

RESOLUTION

LaMANNA

WHEREAS, LaManna Building & Land Co., Inc., 407 Channel Drive, Point Pleasant Beach, N.J. (hereinafter “Applicant”) has 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 23, Lot 15 on the Tax Map of the Borough of Mantoloking, Ocean County, New Jersey which is also known as 1049 Ocean Avenue, Mantoloking, New Jersey (Property); and

WHEREAS, the Property is in the R-2B 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 now codified and known as Chapter XXX, Land Use Regulations of the Revised General Ordinance of the Borough of Mantoloking (Ordinance) and more specifically from Ch. XXX, Section 30-4.10.h which provides that all pools shall be constructed within the building envelope and the Applicant proposes the construction of a pool in the rear yard setback which is outside the building envelope; and

WHEREAS, the Applicant also requests a variance to deviate from the strict enforcement of the Zoning Ordinance of the Borough of Mantoloking Ch. XXX, Section 30.4.9.e which provides that decks of any height shall be permitted only within the building envelope and the Applicant proposes to install a deck within the rear and side yard setbacks which are outside the building envelope; and

WHEREAS, Thomas S. Guldin, P.E., the Land Use Officer of the Borough of Mantoloking issued a Certificate of Pre Existing Non Conformity to Ms. Roxiana Baran on September 7, 2004 for the property which is the subject of this application (Block 23, Lot 15); 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 to 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 both the c1 and c2 sections of N.J.S. 40:55D-70c; and

WHEREAS, proof of publication and mailing of notice 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, Raymond D. Bogan, Esq. of Bogan & Bogan, 526 Bay Avenue, Point Pleasant Beach, N.J. 08742 represented the Applicant at the February 7, 2008 meeting; and

WHEREAS, Stuart Lieberman, Esq. of Lieberman & Blecher, 10 Jefferson Plaza, Princeton, N.J. 08540 appeared for Michele R. Donato, Esq. and represented the interests of Ms. Joan Calandriello; and

WHEREAS, Raymond D. Bogan, 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 February 7, 2008:

1. Correspondence of Thomas S. Guldin, P.E., Land Use Officer dated January 3, 2008 was marked as B-1.

2. Correspondences dated January 16, 21, 24 and January 31, 2008 of John J. DeVincens, Esq., Attorney for the Board, all of which were either sent to Raymond D. Bogan, Esq. and Michele R. Donato, Esq. on or which they both were copied are marked as Exhibit B-2.

3. The Certificate of Pre Existing Non Conformity issued by Thomas S. Guldin, P.E., the Land Use Officer dated September 7, 2004 was marked as B-3.

4. Permit Z-07-011 dated March 30, 2007 to which is attached correspondence dated April 3, 2007 was marked as B-4.

5. Zoning Permit Application PL-07-003 dated September 18, 2007 with attached plan showing proposed pool and zoning denial dated September 19, 2007 was marked as B-5.

6. GIS map showing lots in area and previous construction on Lot 15 was marked as B-6.

7. Excerpt of tax map showing lots 15 and 15.01 was marked as B-7.

8. "Variance Plan, 1049 Ocean Avenue" prepared by R.C. Burdick, PE, PP and PC dated November 13, 2007 and revised to January 28, 2008 was marked as A1.

9. Site Plan of Block 23, Lot 15 mounted on a board was marked as A-2.
The Applicant retained this Exhibit.

WHEREAS, the following Board members were in attendance and heard the Application at the meeting of February 7, 2008: Chairman Henshaw, Messrs. McIntyre, Hawkings, Gillingham, Richardson, Witkowski, Brown and Ms. Potter and Ms. White;

WHEREAS, Mr. Lieberman entered his objection to the legal conclusion reached by Mr. DeVincens in his correspondence marked as B-2 the major subject of which was

the legality and efficacy of the Certificate of Pre Existing Non Conformity (Certificate) issued by Thomas S. Guldin, PE the Land Use Officer of the Borough to Ms. Roxiana Baran for Lot 15 on September 7, 2004 and marked as Exhibit B-3. There was a brief legal discussion on the record between Mr. Lieberman who essentially felt that a Certificate could only be issued by the administrative officer within one (1) year after the date of the first ordinance to render a lot nonconforming while Mr. DeVincens' position was that the administrative officer could issue a Certificate within one (1) year after the date of any ordinance which rendered a lot nonconforming. Mr. DeVincens also opined that, by virtue of the quasi judicial nature of the Board, it was authorized to make certain determinations of law by interpreting the zoning ordinance (in this case Chapter XXX, Section 30-8.2). He also indicated that unlike a determination by a Board of facts the determination of the interpretation of the Ordinance is purely legal and not entitled to a presumption of validity by a Court nor is it accorded any superior deference; and

