

**ANNUAL REPORT FOR YEAR 2019
OF ATLANTIC HIGHLANDS UNIFIED
PLANNING BOARD/ZONING BOARD OF ADJUSTMENT¹**

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

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

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB 18-03	Bl. 74, Lot 8	58 Prospect Circle	Swanton	R-2

Bulk Variances

The Applicant 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, cabana and other renovations that required 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)). The Planning Board found that a hardship existed due to the lot being undersized and of a unique triangular that precluded reasonable improvements without the necessity for variance relief and that the proposed improvements were consistent with the neighborhood and could be granted without substantial detriment to the public good or the zone plan.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB18-06	Bl. 142, Lots 5	17 Ave. D	Denholtz Major Subdivision	R-1

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for Preliminary and Final Major Subdivision approval of a 308,885 sq. ft. (7.09 acre) parcel into sixteen (16) single family residential

¹ JANUARY 17, 2020 DRAFT

Lots and a remainder open space Lot on a new cul-de-sac roadway, which application required no variances and no design standard waivers. The plans also included associated sidewalks, temporary construction signage, stormwater management facilities, utility connections, lighting, landscaping and a public utility sanitary sewer pump station. Although there was substantial public opposition to the application the applicant revised the plans during the course of the hearings resulting in a variance free, waiver free application. The Planning Board found that the application conformed to the requirements of the Ordinance and was compelled by the findings of the New Jersey Supreme Court in the Pizzo-Mantin decision to approve the application. Objectors have filed an action in the Superior Court of New Jersey, Law Division, Monmouth County challenging the decision which is still pending.

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<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB18-16	Bl. 115, Lot 6	69 First Ave.	First Ave. Realty, LLC Use Variance	HBD

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for use variance approval to permit the use of a portion of existing first floor area for a non-permitted personal service use (esthetician). The proposed use required interior partition wall improvements and no exterior improvements. The Planning Board found that the type of service being proposed will promote public health and general welfare by providing the skin care services which the Applicant proposed. . The Planning Board further found that the grant of the requested variance will promote the goals and objectives of the Master Plan including expanding the choice of goods, services and employment available within the Borough, including the promotion of employment activities within the Borough (commerce goals and objectives). The also found that the use also promotes the purposes of the Municipal Land Use Law by expanding the variety of uses available in an appropriate location. The Planning Board found no significant adverse impacts to the public good or to the zone plan.

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<u>App.#</u>	<u>Block & 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. Subsequently the objectors reached agreement with the applicant to purchase the lot and subdivide it into portions which were to be absorbed by and merged into the adjacent lots. The application was amended to accomplish that and subdivision was approved eliminating Lot 23.01 and having its various subdivided portions merged into the adjoining lots.

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<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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PB18-05	Bl. 102, Lots 7&8	188-190 First Ave.	A.H. Real Estate Ptrs. CBD Deviation from Site Plan Approval	
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The Applicant received Preliminary and Final Major Site Plan approval with variances and waivers by Resolution adopted by the Planning Board of the Borough of Atlantic Highlands on September 13, 2018 for approval to remove the existing buildings and structures on both of the subject lots and construct a 3,085 sq. ft. one-story convenience store, with eleven (11) on-site parking spaces, a truck loading area, a refuse enclosure structure, retaining walls, fencing, concrete sidewalks, signs, lighting, storm drainage, utility connections and landscaping. Due to potential delays in obtaining approval from NJDOT of its free standing sign the Applicant applied to the Planning Board for a deviation from the prior approval with respect to one (1) free-standing sign which was granted variance relief to permit it to be constructed within 30 ft. of the right-of-way of State Highway Route 36 and with a zero (0) ft. property line setback where 10 ft. are required. The Applicant now requested the sign to be relocated out of the right-of-way of State Highway Route 36 onto the subject property at the property line with a setback of zero (0) ft. where 30 ft. (from the right-of-way) and 10 ft. (from the property line) are required. The Planning Board found that the requested variance relief diminishes the degree of variance relief previously granted. The sign will not be in the NJDOT right-of-way and, although still requiring variance relief for distance from the right-of-way, the proposal is more conforming than what was previously approved.

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<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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PB18-13	Bl. 61, Lot 8	77 Memorial Parkway	Grable Use Variance/Site Plan	OR
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The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for approval to open and operate an exotic pet store specializing in reptiles and amphibians which use is not expressly permitted in the O-R Zone District, requiring use variance approval. After being deemed complete but prior to commencing a hearing the Applicant communicated to the Planning Board that he no longer wished to move forward with the Planning Board application and requested that the application be withdrawn. The Planning Board agreed that since it had not commenced the hearing it was appropriate to grant the withdrawal.

WITHDRAWN

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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PB19-01	Bl. 37, Lot 23	24 East Ave.	Raymond Use Variance/Bulk Variances	R-1
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The Applicant applied to the Planning Board for bulk and use variance approval to construct a second story addition above an existing dwelling consisting of 910 sq. ft. which included three (3) bedrooms, two (2) bathrooms, a den, covered porches and second story "boxed-out" window, requiring the following variance relief:

1. Floor area ratio of 0.46 where 0.40 is permitted, requiring a "D4" use variance.(Section 150-29)(Exhibit 5-2)
2. Front yard setback from East Avenue of 7.44 ft. where 20 ft. are required, (Section 150-29) (Exhibit 5-2)
3. Front yard setback from Asbury Avenue of 8 +/- ft. where 20 ft. are required ((Section 150-29) (Exhibit 5-2)
4. Side yard setback of 9.71 ft. where 10 ft. are required, (Section 150-29) (Exhibit 5-2)
5. Building coverage of 29.78% where 25% is permitted (Section 150-29) (Exhibit 5-2)
6. Encroachment of building and covered porch within municipally required sight triangle (Section 150-51)

The Planning Board found that the subject property is an undersized Lot of record and has two (2) front yard setbacks as it is a corner Lot. It found that these factors, coupled with the location of the existing dwelling on the property, the footprint of which is not being altered, result in a hardship to the Applicant as it would prevent the amenities of having covered porches to provide shelter for persons coming to the property from inclement weather along with an aesthetically pleasing appearance for the structure. In addition the Planning Board found that the second-story boxed-out window provides an aesthetic architectural improvement to the existing residence.

The Planning Board found that the floor area ratio variance is triggered by the addition of a second story which will make the home a more functional and modern structure. The Planning Board noted that an Applicant for a FAR "d(4)" variance need not show that the site is particularly suited for more intensive development. Instead the Applicant must show that the site will accommodate the problems associated with a floor area larger than that permitted by the Ordinance. The Planning Board also found that the floor area ratio requirement relates to the intensity of use and in this case a single-family residential home exists on the property and following this addition and the increased floor area ratio, it will continue to be a single family residential home.

The Planning Board found that the proposed improvements are consistent with the fabric of the neighborhood and that the proposed development will not significantly change or alter the existing neighborhood or Zone plan.

APPROVED

App.#	Block & Lot #	Street Address	Applicant/Relief	Zone District
PB19-03	Bl. 107, Lots 4&5	15 W. Lincoln Ave.	West Lincoln, LLC Major Site Plan w/ Use & Bulk Variances	CBD

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for Preliminary and Final Major Site Plan approval to construct a 3-story multi-family residential with the following variances:

1. Multi-family residential development without commercial component not permitted in the CBD Zone District, requiring use variance "D(1)" approval. (Section 150-29) (Exhibit 5-4)
2. Impervious lot coverage of 86.6% where 80% is permitted. (Section 150-29) (Exhibit 5-2)
3. Portion of building within Municipal sight triangle area. (Section 150-51)

The Planning Board found that, notwithstanding the lack of a commercial component, the application promoted the purposes of the MLUL and fulfills a component of the Boroughs approved affordable housing plan by providing two affordable units. The Planning Board noted the surrounding uses and found that the proposed development would be consistent with, and an improvement of, the existing neighborhood.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-05	Bl. 1, Lot 26	36 Bayside Dr.	Potter Bulk Variances	R-3

The Applicant applied to the Planning Board 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))

The Planning Board found 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 found that the undersized nature of the Lot triggered the need for the requested variances for building coverage and floor area ratio. The Planning Board noted 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 is approximately 50% of the coverage that would be permitted on a full size Lot. The Planning Board further found that the unusual shape of the rear Lot line results in a Lot depth that made it extremely difficult to comply with both the front and rear setbacks with a reasonably sized home. Notwithstanding the lot disturbance variance the demolition was to be performed "by hand" to minimize disturbance and the final result would be a net reduction in impervious surface.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-06	Bl. 1, Lot 21	46 Bayside Dr.	Daitz Bulk Variance	R-3

The Applicant applied to the Planning Board for variance approval to construct a new single family dwelling with an attached garage and site improvements, including driveways, walkways, new septic system, tree removal, drainage improvements and re-grading of disturbed Lot area which require the following variances:

- A. Side yard setback of 5.33 ft. where 15 ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)
- B. Combined side yard setback of 20.33 ft. where 30 ft. required (Section 150-29(A)(2)) (Exhibit 5-2)
- C. Building coverage of 21.6% where 12% is permitted (Section 150-29(A)(2)) (Exhibit 5-2)
- D. Floor area ratio (FAR) of 0.39 where 0.175 is permitted (Section 150-29(A)(2)) (Exhibit 5-2)
- E. Lot coverage in steep slope area of 3,330 sq. ft. where 2,189 sq. ft. is permitted (Section 150-29(A)(2)) (Exhibit 5-2)

F. Impervious coverage in steep slope area of 2,705 sq. ft. where 2,586 sq. ft. is permitted (Section 150-78(E)(4))

G. Lot disturbance in steep slope area of 5,731 sq. ft. where 3,362 sq. ft. is permitted (Section 150-78(E)(4))

The following existing non-conforming elements were to continue:

A. Lot area of 10,479.52 sq. ft. where 30,000 sq. ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

B. Lot Shape Diameter of 29.9 ft. where 65 ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

C. Lot frontage of 60.07 ft. where 100 ft. is required (Section 150-29(A)(2)) (Exhibit 5-2)

The Planning Board found that it is not possible to construct a reasonably sized home on the subject property in compliance with the required setback, coverage, FAR and disturbance requirements due to the existing undersized lot area, frontage, width and lot shape diameter. The Planning Board found that the proposed development was consistent with other development in the neighborhood.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-07	Bl. 96, Lot 16.01	27 third Ave.	Hall Minor Subdivision W/Variances	R-1

The Applicant applied to the Planning Board for subdivision approval with variances to subdivide the 10,000 sq. ft. parcel into two 5,000 sq. ft. Lots requiring variances for Lot area, Lot frontage, Lot width, Lot shape diameter and floor area ratio. Following an initial hearing resulting in numerous concerns raised by the Planning Board and interested residents the Applicant withdrew the application.

WITHDRAWN

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB18-01	Bl. 19, Lot 1	233 East Highland Ave..	Kozłowski Extension	R-3

The Applicant by Resolution adopted September 13, 2018 received, variance approval to demolish an existing residential dwelling and to construct a new residential dwelling on the property including a two-story single family residence, attached garage, attached deck, driveway, sidewalk and a proposed septic system with variances. The Applicant did not commence construction within the required 12 month period and requested an extension of the approval. The Planning Board was satisfied that the Applicant experienced unforeseen circumstances that prevented the Applicant from commencing construction. The Planning Board found that there had been no changes to the Ordinance or to the character of the neighborhood surrounding the property such that the findings and conclusions contained in the Resolution supporting the grant of approval were unchanged and remained valid.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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PB19-04 Bl. 36, Lot 10 95 Asbury Ave. Hendrickson R-1
Bulk Variances

The Applicant applied to the Planning Board of the Borough of Atlantic Highlands for approval to construct an 800 sq. ft. in-ground swimming pool with a pool filter/heater and a 6 ft. tall stockade fence along with a concrete cooking/patio area which requires the following variances:

- A. Pool wall side yard setback of 5 ft. where 10 ft. are required (Section 150-54(G)(2))
- B. Rear yard setback for pool wall of 5 ft. where 10 ft. are required (Section 150-54(G)(II))

The Planning Board found that, in order to have a swimming pool on the property which is an amenity contemplated for properties located in the R-1 Zone District, variance relief was necessary due to the lot being undersized with deficient frontage and width and unique elongated rectangular shape coupled with the location of the existing residence and other improvements.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-09	Bl. 114, Lot 3	89-93 First Ave.	Winfield Management, LLC Bulk Variance	HBD

The Applicant applied to the Planning Board to permit a change in use increasing the number of non residential units in a structure requiring approval along with a waiver of site plan requirements to permit approximately 1700 sq. ft. of the first floor of the building for general office use with minimal exterior improvements. The premises are presently developed with an existing three story building with first floor commercial uses including a nail salon (Sue's Nails) an eyeglass store (Eyes on First) and a Pizza Restaurant (Una Pizza Napoletana) and approximately 1,700 sq. ft. of vacant commercial space, with a second floor with four residential apartments and a third floor with four residential apartments. The Applicant proposes to utilize the 1,700 sq. ft. vacant portion of the first floor space for office use. The Applicant also proposes to construct a handicapped ramp/lift to the rear of the building to provide for ADA access to the building. The Planning Board found that the change in use would result in a less intense use than the prior restaurant and was appropriate. The Planning Board also found that the exterior improvements were minimal and should be permitted without the requirement of a full site plan subject to approval of the final design by the Planning Board Engineer.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB15-03	Bl. 17, Lot 8.01	170 Ocean Blvd.	Thomas Paine House, LLC Extension	R-3

The "Applicant" previously, by Resolution adopted August 13, 2015, received approval for the development of property located at 170 Ocean Boulevard. The approval was for conditional use and site plan to convert an

existing single family residential home into a bed and breakfast facility, pursuant to Chapter 150, Article VI, Section 150-46.1 of the Development Regulations. The Applicant requested it's third one-year extension of approval commencing on August 13, 2019 and concluding on August 12, 2020. The Planning Board found that there have been no changes to the Ordinance or in the character of the neighborhood surrounding the property such that the findings and conclusions contained in the Resolution of August 13, 2015 supporting the grant of approval were unchanged and remained valid. Thus the Planning Board foundd that it was appropriate to grant the extension.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-02	Bl. 134, Lot 3	24 South Ave..	Miragliotta Bulk Variance	R-1

The Applicant applied to the Planning Board for approval to construct an in ground swimming pool and surrounding patio on an undersized lot of record with existing nonconforming lot area, frontage, width, lot shape, principal building setback and accessory building setbacks. Although no new nonconformity was proposed the ordinance prohibits the construction of principal or accessory structures on lots that are nonconforming in lot area without variance relief. The Planning Board found that the proposed improvements were designed not to trigger any new nonconformity and that it was the existing conditions that prevented development of the property with an appropriate amenity without variance relief.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-10	Bl. 94, Lot 17	37 Fourth Ave.	Fortier Use/Bulk Variance	R-1

The Applicant applied to the Planning Board for variance approval to permit the Construction of a three story addition to an existing single family residential home requiring variance relief including:

- A. Front yard setback for a third-floor addition of 9.2 ft. where 20 ft. is required (Section 150-29 (A)(2)).
- B. Side yard setback of third floor addition of 4.2 ft. where 10 ft. is required (Section 150-29 (A)(2)).
- C. Total side yard setbacks of 15.4 ft. where 20 ft. is required (Section 150-29 (A)(2)).
- D. Building coverage of 38% where 25% is permitted (Section 150-29 (A)(2)).
- E. Building height of 39 ft. where 35 ft. is permitted (Section 150-29 (A)(2)).
- F. Building height of 3 stories where 2.5 stories is permitted (Section 150-29 (A)(2)).
- G. Floor area ratio of 0.604 where 0.40 is permitted (Section 150-29 (A) (2)).

