

RESOLUTION
2015-005
WOLF

WHEREAS, WILLIAM J. WOLF, ESQ., and MARY CATHERINE CUFF, (referred to as Applicant), owners of 1424 Ocean Avenue, Mantoloking, New Jersey 08738 have made Application to the Borough of Mantoloking Planning Board (2015-005); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 1424 Ocean Avenue, Mantoloking, New Jersey 08738 and which is also known as Block 37, Lot 7 on the Borough of Mantoloking Tax Map (Property); and

WHEREAS, the Property in the R-3A Zoning District of the Borough of Mantoloking; and

WHEREAS, on February 19, 2015, Barbara Allen Woolley-Dillon, PP, AICP, the Zoning Official/Land Use Administrator of the Borough sent a Letter of Completeness to William J. Wolf, Esq., Bathgate, Wegener & Wolf, One Airport Road, P.O. Box 2043, Lakewood, NJ 08701. The Letter is marked into the record as B-1; and

WHEREAS, the Applicant proposes to elevate an existing two and one-half story dwelling, adding a new front porch and additional stairs and reducing the area of an at grade patio at the rear of the dwelling. The proposed improvements will also include the removal of the existing basement of the dwelling; and

WHEREAS, the Applicant desires to elevate and relocate the existing dwelling to the west (rear) of the lot by approximately six feet (6') which would increase the existing front yard setback from 19.6' to a new front yard setback of 25.46'; and

WHEREAS, Ms. Woolley-Dillon's Letter (B-1) indicated the following variance relief required:

- Minimum required front yard setback – either a minimum of twenty-five feet (25') of the average setback of structures located on lots of similar size within 200 feet of the property (50.65 feet), whichever of the two (2) measurements is stricter is required. A minimum front yard setback of just under fifty-one feet (50.65') is required where nineteen and one-half feet (19.5') exists and nearly twenty-five and one-half feet (25.46') is proposed. *There is an existing non-conforming condition relating to this item*; and

WHEREAS, the Letter (B-1) also states that the existing lot coverage is being reduced from 4,558.85 square feet to 4,392.72 square feet (4,440 square feet is the permitted maximum in the R-3A Zone). This reduction results in the elimination of the existing non-conforming lot coverage; and

WHEREAS, at present, the existing house has a front yard setback from Ocean Avenue of 19.6' and as indicated above, 50.65' is required by the front yard averaging. A Minor Subdivision Map for Lots 7, 8, 9, 10 & 17 in Block 37 prepared by Donald W. Smith Associates dated November 11, 1993 (later marked ad A-2) shows in Note 7.c. a request for approval of a "(V)ariance for Lot 7, Block 37 (Wolf lot) for a pre-existing front yard setback of 19.6 feet when 25 feet (the then required front yard setback) is required."; and

WHEREAS, the Zoning archive file for the above Application which was badly water damaged by Superstorm Sandy does not contain any Resolution of Approval nor any approved subdivision map but simply indicates "Approved July 7, 1994" on the outside of the file; and

WHEREAS, in this case, the existing structure is non-conforming in that it violates the front yard and lot coverage requirements of the R-3A 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 of a front porch to the house would be non-conforming by virtue of the fact that it would be within the non-conforming front yard setback and is an enlargement or increase to the non-conforming structure thus requiring a variance; and

WHEREAS, in order to prove its case and be granted the variance relief being requested above the Applicant under N.J.S.A 40:55D-70c, must, if Applicant chooses to proceed under the c1 tests, 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.

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 of 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 purpose of zoning as stated in N.J.S. 40:55D-2 and the undue hardship (the "positive criteria").

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 purpose of the MLUL would be advanced by the deviation from the requirements of the zoning ordinance; 3) that the variance 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, 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. Gilligan Engineering Plans for the Wolf Residence, Lot 7, Block 37, 1424 Ocean Avenue, Mantoloking, New Jersey dated January 7, 2015 as Job No. 12-2146 (Sheet 2 of 5, Site Plan and Sheet 4 of 5 showing East, West, South and North Elevations) were marked as A-1.

2. A Minor Subdivision Map for Lots 7, 8, 9, 10 & 17 in Block 37 prepared by D.W. Smith Associates dated November 11, 1993 was marked A-2; and

WHEREAS, the following Board Members were present at the March 19, 2015, hearing on the matter: Chairman Stanley Witkowski, Ms. Jane White, Ms. Susan Laymon, Ms. Denise Boughton, Messrs. Gillingham, Hawkings, Bixby, Daly and Duggan. Mr. McIntyre and Ms. Nelson were not present and all Members present indicated they made a site visit; and

WHEREAS, the Applicant, William J. Wolf, Esq., represented himself and also testified on certain fact issues was duly sworn in his latter capacity and stated:

1. The house was built on the Property in 1905 and he and his wife purchased it in 1987.

2. During Superstorm Sandy the basement was badly flooded.

3. They are proposing to eliminate the basement, elevate and raise the house 4.67', move the house eleven feet (11') west from its existing location which is 19.5' from Ocean Avenue, add a front porch which will result in a new setback of approximately 25'6" which decreases the present non-conforming front setback.

4. By moving the house and reconfiguring certain site improvements Applicant was able to reduce the lot coverage to now make it fully conform to the lot coverage requirements of the Ordinances for the R-3A Zone thus completely eliminating a pre-existing non-conformity.