WHEREAS, after the discussion, the Board, on motion made by Mr. McIntyre seconded by Mr. Hawkings unanimously agreed to accept the opinion of Mr. DeVincens as expressed in his correspondence of B-2; and

WHEREAS, the following Board members made a site visit: Chairman Henshaw, Messrs. McIntyre, Hawkings, Gillingham, Richardson, Witkowski, Brown and Ms. Potter and Ms. White; and

WHEREAS, Mr. Bogan called as his first witness Robert C. Burdick, PE, PP and P.C., 1023 Ocean Road, Point Pleasant, N.J. 08742 who indicated he graduated from Clemson University, was a licensed professional engineer of New Jersey (License 30929) and a licensed professional planner of New Jersey (License 04383), that he is also

licensed in the State of South Carolina and the Commonwealth of Pennsylvania and has practiced in his field for over thirty (30) years and has testified on many occasions before administrative bodies in both Monmouth and Ocean County. Mr. Burdick's credentials having been accepted and being duly sworn he testified as follows:

1. He prepared the "Variance Plan, 1049 Ocean Avenue" and the Site Plan marked as A1 and A2.

2. He recognized that the Property was in the R2B Zone of the Borough and that upon his examination determined that the lot was nonconforming but a valid preexisting lot.

3. In specifically addressing the proposed swimming pool which was to be located in the northeastern rear corner of the Property he indicated:

a. the pool was a small pool being 10' by 20' in size

b. the pool is 7.5' off of the rear property line and 10' off of the northerly side property line.

c. there is a 3' wooden deck around the pool which is within the side yard setback and is 4.5' off the rear property line.

d. the pool is also 7.5' away from the rear of the dwelling.

4. The pool was purposely placed in the northeast corner of the Property to be behind the garage on the adjacent Lot 15.01 to minimize its impact both visually and acoustically from the rear yard of Lot 15.01.

5. He is fully aware of the proofs necessary to carry the burden to obtain the variances requested by the Applicant.

6. Relating to the proofs pursuant to N.J.S. 40:55D-70c1 he believes that Lot 15 has peculiar and exceptional practical difficulties and has an exceptional situation affecting a specific piece of property in that:

a. no other lot in the R2B zone has its rear yard to the Ocean. All other lots in this specific R2B Zone have their rear property line to Ocean Avenue.

b. because of the lot having been split many years ago from a larger lot to create Lots 15 and 15.01, Lot 15 has a shallowness which does not allow for the building area as other lots in this R2B Zone.

7. As it relates to the purpose of zoning as contained in the Municipal Land Use Law at N.J.S. 40:55D-2 he felt:

a. the pool is a permitted accessory use for a residential dwelling.

b. pursuant to N.J.S. 40:55D-2g the pool and deck meet the lot coverage and maximum lot coverage requirements of the Ordinance.

c. that pursuant to N.J.S. 40:55D-2 the pool and deck promote a desirable visual environment in that it is better than the sand and scrub growth that presently exists.

d. that pursuant to N.J.S. 40:55D-2(c) the construction will provide adequate light, air and open space.

8. Relating to the proofs pursuant to N.J.S. 40:55D-70c2 and the weighing of the advantages against the detriments that:

a. the improvements on the Property comply with the lot coverage requirement and the maximum permitted total impervious coverage of 45%.

b. there is no change in the entrance and egress from the Property to Ocean Avenue.

c. that the use will create no noxious odors.

d. that the use of a single family residence and the swimming pool and deck are both a permitted use in the R2B Zone.

e. that the shift of the pool and deck to be behind the garage on Lot 15.01 will minimize the noise and visual effect to the property to the rear (Lot 15.01).

f. that the addition of the pool will not only enhance the value of the property of the Applicant, but by doing so will also enhance the value of the surrounding properties.

g. that the design and construction of the improvements on the Property meet all storm water requirements.

9. That relating to both c1 and c2 that:

a. the variances requested can be granted without substantial detriment to the public good.

b. the benefits of the grant of the variances would substantially outweigh any detriments.

c. the variances can be granted without substantial detriment nor would that grant impair the interest and purpose of the zone plan and the zoning ordinance.

10. In response to a question by a Board member, the pool and deck will be enclosed by a 4' high vinyl fence.

11. In response to a question by a Board member the pool equipment will be under an overhang on the northeast corner of the home under construction.

12. In response to a question by a Board member the electric service to the house being constructed and to the proposed pool will be provided by an underground service and that the electric source now provided on a temporary basis on a pole 10' away from the pool will be removed and discontinued. However, that pole will continue to provide overhead electric service to the house located on Lot 15.01.

13. In response to a question by the Land Use Officer the pool filter and equipment will be within the building envelope as required by the Ordinance; and

WHEREAS, Mr. Lieberman conducted a cross examination of both Mr. LaManna (Mr. LaManna having been sworn in the course of responding to the several questions posed by the Board members as above cited) and Mr. Burdick and the responses follow:

1. Mr. Burdick acknowledges that there are two variances as requested.
2. Mr. Burdick acknowledges that the house as being constructed on the Property is 25' from the rear property line which is the minimum permitted setback.
3. Mr. Burdick and Mr. LaManna both acknowledge that the house as being constructed maximizes the maximum lot coverage permitted on Property save for a few square feet.
4. Mr. Burdick acknowledges that to avoid a variance the edge of the deck to the rear would have had to be constructed at the present location of the most oceanward wall or rear of the house.

5. Mr. Burdick acknowledges that in order for the pool and deck to conform it would have to be 25' from the rear property line.

6. Mr. Burdick acknowledges that the Applicant could not have the house as being constructed and the pool and deck without the variances being applied for.

7. Mr. Burdick acknowledges that a house and a pool and deck could have been built on the Property and conform to the Ordinance requirements.

8. Mr. Burdick and Mr. LaManna acknowledge that the house as being built is substantially larger than the Calandriello house on Lot 15.01.

9. Mr. Burdick acknowledges that the Property is substantially smaller in area than all the surrounding lots except for Lot 15.01 but disputes that the fact that there is no undue hardship associated with the Applicant's request for variance relief.

10. Mr. Burdick agrees that there is no level of hardship if the house which in and of itself maximizes lot coverage doesn't have a pool. Mr. Burdick believes that the proposed pool is appropriate but does concede that it may not constitute a hardship.

11. Mr. Burdick said that the 25' rear setback requirement was probably set with privacy and noise factors in mind. He contends however, that such bulk requirement was established for lots which fully conformed.

12. Mr. Burdick disputes that applying for a 4.5' rear yard setback is a substantial reduction from the 25' rear property line. He cites for this position that the garage on Lot 15.01 sharing the rear property line of the Applicant is only 2' to 2.5' from that line, that placing the pool and deck behind that garage minimizes the impact of the set back, that the noise generated would not be louder than the noise off the Ocean and

that the construction of the pool and deck would provide an aesthetic improvement over what presently exists in that area.

13. In response to a question Mr. Burdick indicates that the stormwater discharge for this site with the pool and deck would be one cubic foot for every four square feet of impervious surface while the New Jersey Department of Environmental Protection's standard is one cubic foot for every twelve square feet of impervious surface.

14. Mr. Burdick acknowledges that the Applicant explored moving the pool further away from the north side yard to the south but believed the pool and deck in its proposed location behind the garage on Lot 15.01 would provide both visual and sound mitigation.

15. Mr. LaManna believes that the house and garage on the lot when he purchased it had a footprint of approximately 2,000 square feet.

16. Mr. LaManna bought Lot 15 about one year ago and it had a single family residence and a two car garage which have been razed.

17. Mr. LaManna responded that the house his company is constructing on the Property has a footprint of 2825 square feet.

18. Mr. LaManna responded that he has been a custom builder for 34 years, that he was aware of the zoning requirements of the Borough as they applied to this Property and that no one promised him he would be able to construct a pool and deck.

19. Mr. LaManna responded that he felt he would have no problem getting a swimming pool on the Property.

20. Mr. LaManna responded that there were pools located on the northerly two lots immediately adjacent to the Property and that the Property's access to the Ocean was by a walkway easement between the fourth and fifth lots to the north.

21. Mr. LaManna responded that he believed a swimming pool on this Property would be an amenity; and

WHEREAS, upon redirect from Mr. Bogan, Mr. Burdick responded:

1. That the garage on the Calandriello property (Lot 15.01) which share a common rear property line with the Property is about 2' from that line.

2. That the location of the proposed pool and deck was designed behind that garage to mitigate noise and any visual impact and that the pool would not be able to be seen from Lot 15.01; and

WHEREAS, Mr. Lieberman called as a witness Charles Pivrotto of 145 Green Lawn Avenue, Clifton, N.J. who being duly sworn testified:

1. He is the son-in-law of Mrs. Calandriello who is the owner of Lot 15.01.

2. He is familiar with this house for thirty two years since he was 23 years old.

3. The house is not used on a year round basis, but is used by the extended Calandriello family on a seasonal basis.

4. He has looked at the plans and has been following the construction of the new house on Lot 15 and is opposed to the variance request of the Applicant for the construction of a pool and deck.

5. His reasons for his objections are that:

a. the pool and deck would be very close to the common rear property line and would create a noise problem.

b. the Calandriello family utilizes the rear deck on its house on Lot 15.01 for sitting and enjoyment.

c. the house as being constructed will already have an impact in that each floor has outside decks to the rear which overlook the Calandriello property and now destroys its view of the Bay. He would have preferred the construction of a smaller house.

d. that the present construction on Lot 15 created a problem with the driveway and caused the Calandriello's to lose a month's rent. Additionally the location of the Port O Potty created a problem. When cross examined by Mr. Bogan, Mr. Pivrotto admitted that when Mr. LaManna was told about the driveway problem and the objectionable location of the Port O Potty he immediately responded and corrected both matters.

e. Again on cross examination by Mr. Bogan, Mr. Pivrotto conceded that the garage on the Calandriello property would block the view of the pool and deck; and

WHEREAS, Mr. Lieberman then called John Calandriello, 47 Maitland Avenue, Garfield, N.J. who being duly sworn testified as follows:

1. He is the son of Mrs. Joan Calandriello who is the owner of Lot 15.01.
2. He has been coming to this house for thirty two (32) years.
3. The Calandriello house has never been expanded during that time.

4. The house is used from May through September (August it is rented) by the large Calandriello extended family and friends.

5. He feels boxed in by the house being constructed by the Applicant on the Property and he is concerned by the potential noise, diminished privacy and view of the Bay.

6. He has no personal quarrel with Mr. LaManna and he hopes he makes a good profit from building the house; and

WHEREAS, there was no cross examination by Mr. Bogan of John Calandriello; and

WHEREAS, Mr. Guldin the Land Use Officer of the Borough being duly sworn testified as follows:

1. He issued the Certificate of Pre Existing Non Conformity to Roxiana Baran on September 7, 2004 which has been marked as B-3.

2. He believed that Lot 15 was at one time fully conforming and was rendered nonconforming by the adoption of Ordinance 465 on October 6, 2003 now codified as Chapter XXX.

3. To the best of his knowledge, Ordinance 465 was the first Ordinance in the Borough that had a depth requirement.

4. At one time he rejected the Applicant's request to add a pool and deck (See Exhibit B-5); and

WHEREAS, the Board called Robert Mainberger, P.E. of Hatch Mott McDonald, 2 Dogwood Road, Middletown, N.J. who upon his oath being duly sworn testified as follows:

1. He is a licensed Professional Engineer in the State of New Jersey. He obtained his Bachelor of Science in Civil and Environmental Engineering from the Newark College of Engineering and has been practicing in that field for thirty five years, first with Killam Associates and now with Hatch Mott McDonald.

2. Hatch Mott McDonald is the engineer and planner for the Borough of Mantoloking and he is the primary contact of that firm.

3. He and his then associate Janice Talley, a licensed planner, were very involved in the late 90's and in early 2000 in conducting studies that led to the Master Plan Reexamination of 2001. In addition and after that Reexamination was adopted by the Board there was a concentrated study of the Land Use Element of the Master Plan which ultimately led to the formulation and adoption by the Borough of Ordinance 465 on October 6, 2003.

4. He did examine the Applicant's plan and request for variances. He is fully familiar with the R2B Zone and both the Applicant's Lot 15 and the adjoining Lot 15.01 (Calandriello).

5. In doing the studies for the Land Use Element and the enacting of Ordinance 465 and together with Mr. Guldin, the Land Use Officer and Mr. Anderson, the tax assessor, the following took place:

- a. each and every property in the Borough of Mantoloking was analyzed as to its dimensions, the improvements within the property lines and the possibility of existing and potential nonconforming lots and/or structures. This took a considerable amount of time, effort and expense.

b. the analysis of the zoning in existence had to be totally evaluated in that there were no distinct zoning districts in the Borough and the bulk requirements were determined by Block and Lot which resulted in over 25 different classifications. The zoning scheme was confusing and difficult to navigate.

c. after much of the background information became available there was an attempt to create zones so as to not render a great number of properties within the proposed zones into a nonconforming status. They attempted to have no more than 30.0% of properties within a zone be classified as nonconforming and in most instances the nonconforming status of lots was considerably less than the 30% goal.

d. there was a significant public participation and input in the process both in the form of public hearings and public comment in writing.

e. in addition to the actual lot studies, attention was paid to certain uses, roads, environmental issues and safety.

6. He was aware of Lot 15 and Lot 15.01 since they were created many years before and that they were the only two lots which in this area did not extend from Ocean Avenue to the Atlantic Ocean. He knew these lots were in separate ownership, that both had been improved by single family residential dwellings and that absent coming into common ownership the principle of merger would not be applicable.

7. He knew the lots would be rendered nonconforming in terms of area and depth by the proposed bulk requirements of Ordinance 465 and also, to the best of his

knowledge, Ordinance 465 was the first Ordinance to propose depth requirements in the Borough.

8. He made a determination that both Lots 15 and 15.01 were preexisting valid nonconforming lots.

9. When dealing with these lots 15 and 15.01 special attention was given because of their configuration by including a footnote FN 8 in Appendix B, Bulk Standards of the Ordinance for the R2B Zone which states: “The minimum front yard setback for lots with front yards on Ocean Avenue in the R2B Zone is fifty feet (50’)”. This would specifically apply only to the Applicant’s Property in that all lots in that zone extend from Ocean Avenue to the Atlantic Ocean and the front yard for Ocean front lots is the Atlantic Ocean and not Ocean Avenue. Lot 15 has no frontage on the Atlantic Ocean and, hence, the distinction applying to Lot 15.

10. He believed the location of the pool and deck as proposed by the Applicant might cause a driveway problem to continue from Recharge Area #2 forcing water to that area. However, that had been corrected by the deletion of that Recharge Area on the Applicant’s plans.

11. In doing the Land Use Element and advising as to the formulation of Ordinance 465 specific attention was paid to:

- a. the ability to create and maintain air, light and open space. The development of extremely large houses was becoming out of character with the Borough.

b. attempt to provide sizeable rear yard setbacks wherever possible to promote light, air and open space and to reduce the possibility of imposing development and to maintain a sense of privacy.

c. ratios were established relating to second floor to first floor area, one half stories and restrictions on third floors as well as limitations on lot coverage (30%) and maximum impervious coverage (45%) were recommended.

d. in the R2B Zone the recommended 25' rear yard setback was considered and determined to be a reasonable standard.

12. That the location of the pool and deck could create a safety hazard in the event of a fire and getting fire equipment to the rear of the Property; and

13. That the previous house and garage on the Property totaled 1785 square feet.

14. The Applicant maximized the lot coverage and use of the building envelope in constructing the dwelling.

WHEREAS, upon cross examination by Mr. Bogan, Mr. Mainberger responded as follows:

1. The pool and deck would not impinge upon light, air and open space, but neither would leaving the area in its natural state. He also acknowledges that the pool being 10' by 20' is not a large pool.

2. He restated that he thought that there was a safety issue in the event of fire.

3. He acknowledged that the house as being constructed was in conformance with all bulk requirements of the R2B Zone with the exception of lot area and depth, the two prior existing nonconformities; and

WHEREAS, upon cross examination by Mr. Lieberman, Mr. Mainberger responded:

1. That considering the 25' rear yard setback in the R2B Zone it was not reasonable to have a 4' setback or a 10' setback.

2. By considering FN8 it permitted the owner of Lot 15 (Property) to have more area to build than if the owner would have to comply with the rear setbacks of all other lots (except 15.01) in the R2B Zone.

3. That the 25' rear yard setback was a fair compromise and would provide adequate light, air and open space and would be consistent with the purpose of zoning; and

WHEREAS, Mr. Bogan requested the ability to recall Mr. Burdick in response to the safety issue and, that having been granted, Mr. Burdick responded:

1. That his office had done some 300 pool plans within the past several years and he did not believe the construction of a pool and deck as proposed by the Applicant constituted any safety issue.

2. That the pool being 7.5' off of the rear property line was a reasonable distance. He believes that 5' together with proper fencing is a reasonable distance.

3. In the event of a fire the access point would be the adjoining property and a firefighter would not want to expose the equipment to the burning house; and

WHEREAS, upon cross examination by Mr. Lieberman, Mr. Burdick responded:

1. He was not a volunteer fireman and he never fought a fire.
2. He never read any reports of fighting fires in general.
3. That he was a City Engineer in South Carolina and acted as the Zoning Board Engineer for the Township of Toms River (then Dover Township); and

WHEREAS, the Board called as its second witness Thomas A. Thomas, PP, Thomas Planning Associates with an address of P.O. Box 363, Brielle, N.J. who upon being duly sworn testified as follows:

1. He is a Professional Planner licensed in the State of New Jersey. He received his Bachelor of Science degree in Urban Planning from Michigan State University and his Master of Science degree from Rutgers University. He has been a professional planner since 1972 and has acted as a planner for over thirty (30) municipalities in New Jersey. He acted as the planner for the County of Ocean and previously for the Borough of Mantoloking in 1989 to 1995.

2. He worked with Hatch Mott McDonald as a planning consultant and authored the Master Plan Reexamination Report adopted by the Board on December 6, 2007.

3. In analyzing this Application and the Property he inspected the plans of the Applicant, the tax maps of the Borough and he visited the Property and the surrounding properties.

4. He read the correspondence of Mr. DeVincens dated January 16, 18, 24 and 31 (B-2) and together with his personal research agrees that the Lots 15 and 15.01 are preexisting valid nonconforming lots.

5. He is familiar with this Lot 15 and the R2B Zone.

6. He agrees that both Lots 15 and 15.01 are not consistent with the other lots in that area in that all the other surrounding lots extend from Ocean Avenue to the Atlantic Ocean and most contain depths of well over 200’.