The Planning Board found that the existing property is an undersized Lot that creates difficulties in complying with the yard setbacks, building coverage and floor area ratio issues. The Planning Board found that the existing residence is very "tight" as it was constructed many years ago and the room sizes, hallways and stairways are all undersized and inconsistent with modern building standards. The Applicant's proposed

additions will permit these conditions to be alleviated creating larger bedrooms, hallways, stairways and bathrooms provide a better functioning home. The Planning Board further found that the proposed deviations were diminimis deviations.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-11	Bl. 9, Lot 5.03	254 East Highland Ave.	Jasontek/Zilincar Bulk Variance	R-3

The Applicant applied to the Planning Board for variance approval to construct a 24 ft. by 22.67 ft. detached garage requiring variances for building coverage, building height and floor area ratio on a lot with a lot area less than that required in the R-3 District. The lot was created by the Planning Board’s grant of subdivision approval with variances on December 11, 2008. The Resolution granting approval imposed Special Condition No. 5 requiring that the Applicant maintain a minimum side yard setback along the westerly property line of 33 ft. for all structures. The subdivision deed perfecting the aforesaid subdivision was recorded in the office of the Monmouth County Clerk. The Deed includes the Special Condition restrictive covenant and states that the covenant shall run with the land as a condition of the subdivision approval granted by the Planning Board. The neighboring property owners challenged the jurisdiction of the Planning Board to hear this application contending that the Planning Board does not have authority to relieve the property from the restrictive covenant which would be necessary in order to grant the relief requested. The Planning Board received a Memorandum from it's attorney advising the Planning Board of the general rule of law that the imposition of conditions upon approval does not bar the making of a new application for a variance, or for modification or enlargement of an approval previously granted, or for lifting conditions previously imposed in connection with the grant of an approval. However, the Memorandum further advised the Planning Board that the general rule does not apply in the case of a recorded restriction of a covenant that is placed upon a property for the benefit of the public and that , based on the case of Soussa v. Denville Township Planning Board, the Planning Board did not have jurisdiction to grant the requested relief. Based on advice of Counsel the Planning Board dismissed the application without prejudice.

DISMISSED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-13	Bl. 26, Lot 2	16 Keystone Dr.	Bisaccia Bulk Variance	R-2

The Applicant applied to the Planning Board for variance approval to construct a new raised deck addition and an exterior spiral staircase to an existing single family residential home, including the transplanting of an exiting 2.5” multi-stem Japanese tree from the rear yard area to the front yard which requires the following relief:

- A. Retain pre-existing rear yard setback of 24.6 ft. where 30 ft. are required (Section 150-29(A)(2)) (Exhibit 5-2)
- B. Retain pre-existing side yard setback of 14.4 ft. where 15ft. are required (Section 150-29(A)(2)) (Exhibit 5-2)
- C. Retain building coverage of 16.1% where 15% is permitted (Section 150-29(A)(2))(Exhibit 5-2)
- D. Maximum lot coverage in steep slope area of 5,340 sq. ft. where 5,194 sq. ft. are permitted (Section 150- 78(E)(4)) (Exhibit 5-2))
- E. Maximum steep slope area of 5,340 sq. ft. where 4,515 sq. ft. are permitted (Section 150-78(E)(4) (Exhibit 5-2))

The Planning Board agreed that the existing decks and rear exterior stairway were small, substandard and did not function properly. The Planning Board found that the proposed development would improve the property, provide better safety and would not have any adverse impacts on the neighborhood or the zone scheme. The Planning Board noted the sensitivity that was given to the slope using using minimally invasive “by hand” excavation and installation of the improvements.

APPROVED

<u>App.#</u>	<u>Block & Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB19-12	Bl. 107, Lot 7	11 West Lincoln Ave.	Muradi Bulk & Use Variance/Site Plan	CBD

The Applicant applied to the Planning Board for use variance, bulk variance and preliminary and final major site plan approval to construct a 4-story, mixed – use industrial/residential building containing 2,688 sq. ft. of office/warehouse/storage on the first floor, 2,268 sq. ft. of warehouse/office on the second floor, a 2,756 sq. ft. 3-bedroom apartment on the third floor and a 2,756 sq. ft. 3-bedroom apartment on the fourth floor. The specific relief requested was:

- A. Lot area of 6,750sq. ft. where 10,000 sq. ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- B. Lot frontage of 50 ft. where 100 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- C. Lot width of 50 ft. where 100 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- D. Lot shape diameter of 50 ft. where 60 ft. are required (Section 150-29) (Exhibit 5-2) (Existing condition)
- E. Lot coverage of 82.8% where 75% is permitted (Section 150-29) (Exhibit 5-2)
- F. Height of four stories where three stories is permitted (Section 150-29) (Exhibit 5-2)
- G. Mixed-Use light industrial/business/residential use where mixed use with industrial component is not permitted in the CBD Zone District (Section 150-29) (Exhibit 5-4);
- H. Preliminary and Final Major Site Plan Approval.

The Planning Board found that the bulk variances were necessary in order to reasonably develop the property due to the pre-existing deficiencies in lot area, frontage, width and lot shape diameter. The Planning Board found that the proposed warehouse storage use was consistent with surrounding development and would be less

intense than permitted uses in the zone. In addition the residential component would be a substantial benefit and promote the Borough's desire for Mixed Use business and residential development in proximity to First Avenue. The Board found that the grant of the requested variances would promote the purposes of the MLUL as well as the Borough Master Plan and, with the conditions imposed on the approval, the benefits substantially outweighed any potential detriment.

APPROVED

<u>ZONING ANALYSIS</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>
NUMBER OF APPLICATIONS	20	16	20	15
NUMBER GRANTED ²	17	12	14	13
NUMBER DENIED	1 ³	0	1	1
NUMBER WITHDRAWN	2	2	1 ⁴	1
NUMBER STILL PENDING	0	2	4	0
 <u>APPLICATIONS BY ZONE</u>				
NUMBER IN R-1 ZONE*	6	8	8	6
NUMBER IN R-2 ZONE	2	1	1	1
NUMBER IN R-3 ZONE	6	5	6	4
NUMBER IN HBD ZONE	2	0	3	2
NUMBER IN CBD ZONE*	3	3	3	0
NUMBER IN LI ZONE	0	0	0	0
NUMBER IN OR ZONE	1	0	0	0
NUMBER IN SC ZONE	0	0	0	0

² 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.

³ This application was “denied” / “dismissed” as the Planing Board determined that it did not have authority to grant the relief requested by the applicant.

⁴ Dismissed without prejudice for failure to prosecute application.

NUMBER IN MF-2 ZONE	0	0	0	2
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<u>RELIEF SOUGHT</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>
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EXTENSION OF APPROVAL	2	1	1	1
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APPEAL FROM ZONING OFFICER	0	0	0	0
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MAJOR SUBDIVISION*	1	2	0	0
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MAJOR SITE PLAN*	3	2	4	2
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MINOR SUBDIVISION*	2	2	2	4
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MINOR SITE PLAN*	0	1	2	2
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SITE PLAN WAIVER*	0	0	1	0
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CONDITIONAL USE*	0	0	0	0
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USE VARIANCE *	6	5	3	4
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BULK VARIANCE*	14	14	16	9
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DEVIATION FROM CONDITIONS OF APPROVAL	1	0	0	0
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***NOTE: APPLICATIONS MAY HAVE INVOLVED MULTIPLE RELIEF
RESULTING IN MORE ITEMS FOR RELIEF SOUGHT THAN APPLICATIONS**

