# BOROUGH OF SEA BRIGHT PLANNING/ZONING BOARD APPLICATION

## 1099 Ocean Avenue Sea Bright, New Jersey 07760 732-842-0099 ext. 123

The application with supporting documentation must be filed with the office of the Planning Board Secretary and must be delivered for review at least ten (10) days prior to the meeting at which the application is to be considered.

# NOTE: All plans must be folded. Any rolled plans will not be accepted.

Telephone Number	To be completed by Municipal staff only.
Application Fees Escrow Deposit	Date Filed Application No
1. SUBJECT PROPERTY Location: 164 Ocean Avenue Block 33 Lot 20.01 Dimensions: Frontage 40' Depth 140' Total Area 5600 SF Zoning District: R. 2  2. APPLICANT Name: 164 Ocean Avenue, Seu Bright, NT 0776 D Telephone Number: 908 - 433 - 640 Individual  3. DISCLOSURE STATEMENT: Pursuant to J.J.S. 40:55D-48-1, the names and addresses of all persons owning 10% of the stock in a corporate applicant or 10% interest in any partnership, applicant must be disclosed. In accordance with N.J.S. 40:55D4-8.2 that disclosure requirement applies to any corporation or partnership which owns more than 10% interest in the applicant followed up the chain of ownership until the names and addresses of the non-corporate stockholders and partners exceeding the 10% ownership criterion have been disclosed. (Attach pages as necessary to fully comply.)  4. If owner is other than the applicant, provide the following information on the Owner(s). Owner's Name: Address Telephone Number	Application Fees Escrow Deposit
Location: 164 Ocean Avenue Block 33 Lot 20.01 Dimensions: Frontage 40' Depth 140' Total Area 5600 SF Zoning District: R-2  2. APPLICANT Name: Martin and Theresa Phan Address: 164 Ocean Avenue, Sea Bright, NT 0776 O Telephone Number: 908-433-6401 Applicant is a: Corporation Partnership Individual  3. DISCLOSURE STATEMENT: Pursuant to J.J.S. 40:55D-48-1, the names and addresses of all persons owning 10% of the stock in a corporate applicant or 10% interest in any partnership, applicant must be disclosed. In accordance with N.J.S. 40:55D4-8.2 that disclosure requirement applies to any corporation or partnership which owns more than 10% interest in the applicant followed up the chain of ownership until the names and addresses of the non-corporate stockholders and partners exceeding the 10% ownership criterion have been disclosed. (Attach pages as necessary to fully comply.)  4. If owner is other than the applicant, provide the following information on the Owner(s). Owner's Name: Address Telephone Number	Reviewed for CompletenessHearing
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Telephone Number	Owner's Name:
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5. Property Information:	
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(Attach copies) No Proposed	
Note: All deed restrictions conservations	
Note: All deed restrictions, easements, association by-laws, existing and proposed must be submitted for review and must be written in easily understandable English in order to be a	
understandable English in order to be approved.	
Present the use of the premises: Pre-existing nun-cuntuming 2	family use
6. Applicant's Attorney: Richard C. Sciria Address: 55 North Bridse Ave. Ste 4. Red Bonk Note Telephone Number 732-842-7905 FAX Number 732-842-7905	
Address: 55 North Bridge Ave. Ste 4 Red Box 6 1/7	
1 elephone Number 732-842 - 7905 FAX Number 732-842 - 7905	7770)
7. Applicant's Engineer: Catherine Franco, AIA Address: 150 Manny A Avenue Atlanto His Klandy, NJO Telephone Number 732-291-5942- FAXNumber	
8. Applicant's Planning Consultant: Janes Hissins	
8. Applicant's Planning Consultant: Janes Hissins Address: 823 West Park Avenue #261, Ucen 7 mashy, Telephone Number 732-493-3065 FAX Number	1 2 hero 2 n
9 Applicanta Traffic F.	my we
9. Applicant's Traffic Engineer:Address:	
Address:FAX NumberFAX Number	3
10. List any other Expert(s) who will submit a report or who will testify for the Applicant: (Attach additional sheets as may be necessary).	,
Name:	• *
Field of Expertise:	
Address	17/2
	And the state of t
Telephone NumberFAX	
11. APPLICATION PEDDESENTS A DEGLES	: •
11. APPLICATION REPRESENTS A REQUEST FOR THE FOLLOWING:	
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PLOT PLAN OF VARIANCE PLAN APPROVAL (Amended Site  SUBDIVISION  Minor Subdivision Amended Site  Minor Subdivision Amended Site	
Wind Subdivision Approval	
Subdivision Approval (Preliminary)Subdivision Approval (Final)	nor on one
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Number of lots to be created(including remainder lot) Number of proposed dwelling units(if Applicable)	·

