

RESOLUTION
2015 – 001
MURRAY

WHEREAS, WILLIAM J. AND JOAN M. MURRAY (referred to as Applicant), 920 Cherokee Lane, Franklin Lakes, New Jersey 07417 and 1235 Ocean Avenue, Mantoloking, New Jersey 08723 have made Application to the Borough of Mantoloking Planning Board (2015-001); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1235 Ocean Avenue, Mantoloking, New Jersey 08738 which is also known as Block 26, Lots 9 and 9.01 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R-1 Zone of the Borough of Mantoloking; and

WHEREAS, on February 3, 2015, Barbara Allen Woolley Dillon, Zoning Official/Land Use Administrator of the Borough sent a Certificate of Completeness to Daniel M. Hurley, Esq., Starkey, Kelley, Kenneally, Cunningham & Turnbach, 1593 Route 88 West, Brick, New Jersey 08724. The Letter is marked into the record as B-1 indicated the following reasons for the Denial and the variance relief that would be required as follows:

- Minimum required front yard setback – either a minimum of sixty feet (60’) or the average setback of structures located on lots of similar size within 200 feet of the property (78.68 feet), whichever of the two (2) measurements is stricter is required. A minimum front yard setback (from the Ocean) of 78.68 feet is required where forty-two (42’) is existing/proposed. *There is an existing non-conforming condition relating to this item.*
- Minimum Required Side Yard Setback – a minimum required side yard setback of fifteen feet (15’) is required where just over thirteen feet (13.3’) exists/is proposed. *There is an existing non-conforming condition relating to this item.*
- Maximum Permitted Lot Coverage – a maximum of thirty percent (30%) of the buildable lot area is permitted to be covered with Lot Coverage on a typical 12,000 square foot lot. The amount of Lot Coverage is decreased with larger lot sizes. Based on the lot size of 25,000 square feet, a maximum Lot Coverage of 5,260 square feet is permitted, where 8,123.7 square feet exists and 7,609.2 square feet is proposed. *This is a result of an existing non-conforming condition that will be slightly reduced as a result of the proposed improvements;* and

WHEREAS, In this case, the existing structure is non-conforming in that it violates the side yard, front yard and lot coverage requirements of the R-1 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 to the front of the house is non-conforming by virtue of the fact that it is within the non-conforming front yard setback and is an enlargement of the non-conforming structure thus requiring a variance; and

WHEREAS, prior to the Applicant presenting its case, John J. DeVincens, Esq., the Attorney for the Board advised that a review of the Lindstrom, Diessner & Carr, P.C. Plot Plan & Surface Management Plan & Coastal General Permit Plan for the Property dated September 12, 2014 with revisions to January 6, 2015, provided a comparison of the Existing Conditions Plan and the Proposed Development Plan which does not show an exacerbation of the pre-existing non-conforming side yard setback and side yard setback and that the existing non-conforming maximum lot coverage is actually being reduced and in that situation where there is or are pre-existing non-conforming conditions that are not affected by the Application and where it does not appear that a previous variance for the pre-existing non-conformities was granted, the consensus among Board Attorneys is to advise the Board “that the request for variance relief from the pre-existing non-conformities not affected by this Application is recognized as a pre-existing non-conformity and thus, a variance is not required or granted.” The basis for this is *Cortesini v. Hamilton Township Planning Board*, 417 N.J. Super, 210 (App. Div. 2010) and in this case, it was his opinion that no variance is required for any of the three (3) pre-existing conditions and that the Board simply recognize them as such and that language in the Resolution should so indicate; and

WHEREAS, therefore, the Applicant need only be concerned with proving the need for variance relief based on the expansion of the non-conforming structure; 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) 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, 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; and

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

1. B.L.D.G. Architecture, LLC, Plans prepared by Daniel Lynch, R.A., N.J. Architect No. A1 17862 as Sheet A1.01, A1.1, A1.2, A2.1, and A2.0 (Project 13-055) signed and dated 12/29/14 were all marked as A-1.
2. Lindstrom, Diessner & Carr, P.C. "Plot Plan & Surface Management Plan & Coastal General Permit Plan" for Block 26, Lots 9 & 9.01, dated September 12, 2014 and revised January 6, 2015 (2 sheets) was marked as A-2; and

WHEREAS, the following Board Members were present at the February 26, 2015 hearing on the matter: Chairman Stanley Witkowski, Ms. Jane White, Ms. Susan Laymon, Ms. Elizabeth Nelson, Messrs. Robert McIntyre, Hawkings, Bixby and Daly. Mr. Gillingham and Ms. Boughton were not present and all Members present indicated they made a site visit.

WHEREAS, the Applicant was represented by Scott Kenneally, Esq., Starkey, Kelley, Kenneally, Cunningham & Turnbach, 1593 Route 88 West, Brick, New Jersey 08724, who after brief introductory remarks called Daniel Lynch as his first witness who after being duly sworn, testified and affirmed his testimony given prior to being sworn as follows:

1. He is a licensed Architect (A1 17862) of the State of New Jersey since 2004. He is the present owner of B.L.D.G. Architecture, LLC, 617 Union Avenue, Building 3, Suite 14, Brielle, New Jersey. He has testified before Boards on numerous occasions but that this is his first time before this Board. (His credentials were then accepted and he continued).

2. He was engaged by the Applicant to essentially remedy a condition created by the storm surge during Superstorm Sandy and the fact that the dwelling sustained additional damage from a house that was moved by Sandy and deflected into the Applications dwelling.

3. The lower or on grade level which contained two (2) bedrooms a kitchenette and mechanicals including HVAC compressor units was greatly compromised. In addition,

there was damage as a result of undermining of the pilings which provided support and elevation of the existing dwelling. The result of the damage is the loss of the two (2) bedrooms and kitchenette.

4. In order to remedy the damage to and undermining of the pilings the existing dwelling will be lifted off of the existing pilings, moved to a location on the lot, the pilings will then be removed and replaced after which the house will be moved back on top of the pilings in the exact location where it previously rested. The result of which is there will be no increase or exacerbation of the previous nonconforming front yard and side yard setbacks.

5. In the process of replacing the pilings the elevation of the house will be raised from the present elevation of 18.2' to 21.53' an increase of 3.33'. The new elevation of 21.53' exceeds the new FEMA maps.

6. The new proposed configuration and layout of the house will continue the existing wood deck, a bathroom, garage and storage area at grade level. The first floor which did not sustain and significant damage and was in "good shape" will have two (2) bedrooms, two (2) baths, kitchen and dining room all essentially the same as previously existed. The second floor plan will contain the previously existing Master bedroom and Master bath, existing bedroom with existing bath, an existing bath, three (3) new bedrooms and new a bathroom and sitting room.

7. The mechanicals will be suspended from the underside of the understory or grade level floor.

8. The Applicant proposes a two (2) story 336.2 square foot addition to the front (Ocean) side of the Property which is located in an inset area of the present existing house and does not extend beyond the existing front yard setback line. This addition will not be visible from either the northerly or southerly adjacent houses since the proposed area is within the existing inset area.

9. The house will be 26'2" from the first floor to the highest ridge line; and

WHEREAS, Mr. Kinneally called as his second witness Charles Lindstrom, P.E., Lindstrom, Diessner Carr, P.C., 138 Drum Point Road, Suite 6, Brick, New Jersey 08723, who was duly sworn and whose credentials were accepted based on his numerous appearances before this Board and proceeded to testify as follows:

1. He was involved with the development of the Plot Plan (Exhibit A-2) on behalf of the Applicant.

2. That the two (2) story addition in the inset of the existing dwelling does not increase the existing front yard setback of 42' where 78.68' is required based on the average front yard setback of houses within 200 feet. The front yard average setback of 78.68' is skewed by the two (2) houses to the immediate south of this Property where the setback is 102' and 108' respectively. The Proposed Development Plan shows 42' from the Dune Reference Line to the replacement partially covered wood deck, 51.3' to the replacement

wood deck and 55.7' to dwelling. These setbacks are not in any way changed from the Existing Conditions.

3. Because of the reconfiguration of the pool area and reduction in pavers in the proposed plan the lot coverage is being reduced from 8,123.7 square feet to 7,609.2 square feet (514.50) which reduces an existing lot coverage nonconformity.

4. Because the preexisting nonconforming side yard setback of 13.3 feet and the 42' front yard setbacks are not being changed and indeed, the nonconforming lot coverage is actually being reduced, that there is no substantial detriment to the Borough of Mantoloking Zone Plan or Land Use Ordinance.

5. That the 336.2 square foot two (2) story addition would be in an area which would not be visible to the southerly or northerly property owners, would be aesthetically pleasing would not hinder light, air and open space and would be brought into the FEMA Standards and therefore, would not be a substantial detriment to the public good but would actually constitute a benefit which would outweigh any detriment; and

WHEREAS, Mr. Witkowski opened the meeting for the purpose of entertaining questions or statements from interested parties and the following came forward:

1. Henry Rzemieniewski, 201 Downer Avenue, Block 34, Lot 10.01, who expressed that he was very much in favor of granting the relief requested, that he believes that it is an aesthetic improvement and was happy that at least on property owner was taking steps to renovate/rehabilitate their Sandy affected dwelling.

No party came forward to object to the Application;

WHEREAS, the Board makes the following findings:

1. That the two (2) southerly houses skew the front yard setback average but, nonetheless, the Applicant is not changing the setback that presently exists.

2. That the preexisting nonconforming lot coverage is being reduced by 514.5 square feet which constitutes an improvement.

3. That the dwelling is being raised to meet the new FEMA requirements and constitutes a substantial safety benefit to the dwelling and to surrounding properties.

4. The two (2) story 336.2 square foot proposed addition on the Ocean side front does not increase the preexisting nonconforming front yard setback, has been made to be nonvisible to the southerly and northerly neighbors and is essentially used to provide an area for two (2) bedrooms to replace those lost on the understory due to Sandy. The addition will not affect air, light and open space.

5. That the architectural redesign is aesthetically pleasing and presents a visual improvement to the area.

6. That the Applicant is taking extraordinary steps to reconstruct the dwelling by removing it from its pilings, replacing the pilings and then replacing the house on the new pilings all in the exact footprint that presently exists; and

WHEREAS, THEREFORE BE IT RESOLVED, that for the above findings, the Planning Board of the Borough of Mantoloking grants the following variance relief to the Applicants, William J. and Joan M. Murray as follows:

1. To expand the preexisting nonconforming structure with a 336.2 foot addition to the Ocean side or front of the existing dwelling which expansion would not be permitted pursuant to Chapter XXX, Section 30-6.5; and

THEREFORE, BE IT FURTHER RESOLVED, that the Board recognizes the preexisting nonconforming side yard setback of 13.3 feet, the preexisting 42' front yard setback and the preexisting nonconforming 8,123.7 square foot lot coverage now being reduced to 7,609.2 square feet all of which are not being increased by this Application. In this matter a variance for these conditions is not required and non is being granted; and

THEREFORE, BE IT FURTHER RESOLVED, that the above variance approved is granted on the following conditions:

1. That the Applicant relies on the testimony of Mr. Lindstrom, Mr. Lynch and the statements of its Attorney, Scott Kenneally, 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 February 26, 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.

2. 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.

3. The Applicant furnish a copy of the Ocean County Soil Conservation District Certification to the Land Use Officer, if applicable.

4. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking before a building permit is issued.

5. 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.

6. 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.

7. 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.

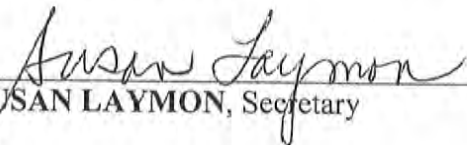
8. The Applicant shall pay any and all costs and fees incurred by the Borough and Board in reviewing and prosecuting this Application and as required by the Applicant to be made pursuant to N.J.S. 40:44D-35. The failure of the Applicant to deposit or provide such fees, after being requested or directed to do so, shall render any approval granted hereunder null and void and of no further force and effect.

9. 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.

10. 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 19th day of March, 2015, and memorializes and confirms the actions by the Planning Board in now approving the relief requested by the Applicant at its regular meeting held on February 26, 2015.



SUSAN LAYMON, Secretary

VOTE AT FEBRUARY 26, 2015
AUTHORIZING PREPARATION OF RESOLUTION OF APPROVAL

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

Absent : Mr. Gillingham, Ms. Boughton

Not Voting or Rescued:

**VOTE AT MARCH 19, 2015
TO APPROVE THE RESOLUTION OF APPROVAL**

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

Absent : Ms. Nelson, Mr. McIntyre

Not Voting or Rescued: Ms. Boughton, Mr. Gillingham