<u>NATURE OF APPLICATION</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>
COMMERCIAL	5	2	6	4
MIXED COMMERCIAL/RESIDENTIAL	1	2	1	1
MULTI-FAMILY/HIGH DENSITY	1	0	0	1
SINGLE FAMILY RESIDENTIAL	13	12	13	9
NEW CONSTRUCTION	5	4	2	4
TEAR DOWN/REBUILD	3	2	0	1
ADDITION	6	5	8	3
APPEAL FROM ZONING OFFICER	0	0	0	0
INTERPRETATION OF ORDINANCE	0	0	0	0
CERTIFICATION NONCONFORMING USE	0	0	0	0

COMMENTS:

The number of applications increased 25% over 2018 but is consistent with 2017. This 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 continues to be relatively robust. There were two

applications for extension of a prior approval which appears to be an increase over the past several years in which there was only one such request in each. One of the requests was for a third one year extension which is the final extension permitted for that application. The percentage of approvals is 85% of those cases concluded. This percentage is consistent with prior years. That the percentage of approvals remains high is in large part due to the boards interaction with applicants giving them feedback resulting in modifications to applications during the course of hearings resulting in their being approvable. It has also been due to a number of applications being submitted "of right" without the need for variances. That was the case with the Denholtz major subdivision application this year. In that case the applicant revised its plans during the course of the hearings reducing the number and configuration of lots in order to present a conforming application.. A number of applications submitted did not require new bulk variance approval for proposed improvements but required a variance because the lot did not have the required lot area. 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 denials⁵ remained low at 5.0%.

In 2018 the highest number of applications were for properties in the R-1 and R-3 zones at 30% for each zone. This percentage is consistent with 2018, 2017 and 2016 for the R-3 zone but is lower for the R-1 zone which constituted 50% in 2018 and 40% in 2017 and 2016. It is also consistent over time as the highest number of applications continues to be for properties in the R-1 zone with the R-3 zone either even or slightly lower. The R-2 zone at 10.0 % is slightly above immediate prior years but is consistent with 2013, 2014 & 2015 at approximately 11% and a substantial decrease from the 25% experienced in 2012. Applications in the HBD zone at 10% increased over 2018 which had none, but is consistent with 2017 and 2016. It is still a significant decrease from the 25% in 2015 which was the highest in recent years. Nevertheless, 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 consistent with 2017 and 2018. The LI zone had no applications which is consistent with recent years. The SC zone had no applications which is consistent with recent years. The MF-2 zone had no applications which is consistent with recent 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 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 70% 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 three major site plan applications, no minor site plan applications, one site plan waiver application, two minor subdivision applications and six use variance applications. This is consistent with prior years and the applications did not reveal any particular trends or issues. There was only one application for major subdivision, no appeals from zoning officer decisions, no conditional use approval and one deviation from conditions of approval. This is also consistent with prior years.

⁵ Denial/dismissal used interchangeably per footnote #3.

Single family home applications accounted for approximately 65% of all applications. Approximately 46% of those involved home additions. This is consistent with 2018 (42%) and 2016 (40%) but below 2017 (61.5%) and remains well below the 80% in 2014. Commercial applications at 25% was consistent with prior years which ranged between 20% and 33.3%..

There do not appear to have been any major trends experienced in 2019. 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 REVISION⁶

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 with 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. During 2019 the Planning Board appointed a subcommittee to review and make recommendations as to how the Ordinance can be improved to remove any ambiguities in the Ordinance. Those recommendations have been sent to the Governing Body for its consideration.

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.. Applications for development in these zones routinely provide no on-site/off-street parking and rely on Ordinance provisions permitting proximity to the municipal lot to meet their parking requirements. Although the Ordinance has been recently tightened the Planning Board continues to have concern as to the capacity of the existing lot to handle these parking needs. The Planning Board recommends that the Ordinance be revised

⁶ Some recommendation are carried over from the 2018 annual report and some result from applications considered in 2019.

to include an exhibit to graphically show the limits beyond which the Ordinance 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. This is noted as a priority in the Circulation Plan element of the recently adopted Master Plan.

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. **Traffic Analysis.** The Planning Board has had several applications previously and pending involving developments with the potential to generate significant traffic. Consideration should be given as to whether it is appropriate to require a traffic analysis to be required as a completeness requirement for applications exceeding a certain level of traffic generation.