WHEREAS, ROMANO TARTIVITA, hereinafter the "Applicant", has proposed the development of property located at 73 Avenue "A", in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 127, Lot 1 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 approval to construct a new two-story dwelling on an existing undersized Lot with an 18 ft. wide paved driveway, concrete driveway apron and removal of an existing asphalt driveway, which application requires variance relief to permit a front yard setback of 14 ft. (revised to 13 ft. during the course of the hearing) where 20 ft. are required (Section 150-29 and Exhibit 5-2) and floor area ratio of 0.46 where 0.40 is permitted (Section 150-29, Exhibit 5-2), the foregoing is 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 Planning Board also notes that two (2) existing non-conforming elements will be continued including a lot area of 5,625 sq. ft. where 7,500 sq. ft. are required and lot shape diameter of 35 ft. where 45 ft. are required, these are existing conditions which may continue without the requirement of additional variance relief; and
WHEREAS, the subject property is located in the R-1 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 December 13, 2018, 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 review of Zoning Officer Michelle Clark, dated July 24, 2018, marked as Exhibit A-1 in evidence.

   1.2 Application of Romano Tartivita, dated July 18, 2018, marked as Exhibit A-2 in evidence.

   1.3 Site Development Plan prepared by Richard E. Stockton & Associates, Inc. dated June 14, 2018, marked as Exhibit A-3 in evidence.
1.4  Review #1 of CME Associates dated August 27, 2018, marked as Exhibit A-4 in evidence.

1.5  Architectural Elevation and Foundation Plan prepared by Catherine Franco, Architect, dated September 24, 2018, marked as Exhibit A-5 in evidence.

1.6  Review #2 of CME Associates dated October 26, 2018, marked as Exhibit A-6 in evidence.

1.7  Resolution of the Atlantic Highlands Planning Board in application PB#13-03, marked as Exhibit A-7 in evidence.

1.8  Letter from Atlantic Highlands Planning Board regarding completeness, marked as Exhibit A-8 in evidence.

1.9  Photographs of subject property and adjacent properties consisting of three (3) 8.5" x 11" sheets, marked as Exhibit A-9 in evidence.

1.10 Photographs of subject property and adjacent properties consisting of three (3) 8.5" x 11" sheets, marked as Exhibit A-10 in evidence.

2.  The premises in question are located at 73 Avenue “A”, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 127, Lot 1 on the Tax Map of the Borough of Atlantic Highlands.
3. The subject property is located in the R-1 Residential Zone District in the Borough of Atlantic Highlands and single family residential homes with associated accessory structures are a permitted use in the Zone.

4. The Applicant was represented by Henry Wolff, Esquire who presented the testimony of the Applicant Romano Tartivita along with professional Land Surveyor and professional Planner Richard E. Stockton and Architect Catherine Franco. They provided testimony that the subject property is a square Lot with dimensions of 75 ft. x 75 ft. x 75 ft. x 75 ft. with a lot area of 5,625 sq. ft. where 7,500 sq ft. are required. This is a pre-existing non-conforming condition which will continue. The subject parcel also has a Lot Shape Circle Diameter of 35 ft. where 45 ft. are required, which is also an existing non-conforming element which will continue.

5. The subject property is a corner lot located at the northeast quadrant at the intersection of South Avenue and Avenue "A". The Applicant proposes to construct a new two-story dwelling on the property with an 18 ft. wide paved driveway, concrete driveway apron and removal of an existing asphalt driveway that accesses from Avenue "A". The proposed new building will front on South Avenue. The proposed building will be a modular four (4) bedroom home with 2.5 baths and will be two (2) stories in height. The subject property is located in a flood zone with a base flood elevation of 11 ft. Consequently pursuant to Flood Regulations, the structure must be elevated in order for the first floor to be at least 1 ft. above the base flood elevation. Thus in order to access the building there must be a stair and platform structure. Although wall of the
building will be 20 ft. from the street line, which complies with the Ordinance requirement, it requires the stair and platform areas to access the building. If the building were pushed further from South Avenue in order to comply with frontage requirements, the building would have to encroach into the rear yard where room is needed in order to place air conditioning units and stairway/platform access to the rear of the building.

6. The Applicant presented the testimony of Richard Stockton who testified as to the hardship associated with this property insofar as it is an undersized lot of record which creates a hardship in placing a reasonably sized modern home on the property without some variance relief. Thus Mr. Stockton opined that there is a hardship associated with this property and the Planning Board agrees.

7. The Planning Board questioned the need for the extent to which the steps protrude into the front yard area. Ms. Franco responded that the steps were needed due to the raised level of the building for flood purposes to meet the FEMA requirements for the building. During the course of the discussion question was raised as to the adequacy of the stair and platform sizes in order to provide adequate emergency access for emergency stair chair equipment access to and from the home. Question was also raised as to access to the electric meter which the Applicant agreed would be placed on the front wall of the house but must be raised above the base flood elevation. The Planning Board determined, and the Applicant’s Architect agreed, that the request for a 14 ft. front yard setback where 20 ft. are required should be changed to request a 13 ft. front
yard setback in order to provide adequate area to construct front steps with platforms that will provide access to the electric meter per JCP&L requirements and provide adequate dimension for emergency access for a stair chair. The Applicant also agreed that the proposed front stair, porch and platform will remain open and uncovered. The Planning Board agrees that this is an appropriate solution.

8. Based upon the foregoing, the Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested variance to permit a front yard setback for the entry stairway and platforms of 13 ft. where 20 ft. are required.

9. The Planning Board further finds that the grant of the requested variance relief for front yard setback will not result in any substantial detriment to the public good. The Planning Board notes that it is not the residence which is located within the front yard setback, only the stair area which is open, unroofed and will have minimal visual impact upon the streetscape or the surrounding properties. The Planning Board has viewed the architectural drawings provided by Ms. Franco and finds that the proposed residence will have a pleasing aesthetic appearance and will fit with the character of the surrounding community. Thus the grant of the requested variance relief will not have any substantial detrimental impacts upon the public good. Instead it will provide for an attractive and pleasing new residence on an existing underutilized vacant Lot.

10. 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. The Planning Board finds that the principal purpose of the Ordinance setback requirements are to insure that buildings and structures are not located so close to neighboring properties or street lines so as to have an overly imposing appearance impeding upon light, air and open space. The Planning Board finds that, based upon the architectural plans submitted and the testimony provided, this proposed front stairway and platforms will not have the impacts sought to be avoided by the Ordinance and therefore does not offend the Ordinance and the Planning Board finds that there is no substantial impairment of the Zone Plan or Zoning Ordinance.

11. The Planning Board notes that the Applicant agreed during the presentation to remove the existing asphalt driveway and construct a full-face curb along Avenue “A” where the driveway existed. The Applicant also agreed to provide landscape screening plan for the property which will be submitted to the Planning Board’s Engineer for review and approval.

12. The Applicant also requires variance relief for floor area ratio. The Applicant provided testimony that the subject parcel was previously granted a floor area ratio variance for a greater deviation of 0.49. However that Applicant did not proceed with the development of the parcel and that variance expired pursuant to the provisions of the Atlantic Highlands Development Regulations. The Applicant provided testimony that the proposed dwelling is of reasonable size for the area in which it is being located and that the reason that it exceeds the floor area ratio is because it is a pre-existing undersized lot of record. The Applicant’s witnesses testified that,
notwithstanding the excessive floor area ratio, that this proposed home will properly fit on the Lot and that the Lot can accommodate the building notwithstanding the deviation in floor area ratio. The Planning Board agrees and finds that the Applicant has satisfied the positive criteria for the grant of that variance.

13. The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the floor area ratio variance. The Planning Board finds that the grant of the variance will not result in any substantial detriment to the public good. The Planning Board agrees with the applicant’s planner that the subject is underutilized. The Planning Board finds that an attractive new home placed on this vacant lot will be an overall improvement to the neighborhood and will have a pleasing aesthetic appearance upon the streetscape. Consequently, the Planning Board finds that there will be no substantial detriment to the public good flowing from the grant of the requested variance relief.

14. 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. The Planning Board finds that a principal purpose of the floor area ratio requirement is to insure that properties are not overbuilt with excessively large and imposing structures. The Planning Board finds that the proposed structure in this case is not oversized or overly massive for this area of the Borough and is consistent with other development in the vicinity of this property and will not have the impacts sought to be avoided by the floor area ratio requirement. The Planning Board also further notes that
the extent of this deviation is 0.09 and is diminimis in extent in the context of this application. Therefore the Planning Board finds that the impact of the deviation from the Ordinance requirement will be insubstantial and will not result in substantial impairment of the zone plan or zoning ordinance.

15. 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.

16. 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 10th day of January, 2019 that the Application of ROMANO TARTIVITA 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 for proposed raised front steps and platforms of 13 ft. where 20 ft. are required.
B. Maximum usable floor area ratio (UFAR) of 0.46 where .40 is permitted.

2. The Applicant shall design front steps and platforms to meet JCP&L requirements for observation and access to the electric meter which will be placed on the front of the home. The front steps will also be designed with adequate dimension to accommodate emergency access for a stair chair device. The front stair, porch and platform will remain open and uncovered.

3. The existing asphalt driveway along Avenue "A" shall be removed.

4. A full-face curb will be provided along the area where the asphalt driveway existed along Avenue "A".

5. The Applicant shall provide a landscape screening plan to the Planning Board Engineer for review and approval.

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 Official 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: Dr. Cetron

SECONDED BY: Mrs. Murray

ROLL CALL:

YES: Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Colangelo, Mrs. Murray, Mr. Neff, Mr. Pepe

NO: None

ABSTAIN: None

ABSENT: Mr. Illiano, Councilman Fligor, Ms. Hoffman

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 January 10, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands