

RESOLUTION
2013 – 011
GUEZ

WHEREAS, ELIZABETH A. GUEZ, referred to as Applicant, 955 Ocean Avenue, Mantoloking, New Jersey 08723 has made Application to the Borough of Mantoloking Planning Board (2013-011); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 955 Ocean Avenue, Mantoloking, New Jersey 08738 and is also known as Block 8, Lot 14 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R-6A Zone of the Borough of Mantoloking;
and

WHEREAS, this Application was declared complete on December 21, 2013. On even date Barbara Allen Woolley-Dillon, PP, AICP issued a Supplemental Zoning Denial letter to Applicant and subsequent to that issued a revised Certificate of Completeness dated January 6, 2014; and

WHEREAS, Ms. Woolley-Dillon's Zoning Denial letter referred to above and dated December 21, 2013 and revised Certificate of Completeness dated January 6, 2014 call out the bulk (Appendix B of Chapter XXX) deficiencies which are implicated by this Application. They are:

- a) Minimum required front yard setback where twenty-one feet (20.86') is required (based on the average setback of lots with similar depths located within 200 feet of the site) and where just over 16' exists and approximately 14.22' is proposed to the porch and 9.22' to the uncovered front steps is proposed. *There is an existing non-conforming condition relating to this item.*
- b) Minimum required side yard setback(s) for the existing air conditioning condenser unit located on a platform that will be relocated more toward the northern property line where ten feet (10') is required and where 8.83' exists and 8.15' is proposed. *There is an existing non-conforming condition relating to this item.*
- c) Maximum permitted lot coverage where thirty percent (30%) is permitted and where just over thirty-two percent (32.2%) exists and thirty-one percent (31.3%) is proposed. *This is a result of an existing non-conforming condition that will be slightly reduced as a result of the proposed application.*

- d) Minimum rear yard setback for the proposed at grade deck located near the eastern property line where 10' is required and 6'6" is proposed.

WHEREAS, in addition, Section 30-8.2 (Grandfather Provisions) of Chapter XXX provides in its relevant part:

Except as otherwise provided in this chapter, any lot which conformed to the bulk requirements (i.e., lot area, width and depth) of and 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...and (2) the lot otherwise conforms with all requirement of its zone...

The lawful use of land or of any structure existing as of the adoption of this chapter may be continued, although the use of structure does not conform to the requirements of this chapter. The owner of any such land or structure shall not be required to obtain variance relief for the construction of any improvements which comply with the bulk requirements of this chapter. Uses or structures rendered nonconforming by this chapter may not, however, be enlarged or expanded, either horizontally or vertically; and

WHEREAS, the instant matter, although the lot area, width and depth deficiencies would be grandfathered, the fact that the structure on the lot, which may have been validly existing, is being changed in a manner which will constitute an enlargement or expansion of a presently nonconforming structure or lot (minimum required front yard setback where 20.86 feet is required and where sixteen feet (16') exists and approximately 14.22' is proposed for the porch and 9.22' to the uncovered front steps and in addition, there is an existing side yard setback where ten feet (10') is required and 8.83' exists and 8.15' is proposed and maximum permitted lot coverage where 30% is permitted and 32.2% exists and 31.3% is proposed. These constitute expansion.

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 structure suffered damage as a result of Superstorm Sandy which damage is less 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 the Application for the relief requested and which were marked:

1. Aquatecture Associates Incorporated Site Plan dated October 25, 2013 marked as A-1.
2. North, South, East and West Elevations with the Front Elevation in color was marked as A-2.
3. Photographs of the two (2) properties to the south and a photograph of the Guez existing structure was marked as A-3.
4. Four (4) building elevations on a single board was marked as A-4.
5. First floor plan showing reorganization of space was marked at A-5.

The Applicant's Attorney was advised to keep these Exhibits.

WHEREAS, the Board marked into the record the December 21, 2013 letter of Barbara Allen Woolley-Dillon, PP and the revised Letter of Completeness dated January 6, 2014, as B-1.

WHEREAS, the following Board Members were present at the January 9, 2014 hearing on the matter: Thomas McIntyre, Chair, Ms. Nelson, Ms. White, Ms. Boughton, Ms. Laymon, Messrs. R. McIntyre, Gillingham, Hawkings, Bixby and Daly. Mr. Witkowski was absent. All members in attendance indicated they made a site visit; and

WHEREAS, the Applicant was represented at the January 9, 2014 meeting by William T. Gage, Esq., 536 Lake Avenue, Bay Head, New Jersey 08742; and

WHEREAS, Mr. Gage after introductory remarks called as the Applicant's first and only witness, John C. Amelchenko, RA of Aquatecture Associates, Inc., 421 River Avenue, Point Pleasant Beach, New Jersey, who testified as follows:

1. He is a Licensed Architect of New Jersey (No. AL10380). Mr. Amelchenko, having testified recently before this Board, his credentials were accepted without repeating and he continued his testimony.
2. The Property was damaged by Sandy and the Applicant had a choice to elevate the house and do renovations and repairs or to raze the house and build a completely new structure.
3. The Applicant chose to elevate the house and renovate. The Property is in the BFE A Zone where eight feet is required, the house as it exists is at 7.7 feet and she wants to go to 10 feet.
4. There will be no increase in the existing lot coverage of 32.2' and in fact that will be reduced to 31.3%.
5. The Property is 70' at its frontage (east property line) on Ocean Avenue and is 76.5' deep on the south Property line and 77.16' feet on the north property line.
6. It is the intention to remove the existing step down enclosed rear (west) brick porch and steps and to rebuild as a part of the house at the elevated level which would now contain the kitchen with a breakfast bar. There would be no increase in this size than the previously existing step down enclosed porch.
7. The Applicant will continue to keep the house as a single story dwelling.
8. The Applicant proposes to build front steps 9.22' from the front yard Property line and a proposed 6' x 9' covered unenclosed entry 14.22' from the front yard Property line which would replace the existing wood porch and steps. The architectural roof feature above the proposed covered but unenclosed entry would provide both protection from the elements and break up the visual straight line appearance that presently exists.
9. The air condition condenser and the 32" x 32" platform is being moved slightly north from the house to allow for proper air circulation.
10. The rear deck was designed in a square configuration which requires the variance requested instead of a long and narrow deck which could conform but would not be logical and would be both impractical and not good design. The deck would be 8' x 14'.
11. The newly designed structure would promote a desirable visual environment, would fit in with the character of the immediate

neighborhood, lessen the existing nonconforming lot coverage and the variances can be granted without substantial detriment to the public good and the variances, if granted, would not substantially impair the intent and purpose of the Mantoloking zone plan and zoning ordinances.

WHEREAS, Mr. McIntyre opened the meeting to the public for questions and/or statements and the following ensued:

1. Ms. Marion Mahalick, 979 Ocean Avenue, Block 7, Lot 10, questioned the extent of the rear yard setback variance and having received a response was satisfied and had no objection.

WHEREAS, the Planning Board of the Borough of Mantoloking finds that:

1. The testimony of Mr. Amelchenko was fully credible, comprehensive and persuasive
2. That there would not be any adverse effect as to the grant of the variance relief requested.
3. That the presentation of the Applicants' professional meets the criteria set forth for the grant of variances pursuant to the N.J.S.A. 40:55D-70c(1) and c(2) and satisfied the requirements of the negative and positive criteria, i.e. that the variances requested and the expansion of the existing nonconforming structure can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance of the Borough.
4. That these variances are essentially cosmetic.
5. That the aesthetic enhancement of the dwelling is consistent with and fits into the immediate neighborhood and the Borough of Mantoloking in general.
6. That the improvement to the structure would enhance the value of the surrounding properties.
7. That the Applicant limited the scope of the improvements.
8. The intent to raze the house and renovate the structure was a good solution and the Architect did a good job with the limited size of the lot and the existing structure.

NOW THEREFORE BE IT RESOLVED, that for the above findings the Planning Board grants approval to the Applicant, Elizabeth A. Guez, as follows:

1. For a variance of 11.64' into the front yard setback where 20.86' is required, and 9.22' is proposed to the front steps and a variance of 6.64' into the front yard where 20.86' is required and 14.22' is proposed to the unenclosed covered porch (entry).
2. For a variance of 2'15" into the north side yard setback for the relocation of an air conditioning condenser plan where 10' is required and 8.15' is provided.
3. To exceed the permitted maximum lot coverage of 30% by 1.3%.
4. For a variance to construct the on grade deck in the rear yard at 6.5' from the rear yard property line where 10' is required. This would constitute a 3.5' variance.
5. To expand a presently preexisting nonconforming structure in the manner as approved.

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

1. That the Applicant, Elizabeth A. Guez, not being present at the meeting, will rely on the testimony of Mr. Amelchenko and the representation of her attorney, William T. Gage, Esq.
2. That the Applicant obtain a building permit prior to commencing any 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 that 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 this 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 January 9, 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.

Courtney Bixby

CERTIFICATION

I, ~~Elizabeth Nelson~~, 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 of February, 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 January 9, 2014.

ELIZABETH NELSON, Secretary

Courtney Bixby

**MEETING OF JANUARY 9, 2014
TO PREPARE A RESOLUTION TO APPROVE**

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
		X	
		X	
		X	
	X	X	
		X	
		X	
X		X	
		X	
		X	

Absent : Mr. Witkowski

Not Voting or Rescued:

**MEETING OF MARCH 13, 2014
VOTE TO APPROVE RESOLUTION**

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: