

RESOLUTION
2014 –002
HUGHES

WHEREAS, John T. Hughes (referred to as Hughes or Applicant), residing at 2905 Gulf Shore Blvd., Unit N703, Naples, FL 34103 and 1200 Bay Avenue, Mantoloking, New Jersey, 08738 have made Application to the Borough of Mantoloking Planning Board (2014-002); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1200 Bay Avenue, Mantoloking, New Jersey 08738 which is also known as Block 29, Lots 1 and 1.01 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R-4A Zone of the Borough of Mantoloking;
and

WHEREAS, on March 5, 2014 (Letter of Denial) and April 24, 2014 (Certificate of Completeness), Barbara Allen Woolley-Dillon, P.P., AICP, the Land Use Administrator of the Borough of Mantoloking issued letters to William J. Wolf, Esq., Bathgate, Wegener & Wolf, One Airport Road, Lakewood, New Jersey 08701, the Attorney for the Applicant which were both marked B-1 at the meeting; and

Said letters indicated the following variances for which relief is requested:

- Minimum required side yard setback(s) for the propose dwelling and porch – fifteen feet (15') is required where just under nine (8.9') is proposed.
- Minimum required rear yard setback – twenty-five feet (25') is required where just over twelve feet (12') is proposed to the sidewalk. In accordance with the provisions contained in § 30-4.0e, decks are defined to include entrance porches, stairs, *walkways*, patios, pool surrounding access, and the like.
- Minimum required side yard setback for the proposed stone walkway (southern property line) – ten feet (10') is required where approximately four (4') is proposed. Again, in accordance with the provisions contained in § 30-4.9e, decks are defined to include entrance porches, stairs, walkways, patios, pool surrounding access, and the like. Decks are not permitted to encroach.

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; and

WHEREAS, subsequent to Ms. Dillon’s letters of March 5, 2014 and April 24, 2014, it was agreed that walkways in her second and third bullet points were to be pea gravel and would not, therefore, require a variance; and

WHEREAS, the structure that existed was more than partially damaged and removed from the property as a result of Superstorm Sandy; 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 his Application for the relief request and which were marked:

1. Site Plan Map as Sheet CSI prepared by Aquatecture Associates Incorporated as Project 13.58 dated January 28, 2014 and revised to March 3, 2014 was marked as A-1. This sheet was part of and incorporated in the seven (7) page Site Plan and Elevations filed with the Application. A revised Proposed Site Plan dated January 28, 2014 revised to June 23, 2014 was admitted as a supplement to A-1 at the July 10, 2014 meeting.
2. A photorealistic color rendering of the proposed dwelling was marked as A-2.
3. Survey Map prepared by East Coast Engineering, Inc., dated April 2, 2014 for Block 29, Lot 1 as Job No.: 2014-0138 which was marked as A-3.

4. Floor Plan of first floor of proposed residence Sheet 3 of the seven (7) Site Plan and Elevations – referred to in 1 above was marked as A-4.
5. Resolution 2005-1 memorialized on June 27, 2005 was marked as B-2.
6. The telefax from the Ocean County Engineering Department to Ms. Dillon dated June 5, 2014 with the letter from the Office of the Ocean County Engineer, Frank S. Scarantino, PE dated April 30, 2014 to William J. Wolf, Esq., was marked as B-3.

The above were introduced and admitted into evidence at meeting of June 5, 2014. The following were introduced and admitted into evidence at the meeting of July 10, 2014.

7. A Site Distance Plan prepared by Jason Marciano, P.E., P.P., from East Coast Engineering prepared June 23, 2014 was marked as A-5.
8. July 9, 2014 letter to William J. Wolf, Esq. from Frank S. Scarantino, P.E., P.P., Ocean County Engineer together with Right of Entry Permit from Temporary Construction Easement was marked as A-6.

The Applicant was permitted to retain the Exhibits; and

WHEREAS, the following Board Members were present at the June 5, 2014 and July 10, 2014 hearings on the matter:

Chairman McIntyre, Ms. White, Ms. Nelson, Ms. Boughton, Ms. Laymon, Messrs. R. McIntyre, Gillingham, Witkowski, Bixby and Daly. Mr. Hawkings was absent. All Members in attendance indicated they made a site visit, Ms. Laymon living within 200 feet of Property recused herself and left the dais. All the same members were present at the July 10, 2014 continued meeting on this application.

WHEREAS, the Applicant was represented at the hearing by William J. Wolf, Esq., Bathgate, Wegener & Wolf, One Airport Road, Lakewood, New Jersey 08701 who, after brief introductory remarks, called Gregory L. Cox as his first witness; and

WHEREAS, Gregory L. Cox, testified that he is a Principal of Aquatecture Associates Incorporated, 421 River Road, Point Pleasant Beach, New Jersey 08742, that he has a Bachelor of Arts in Architecture from The Pratt Institute in 1980, that he is a licensed Architect in New Jersey (A109000) having received that license in 1984, that he is also licensed in NY (NY01536-1) in 1983 and received his Professional Planners license in New Jersey in 1984, and that he has testified before this Board and before numerous municipal boards and agencies throughout New Jersey. His credentials being accepted, he testified at both the June 5, 2014 and July 10, 2014 as follows:

1. He was the Architect that prepared the Plans originally approved for the Hughes house and for which Hughes received the memorialized Resolution of Approval dated June 27, 2005 (B-2). He testified on behalf of Mr. Hughes at that time.
2. In June of 2005, Hughes had 11 variances relating to this Property, either new or a confirmation of preexisting conditions of which one was a north side yard setback of 0.98 feet.
3. The Plan presented to the Board, marked as A-1 dated January 28, 2014 and revised to March 31, 2014 requested a north side yard setback (Herbert Street) of 8.9' where 15' is required in the R-4A Zone. At the meeting of July 10, 2014, a supplement to A-1, now revised to June 23, 2014, increased the setback to 12.17' from the Herbert Street side yard which would now necessitate a 2.38 foot side yard setback variance where 15' is required.
4. The house that existed on the Hughes property was severely damaged by superstorm Sandy and ultimately razed by the Applicant.
5. That the new Site Plan for the proposed Hughes lot eliminates all of the variances granted on July 27, 2005 except that the north side yard variance (paragraph 2 and 3 above) will still be necessary. Those eliminated include but are not limited to:
 - a. reduce lot coverage from 59.5% to the required maximum 30%.
 - b. reduce the maximum lot coverage from 62% to 41.2% where 45% maximum is permitted.
 - c. increase the rear yard setback (Bay Avenue) from 23.5 feet to 25'2" where 25' is required.
 - d. increase the front yard setback (Barnegat Bay) from 23.5' to 47.8' where a minimum 25' is required.
 - e. reduce the variant building height from a 3 story structure to a complying 2 ½.
 - f. reduce the building height from 32.75 feet to the permitted 32.5 feet.
6. That the garage was shifted from its previous location on the north side of the house to the south side.
7. That this lot, prior to the Resolution of June 27, 2005, and that Application was the subject of a 5' taking from the State Department of Transportation reducing the previous 82' of frontage on Bay Avenue to 77'.
8. The house as now designed is less wide than the previous house.
9. The roof line has been shortened and the dormers now comply and the pitch of the roof also complies with the Ordinance requirement.

10. The loss of the 5' to the State DOT created certain practical difficulties in the design of the new house in that by pulling the house from the north to south and attempting to decrease the north side yard setback variance required significant reductions in the width of the house.
11. Prior to the meeting he and Ms. Dillon agreed that the stone walkways as shown on the original Site Plan will now be shown as pea gravel walkways thus eliminating the need for the other variances cited in Ms. Dillon's letters of March 5, 2014 and April 24, 2014 (B-1).
12. That the house as designed preserves the historic fabric of Mantoloking and the existing neighborhood in that it is essentially in the same style as the house that was razed.
13. That the house cannot be shifted any further south without destroying the practical width of the house.
14. That the variance requested would meet the tests for a c2 variance in that it will meet new flood standards, provide adequate light, air and open space, promote a desirable visual environment and a conservation of a historic site in that the design of the new house was done to resemble the destroyed house which was over 100 years old.
15. It meets the c1 test in that the taking of 5' dramatically reduces the available width of the Property and creates a hardship in that it reduces the size available for development of a house with sufficient width.
16. That the variance if granted would not substantially impair the intent and purpose of the Borough of Mantoloking zoning ordinances and could be granted without substantial detriment to the public good.

WHEREAS, Mr. McIntyre opened the June 5th meeting to interested parties and to the public for any questions or statements and no one came forward.

WHEREAS, the Members of the Board expressed the following comments at the June 5, 2014 meeting:

1. Mr. Witkowski is troubled that the proposed house which would require a north side yard variance (Herbert Street) was too close to the Bridge. He believed that since the lot was now vacant that a house which would fully comply with all the existing R-4A Zone requirements could be constructed. He also questioned the sight lines from Bay Avenue looking west and believes the proposed house being so close to the Mantoloking Bridge creates a safety hazard.

2. Mr. Gillingham believed since it was a vacant lot and now has vacant lots to its south it was hard to establish whether or not the purposes of zoning would be met.
3. Ms. White would like to have more information concerning the safety issue and sight lines as expressed by Mr. Witkowski.
4. Mr. Daly expressed the same view as Ms. White.
5. Mr. T. McIntyre thought that the new house could be constructed without a need for a variance and would like to see the Applicant work to that end.
6. Ms. Nelson felt the proposed house might be too large for the small lot; and

WHEREAS, the Applicant's attorney, Mr. Wolf, hearing the comments of the Members of the Board, asked that this matter be carried to the July 10, 2014 meeting in order for him to further consult with his Client, who was unable to attend the June 5 meeting, the Architect and to obtain a report concerning the sight line issues raised by Mr. Witkowski; and

WHEREAS, the Board consented to carry the hearing on the Application of Hughes until July 10, 2014 without further notice or publication; and

WHEREAS, on July 10, 2014 the Board reconvened the hearing on the Hughes Application; and

WHEREAS, Mr. Wolf then called as his first witness Frank Scarantino, P.E., P.P., the Ocean County Engineer to address the County Engineer's concerns as raised by the letter forwarded to Mr. Wolf dated April 30, 2014 Exhibit (B-3); and

WHEREAS, Mr. Scarantino indicated that as a result of a conference held at and immediately before the meeting of July 10, he, on behalf of the County Engineer's Office and representing the position of the Ocean County Planning Board and in consideration of Mr. Hughes consenting to County access to his Property, the County would have no objection to Mr. Hughes "construction of his new dwelling". Mr. Scarantino submitted the County Engineers letter and Right of Entry Permit dated July 9, 2014 (Exhibit A-6). He further indicated that the issues in that letter had been resolved; and

WHEREAS, Mr. Witkowski asked if Mr. Scarantino had any opinion concerning the sight line issue from Bay Avenue west to the Mantoloking Bridge if the house was to be built 12.17 feet from the north side yard. Mr. Scarantino indicated those sight lines would not meet the sight line requirements of the Ocean County Planning Board but that he believed that, as in the past, that Board has issued variances to its sight line requirements and that he believed the Board would do so in this case; and

WHEREAS, Mr. Wolf now called Jason M. Marciano, P.E., P.P., of East Coast Engineers, 508 Main Street, Toms River, New Jersey who testified that he prepared the Sight Distance Plan of June 23, 2014 marked as A-5; and

WHEREAS, Mr. Marciano testified that based at 35 miles per hour at 7 ½ seconds that the sight distance from Bay Avenue looking west was 385 feet which distance was further than the crest of the Mantoloking Bridge; and

WHEREAS, this distance would provide more than adequate distance and time for a car stopped at Bay Avenue to make the right turn on Herbert (left turns being prohibited) and proceed east and would permit a second car and possibly a third car to make the turn safely as it related to traffic coming over the Mantoloking Bridge in an easterly direction; and

WHEREAS, the proposed Hughes house being 12.17 feet from Herbert would not obstruct the view from Bay Avenue to the crest of the Mantoloking Bridge and would not, in his professional opinion, constitute any traffic safety issues; and

WHEREAS, when asked by Mr. Witkowski what sight line standards he utilized he responded he utilized those provided by AASHTO and in answer to a further question by Mr. Witkowski he indicated that those standards were not as strict as those utilized by the Ocean County Planning Board relating to sight triangles but in his opinion and, as it related to this matter, the AASHTO standards are more than adequate and acceptable; and

WHEREAS, Mr. McIntyre, as he did on June 5, opened the meeting to interested parties and to the public for any questions or statements, and again, no one came forward; and

WHEREAS, the public portion was closed and the following comments and observations from the Board were made:

1. Mr. T. McIntyre expressed his appreciation to the Applicant for his efforts to reduce the north side yard variance and would now be in favor of granting the 2.83' variance.
2. Mr. Gillingham indicated that the Borough worked hard to implement a new Zoning Ordinance and, that this lot being vacant he did not find any particular hardship or peculiar facts which would constitute an undue hardship and that to grant this variance would be unfair to other owners that have or were required to comply.
3. Mr. Witkowski stated that the Borough for a period of three (3) years "tortuously" went through the process of enacting a new Zoning Ordinance and believed that the 5' taken by the NJ DOT in 2004 was present when Mr. Hughes applied in 2005 and was not now an exceptional factor creating a hardship. He also did not want to create a precedent.

4. Ms. White indicates that the Board Attorney has advised this Board as it relates to creating precedents and that she approaches each Application that comes before the Board in a "compartmentalized" fashion and on a case by case basis. She indicates that both the reduction in the north side yard variance being requested and the testimony concerning the sight line safety issue were now satisfactory to her.
5. Ms. Denise Boughton believes the 5' taking does create a hardship.

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

1. That the testimony of the Applicants' professionals was comprehensive.
2. That on June 27, 2005 the Applicant obtained a memorializing Resolution from this Board granting variances as contained therein and that the present Application eliminates all the variances granted on June 27, 2005 except the one now applied for.
3. That the Applicant made an effort to further reduce the north side yard setback variance to 2.83'.
4. That the proposed house is of good design and as it is similar in architectural approach to the house which previously existed fits into the traditional Mantoloking feel and is aesthetically pleasing and would promote a desirable visual environment.
5. That there being no house to its north, where the Mantoloking Bridge abuts the Property, there would be adequate light, air and open space.
6. That the new house will meet all current laws and ordinances to comply with the new FEMA and flood control standards.
7. That the 2.83' north side yard variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purposes of the Land Use Regulations of the Borough of Mantoloking.

NOW THEREFORE BE IT RESOLVED, that for the above findings the Planning Board grants approval to the Applicant, John Hughes and ~~Kathy Hughes~~ ^{EM}, as follows:

1. Variance for the construction for the proposed dwelling and porch where fifteen feet (15') is required and where 12.17' is proposed (a 2.83' variance).

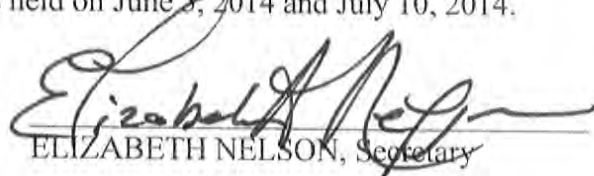
NOW, BE IT FURTHER RESOLVED, that the approval as immediately above stated is granted on the following conditions:

1. 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.
2. The Applicant furnish a copy of Ocean County Soil Conservation District Certification, if applicable.
3. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. All the representations and statements made by the Applicant at the hearings on June 5, 2014 and July 10, 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, Elizabeth Nelson, 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 August, 2014, and memorializes and confirms the actions taken by the Planning Board in now approving the request by Applicant for relief at the regular meetings held on June 5, 2014 and July 10, 2014.


ELIZABETH NELSON, Secretary

**MEETING OF JULY10, 2014
TO PREPARE A RESOLUTION TO APPROVE**

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

Absent: Mr. Hawkings
Not Voting or Rescued: Ms. Laymon

**MEETING OF AUGUST 6, 2014
VOTE TO APPROVE RESOLUTION**

	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: Mr. Hawkings and Ms. Laymon

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