7. He is familiar with the methodology used in the formulation of the existing Master Plan, the present Land Use Element and Ordinance 465. Of the forty (40) zoning ordinances, he has been involved with only one other municipality (Ocean City) took the effort and time to analyze and look at every piece of property within its boundaries, the variety of development and the general improvements and structures on each of the lots. He believes it is a highly unusual but a thorough and comprehensive method.

8. He is aware that efforts were taken to compensate for the unusual configuration of Lots 15 and 15.01 as evidenced by FN8 of Appendix B and believes its (FN8) inclusion demonstrates an attention and intention to modify certain requirements for Lot 15.

9. He believes the standard of the requirements in the R2B Zone is reasonable.

10. He heard the testimony of everyone at this meeting and he is aware of the proofs required pursuant to the Municipal Land Use Law and specifically N.J.S. 40:55D-70 c1 and c2.

11. Relating to this Application and Lot 15;

a. the standard of requirements of the Ordinance is reasonable.

b. the rear yard setback is designed to promote light, air and open space and to prevent overcrowding.

- c. the height requirements are also designed for that purpose.
- d. the house as being constructed meets the bulk requirements but the addition of the pool and deck is a substantial deviation.
- e. there are no peculiar and extraordinary practical difficulties except those created by the Applicant maximizing the size of the house to the point of utilizing the maximum lot coverage and building envelope available.
- f. there is no demonstrable benefit that would outweigh the detriment by the granting of the variances; and

WHEREAS, Mr. Bogan intended to call as his second witness Mr. Carl LaManna, President of the Applicant, LaManna Building & Land Co., 407 Channel Drive, Point Pleasant Beach, N.J. 08742, but in the course of direct and cross examination of other witnesses, Mr. LaManna was duly sworn and testified as indicated above.

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

1. Mr. Craig Symons of 1047 Ocean Avenue, Mantoloking, N.J. was duly sworn and testified as follows:
 - a. He is the owner of the adjacent property to the north.
 - b. He is directly impacted by the proposed construction of the pool and deck in the northeast corner of the Property.
 - c. There was an alternative that could have alleviated the request for the variance relief requested and that would have been to cut the scale of the house being built.

d. He was concerned with the noise and privacy factors.

2. Mr. Thomas Hall of 1051 Ocean Avenue, Mantoloking, N.J. was duly sworn and testified as follows:

a. He is the owner of the property directly adjacent to the south.

b. He has been an architect since 1980.

c. The request for variance relief would not be needed if the footprint of the house was designed to be smaller which would in fact be more consistent with the development in the neighborhood.

d. That the house as being built is nearly double the footprint of the house razed to make way for the new house.

e. He believes that the 4.5' setback from the rear yard property line where 25' is required is a radical difference.

f. That the Applicant created its own hardship by utilizing all available lot coverage and the building envelope.

g. That there is no benefit that would outweigh any detriment by granting the variance.

3. Mrs. Lisa Hall of 1051 Ocean Avenue, Mantoloking, N.J. was duly sworn and testified as follows:

a. She is the owner of the property directly adjacent to the south.

b. She is concerned with the visual and noise impact that the proposed pool and deck would create.

c. She will have to do extensive additional landscaping on her property to buffer that construction.

d. The original house on the Property was much further away from her property and that of the Symons and Calandriellos and the size and scale of the house is so imposing that it has changed the “culture” of the neighborhood.

e. She believes the value of her property has suffered.

4. Mr. William DeCamp, Jr., of 1229 Bay Avenue, Mantoloking, N.J. was duly sworn and says:

a. He does not live within 200’ of the Property which is the subject of this Application, but is here to support the objectors opposing the Application.

b. He believes that it is a real shock when a monster house goes up on an adjacent property and in his personal experience the pool on the property next to him creates substantial noise.

c. He does not see that the Applicant has any hardship.

d. He would like to see allowable lot coverage reduced and is concerned about the ability of developers or owners to cut down trees on the lots.

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

1. That it recognized the testimony and statements of all the professional, witnesses and those parties interested in this Application, but did not give any weight to the following as it relates to its decision.

2. The testimony of Mr. Mainberger relating to the safety issue (fire), the direct testimony by Mr. Burdick in relationship to the safety issue and the cross examination by Mr. Lieberman of Mr. Burdick and Mr. Burdick’s response to that cross examination. While the Board is always sensitive to the safety issue (fire) the colloquy

among the parties on this issue as it relates to this examination was based on speculation and hypotheticals and the testimony was in direct conflict. While the Board can listen to such testimony, it has the right to decide which expert is more credible and in this instance it has chosen to simply disregard the opinions of the experts on this issue.

3. Likewise the Board did not consider the statements of Mr. DeCamp concerning the removal of trees and ordinance changes concerning that matter. While the Board recognizes the statements of Mr. DeCamp they were not relevant to the Application being considered and are more appropriate for a meeting where those issues can be addressed in relation to revision of the Ordinance.

4. The Board did not consider or give any weight to the testimony of Mr. Pivrotto relating to the problem of the driveway surface and the location of the Port O Potty since those matters occurred during the construction of the house, were handled by Mr. LaManna when he was notified and should cease upon the completion of this dwelling on Lot 15.

5. Relating to the issuance of the Certificate of Pre Existing Non Conformity issued by Thomas S. Guldin, P.E., the Land Use Officer to Roxiana Baran on September 4, 2004 (Exhibit B-3) the Board found that it was validly issued for the following:

a. Lot 15, the Property was created by a deed dated January 5, 1927 from Foster Debevoise which deed was recorded January 7, 1927 in the Ocean County Clerk's Office in Deed Book 728 at page 78. Lot 15 as created by this deed has remained in the same configuration to this time.

b. Borough Ordinance LXX passed on April 18, 1942 in the Small and Large Volume Residence District Section g required Block 23, Lot 15 to have a required minimum lot area of 7,000 square feet which it had at that time.

c. There was no depth requirement in Ordinance LXX nor was there any depth requirement in any Mantoloking Land Use Ordinance until the adoption of Ordinance 465 on October 6, 2003.

d. Therefore, Lot 15 was a fully conforming lot as of April 18, 1942 and was only rendered nonconforming by the passage of a 1985 Ordinance, Ordinance 375 on December 16, 1996 and Ordinance 465 on October 6, 2003.

e. In addition, Chapter XXX, Section 30-8.2 states in part that “any lot which conformed to the bulk requirements (i.e., lot area, width and depth) of any Land Use Ordinance in effect prior to the adoption of this chapter, or was validly pre-existing, may be used as a lot for any purpose permitted in the zone without the necessity of variance relief” (emphasis supplied).

f. The issuance of the Certificate of Non Conformity goes to the issuance by Mr. Guldin of the Zoning Permit (#Z07-011 dated March 30, 2007) (Exhibit B-4) which approved the construction of the new single family dwelling on Lot 15.

g. The variances requested by the Applicant at the meeting of February 7, 2008 are not subject to the Certificate of Pre Existing Non Conformity and the issuance of the Certificate is not relevant to this Application.

h. A more detailed analysis of this issue can be found in Exhibit B-2.

6. That both Lot 15 and Lot 15.01 are valid preexisting nonconforming lots.

7. That in the formulation of the Land Use Element of the Master Plan and the compilation and adoption of Ordinance 465 on October 6, 2003 now codified as Chapter XXX a careful; intensive and comprehensive study was done of every lot in the Borough. Specifically relating to the Property, which is the subject of this Application (Lot 15) there was an effort to deal with that Lot 15 and Lot 15.01 as being different from the surrounding lots in that area of the R2B Zone.

8. That Lot 15 and Lot 15.01 are the only lots in this area of the R2B Zone that don't extend from Ocean Avenue to the Atlantic Ocean. Lot 15 extends from Ocean Avenue to the common rear property line with Lot 15.01 and Lot 15.01 extends from that common property line to the Atlantic Ocean. Lot 15 is the only lot within this area of the R2B Zone with frontage on Ocean Avenue and Lot 15.01 is the only lot within this area of the R2B Zone with no rear yard on Ocean Avenue. Front yards in this R2B Zone are the Atlantic Ocean side of the lots and not the Ocean Avenue side which is considered the rear lot line.

9. That recognizing this difference in Ordinance 465 the Board recommended and the Borough adopted FN8 of Appendix B (Bulk Standards) which states "The Minimum front yard setback for lots with front yards on Ocean Avenue in the R2B Zone is fifty feet (50')." This would be applicable to Lot 15 and reduces the 60' front yard setback requirement in the R2B Zone which 60' is measured for oceanfront properties between this scarp line and the building line. See FN4 of the Appendix B (Bulk Standards) to Ordinance 465, Chapter XXX.

10. That the Applicant razed the house previously located on Lot 15 and began construction of the new dwelling in 2007 pursuant to the Zoning Permit issued by

Mr. Guldin (Exhibit B-4). That Zoning Permit did not include the construction of a pool and deck and when the Applicant sought a permit to construct the pool and deck that zoning permit was denied (See Permit #P-07-003 marked as Exhibit B-5).

11. That the Applicant was fully aware of the bulk requirements of the Land Use Regulations of the Borough and that at the time it applied for the zoning permit to construct the new single family dwelling on Lot 15 no person promised or indicated to Mr. LaManna that a pool and deck could be built without further applications and/or the issuance of a zoning permit.

12. That the Applicant constructed the now single family dwelling in a fashion which utilized all square footage (save 6 square feet) and built to the end of the building envelope (25-67') from the rear property line. Therefore, the Applicant maximized that portion of Lot 15 that could be built upon relating to lot area and setbacks that was permitted by the R2B Bulk Standards. The building of the pool and deck would have then necessitated the variance relief as now applied for by the Applicant.

13. That the twenty five foot (25') rear yard setback was incorporated in the R2B Zone to provide a measure of light, air and open space to prevent overcrowding lots with improvements and to allow for a certain allotment of separation and privacy from adjoining rear yard properties.

14. That the twenty five foot (25') rear yard setback in the R2B Zone is a reasonable standard.

15. That the rear yard distance of 4.5' from the rear property line instead of the 25' constitutes a substantial impairment to the intent of the Master Plan of the Borough and the Bulk Standards of the Land Use Ordinance and cannot be granted

without substantial detriment to the public. In addition the magnitude of the difference between the 25' rear yard setback requirement and the actual distance from the pool and deck within the rear yard setback is so great that the benefits of the grant of the variances would not substantially outweigh any detriment.

16. That the Applicant created its own hardship by maximizing the improvements on the lot and thus not being able to provide for a pool and deck within the building envelope. The Applicant could have avoided the need to request these variances by providing for sufficient room for the construction of the pool and deck when considering its plans for this Lot 15.

17. That there is no peculiar and exceptional practical difficulties or exceptional and undue hardship relating to the configuration of this Lot or by reason of an extraordinary and exceptional situation uniquely affecting this Property.

18. That there was substantial concern and opposition expressed by a number of neighbors who are impacted by the present construction and would be further impacted by the granting of these variances.

19. That the Board appreciated the professionalism and courtesy of the attorneys, professionals, witnesses and interested parties in the conduct of this public hearing.

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 March 6, 2008 the Application of LaManna Building and Land Co., Inc. for the variances stated hereinafter cannot be granted without substantial detriment to the public good and the grant would 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 would not be advanced and that the benefits of granting of the variances and deviations from the strict enforcement of the Zoning Ordinance would not substantially outweigh any detriment; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the following variances are not approved;

1. For a deviation from Ch. XXX, Section 30-4.10.h which requires that all pools shall be constructed within the building envelope; and

2. For a deviation from Ch. XXX, Section 30-4.9.e which provides that decks of any height shall be permitted only within the building envelope.

3. The variances requested and hereby not approved are more specifically outlined in this Resolution.

4. That the Applicant publish a Notice of Decision in the Asbury Park Press or the Ocean Star within 15 days from the adoption of this Resolution on March 6, 2008 and to provide an Affidavit of Publication of the Notice of Decision to the Secretary of the Mantoloking Planning Board.

February 7, 2008 Meeting

MOVED BY: Gillingham
SECONDED: Hawkings
THOSE IN FAVOR: Nine (9)
THOSE OPPOSED: None (0)
THOSE ABSENT OR RECUSED: Bradley, Wagner
THOSE NOT VOTING:

	<u>YES</u>	<u>NO</u>
Nebel	_____	_____
Witkowski (designee)	<u> X </u>	_____
Henshaw	<u> X </u>	_____
Brown	<u> X </u>	_____
Bradley (absent)	_____	_____
Gillingham	<u> X </u>	_____
McIntyre	<u> X </u>	_____
Hawkings	<u> X </u>	_____
Richardson	<u> X </u>	_____
Potter	<u> X </u>	_____
Wagner (Alt.) (absent)	_____	_____
White (Alt.)	<u> X </u>	_____

Memorialization of Resolution

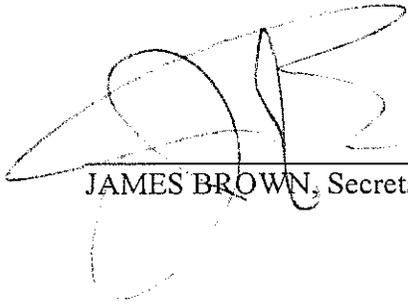
March 6, 2008

MOVED BY: Richardson
SECONDED: Hawkings
THOSE IN FAVOR: 8
THOSE OPPOSED: 0
THOSE ABSENT OR RECUSED: Bradley, McIntyre; Wagner
THOSE NOT VOTING:

	<u>YES</u>	<u>NO</u>
Nebel	_____	_____
Witkowski (designee)	_____✓	_____
Henshaw	_____✓	_____
Brown	_____✓	_____
Bradley (absent 2/7 meeting)	_____	_____
Gillingham	_____✓	_____
McIntyre	_____	_____
Hawkings	_____✓	_____
Richardson	_____✓	_____
Potter	_____✓	_____
Wagner (Alt.) (absent 2/7 meeting)	_____	_____
White (Alt.)	_____✓	_____

CERTIFICATION

I, James Brown, 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 6th day of March, 2008, and memorializes and confirms the actions taken by the Planning Board in denying the Application and its attendant variances at the regular meeting held on February 7, 2008.



JAMES BROWN, Secretary