

**ANNUAL REPORT FOR YEAR 2017  
OF ATLANTIC HIGHLANDS UNIFIED  
PLANNING BOARD/ZONING BOARD OF ADJUSTMENT<sup>1</sup>**

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.

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB 15-03</b>	<b>Bl. 17, Lot 8.01</b>	<b>170 Ocean Blvd.</b>	<b>Sullivan</b>	<b>R-3</b>
<b>Extension of Approval</b>				

The Applicant previously received approval for conditional use and site plan to convert an existing single family residential home into a bed and breakfast facility. The two year time period within which to perfect the approval was scheduled to expire on August 12, 2017. The Applicant requested the first of up to three one-year extensions of approval. The Planning Board found that there were no changes in the subject property, the surrounding area or the zoning ordinance since the initial approval and that the extension could be granted.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB16-09</b>	<b>Bl. 17, Lots 10 &amp; 11</b>	<b>148 Ocean Blvd.</b>	<b>Grabowski</b>	<b>R-3</b>
<b>Bulk Variance/Steep Slope</b>				

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit modifications to the foundation, reconstruction of a second floor and removal and replacement of an existing wood deck requiring a side yard setback of 7.5 ft. and total side yards of 20.5 ft. where 15 ft. and 30 ft., respectively, are required, contrary to the provisions of Chapter 150, Article V, Section 150-29 and Exhibit 5-2 of the Development Regulations of the Borough of Atlantic Highlands. The property is in a steep slope area. **The application presented significant questions regarding the interpretation of the zoning Ordinance with respect to basements and cellars and to determine what constitutes a "story".** Ultimately it was

<sup>1</sup> DECEMBER 15, 2017 DRAFT

determined, through communication with the Board's professionals and the Applicants' professionals, that the existing residence is a three (3) story home where two and one-half (2.5) stories are permitted and that a variance was required for the new construction. The building did not exceed the 35 ft. allowable building height requirement. The Board found that, due to the location and configuration of the existing improvements, a hardship existed justifying variance relief and that there would be no substantial detriment as the proposal would result in an aesthetic improvement to the neighborhood

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-10	Bl. 8, Lot 27	290 Ocean Blvd..	Getta Bulk Variances/Steep Slope	R-3

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for Variance Approval to substantially reconstruct an existing residential dwelling with a 109 sq. ft. first floor addition, 192 sq. ft. front covered porch, a 461 sq. ft. rear deck and a second floor addition along the easterly side of the existing building resulting in an easterly side yard setback for the addition of 9.7 ft. where 15 ft. are required and a 9.7 ft. easterly side yard setback for the proposed deck where 15 ft. are required with a Lot coverage in the steep slope area of 7,344 sq. ft. where 6,699 sq. ft. are permitted. The Board found that required bulk variances for deficient setback were excessive being a 35% deviation from what is permitted. The Board also found that a significant portion of the deficiency resulted from a second story addition that impeded scenic views that neighboring residents and the community would otherwise enjoy which is contrary to the objectives of the municipal Master Plan. Finally the Board found that although the applicant proposed removing impervious concrete areas to minimize the excessive Lot coverage in a steep slope area such area was already disturbed and would be further by the removal. Moreover, that removal did not mitigate the additional structures proposed to be constructed in previously undisturbed steep slope areas.

**DENIED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB16-13	Bl. 8, Lot 23.01	25 Bayside Drive	J&L Bayside Drive, LLC Subdivision with Bulk Variances/Steep Slope	R-3

The Applicant applied for approval to construct a two-story single family home on an undersized lot in a steep slope area requiring variances for Lot Area, Front Setback, Side Setback, Lot Shape Diameter, Minimum Gross Floor Area, Maximum Lot Coverage and Maximum Lot Disturbance. The application is opposed and has undergone multiple meetings and plan revisions. The applicant requested that the application be withdrawn "without prejudice" so that it may submit an application and start anew. The objector opposed that request. A hearing on the request was scheduled to be conducted at the December 14, 2017 Planning Board meeting. The request was withdrawn, the Applicant is revising its plan and will submit an amended plan which is scheduled for hearing on February 8, 2018

**PENDING**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-01	Bl. 97, Lot 5	96 First Ave.	Kurdes Minor Site Plan	HBD

The Applicant requested approval for a change of use of a coffee shop storage room into office space which required minor site plan approval. The hearing of the application commenced on May 11, 2017. At the conclusion of that meeting the hearing was continued to the June 8, 2017 meeting. The applicant failed to appear at the June meeting and was advised by letter that he must appear at the July 13, 2017 meeting to complete the presentation of the application and if he did not appear the Board would entertain dismissal of the application for failure to prosecute the application. The applicant did not appear at the July 13, 2017 meeting and the Board voted to dismiss the application.

**DISMISSED WITHOUT PREJUDICE**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-02	Bl. 104, Lots 1&2	Bayshore Plaza Rt. 36.	Atlantic Highlands PBA Site Plan Waiver	HBD

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for minor site plan waiver to permit the placement of three (3) clothing bins on a grassed area adjacent to the parking lot of the existing shopping center. The proceeds from the collected clothing will go to the A.H.P.B.A. and will be used to support local residents and charitable organizations such as the Atlantic Highlands Elementary School PTO, Atlantic Highlands Volunteer First Aid Squad/Fire Department, Atlantic Highlands Chamber of Commerce, Atlantic Highlands Historical Society and other charitable groups. Since the introduction of the bins to this site does not fall within the definition of "Exempt Development" in the zoning ordinance it is subject to site plan approval pursuant to the provisions of Chapter 150, Article IV, Section 150-21 of the Development Regulations of the Borough of Atlantic Highlands. The Planning Board found that the proposed development will not include the actual development of permanent improvements to the property, only the placement of free-standing, temporary structures in an area of the site that does not impact upon the natural resources of the site, vehicular or pedestrian circulation, parking and loading on the site, screening, landscaping or location of structures on the site or exterior lighting required for safety. Consequently, the proposal does not noticeably affect the items set forth in the Development Regulations of the Borough of Atlantic Highlands for site plan approval. As a result of the foregoing, the Planning Board found that under the circumstances it could waive the requirement for submission of a formal site plan and grant approval for the location of the three (3) clothing bins.

**SITE PLAN WAIVER APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-03	Bl. 135, Lot 10	39 South Ave.	Sharkey Bulk Variances	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the construction of first and second floor building additions to an existing two-story single family home which requested a front yard setback for the addition to the principal structure of 17.2 ft. where 20 ft. are required and 14.5 ft. exist, side yard setback for new addition to principal structure of 5.8 ft. where 10 ft. are required and 5.8 ft. exist. The Planning Board found that the property is a long, narrow rectangle with two street frontages. The shallowness of the property coupled with the location of the existing residence created a hardship. The Planning Board also found that the proposed deviations from the ordinance were consistent with nearby properties in the neighborhood which exhibited the same or similar nonconformities.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-04	Bl. 133, Lot 15	81 Bay Ave.	Thomson Bulk Variance	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to construct an in-ground swimming pool with an accessory structure (pool filter and pump) in a front yard with a setback of 17.2 ft. where 20 ft. are required, accessory concrete patio in a front yard with a setback of 5.3 ft. from Avenue B where 20 ft. are required, accessory rear yard setback for retaining wall of 2.5 ft. where 5 ft. are required and impervious coverage of 50.8% where 50% is permitted. This is an existing undersized Lot of record as the R-1 Zone requires minimum Lot area of 7,500 sq. ft. The Planning Board found that the subject property is unique insofar as it is a corner lot with frontages on Bay Avenue and Avenue "B". Moreover, due to the location of the existing residence and garage the only place a swimming pool could be constructed is where it was proposed, where there was an existing above ground pool. The Planning Board found that the dual frontage coupled with the location of existing structures created a hardship and that the variances could be granted. The Planning Board further found that the in-ground swimming pool would have less impact on the surrounding properties and the zone scheme than the existing above ground pool and would be an improvement.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-05	Bl. 124, Lot 1&2	13 Leonard Ave.	Roberts Bulk Variances	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the placement of A 12 ft. x 24 ft. shed on a residential property with a floor area of 288 sq. ft. where 150 sq. ft. are permitted. The Planning Board agreed with the Applicant that the property was an "island" bordered by properties that would not be developed in the future. Therefore, there was no adverse impact on the surrounding neighborhood or the zone scheme. The increased shed size was needed for additional storage space and an existing shed in a nonconforming location would be removed which constituted a zoning improvement.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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<b>PB17-06</b>	<b>Bl. 12, Lot 5</b>	<b>225 Ocean Blvd.</b>	<b>Baranek Bulk Variance</b>	<b>R-3</b>
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The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to construct renovations to an existing single family home including a 68 sq. ft. first floor addition, a 115 sq. ft. front covered porch, a 1,190 second floor addition and a 480 sq. ft. two (2) car garage requiring variance relief for front yard setback from Ocean Boulevard of 24.0 ft. where 25 ft. are required and from Gawen Road of 15.3 ft. where 25 ft. are required, impervious Lot coverage of 31% where 30% is permitted, building Lot coverage of 17.5% where 12% is permitted and floor area ratio of 0.23 where 0.175 is permitted. The Planning Board found a hardship for this property as it is a corner lot requiring two front yard setbacks, it is undersized and irregularly shaped which creates a difficulty meeting the required setbacks, coverage and FAR for a reasonably sized home and the property is already developed with an existing residence. Consequently, the shape of the lot coupled with it's dual frontage and the location of the existing residence resulted in a hardship. The Planning Board also found that the setback variances were for the second story addition which did not bring the structure closer to the street. In addition the garage encroachment was only a small triangular corner of the building. The Planning Board noted that the Applicant recently purchased the subject property which is a one-story ranch dwelling which is dilapidated and overgrown. The Planning Board found that the applicant's proposal will greatly improve the property and the neighborhood.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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<b>PB17-07</b>	<b>Bl. 105, Lot 3</b>	<b>Rt. #36 &amp; West Ave..</b>	<b>Steve's Mobile Marine Use Variance/Site Plan</b>	<b>CBD</b>
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The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for use variance and minor site plan approval to operate a marine repair service business on a site previously used as a motor vehicle towing, repair and storage site. The Applicant provided testimony that the proposed business would operate substantially the same as the prior motor vehicle business. The Planning Board found that, pursuant to 40:55D-2, the purposes of the Municipal Land Use Law include the appropriate use and development of all lands in the State to promote public health, safety and general welfare. It is also a purpose of the Municipal Land Use Law to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space both public and private, according their respective environmental requirements in order to meet the needs of all New Jersey citizens. The Planning Board noted the goals and objectives contained in its Master Plan including encouraging improvements in businesses to strengthen the Borough's commercial attraction and to promote a viable economic base and expand the choice of goods, services and employment available within the Borough. The Planning Board further noted the Master Plan's vision of Atlantic Highlands as a small town bayside waterfront community. The Planning Board noted the Atlantic Highlands Harbor and the substantial boat activity and commerce that occurs there and found that the Applicant's proposed business will support that aspect of the community and provide an appropriate facility within the Borough to service the boating public. Therefore the Planning Board found that the subject property was uniquely and particularly suited for the proposed use and that there would be no substantial detriment as the proposed use was substantially similar to the prior permitted use.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-08</b>	<b>Bl. 82, Lot 11</b>	<b>49 Asbury Ave..</b>	<b>Barratt Bulk Variance</b>	<b>R-1</b>

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to construct an enclosed front porch on an existing residence with a front yard setback of 9.6 ft. where 20 ft. are required and a side yard setback of 5.5 ft. and 5.9 ft. where 10 ft. are required. The Planning Board found that due to the narrowness of the Lot coupled with the location of the existing dwelling, a front porch could not be constructed on the property without the requirement of a front yard setback variance as the existing structure is already within the front yard setback. Thus without variance relief the porch could not be constructed and that would limit the extent to which the property can be used resulting in a hardship. The Planning Board found that the same circumstances applied to the side yard setback. The proposed covered porch will follow the same building wall lines as the existing residence so as to provide for a balanced appearance to the front of the building. The Planning Board found that this is appropriate as it will enhance the appearance of the building from the streetscape. Similarly the rear one-story addition and proposed new deck will also follow the existing wall lines of the existing building. This also provides for an appropriate aesthetic and functional solution to the need for additional space in the home.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-09</b>	<b>Bl. 28, Lot 23</b>	<b>125 E. Highland Ave.</b>	<b>Eittreim Bulk Variances/Steep Slope</b>	<b>R-1</b>

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the Construction of an in-ground swimming pool with adjacent concrete patio within a sloped area requiring variances pursuant to the steep slope provisions of the Ordinance for Lot coverage of 5,169 sq. ft. where 3,164 sq. ft. are permitted and maximum impervious surface of 5,169 sq. ft. where 2,138 sq. ft. are permitted. The Planning Board found that in this case the application of the Steep Slope Ordinance provisions imposed a hardship upon the Applicant as it would prevent the construction of the pool and patio amenities which are an expected amenity for homes in the R-1 Zone District. The Planning Board found that the grant of the variances requested would not result in any substantial detriment to the public good. The proposed improvements would be at ground level and would have no visibility along the streetscape of East Highland Avenue. Nor would there be any substantial visibility from adjacent properties. The Planning Board accepted the testimony of the Applicant's Engineer that the design of the improvements would not result in any degradation of the sloped area or create any hazards from run-off or create any potential slope collapse. The Planning Board noted that the steep slope lot coverage and impervious surface limitations are in place to insure the stability of the slope as well as to prevent excessive run-off. In this case the Engineer provided Plans and testimony to the Planning Board's satisfaction that the grant of the requested variance relief would not result in those negative impacts.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-10</b>	<b>Bl. 17, Lot 20</b>	<b>130 Ocean Blvd.</b>	<b>Shnayder Bulk Variance/Steep Slope</b>	<b>R-2</b>

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the construction of an accessory pool house, 23.3 ft. and two (2) stories in height, where 16 ft. and one (1) story are permitted with impervious coverage of 11,615 sq. ft. where 10,890 sq. ft. are permitted and 11,642 sq. ft. exist. The Planning Board noted that the Applicant proposed to replace a former guest house with a new pool house structure. Although the new structure would have a height of two (2) stories and 23.3 ft. where one (1) story and 16 ft. are permitted, the second story of the proposed structure would be an open area with a railing around and will not be enclosed by walls but will have a roof. This, coupled with the topography substantially reduced the impact of the building height upon the streetscape and adjoining properties. The Planning Board further noted that there would be no additional land disturbance as the structure was using the existing building footprint. Finally, the resultant lot coverage was to be reduced making the property more conforming to the zoning coverage allowance.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-11</b>	<b>Bl. 112, Lot 1</b>	<b>135 First Ave.</b>	<b>Green Leaf East, LLC Minor Subdivision/Site Plan/Variances</b>	<b>CBD</b>

The Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for a minor subdivision lot line adjustment with use variance and site plan approval to permit a sidewalk pick-up window for a juice bar. This application has not yet been deemed complete or scheduled for hearing.

**PENDING**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-12</b>	<b>Bl. 101, Lot 4.02 &amp; 5</b>	<b>158 First Ave.</b>	<b>P&amp;C2, LLC Bulk &amp; Use Variance/Site Plan</b>	<b>CBD/R-1</b>

The Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for Preliminary/Final Site Plan approval with Use Variance and bulk variances to construct a 3-story mixed use residential and commercial building on a "split-zoned" property. This application has been deemed complete and hearing commenced at the December 14, 2017 Planning Board meeting. The application was not completed and will continue on January 11, 2018.

**PENDING**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-13	Bl. 93, Lot 15	21 Sixth Ave.	Stack Bulk Variance	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to construct a 5 ft. x 11 ft. addition with a powder room, sink and toilet requiring variances for side yard setback of 5 ft. where 10 ft. are required (Section 150-29(A)(2)) (Exhibit 5-2) and a rear yard setback of 14 ft. where 20 ft. are required (Section 150-29(A)(2)) (Exhibit 5-2). The Planning Board found that there is an existing structure on the subject property with its closest side setback along the southerly property line of 4.83 ft. where 10 ft. are required. The proposed addition will be only one (1) story in height and is being placed in the only location possible due to the interior layout of the existing structure. Because of the location of the existing structure and its interior layout, this amenity must be placed where proposed and cannot be constructed without the requirement for variance relief. The Planning Board found that the location of the existing residence coupled with it's interior layout requires that this amenity be placed where the Applicant is proposing it. In addition to the foregoing the Lot has an irregularly shaped rear property line with an angle such that the area in which the addition must be placed has a shallower rear yard than the rest of the structure. The Planning Board found that the impact of this minor addition was diminimis and insubstantial.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-14	Bl. 8, Lot 8	10 Ballinswood Rd.	Reignier/Coleman Bulk Variance/Steep Slope	R-3

The Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for approval to construct a prefabricated detached garage within a front yard area. This application has not yet been deemed complete or scheduled for hearing.

**PENDING**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB17-15	Bl. 94, Lot 13	11 Fourth Ave.	Ackerman/Davis Bulk Variance	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to permit the construction of a two-story addition and covered porch within a front yard resulting in a front yard setback of 18 ft. where 20 ft. are required. The Planning Board found that this variance is necessary as compliance with the Ordinance provide for only a 4 ft. wide porch which would not be functional. The



additional 2 ft. makes the porch wide enough to have functionality. The Planning Board found that, without the grant of relief, a functional front porch cannot be created of sufficient depth to reasonably accommodate porch furnishings. As a result of the foregoing the Planning Board found that a hardship existed. The Planning Board found that the 2 ft. deviation from the front yard setback is de minimis in extent. The Planning Board found that the proposed improvement would be an open front porch with an open deck above and would not be enclosed and would not have a substantial impact on the streetscape. The Planning Board noted the Applicant's testimony that other homes on Fourth Avenue have similar front porch setback variations and noted Exhibit A-6 which demonstrated that the resultant front setback on the Applicant's property will be consistent with the other homes in this area of Fourth Avenue. Thus, there was no substantial detriment to the public good or impairment of the zone scheme.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB17-16</b>	<b>Bl. 115, Lot 7</b>	<b>67 First Ave.</b>	<b>Crocker Enterprises, LLC Bulk &amp; Use Variance/Site Plan</b>	<b>HBD</b>

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for use variance, variance and site plan approval to permit the substantial renovation/reconstruction of an existing building to create a roof-top deck and partial second floor addition requiring use variance approval for the non-permitted use of a roof-top restaurant and bar within the Historic Business District Zone (HBD) with variances for having an outdoor trash enclosure within the public right of way, mural style signage and no off-street parking spaces. The request for trash enclosure variance was withdrawn during the hearing. The request for a third façade sign where only two are permitted was also withdrawn. The Planning Board found that the required parking may be provided within public or privately operated lots available for general public use pursuant to Ordinance Section 150-89.B.5.(a). The Planning Board found that the public parking lot is in the immediate proximity of the subject property and within 600 ft. walking distance. The Planning Board found that the subject property has been utilized as a restaurant and bar for many years which characterizes the historic use of this parcel of land.

**The Planning Board further found that bars and restaurants are a permitted use in the HBD Zone District. However, the Regulations do not expressly permit restaurants and bars above the first story of a building. The Planning Board found that this appears to be an inadvertent omission to the Zoning Ordinance.**

The Planning Board found that the proposed use of the upper level of this building is consistent with the permitted use on the lower level and is an extension of a permitted use. The Planning Board found that the subject property has been utilized for similar purposes for many years and is therefore consistent with the neighborhood scheme and has demonstrated that the use is appropriate for this property and that the subject property is particularly suited for this use. The Planning Board did impose conditions on the approval to mitigate noise and potential for falling items from the open-air second floor establishment.

**APPROVED**

**ZONING ANALYSIS**

	<b><u>2017</u></b>	<b><u>2016</u></b>	<b><u>2015</u></b>	<b><u>2014</u></b>	<b><u>2013</u></b>
<b>NUMBER OF APPLICATIONS HANDLED</b>	<b>20</b>	<b>15</b>	<b>12</b>	<b>15</b>	<b>9</b>
<b>NUMBER GRANTED<sup>2</sup></b>	<b>14</b>	<b>13</b>	<b>10</b>	<b>13</b>	<b>8</b>
<b>NUMBER DENIED</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>NUMBER WITHDRAWN</b>	<b>1<sup>3</sup></b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>NUMBER STILL PENDING</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

**APPLICATIONS BY ZONE**

<b>NUMBER IN R-1 ZONE*</b>	<b>8</b>	<b>6</b>	<b>5</b>	<b>6</b>	<b>3</b>
<b>NUMBER IN R-2 ZONE</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>NUMBER IN R-3 ZONE</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>2</b>
<b>NUMBER IN HBD ZONE</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>NUMBER IN CBD ZONE*</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>2</b>
<b>NUMBER IN LI ZONE</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>NUMBER IN OR ZONE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>NUMBER IN SC ZONE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<sup>2</sup> 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.

<sup>3</sup> Dismissed without prejudice for failure to prosecute application.

NUMBER IN MF-2 ZONE	0	2	0	0	0
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<u>RELIEF SOUGHT</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
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EXTENSION OF APPROVAL	1	1	1	2	1
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APPEAL FROM ZONING OFFICER	0	0	3	0	0
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MAJOR SUBDIVISION*	0	0	0	0	0
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MAJOR SITE PLAN*	4	2	4	3	0
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MINOR SUBDIVISION*	2	4	3	1	1**
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MINOR SITE PLAN*	2	2	0	0	1
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SITE PLAN WAIVER*	1	0	3	1	1
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CONDITIONAL USE*	0	0	4	1	0
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USE VARIANCE *	3	4	3	2	3
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BULK VARIANCE*	16	9	6	11	5
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DEVIATION FROM CONDITIONS OF APPROVAL	0	0	1	0	0
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**\*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>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
COMMERCIAL	6	4	3	2	3
MIXED COMMERCIAL/RESIDENTIAL	1	1	3	1	1
MULTI-FAMILY/HIGH DENSITY	0	1	0	0	0
SINGLE FAMILY RESIDENTIAL	13	9	4	12	5
NEW CONSTRUCTION	2	4	5	3	2
TEAR DOWN/REBUILD	0	1	1	1	1
ADDITION	8	3	1	8	1
APPEAL FROM ZONING OFFICER	0	0	3	0	0
INTERPRETATION OF ORDINANCE	0	0	2	0	0
CERTIFICATION NONCONFORMING USE	0	0	0	0	0

**COMMENTS:**

The number of applications increased significantly from 2016 and is the largest number of applications by the Planning Board since 2005-2006 when there were eighteen (18) applications each year. It is an indication that the economic recovery has stabilized. There was only one application for extension of a prior approval which is consistent with the past five (5) years. The percentage of approvals is 87.5% of those cases concluded and does not include cases that remain pending. This percentage 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. In the past it has also been due to a number of applications being submitted "of right" without the need for variances. However that was not the case in 2017. A number of applications submitted did not require new bulk variance approval. Several applications submitted were for residential home additions that required variance relief but maintained pre-existing nonconforming setbacks. In a number of cases the variances requested were minor (diminimis) in nature. The number of denials remained low at 6.25%.

In 2017 the highest number of applications (40%) were for properties in the R-1 zone. This percentage is consistent with 2016, 2015 and 2014 and is an increase over 2013 (33.3%) and 2012 (37.5%). It is also consistent with over time with as the highest number of applications continues to be for properties in the R-1 zone. The R-2 zone at 5.0 % is consistent with immediate prior years but is a decrease from 2013 (11%) and a substantial decrease from the 25% experienced in 2012. The R-3 zone continues to generate the second largest number of applications at 30% which is an increase over the 26.6% in 2016 and 16.6% in 2015 but is otherwise consistent with prior years. Applications in the HBD zone increased slightly over 2016 from 13.3% to 15% but is still a decrease from the 25% in 2015 which was the highest in recent years. This fluctuation is historically consistent with prior years. There were three applications (15%) in the CBD zone which is an increase over 2016 (0%) when there were no applications in this zone and 2015 (13.3%) but is a substantial decrease from the activity in prior years, 2014 (26.6%), 2013 (22.2%) and 2012 (19%). 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 had no applications which is consistent with prior years except 2016 when there were two applications 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. It appears that the level of activity has finally rebounded to the levels that preceded the recession which bottomed in 2009.

