

RESOLUTION
2014 – 007

WHEREAS, 1055 OCEAN AVENUE MANTOLOKING, LLC (referred to as Applicant), 573 Cross Street, Township of Washington, New Jersey 07676 and 1055 Ocean Avenue, Mantoloking, New Jersey 08723 have made Application to the Borough of Mantoloking Planning Board (2014-007); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1055 Ocean Avenue, Mantoloking, New Jersey 08738 which is also known as Block 23, Lot 18 and 18.01 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R-2B Zone of the Borough of Mantoloking;
and

WHEREAS, on September 30, 2014, Jeremy Edinger, Deputy Zoning Officer of the Borough issued a Zoning Denial Letter (Z-14-042) and on October 15, 2014 sent a Certificate of Completeness both of which were addressed to Mr. David Paulus, Twinn Cedars, a representative of the Applicant. The Letters are marked into the record as B-1 and B-2 respectively. The Zoning Denial Letter (Z-14-042) indicated the following reasons for the Denial and the variance relief that would be required as follows:

1. The proposed dwelling and front deck do not meet the requirements for the front yard setback. In accordance with Footnote No. 7 contained in the Appendix B-Bulk Standards, the minimum required front yard setback is either sixty feet (60') or the average setback of structures on lots located within two-hundred feet (200') of the subject parcel, on the same side of the street, with similar lot depth, whichever of the two is greater. The average front yard setback as calculated on the plan shall be 79.68'. No part of the dwelling or above grade deck shall be within the front yard or any setback. (It should be noted that the Land Use Ordinances of the Borough have been amended to indicate that the 60' foot or average setback is to be calculated from the "dune reference line" and not from the previous benchmark of the "scrap line" under the Applicant's previous application to the Zoning Officer was made).

2. The proposed removable walkways along the northerly and southerly side of the dwelling are within the 10' side setback. In accordance with the definitions contained in §30-4.9(b), a walkway is considered to be a "deck". In accordance with the provisions contained in §30.4.06, decks of any height are permitted to be located in only the building envelope except that decks which are less than 8" above existing grade are permitted in the front yard of waterfront lots. The term "deck" is deemed to include entrance porches, stairs, walkways, patios, pool surrounding access and decks of any height. The proposed four foot (4') wide removable wood boardwalks on grade and non-compliant with the ten foot (10') minimum side yard setbacks. (The Applicant proposes six feet from both side yards); and

WHEREAS, in order to prove its' case, the Applicant under N.J.S. 40:55D-70c must, if Applicant chooses to proceed under the c(1) test, 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

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 Ordinance 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 state sin N.J.S. 40:55D-2 and the undue hardship (the "positive criteria"); and

The Applicant can also choose to prove its case by N.J.S. 40:55D-70c(2) known as the flexible "c". The Applicant must show that: (1) the Applicant applies to a specific piece of property; (2) the proposes of the MLUL would be advanced by a deviation from the requirement 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 Property is essentially vacant save for pilings which have been driven in anticipation that the previous application for a building permit would remain effective; and

WHEREAS, proof of publication and mailing to owners within 200 feet of the Property was completed, as is required by the Municipal Land Use Law of New Jersey (MLUL) (N.J.S. 40:55D-1 et. seq. and more specifically at N.J.S. 40:55D-12) and the Land Use Ordinance of the Borough of Mantoloking (Chapter XXX, Sections 30-3n.2 and 3n.3) has been furnished and accepted; and

WHEREAS, the Applicant submitted the following Exhibits to support its Application for the relief request and which were marked:

1. Survey of Property with Topography & Plot Plan with Grading for Variance for 1055 Ocean Avenue, Block 23, Lots 18.00 and 18.01, Block 23 prepared by Ronald W. Post Surveying, Inc., dated September 24, 2014 and revised to October 5, 2014 (Job No. 120160) was marked as A-1; and
2. Four (4) page Statement in Support of Application on behalf of the Applicant and filed with the Application by Michele R. Donato, Esq., the Attorney for the Applicant, was marked as A-2; and

WHEREAS, the following Board Members were present at the November 6, 2014 hearing on the matter: Chairman Thomas McIntyre, Ms. Jane White, Ms. Susan Laymon, Messrs. Robert McIntyre, Gillingham, Witkowski, Bixby and Daly. Ms. Boughton and Mr. Hawkings were not present; and

WHEREAS, the Applicant was represented at the hearing by Michele R. Donato, Esq., 106 Grand Central Avenue, P.O. Box 145, Lavallette, New Jersey 08735, who, after introductory remarks as outlined in her Statement in Support of Application (Exhibit A-2), called as her first witness, Mr. David Paulus, who after being duly sworn, testified as follows:

1. He is a principal of Twinn Cedars, a general building contractor and landscaping design firm located at 709 Marie Street, Toms River, New Jersey. He and his firm have engaged in the building of residential dwellings for a good number of years and has additional experience in multi-family and commercial building. In that connection he has been called to testify concerning construction before many Boards in Ocean and Monmouth Counties. He was advised that he could not testify as to planning and engineering matters and his credentials as an expert in the construction industry were accepted.
2. He was engaged by the Applicant before Sandy to construct the now proposed single family dwelling on the Property.
3. The Applicant purchased the Property from the northern property owner (Van Cleef) about three (3) years ago.
4. The Property is vacant except there are some pilings that were driven in the anticipation of the receipt of a building permit prior to Superstorm Sandy. In answer to a question from a Member of the Board he acknowledge that if the present front yard setback variance was granted some of the already driven pilings would have to be removed and he agreed that would be the case.
5. There was and there is a Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et. seq.) (CAFRA) Permit in effect.
6. On October 23, 2012, the Borough approved the original application for construction and zoning permits. Superstorm Sandy intervened before construction began and on May 23, 2013 the Borough Zoning Officer revoked the original zoning permit due to the Post Sandy required change in the flood elevation dictated by FEMA.
7. On October 24, 2013, the Applicant filed for a new Zoning Permit necessitated by the new FEMA elevation requirements adopted in June of 2013. On July 23, 2014 Jeremy Edinger, the Acting Zoning Officer based upon changes to the Mantoloking Land Use Ordinance made after Sandy. (It was here that Mr. Edinger and Barbara Allen Woolley – Dillon, the Land Use Officer of the Borough, acknowledged the history of the original application and the reasons that this new Application was filed.)

8. As it relates to the front yard setback requirement where the greater of sixty (60') feet is required from the dune reference line or the front yard average as required by Section 30-6.10(c) he related that the position of the proposed house is 66.17' from the dune reference line and thus requires a variance since the average front yard setback is shown on the Plans is 79.68'.

9. The Plans show that the property to the north designated as Lot 17 is setback 64.6' and Lot 19 to the south is setback 120.2'. He indicated that Lot 19 was vacant when the original Plans for Applicant were prepared and the Applicant would have, at that time, complied to the front yard setback requirement.

10. While the Applicant was preparing revised Plans on which this Application is based, the owner of Lot 19 began construction which resulted in a front yard setback of 120.2 feet which greatly skewed the calculation based on the front yard average requirement and created the need for the variance in that it changed the front yard setback to be at 79.68'. He indicated that the location of the house at 66.17' was more consistent with the neighborhood setback pattern and would present a more consistent and more straight line. (It was then that the Board indicated that the intention when it implemented the average setback requirement was not to insure a consistent front yard line but was to protect the view of neighboring properties.)

11. Mr. Edinger, therefore denied the Zoning Permit on September 30, 2014 for the reasons as set forth in that denial and as contained in B-1.

12. In addition, there is also a need for a variance for the location of the removable walkways on the north and south sides of the proposed dwelling and within the ten (10') foot side yard setback again as specified in Mr. Edinger's denial of the Zoning Permit dated September 30, 2014.

13. He proposed that the walkways be constructed with a relatively new material known as a "Mobi-Mat" which are four foot wide and 12 foot long strips of a permeable roll up material.; and

WHEREAS, Mr. McIntyre opened the meeting for the purpose of entertaining questions or statements from interested parties and the public and the following came forward:

1. Mr. Scott VanCleeef (LSVC Realty, LLC) of 1053 Ocean Avenue (Block 23, Lot 17) the property directly north of Property asked if the CAFRA Permit was still in effect to which the response from Mr. Paulus was that it was; and
2. Mr. John Kolmer (Norma D. Kolmer Trust) of 1057 Ocean Avenue (Block 23, Lot 19) the property directly south of Property indicated that he was not concerned with his view being blocked but rather the

potential funneling of a surge that would essentially destroy his dwelling.; and

WHEREAS, the Applicant, as indicated above, proposed during the course of the Meeting that it be permitted to substitute “Mobi-Mats” for the “removable wood boardwalks” as shown on the proposed Plans submitted by the Applicant contending that these materials fell within the definition of “decks” as in the Ordinance. “Mobi-Mats” are defined in their on-line literature as a “Rollout Pathway.....which can be used for pedestrians, disabled persons, wheelchair users, strollers, bicycles and vehicles including ATVs, golf carts, maintenance and emergency trucks” and further, as an “environmentally friendly and slip resistant product that helps transport vehicles and equipment over lawns and gravel, through mud and across soft terrain such as sand”; and

WHEREAS, the Board discussed this request which would require the Board to make a “ policy decision “ and a favorable interpretation that “Mobi-Mats” met the definitional terms of “decks” as contained in Section 30-4.9(e) of the Land Use Ordinances. After some significant discussion, it was the unanimous decision of the Board that it not accept “Mobi-Mats” as meeting the definition of a “deck” and that the Applicant be required to fulfill the installation of the “removable wood boardwalks” as proposed and shown on the Plans submitted with this Application; and

WHEREAS, the Board also considered the request for the a front yard setback of the proposed house at the required 79.68’ where 66.17’ is proposed and the location of the four foot wide removable wood boardwalk on grade within the ten (10’) foot minimum side yard setbacks where six feet is proposed for both side yards and found:

1. The proposed front yard setback of 66.17’ would not impair the view of the property of the dwelling constructed on Lot 19 in a material way than if it was constructed in accordance within the required setback and would be more consistent with the setback of the house under construction at 64.6’ on the adjacent lot 17, directly to the north.
2. In addition the setback would help alleviate the skew created by the construction of the house on Lot 19 at a front yard setback of 120.2’ on the potential front yard setback of the house on Lot 20 to the north which is now vacant.
3. The skew creates an exceptional situation involving a specific piece of property.
4. That the Applicant was forced to revise its’ original approved plans as a result in the change of the Borough’s Land Use Ordinance in response to the new FEMA regulations and the house could have been constructed under the original Zoning and Building Permits and would have not required the now applied for setback variance.

5. That the variances for the front yard setback and the side yard setbacks can be granted without any substantial impairment to the intent and purpose of the zone plan and the proposed deviations would not create any substantial detriment to the public.

NOW, THEREFORE BE IT RESOLVED, that for the above findings the Planning Board of the Borough of Mantoloking grants the following variance relief to the Applicant, 1055 Ocean Avenue Mantoloking LLC as follows:

1. For a variance to construct the proposed house as shown on the Plans submitted with a front yard setback of 66.17'; and
2. For a variance to construct a removable four (4') foot wide wooden boardwalk six (6') feet from both of the northerly and southerly side yard setbacks. This variance is granted on the condition that the Applicant construct the boardwalk with wooden sections of eight (8') feet, ten (10') feet and or twelve (12') feet at the discretion of the Applicant. The use of "Mobi-Mats" in place of the removable wooden boardwalk is specifically prohibited; and

NOW, THEREFORE BE IT FURTHER RESOLVED, that the above variance approvals are granted on the following conditions:

1. That the Applicant provide to the Land Use Officer a copy of the CAFRA Permit as testified to within ten (10) days of the adoption of this Resolution.
2. That the Applicant remove any and all pilings as presently driven on the Property and not necessary for the construction of the proposed single family dwelling.
3. That the Applicant relies on the testimony of Mr. Paulus and the statements of its Attorney, Michele R. Donato, Esq. and ratifies and adopts said representations and statements. The testimony, deliberations and stipulations made at the hearing are incorporated by reference and to the extent same impose additional or more detailed conditions of approval, same are hereby adopted as if each were set forth herein at length. All the representations and statements made by the Applicant at the hearing on November 6, 2014 shall be considered and deemed to be relied on by the Board in rendering this decision and to be an expressed condition of the Board's actions in approving the variances as above granted.
4. That the Applicant obtain a building Permit prior to commencing the construction of the single family dwelling on the Property. A building Permit must be obtained within two (2) years from the date of this Resolution or this Resolution shall be deemed null and void and of no force or effect.
5. The Applicant furnish a copy of the Ocean County Soil Conservation District Certification to the Land Use Officer, if applicable.

6. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking before a building Permit is issued.
7. 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 the date of receipt of this Resolution.
8. The Applicant shall obtain any and all necessary Federal, State of New Jersey, County of Ocean and Borough of Mantoloking permits and/or approvals for each agency or board having regulatory jurisdiction over this development and fulfill all conditions of said permits and/or approvals, and will submit a copy of any permits and/or approvals to the Board.
9. In the event that other agencies require a change in the Plans approved by the Board, the Applicant must reapply to the Board for the approval of the change. If the Applicant makes any substantial changes to the Plans as submitted to this Board and as approved, the Applicant shall provide the changes to the Land Use Officer.
10. The Applicant shall pay any and all costs and fees incurred by the Borough and Board in reviewing and prosecuting this Application and as required by the Applicant to be made pursuant to N.J.S. 40:44D-35. The failure of the Applicant to deposit or provide such fees, after being requested or directed to do so, shall render any approval granted hereunder null and void and of no further force and effect.
11. The terms and conditions contained herein shall be binding upon all successors, assigns, personal representatives, heirs and each and every other person or entity taking possession or title with respect to the Property which is the subject of this Application and approval.
12. The terms, conditions and stipulations imposed on the Applicant in this approval are an integral and material part of the action of the Board in that the Board in approving this Application would not or may not have voted affirmatively for said approval without the imposition of the terms, conditions and stipulations contained in this Resolution and on the record.

DENISE BOUGHTON

CERTIFICATION

I, ~~ELIZABETH NELSON~~, Secretary of the Planning Board of Mantoloking, do hereby certify that the foregoing is a true copy of the Resolution duly adopted by the Planning Board at its regular meeting on the 4th day of December, 2014, and memorializes and confirms the actions by the Planning Board in now approving the relief requested by the Applicant at its regular meeting held on November 6, 2014.



~~ELIZABETH NELSON~~, Secretary

VOTE AT NOVEMBER 6, 2014
TO APPROVE THE PREPARATION OF A RESOLUTION OF APPROVAL FOR
THE VARIANCES TO CONSTRUCT THE REMOVABLE WOODEN
BOARDWALKS SIX FEET (6') FROM THE NORTHERLY AND SOUTHERLY
SIDE YARDS OF THE PROPERTY.

	Moved	Seconded	Yes	No
Thomas McIntyre			x	
Robert S. McIntyre	x		x	
D. Mark Hawkings				
Stanley Witkowski			x	
Evan S. Gillingham			x	
Jane G. White			x	
Elizabeth Nelson			x	
Denise Boughton				
Courtney Bixby			x	
Susan Laymon, (Alt.)		x	x	
Joseph Daly, (Alt.)			x	

Absent :

Not Voting or Rescued: NONE

VOTE AT DECEMBER 4, 2014
TO APPROVE THE VARIANCES TO CONSTRUCT THE REMOVABLE
WOODEN BOARDWALKS SIX FEET (6') FROM THE NORTHERLY AND
SOUTHERLY SIDE YARDS OF THE PROPERTY.

	Moved	Seconded	Yes	No
Thomas McIntyre			✓	
Robert S. McIntyre	✓		✓	
D. Mark Hawkings				
Stanley Witkowski			✓	
Evan S. Gillingham			✓	
Jane G. White				
Elizabeth Nelson				
Denise Boughton				
Courtney Bixby			✓	
Susan Laymon, (Alt.)		✓	✓	
Joseph Daly, (Alt.)			✓	

Absent :

Not Voting or Rescued:

**VOTE AT NOVEMBER 6, 2014
TO APPROVE THE PREPARATION OF A RESOLUTION TO PERMIT A
FRONT YARD SETBACK OF 66.17 FEET WHERE 79.68' IS REQUIRED.**

	Moved	Seconded	Yes	No
Thomas McIntyre			x	
Robert S. McIntyre			x	
D. Mark Hawkings				
Stanley Witkowski				X
Evan S. Gillingham				X
Jane G. White			x	
Elizabeth Nelson			x	
Denise Boughton				
Courtney Bixby			x	
Susan Laymon, (Alt.)	X		x	
Joseph Daly, (Alt.)		X	x	

Absent :

Not Voting or Rescued:

VOTE AT DECEMBER 4, 2014
TO APPROVE THE VARIANCE TO PERMIT THE PROPOSED FRONT YARD
SETBACK AT 66.17 FEET WHERE 79.68 FEET IS REQUIRED.

	Moved	Seconded	Yes	No
Thomas McIntyre			✓	
Robert S. McIntyre			✓	
D. Mark Hawkings				
Stanley Witkowski				
Evan S. Gillingham				
Jane G. White				
Elizabeth Nelson				
Denise Boughton				
Courtney Bixby	✓		✓	
Susan Laymon, (Alt.)		✓	✓	
Joseph Daly, (Alt.)			✓	

Absent :

Not Voting or Rescued: