RESOLUTION
2014 –003
BARNEGAT LANE, LLC

WHEREAS, Barnegat Lane, LLC, Lincoln Heffner and Patricia Heffner, its members residing at 10 Seven Springs Road, Lebanon, New Jersey 08833 and 1008 Barnegat Lane, Mantoloking, New Jersey 08738 have made Application to the Borough of Mantoloking Planning Board (2014-003); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1008 Barnegat Lane, Mantoloking, New Jersey 08738 which is also known as Block 21, Lots 35 and 35.01 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 May 13, 2014 (Letter of Denial) and June 16, 2014 (Certificate of Completeness), Barbara Allen Woolley-Dillon, P.P., AICP, the Land Use Administrator of the Borough of Mantoloking issued letters to Daniel M. Hurley, Esq., Starkey, Kelly, Kenneally, Cunningham & Turnbach, 1593 Route 88 West, Brick, New Jersey 08724, 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 lot area – *10,000 square feet is required where 7,757 square feet exists/is proposed. This is an existing non-conforming condition.*
- Minimum required lot frontage – *seventy feet (70') is required where fifty feet (50') exists. This is an existing non-conforming condition.*
- Minimum required side yard setback for the principal building – ten feet (10') is required where nine feet six inches (9.5') is proposed for both side yard setbacks.
- Minimum required side yard setback for the principal building – ten feet (10') is required where eight feet six inches (8.5') is proposed for the bay window to the southern (side) property line.
- Minimum required side yard setback for the principal building – ten feet (10') is required where nine feet six inches (9.5') is proposed for the above grade decks from both the northern and southern (side) property lines.
- Maximum permitted encroachment for ornamental features such as overhangs and chimneys – one foot is permitted where just over two feet (2.17') is proposed for the roof overhang with respect to the side yard setbacks. (A minimum of nine feet (9') is required where just under eight feet (7.83') is proposed.
- Maximum permitted encroachment for ornamental features such as overhangs and chimneys – one foot is permitted where two and one-half feet (2.5') is proposed for the chimney at the northern property line. (A minimum of nine feet (9') is required where seven and one-half feet (7.5') is proposed.)

- The construction of a balcony above the second habitable floor. Please note that in accordance with the provisions contained in § 30-4.7 b, third story balconies are not permitted on dwellings that are located on lots fronting on North or South Lagoon; and

WHEREAS, Mr. Hurley prior to commencing the hearing on this matter announced that they have narrowed the variances requested to only include the following:

1. The south yard setback from the south-side bow window where ten feet (10') is required and nine feet (9') is proposed.

2. The north yard setback of the north-side chimney where nine feet (9') is required and eight feet (8') is proposed.

3. A roof overhang on the north and south side of the house where nine feet (9') is required and 8.33' is requested; and

WHEREAS, the plans to be reviewed at the meeting of August 6, 2014 do not reflect the accurate dimensions of the variances requested. The approval of this application is conditional upon the submission of new plans to the Land Use Administrator of the Borough showing the revised dimensions as indicated above; 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. 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, the structure that existed was totally destroyed 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 its Application for the relief request and which were marked:

1. A photorealistic front elevation of the proposed house was marked as A-1.

2. A photorealistic rear elevation of the proposed house was marked as A-2.

3. Studio Two Hundred, LLC, plans dated May 5, 2014, revised to May 27, 2014 sheet A1.0, marked as A-3.

4. Studio Two Hundred, LLC plans dated May 5, 2014, revised to May 27, 2014 sheet A2.0, marked as A-4.

5. Studio Two Hundred, LLC plans dated May 5, 2014, revised to May 27, 2014 sheet A2.1, marked as A-5.

6. A rendering of the north, east, west and south elevations of the proposed house to be constructed was marked as A-6.

7. An enlargement of the Mantoloking Tax Map showing the location of the lot in question and surrounding lots was marked as A-7.

8. A Plot Plan for Variance for Block 21, Lots 35 and 35.01 dated March 28, 2014and revised on May 15, 2014 and prepared by Lindstrom, Diessner & Carr, P.C., 136 Drum Point Road, Suite 6, Brick New Jersey 08723, was marked as A-8.

9. A pre-Sandy aerial map showing what existed previously on the site (now vacant) is marked as A-9.

The Applicant was permitted to retain the Exhibits; and

WHEREAS, the following Board Members were present at the August 6, 2014 hearing 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. Messers. McIntyre and Bixby and Ms. Boughton, although in attendance at this meeting where

excused to attend to a previous commitment and did not take part in the hearing of this matter.

WHEREAS, the Applicant was represented at the hearing by Daniel M. Hurley, Esq., Starkey, Kelly, Kenneally, Cunningham & Turnbach, 1593 Route 88 West, Brick, New Jersey 08724, who, after brief introductory remarks, called Lincoln Heffner as his first witness; and

WHEREAS, Lincoln Heffner, testified as follows:

1. The house that previously existed on Block 21, Lots 35 and 35.01 was totally destroyed by Sandy on October 29, 2012 and the property is presently vacant.

2. The previous house that existed on the property was built in 1927.

3. The property and previously existing house has been owned by his family since 1964.

4. The house that was destroyed was of modest size in the approximate square footage amount of 2,500 square feet.

5. The garage that was on the existing property was totally destroyed and lost in the Sandy storm. They are not looking to replace said garage.

6. The house that has presently been designed as part of this Application is essentially in the same design as what previously existed. It was designed to further fit into, and be consistent with, the architecture of the Borough.

7. The house as designed does not expand beyond the ground foot print of what previously existed.

8. Because of certain CAFRA restrictions, the design of the new house could not exceed a thirty percent (30%) coverage of the lot, and the house designed is slightly under that percentage restriction; and

WHEREAS, Mr. Hurley called John R. Burgdorfer, RA, as his second witness, who testified as follows:

- He is the principal owner of Studio Two Hundred, LLC, Architecture Design, 200 Union Avenue, Brielle, New Jersey 08730, that he obtained a Bachelor of Architecture Degree from the New Jersey Institute of Technology and is licensed in New Jersey (# AI12599), in Florida (# AR92380), in Pennsylvania (# RA403689) and in New York (# 032560-1); and

- That he has practiced architecture in New Jersey for the past 21 years and that he has testified before numerous other Boards.

His credentials being accepted he continued as follows:

1. He met with his clients to discuss their intentions of going forward with the construction of a new dwelling for Block 21, Lots 35 and 35.01.

2. He reviewed the previous architecture of the house that was destroyed by Sandy and understands that his client would like to replicate the look of that house as much as possible and also understands that they wish to make certain interior changes to render the house more efficient and modern.

3. The house could not be expanded in size due to a CAFRA restriction which limited the square footage coverage on the lot to 30 percent.

4. That the client's lot is 50 feet along the rear yard on Barnegat Bay running 155.2 feet from Barnegat Lane to Barnegat Bay.

5. That the lot in question is the only lot in the immediate area that has a square footage of less than 10,000 square feet which is the required square footage in the R-4A Zone and all other surrounding lots have over 10,000 square feet and a rear yard minimum of 100 feet.

6. That the on-ground foot print of the house meets both the north and south yard setback and the variances being requested are as a result of improvements which are not on the ground and are as follows:

   - The bow-window on the south side of the property would require a variance of one foot (1') from that south side boundary line;

   - The north side setback from the chimney is required to be nine feet (9') and is proposed to be eight feet (8');

   - The roof overhang on the north and south side where nine feet (9') is required from the north and south side yards and 8.33 feet is proposed. None of these improvements actually touch the ground.

7. The applicants kept the variances they felt were necessary to an absolute minimum so as not to interfere or project closer to the north and south properties.

8. The stairs have been tucked into the house so as not to create an architectural design without the footprint.

9. A breakaway door has been designed on the Barnegat Lane side (rear yard) of the property so as to permit some storage in that area; and

WHEREAS, Mr. Hurley then called Charles Lindstrom of Lindstrom, Diessner & Carr, P.C., 136 Drum Point Road, Suite 6, Brick New Jersey 08723, as his next witness.

Mr. Lindstrom having testified numerous times before this Board, his credentials were accepted and he testified as follows:

1. His firm was engaged to prepare the Plot Plan for Variances for Lots 35 and 35.01, Block 21, which plan was marked into evidence as A-8.

2. He confirmed that the only three (3) variances now being requested by the Applicant are those indicated by Mr. Burgdorfer in his testimony.

3. He emphases that this lot is the smallest lot in both area and frontages in the R-4A Zone in the immediate area.

4. He indicated that the actual on-ground footprint met both the north and south side yard required setback of 10' and indicated that the three (3) variances being requested where measurements taken from off the ground.

5. He indicated although not directly involved with the CAFRA application and condition of the approval that he believed that the maximum amount of lot coverage that can be utilized for the construction of a new house would be thirty percent coverage and the proposed house as designed nearly occupies thirty percent coverage of the existing lot.

6. That the house facing Barnegat Lane is nearly 62.8 feet from its rear to the Barnegat Lane property line.

7. That the variances requested, if granted, would not substantially impair the intent and purpose of the Borough of Mantoloking Zoning ordinance and could be granted without substantial detriment to the public good.

8. That in considering the c-1 test this lot being the smallest and most narrow lot in the R-4A Zone in this area creates a hardship in that it reduces the size available for the development of a dwelling and that the proposed dwelling represents nothing more in terms of size then previously existed prior to Sandy.

9. That the variance requested would meet the test for a c-2 variance and that the proposed house will meet the new FEMA flood standards, provide the same amount of adequate light, air and open space as previously existed and would promote a desirable visual environment.

WHEREAS, Mr. McIntyre opened the August 6, 2014 meeting to interested parties and to the public for any questions or statements.

1. Ms. Dorthea K. Kraft, 1010 Barnegat Lane, the owner of the house directly north of the subject property appeared and emphasized to the Board that Ordinances of the Borough should be upheld and that to

consistently grant deviations from the ordinances creates a precedential affect. It was explained that each case is heard on a fact basis relative to each application and that although many applicants argue the precedential theory, that this Board determines each application on the specific facts presented.

WHEREAS, the Members of the Board expressed the following comments at the August 6, 2014 meeting:

1. Ms. White expressed that the replacement of the house and the variances requested were not significant and did not represent an expansion of what previously existed.

2. Ms. Laymon believes that the variances requested are no more than what previously existed and that the size of the lot greatly limits the ability to rebuild without the necessity of the minimum variance requested.

3. Steve Gillingham believes that in this instance the request for the variances are based upon the unique circumstances of the lot being undersized in the R-4A Zone and the only lot in the immediate R-4A Zone area that does not meet the area and footage requirements. He further believes that in this instance and because the variances requested are not on the ground footprint that this presents a better zoning alternative.

4. Mr. Witkowski agrees with the comments of Mr. Gillingham.

5. Ms. Nelson believes that the architect did a great job in designing the new house to minimize variances to be requested.

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

1. That the testimony of the Applicant's professional were comprehensive and persuasive.

2. That the Applicant reduced the number of variances originally applied for and that the variances requested were both minimal in nature and not on the ground variances which would affect the actual footprint.

3. That the size of the lot being the smallest of the lots in the immediate R-4A Zone and the restrictions of the CAFRA permit greatly reduce and limit the building area provided to Applicant.

4. That the proposed house is of nice design and is quite similar to the house which was previously on said lot and destroyed by Sandy, and that to rebuild a house on the property would not affect what existed as it related to light, air and open space and would promote a desirable visual environment.

5. That the new house will meet all current laws and ordinances to comply with the new FEMA and flood control standards.

6. That the variances requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Land Use Ordinance of the Borough of Mantoloking.

NOW THEREFORE BE IT RESOLVED, that for the above findings the Planning Board grants approval to the Applicant(s), Barnegat Lane, LLC, Lincoln Heffner and Patricia Heffner, its members, as follows:

1. A south side yard setback from the south side bow-window where ten feet (10') is required and nine feet (9') feet is proposed and approved.

2. A north side yard setback of the north side chimney where nine feet (9') is required and eight feet (8') is proposed and approved.

3. A roof overhang on the north and south side of the house where nine feet (9') is required and 8.33 feet is proposed and approved.

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 August 6, 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 11th day of September, 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 August 6, 2014.

ELIZABETH NELSON, Secretary

MEETING OF AUGUST 6, 2014
TO PREPARE A RESOLUTION TO APPROVE

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

Absent: Mr. Hawkings
Not Voting or Rescued: Mr. Robert S. McIntyre, Ms. Denise Boughton and Mr. Courtney Bixby. (All were originally present at the meeting, but subsequently excused.)

MEETING OF SEPTEMBER 11, 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, Mr. Robert S. McIntyre, Ms. Denise Boughton and Mr. Courtney Bixby. (All were originally present at the meeting, but subsequently excused.)