

**RESOLUTION NO. 2018-003 OF THE  
BOROUGH OF MANTOLOKING JOINT PLANNING BOARD –  
ZONING BOARD OF ADJUSTMENT**

**WHEREAS**, David W. & Linda K. Schusler Family Trust, whose mailing address is 187 Broad Avenue, South Naples, Florida 34102, has applied to the Borough of Mantoloking Joint Planning Board – Board of Adjustment for two lot minor subdivision approval with variance relief affecting premises located at 921 Lagoon Lane, Mantoloking, New Jersey 08738, also known as Lots 10, 10.01, and 10.02, Block 16 as designated on the Tax Map of said Municipality; and

**WHEREAS**, such proof of service as may be required by New Jersey Statutory and Municipal Ordinance requirements upon appropriate property owners and Governmental bodies has been furnished; and

**WHEREAS**, a public hearing was held on the said application on July 19, 2018 in the Municipal Building of said Municipality and testimony and exhibits were presented on behalf of the applicant and all interested parties having been heard; and

**WHEREAS**, the said Board, having considered said application, testimony, exhibits submitted, and from its inspection of the site, it makes the following determinations:

1. The tract in question has an area of 12,469 square feet.
2. The tract in question is located in the R-6 B Zone.
3. The Applicant is seeking to subdivide the existing one residential lot containing one detached single family dwelling, a detached garage and an in-ground swimming pool into two residential lots. Variance relief is required as follows:

- North side yard setbacks of 7 feet to the steps where 10 feet is the minimum required.
- South side yard setback of 7.56 feet to the steps where 10 feet is the minimum required.
- Front yard setback of 31.38 feet to the porch where 33.3 feet is the minimum required.
- First floor elevation of 6 feet where 12 feet is the minimum required.

4. The Applicant submitted the following in support of the application:

- Application dated April 25, 2018.
- Tax Certification dated June 22, 2018 indicating that all taxes are current.
- Certified List of Property Owners located within 200 feet of the property dated April 26, 2018.
- Subdivision Plat, prepared by R.C. Burdick, P.E., P.A., P.C., dated November 28, 2017, containing the latest revision date of June 22, 2018.
- Exhibit A1 – May 31, 2011 correspondence from land use officer.
- Exhibit A2 – Photograph of trex deck on lagoon side of property.
- Exhibit A3 – Photograph – stairs/entranceway/slate walkway on south side of existing residence.

5. David Schusler, testified on behalf of the application as follows, to wit:

- A. He is the trustee of the David W. & Linda K. Schusler Family Trust and as such is fully familiar with the subject property and the proposed application.
- B. He testified that he and his wife purchased the subject property in or about 1997 and transferred same to the trust in or about 2011. In or about 2010 through 2011,

Applicant demolished an existing home on the subject property and constructed the single family home that currently exists and is proposed to remain on new Lot 10.01. He recounted that all work was performed via proper municipal permits and at the time, no variance relief was required for the construction. He entered as Exhibit A1, a May 31, 2011 correspondence from then land use officer, Vito M. Marinaccio entitled "Certificate of Compliance – New Home" indicating that the land use officer had reviewed the final, as-built survey plan for the new construction and found same acceptable.

- C. He testified that approximately a year later, he (with proper permits) constructed the swimming pool and detached garage, which currently exist and are proposed to be removed as part of this subdivision as located on proposed new Lot 10.02.
- D. He testified that the subject parcel was previously two separate lots as depicted on the currently proposed subdivision plan, however, in order to construct the detached garage and swimming pool as accessory structures to the existing single family home, Applicant was requested to consolidate the lots into one parcel.
- E. He entered as Exhibit A2 a photo of the existing trex deck on the lagoon side of the property which he confirmed evidence that the deck is less than 8 inches above grade and as such no front yard setback variance is required for said deck. This was confirmed by the Board Planner.

6. Robert C. Burdick, P.E., P.P., testified on behalf of the application as follows, to wit:

- A. He prepared the subdivision plan with variance relief required submitted in support of the application and is fully familiar with the subject property and surrounding neighborhood.

- B. He described the subject property noting that the existing parcel is 12,469 sq. ft. and the proposed subdivision would provide for Lot 10.01 (6,529 sq. ft.) and Lot 10.02 (5,940 sq. ft.) in the R-6 B Zone which requires a minimum of 5,000 sq. ft.
- C. The single family residential proposed use is a permitted use in the R-6 B Single Family Residential Zone in which the property is located.
- D. He testified that the lot dimensions meet or exceed all requirements of the zone.
- E. Three of the four variances required (north side yard setback to the steps; front yard setback to the porch; and first floor elevation) are all existing conditions of the existing home which are not modified or impacted/exacerbated in any way by the proposed subdivision. The only variance created by the subdivision (common lot line between proposed Lot 10.01 and 10.02) is the south side yard setback of 7.56 ft. to the steps where 10 ft. is the minimum required. He opined that this deviation is de minimus in nature and will create no detriment to the surrounding neighborhood.
- F. As to off-street parking, he testified that the existing home provides for one garage parking space and the driveway provides for two compliant off-street parking spaces; which meets the RSIS standards for off-street parking for proposed Lot 10.01.
- G. He agreed that any proposed construction on new Lot 10.02, which is a fully conforming residential lot, must comply with all requirements of the zone for any construction proposed or variance relief shall be required from the Board.
- H. He confirmed that the existing slate walkway is proposed to be removed and same is necessary so as to maintain compliance with the coverage requirements of the

zone for Lot 10.01. Same will be replaced with permeable gravel to allow for proper drainage while providing for a reasonable walkway to the staircase/entrance.

- I. Applicant agreed as a condition that all existing site improvements proposed to be removed (in-ground swimming pool and surround; detached garage; slate walkway) shall be removed in advance of the perfection of the subdivision via map or deed filing.
- J. Applicant agreed as a condition that all fencing on the subject property shall be brought into compliance with the Borough zoning ordinance at the time the site improvements are removed.
- K. He noted that the proposed application provides for lots areas in excess of the zone requirements and provides for adequate light, air, and open space on the sites.
- L. He opined that the proposed application could be granted without substantial detriment to the zone plan or the zoning ordinance in as much as the lot sizes meet the requirements of the zone and are consistent with the lot sizes in the immediate vicinity.
- M. He opined that the proposed application could be granted without substantial detriment to the zone plan or the zoning ordinance in as much as three of the four existing non-conformities are existing on the site based on the existing single family home constructed and the only new non-conformity (south side yard setback to the existing staircase/entrance) is deficient by approximately 2.5 ft. and will be negligible in nature.

7. Owner of Lot 12 (adjacent property), Michael Manzulli, appeared via counsel, Ryan Malk, Esq., to register an objection to the proposed application.

8. The Board makes the following findings, conclusions of law:

A. The Board determines that the Applicant has met the requirements of N.J.S.A 40:55D-70(c)(1) and (c)(2) for the variance relief requested based upon the following:

- The existing single family home on the site that is proposed to remain on Lot 10.01 was constructed in or around 2011 with permits and a certificate of compliance with then existing ordinances/regulations.
- Previously, the subject property was divided into two lots as proposed by this subdivision, however, Applicant was compelled to consolidate said lots into one existing single family residential lot so as to allow for the construction of the accessory structures (in-ground swimming pool and detached garage).
- The proposed application proposes to remove those existing accessory structures upon approval thereby eliminating the necessity for deed consolidation and Applicant wishes to restore the property to provide for two single family lots.
- Pursuant to current Borough ordinances, variance relief is required for three existing conditions for the single family dwelling on Lot 10.01 (north side yard setback to the existing steps; front setback to the existing porch on the lagoon side of the property; and first floor elevation); while the only newly created variance by the subdivision is that for south side yard setback from the proposed property line to the existing stairs where 10 ft. is required and 7.56 ft. is proposed to remain.

- The proposed development as set forth on the subdivision plan submitted provides for adequate light, air, and open space on the site and for the surrounding properties.
- The proposed application advances purposes of zoning as defined in N.J.S.A. 40:55D-2(a)(b)(c) and (i). Those benefits outweigh any detriment by the deviation from the strict application of the zoning ordinance.
- The proposed lots with proposed single family development are in keeping with the size of the residential lots in the immediate vicinity.
- The variance relief requested creates no significant detriment to the public good and the Board notes that the zone provides for single family development on lot sizes as proposed by this subdivision.
- The variance relief requested creates no significant impairment to the intent or purpose of the zone plan.

**NOW THEREFORE, BE IT RESOLVED**, by the Borough of Mantoloking Joint Planning Board - Board of Adjustment in the County of Ocean and State of New Jersey on the 19th day of July, 2018, that the application for David W. & Linda K. Schusler Family Trust be granted, subject to the following terms and conditions:

1. Applicant should obtain any other approvals with respect to the submission from any other Federal, County, State or Municipal Agency having jurisdiction over same.

2. Applicant should re-submit this entire proposal should there be any deviation from this Resolution or the submitted documents which are hereby made a part hereof and shall be binding on the applicant.
3. Applicant shall construct at applicant's sole cost and expense all improvements reflected on the submitted documents or required by this Resolution.
4. The Applicant shall comply with all representations and agreements made by the applicant or the applicant's representative during the consideration of this Application.
5. The Applicant shall comply with all conditions specified in this Resolution.
6. The Applicant shall provide a statement from the Borough Tax Collector that all taxes are paid in full as of the date of this Resolution and as of the date of the fulfillment of any condition(s) of this Resolution.
7. A statement must be furnished by the Borough Engineer indicating that all required improvements on the site have been approved, or in the alternative, a cash bond and performance guarantee have been posted with the Borough Clerk in an amount sufficient to insure the completion of all required improvements. The amount of cash bond and performance guarantee is to be determined by the Borough Engineer. The performance guarantee is to be updated at six-month intervals at the discretion of the Borough Engineer.
8. The depositing of a cash bond and performance guarantee shall not operate to discharge or release the Applicant from the obligation and responsibility to cause required improvements to be installed and maintained as required by an applicable ordinance or other law. In the event that Applicant desires to be



released or otherwise transfer obligations and responsibilities to another party under the terms of the guarantee posted with the Borough, the Applicant shall make Application to the Borough Council seeking this permission.

9. An essential and non-severable condition of approval is compliance with the Borough's Affordable Housing and Growth Share Ordinance as applicable.
10. All existing site improvements proposed to be removed (in-ground swimming pool and surround; detached garage; slate walkway) shall be removed in advance of the perfection of the subdivision via map or deed filing.
11. All fencing on the subject property shall be brought into compliance with the Borough zoning ordinance at the time the site improvements are removed.

Moved by: Robert McIntyre

Seconded by: Elizabeth Ann Nelson

**ROLL CALL VOTE**

Those in Favor: Robert McIntyre, Steve Gillingham, Susan Laymon, Denise Boughton, Jane White,  
Elizabeth Ann Nelson, Christine Beck, John Wesson

Those Opposed:

Those Absent: Mayor Nebel, Joe Daly, Betsy Nelson

Those Not Voting:

The foregoing is a true copy of a Resolution adopted by said Board at its meeting on August 2,  
2018, as copied from the Minutes of said Meeting.

Colleen Malvasio  
**SECRETARY OF THE BOARD**

DATED: 8/2/18