Minor Site Plan Approval Preliminary Site Plan Approval Final Site Plan Approval Amendment or Revision to an Approval Site Plan Area to be disturbed (square feet) Total number of proposed dwelling units Request for Waiver from Site Plan Review and Approval Reason for request: A raulting of the Sea Br. Kt Planny Zoung Board og much the explicant's previous application on Fibrary 2018 for a sufficient of the sea of t	SITE PLAN:	**
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	4. Attach a copy of the Notice to Appear in the official newspaper of the market in	

14. Attach a copy of the Notice to Appear in the official newspaper of the municipality and to be mailed to the owners of all real property, as shown on the current tax duplicate, located within the State and within 200 feet in all directions of the property which is the subject of this application. The Notice must specify the sections of the Ordinance from which relief is sought, if applicable.

The publication and the service on the affected owners must be accomplished at least 10 days prior to the date scheduled by the Administrative Officer for the hearing. An Affidavit of Service on all property owners and Proof of Publication must be filed before the application will be complete and the hearing can proceed.

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15. Explain in detail the exact nature of the application and the changes to be made the premises including the proposed use of the premises: (attach pages as needed)  16. Is a public water line available?	at
16. Is a public water line available? Yes See attricted	Revolution
17. Is public sanitary sewer available? /e \( \sqrt{e} \)	reement
18. Does the application propose a well and septic system?	
19. Have any proposed new lots been reviewed with the Tax Assessor to determine appropriate lot and block number?	·
20. Are any off-tract improvements required an analysis of the same and the same an	
21. Is the subdivision to be filed by Deed or Plat?	
22. What form of security does the applicant propose to provide as performance and maintenance guarantees?	- Olding
23. Other approvals, which may be required, and date plans submitted:	
MARK THE FOLLOWING WITH A YES OR NO AND DATES OF THE PLANS SUBMITTED	
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Wonmouth County Board Of House	
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24. Certification from the Tax Collector that all taxes due on the subject property have been paid.

25. Certification from Sewer Collector that sewer utility charges due on the subject property have been paid.

Note: It is the responsibility of the Applicant to mail or deliver copies of the Application form and all supporting documents to the Board Secretary, Borough Engineer and Board Attorney for their review. Documentation must be at least ten (10) days prior to the meeting at which the application is to be considered, otherwise the application will be deemed incomplete. A list of those required to receive documents is attached to the application form.

26. The Applicant hereby requests that copies of the reports of the Borough Engineer and Board Attorney reviewing the application be provided to the following of the applicant's professionals.

Applicant's Professional Report Requested Attorney See ATTUNI List Address:	
Phone Number:	
Fax Number:	A
Engineer: See ATT List Address:	i ots
Phone Number:	
I certify that the foregoing statements and the materials submitted a certify that I am the individual applicant or that I am an Officer of the Application and that I am authorized to sign. (If the applicant is a corbe signed by an authorized corporate officer. If the applicant is apart be signed by a general partner).	Corporate poration, this must inership, this must
Sworn to and subscribed before me this 25 day of June, 20	P.M.lean
My Commission Expires: 03-22-20)2	Notary Public – State of New Jersey My Commission Expires Mar 22, 2022
I understand that the sum of \$has been deposited in an (Builder's Trust Account). In accordance with the Ordinances of the BoseaBright, I further understand that the escrow account is established of professional services including engineering, planning, legal and other associated with the review of submitted materials.	escrow account  prough of  d to cover the cost her expenses
Sums not utilized in the review process shall be returned.If additional states and that will be notified of the required amount as	
Date: 6/25/2021 Applicant: Theus allog Phase	
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THE LAND'S END TOWNHOUSE CONDOMINIUM ASSOCIATION, INC.

Plaintiff-Appellant,

v.

BOROUGH OF SEA BRIGHT UNIFIED PLANNING BOARD, ET AL.,

Defendant-Respondents.

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-004249-18

#### CIVIL ACTION

On Appeal From: Superior Court of New Jersey Law Division: Monmouth County Docket No.: MON-L-1255-18

Sat Below: Hon. Linda Grosso Jones, J.S.C.

\*\*ETHIS MATTER coming before the Court by GREENBAUM, ROWE, SMITH DAVIS LLP, attorneys for Appellant-Plaintiff, The Land's End Townhouse Condominium Association, Inc., (the "Association"), and upon notice to Respondents-Defendants, Borough of Sea Bright Unified Planning Board (the "Planning Board") and Martin Phan and Theresa Hoang (together, the Applicants), and the Association and the Applicants having agreed to the terms and entry of this Stipulation of Settlement (the "Stipulation").

### STIPULATED AND AGREED as follows:

1. The term "Approvals" as used herein shall mean the Planning Board's February 13, 2018, approval and February 27, 2018, resolution memorializing such approval, of plans prepared by Catherine Franco, AIA, dated September 25, 2017 (the "Original Plans"), including both "d" and "c" variances, concerning the proposed enlargement of Applicant's two-family house (the "House")

located at 164 Ocean Avenue, Sea Bright, New Jersey (Block 20.01, Lot 33) (the "Property").

- 2. Unless and until the Approvals are amended consistent with the terms of this Stipulation, Applicants shall not (i) seek to act upon or enforce the Approval, (ii) apply for any building permits concerning the Property, (iii) make any addition to the House, (iv) or perform any improvements to, or undertake any construction activities on, the Property, if the improvement or construction activity relates in any way to the Approvals.
- 3. Applicants shall seek approval from the Planning Board for an amendment to the Approvals to permit the enlargement of the House based upon amended plans that (i) eliminates the two (2) rear exterior decks as shown on the Original Plans, (ii) incorporate any front decks or balconies below the roof deck, (iii) incorporates "Juliet Balcony(ies)" on the rear elevation of the House, (iv) change the contour of the rear stairwell, thereby reducing the length as to the area of the rear stairwell from the back of the house by three feet (3') from the Original Plans, which shall not change the footprint of the livable space, (v) incorporates the planting of no less than five (5) trees of similar species, size, height, and caliper as currently exists on the Property in the buffer between the Property and the Association's property, (vi) provides that the brick wall shown on the Original Plans that run up half-way up the Ocean Avenue exterior stairwell

be amended so that the brick wall or other non-transparent material runs the entire height of the stairwell, and (vii) that the left-side railing on the roof deck (adjacent to the Lands End Condominium) be a solid barrier (non-transparent) (the "Amended Plans"). Prior to submission of the amended application, Applicants shall provide a copy of the Amended Plans to the Association for approval with the terms of this Stipulation, including the location and species of trees to be planted, such approval not to be unreasonably conditioned or withheld.

- 4. The Association agrees not to object to any application for approval of the Amended Plans submitted by the Applicants to the Planning Board.
- 5. The Association shall withdraw its Appeal, docketed A-004249-18, against all Respondent-Defendants.
- 6. This Stipulation may be recorded with the Monmouth County Clerk and shall be binding against all parties, their successors, heirs and assigns.

7.

THE LAND'S END TOWNHOUSE CONDOMINIUM ASSOCIATION, INC.

Dated: 12/11/19

By:

Steven & Mlenak, Esq.

