RESOLUTION

D'AVELLA

WHEREAS, Bernard J. D'Avella, Jr. and Elaine B. D'Avella, 1535 Runyon Lane, Mantoloking, New Jersey, 08738 (hereinafter "Applicant") have made Application to the Planning Board of the Borough of Mantoloking (hereinafter "Board"); and

WHEREAS the Applicant is the owner of the property for which several variances are being requested which is known as Block 40, Lot 9.01 on the Tax Map of the Borough of Mantoloking, Ocean County, New Jersey which is also known as 1535 Runyon Lane, Mantoloking, New Jersey (Property); and

WHEREAS, the Property is in the R4A Zone of the Borough; and

WHEREAS, the Applicant requests a variance to deviate from the strict enforcement of the Zoning Ordinance of the Borough of Mantoloking Ordinance 465 also now codified and known as Chapter XXX, Land Use Regulations of the Revised General Ordinance of the Borough of Mantoloking and more specifically from Ch. XXX, Section 30 – 6.5a.2 and Appendix B Bulk Standards which provides:

A. A nonconforming structure shall not be enlarged, extended, or increased, horizontally or vertically, unless such enlargement, extension or increase is conforming.

WHEREAS, the Applicant proposes to expand the existing nonconforming structure, in a nonconforming manner in the rear yard setback by the construction of three dormers above the portion of the existing structure within the rear yard setback; and

WHEREAS, the existing nonconformities of the structure are that the north side yard setback is 9.35' and 10' is required by Chapter XXX, Section 30-6.10.a and

Appendix B and a rear yard setback where 10' is actual and 20' is required, (Chapter XXX, Section 30-6.10.a and Appendix B); and

WHEREAS, the Applicant seeks a variance from the strict enforcement of the Half Story Habitable Area where 36.7% is requested and 33 1/3% is permitted (Definitions and Appendix B of the Bulk Standards) which states:

> HALF STORY – The space under a sloping roof above the second story which has the line of intersection of the roof and wall face not more than two feet above the floor level and in which space the possible floor area with headroom of five feet or less occupies at least fifty percent (50%) of the floor area of the second story and the floor area of finished living space with headroom of five feet or more occupies less than thirty three and one third percent (33 and 1/3%) of the floor area of the second story below; and

WHEREAS, the Applicant seeks a variance from strict enforcement of the construction within the rear yard setback where 20 feet is required and 15.6 feet is provided (Chapter XXX 30-6.10.a and Appendix B); and

WHEREAS, the proposed construction by Applicant will not increase or exacerbate the already existing rear yard nonconformity but the proposed construction components, namely the east side dormer, added to the half story would constitute a vertical enlargement within the already existing rear yard nonconformity of 15.6'; and

WHEREAS, the Applicant under N.J.S. 40:55D-70c must if Applicant chooses to proceed under the c1 tests show whether there is (1) peculiar and exceptional practical difficulties to, or (2) exceptional and undue hardship upon, the applicant arising out of (a) the exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the existing structure thereon; and

WHEREAS, in addition to the above proof, the Applicant must demonstrate that such variance can be granted without substantial detriment to the public good and will not substantially impair the intent of the Master Plan or the Land Use Ordinances of the Borough of Mantoloking (the "negative criteria") and the Applicant must show that the grant of the variance would promote the purposes of zoning as stated in N.J.S. 40:55D-2 and the undue hardship (the "positive criteria"); and

WHEREAS, the Applicant can also choose the prove his case by N.J.S. 40:55D-70c(2) known as the flexible "c". The Applicant must show that: 1. the Application applies to a specific piece of property; 2. that the purposes of the MLUL would be advanced by a deviation from the requirements of the zoning ordinance; 3. that the variances can be granted without substantial detriment to the public good; 4. that the benefits of the deviation would substantially outweigh any detriment; 5. that the variance would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the attorney for the Applicant indicated the Applicant would proceed with the case under the c2 criteria and proofs; and

WHEREAS, proof of publication and mailing to owners within 200 feet of the Property, as is required by the Municipal Land Use Law of New Jersey (N.J.S. 40:55D-1 et.seq.) and the Land Use Ordinance of the Borough of Mantoloking (Article III; Section 8.2N) has been furnished; and

WHEREAS, Daniel M. Hurley, Esq. (Starkey, Kelly, Bauer, Kenneally and Cunningham) 2 Hooper Avenue, Toms River, New Jersey, 08753, represented the Applicant at the December 6, 2007 meeting; and

WHEREAS, Daniel M. Hurley, Esq., the attorney for the Applicant agreed that the Application would be heard as a site plan and that it would not be a matter where the Zoning Board has exclusive jurisdiction and that the Board would hear this as a Planning Board; and

WHEREAS, the following exhibits were marked at the meeting held on December 6, 2007:

1. Correspondence of Thomas S. Guldin, P.E., Land Use Officer dated November 28, 2007 was marked as B-1.

2. Addition and Alteration Plan prepared by Arthur Manns Harden, AIA, License No. C-5514, One Downer Avenue, Mantoloking, New Jersey, 08738 dated May 2003 and revised thru October 31, 2007 as Job 2303 was marked as A1.

3. Architectural Plans prepared by Arthur Manns Harden, A1A dated May 12, 2003 revised thru October 17, 2007 containing one sheet was marked as A-2.

4. Survey prepared by Hallard & Associates dated March 21, 2003 as Job No. 39576 was marked as A-3; and

WHEREAS, the following Board members were in attendance and heard the Application at the meeting of December 6, 2007: Chairman Henshaw, Messrs. Hawkings, McIntyre, Brown, Bradley, Witkowski, Richardson, Ms. Potter and Ms. Wagner. Mr. Ness, an alternate, was also in attendance.

WHEREAS, the following Board members made a site visit: Chairman Henshaw, Messrs. Hawkings, McIntyre, Brown, Bradley, Witkowski, Richardson and Ness, Ms. Potter and Ms. Wagner.

WHEREAS, Mr. Hurley called as his first witness Bernard J. D'Avella, 1535 Runyon Lane, Mantoloking, N.J. 08738, who being duly sworn testified as follows:

1. The house when first constructed in the 1960's could be seen from both Runyon Lane and Ocean Avenue (Route 35) and was designed in a manner to appear that it had two fronts.

2. Ultimately the lot on the Ocean Avenue side was sold and a house was constructed on that lot.

3. He and his wife purchased this Property and the house in 1988 and no changes in the house were made from that time until the present. The changes desired by the Applicant are the first improvements they will make to the residence.

4. In 2003 the Applicant engaged Arthur Manns Harden, AIA to draw plans to expand the house with the only direction that an expansion be within the Codes of the Borough of Mantoloking. The expansion would have been to accommodate visits from their sons and extended families and provide adequate and safe sleeping accommodations.

5. Certain circumstances prevented them from executing the plans done by Mr. Harden in 2003.

6. At that time the plans to expand the third floor in the southeastern portion of the residence on the Property were fully in compliance with the Ordinances of the Borough of Mantoloking. In 2003 the Land Use Ordinance of the Borough was overhauled and changed by Ordinance 465 now codified and known as Chapter XXX.

7. New bulk requirements of Ordinance 465 and Chapter XXX which is now the operative Land Use Ordinance of the Borough of Mantoloking made the designed and desired improvement to the residence nonconforming.

8. Therefore, the Applicant comes before this Board to obtain approval to construct three (3) dormers in the attic space (two on the west side and one on the east side) of the existing dwelling.

9. The purpose for expansion is to provide enough space for beds for all grandchildren and/or extended family and guests and to install a bathroom to serve that sleeping area. They explored the possibility of putting two bedrooms in that area, but the space does not allow for such construction.

10. The area presently has two windows, one to the north and one to the south and is extremely dark. Also the egress from those windows, at present, means that in order to get out and to ground level, a person wishing to do so would have to traverse other roofs.

11. The proposed window facing the south side gives egress through the window which meets safety codes for the size of an egress window and allows a person wishing to utilize such egress a direct descent to the ground via a rope or chain ladder which is not presently available with the configuration of the present windows.

12. Dormers will provide light from all angles and the ability to obtain additional ventilation.

13. Although the present area is used as a sleeping area there is no availability of a bathroom on that level, nor is there ability to obtain adequate light during daylight hours. There is a furnace there which services the second and attic floor.

14. There is only one window on the west side of the neighboring house to the east which would have exposure to the new dormer to be placed on the east side of the Applicant's house. There is also one glass block window on the west side of the neighboring house through which no visibility is available in or out.

15. The two dormers proposed on the west side of the Applicant's house facing Runyon Lane are fully conforming. The Applicant understands the reason for the variance application is for the east side dormer within the rear setback of twenty (20) feet. The fact that the rear setback is presently nonconforming means that this expansion would consist of an expansion of a nonconforming structure, and that by adding dormers the present attic space exceeds the half story habitable area limit and is within the 20' setback; and

WHEREAS, Mr. Hurley called as his second witness Arthur Manns Harden, AIA, N.J. License C-5514 of One Downer Avenue, Mantoloking, N.J.. Mr. Harden having previously presented his qualifications and having testified before this Board on numerous, his credentials were accepted; and

WHEREAS, Mr. Harden testified as follows:

1. He has been in general practice of architecture for many years and has done a significant amount of work within the Borough of Mantoloking.

2. He was engaged by the Applicant in order to do an expansion of the third floor attic area in 2003 and his only direction was to keep the expansion within code.

3. At that time he designed an expansion to fit within the existing codes of the Borough of Mantoloking, but the Applicant did not go forward with the project at that

time and changes in the Borough Land Use Ordinance now creates variances which the Applicant explained and which are now being addressed.

4. The Applicant wishes to add three (3) dormers, two on the west side (Runyon Lane) which fully conform to the Ordinance as far as setbacks are concerned and one (1) on the east side (Ocean Avenue) which does not conform for reasons as expressed by the Applicant in his testimony and as outlined in this Resolution.

5. It would be extremely difficult and aesthetically unappealing to cut back the dormer from the existing 15 foot 6 inch setback from the rear yard to conform to the now 20 foot rear yard setback required in the R4A Zone.

6. The house is set far back from Runyon Lane and essentially is buffered from Ocean Avenue by its back door or easterly neighbor. He believes that construction of the dormers essentially constitutes a sleeping area with a bathroom which makes the house far more livable without having to expand the existing foot print of the residence. The total square footage of livable space by the adding of the dormers and requirements for these variances are de minimus in that such construction and expansion constitutes a 3.4 % increase in such space over the permitted square footage.

7. He also points out that under the present Codes of the Borough, the Applicant would be permitted to construct a residential dwelling with a footprint of 4200 square feet without an area variance but the present house together with the porches, constitutes only 1900 square feet.

8. In answer to certain concerns for emergency egress, he testified that the stairway leading to the area to be improved is two feet, 6 inches wide which does not meet the safety code for emergency ingress or egress. He explained the house was built

in the 1960's and many design criteria used were those of that time. However, the new south side window meets all new codes for emergency egress and only one such egress is required by code. The window in the bathroom to be constructed is not the size for the egress under new safety codes, but he testified it is large enough for a person to remove himself or herself.

9. He believes there would be no substantial detriment to the public and that the aesthetic affect of the dormers would be a positive impact on the neighborhood. He believes that the Applicant by taking this route avoids an on ground increase of conforming square footage which would be necessary to fulfill living needs of the Applicant. He also believes that there will be no detriment to light, air and open space to any neighbors and that addition of the east side dormer window provides an additional safety factor to get out of the residence in case of emergency.

WHEREAS, Chairman Henshaw opened the meeting for questions and comments and the following were made:

1. Dennis Commette of 1519 Runyon Lane which is adjacent to the Applicant's Property on the north side supports the variance request of the Applicant. He believes this alternative to spreading the footprint to accomplish the living needs of the Applicant is far preferable in that respect and is beneficial to the neighborhood and the general public of the Borough of Mantoloking. He believes the architectural addition of the dormers would be an aesthetic benefit in that it would bring the house into a more appropriate saltbox appearance. He believes that such an Application in order to attempt to comply with the Borough's Ordinance should be recognized.

2. George Nebel residing at 1504 Runyon Lane and speaking as a resident and not as a Borough official indicates he supports the Application of the D'Avellas.

3. Eileen McIntyre of 1516 Runyon Lane (not related to Board Member Robert McIntyre) also supports the Application of the D'Avellas and believes it would be a beautiful addition to the street.

NOW, THEREFORE, the Planning Board of the Borough of Mantoloking makes the following findings relating to this Application:

1. That construction of three (3) dormers only one of which will be within a nonconforming setback is a de minimus deviation from the Land Use Ordinance of the Borough of Mantoloking.

2. That by expanding the attic space into the half story habitable living area is preferable than the Applicant seeking to expand the existing foot print to accommodate their living needs.

3. That the addition of three (3) dormers will not hinder air, light or open space and that the dormers provide an aesthetic improvement and will bring architectural detail of the house more in line with the neighborhood and Borough.

4. The addition of the south side window will provide safety enhancements in that the window will allow for egress and provide direct outside descent to the ground.

5. That the benefit of granting a variance greatly outweighs the detriment which could result in the Applicant seeking to expand on the ground foot print to accommodate their living needs.

6. That the Applicants request to construct in the nonconforming rear yard setback was occasioned as a result of the change of the Borough Land Use Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Mantoloking based on the finding of facts specifically stated heretofore that on December 6, 2007 the Application of Bernard J. D'Avella, Jr. and Elaine B. D'Avella for the variances stated hereinafter can be granted without substantial detriment to the public good and would not substantially impair the intent or purpose of the Zoning Ordinance and Master Plan of the Borough of Mantoloking, and further the Board finds that the purposes of the Municipal Land Use Law (N.J.S. 40:55D-1 et. seq.) and specifically N.J.S. 40:55D-2(b) (c) and (j) would be advanced and that the benefits of granting of the variances and deviations from the strict enforcement of the Zoning Ordinance would substantially outweigh any detriment on the following conditions:

1. The Applicant shall comply with all submissions and representations made before the Board or were made by their professionals at the December 6, 2007 meeting and in their Application.

2. The Applicant shall obtain a building permit and a zoning permit (if necessary) from the Borough of Mantoloking.

3. The Applicant must submit proof of payment of all due taxes to the Borough of Mantoloking at the time of the adoption of the Resolution.

4. Applicant will provide proof of publication of a Notice of Decision of the Board to the Secretary of the Board within thirty (30) days from receipt of the Resolution.

5. The Applicant shall obtain any and all necessary Federal, New Jersey permits (including any Coastal Area Facility Review Act [CAFRA] permit), (a copy of any already obtained permit shall be provided to the Secretary of the Board) County of Ocean or local permits and/or approvals for each agency or Board having regulatory

jurisdiction over this development and fulfill all conditions of said permits and/or approval, and will submit a copy of any permits to the Board. In the event other agencies require a change in the plans approved by the Board, the Applicant must re-apply to the Board for approval of that change.

6. The Applicant shall pay any and all costs required by the Applicant to be made pursuant to N.J.S. 40:44D-35 et. seq.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the following variances are approved;

1. To enlarge the presently nonconforming structure in the rear yard by constructing three (3) dormers (one on the east side and two on the west side) which expand the living space of an attic area. (Chapter XXX, Section 30-6.5a2 and Appendix B).

2. To permit the enlargement of an existing nonconforming structure by the enlargement of the attic area which constitutes a vertical expansion of an already existing nonconforming structure.

3. To permit construction of a dormer on the east side of the existing structure to be within 4.4 feet of the rear yard setback where 20 feet is required and 15.6 feet is provided (Chapter XXX 30-6.10.a and Appendix B).

4. To permit a half story area where 33 1/3% is permitted and 36.7% is proposed (Appendix B of Bulk Standards).

5. To recognize the existing nonconformities of the structure on the north side yard setback where 10 feet is required and 9.35 feet is provided (Chapter XXX, Section 30-6.10.a and Appendix B) and the rear yard setback where 10 feet is the actual

distance from the rear property line to the existing rear of the garage and 20 feet is required pursuant to Chapter XXX 30-6.10.a and Appendix B. The Board hereby grants a Certificate of Non Conformity pursuant to N.J.S. 40:55D-68 which allows a Zoning Board to certify a "non-conforming structure" existed "before the adoption of an Ordinance which rendered the ...structure non-conforming..." Mr. Witkowski being a designee of the Mayor and not able to sit in those matters under the exclusive jurisdiction of the Zoning Board will not vote on the issuance of such certification.

6. The variances requested and hereby approved are more specifically outlined in this Resolution.

December 6, 2007 Meeting

MOVED BY: Potter
SECONDED: Hawkings
THOSE IN FAVOR: 0
THOSE OPPOSED: 0
THOSE ABSENT OR RECUSED:
THOSE NOT VOTING: Ness

	YES	NO
Nebel		
Witkowski (designee)*	X	
Henshaw	X	
Brown	X	
Bradley	X	
Gillingham (absent)		
McIntyre	X	
Hawkings	X	
Richardson	X	
Potter	X	
Wagner (Alt.)	X	
Ness (Alt.)		

* - Mr. Witkowski did not participate in the granting of a Certificate of Nonconformity as contained in approval #5 at page 13.

Memorialization of Resolution

January 10, 2008

MOVED BY:
SECONDED:
THOSE IN FAVOR:
THOSE OPPOSED:
THOSE ABSENT OR RECUSED:
THOSE NOT VOTING:

	YES	NO
Nebel		
Witkowski (designee)	✓	
Henshaw	✓	
Brown		
Bradley		
Gillingham (absent 12/6 meeting)		
McIntyre	✓	
Hawkings	✓	
Richardson	✓	
Potter	✓	
Wagner (Alt.)	✓	
Ness (Alt.)(did not vote on 12/6)		

CERTIFICATION

I, James Brown, Acting Secretary of the Planning Board of the Borough of Mantoloking do hereby certify that the foregoing is a true copy of the Resolution duly adopted by the Planning Board on the 10th day of January, 2008, and memorializes and confirms the actions taken by the Planning Board in approving the Application and its attendant variances at the regular meeting held on December 6, 2007.

JAMES BROWN, Secretary