

**ANNUAL REPORT FOR YEAR 2015  
OF ATLANTIC HIGHLANDS UNIFIED  
PLANNING BOARD/ZONING BOARD OF ADJUSTMENT**

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

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

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB12-08</b>	<b>Bl. 117, Lot 8</b>	<b>35 First Ave.</b>	<b>SFC Enterprises Extension of Approval</b>	<b>HBD/CBD</b>

The Applicant previously received minor subdivision, use variance, bulk variance and site plan approval to demolish an existing building ("Skipper Shop") and construct one mixed use commercial/residential building on each of the two new lots. The Applicant requested the Planning Board to confirm that the Permit Extension Act of 2008 extended its approval until December 31, 2015. The Planning Board adopted a resolution confirming the application of the Permit Extension Act and extension of the approval to December 31, 2015.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB14-10</b>	<b>Bl. 134, Lot 18</b>	<b>83 Center Avenue</b>	<b>Casazza Bulk Variance</b>	<b>R-1</b>

The Applicant requested bulk variance relief to permit the demolition of an existing single family home with nonconforming side yard setback of 1.8 ft. where 10 ft. are required, nonconforming rear yard setback of 0.5 ft. where 20 ft. are required and nonconforming accessory rear yard setback of 0.5 ft. where 5 ft. are required and the construction of a new two-story home meeting all required setbacks on an existing undersized lot with lot area of 6,500 sq. ft. where 7,500 sq. ft. are required and lot frontage of 50 ft. where 75 ft. are required. The Board found that a hardship existed due to the undersized lot area and dimension are existing conditions and the adjacent properties are developed so that no additional land is available for assemblage to reduce the nonconformities. In addition the new home would eliminate three existing variance conditions. The Board also noted that 84% of the lots in the vicinity of the subject property had similar lot area and width deficiencies so

that the subject property is not out of character with the surrounding area. The Board found that the proposal would result in a more conforming lot with an aesthetically pleasing new home.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB14-11	Bl. 94, Lot 6.02	33 Fourth Ave.	Estate of Palamara Bulk Variance/Interpretation	R-1

The Applicant appealed the determination of the Zoning Officer that a variance was required in order to construct a 12 ft. by 16 ft. (192 sq. ft. ) accessory shed on a vacant parcel without a principal structure. In the alternative, a variance was requested if required. The Board found that the prior structures on the property had been removed and any rights under the Ordinance and MLUL provisions to restore partially damaged nonconforming structures had been lost. A new structure could not be built since the Ordinance only permits accessory structures to be built on a lot occupied by a principal structure to which it is accessory. The Board noted that the subject lot had been used for accessory structures in conjunction developed lot 16 for many years. Both lots are owned by family members. Moreover the Board found that it would be preferable to have the equipment proposed to be stored on the lot inside an accessory building rather than on the lawn in the open.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB14-13	Bl. 122, Lot 1	26 W. Highland Ave.	Sabat Use Variance/Site Plan	LI

The Applicant requested a use variance to convert an existing building to permit 5,031 sq. ft. to be used for a marble and granite facility with a retail showroom, 2,963 sq. ft. to be used for a cross-fit gym and the remaining 2,985 sq. ft. to be used as office space. The marble and granite retail component and the cross-fit gym are not permitted uses. The Board agreed with the applicant's planning witness that the use variance would promote the purposes of the MLUL and the Atlantic Highlands Master Plan by providing for a variety of types of uses in an appropriate location to serve the needs of citizens. Moreover the Master Plan goals include promoting an active waterfront community with a viable economic base and the expansion of the choice of goods, services and employment opportunities available in the Borough. The Board also agreed with the planner that the proposed uses would not have any substantial negative impacts upon the surrounding community. Finally, the Board agreed that, due to the fact that only the building was being renovated and minimal exterior change was proposed, it was appropriate to waive the requirements of a full site plan subject to the applicant, as a condition of approval, providing plans to address the technical concerns raised by the Bopard's engineer including some pavement restoration/resurfacing and installation of landscape buffering.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB14-12	Bl. 112, Lot 4	20 West Ave.	Halbert Use Variance/Site Plan	CBD

The Applicant requested a use variance to use an existing office building for a skin art and specialty tattoo design business. The Applicant also requested a waiver of site plan as no exterior improvements were proposed. The Board noted that the subject property is on the border of the LI Zone which permits the use. In fact the Applicant's current location was across the street in the LI Zone. However his lease for that premises was not renewed and he was unable to find another location in the LI Zone. The Board noted the very low intensity which is lower than office use. Thus, there would be no adverse impacts and the grant of variance relief would permit this business to remain in the Borough to continue providing a variety of uses and opportunities for residents of the Borough. The Board also found that the proposed use did not require exterior improvements and that a site plan should not be required.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB15-01	Bl. 140, Lot 1	103 Center Ave.	St Agnes Church Subdivision/Site Plan/Variations	R-1

The applicant requested a conditional use variance, minor subdivision, amended site plan and bulk variance relief to permit the residential home to be subdivided from the main church lot resulting in a nonconforming undersized lot with lot area of 4,950 sq. ft. where 7,500 sq. ft. are required, lot frontage of 50 ft. where 75 ft. are required and lot shape circle diameter of 30 ft. where 50 ft. are required. The subdivision also required the removal of parking spaces necessitating an amended site plan approval. Finally the subdivision resulted in increased lot coverage for the church property to 55.2% where 50% is permitted requiring a conditional use variance. The Board by a split vote found that the creation of the new undersized residential lot required variances that were too great and would result in a substantial detriment.

**DENIED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
PB15-02	Bl. 8, Lot 1.011	7 & 11 Hillside Road	Bonaduce Subdivision/Bulk Variance	R-3

The applicant applied for minor subdivision and bulk variance relief to subdivide an existing parcel with two residences into two separate lots with one of the residences on each lot. Variances were required for lot area of 9,512 sq. ft. where 30,000 sq. ft. are required, lot coverage of 2,885 sq. ft. where 2,320.4 sq. ft. are permitted, lot coverage of 12,084 sq. ft. where 7,761.5 sq. ft. are permitted and Floor Area Ratio of 25.85% where 17.5% are permitted. Prior to the commencement of a hearing the Applicant withdrew the application.

**WITHDRAWN**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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<b>PB15-03</b>	<b>Bl. 17, Lot 8.01</b>	<b>170 Ocean Blvd.</b>	<b>Sullivan</b> <b>Conditional Use/Site Plan</b>	<b>R-3</b>
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The applicant applied for conditional use and site plan approval to convert an existing single family home into a bed and breakfast facility. The Board noted that the application required no variances. It complied with all of the zoning requirements of the Ordinance. Two design standard waivers were requested and granted. The first was for a reduction of the 25 ft. buffer and certain curb and paving requirements. The Board approved the application with conditions.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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<b>PB15-05</b>	<b>Bl. 140, Lot 1</b>	<b>103 Center Ave..</b>	<b>St. Agnes Church</b> <b>Subdivision/Site Plan/Conditional Use</b>	<b>R-1</b>
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The applicant requested minor subdivision approval, amended site plan approval and conditional use permit to subdivide the subject property into two (2) lots. New Lot 1.01 will have a lot area of 96,380 sq. ft. (2.213 acres) and will retain the existing St. Agnes Church improvements including a masonry Church, 2.5 story brick rectory, 2.5 story frame convent, frame garage and associated driveway and parking areas. New Lot 1.02 will have a lot area of 7,500 sq. ft. (0.161 acres) and will retain an existing 1.5 story frame dwelling and driveway. The subdivision required the removal of twelve (12) existing parking spaces in order to create New Lot 1.02 as a separate residential lot. Those spaces were included in the previous site plan approval for the Church facility granted in 2008. Therefore, amended site plan and conditional use permit approval was also required. This is the same property that was denied approval in application PB#15-01. The applicant revised the application resulting in the elimination of the previously requested variances for lot area, frontage, lot shape circle diameter and conditional use variance. The Board found that the Applicant presented a variance free application and addressed all legitimate concerns expressed by the Board and interested citizens.

**APPROVED**

<u>App.#</u>	<u>Block &amp; Lot #</u>	<u>Street Address</u>	<u>Applicant/Relief</u>	<u>Zone District</u>
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<b>PB15-10</b>	<b>Bl. 17, Lot 25</b>	<b>100 Ocean Blvd.</b>	<b>Karasik</b> <b>Deviation From Conditions</b>	<b>R-2</b>
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The Applicant previously applied to the Planning Board of the Borough of Atlantic Highlands and, by Resolution adopted November 14, 2013, received approval to convert a medical office component of a pre-existing, non-conforming mixed use residential/medical office building into a residential apartment, resulting in a two family home where multi-family dwellings are not a permitted use in the R-2 Residential Zone District, contrary to the provisions of Chapter 150, Sections 150-30 and 150-31, and Exhibit 5-4 of the Development Regulations of the Borough of Atlantic Highlands. The Resolution at Paragraph 7 provided that there would be no increase to the size of the structure, the height of the structure or the exterior walls of the structure. The subject property is located in the R-2 Residential Zone District and multi-family residential

homes are not a permitted use in the Zone, but is a permitted use on the subject property by virtue of the variance previously granted subject to the aforesaid conditions. Subsequent to the adoption of the Resolution the Applicant decided not only to renovate the downstairs medical office into an apartment, but also to renovate the upstairs living unit, increasing the interior ceiling height of those rooms and altering the roof line to accommodate same, resulting in the height of a portion of the roof increasing up to, but not more than, 2 feet above the previously existing height. The Applicant requested relief from the condition to permit the additional height of the roof. The Board noted that, although the height of the renovated building has increased, it does not exceed 26.3 ft.. The R-2 Zone permits 35 ft.. The Board found the change to be diminimis and insubstantial. It did not violate the spirit and intent of the previous Resolution.

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB15-08</b>	<b>Bl. 97, Lot 13</b>	<b>60-68 First Ave.</b>	<b>Atlantic Highlands Assoc. II, LLC Conditional Use/Site Plan/Variance Interpretation</b>	<b>HBD</b>

The Applicant applied to the Planning Board for Conditional Use Permit, Variance and Site Plan Approval to construct an addition to an existing one-story commercial building, which addition will extend onto an adjacent vacant lot creating a larger first floor footprint with two new stories above resulting in a three-story building. The first floor will contain 9,646 sq. ft. of commercial space, and the upper levels will house eighteen (18) residential apartments, thirteen (13) of which will be one (1) bedroom units and five (5) of which will be two (2) bedroom units. Some of the third story apartments are proposed to include “loft type areas” within the third floor. The Applicant also requested an interpretation of the Zoning Ordinance insofar as the Zoning Officer determined that the “loft type areas” in the third stories of the proposed building constitute a separate story. If so, it would require a height variance insofar as the Ordinance permits a maximum building height of three (3) stories. The existing structure extends 0.20 ft. into the Borough right-of-way where a zero (0) ft. setback is required. This is a previously existing non-conformity that will continue. The existing 0.10 foot buffer will remain unchanged on Lot 13 where 9.5 ft. are required, and a buffer of 4 ft. will be provided on Lot 14 for the trash enclosure where 9.5 ft. are required, resulting in the need for a design waiver pursuant to Chapter 150, Article VIII, Section 150-85. In addition the Applicant did not provide the required thirty per cent set aside for common open space pursuant to Chapter 150, Article VIII, Section 150-87 of the Development Regulations of the Borough of Atlantic Highlands. The Board noted that the Ordinance refers to the Uniform Construction Code for definitional guidance. The provisions of that Code demonstrate that the “loft type areas” fall within the definition of a “mezzanine” which is not a story. The Board was satisfied that a height variance was not required. Although some concern was expressed regarding required buffer and parking the Board found that the Applicant complied with the requirements of the Ordinance

**APPROVED**

<b>App.#</b>	<b>Block &amp; Lot #</b>	<b>Street Address</b>	<b>Applicant/Relief</b>	<b>Zone District</b>
<b>PB15-07</b>	<b>Bl. 97, Lot 17</b>	<b>44-48 First Ave.</b>	<b>Luxury Rentals, Inc. Amended Site Plan/VariANCES</b>	<b>HBD/R-1</b>

The Applicant's predecessor applied for and received conditional use permit and major site plan approval to construct a three-story mixed-use building on an existing vacant lot. The Applicant applied to the Planning Board for amended Preliminary and Final Site Plan approval with variances to construct a four-story mixed-use commercial/residential building with three (3) commercial units on the first floor, and thirteen (13) single family apartments on the three upper floors. The application required a "D" use variance as the mixed-use development is a conditional use within the HBD Zone and the development does not meet all of the standards of the HBD Zone. More particularly, the building is four (4) stories in height where three stories are permitted. The application also required a "D" use variance insofar as the subject property is a "split-zoned" property with a portion in the HBD Zone and a portion in the R-1 Zone. The R-1 Zone does not permit mixed-use commercial/residential development. The Applicant will also continue existing lot frontage and lot width nonconformities for that portion of the property in the R-1 Zone as the existing lot frontage and width is 25 ft. along Second Avenue. The Board noted that the portions of the development in the R-1 Zone are parking spaces, a trash enclosure and seating area for residents which are not inconsistent with permitted uses/amenities in the R-1 Zone. The Board also agreed with the Applicant's architect that the new building elevation appearance is much improved over what was previously approved. The Board found that the Applicant addressed the issues of concern adequately and that the amended plan was an improvement over that previously approved. The Board also noted the concerns over adequacy of parking and determined that the Applicant had complied with the requirements of the Ordinance.

**APPROVED**

<u>ZONING ANALYSIS</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>
NUMBER OF APPLICATIONS HANDLED	12	15	9	16
NUMBER GRANTED <sup>1</sup>	8	13	8	14
NUMBER DENIED	1	1	0	2
NUMBER WITHDRAWN	1	1	0	0
NUMBER STILL PENDING	0	0	1	0
<u>APPLICATIONS BY ZONE</u>				
NUMBER IN R-1 ZONE*	5	6	3	6
NUMBER IN R-2 ZONE	1	1	1	4
NUMBER IN R-3 ZONE	2	4	2	2
NUMBER IN HBD ZONE	3	1	2	2
NUMBER IN CBD ZONE*	2	4	2	3
NUMBER IN LI ZONE	1	0	0	0
NUMBER IN OR ZONE	0	0	0	0
NUMBER IN SC ZONE	0	0	0	0

<sup>1</sup> It should be noted that the high approval rate is the result of the Planning Board taking an active role in working with Applicants during the hearing process to suggest revisions to plans to improve design, diminish the extent of, or remove, variances and mitigate impacts in order to transform an unapprovable application into an approvable one. In addition some subdivision and site plan applications may have been fully conforming to the zoning regulations and required to be approved per the Pizzo Mantin case. Finally, several applications were requests for either extension of approval period or minor administrative changes to previously approved plans.

**\*NOTE: ONE APPLICATION INVOLVED BOTH THE HBD AND R-1 ZONES  
AND ONE APPLICATION INVOLVED BOTH THE HBD AND CBD ZONES**

<b><u>RELIEF SOUGHT</u></b>	<b><u>2015</u></b>	<b><u>2014</u></b>	<b><u>2013</u></b>	<b><u>2012</u></b>
<b>EXTENSION OF APPROVAL</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>
<b>APPEAL FROM ZONING OFFICER</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>MAJOR SUBDIVISION*</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>MAJOR SITE PLAN*</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>MINOR SUBDIVISION*</b>	<b>3</b>	<b>1</b>	<b>1**</b>	<b>1</b>
<b>MINOR SITE PLAN*</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>
<b>SITE PLAN WAIVER*</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>CONDITIONAL USE*</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>2</b>
<b>USE VARIANCE *</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>3</b>
<b>BULK VARIANCE*</b>	<b>6</b>	<b>11</b>	<b>5</b>	<b>11</b>
<b>DEVIATION FROM CONDITIONS OF APPROVAL</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>

**\*NOTE: APPLICATIONS MAY HAVE INVOLVED MULTIPLE RELIEF  
RESULTING IN MORE ITEMS FOR RELIEF SOUGHT THAN APPLICATIONS**



**\*\* APPLICATION WAS FOR LOT LINE ADJUSTMENT AND DID NOT CREATE ANY NEW LOTS**

<b><u>NATURE OF APPLICATION</u></b>	<b><u>2015</u></b>	<b><u>2014</u></b>	<b><u>2013</u></b>	<b><u>2012</u></b>
<b>COMMERCIAL</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>2</b>
<b>MIXED COMMERCIAL/RESIDENTIAL</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>MULTI-FAMILY/HIGH DENSITY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>SINGLE FAMILY RESIDENTIAL</b>	<b>4</b>	<b>12</b>	<b>5</b>	<b>12</b>
<b>NEW CONSTRUCTION</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>3</b>
<b>TEAR DOWN/REBUILD</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>ADDITION</b>	<b>1</b>	<b>8</b>	<b>1</b>	<b>4</b>
<b>APPEAL FROM ZONING OFFICER</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>INTERPRETATION OF ORDINANCE</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>CERTIFICATION NONCONFORMING USE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**COMMENTS:**

The number of applications reduced from 2014 but are consistent with the pattern of the prior three years. That may be an indication that the economic recovery is stabilizing. However, one application was for

extension of prior approvals. One application sought amendment of a prior approval. One application was denied and the reapplied and was approved. The percentage of approvals has decreased from 86.6% in 2014 to 66%. However if the withdrawn application is not considered the approval rate is 73% and is consistent with prior years. The percentage of approvals remains high and is in large part due to the boards interaction with applicants giving them feedback resulting in modifications to applications in order to make them approvable. In the past it has also been due to a number of applications being submitted "of right" without the need for variances. A significant number of applications (50%) submitted did not require new bulk variance approval. In a number of cases the variances requested were minor in nature. The number of denials was changed only slightly at 7% to 8%.

In 2015 the highest number of applications (42%) were for properties in the R-1 zone. This is a consistent with 2014 and an increase over 2013 (33.3%) and 2012 (37.5%) and is consistent with the past when the highest number of applications were for properties in the R-1 zone. The R-2 zone at 8.3% is a slight increase over 2014 at 6.6%, is a slight decrease from 2013 (11%) and still a substantial decrease from the 25% experienced in 2012 but is more consistent with 2009, 2010 and 2011 percentages which were at approximately 13% +/- . The R-3 zone at 16.6% is substantially below 2014 at 26.6% , 2013 at 22.2%, is up from 2012 (12.5%) but is still well below 2011 (33%). Applications in the HBD zone increased to 25% compared to 6.6% in 2014 and 22.2% in 2013, 12.5% in 2012 and 20% in 2011. Applications in the CBD zone at 16.6% is below 2014 at 26.6% and is a decrease from the activity in prior years of 22.2% in 2013 and 19% in 2012. The LI zone increased to 8.3% from 2014 with 0%. Applications in the OR zone remained consistent with 0. The SC zone had no applications for 0% which was consistent with prior years. There continues to be interest in constructing new and improving existing residential homes, as well as in developing commercial properties in Atlantic Highlands. However that has still not rebounded to the levels that preceeded 2009.

Bulk variances continue to be the most sought approvals and were a component in 50% of applications. This is lower than prior years ( 55.5% in 2013 and 62.5% in 2012) and consistent with pre-2012 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 2012. 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.

Single family homes accounted for approximately 33% of all applications. This is a substantial drop from 80% in 2014 and more consistent with the 55.5% in 2013 and 68% in 2012. Commercial applications at 50% was significantly higher than 2014 at 20% and 2013 at 33.3%, and 2012 at 12.5.

There do not appear to have been any major trends experienced in 2014. 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.

## **RECOMMENDATIONS FOR ZONING ORDINANCE AMENDMENT OR REVISION**

The Board discussed several zoning issues during the course of the year including:

1. Signage continuity in HBD and CBD districts. This continues to be reviewed and no specific recommendations have been formulated.