Bulk variances continue to be the most sought approvals and were a component in 80% of applications. This is somewhat higher than 2016 (60%) which was 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 prior years. 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.

There were four major site plan applications, two minor site plan applications, one site plan waiver application, two minor subdivision applications and three use variance applications. This is consistent with prior years and the applications did not any particular trends or issues. There were no applications for major subdivision, appeal from zoning officer decisions, conditional use approval or deviations from conditions of approval. This is also consistent with prior years.

Single family home applications accounted for approximately 65% of all applications. More than 60% of those involved home additions. This is a substantial increase from 2016 (40%) and 2015 (27%) but remains below the 80% in 2014. Commercial applications at 30% was consistent with prior years which ranged between 20% and 33.3%.

There do not appear to have been any major trends experienced in 2017. 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

applications that raised questions that may be considered for zoning ordinance amendments that are discussed below.

## **RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENT OR REVISION<sup>4</sup>**

1. **Accessory Structures.** In 2016 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. In 2017 an application was made to replace a prior accessory “Guest House” with an accessory “Pool House”. Consideration may be given regarding clarifying what constitutes a “shed” as opposed to an “accessory building”, “cabana” or “pool house” and whether a limitation on the number of accessory structures other than sheds should be considered. Moreover, at present pool cabanas or similar accessory structures are not dealt explicitly in the Ordinance. Consideration as to whether specific guidelines for these structures may be appropriate.

2. **Building Height.** In 2017 there was an application in a steep slope area for a residence that had 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 did not have more than half of its volume above the finished grade of the front of the building and therefore could not be classified as a “basement”. In addition, that level had more than half of its cubic volume above the average level of the adjoining ground and therefore could not be classified as a “cellar”. The second level below finished grade at the front of the building had similar characteristics. The ordinance definitions are difficult to reconcile for properties located in steep slope areas. Consideration should be given as to whether the definitions of “basement” and “cellar” should be revisited to provide clarity to their application and particularly to determine what is 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.. Applications for development in these zones routinely provide no on-site/off-street parking and rely on this provision to meet their parking requirements. The Planning Board has concern as to the capacity of the existing lot to handle these parking needs. 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 further 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 including reducing the radius of properties able to take advantage of this provision to 300 ft. instead of 600 ft..

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<sup>4</sup> Some recommendation are carried over from the 2016 annual report and some result from appoiations considered in 2017.

4. **Steep Slopes.** The Planning Board has had a significant number of applications requesting relief from the steep slope limitations on impervious coverage and lot disturbance. The Planning Board has the following concerns that may justify consideration of Ordinance revisions:

a. Applicants removing existing impervious coverage and contending that such areas, even though previously disturbed, should not be included as disturbed or impervious areas so that areas elsewhere may be disturbed for new development. (ie. removing a concrete patio on one side of a lot so that an addition can be constructed on the other side of the lot)

b. Applicants have been requested by the Planning Board to provide geotechnical reports to demonstrate slope stability to support proposed construction on steep slope lots. Since these reports are not required as part of the submission checklist requirements Applicants express surprise when the materials are requested by the Planning Board during the course of a hearing which results in adjournments, delay in processing the application and additional unanticipated cost to the Applicant. Consideration may be appropriate to establishing Ordinance submission guidelines as to when such information, and what information, shall be required as part of the completeness review.

5. **Rooftop Uses.** The Planning Board has had several applications previously and pending involving developments proposing rooftop uses. This is both in the residential context for rooftop recreation areas and in the commercial context for rooftop bar/restaurant use. Consideration should be given as to whether it is appropriate to establish specific ordinance provisions controlling the development and use of these areas including, among other things, noise control, prevention of rooftop debris, etc.