

**ANNUAL REPORT FOR YEAR 2016
OF ATLANTIC HIGHLANDS UNIFIED
PLANNING BOARD/ZONING BOARD OF ADJUSTMENT**

Pursuant to N.J.S.A. 40:55D-70.1, the Zoning Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by Resolution a report of its findings on zoning ordinance provisions which were the subject of variance requests, and its recommendations for zoning ordinance amendment or revision, if any. The Zoning Board of Adjustment is required to send copies of the report and resolution to the Governing Body and Planning Board. Pursuant to N.J.S.A. 40:55D-25 the Planning Board of the Borough of Atlantic Highlands has been authorized to exercise, to the same extent and subject to the same restrictions, all the powers of the Zoning Board of Adjustment as a unified board. This report is intended to satisfy the foregoing provisions of the Municipal Land Use Law. The report of the Borough of Atlantic Highlands Unified Planning Board/Zoning Board of Adjustment is as follows:

The following is a listing of applications, including an identification of the Applicant's property, nature of the application and disposition of the case.

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB15-09	Bl. 95, Lot 4	10 Ocean Blvd.	Elk Harbor View, LLC Use Variance/Site Plan	MF-2

The Applicant applied for Use Variance (Density) and site plan approval pursuant to N.J.S.A. 40:55D-70.d(5) to increase the permitted density of an existing apartment building to 84 units where 45 units are permitted and 81 units presently exist. The application also required relief for deficient on-site parking spaces and excessive lot coverage. The applicant proposed converting interior portions of the ground floor presently used as a gym and storage area into three (3) new residential apartments. The applicant argued that the improvements were principally interior and adverse impacts would be minimal. The planning board disagreed, finding that the applicant's planning testimony regarding available off-site parking to satisfy the parking requirement was inaccurate. The planning board also found that the parking layout provided was flawed and that there would be fewer spaces on-site than represented if the spaces were required to be made conforming in dimension. The planning board found that the site is already burdened and could not accommodate the parking required by the additional proposed apartment units.

DENIED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB15-11	Bl. 135, Lot 5	56 W. Highland Ave.	Silakowski Bulk Variance	R-1

The Applicant requested bulk variance relief to permit the construction of a "switchback" handicap ramp in the front yard of a single family residence to allow access for the Applicant's disabled son from the driveway to the front entrance of the home requiring a front yard setback variance of 15 ft. where 20 ft. are required. The

Board found that a hardship existed due to the narrowness of the property, the location of the existing residence and the fact that the only practical handicap entrance to the building was from the front. The planning board found that the ramp was an open structure not increasing the size or mass of the home and that it would not result in a substantial detriment to the public good or a substantial impairment to the zone plan. The planning board also agreed with the applicant's architect that granting an additional side yard setback variance for 7 ft. where 10 ft are required to facilitate a better ramp design and granted that variance as well. The variance was conditioned upon the variance being for an uncovered ramp structure.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB15-06	Bl. 25, Lot 1	2 Keystone Drive	Manton/Crowley Subdivision with Bulk Variances	R-2

The Applicant applied for approval to subdivide a parcel into two (2) residential lots. One lot would retain an existing single family home and garage and the second lot would be developed with a new single family home. Variances were required for (1) having an accessory building on a lot with no principal building, (2) having an accessory building in a front yard, and (3) developing a lot on a street not improved to municipal standards. After many months of postponements by the applicant the planning board advised the applicant to be prepared to present the application at the September 2016 meeting or the application would be dismissed. The applicant failed to appear at the September 2016 meeting and the application was dismissed.

DISMISSED WITHOUT PREJUDICE

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB15-12	Bl. 114, Lot 4	20 Railroad Ave.	Zilber Use Variance/Site Plan	HBD

The Applicant requested a use variance to permit the use of the property for an art studio and personal services body art studio. The applicant demonstrated that he is a recognized artist who creates paintings as well as body art. The proposed studio would be a satellite of his New York City business and would be used only on a limited basis by appointment only. The facility will be discrete with no storefront or signage. There will be no exterior impacts due to limited hours, no signage, no walk-in traffic, no parking demand, no noise, no outside activity and no change to the exterior of the building. The planning board agreed. The planning board noted that the proposal is consistent with Master Plan Goals of revitalizing business with a small artist use with low key signage and litter-free environment and providing a stronger commercial attraction of new businesses. Insofar as there were no exterior changes proposed or needed by the applicant the planning board found it appropriate to waive the requirement for site plan approval.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB09-10	Bl. 131, Lot 1	24 Harborview Dr.	Hanafy Extension of Approval	R-1

The applicant received subdivision approval in 2011 to subdivide a single lot into two new lots with a front yard setback variance permitting a setback of 15 ft. where 20 ft are required. The 190 day time period within which to perfect the approval was tolled by the Permit Extension Act of 2008 until June 30, 2016. The applicant was not able to perfect the subdivision within that time frame and requested an extension by the planning board. The applicant did not appear at the assigned and correspondence from the applicant's attorney indicated that they could not meet the statutory criteria for extension. The extension request was dismissed without prejudice.

Subsequently the legislature further extended the Permit Extension Act tolling period through December 31, 2016 with the ability of an applicant to use up to six (6) months of protection time not used prior to the tolling provisions of the Act. The applicant submitted a request that the planning board confirm that the Permit Extension Act was applicable and that the applicant has until June 30, 2017 to perfect the subdivision. Since the Act applies the planning board adopted a resolution confirming the application of the Act.

EXTENDED BY OPERATION OF LAW

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB16-02	Bl. 114, Lot 4	85 First Ave.	Disher Use Variance & Site Plan	HBD

The applicant requested a use variance and minor site plan approval to permit a portion of the building to be used as a sports massage therapy office. Although "massage parlors" are not a permitted use in the HBD zone, the applicant demonstrated that she is a State licensed "personal trainer and sports message therapist" specializing in sport therapy principally to professional and collegiate athletes including a continuing relationship with Monmouth University and Rutgers University for their athletes. Her business is related exclusively to providing massage therapy to athletes to treat injuries and enhance performance levels. The planning board found that the subject business functions more like a permitted office use and is the type of use that the Master Goals intend to strengthen commercial attraction by providing a valuable and enhanced variety of services within the Borough. The planning board also found that the physical facility had no adverse impacts.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB16-03	Bl. 99, Lot 7&9	6 Washington Ave.	Carton Brewing Company Subdivision/Bulk Variance	R-3

The applicant applied for preliminary and final major site plan approval to demolish an existing 10,000 sq ft. one-story commercial building and replace it with a new two-story building on substantially the same footprint

with a 1.5 ft. shift toward First Avenue and minor modifications to the parking area approval received in a prior site plan application that had proposed retention of the existing 10,000 sq. ft. building that was later found to be structurally inadequate. After the applicant addressed a number of planning board concerns, including vehicular access from East Highland Ave., stormwater mitigation, downspout system, adding site triangle easements and street trees, the planning board approved the application.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-04	Bl. 8, Lot 21	31 Bayside Drive	McCoy Bulk Variances	R-3

The applicant applied for approval to demolish an existing single family home and replace it with a new single family home on the same building footprint. Variances were required to continue pre-existing nonconforming deficiencies in lot area, lot frontage, lot shape diameter, lot coverage, impervious coverage and a new variance for front setback of 19.4 ft. where 25 ft. are required and 21.7 ft. existed. The planning board found that there is a hardship associated with the subject property due to its being undersized, irregular shape and significant topography limiting the ability to comply with the ordinance requirements for a reasonable size home. The planning board further found that there would be no substantial detriment to the public good or impairment to the zone plan as a home of the same size and at the same location would be constructed continuing the same conditions that have existed for many years.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-01	Bl. 95, Lot 4	10 Ocean Blve.	Verizon Wireless Use Variance/Site Plan	MF-2

The applicant applied for use variance and site plan approval to install roof-top wireless telecommunication antennae and equipment with height deviation of 15 ft. 11 inches above the roof where 10 ft. are permitted and a total building height of 117+ ft. where 40 ft. are permitted with a floor area ratio of 1.359 where .55 is permitted. The applicant presented substantial un rebutted expert testimony establishing that (1) Verizon is licensed by the FCC to provide wireless service in this area, (2) the FCC requires substantially "seamless" service to customers, (3) there is an existing GAP in service in the Atlantic Highlands area, (4) propagation studies demonstrate the nature and scope of the GAP, (5) studies were performed to locate the best site to address the GAP which is the subject property, and (6) the impacts of the facility could be substantially mitigated through architectural, landscape and other techniques. That un rebutted expert testimony and exhibits satisfied the requirements set forth in the case law requiring the grant of the variances and site plan approval. The planning board placed significant conditions on the approval to mitigate impacts.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-05	Bl. 78, Lot 8	45 E. Highland Ave.	Stone Bulk Variance	R-1

The applicant applied for approval to construct a one-story building addition (284 sq. ft.) to the front and partial one-story (208 sq. ft.) and two-story (206 sq. ft.) to the rear of an existing dwelling to provide additional porch, garage and living space. Variances were required for side yard setback of 5.7 ft. on one side and 18.3 ft. total where 10 ft and 20 ft. total are required with lot coverage of 27.3% where 25% is permitted. The planning board found that a hardship exists due to the lot being undersized and narrow shape of the lot coupled with the existing location of the house on the property. The planning board particularly noted the practicality of having the additions follow the existing exterior wall lines. The planning board further found that there would be no substantial detriment to the public good or impairment of the zone plan as the additions were appropriate in scale and provide a pleasing aesthetic appearance and the structure was within building coverage limits and consistent with surrounding development.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-07	Bl. 141, Lot 11	105 Bay Ave..	Kaskiw/Nolte Bulk Variance	R-1

The Applicant applied to the Planning Board for approval to construct a covered deck (335 sq ft.) with a paver patio (507 sq. ft.) and relocated pool equipment with a principal side yard setback of 3.1 ft. where 10 ft. are required and total side yard setback of 17.8 ft. where 20 ft. are required, pool equipment accessory side yard setback of 1.3 ft. where 5 ft. are required and lot coverage of 56.1% where 50% is permitted. The planning board found that a hardship exists due to the lot being undersized and narrow coupled with the location of the existing structures which severely limit where additions can be placed. The applicant agreed as a condition of approval that the roofed deck would not be enclosed in the future to become interior living area. The planning board also agreed with the applicant that the pool equipment was being located at a point in the property that would have the lease effect of neighbors. The planning board also noted the substantial existing vegetative screening that buffers the improvements from neighboring properties. The planning board found that there would be no substantial detriment to the public good or substantial impairment of the zone resulting from the grant of the requested variances.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-06	Bl. 8, Lot 1.011	11 Hillside Rd..	Bonaduce Subdivision /Variances	R-3

The applicant applied for approval to subdivide an existing nonconforming lot with two (2) principal residences where only one principal residence is permitted on lot such that each principal residence would be

located on its own lot. No new improvements were requested, but numerous bulk variances were required to accommodate the subdivision due to the existing conditions of the property and location of the dwellings. The planning board agreed with the applicant's planning expert that it will be a substantial improvement to have each residence on its own lot and that the benefits of eliminating nonconforming use substantially outweigh the detriments of granting bulk variances which will have no impact upon the surrounding neighborhood, streetscape or zone plan

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB16-08	Bl. 1, Lot 22	44 Bayside Drive	Black Bulk Variance	R-3

The applicant requested approval to reconstruct an existing dwelling with swimming pool, paver driveway, pervious paver walkway and wooden deck with variances for side yard setback, building coverage, floor area ratio, steep slope lot coverage, steep slope impervious coverage and lot disturbance. The subject property suffered substantial storm damage and was proposed to be renovated. Permits were issued and the renovation commenced. During the course of renovation substantial additional latent structural damage was discovered requiring much additional work. The construction official determined that the renovation reached a point where the structure was considered to be more than partially destroyed and required the applicant to apply for variance relief. The planning board agreed with the applicants professionals that a hardship exists with respect to the property as they are pre-existing nonconformities and that some of the nonconformities are being reduced with the renovations.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB16-11	Bl. 135, Lot 27	21 South Ave.	South Avenue Holdings, LLC Minor Subdivision	R-1

The applicant requested approval to subdivide a 17,500 sq. ft. lot into two fully conforming lots. One lot would retain an existing residence and the other would be developed with a new single family home. Since the subdivision was fully conforming with no variances or waivers the applicant was entitled to approval.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB16-12	Bl. 50, Lot 7	90 Grand Ave.	Horan Bulk Variance	R-1

The applicant requested approval to have a second "shed" to be used as a pool cabana with dimensions of 16 ft. x 12 ft. (192 sq. ft.) with a side setback of 4.5 ft. where only one shed is permitted with a maximum floor area of 150 sq. ft. and 5 ft. side setback is required. The planning board found that the subject property had a

hardship due to its shape and location of existing structures. The planning board also found that the proposed cabana is an appropriate amenity to a residential swimming pool and functions more like an accessory structure than a shed. The planning board also noted that the other shed on the property is substantially undersized at 72 sq ft..

APPROVED

<u>ZONING ANALYSIS</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
NUMBER OF APPLICATIONS HANDLED	15	12	15	9
NUMBER GRANTED ¹	13	10	13	8
NUMBER DENIED	1	1	1	0
NUMBER WITHDRAWN	1	1	1	0
NUMBER STILL PENDING	0	0	0	1
<u>APPLICATIONS BY ZONE</u>				
NUMBER IN R-1 ZONE*	6	5	6	3
NUMBER IN R-2 ZONE	1	1	1	1
NUMBER IN R-3 ZONE	4	2	4	2
NUMBER IN HBD ZONE	2	3	1	2
NUMBER IN CBD ZONE*	0	2	4	2
NUMBER IN LI ZONE	0	1	0	0
NUMBER IN OR ZONE	0	0	0	0
NUMBER IN SC ZONE	0	0	0	0

¹ It should be noted that the high approval rate is the result of the Planning Board taking an active role in working with Applicants during the hearing process to suggest revisions to plans to improve design, diminish the extent of, or remove, variances and mitigate impacts in order to transform an unapprovable application into an approvable one. In addition some subdivision and site plan applications may have been fully conforming to the zoning regulations and required to be approved per the Pizzo Mantin case. Finally, applications may have been requests for either extension of approval period or minor administrative changes to previously approved plans.

	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
NUMBER IN MF-2 ZONE	2	0	0	0
<u>RELIEF SOUGHT</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
EXTENSION OF APPROVAL	1	1	2	1
APPEAL FROM ZONING OFFICER	0	3	0	0
MAJOR SUBDIVISION*	0	0	0	0
MAJOR SITE PLAN*	2	4	3	0
MINOR SUBDIVISION*	4	3	1	1**
MINOR SITE PLAN*	2	0	0	1
SITE PLAN WAIVER*	0	3	1	1
CONDITIONAL USE*	0	4	1	0
USE VARIANCE *	4	3	2	3
BULK VARIANCE*	9	6	11	5
DEVIATION FROM CONDITIONS OF APPROVAL	0	1	0	0

***NOTE: APPLICATIONS MAY HAVE INVOLVED MULTIPLE RELIEF RESULTING IN MORE ITEMS FOR RELIEF SOUGHT THAN APPLICATIONS**

**** APPLICATION WAS FOR LOT LINE ADJUSTMENT AND DID NOT CREATE ANY NEW LOTS**

<u>NATURE OF APPLICATION</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
COMMERCIAL	4	3	2	3
MIXED COMMERCIAL/RESIDENTIAL	1	3	1	1
MULTI-FAMILY/HIGH DENSITY	1	0	0	0
SINGLE FAMILY RESIDENTIAL	9	4	12	5
NEW CONSTRUCTION	4	5	3	2
TEAR DOWN/REBUILD	1	1	1	1
ADDITION	3	1	8	1
APPEAL FROM ZONING OFFICER	0	3	0	0
INTERPRETATION OF ORDINANCE	0	2	0	0
CERTIFICATION NONCONFORMING USE	0	0	0	0

COMMENTS:

The number of applications increased from 2015 but is consistent with the pattern of the prior two years. It is significantly increased from 2013 which is an indication that the economic recovery is stabilizing.

However, one application was for extension of prior approvals. One application sought amendment of a prior approval. The percentage of approvals is 86.6% and is consistent with prior years. The percentage of approvals remains high and is in large part due to the boards interaction with applicants giving them feedback resulting in modifications to applications in order to make them approvable. It has also been due to a number of applications being submitted "of right" without the need for variances. A significant number of applications (33%) submitted did not require new bulk variance approval. In a number of cases the variances requested were minor in nature. The number of denials remained low at 6%.

In 2016 the highest number of applications (40%) were for properties in the R-1 zone. This is consistent with 2014 and 2015 and an increase over 2013 (33.3%) and 2012 (37.5%) and is consistent with the past when the highest number of applications were for properties in the R-1 zone. The R-2 zone at 6.6 % is consistent with prior years but is a decrease from 2013 (11%) and a substantial decrease from the 25% experienced in 2012. The R-3 zone at 26.6% is an increase over 2015 but is consistent with prior years. Applications in the HBD zone decreased from 25% in 2015 to 13.3% . This fluctuation is consistent with prior years. There were no applications in the CBD zone which is a substantial decrease from the activity in prior years of 13.3% in 2015, 26.6% in 2014, 22.2% in 2013 and 19% in 2012. The LI zone had no applications which is consistent with recent years. The SC zone had no applications which is consistent with prior years. The MF-2 zone which has had no applications in recent years had two applications in 2016 for the same property. There continues to be interest in constructing new and improving existing residential homes, as well as in developing commercial properties in Atlantic Highlands. However that has still not rebounded to the levels that preceeded 2009.

Bulk variances continue to be the most sought approvals and were a component in 60% of applications. This is consistent with prior years and slightly higher than pre-2012 levels which hovered at 50%. It should be noted that no applications sought increased fence height which had been a significant percentage of variance requests in 2012. This may be responsive to the governing body's ordinance amendments respecting the calculation fence height which constituted a reaffirmation that it intends variances from the fence height limitations be given only sparingly and where substantial proofs have been submitted.

Single family homes accounted for approximately 40% of all applications. This is a substantial increase from 2015 (27%) and substantial drop from 80% in 2014. Commercial applications at 27% was consistent with prior years which ranged between 20% and 33.3%..

There do not appear to have been any major trends experienced in 2016. Nor have there been a significant number of applications requesting relief from a specific ordinance provision creating concern for the need to consider recommendations for changes due to their adverse impacts on properties. There have been two applications that raised questions that may be considered for zoning ordinance amendments that are discussed below.

RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENT OR REVISION

1. **Accessory Structures.** One applicant with an in ground swimming pool wished to place a "cabana" for the pool to house pool equipment. The structure was in dimension similar to a shed structure. Therefore, the zoning officer classified it as a "shed". Section 150-54 permits accessory buildings (plural). It does not limit the number of accessory buildings, but limits the number of accessory sheds to one (1) per lot. In this case the property owner was required to seek variance approval for the "cabana" since it had the physical characteristics

of a shed, even though it was not utilized as a shed. Consideration may be given regarding clarifying what constitutes a “shed” as opposed to an “accessory building” and whether a limitation on the number of accessory structures other than sheds should be considered.

2. **Building Height.** A pending application in a steep slope area has four levels, two of which are below the finished grade of the front of the building. The first level below finished grade of the front of the building does not have more than half of its volume above the finished grade of the front of the building and therefore cannot be classified as a “basement”. In addition, that level has more than half of its cubic volume above the average level of the adjoining ground and therefore cannot be classified as a “cellar”. The second level below finished grade at the front of the building has similar characteristics. Consideration should be given as to whether the definitions of “basement” and “cellar” should be revisited to determine whether they are intended to constitute a “story” for purposes of determining the height of the building.

3. **Parking Requirements.** The Ordinance presently provides that in the HBD and CDB zones the off-street parking requirement may be satisfied in whole or in part by evidence that the required amount of parking has been or will be provided in public or privately operated lots available for the use of the general public. Such parking space shall be located within six hundred (600) feet walking distance of the principal use, as measured from the geometric center of the parking facility located on Railroad Ave.. The Planning Board recommends that the Ordinance be revised to include an exhibit to graphically show the limits beyond which this provision does not apply. The Planning Board recommends that the Governing Body consider whether this public parking area is adequate to accommodate the parking that will be required by future development proposing limited or no on-site parking as well as the general public visiting the Borough to take advantage of its public, business, retail, commercial, service, restaurant and entertainment enterprises. If not, consideration should be given as to what zoning and planning alternatives may be available to address the need.