

RESOLUTION 2014 – 005

WHEREAS, WALTER BRAY (referred to as BRAY or Applicant), 1216 Ocean Avenue, Mantoloking, New Jersey 08738 has made Application to the Borough of Mantoloking Planning Board (2014-005); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1216 Ocean Avenue, Mantoloking, New Jersey 08738 which is also known as Block 27, Lot 5 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R-2A Zone of the Borough of Mantoloking; and

WHEREAS, on August 18, 2014, Jeremy Edinger, the Deputy Land Use Officer of the Borough of Mantoloking issued a letter to Philip G. Mylod, 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 southerly side yard – ten feet (10') is required where three feet (3') is proposed.
- Minimum required front yard setback for an accessory structure – thirty-five feet (35') is required where thirty three feet two inches (33'2") 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 without substantial detriment to the public good; 4. that the benefits of the deviation would

substantially outweigh any detriment; 5. that the variance would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the free standing garage was destroyed as a result of Superstorm Sandy which damage is more than partial and the Applicant desires to replace it in essentially the same area.

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:

A1 – Map showing proposed locations

A2 – Pre-Sandy Aerial

A3 – Survey of Property done by Ronald W. Post Surveying dated March 7, 1996 (Job No. 96-14793) showing pre-Sandy location of structures.

A4 – Google Map Photo showing the southerly property side of Property and adjacent Block 27, Lot 24.

A5 – Google Map Photo showing northerly side of Property.

A6 – Aerial View showing entire Property with existing improvements.

WHEREAS, the following Board Members were present at the September 4, 2014 hearing on the matter: Chairman Thomas McIntyre, Ms. Jane White, Ms. Susan Laymon, Ms. Elizabeth Nelson, Ms. Diane Boughton, Messrs. Robert McIntyre, Gillingham, Witkowski, Bixby and Daly; and

WHEREAS, the Applicant was represented at the hearing by Philip G. Mylod, Esq., 1953 Route 35 North, Ortley Beach, NJ 08751, who, after introductory remarks called Mr. Bray as his first witness who testified as follows:

1. The garage to be constructed is located on the southside of the Property three feet (3') from the southerly Property line.

2. Mr. Bray's desire is to replace the destroyed garage in essentially the same location and with the same dimensions as previously existed.

3. The garage would be a one and a half car (1.5) structure, or a 1 car and boat structure,

4. He believes the location in the pre-existing location presents a proper replacement area and will accommodate easy access to the existing house.

5. That he or his family have owned the Property since 1932,

WHEREAS, Mr. McIntyre opened the meeting to interested parties and to the public for any questions or statements and Ms. Mary F. Trachtenberg, 1212 Ocean Avenue, Mantoloking, NJ, Block 27, Lot 24 came forward and being duly sworn stated:

1. She is the owner of Block 27, Lot 24 the lot directly south and adjacent to Mr. Bray's Property.

2. She has owned her Property for fourteen (14) years.

3. That Mr. Bray has been her neighbor during that period and they have had a good relationship and she hopes that does not change.

4. When she bought the house the garage that was destroyed by Sandy was where the proposed new structure is proposed. She knew it hurt the value of her Property but she had no objection.

5. However, now that it no longer exists it would be appropriate that it be moved to an area of Mr. Bray's Property where it would be less obtrusive and possibly not needing any variances; and

WHEREAS, the Planning Board of the Board of Mantoloking then discussed the Application and entered into a discussion with the representatives of the Applicant as follows:

1. Ms. White indicated that while she would like to see Mr. Bray rebuild his garage where it previously existed she believed that to do so would be a continuance of the obstructive affect it would have on Ms. Trachtenberg's Property.

2. Mr. Gillingham, although he does not like to see someone lose what they already had, believes there is no hardship except for Mr. Bray's personal preference to relocate the structure in the old location. He believes Mr. Bray's lot, being one of the largest in the Borough, could support a location to the north of the house without the need of a variance and remove the negative affect on the adjoining Property to the south.

3. Mr. Robert McIntyre, Mr. Witkowski and Mr. Daly generally subscribed to the comments of Mr. Gillingham.

4. Ms. Nelson, having heard the explanation of access to the easement to the rear, agreed the garage could be relocated to the northerly side of the Property where no variances would be required which would have no negative effect on maintenance of the easement; and

WHEREAS, Mr. Thomas McIntyre wanted to correct the record to indicate that Mr. Bray did comply with the front yard setback requirement in that in the R-2A Zone the front yard setback is 15' for accessory structures; and


NOW THEREFORE BE IT FURTHER RESOLVED that the Mantoloking Planning Board, at its meeting of November 6, 2014, denies the Application of Walter Bray for the relief requested in his Application for the following reasons:

1. The Applicant has the ability and the lot could support the relocation of the garage to make it fully conforming with the Ordinances; and
2. That there was no proof to support the variance relief pursuant to N.J.S. 40:55D-70c1 or 70c2 and that the grant of the variance would create a substantial detriment to the public good and would impact the intent and purpose of the Zone plan.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Applicant publish a Notice of Decision indicating this denial within 15 days from the date of this Resolution

CERTIFICATION

I, Elizabeth Nelson, Secretary of the Planning Board of the Borough of Mantoloking, does hereby certify that the foregoing is a true copy of the Resolution duly adopted by the Planning Board on the 6th day of November, 2014, and memorializes and confirms the actions taken by the Planning Board in ~~now~~ approving the request by Applicant for relief at the regular meeting held on September 4, 2014.


ELIZABETH NELSON, Secretary

**MEETING OF SEPTEMBER 4, 2014
TO PREPARE A RESOLUTION TO DENY**

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

Absent : None

Not Voting or Rescued:

**MEETING OF NOVEMBER 6, 2014
VOTE TO DENY**

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

Absent :

Not Voting or Rescued: