IN THE MATTER OF
APPLICATION NO. PB19-05
OF JOHN POTTER
BLOCK 1 LOT 26

WHILEAS, JOHN POTTER, hereinafter the "Applicant", has proposed the development of property located at 36 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth, and State of New Jersey which property is further known and designated as Block 1, Lot 26 on the Tax Map of the Borough of Atlantic Highlands; and

WHILEAS, the Applicant has applied to the Planning Board of the Borough of Atlantic Highlands for variance approval to demolish an existing single family residential dwelling and asphalt driveway, and to construct a new single family residential dwelling with attached garage, driveway, walkways, installation of a new septic system, along with tree removal and regrading of disturbed Lot area, requiring the following variance relief:

A. Lot area of 14,250 sq. ft. where 30,000 sq. ft. is required (Section 150-29 A(2)) (Existing condition)

B. Lot shape diameter of 59.7 ft. where 65 ft. is required (Section 150-29 A(2)) (Existing condition)

C. Rear yard setback of 15 ft. where 30 ft. is required (Section 150-29 A(2))

D. Building coverage of 13.23% where 12% is permitted
(Section 150-29 A(2)) (Exhibit 5-2)

E. Floor area ratio of 0.214 where 0.175 is permitted
(Section 150-29 A(2))

F. Lot disturbance of 11,078 sq. ft. where 5,250 sq. ft.
is permitted (Section 150-78 E(4))

Contrary to the provisions of Chapter 50 Articles V & VII
Sections 150-29 A & 150-78 E and Exhibit 5-2 of the Development
Regulations of the Borough of Atlantic Highlands; and

WHEREAS, the subject property is located in the R-3
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 July 11, 2019 and
October 10, 2019 respectively, due notice of said meetings
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 April 27, 2019, marked as Exhibit A-1 in evidence.

1.2 Application of John Potter with narrative of intent dated March 20, 2019, marked as Exhibit A-2 in evidence.

1.3 Steep Slope review plan prepared by Richard E. Stockton dated March 23, 2015, revised through January 1, 2019, marked as Exhibit A-3 in evidence.

1.4 Elevation and floor plan drawings prepared by Dugasz & Brower dated March 20, 2019, marked as Exhibit A-4 in evidence.

1.5 Roof Drain Exhibit consisting of 3 sheets color rendered, marked as Exhibit A-5 in evidence.

1.6 Steep Slope Review of CME Associates dated February 20, 2019, marked as Exhibit A-6 in evidence.

1.7 Review #1 of CME Associates dated June 11, 2019 marked as Exhibit A-7 in evidence.

1.8 Color Rendering of Site Plan Steep Slope prepared by Richard E. Stockton revised through January 1, 2019, marked as Exhibit A-8 in evidence.
1.9 Color rendering with yellow highlight over existing dwelling, marked as Exhibit A-9 in evidence.

1.10 Improvement plan prepared by FWH Associates, P.A. dated July 19, 2019 revised August 20, 2019, marked as Exhibit A-10 in evidence.


1.12 Septic Design Plan prepared by WJH Engineering dated January 16, 2015, revised November 20, 2018, marked as Exhibit A-12 in evidence.

1.13 Review #2 of CME Associates dated August 7, 2019, marked as Exhibit A-13 in evidence.

2. The premises in question are located at 36 Bayside Drive, in the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey, which property is further known and designated as Block 1, Lot 26 on the Tax Map of the Borough of Atlantic Highlands.

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

4. The premises in question has approximate dimensions of 116.30 ft. x 164.85 ft. x 29.30 ft. x 45.00 ft. by 72.23 ft. x 111.81 ft. and is irregular in shape with an approximate area of 14,250 sq. ft. (.33 acres). The subject property has
substantial Steep Slopes over a portion of the rear and adjacent to another portion to the rear of the subject property.

5. The subject property is presently developed with an existing single family residential home with an asphalt driveway. The Applicant proposes to construct a new single family dwelling with attached garage and additional site improvements including a proposed driveway, walkways, installation of a new septic system, tree removal and regrading of disturbed Lot area. These proposed improvements require the variances outlined previously in this Resolution.

6. The Applicant was represented by Kevin Kennedy, Esq. who presented the testimony of Chris Rosati, a licensed Professional Engineer in the State of New Jersey, John Brower a licensed Architect in the State of New Jersey, John Potter the applicant and Frank Levering, the contractor. They presented testimony that the nonconforming Lot area and Lot shape diameter are the result of the property being an undersized Lot of record. These are existing conditions that the Applicant is unable to mitigate and those conditions will remain. The Planning Board also finds that the undersized nature of the Lot is the principal reason for the requested variances for building coverage and floor area ratio. The Planning Board notes that the floor area of the proposed new residence is only 60% of that which would be permitted on a full size Lot in the R-3 Zone District. Similarly, the building coverage for the proposed new home will be approximately 50% of the coverage that would be permitted on a full size Lot. The Planning Board further finds that the unusual shape of the rear Lot line results in a Lot
depth that makes it extremely difficult to comply with both the front and rear setbacks with a reasonably sized home.

7. Based on the foregoing the Planning Board finds that the subject property does have unique features that result in a hardship to the Applicant as they make it difficult, if not impossible, to construct a reasonably sized residential home on this parcel without variance relief. Consequently, the Planning Board finds that an extraordinary and exceptional situation uniquely affecting this specific piece of property exists such that the strict application of the Development Regulations of the Borough of Atlantic Highlands would result in peculiar and exceptional difficulties to and exceptional and undue hardship on the Applicant as it would prevent the Applicant from constructing a reasonably sized home consistent with other homes in the neighborhood.

8. The Planning Board 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. As noted previously, the proposed residence will be significantly smaller in foot print and floor area than could be constructed on a full size Lot. The Planning Board finds that the scale and size of the proposed residence is appropriate for this particular Lot and is consistent with other development along Bayside Drive. Thus, the Planning Board finds that there will be no substantial detriment to the public good as the proposed residence will be consistent with, and harmonize with, other development in the neighborhood.
9. The Planning Board also finds that the grant of the requested variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. The Planning Board finds that the dimensional variances requested in this case are from Ordinance provisions designed to insure that properties are not over built and that buildings not be located so close to the property lines as to having an imposing appearance and intruding upon the light, air and open space of adjacent parcels. The Planning Board further finds that the Ordinance provisions relating to building coverage and floor area are similarly intended to prevent properties from being overdeveloped with excessive sized buildings and structures. The Planning Board finds that the deviations proposed in this application are not excessive under the circumstances and the proposed improvements will not offend purposes for which these ordinances were passed. Consequently, there will be no substantial impairment of the Zone Plan or Zoning Ordinance.

10. With respect to Lot disturbance the Planning Board finds that, although there will be significant Lot disturbance in excess of that permitted, the resulting improvements will actually reduce the impervious Lot coverage by 4.1% from existing conditions. Moreover, the Applicant agreed to mitigate impacts regarding the Lot disturbance by agreeing that there will be no "track hoe" utilized in the demolition of the existing improvements which will be performed "by hand". The Applicant further agreed that there will be no "piles" and that roof runoff will be directed by gutter leaders to Bayside Drive in order to minimize impact upon the Steep Slope area to the rear of the proposed home. Finally, the Applicant agreed to mitigate the 9 trees to be removed for the new improvements by
providing 5 shade trees including 2 zelcova and 3 red maple trees with a minimum diameter at breast height of 2 inches to 2.5 inches and a minimum height of 10 ft. to 12 ft.. The Applicant also agreed to comply with the recommendations of the Planning Boards Engineer in its review #2 including a condition that the limit of disturbance area be staked by the board Engineer prior to Construction to confirm that the limit of disturbance is not exceeded. The Applicant also agreed with the recommendation of the Planning Board Engineer to meet to discuss reducing the limit of disturbance and phasing of Construction activities in order to minimize to extent of Lot disturbance at any one time. Based upon all of the foregoing, the Planning Board is satisfied that the request to exceed the allowable Lot disturbance is appropriate under the circumstances of this application.

11. 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.

12. 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 14th day of November, 2019 that the Application of JOHN POTTER 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. Lot area of 14,250 sq. ft. where 30,000 sq. ft. is required (Section 150-29 A(2)) (Existing condition)

   B. Lot shape diameter of 59.7 ft. where 65 ft. is required (Section 150-29 A(2)) (Existing condition)

   C. Rear yard setback of 15 ft. where 30 ft. is required (Section 150-29 A(2))

   D. Building coverage of 13.23% where 12% is permitted (Section 150-29 A(2)) (Exhibit 5-2)

   E. Floor area ratio of 0.214 where 0.175 is permitted (Section 150-29 A(2))

   F. Lot disturbance of 11,078 sq. ft. where 5,250 sq. ft. is permitted (Section 150-78 E(4))

2) Demolition of the existing improvements will be done by hand and without the use of a "track hoe". There will be no
“piles” used in the demolition or construction of new improvements.

3) All gutters and leaders will be directed to Bayside Avenue.

4) The Applicant shall replace the trees being removed with 5 new shade trees including 2 zelcova and 3 red maple with a minimum diameter at breast height of 2 inches to 2.5 inches and a minimum height of 10 ft. to 12 ft.

5) The Applicant shall comply with the technical recommendations set forth in review #2 prepared by CME Associates and marked in evidence as Exhibit A-13 including, but not limited to, those recommendations relating to Lot disturbance at paragraph 6. (e) and (f).

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: MRS. MURRAY
SECONDED BY: MR. CACCAMO

ROLL CALL:

YES: MR. HAWLEY, MR. CACCAMO, DR. CETRON, MR. NEFF, MR. PEPE, MRS. MURRAY, MR. COLANGELO

NO: NONE

ABSTAIN: NONE

ABSENT: NONE

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 November 14, 2019.

Secretary, Planning Board
Borough of Atlantic Highlands