\_GREENBAUM, ROWE, SMITH & DAVIS LLP Attorneys for Appellant-Plaintiff

## MARTIN PHAN & THERESA HOANG

Richard e. Sciria, Esq.
LAW OFFICE OF RICHARD C. SCIRIA
Attorneys for RespondentDefendants, Martin Phan & Theresa

Hoang

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-004249-18

THE LAND'S END TOWNHOUSE CONDOMINIUM ORDER DISMISSING APPEAL ASSOCIATION, INC. v.

BOROUGH OF SEA BRIGHT UNIFIED PLANNING BOARD, MARTIN PHAN AND THERESA HOANG

This matter being opened to the court on its own motion and it appearing that appellant has requested that the appeal be withdrawn.

IT IS HEREBY ORDERED that the above appeal is dismissed.

WITNESS, the Honorable Carmen Messano, Presiding Judge for Administration, at Trenton, this 13th day of December, 2019.

> s/JOSEPH H. ORLANDO JOSEPH H. ORLANDO CLERK OF THE APPELLATE DIVISION

MON-L-1255-18 MONMOUTH

# RESOLUTION OF THE SEA BRIGHT PLANNING/ZONING BOARD GRANTING SITE PLAN WITH BULK VARIANCES AND USE VARIANCE APPROVAL

RE: MARTIN PHAN 164 OCEAN AVENUE BLOCK 33 LOT 20.01

WHEREAS, the applicant, Martin Phan, owner of premises commonly known as 164 Ocean Avenue, Block 33, Lot 20.01, Sea Bright, New Jersey has applied to the Planning/Zoning Board for site plan approval with bulk variances and use variance approval to expand an existing non-conforming 2-family use in the R-2 zone; and

WHEREAS, the applicant has provided due notice to the public and all surrounding properties as required by law in accordance with N.J.S.A. 40:55D-1, et seq., this Board gaining jurisdiction therein and the public hearing having been held on this matter on February 13, 2018 at which time all persons having an interest in said application were given an opportunity to be heard; and

WHEREAS, the applicant appeared and marked into evidence the following:

A-1: Jurisdictional Packet.

A-2: Architectural plans prepared by Catherine Franco,

Architect dated 9-25-17

A-3: Report by David Hoder, Board Engineer, dated 1-18-18, revised to 1-24-18

A-4: Architectural plans showing existing conditions

and proposed, colored, dated 9-25-17

A-5: Board with 4 photos and site plan

A-6: Aerial

A-7: Aerial

WHEREAS, neighboring condominium development Lands End appeared through its attorney and presented the following evidence:

O-1: View of subject property from Mountain View looking East

O-2: View along south property line from Ocean Avenue looking west

O-3: View from Lands End looking at rear of subject

WHEREAS, the Board having considered the evidence presented it does hereby make the following findings of fact and conclusions:

- 1. The subject property is located in an R-2 Zone. The Applicant testified that the property is presently developed as a 2-family dwelling. The Applicant proposes to expand the existing 2-family residence from by adding 8' to the front and 30' to the rear.
- 2. Two-family homes are not permitted in the R-2 zone. Applicant is seeking a D variance for use as well as bulk variances for: lot width where 50' is required and 40' is existing and proposed; minimum front yard where 25' is required and 33.4'/4.8' is existing and 25.5'/4.8' proposed (corner lot requires two front yards); minimum side yard where 7' is required and 41.83'/4.8 is existing and proposed and will be extended with the additional with the addition;

3. The home is currently two-family and has been for many years. The architect, Catherine Franco testified that one unit is located on the first floor and one on the second floor. The first floor contains 1008 s.f. existing and will add an additional 937 s.f. including the deck. The total additional living space will be 581 s.f.

The second floor unit will add an additional 1273 s.f., (917 s.f. living space and 356 s.f. deck).

- 4. Applicant testified that the property has been used as a two family residence for many years. Applicant is proposing a garage which will allow vehicles to be parked inside and provide more greenspace than currently exists. The Applicant testified that the current stone driveway on Mountain View will be removed.
- 5. Steven Melenik, attorney for Lands End questioned the architect about the removal of 2 trees at the rear of the existing building. He also noted that home was being enlarged from 42' in length to 72'. The lot is 140' in depth.
- 6. Planner James Higgins testified on behalf of the Applicant. He noted that the applicant requires a D-2 variance for expansion of a pre-existing non-conforming use. He noted that there are currently 2 units with 2 bedrooms in each unit. This same configuration will remain with the addition. The improvements merely improve the functionality and "livability" of the home. The intensity of use will not be increased.

Higgins noted that the use would continue as it currently exists if the expansion did not take place.

The Planner further testified that the proposed expansion would improve current conditions, improve the aesthetics and provide a safer living environment for the residents.

7. The Planner further testified that the two-family use is consistent with the area. The 24 unit Lands End townhome

development is immediately adjacent to the subject property and the approved 24 unit Gaiters development is just north of the subject. Mountain View is sandwiched between these two large multi-family developments.

Higgins noted that the property is unique in that it is a corner lot requiring 2 front yards. The purpose is to allow the front yard site line to be consistent on both streets. That is not necessary in this instance because there is no other home on this side of Mountain View.

The Planner further noted that the lot is long and narrow  $(40 \times 140)$ . While 50% lot coverage is allowed, the subject, with the improvements, will only be 36.7%, which is 750 s.f. less than allowed. The Applicant is not maxing out the lot development.

Moreover, Higgins noted that the existing parking area for cars is stoned and cars park outside. The new garage will allow cars to be housed inside and provide less stone area and more green space, improving the neighborhood.

He further stated that the bulk variances were technical in nature due to the two front yards. The bulk variances were not being increased other than by extending the building down the same line an additional 30 '. He noted the large separation between the subject building and the closest Lands End building.

- 8. Mr. Phan testified that he is requesting the addition in order to make better living conditions for his family.
- 9. Neighbor Ruth Fialko lives directly across from the subject property and testified in favor of the application.
- 10. Planner Higgins gave his opinion that the expansion of the building would have no negative impact on the zone ordinance and was not inconsistent with the intent of the Master Plan. There would be no detriment to the neighborhood. The two residential uses have been in existence for many years.

He stated that the property would be improved aesthetically and provide for a better and safer plan. It would definitely improve the functionality of the home.

11. Lands End presented Planner Brian McPeak. He testified that the addition would diminish the aesthetic resources. He opined that there would be a detriment to the light and space by the addition to building.

McPeak further opined that the 130% increase in the floor area would be a substantial intensification of the use. He felt that there was no hardship for the issuance of the bulk variances.

- 12. The Board agreed that the proposed extension of the existing two-story residence would not impair the intent of the zone plan or zoning ordinance. The Board found that the exterior changes will be an upgrade to the property and a benefit to the streetscape. The Board further found that the setbacks are existing and will be extended by the length being added to the building, but are similar to the conditions in the neighborhood and will improve existing conditions.
- 13. The Board found that the proposed addition is not excessive in size and that the lot coverage is well under that permitted. The intensity of the use will not change. The two residential uses on the same lot have existed for many years with no detriment. The use is consistent with the neighborhood, especially with the Lands End development immediately adjacent.
- 14. The Board found that the proposed development would improve the functionality of the house and would provide more green space.
- 15. The Board agreed that the expansion of the building vertically would have no negative impact on the zone ordinance and was not inconsistent with the intent of the Master Plan.

The two residential uses have been in existence for many years.

The addition of 30' to the rear on this very deep lot would have no impact. The Board found that the proposed addition would be an aesthetic improvement and still leave considerable space between the subject house and the Lands End buildings. The Board found that the intensity of the use would remain the same and not be intensified by adding on the existing two-family structure. The property will still contain two two-bedroom units.

- 16. After discussion with the Board engineer, the Board determined that the waivers for road widening, curb and sidewalk on Mountain View were warranted.
- 17. The Applicant stipulated that no mechanicals would be located further into any setback than the walls of the buildings.
- 18. The Applicant noted, and the Board agreed, that the property was exceptionally narrow, making it difficult to comply with the one side yard/front yard setback. The side yard setbacks will remain the same, just be extended by the additions as set forth on the plans.
- 19. After evaluating all of the evidence and testimony the Board found that the applicant has met the enhanced burden of proof as to the positive and negative criteria as set forth in Medici v. BPR Co., 107 N.J. 1 (1987).

The addition to the existing two family residence by adding to the front and rear will have no impact on the existing provision of adequate light, air and open space.

The continuation of the two family use will not impede the specific intent and purpose of the zone, as it has been in existence for years. There are several multi-family uses in the neighborhood.

The Board found that the proposed expansion of the non-conforming use, making the units more functional and removing the driveway on Mountain View and the stoned area will promote the public health and safety.

20. The "D" variance relief sought can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan, Zone Plan and Zoning Ordinance for the reasons set forth above.

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board of the Borough of Sea Bright based upon the findings of fact set forth hereinabove that the waivers, bulk and use variance request to expand the existing non-conforming two-family residential dwelling be granted subject to the following general and specific conditions:

#### General Conditions

- 1. The applicant shall submit proof of payment of all real estate taxes applicable to the property and payment of all outstanding and future fees and escrow charges, posting of all performance guarantees, if any, in connection with the review of this application prior to and subsequent to the approval of this application.
- 2. The applicant must obtain the approval of all necessary and appropriate governmental agencies including but not limited to CAFRA and compliance with all governmental regulations except those specifically waived or modified in this Resolution.
- 3. The applicant shall comply with all building, FEMA and fire codes including but not limited to, entrances and exits.
- 4. The accuracy and completeness of the submission 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, which shall be deemed satisfied

unless and until the Board determines (on Notice to the applicant) that a breach thereof has ocurred.

- 5. All stipulations agreed to on the record, by the applicant.
- 6. In the event that any documents require execution in connection with the within approval, such documents shall not be released until all of the conditions of the approval have been satisfied unless otherwise expressly noted.
- 7. 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 improvements and other purposes authorized by the MLUL.
- 8. The Applicant shall furnish such Performance Guarantees and/or Maintenance Guarantee as may be required pursuant to the MLUL and the Sea Bright Ordinances.
- 9. 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.

#### Specific Conditions

- 1. No mechanicals would be located further into any setback than the walls of the buildings.
  - 2. The driveway along Mountain View will be removed.
- 3. Applicant will repair any curb, sidewalk and pavement disturbed during the course of construction, to the satisfaction of the Board engineer.

BE IT FURTHER RESOLVED that this Resolution memorializes the action taken by the Planning/Zoning Board at its meeting of February 13, 2018; and

BE IT FURTHER RESOLVED that the Chairman and Board Secretary are hereby authorized to sign any and all documents necessary to effectuate the purpose of this Resolution; and

BE IT FURTHER RESOLVED that the Board Secretary is hereby authorized and directed to cause a certified copy of this

Resolution to be sent to the Applicant, the Borough Clerk, the engineer and the zoning officer and to make same available to all other interested parties and to cause notice of this Resolution to be published in the official newspaper at the Applicant's expense.

I certify the foregoing to be a true copy of a Resolution by the Sea Bright Planning/Zoning Board memorialized on February 27, 2018.

> Sea Bright Planning/Zoning Board

Adopted on a roll call on a motion by

David Desio

Seconded by Elizabeth

Lance Cunningham, Chairman

Sea Bright Planning/Zoning Board

# APPLICATION Mostin Phan

Stephen Ca	Showe MADE A MOTION TO
Appro	ડર્_
SECONDED BY	stephen Smith
ROLL CALL:	•
PLANNING BOARD	MEMBERS:
CASHMORE	yes
CUNNINGHAM	Absent
DEGULIO	4es
DESIO	<u>4e5</u>
DUFFY	yes
LECKSTEIN	Absent
LONG	Absent
NOTT	yes
SMITH	<u>4e5</u>
ONLY VOTES TO MA	AKE NINE VOTES IF NEEDED
McGINLEY (ALT 1)	<u>Yes</u>
BILLS (ALTA)	