5. They cannot move the house any further west because of the location of the pool in the rear yard. They decided to move the house despite the fact it was more expensive to do so than to elevate in its existing location; and

WHEREAS, Mr. Wolf then called Charles W. Gilligan, P.E., a principal of Gilligan Engineering, Civil/Structural Engineers, 549 Woodland Avenue, Brielle, New Jersey 08730 who upon being duly sworn indicated that he is a N.J. Licensed Professional Engineer (License No. 27050), he is a graduate of the University of Notre Dame with a Bachelor of Science in Civil Engineering, he received a Masters from Rutgers University and has testified before numerous boards, especially in Monmouth County. His credentials being accepted, he testified as follows:

1. He worked with the Applicant in the preparation of the Plans for the Wolf Residence (Exhibit A-1).

2. That the proposal of the Applicant is to raise the house from the existing first floor elevation of 10' to 14.67 feet (4.67').

3. That the elevations of the house will remain essentially the same except for the addition of a front (Ocean Avenue) porch which he believes provides an aesthetic improvement.

4. That the moving of the house to the west decreased the existing non-conforming setback of 19.6' to 25.46' and where 50.65' is required pursuant to the front setback average requirement in the R-3A Zone.

5. That the existing lot coverage is being reduced from the existing 4,558.85 square feet to 4,392.72 square feet (-166.13 square feet) which reduction totally eliminates the existing non-conforming condition associated with lot coverage.

6. That the location of the pool in the rear yard restricts moving the house any further to the west. The movement to the west makes the front yard setback more compatible with the southerly dwelling.

7. That the following purposes of Zoning as defined in the MLUL (N.J.S. 40:55D-2) are met by the proposed plan:

a. promote health, safety and general welfare in that the raising of the house in conformance with the new FEMA requirements will aid in preventing flooding of the dwelling.

b. the raising and elevation of the house will secure safety from flood and other natural and man-made disasters.

c. the existing elevations of the house will essentially remain the same and adequate light, air and open space will be provided.

d. by pulling back the house from Ocean Avenue will promote a more desirable visual environment.

8. That a hardship exists pursuant to N.J.S. 40:55D-70c(1) by reason that the pool, being an existing structure which prevents moving the house further to the west.

9. That N.J.S. 40:55D-70c(2) is met in that the grant of the variance presents a benefit that would substantially outweigh any detriment and would present a better zoning alternative. This is based on the fact that the existing non-conforming front setback is being reduced, the existing lot coverage non-conforming condition is being eliminated and the relocation of the house is more consistent with the neighboring properties.

10. That for the above reasons the granting of the requested variances would be without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance of the Borough; and

WHEREAS, Mr. Witkowski opened the meeting to any interested party for questions and statements and no one came forward. (It is noted that several people wrote letters to the Board concerning this Application but those letters were placed in the file and not distributed to any Board Member). Mr. Wolf also stated he had discussed the Applicant's proposal with several of his neighbors; and

WHEREAS, the Mantoloking Planning Board made the following findings at its meeting on March 19, 2015:

1. That the Applicant's desire to raise the existing dwelling to meet the new FEMA standards creates a beneficial safety condition.

2. That the reduction of the non-conforming front yard setback and the elimination of the existing non-conforming lot coverage makes the lot and dwelling substantially more conforming with the Land Use Ordinance of the Borough.

3. That moving the house westward and away from Ocean Avenue is more in character with the immediate neighborhood.

4. That the movement to the west and the addition of a front porch on the Ocean Avenue side provides an aesthetic improvement.

5. That the Application meets several of the purposes of Zoning as outlined in N.J.S. 40:55D-2 and as included hereinbefore.

6. That the swimming pool in the rear yard creates a hardship in that it prevents moving the house further to the west.

7. That the benefits of granting the variance substantially outweighs any detriment.

8. That for the reasons above the variances requested can be granted without substantial detriment to the public good and without any substantial detriment to the Master Plan and Land Use Ordinance of the Borough of Mantoloking; and

WHEREAS, THEREFORE BE IT RESOLVED, that for the above finding, the Planning Board of the Borough grants the following variance relief to the Applicants, William J. Wolf, Esq., and Mary Catherine Cuff, as follows:

1. For a front yard setback of 25.46' where 50.65' is required in the R-3A Zone.
2. To expand the pre-existing non-conforming structure by virtue that it will continue to be in the front yard setback to add a new front porch and additional stairs, adding supplemental stairs to the existing stairways at the side and rear entrance and replacing an at grade level concrete deck at the rear of the dwelling; and

NOW, THEREFORE BE IT FURTHER RESOLVED, the above variances are approved on the following conditions:

1. That the Applicant relies on the testimony of Mr. Gilligan and Mr. Wolf (as to the facts) and the statements of its Attorney, William J. Wolf, 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 March 19, 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 2nd day of April, 2015, and memorializes and confirms the actions by the Planning Board in now approving the relief requested by the Applicant at its special meeting held on March 19, 2015.



SUSAN LAYMON, Secretary

VOTE AT MARCH 19, 2015
AUTHORIZING PREPARATION OF RESOLUTION OF APPROVAL

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

Absent : Mr. McIntyre, Ms. Nelson

Not Voting or Recused:

**VOTE AT APRIL 2, 2015
TO APPROVE THE RESOLUTION OF APPROVAL**

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

Absent : Ms. Nelson,

Not Voting or Recused: Mr. McIntyre