

## RESOLUTION

2014 – 001

*WHEREAS*, DANIEL AND PAMELA HARDING (referred to as HARDING or Applicant), 168 Childs Road, Basking Ridge, New Jersey 07920 and 909 East Avenue, Mantoloking, New Jersey 08723 have made Application to the Borough of Mantoloking Planning Board (2014-001); and

*WHEREAS*, the Applicant is the owner of the property for which variance relief is requested which property is known as 909 East Avenue, Mantoloking, New Jersey 08738 which is also known as Block 1, Lot 3 on the Tax Map of the Borough of Mantoloking (Property); and

*WHEREAS*, the Property is in the R-3B Zone of the Borough of Mantoloking; and

*WHEREAS*, on February 27, 2014, Barbara Allen Wooley-Dillon, P.P., AICP, the Land Use Administrator of the Borough of Mantoloking issued a letter to William T. Gage, Esq., the Attorney for the Applicant which was marked B-1 at the meeting and which called out the following Variances required:

- Minimum required setback for an accessory structure from the street – twenty-five feet (25') is required where ten feet (10') is proposed.
- Minimum required side yard setback for an accessory structure – ten feet (10') is required where just over one and one-half feet (1.6') is proposed.

*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. that 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 free standing garage was destroyed as a result of Superstorm Sandy which damage is more than partial; 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

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

1. A1 – Map of Survey for Block 1, Lots 3 and 3.01 done by Dennis W. Kortze & Assoc., 34 Gerald Place, Bayville, N.J., dated July 13, 2010 as File No.: 6203.
2. A2 – Paul Lawrence Architectural Plans for Proposed Re-Construction of Existing Garage on which A1 is included.
3. A3 – Overhead view of pre-Sandy and post Sandy conditions of Property and surrounding area.

*WHEREAS*, the following Board Members were present at the April 3, 2014 hearing on the matter: Chairman Thomas McIntyre, Ms. Jane White, Ms. Susan Laymon, Ms. Boughton, Messrs. ~~Robert McIntyre~~, Gillingham, Witkowski, ~~Hardings~~, Bixby and Daly; and

*WHEREAS*, the Applicant was represented at the hearing by William T. Gage, Esq., 536 Lake Avenue, Bay Head, New Jersey 08742, who, after introductory remarks called Paul Lawrence as his first witness; and

*WHEREAS*, Mr. Lawrence indicated that his offices are located at 1111 Atlantic Avenue, Manasquan, NJ 08736, that he is a licensed Architect of the State of New Jersey License No. 12441 that he received his degree from the Pratt Institute that he has been practicing for 30 years and has testified before numerous Boards. His credentials being accepted he testified as follows:

1. The garage to be reconstructed is located on the southwest corner of the Property 1'6" from the southwest corner and 10' from East Avenue, in this case the rear Property line.
2. The Hardings' desire is to replace the destroyed garage in the exact location and with the same dimensions as previously existed.

3. The garage would be a two (2) car, 15' high single story, with a ½ roof structure with windows to give it a more attractive look.
4. That there are between 10 and 12 garages on East Avenue between Mathis and Lyman that are oriented close to property lines and to East Avenue.
5. He believes the relocation in the pre-existing location presents a logical replacement area and sets well with the existing house and does not dominate the view from the rear of the existing dwelling.
6. That the house and garage occupy 19% of the Lot with the garage representing 2 1/2 % of that amount.

*WHEREAS*, Mr. McIntyre opened the meeting to interested parties and to the public for any questions or statements and no one came forward.

*WHEREAS*, the Planning Board of the Board of Mantoloking then discussed the Application and entered into a discussion with the representatives of the Applicant as follows:

1. Mr. Witkowski felt that the proximity to the southerly neighboring property of 1'6" was such as to impede pedestrian access and maintenance between the proposed location on the Property and the garage located on the southerly property.
2. Mr. Gillingham felt that the garage should be set back further than 10' from the East Avenue Property line. He believes that 10' where 25' is required is not sufficient.
3. Several Board Members believed that this is the time to bring pre-existing nonconformities into conformity or more conformity with the existing Ordinances of the Borough. To do this the Applicant would need to relocate the garage to 10' from the southerly side yard and 25' from the rear yard (East Avenue) Property line.
4. Ms. Laymon and Ms. White believed that the garage should be able to be rebuilt where it was previously located, i.e., 1'6" and 10'. They believed that the location was consistent with the East Avenue neighborhood; and

*WHEREAS*, Mr. Gage having heard the comments at the March 13, 2014 meeting asked for suggestions as to relocating the garage and one of those put forward was 6' from the southerly side yard and 15' from the East Avenue rear Property line. Several members suggested 6' and 20' from the East Avenue Property line; and

*WHEREAS*, at the meeting of April 3, 2014, Mr. Gage asked the Board to consider an amendment to the Application to permit the relocation of the garage to 6' from the southerly side yard and 20' from the East Avenue Property line (rear); and

WHEREAS, the Board considered the amendment and finds the following as it relates to that the amendment to relocate the garage to 6' from the southerly side yard and 20' from the East Avenue rear Property line:

1. It would be an acceptable compromise in that it would increase the distance between the garage and the common property line with the southerly property.
2. That the proposed relocation would enhance and increase light, air and open space.
3. That the proposed area of relocation would not create any substantial detriment to the public in that it increases distances from pre-existing nonconforming setbacks.
4. The proposed area of relocation will not substantially impair the intent and purpose of the zone plan in that it brings the garage into more conformity with the existing ordinances of the Borough.

*NOW THEREFORE BE IT RESOLVED*, that for the above findings the Planning Board grants approval to the Applicants, Daniel and Pamela Harding:

1. For a variance into the rear yard setback where 25' is required, and 20' is proposed for the relocation of the garage.
2. For a variance into the south sideyard setback for the relocation of the garage, where 10' is required and 6.0' is provided.

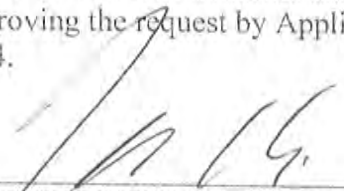
*NOW THEREFORE BE IT FURTHER RESOLVED*, that the approval as immediately above state is granted on the following conditions:

1. That the Applicants, Daniel and Pamela Harding will rely on the testimony of Mr. Lawrence and the representation of their attorney, Willam T. Gage, Esq.
2. That the Applicant obtain a building permit prior to commencing and construction on the Property. A building permit must be obtained within two (2) years from the date of this Resolution or this Resolution will be deemed null and void and of no effect.
3. The Applicant furnish a copy of Ocean County Soil Conservation District Certification, if applicable.

4. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking.
5. Applicant will provide Proof of Publication of a Notice of Decision of the Board to the Secretary of the Board within 30 days from receipt of Resolution.
6. The Applicant shall obtain any and all necessary Federal, New Jersey (including any Coastal Area Facility Review Act (CAFRA) permits, 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 approvals, 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 reapply to the Board for the approval of the change.
7. 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. and all fees incurred by the Board in reviewing this Application. The failure of the Applicant to deposit or provide such fees, after being directed to do so, shall render any approval granted hereunder null and void.
8. The testimony, deliberations and stipulations made at the hearing are hereby 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.
9. 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 in question.
10. The terms, conditions and stipulation imposed upon that Applicant in this approval are an integral and material part of the actions of the Board in that the Board 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.
11. All the representations and statements made by the Applicant at the hearing on April 3, 2014, shall be considered and deemed to be relied upon 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.

### CERTIFICATION

I, Courtney Bixby, Acting Secretary of the Planning Board of the Borough of Mantoloking, does hereby certify that the foregoing is a true copy of the Resolution duly adopted by the Planning Board on the 3rd of April, 2014, and memorializes and confirms the actions taken by the Planning Board in now approving the request by Applicant for relief at the regular meeting held on March 13, 2014.



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COURTNEY BIXBY, Acting Secretary

**MEETING OF APRIL 3, 2014  
TO APPROVE THE APPLICATION**

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.)

Moved	Seconded	Yes	No
		✓	
		✓	
✓		✓	
		✓	
		✓	
	✓	✓	
		✓	

Absent :

Not Voting or Rescued: