

Variance  
file

**RESOLUTION**  
**2014 – 008**  
**RITCHIE**

**WHEREAS**, SARA B. RITCHIE, 6 Fitzcharles Drive, Pennington, New Jersey 08534 and 990 East Avenue, Mantoloking, New Jersey 08738 (herein referred to as Applicant or Ritchie) has made an Application (14-008) to the Mantoloking Planning Board for a Subdivision together with Variances; and

**WHEREAS**, the Applicant is the owner of property known as 990 East Avenue Mantoloking, New Jersey 08738 and also known as Block 7 Lots 13 and 15 on the Tax Map of the Borough of Mantoloking (Property); and

**WHEREAS**, the Property is in the R-6A Zoning District of the Borough of Mantoloking; and

**WHEREAS**, on November 18, 2014, Larry Plevier, PE, CME, Borough Engineer at Hatch, Mott, McDonald, issued a Letter of Completeness (marked as Exhibit B-1) to Daniel M. Hurley, Esq., the Attorney for Applicant in which he indicated the following relief was needed:

- The minimum lot area is 5,000 square feet (sf), and whereas the Applicant has requested a variance for the lot size for proposed developable Lot 13 of 4,983 sf and for proposed developable Lot 15 of 4,935 sf; and

**WHEREAS**, Mr. Plevier, issued a letter dated November 26, 2014 to Thomas McIntyre, then Chairman of the Board, which constituted his technical review of the Plans which letter was copied to the Applicant, the Applicant's Attorney and Engineer and is marked as B-2; and

**WHEREAS**, the Municipal Land Use Law of New Jersey (MLUL) (N.J.S. 40:55D-1 et seq) and specifically at N.J.S. 40:55D-40(a) gives a municipality the discretion to include in its Land Use Ordinance a class of subdivision known as a "Minor Subdivision" in addition to the required "Major Subdivision". The Borough of Mantoloking has not included a "Minor Subdivision" classification in its Land Use Regulations and therefore, in Mantoloking, all subdivisions are treated as one class and are controlled in the Borough Land Use Ordinance, Chapter XXX, Section 30-5.1 et seq.; 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 of the existing structure thereon; and

In addition to the above proof, the Applicant must demonstrate that such variances 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 variances would promote the purposes of zoning as stated in 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 Application applies to a specific piece of property; 2. that the purposes 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 Board Attorney, gave a brief overview as to the weighing process that the Board should conduct taking into consideration and including the purposes of zoning, neighborhood characteristics and the impact, positive or negative, that the variance would have or not have if approved or denied; and

*WHEREAS*, the Board Attorney further requested that the Members of the Board, after hearing the matter, put their reasons to either approve or deny the Application although it was not necessary to do so since the final Resolution as memorialized will speak for the Board; 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 following Board Members were present at the January 8, 2015 hearing on the matter: Chairman Witkowski, Ms. Jane White, Ms. Susan Laymon, Messrs. Steve Gillingham, Robert McIntyre, Mark Hawkings, Courtney Bixby and Michael Duggan. Mr. Daly, residing at 985 Barnegat Lane (Blk 13, Lot 15), within 200 feet was recused, left the dais and remained. Ms. Denise Boughton was absent. All Members present responded that they made a site visit and inspection; and

*WHEREAS*, the Applicant was represented by Scott E. Kenneally, Esq., (Starkey, Kelly, Kenneally, Cunningham & Turnbach), 1593 Route 88 West, Brick, New Jersey 08724, who called as his first witness, Charles Lindstrom, PE, PP, Lindstrom, Diessner & Carr, P.C., 136 Drum Point Road, Suite 6, Brick, New Jersey 08724, who being sworn testified as follows:

1. He is a New Jersey licensed Professional Engineer and Professional Planner, he graduated with a Bachelor of Science Degree from Lafayette College and a Master of Science Degree from NJIT and has practiced in this area for thirty-five (35) years (Mr. Lindstrom has testified before this Board on numerous occasions and his credentials were accepted).

2. Prior to continuing to testify Mr. Lindstrom offered the following Exhibits:

a. Copy of Filed Map C-161 (1924) of the Bay Head-Mantoloking Land Company marked as A-1.

b. Current Tax Map of Borough of Mantoloking showing Block 7, Lots 13 & 15 marked as A-2.

3. Mr. Lindstrom worked together with William H. Doolittle, PLS of his firm on the Minor Subdivision Plan dated September 25, 2014. (The Plan being part of the Application is not separately marked as an Exhibit).

4. The Property is located in the R-6A Zone and contains 9,918 feet and is known as Block 7, Lots 13 & 15. The Property is on the southeast corner of Stephens Place and East Avenue (front). Lots 13 & 15 are separate lots as shown on the Borough Tax Map.

5. A house, once located straddling Lots 13 & 15, was substantially damaged by Superstorm Sandy and demolished.

6. The Applicant desires to subdivide the Property into two (2) building lots, Lot 15 (the corner lot) containing 4,935 square feet and Lot 13 (interior lot) containing 4,983 square feet. Both Lots would front of East Avenue.

7. That the minimum requirement for a building lot in the R-6A Zone is 5,000 square feet and, therefore, a lot area variance of 65 square feet would be required for Lot 15 and a lot area variance of 17 square feet would be required for Lot 13.

8. The Filed Map C-161 (A-1) created the subdivision of Block 7 in which Lots 13 and 15 were initially located. There are 16 lots in Block 7 all of which are improved with single family residences with the exception of Lots 13 and 15.

9. The deficiency in the proposed area of Lots 13 and 15 is created by the fact that East Avenue and Ocean Avenue are not parallel and cause a narrowing of the Lots in Block 7 going south from Newman Place to Stephens Place. The narrowing causes Lots 13 & 15 to not meet the area requirements.

10. That the intent of the Applicant is to subdivide into two (2) lots to remain vacant at this time until Ms. Ritchie evaluates her options.

11. He believes only the Property and Lots 14 and 16 in Block 7 do not meet the R-6A minimum lot area requirement (4 lots out of 16 lots in Block 7) together with one lot in Block 8, the only other Block in the R-6A Zone on Tax Map Sheet 3 and directly north of Block 7.

12. He believes the variances requested are de minimus in that Lot 13 only requires a 65 square foot deviation and Lot 15 only a 17 square foot deviation. He testified that Lot 13 would need an additional 3" in depth to meet



the area requirement and Lot 15 would require an additional 9" of depth to meet the area. This very small deficiency does not harm the zone plan.

13. He testified that if the lot remains as a single developable lot the trend in Mantoloking is to "max out" available building area and could result in a house out of character with the neighborhood. Therefore, the proposed subdivision presents a better zoning alternative in addition to the fact that two (2) smaller single family dwellings would be more consistent with the neighborhood characteristics.

14. He finds that the proposed subdivision will provide adequate light and air in that two (2) single family houses will provide an "alley" for the flow of light and air whereas a large single family structure will block out the free flow of air. He testified that two (2) single family houses of 2,975 square feet (as would be permitted) would be more appropriate than one (1) 6,000 square foot single family dwelling on Property.

15. The hardship on Property is created by the narrowing as testified to in 9 above and meets the test of N.J.S. 40:55D-70c(1).

16. He testified for the reasons above the Variances requested could be granted without substantial detriment to the zone plan and ordinances of the Borough and without substantial detriment to the public good.

**WHEREAS**, Barbara Allen Woolley-Dillon, P.P., the Land Use Administrator of the Borough, asked Mr. Lindstrom if he would relate the request for the area variances requested with the history of Lots 12 & 14 and considering the rezoning of the R-6A Zone in the 2003 Land Use Ordinance where the area requirement for a single developable lot was increased from 4,900 square feet to 5,000 square feet. Mr. Lindstrom responded that, of course, each of Lots 13 & 15 would have fully complied with the pre-2003 Ordinance. Ms. Dillon observed that Lots 12 and 14 were officially separated in 2002 before the Ordinance changed and fully met the 4,900 square feet area requirement and were not considered non-conforming; and

**WHEREAS**, Mr. Kenneally called no other witness; and

**WHEREAS**, Peter Kearns, Esq., 1100 Arnold Avenue, Point Pleasant, New Jersey 08742, representing William M. Oeste, Jr., 1000 East Avenue (Block 6, Lots 1) and Mr. Steven Paganessi, 985 Ocean Avenue (Block 7, Lot 12) both of whom are opposing the Application and called as his first witness, Timothy Michel, PP, of Timothy B. Michel, Inc., 2168 River Road, Little Egg Harbor Twp., New Jersey who testified that he was a 1974 graduate of Stockton College and received his Professional Planners license from the State of New Jersey in 1981 and has represented both public and private clients and testified before numerous Boards in his professional capacity. His credentials as a Professional Planner were accepted by the Board.

