact from the ground level, and the second floor of the residence will continue to have a view of the parking area in the front yard. These views onto a parking area are not changing on account of the continued use of the front parking area. Thus, the Board finds that this impact is minimal under the circumstances and the proposed continuation, with the modified configuration remains in harmony with the neighborhood.

21. Subject to compliance with the following, the Board finds that the benefit to the Applicant outweighs any potential detriment to the neighborhood or neighboring properties:

- a. As the use of the parking lot for 16 spaces requires a valet parking arrangement to accommodate the tandem parking arrangement, this approval is contingent on the Applicant obtaining and maintaining a valid Village of Atlantic Beach valet parking license in accordance with Village Code Chapter 130, that includes and permits valet parking for on-

site parking spaces and the valet parking attendant being located on site at all times that the restaurant is open. The valet shall not be permitted to park any vehicles off of the Premises. Application for such licenses shall be submitted to the Village prior to submission of a building permit for the proposed work and given the conditional nature of this approval must be obtained before any such building permit issues. Should the Applicant not apply for a valet parking license within 60 days of the filing of this determination, this determination shall be null and void.

- b. The parking arrangement shall be in accord with the "Alternate Parking Layout (16) spaces" as shown in the plan entitled "Plot Plan", prepared by John F. Capobianco, last revised 10-6-2025.
- c. The Applicant may host occasional private parties (not more than one per month) for not more than 50 people within the restaurant, but shall not advertise as a catering hall facility.
- d. The hours of operation shall be no greater than 5-10pm on Tuesday through Thursday and 4-11pm on Friday through Sunday from mid-October through mid-April and 4-11pm on all days from mid-April through mid-October.
- e. This decision is subject to the provisions in Village Code §250-98.

BOARD OF ZONING APPEALS
VILLAGE OF ATLANTIC BEACH

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In the Matter of the Application of

**1846 PARK STREET REALTY LLC
1846-1850 Park Street
Atlantic Beach, New York**

**For relief in respect of
Village Code §250-108**

-x

WHEREAS, 1846 Park Street Realty LLC ("Applicant") submitted plans seeking to convert a portion of the building at 1846-1850 Park Street, Atlantic Beach, from retail occupancy to restaurant occupancy, and

WHEREAS, the Building Department determined that the proposal did not comply with the following Village Code sections: (a) Village Code §250-4(B) in that the physical area occupied by any legal nonconforming use shall not be expanded, (b) Village Code §250-4(C) in that no legal nonconforming building may be expanded unless the use is expressly permitted in the regulations applicable to the zoning district and not a legal nonconforming use, (c) Village Code §250-125(A)(8), to permit 16 on-site parking spaces, where a minimum of 30 spaces is required (d) Village Code §250-125(D)(3), to provide a parking aisle width of 22 and 13 feet, where a minimum of 24 feet is required, (e) Village Code §250-125(F), in that no parking space is permitted in a front yard, except where the Board of Zoning Appeals grants a special exception, and (f) Village Code §250-108, to permit HVAC rooftop equipment, where such structure requires a special exception from the Board, and

WHEREAS, the application for variances of the aforesaid provisions has been referred to the Nassau County Planning Commission in accordance with the General Municipal Law, and the Planning Commission has not responded timely to the referral, and

WHEREAS, the Board has separately rendered a SEQRA determination, and

WHEREAS, the Board held a public hearing on the application for variances, and

WHEREAS, the Board has determined that the application does not require variances of Village Code §§250-4(B) or (C) for reasons explained in that determination, and

WHEREAS, the Board has determined to consider each of the remaining variances individually,

NOW, THEREFORE, BE IT RESOLVED, that the Board makes the following findings and determination with respect to Village Code §250-108, to permit HVAC rooftop equipment, where such structure requires a special exception from the Board:

1. The premises are located at 1846-1850 Park Street, Atlantic Beach (the "Premises").

2. The Premises is located on the north side of Park Street, and bounded by Ithaca Avenue on the west and Jefferson Boulevard on the east.

3. The Applicant proposes to convert a portion of the building on the Premises to provide for an expansion of the restaurant occupancy in the existing

building, reconfigure the parking area on the eastern side of the property to provide for 16 tandem parking spaces with valet parking, and to relocate a rooftop HVAC unit further east and south. Regarding the interior renovation, as shown on the plans and as expressed by the Applicant, the kitchen area will be expanded, the dining area will be expanded to accommodate more space between tables and a separation of the dining area from the bar area, and a separate waiting area. The Applicant further testified that the restaurant business is financially challenging and the rearrangement of the interior with the additional 18 seats will provide better financial viability. The underlying benefit for these proposed modifications is to create a more pleasurable and spacious dining and waiting experience, with more space between tables, separation between the bar and dining area, and a larger kitchen providing improved spacing and cooking equipment for the kitchen staff. The Applicant also proposes to include occasional private parties, but will not be used as a catering hall for a significant number of events. The proposal includes no building expansion and no exterior physical building changes (other than the relocation of the rooftop HVAC unit and the redirecting of the HVAC venting towards Park Street).

4. The Applicant proposes a maximum seating occupancy of 93 customers. Presently, the restaurant provides for a seating capacity of 75. Thus, there is a net increase in seating of 18 people (12 new dining seats plus 6 new lounge waiting area seating). The proposed renovation also eliminates a part of the retail occupancy for the part of the building that will be occupied by the restaurant.

5. Presently, the HVAC equipment is located on the rooftop of the building. As part of the renovation, the Applicant proposes to relocate the rooftop HVAC equipment to a point further south and west on the building, providing for venting in the direction of Park Street (away from the two (2) abutting residential properties and towards an open roadway) and acoustical screening to further minimize potential odors, and reduce noise and visual impacts to the neighborhood.

6. Park Street is a Nassau County road, with seven (7) lanes in front of the Premises, 4 for moving traffic (2 in each direction), 1 dedicated turning lane and 2 parking lanes (1 on the south side of Park and the other on the north side of Park). Directly across the street is a parking lot used for parking in connection with one of the beach clubs.

7. By relocating and repositioning the HVAC equipment, the Applicant is able to move the equipment further from the two (2) northerly abutting residential properties and closer to a 7 lane roadway and parking lot on the south side of the road. Clearly, this relocation, with the additional protections (screening and southerly venting direction), provides a more harmonious relationship in the neighborhood than the current existing equipment.

8. The approval requested is a special exception, as provided in Village Code §250-125(F). While the Village Code provides no guidelines for the Board's consideration relative to a special exception, the underlying consideration, as set forth in Village Law §7-725-b is to determine whether the proposed use is in harmony and will not adversely affect the neighborhood. In

considering whether the proposed front yard parking area is in harmony and will not adversely impact the neighborhood, the Board considers many of the same factors utilized for an area variance in relation to the potential adverse impact on the neighborhood.

9. For the reasons set forth herein, the Board finds and concludes that the proposed relocation of the HVAC equipment is in harmony with the existing neighborhood and will not adversely impact the neighborhood. In reaching this conclusion, the Board makes the following findings.

10. The special exception improves an existing condition by relocating the equipment, positioning the equipment and the venting away from residential properties and providing additional screening to further ameliorate any potential impacts on the residential neighbors. The evidence sufficiently demonstrates that the proposed equipment will not produce an adverse impact in the neighborhood character or detriment to nearby properties.

11. The Board finds that the requested special exception, when considered in relation to the existing conditions and the entire proposal (including all variances), is minimal and in harmony with the neighborhood. As noted above, the rooftop equipment exists. The proposed relocation, repositioning and protective features, reduces impact on the residential neighborhood and provide for protections more congruent with the existing neighborhood conditions.

12. The building was built in the 1920s. Locating the equipment in the proposed location, rather than keeping it in its present location or relocating

to a ground level location on the site (which could be closer to the residential properties), is more in harmony with the community.

13. Subject to compliance with the following, the Board finds that the benefit to the Applicant outweighs any potential detriment to the neighborhood or neighboring properties:

- a. The HVAC equipment shall be installed in the location shown on the 10-6-2025 plot plan, and shall be screened by acoustical screening designed to minimize noise, odors and visual impacts on the northerly abutting properties in a size and material as determined by the Building Inspector.
- b. The HVAC equipment shall include venting positioned solely in a southerly direction to provide for the venting from the kitchen to face in a directly southerly direction directly towards Park Street.
- c. The Applicant shall obtain all permits, licenses and other approvals from any other agency with jurisdiction relative to the proposed kitchen renovation, including any additional approvals required for the HVAC equipment and the venting.
- d. This decision is subject to the provisions in Village Code §250-98.

BOARD OF ZONING APPEALS
VILLAGE OF ATLANTIC BEACH

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In the Matter of the Application of

**1846 PARK STREET REALTY LLC
1846-1850 Park Street
Atlantic Beach, New York**

**For relief in respect of
Village Code §250-125(A)(8)**

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WHEREAS, 1846 Park Street Realty LLC ("Applicant") submitted plans seeking to convert a portion of the building at 1846-1850 Park Street, Atlantic Beach, from retail occupancy to restaurant occupancy, and

WHEREAS, the Building Department determined that the proposal did not comply with the following Village Code sections: (a) Village Code §250-4(B) in that the physical area occupied by any legal nonconforming use shall not be expanded, (b) Village Code §250-4(C) in that no legal nonconforming building may be expanded unless the use is expressly permitted in the regulations applicable to the zoning district and not a legal nonconforming use, (c) Village Code §250-125(A)(8), to permit 16 on-site parking spaces, where a minimum of 30 spaces is required (accounting for 55 total spaces required upon the occupancy conversion and 25 off-site spaces having been grandfathered previously), (d) Village Code §250-125(D)(3), to provide a parking aisle width of 22 and 13 feet, where a minimum of 24 feet is required, (e) Village Code §250-125(F), in that no parking space is permitted in a front yard, except where the Board of Zoning Appeals grants a special exception, and (f) Village Code §250-

108, to permit HVAC rooftop equipment, where such structure requires a special exception from the Board, and

WHEREAS, the application for variances of the aforesaid provisions has been referred to the Nassau County Planning Commission in accordance with the General Municipal Law, and the Planning Commission has not responded timely to the referral, and

WHEREAS, the Board has separately rendered a SEQRA determination, and

WHEREAS, the Board held a public hearing on the application for variances, and

WHEREAS, the Board has determined that the application does not require variances of Village Code §§250-4(B) or (C) for reasons explained in that determination, and

WHEREAS, the Board has determined to consider each of the remaining variances individually,

NOW, THEREFORE, BE IT RESOLVED, that the Board makes the following findings and determination with respect to the variance of Village Code §250-125(A)(8), to permit 16 on-site parking spaces, where a minimum of 30 spaces is required (accounting for 55 total spaces required upon the occupancy conversion and 25 off-site spaces having been grandfathered previously):

1. The premises are located at 1846-1850 Park Street, Atlantic Beach (the "Premises").

2. The Premises is located on the north side of Park Street, and bounded by Ithaca Avenue on the west and Jefferson Boulevard on the east.

3. The Applicant proposes to convert a portion of the building on the Premises to provide for an expansion of the restaurant occupancy in the existing building, reconfigure the parking area on the western side of the property to provide for 16 tandem parking spaces with valet parking, and to relocate a rooftop HVAC unit further east and south. Regarding the interior renovation, as shown on the plans and as expressed by the Applicant, the kitchen area will be expanded, the dining area will be expanded to accommodate more space between tables and a separation of the dining area from the bar area and a separate waiting area. The Applicant further testified that the restaurant business is financially challenging and the rearrangement of the interior with the additional 18 seats will provide better financial viability. The underlying benefit for these proposed modifications is to create a more pleasurable and spacious dining and waiting experience, with more space between tables, separation between the bar and dining area, and a larger kitchen providing improved spacing and cooking equipment for the kitchen staff. The Applicant also proposes to include occasional private parties, but will not be used as a catering hall for a significant number of events. The proposal includes no building expansion and no exterior physical building changes (other than the relocation of the rooftop HVAC unit and the redirecting of the HVAC venting towards Park Street).

4. The Applicant proposes a maximum seating occupancy of 93 customers. Presently, the restaurant provides for a seating capacity of 75. Thus,

there is a net increase in seating of 18 people (12 new dining seats plus 6 new lounge-waiting area seating). The proposed renovation also eliminates a part of the retail occupancy for the part of the building that will be occupied by the restaurant.

5. The Applicant submitted revised plans dated 10-6-25 providing for an alternate tandem parking arrangement to be serviced by valet parking via Ithaca Avenue. The tandem parking plan depicts 16 parking spaces.

6. Park Street is a Nassau County road, with on-street parking spaces available to the public, including customers of the Premises, for restricted hours in front of the Premises. On-street public parking spaces also are available along the west side of Ithaca Avenue and the north side of Park Street between Ithaca Avenue and Hamilton Avenue subject to time restrictions. The property immediately west of the premises is occupied by a utility company (with facilities for sewer pumping), and includes the entirety of the block between Park Street, Ithaca Avenue, Hamilton Avenue and Bay Boulevard.

7. Ithaca Avenue is a one-way northbound street and Jefferson Boulevard is a 2 way street with a signal controlled access at Park Street. Customers of the Premises who arrive by motor vehicle can park in any available on-street parking space or utilize the valet service for on-site parking.

8. In or around 2023, Applicant applied to utilize the entire building as part of the proposed restaurant, which proposal required variances including variances related to parking. In June 2025, the Board denied the variances due to insufficient parking and impacts on the community resulting from the use of off-

site parking using a valet parking system. The proposed use only uses a portion of the additional building space for restaurant purposes, increases the on-site parking spaces to 16 as part of a proposed valet parking system, and limits the proposed valet parking to on-site parking.

9. During the hearing on the current application, much discussion was had relative to the direction of travel along Ithaca Avenue and whether the Applicant should consider making a request of the Village Board of Trustees to change the direction of travel on Ithaca Avenue. The permitted direction of travel is solely within the jurisdiction of the Board of Trustees and this decision does not address or advocate for any such change.

10. The current on-site parking configuration allows for 10 parking spaces on the Premises for all on-site uses. The proposed site renovation will accommodate an additional 6 parking spaces, for a total of 16 on-site tandem parking spaces and include valet parking during all hours when the restaurant is open. The Building Inspector determined that the tandem spaces configuration qualifies as 16 lawful on-site spaces, subject to approval by the Board as to whether to permit the tandem spaces for purposes of the proposed renovation. Additionally, the proposed valet parking will require a license in accordance with Article III of Chapter 130 of the Village Code.

11. Prior to the incorporation of the Village, as reported by the Building Inspector, the use of the Premises as a restaurant was permitted by the Town of Hempstead resulting in an grandfathered variationto permit the use of the premises with 25 less spaces than otherwise required.. According to the Building

Inspector, the proposed renovation would result in an overall on-site parking requirement of 55 spaces, including the 25 which were previously grandfathered . Thus, the existing on-site parking configuration of 10 spaces, where 30 on-site parking spaces would be required, results in an on-site parking deficiency (when solely applying the Village Code) of 20 spaces. The proposal provides for six (6) additional spaces to accommodate the increase in capacity, as testified to, of 18 patrons. Based on the parking calculation provided in the Village Code (1 space for 3 restaurant patrons), the proposed increased occupancy would require six (6) additional spaces, as determined by the Building Inspector. Thus, on account of the occupancy conversion the increase in parking spaces (6) equates to the number of additional parking spaces required (6) on account of the proposal.

12. The variance is an area variance. In determining whether to grant an area variance, the Board takes into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board is required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-

created, which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance.

13. For the reasons set forth herein, the Board finds and concludes that the benefit to the Applicant outweighs any detriment to the neighborhood and grants the requested variance of Village Code §250-125(A)(8). In reaching this conclusion, the Board has considered the relevant statutory factors in relation to the variance.

14. With regard to whether the proposed variance would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, the evidence sufficiently demonstrates that the proposed variance will not produce an undesirable change in the neighborhood character or detriment to nearby properties. There has been a restaurant at the premises for many years. The current on-site parking arrangement provides for 10 on-site spaces for the Applicant's customers to use. Patrons also utilize the available off-site, on-street parking spaces, which spaces are available to any person, including restaurant patrons. These conditions exist currently. The Applicant now seeks to enlarge the restaurant space within the existing building, and in so doing, proposes an increased occupancy of 18 patrons. Based on the Village Code parking formula calculation, an additional 6 parking spaces would be required to accommodate the additional proposed occupancy. This is the exact number of on-site parking spaces proposed to be added at the Premises.

15. In this regard, the net effect of the increase in restaurant occupancy is accommodated by the Applicant in providing for sufficient on-site parking

spaces using a tandem arrangement and valet parking services. Subject to compliance with the conditions of this decision, as set forth below, the proposed variance would not have an adverse or detrimental impact on either the neighborhood character or on nearby properties.

16. The Board finds that the requested variance (to provide for 6 additional spaces where 6 additional spaces are required), when considered in relation to the existing conditions and the entire proposal (including all variances), is not substantial. In reaching this conclusion, the Board is mindful that substantiality cannot be viewed solely in the abstract based on the numerical variation, but rather must encompass the entire proposal and the impact on the neighborhood, the neighboring properties, and the public. As noted above, the Board finds that the same number of spaces that are required as a result of the additional occupancy are being provided by the Applicant. Thus, although the variance appears to involve a parking deficiency of 14 spaces (55 required, 25 off-site previously grandfathered, and 16 on-site, leaving the 14 space difference), which standing alone would be substantial in this neighborhood, the actual increase in required parking spaces for the renovation is six (6) spaces. And, since the proposal provides for an additional six (6) on-site spaces, the actual parking increase is addressed on-site. Thus, the variance is, on the whole, not substantial.

17. As to whether there are feasible alternatives for the Applicant to pursue to achieve the desired benefit, the Board finds that no such alternatives exist. The Applicant seeks an occupancy of an additional 18 patrons and a

redesigned interior to provide for a more spacious experience for patrons, whether seated, at the bar or waiting for a table, and kitchen staff. Since this proposed occupancy increase necessarily requires a variance based on a 1 space per 3 patron formula, there is no alternative.

18. As to whether the proposed variances will have an adverse impact on the physical or environmental conditions in the neighborhood, the Board finds that there will be minimal impact in this regard. In considering this factor, the Board notes that the proposed enlargement also necessarily results in a reduction of the parking used for other commercial uses that would use the existing commercial space. So, while the consideration of cars abutting a residential district does impact the physical and/or environmental conditions in the neighborhood in general, the use of the space for commercial uses, and its concomitant impact from cars on the adjoining neighborhood already exists. Thus, the Board finds that this impact is minimal under the circumstances.

19. As to the self-created hardship, the Board finds that the proposed variances are self-created. The applicant acquired the property with actual or constructive knowledge of the existing zoning limitations and that the expansion of a restaurant use would result in a need to apply for variances. It is evident that the hardship is self-created. Notwithstanding such finding, based on its consideration of the other factors set forth above, the Board finds that the self-created hardship is insufficient to warrant a denial.

20. Subject to compliance with the following, the Board finds that the benefit to the Applicant outweighs any potential detriment to the neighborhood or neighboring properties:

- a. As the use of the parking lot for 16 spaces requires a valet parking arrangement to accommodate the tandem parking arrangement, this approval is contingent on the Applicant obtaining and maintaining a valid Village of Atlantic Beach valet parking license in accordance with Village Code Chapter 130, that includes and permits valet parking for on-site parking spaces and the valet parking attendant being located on site at all times that the restaurant is open. The valet shall not be permitted to park any vehicles off the Premises. Application for such license shall be submitted to the Village prior to submission of a building permit for the proposed work and given the conditional nature of this approval must be obtained before any such building permit issues. Should the Applicant not apply for a valet parking license within 60 days of the filing of this determination, this determination shall be null and void.
- b. The parking arrangement shall be in accord with the "Alternate Parking Layout (16) spaces" as shown in the plan entitled "Plot Plan", prepared by John F. Capobianco, last revised 10-6-2025.

- c. The Applicant may host occasional private parties (not more than one per month) for not more than 50 people within the restaurant, but shall not advertise as a catering hall facility.
- d. The hours of operation shall be no greater than 5-10pm on Tuesday through Thursday and 4-11pm on Friday through Sunday from mid-October through mid-April and 4-11pm on all days from mid-April through mid-October.
- e. Exterior garbage containers or dumpsters shall be removed from the Premises and the Applicant shall provide for garbage/trash room inside of the building, and only place the garbage outside of the building beginning at the close of business on the night prior to scheduled garbage pickup.
- f. This decision is subject to the provisions in Village Code §250-98.

BOARD OF ZONING APPEALS
VILLAGE OF ATLANTIC BEACH

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In the Matter of the Application of

**1846 PARK STREET REALTY LLC
1846-1850 Park Street
Atlantic Beach, New York**

**For relief in respect of
Village Code §§250-4(B) and (C)**

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WHEREAS, 1846 Park Street Realty LLC ("Applicant") submitted plans seeking to modify the interior portion of the building at 1846-1850 Park Street, Atlantic Beach from retail occupancy to restaurant occupancy, and

WHEREAS, the Building Department determined that the proposal did not comply with various Village Code sections, including (a) Village Code §250-4(B) in that the physical area occupied by any legal nonconforming use shall not be expanded, and (b) Village Code §250-4(C) in that no legal nonconforming building may be expanded unless the use is expressly permitted in the regulations applicable to the zoning district and not a legal nonconforming use, and

WHEREAS, Applicant applied for variances of the Code sections identified by the Building Department, and

WHEREAS, during the public hearing on the application for such variances Applicant further explained that the building is the building and the proposed use is not being expanded, but rather a portion of the building used for commercial retail purposes is being converted to restaurant space, and

WHEREAS, the Board has authority to “reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken” as set forth in Village Law §7-712-b(1), and

NOW, THEREFORE, BE IT RESOLVED, that the Board makes the following findings and determination with respect to Village Code §§250-4(B) and (C):

1. The premises are located at 1846-1850 Park Street, Atlantic Beach (the “Premises”).
2. The Premises is located in the Village’s A Residence District. The only uses permitted as-of-right in the A Residence District are single family detached dwellings and municipal recreational uses and uses accessory to either such use, as well as religious and educational uses upon the issuance of a special exception permit. The Zoning Code contains neither a list of specific uses that are prohibited nor includes any differentiation between any commercial uses, including any differentiation between retail and restaurant as commercial uses, in the A Residence District.

3. A “nonconforming use” is defined in the Village Code as the “use of any land or building which does not conform to the use restrictions of [Chapter 250] for the zoning district in which it is maintained”.

4. The Village Code further defines a “legal nonconforming use” as “any nonconforming use which, at the time such use was commenced, was maintainable as a matter of right under the statutes, ordinances and general rules of law then in effect”. Thus, in the A Residence District, where the use does not qualify as (a) a single family dwelling or municipal use and uses accessory to either, or (b) religious or educational uses in accord with a special exception permit, but the use was commenced at a time when the use was permitted, the use qualifies as a lawful nonconforming use.

5. The Premises have been used for non-conforming commercial purposes for a period of time prior to the adoption of the Village Code in 2003.

Village Code §250-4(B)

6. The term “use” is not defined in the Village Code. Without a definition, the Code does not clearly indicate that the “nonconforming use” is the commercial nature of the use or the specific type of commercial use. Given such ambiguity and the Applicant’s contention that notwithstanding the Building Department’s determination relative to the use, there is no expansion, it is incumbent on the Board, given the claim that there has been no non-conforming use expansion, to consider whether the Building Department’s determination that the proposed conversion constitutes an expansion of a nonconforming use (as regulated in Village Code §250-4(B)) is the correct interpretation of the Village

Code. In making that determination, the Board understands that it may make an interpretation or determination as in the Board's opinion ought to have been made in the initial instance.

7. Here, critically, the Village Code does not separately designate restaurant and retail uses as different non-permitted uses. Both uses are forms of commercial uses. Without any differentiation, the restaurant and the retail use may qualify as a commercial use that is not permitted. Absent a clear, unambiguous distinction amongst various types of commercial uses, all commercial uses are prohibited regardless of form and nature. Thus, the commercial use of the Premises is non-conforming. That the Applicant proposes to convert a portion of the building, without expanding the building, from one commercial type of use to another does not change its non-conformity as a commercial use.

8. Additionally, the term "any" also is not defined in Chapter 250. Notably, a common definition of "any" is "one or more". Thus, as drafted, "any legal nonconforming use" can refer to either one particular nonconforming use or more than one such use. Thus, even if the restaurant use was a separate nonconforming use from the retail use (which the Board does not agree with), by using the term "any", without any definition, the term "any" can mean the whole panoply of nonconforming uses. And, under such circumstances, and cognizant that zoning laws are to be viewed in favor of the property owner where there is ambiguity, the Board finds that the term "any" can include the whole of commercial uses and not just a single form of use.

9. For each and both of the aforesaid reasons, the Board finds that the conversion of a portion of the existing building to allow for restaurant occupancy in place of retail occupancy, is not an expansion of any nonconforming use, and thus no variance of Village Code §250-4(B) is required.

Village Code §250-4(C)

10. The Building Department also determined that the proposed occupancy modification requires a variance of Village Code §250-4(C) in that a legal nonconforming building may not be expanded unless the use is expressly permitted and not a legal nonconforming use.

11. The Board finds that the building is not proposed to be expanded and therefore there can be no building expansion.

12. With respect to the New York State Environmental Quality Review Act (SEQRA), the Board determines that it is the lead agency, that the interpretation herein constitutes a Type II action under SEQRA and requires no environmental review.