

**RESOLUTION
2015-005
JOAN SCHREYER**

WHEREAS, JOAN SCHREYER, (referred to as Applicant) of 1007 East Avenue, Mantoloking, New Jersey 08738 c/o Drue Ann Schreyer, 108 South Nixon Road, State College, Pennsylvania 16801 has made Application to the Borough of Mantoloking Planning Board (2015-004); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1007 East Avenue, Mantoloking, New Jersey 08738 and which is also known as Block 5, Lot 5 on the Borough of Mantoloking Tax Map (Property); and

WHEREAS, the Property is in the R-3C Zoning District of the Borough of Mantoloking; and

WHEREAS, on March 24, 2015, Barbara Allen Woolley-Dillon, PP, AICP, the Zoning Official/Land Use Administrator of the Borough sent a Supplemental Letter of Completeness to Meryl A.G. Gonchar, Esq., Greenbaum, Rowe, Smith and Davis, Metro Corporate Campus One, P.O. Box 5600, Woodbridge, New Jersey 07095. The Letter is marked into the record as B-1; and

WHEREAS, the Applicant desires to construct a new deck and stairs at the Oceanside or front of the dwelling and an expansion of an existing above grade deck at the northeastern side of the existing dwelling and the installation of an exercise pool or spa of approximately 123 square feet in a first floor deck; and

WHEREAS, Ms. Woolley-Dillon's Letter (B-1) indicated the following variance relief required:

- Minimum required rear yard setback – sixty feet (60') is required where just over thirty-five feet (35.3') exists/is proposed. *This is an existing non-conforming condition associated with the garage that will not be changed as a result of the proposed application.*
- Minimum required average front yard setback – sixty feet (60') or the average of the setback to the wall of all buildings located within 200 feet of the site (not including the site), whichever is greater is required. In this instance the average setback for all buildings located within 200 feet of the site, not including the site is just under sixty-five feet (64.98') where sixty-four feet (64') is proposed.
- Maximum permitted lot coverage – a maximum permitted lot coverage of thirty percent (30%) is permitted, with reduced lot coverages for increasingly larger lots. The plans indicate that the lot size is 13,790 square feet. Based on this lot size, the maximum permitted lot coverage is 3,814.8 square feet. The existing lot coverage appears to be approximately 3,454 square feet. (Please see comment below relating to Lot Coverage Calculations.) The proposed lot

coverage is calculated to be approximately 4,302 square feet. There will be an increase of approximately 848 square feet.

- The maximum permitted height for a pool to be installed above the existing grade – twelve inches (12”) is permitted where approximately four feet (4’) is proposed.

WHEREAS, prior to the Applicant’s presentation, John J. DeVincens, Esq., the Attorney for the Planning Board ruled that the minimum required rear yard setback where sixty feet (60’) is required and where 35.3’ exists is a pre-existing non-conforming condition which is not being expanded or enlarged and is not implicated by this Application and as such the condition is recognized by the Board but no variance is required and none will be granted; and

WHEREAS, in this case, the existing structure is non-conforming in that it violates the rear and front yard setbacks and lot coverage requirements of the R-3C Zoning District. Chapter XXX, Section 30-6.5 (Non-conforming Uses) says “a. Continuance. Except as otherwise provided... the lawful use of the land or a structure existing at the date of the adoption of this chapter may be continued although such use or structure does not conform to the regulations specified by this chapter for the zone in which such land or structure is located; provided, however that:... 2. A non-conforming structure shall not be enlarged, extended or increased, horizontally or vertically, unless such enlargement, extension or increase is conforming. 3. A conforming enlargement, extension or increase to non-conforming structure shall not require the approval of the Planning Board.”; and

WHEREAS, the proposed addition of a front deck and stairs and the exercise pool to the house would be non-conforming by virtue of the fact that it would be within the non-conforming rear and front yard setbacks and is an enlargement or increase to the non-conforming structure thus requiring a variance; and

WHEREAS, in order to prove its case and be granted the variance relief being requested above the Applicant under N.J.S.A 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.

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 purpose of zoning as stated in N.J.S. 40:55D-2 and the undue hardship (the “positive criteria”).

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 Application applies to a specific piece of property; 2) that the purpose of the MLUL would be advanced by the deviation from the requirements of the zoning ordinance; 3) that the variance 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; 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. Ms. Gonchar and Mr. DeVincens discussed prior to the meeting that the US Postal Service does not transmit mail by Certified Service to foreign countries and that Ms. Gonchar sent Notice of Meeting to Dale and Bevan Wall Lattanzio of 31 Tedeworth Square, London, SW3, 4DP, United Kingdom by Registered Mail and by Certified Mail to their Mantoloking address at 1013 East Avenue. Mr. DeVincens ruled that satisfied the purpose and intent of the service of Notice of Meeting requirements of the MLUL; and

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

1. A photorealistic image of the Schreyer Residence showing the proposed pool area deck and the proposed front elevation prepared by Ford 3 Architects, LLC dated April 2, 2015, was marked as A-1; and