1. Prior to continuing his testimony the Board received the following Exhibits into the record:

- a. The three (3) Zoning Map Sheets of the Borough marked at O-1, O-3 and O-5; and
- b. The three (3) Tax Map Sheets of the Borough marked as O-2, O-4 and O-6; and
- c. Photographs of the site and surrounding properties marked as O-7; and
- d. Photograph of two (2) new homes built on Barnegat Lane fully compliant with the R-6A requirements and referred to as the "twin towers" and marked as O-8; and

*WHEREAS*, Mr. Michel continued his testimony; and

1. He contested the testimony of Mr. Lindstrom that Lots 13 & 15 were separate lots and pointed to O-6 and the notation thereon that Lots 13 & 15, although separate on the filed May C-161 (Exhibit A-1), were merged and no longer could be considered as separate lots but were one (1) Lot. He contended that the Lots also became one (1) by the Merger Doctrine of *Loechner v. Campoli*.

2. He represented he did a tax search and found that only a single tax bill for Lots 13 & 15 was issued by the Borough Tax Office.

3. That the Master Plan Use Element adopted November 4, 2002 identified 57 properties in the Borough within the R-6A Zones of which 52 comply as it relates to the 5,000 square foot area requirement and 100% comply with the lot frontage requirement.

4. He then read Chapter XXX (Land Use Regulations of the Borough of Mantoloking, Adopted October 6, 2006), Section 30-6.6 (Merger of Contiguous Lots) which states:

Where two (2) or more nonconforming lots (as defined herein) which front on the same street, or portions of nonconforming lots with contiguous frontage which front on the same street are owned by the same property owner at the time of the passage or amendment of this chapter, (Ordinance), and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, (Ordinance), the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of the undivided parcel shall be used unless it meets lot width and area requirements established by this chapter, nor shall any division of the parcel be made which leaves remaining any part, width or area below the requirements set forth in this chapter.

He testified that the inclusion of this, in his experience in a Municipality's land use regulations was unusual.

5. That no hardship under N.J.S. 40:55D-70c(1) existed since Lots 13 & 15 constituted a single lot which met the area requirement of the R-6A Zone and on which a single dwelling previously existed.

6. That the Applicant fails to meet the proofs necessary under N.J.S. 40:55D-70c(2) since the better zoning alternative is the criteria that is in place for the R-6A Zoning District and that a single family dwelling can be constructed with no variance relief necessary; that a dwelling on each of Lots 13 and Lot 15 would not create adequate light, air and open space and would not present a situation where the benefits of the grant of the deviation would outweigh the detriment.

7. That O-8 shows what the outcome of the grant of the variances could be if the variances were granted. (O-8 shows two (2) single family dwellings built on Barnegat Lane, (1073 & 1075), post Sandy, in a R-6A Zoning District and on Lots which were fully compliant); and

*WHEREAS*, Mr. Kenneally questioned Mr. Michel as to whether there were any other lots in any R-6A Zone in the Borough which were capable of being subdivided into two (2) and Mr. Michel responded he was not aware of any, but could not be sure; and

*WHEREAS*, Mr. Kearns called no other witness; and

*WHEREAS*, Mr. Witkowski opened the public portion of the meeting and invited any person who was within 200' or who was an interested party to come forward and the following appeared:

A. Mr. Joseph Daly, who resides at 985 Barnegat Lane, Mantoloking, New Jersey (Block 13, Lot 15) felt that the Property should be developed with one (1) single family dwelling which could be done without the need of a variance.

B. Dr. Constantine Rossakis, 969 East Avenue, Mantoloking, New Jersey (Block 4, Lots 7 & 7.0) testified that the Applicant's request takes the neighborhood to another level, that the development of two (2) houses on the Property would have a negative impact on the Borough, that there was no aesthetic benefit to the proposal and the development of two (2) houses would block light and air.

C. William Richardson, 979 East Avenue, Mantoloking (Block 3, Lots 3 & 3.01) indicated he was opposed to the Application in that the house on a conforming lot was the appropriate use of the Property; and

*WHEREAS*, Mr. Witkowski closed the public portion of the meeting and invited the comments of the Board members which follow:

A. Ms. Laymon, is in favor of varying development of houses on different lot sizes which may occur in neighborhoods and believes the development of one (1) single family dwelling on Property was the best use of the Property for the Borough.

B. Ms. White felt it was difficult to visualize the development of one (1) house on Block 13 and one (1) house on Block 15 and did not want a pattern of development as occurred and as shown on O-8.



C. Mr. Gillingham cannot accept development on lots less than 5,000 square feet in that the R-6A Zoning District since that zone already contains the smallest developable lots in all the Zoning Districts of the Borough. He did not want to see a continued development on this Property as is occurring in the Borough "post Sandy" causing Mantoloking to change.

D. Mr. Witkowski was concerned that the reason for the relief stated on the Application changed from the Applicant wanting "to rebuild on one (1) lot and subdivide the other lot to pay for the rebuild" to the testimony that the Applicant was weighing her options. He disagreed that the proposal would not be a substantial detriment to the zone plan and the Master Plan in that the lot can be improved without the relief requested and be fully compliant with the R-6A Zone.

E. Mr. Duggan essentially echoed the comments of Mr. Witkowski as did Mr. Hawkings.

F. Mr. McIntyre indicated that the Board worked extremely hard and long (over three (3) years) in developing the Master Plan and the Land Use Regulations and paid particular attention to the R-6A Zone so as to fairly treat those smaller Lots with a generous percentage of lot coverage.

G. Mr. Bixby was concerned with the possible "max out" building that could occur as shown on O-8.

***NOW THEREFORE BE IT RESOLVED*** that the Mantoloking Planning Board, at its meeting of February 19, 2015, votes to memorialize the denial of the Application of Ms. Sara Ritchie to create two (2) non-conforming lots from a single conforming lot for the following reasons:

1. Lots 13 & 15 are shown in the Mantoloking Tax Map as a single lot and also shown as to have merged. Lots 13 & 15 as a single lot meets all the area, bulk and dimensional requirements of the R-6A Zoning District.

2. Prior to Superstorm Sandy the Applicant used Lots 13 & 15 for one (1) single family dwelling. Lots 13 & 15 can again be used for one (1) single family dwelling without need of any variance relief.

3. Lots 13 & 15 merged into a single lot since each lot is non-conforming and in the same ownership which is the underlying reasoning of the Doctrine of Merger.

4. That the creation of two (2) lots would create the possibility of a "max out" of two (2) dwellings as shown on O-8 which were constructed in the R-6A Zoning District on Barnegat Lane. This would not meet the character of the existing neighborhood.

5. The Application does not present a better zoning alternative in that the better alternative is to use the Property as it is presently constituted as a fully conforming single developable lot and as previously used as such.

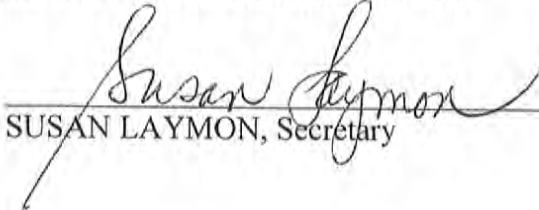
6. To grant the variances requested would create a substantial detriment to the public good since the creation of two (2) lots would create a development pattern not consistent with the existing neighborhood and contrary to the previous fully conforming use of the Property.

7. While the variances are not great, the actual resulting impact of their grant would have a substantial impact and therefore, are not considered de minimus.

***NOW THEREFORE BE IT FURTHER RESOLVED*** that the Applicant publish a Notice of Decision indicating this denial within fifteen (15) days from the date of this Resolution and to provide an Affidavit of Publication to the Secretary of the Planning Board. If the Applicant fails to do so the Secretary of the Board shall publish said Notice of Decision and charge the cost of same against the escrow posted by the Applicant.

### **CERTIFICATION**

I, Susan Laymon, 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 March 19, 2015, and memorializes and confirms the actions taken by the Planning Board in now denying the request by Applicant for relief at its regular meeting held on January 8, 2015.

  
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SUSAN LAYMON, Secretary



**MEETING OF JANUARY 8, 2015  
TO PREPARE A RESOLUTION TO DENY**

	Moved	Seconded	Yes	No
Stanley Witkowski			X	
Evan S. Gillingham	X		X	
Robert McIntyre			X	
Jane G. White			X	
D. Mark Hawkings		X	X	
Denise Boughton				
Courtney Bixby			X	
Joseph Daly				
Susan Laymon (Alt. 1)			X	
Michael Duggan (Alt. 2)			X	

Absent: Ms. Denise Boughton

Not Voting or Rescued: Mr. Joseph Daly

**MEETING OF MARCH 19, 2015  
VOTE TO ADOPT RESOLUTION  
TO DENY APPROVAL**

	Moved	Seconded	Yes	No
Stanley Witkowski			X	
Evan S. Gillingham	X		X	
Robert McIntyre				
Jane G. White			X	
D. Mark Hawkings		X	X	
Denise Boughton				
Courtney Bixby			X	
Joseph Daly			X	
Susan Layton (Alt. 1)			X	
Michael Duggan (Alt. 2)			X	

Absent : Mr. McIntyre

Not Voting or Rescued: Ms. Denise Boughton, Mr. Joseph Daly