WHEREAS, JEFFREY AND ABIGAIL SWANTON, hereinafter the "Applicant", has proposed the development of property located at 58 Prospect Circle, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 74, Lot 8 on the Tax Map of the Borough of Atlantic Highlands; and

WHEREAS, the Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to construct a second level to an existing residence along with a porch and other renovations that require variances including front yard setback of 21.0 ft. where 25.0 ft. are required (Section 150-29(A)(2), Exhibit 5-2), side yard setback of 10.5 ft. where 15 ft. are required (Section 150-29 (A)(2), Exhibit 5-2), impervious coverage of 45.1% (4,540 sq. ft.) where 40% is permitted (Section 150-29 (A)(2), Exhibit 5-2), building coverage of 18% (1,817 sq. ft.) where 15% is permitted (Section 150-29(A)(2), Exhibit 5-2), Lot coverage in steep slope areas of 4,540 sq. ft. where 3,911 sq. ft. are permitted (Section 150-78(E)(2)) and impervious surface coverage of 4,540 sq. ft. where 3,407 sq. ft. are permitted (Section 150-78 (E) (3)), contrary to the provisions of Chapter 150, Articles V and VII, Sections 150-29, 150-78 and Exhibit 5-2, respectively, of the Development Regulations of the Borough of Atlantic Highlands, and

WHEREAS, the subject property is located in the R-2 Residential Zone District and single family residential homes
with associated accessory structures are a permitted use in the Zone, and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Atlantic Highlands on March 14, 2019 due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act and the Municipal Land Use Law and a quorum of the Planning Board being present, the application was heard; and

WHEREAS, the Applicant’s witnesses were sworn, and the Planning Board having heard the testimony of the Applicant’s witnesses and having examined the Exhibits submitted by the Applicant, and having considered all of the evidence presented in favor of or in opposition to the application, the Planning Board has made the following findings of fact:

1. The Planning Board has received and reviewed the following documents, Exhibits and reports:

1.1 Zoning denial of Zoning Officer Michelle Clark dated January 23, 2018, marked as Exhibit A-1 in evidence.

1.2 Application of Jeffrey Swanton and Abigail Swanton, dated November 5, 2018, marked as Exhibit A-2 in evidence.

1.3 Steep Slope review Number 1 of CME Associates dated November 22, 2018, marked as Exhibit A-3 in evidence.

1.5 Architectural Elevation and Floor Plans consisting of six (6) sheets, undated, marked as Exhibit A-5 in evidence.

1.6 Report of CME Associates Review Number 1, dated February 9, 2018, marked as Exhibit A-6 in evidence.

1.7 Report of CME Associates review Number 2 dated January 15, 2019, marked as Exhibit A-7 in evidence.

1.8 Architectural Elevation and Floor Plans prepared by Catherine Franco, AIA, dated December 16, 2018, consisting of two (2) sheets, marked as Exhibit A-8 in evidence.

1.9 Variance Plan prepared by Two River Engineering dated December 5, 2018 consisting of two (2) sheets marked as Exhibit A-9 in evidence.

1.10 Color-rendered variance plan dated December 5, 2018, marked as Exhibit A-10 in evidence.

1.11 Photo-board with six (6) 8.5" x 11" mounted photographs of front and rear of subject property, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 58 Prospect Circle, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and
designated as Block 74, Lot 8 on the Tax Map of the Borough of Atlantic Highlands.

3. The subject property is located in the R-2 Residential Zone District and single family residential homes with associated accessory structures are a permitted use in the Zone.

4. The premises in question have approximate dimensions of 109.96 ft. x 135.00 ft. x 39.27 ft. x 135.01 ft. and is somewhat triangular in shape and has it's greatest width at it's frontage along Prospect Avenue and decreases in width as the property recedes to the rear. Thus the property is of exceptional shape. The subject property also has the following existing, non-conforming elements that will continue:

A. Section 150-29A (2), Exhibit 5-2 - Lot area of 10,073 sq. ft. where 15,000 sq. ft. are required.

B. Section 150-29A (2), Exhibit 5-2 - Lot Shape Diameter of 52 ft. where 65 ft. is required.

C. Section 150-29A (2), Exhibit 5-2 - accessory side yard setback of 4.8 ft. where 10 ft. are required.

The Applicant proposes to construct a second floor addition above the existing first floor area as well as an in-ground swimming pool, pool patio, rear patio, covered porch and proposed walkways, which require the variances previously set forth herein.
5. The Applicant presented the testimony of A.J. Garito, a licensed professional Engineer in the State of New Jersey, property owner Jeffrey Swanton and Catherine Franco, a licensed Architect in the State of New Jersey. They described the proposed second floor and front porch additions along with the proposed in-ground swimming pool, pool patio and retaining wall. Mr. Garito addressed the variances that are required in connection with the property and opined that they are driven by the fact that the lot is undersized and has a unique shape. The witnesses opined that the principal improvements proposed relate to the second story of the structure which is building it “up” and not “out”. They testified that the architectural style of the improvements and resulting structures fit within the neighborhood scheme and that although the majority of the property will be subject to disturbance it is principally minor grading only and, subject to compliance with the conditions herein, will not result in any adverse drainage impacts upon surrounding properties.

6. Ms. Franco testified as to the proposed addition which will now result in a home with four (4) bedrooms so that each of the owners' children will have their own bedroom. During the course of the hearing question was raised as to whether the architecture of the structure results in it being three (3) stories due to the Ordinance definitions of Basement and Cellar. After performing some calculations, Ms. Franco advised the Board that in fact a variance is required for three (3) stories as the computations are so close between cellar and basement that she preferred to err on the side of caution and request the variance. The Applicant also provided testimony that the
basement area will consist only of garage and storage area and will not be converted to bedrooms or habitable living space.

7. During the course of the hearing it became apparent that the Applicant is proposing a retaining wall in the rear of the property and Engineer Garito testified that there will only be a cut of approximately 2 ft. into the steep slope. The retaining wall will be constructed of stone and properly engineered. Engineering details will be provided to the Planning Board's Engineer for review and approval as a condition of this approval. Mr. Garito also agreed on behalf of the Applicant that a drainage plan with details as required by the Planning Board Engineer will be submitted and approved as a condition of this approval.

8. Engineer Garito went through review Number 2 prepared by the Planning Board Engineer dated January 15, 2019 marked as Exhibit A-7 in evidence. He noted that the required two-car garage and two (2) driveway parking spaces comply with the RSIS requirements. Mr. Garito further confirmed that the survey provided to the Board is a boundary survey.

9. Mr. Garito further advised that the Applicant agrees to comply with the technical recommendations set forth in the CME report numbered paragraph 6, D, E, F, G, H, I and K.

10. The Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Planning Board finds that each of the seven (7) variances requested result from the exceptional characteristics of the property including it's triangular shape.
and it's being an undersized property coupled with the location of the existing lawful improvements on the property. The combination of these factors makes it virtually impossible for the Applicant to make the requested modest improvements without the requirement for variance relief. More particularly, in order to place a porch to the front of the building, variance relief must be required due to the building's current location in such close proximity to the front setback. With respect to the side yard setback which relates only to the second story of the structure, this is an existing condition due to the present location of the structure and the second story follows the existing wall of the building. The additions increasing the impervious coverage are modest in nature and anticipated within the R-2 Zone District and the proposed amenities cannot be provided without the requirement of variance relief. Similarly the excessive lot coverage is the result of the undersized lot coupled with the desire to have amenities that are typical of, and anticipated in, the R-2 Zone District.

11. Based on the foregoing, the Planning Board finds that the aforesaid factors do impose a hardship upon the property and prevent the extent of its development in accordance with what is anticipated for residential uses on properties in the R-2 Zone District. Therefore the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property and the structures lawfully existing thereon exists such that the strict application of the Atlantic Highlands Development Regulations would result in peculiar and exceptional practical difficulties to and exceptional and undue hardship upon the Applicant as it would prevent the Applicant
from having these amenities which are anticipated for residential uses in the R-2 Zone District.

12. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that the grant of the requested variances will not result in any substantial detriment to the public good. The Planning Board finds that it agrees with the testimony presented by the Applicant and from the observations of Board members that the proposed improvements, as presented by the Applicant, are consistent with the character of the other homes within the immediate vicinity of the subject property and therefore will not have any substantial negative impacts upon those properties or the streetscape and therefore will not result in a substantial detriment to the public good.

13. The Planning Board further finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. As noted previously herein, the proposed improvements and amenities are consistent with what is anticipated for residential properties in the R-2 Zone District. The improvements will result in a home that is consistent in appearance and impact with other homes in the neighborhood and vicinity and, other than the concerns regarding the retaining wall and potential water run-off issues which are being specifically addressed as conditions of approval, there are no anticipated adverse impacts upon the Zone plan resulting from the grant of the variance relief requested.
14. As a result of all of the foregoing, the Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested variance relief and that the variances can and should be granted at this time.

15. The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper notice of the Hearing of this Application and were provided with an opportunity to present testimony in support of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Atlantic Highlands on this 11th day of April, 2019 that the Application of JEFFREY AND ABIGAIL SWANTON be and is hereby approved, which approval is expressly conditioned upon compliance with the following terms and conditions:

GENERAL CONDITIONS -

1) This approval is subject to the accuracy and completeness of the submissions, statements, Exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.
2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.

3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality’s professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees, Temporary Certificate of Occupancy Guarantees, Safety and Stabilization Guarantees, Maintenance Guarantees, Inspection Fees and such other Guarantees or fees as may be required pursuant to the Municipal Land Use Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract and private site improvements.
6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant will all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".

10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in writing, by the developer and transmitted forthwith to the
New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.

15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable
Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality’s Affordable Housing Trust Fund.

Affordable units in inclusionary developments shall have at least 50% low income units (of which at least 13% are very low income). The remaining affordable units shall be moderate income units. The bedroom distribution for affordable units shall be a minimum of 20% three-bedroom units and a maximum of 20% one-bedroom units.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required prior to the commencement of any development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality’s
approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

19) The scope of the review of this application is necessarily limited to planning, zoning and land use review of the site as compared to the requirements of the Municipality. The grant of this approval and of any permit or approval in connection therewith shall not constitute a representation, guarantee or warranty of any kind or nature by the Municipality or by any Municipal official or employee thereof with respect to the practicability or safety of any structure, use or other plan proposed and shall create no liability upon or cause of action against the Board, the Municipality or any officials or employees of the Municipality for any damage or injury that result from the construction of the improvements for which this Zoning approval is granted.

SPECIAL CONDITIONS -

1. The approvals granted in connection with this application are as follows:

   A. Front yard setback of 21.0 ft. where 25.0 ft. are required (Section 150-29(A)(2), Exhibit 5-2),

   B. Side yard setback of 10.5 ft. where 15 ft. are required (Section 150-29 (A)(2), Exhibit 5-2)

   C. Impervious coverage of 45.1% (4,540 sq. ft.) where 40% is permitted (Section 150-29 (A)(2), Exhibit 5-2),
D. Building coverage of 18% (1,817 sq. ft.) where 15% is permitted (Section 150-29(A)(2), Exhibit 5-2),

E. Lot coverage in steep slope areas of 4,540 sq. ft. where 3,911 sq. ft. are permitted (Section 150-78(E)(2))

F. Impervious surface coverage of 4,540 sq. ft. where 3,407 sq. ft. are permitted (Section 150-78(E)(3))

2. The addition will result in a three (3) story residence where two (2) stories are permitted.

3. The Applicant shall provide details and specifications for a properly engineered retaining wall to be submitted to the Planning Board Engineer for review and approval.

4. The Applicant shall provide a proper detailed drainage plan and submit it for review and approval by the Planning Board Engineer.

5. The Applicant shall comply with the technical recommendations set forth in the report of the Planning Board’s Engineer CME associates, review number 2 dated January 15, 2019 marked as Exhibit A-7 in evidence as previously noted herein expressly including those items contained in paragraph 6 D, E, F, G, H, I, and K.
BE IT FURTHER RESOLVED that nothing herein shall excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

BE IT FURTHER RESOLVED that a written copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Applicant, the Code Enforcement Officer of the Borough of Atlantic Highlands, and the Construction Code Official of the Borough of Atlantic Highlands. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

BE IT FURTHER RESOLVED that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Borough.

OFFERED BY: Mr. Pepe

SECONDED BY: Mr. Hawley

ROLL CALL:
YES: Dr. Kloby, Mr. Caccamo, Dr. Cetron, Mr. Pepe, Mr. Hawley, Mr. Colangelo, Mr. Dougherty, Ms. Drew, Mr. McGoldrick

NO: None
ABSTAIN: None
ABSENT: Councilman Fligor, Mrs. Murray, Mr. Neff

[Signature]
Chairperson, Planning Board
Borough of Atlantic Highlands

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Atlantic Highlands at its meeting held on April 11, 2019.

[Signature]
Secretary, Planning Board
Borough of Atlantic Highlands