2. Map of Topographic Survey done by George W. Henn, Inc., for Property dated July 16, 2014 as File No.: 03-465-E showing existing conditions and seven (7) photographs was marked as A-2; and

WHEREAS, the following Board Members were present at the April 2, 2015, hearing on the matter: Chairman Stanley Witkowski, Ms. Jane White, Ms. Susan Laymon, Ms. Denise Boughton, Messrs. Gillingham, Hawkings, Bixby, Daly and Duggan. Mr. Hawkings and Ms. Nelson were not present and all Members who were present indicated they made a site visit; and

WHEREAS, Meryl A. G. Gonchar, Esq., of Greenbaum, Rowe, Smith and Davis, the Attorney for the Applicant called as her first witness, Drue Ann Schreyer, who being duly sworn testified as follows:

1. She is the daughter of the Applicant, Joan Schreyer and she resides at 108 South Nixon Road, State College, PA 16801 and she manages the affairs of her mother who suffers from Parkinson 's disease.

2. Joan Schreyer and her husband, William A. Schreyer owned the Property since February of 1994. Mr. Schreyer passed away on January 22, 2011.

3. The house suffered Sandy damage that was partial and this presented an opportunity to do certain changes to the house which would mainly accommodate the physical limitations of Mrs. Schreyer and that would be the installation of a 123square foot “therapy pool” four feet deep in an elevated first floor deck which would be accessible without Mrs. Schreyer having to navigate steps. The pool on the property which was on-grade was essentially destroyed by Sandy. The 123 square foot “therapy pool” being even with the first floor would provide direct and easy access for Mrs. Schreyer and would be located in the same general area where the destroyed pool was located. Access to the first floor could be had by an elevator located in the basement in close proximity to the entrance from the garage.

WHEREAS, Ms. Gonchar called as her second witness, Brian Koczan, AIA, of Ford 3 Architects, 32 Nassau Street, 3rd Floor, Princeton, New Jersey, who indicated he received his Bachelor of Science in Architecture from the University of Maryland in 2001 and his Masters in Architecture from the New Jersey Institute of Technology in 2005. He is licensed in N.J. (License No.: 21A101814700). His credentials being accepted he testified as follows:

1. He worked on this project after discussions with Ms. Schreyer.
2. He understood the physical limitations of Mrs. Schreyer, her continued desire to have access to a pool in which she could conduct physical exercise and that the pre-existing on grade pool was destroyed by Sandy and had been removed from the Property. The previous on grade pool could only be reached by a series of steps from the first floor area to the grade level.
3. The design presented shows a small 123 square foot, four (4) foot deep pool even with the first floor level which is proposed to be installed four (4) feet above grade where the maximum permitted height of a pool is 12” above grade. He believes that this height better accommodates the needs of Mrs. Schreyer in that placing the pool in the first floor deck allows Mrs. Schreyer direct access to the “therapy pool” without having to negotiate a series of steps if the pool was constructed 12” or less above grade as mentioned. In addition, the deck in and of itself would provide a surround. He believes the pool is very small, cannot be seen by either the north, south and west property owners and is located in the same general area where the previously Sandy destroyed on grade pool was located.
4. Based on the size of the lot at 13,790 square feet the maximum permitted lot coverage would be 3,814 square feet, the existing square footage is 3,594 square feet and the proposed square footage would be 4,302 square feet resulting in an increase of 487.2 square feet over permitted and 848 square feet over existing and a requested variance in that amount. When asked about the discrepancy in those numbers and those in Ms. Dillon’s Letter (B-1) where she believes the existing lot coverage to be 3,577, the proposed coverage being 4.425 square feet and therefore, a variance of 610.2 square feet would be required (4,425 square feet – 3,814.8 square feet = 610.2)

He had reviewed these numbers and discussed same with Ms. Dillon and he believes that Ms. Dillon is satisfied with the need for a 487.2 square foot variance, (calculated as follows: 3,594 sq. ft., plus 848 sq. ft. minus 140 sq. ft., (deduction for the stairs per Section 6.8b.3.d) equals 4,302 sq. ft.). When asked, Ms. Dillon concurred and explained it was difficult to ascertain pre-Sandy with post-Sandy coverage since certain pre-Sandy construction improvements were removed.

5. He believes the 64.0' proposed front yard setback to the front yard deck where 64.98' front yard is required by the Ordinance requirement of averaging the front yard setback of structures on lots located within 200 feet of the Property on the same side of the street results in a de minimis deviation.

6. He agrees that:
- a) He will submit revised plans to show all correct dimensional and zone requirements; and
 - b) The showing of a gate which can be locked to be located at the bottom of the short set of stairs leading from the first floor deck in which the "therapy pool" is located at the grade level; and

WHEREAS, Ms. Gonchar called as her third witness, Allison Coffin, P.P., AICP, who is with the firm of James W. Higgins, Associates, 823 West Park Avenue, #261, Ocean Township, New Jersey 07712. She has a Bachelor of Science from Boston College and has testified before this Board on previous occasions. Her credentials were accepted and she was duly sworn and testified as follows:

1. That as it related to N.J.S. 40:55D-70c(1) commonly known as the hardship variance she believes it fits a hardship uniquely affecting a structure lawfully existing thereon and the improvements proposed are exterior and the house is not significantly altered by this Application.

2. That the improvements are a reasonable use of the space.

3. That the elevation of the pool four feet (4') above grade where 12" or less above grade permitted enables the pool to be put on the first floor level making it more accessible to Mrs. Schreyer for her use.

4. The pool is not large (123 sq. ft.) and will not be able to be seen by the properties to the south, north and west and is located in the approximately location of the prior pool destroyed by Sandy was situated.

5. The pool in the alcove area of the first floor will have minimum usual impact.

6. That the plan proposed by the Applicant meets the flexible "c" test (N.J.S. 40:55D-70c(2)) of the MLUL in that it is consistent with the neighborhood pattern and characteristics, that it consists of an attractive addition to the neighborhood, that the front yard setback variance of .98' is de minimis and essentially conforms to the required front yard setback.

7. That the variances as requested can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Borough's zone plan and land use ordinance; and

WHEREAS, Mr. Witkowski opened the meeting to any person within 200 feet or an interested person for any questions and statements and the following came forward:

1. Ms. Mary Ann Wagner, 1010 East Avenue, Mantoloking, New Jersey (Block 6, Lot 6) understands that as people age their needs change and the idea of a therapy or exercise pool becomes important. She feels the house is beautifully designed and would be very much in support of the relief requested.

2. Mr. Raymond Peters of Popovitch Builders came to represent Justin and Veronica Glemich, 1003 East Avenue (Block 5, Lot 3) and indicated to the Board that the Glemich's were in support of the Application; and

WHEREAS, the Mantoloking Planning Board made the following findings at its meeting on April 2, 2015:

1. That the Applicant presents a rational and reasonable request.
2. That the request for relief by the Applicant does not present a volume increase in living space and the decks and stairways present an aesthetic benefit and do not create a negative drainage or visual impact.
3. The pool is not large and is mostly hidden in the alcove of the deck on the first floor level and cannot be seen by property owners to the north, south and west.
4. That the .98' front yard setback is de minimis and does not create a negative zoning impact.
5. That although the pool in the first floor deck is specifically designed for the personal needs of Mrs. Schreyer, those needs are compelling. The pool being in the first floor deck will have minimal visual impact.
6. There was some concern about pool safety and the Applicant has agreed to place a gate which can be locked at the bottom of the short flight of stairs from the first floor deck to grade level.
7. Several members were, however, concerned with the increase in the lot coverage of 487.2 square feet.
8. The variances can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Borough's zone plan and land use ordinance.

WHEREAS, THEREFORE BE IT RESOLVED, that for the above finding, the Planning Board of the Borough grants the following variance relief to the Applicant, Joan Schreyer, as follows:

1. A front yard setback variance of .98' where 64.98' front yard setback is required by the front yard setback variance in the ordinance pursuant to the average of the front yard setbacks of structures on lots located within 200 feet of the Property on the same side of the street and where 64.0' is provided.

2. A variance to permit a pool to be installed in a first floor deck which is proposed to be four feet (4') above existing grade where a maximum of 12" above grade is permitted.

3. A lot coverage variance of 487.2 square feet where the lot is 13,790 square feet, 3,814 square feet is permitted and 4,302 square feet is proposed.

4. To expand the pre-existing non-conforming structure by virtue that it will continue to be in the front and rear yard setback and exceeds lot coverage where Chapter XXX, Section 30-6.5(2) does not permit such expansion or enlargement either horizontally or vertically.

It is noted that the Members of the Board voted unanimously in favor of the variances in 1 and 2 above which would incorporate 4 but that two (2) Members of the Board (Mr. McIntyre and Ms. Duggan) were concerned about the volume of the lot coverage variance (3 above) and were not in favor; and

NOW, THEREFORE BE IT FURTHER RESOLVED, the above variances are approved on the following conditions:

1. That the Applicant meet any and all safety measures required and necessary for the installation of a swimming pool.

2. That the Applicant amend its plans to show the correct lot coverage calculations, R-3C zoning requirements to include existing and proposed dimensions and the installation of a locked gate at the bottom of the flight of stairs from the first floor deck to grade level and to submit the revised plans to Barbara Allen Woolley-Dillon for her review and approval.

3. That the Applicant relies on the testimony of Mr. Koczan, and Ms. Coffin and the statements of its Attorney, Meryl A.G. Gonchar, 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 April 2, 2015 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 the 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 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.

CERTIFICATION

I, **SUSAN LAYMON**, 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 7th day of May, 2015, and memorializes and confirms the actions by the Planning Board in now approving the relief requested by the Applicant at its special meeting held on April 2, 2015.



SUSAN LAYMON, Secretary

VOTE AT APRIL 2, 2015
AUTHORIZING PREPARATION OF RESOLUTION OF APPROVAL

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

Absent : Mr. Hawkings, Ms. Nelson

Not Voting or Recused:

**VOTE AT MAY 7, 2015
TO APPROVE THE RESOLUTION OF APPROVAL**

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

Absent: Ms. Nelson,

Not Voting or Recused: Mr. Hawkings