

**RESOLUTION**  
**2013 – 007**  
**CUNDEY**

**WHEREAS**, DAVID E. CUNDEY (referred to as Cundey or Applicant), residing at 943 Barnegat Lane, Mantoloking, New Jersey 08723 has made Application to the Borough of Mantoloking Planning Board (2013-007); and

**WHEREAS**, the Applicant is the owner of the property for which variance relief is requested which property is known as 943 Barnegat Lane, Mantoloking, New Jersey 08738 which is also known as Block 13, Lot 6.01 on the Tax Map of the Borough of Mantoloking (Property); and

**WHEREAS**, the Property is in the R-4A Zone of the Borough of Mantoloking; and

**WHEREAS**, on September 23, 2013, Barbara Allen Woolley-Dillon, P.P., AICP, the Land Use Administrator of the Borough of Mantoloking issued a letter to William T. Gage, the Attorney for the Applicant which was marked B-1 at the meeting; and

**WHEREAS**, said letter of Ms. Woolley-Dillon called out the following existing nonconforming conditions and the variance relief being sought:

- a. Minimum required lot area – *10,000 square feet is required where 7,594 square feet exists. This is an existing non-conforming condition.*
- b. Minimum required lot depth – *100 feet is required where just over sixty-six feet (66.04') exists. This is an existing non-conforming condition.*
- c. Minimum required front yard setback – twenty five feet (25') is required where just under twenty-four feet (23.89') exists/is proposed. *This is a **result** of an existing non-conforming condition.*
- d. Minimum required rear yard setback-twenty feet (20') is required for an "interior lot" where approximately ten feet (9.93') exists/is proposed. *This is a **result** of an existing non-conforming condition;* and

**WHEREAS**, as is noted the lot and structure are nonconforming and as such must also satisfy the following:

The introductory paragraph of N.J.S. 40:55D-68 provides:

"Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof." (emphasis mine)

N.J.S. 40:55D-68 provides what is commonly known as a "grandfather" clause which Chapter XXX, Section 30-8-2, in part, memorializes as follows:

"Except as otherwise provided in this chapter, any lot which conformed to the bulk requirements (i.e., lot area, width and depth) of any Land Use Ordinance in effect prior to the adoption of this chapter, or was validly pre-existing, may be used as a lot for any purpose permitted in the zone without the necessity of variance relief, if (1) at the time of and since the adoption of this chapter neither the lot owner nor any successor owners owned adjoined property which, if combined with the subject lot, would allow the combined lots to conform with the bulk requirements of this chapter, and (2) the lot otherwise conforms with all requirements of its zone...

The lawful use of land or of any structure existing as of the adoption of this chapter may be continued, although the use or structure does not conform to the requirements of this chapter. The owner of any such land or structure shall not be required to obtain variance relief for the construction of any improvements which comply with the bulk requirements of this chapter. Uses or structures rendered nonconforming by this chapter may not, however, be enlarged or expanded, either horizontally or vertically"; 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 et (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; and

**WHEREAS**, the structure suffered damage as a result of Superstorm Sandy which damage is less than partial; 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

(MLJUL) (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 Exhibit to support his Application for the relief requested and which was marked:

1. A plan of the site showing the location of the existing dwelling with setbacks from the property lines (A-1); and

**WHEREAS**, the following Board Members were present at the October 3, 2013 hearing on the matter: Chairman Thomas McIntyre, Ms. White, Ms. Boughton, Ms. Laymon, Messrs. R. McIntyre, Gillingham, Witkowski and Daly. All Members in attendance indicated they made a site visit; and

**WHEREAS**, Mr. Bixby who lives within 200 feet of Property recused himself and stepped down from the dais. Ms. Nelson and Mr. Hawkings were not in attendance at the meeting; and

**WHEREAS**, the Applicant was represented at the hearing by William T. Gage, Esq., 536 Lake Avenue, Bay Head, New Jersey 08742 who, after introductory remarks called Robert C. Burdick, P.E., P.P., 1023 Ocean Road, Point Pleasant Beach, New Jersey 08742, as his first witness; and

**WHEREAS**, Mr. Burdick testified that he received his Bachelor of Civil Engineering from Clemson University, has been a New Jersey licensed Engineer (NJPE No. 30929) for the past 35 years, that he has been a licensed Planner for 25 years and has testified before this Board and numerous municipal Boards throughout the State of New Jersey. His credentials having been accepted he continued his testimony as follows:

1. He visited the site on several occasions and examined the damage created by superstorm Sandy.
2. That the existing lot is unusual in that it is one of the few lots that does not run from Barnegat Lane (in this case the front of Property) to Ocean Avenue (in this case the rear of Property).
3. As such the lot has a depth of 66.04' where 100' is required in the R-4A Zone. This is an existing condition which cannot be eliminated since the property to the rear is also an improved lot.
4. The other nonconforming conditions cited in Ms. Woolley-Dillon's letter of September 23, 2013 (B-1) will remain as existing and will neither be increased or decreased. The footprint of the existing house will remain unchanged.
5. The addition to the habitable space of the house is to create a new Master Bedroom suite with a porch and a new bedroom on the second floor in accordance with the Jeffrey D. Cundey, AIA Plans Sheet No. A-2 as submitted with the Application.
6. If the Applicant was forced to meet all setback requirements it would allow a 21' wide dwelling.

7. The Applicant cannot purchase or acquire adjacent land to make the dwelling conform since the surrounding lots have improvements existing.
8. That there is a 5' sanitary sewer easement to the north and very close to the existing home which would prevent any addition in that direction.
9. That the habitable 2<sup>nd</sup> floor area ratio to the first floor footprint where 80% is permitted and where 72% is proposed meets that requirement.
10. The hardship in this case is definitely created by the shallowness of the lot (depth) which is only 66.04'. This presents a practical difficulty.
11. While there may be some loss of vertical open space by the added construction on the second floor, no views will be impacted and the benefits which outweigh that detriment are that there will be a significant aesthetic improvement to the structure and the structure will be upgraded to better quality and improvement components which will increase and create a safer environment.
12. That based on the above the addition to the second floor living space which constitutes an expansion of a nonconforming structure can be granted with no substantial detriment to the public good and would not substantially impair the intent and purpose of the Zone plan and zoning ordinances.

**WHEREAS**, Mr. McIntyre opened the meeting to interested parties and to the public for any questions or statements and no persons came forward either in favor or opposed to this Application.

**WHEREAS**, the Planning Board of the Borough of Mantoloking finds:

1. That the testimony of Mr. Burdick was credible.
2. That any addition to the north would be prevented by the 5' sanitary sewer easement.
3. That a hardship is created by the existing depth of the Property and if all setbacks were to be enforced they would dictate a house of only 21' in width.
4. That the first floor footprint will remain exactly as it exists and none of the preexisting nonconforming conditions will be increased.
5. That the expansion of the second floor habitable space can be granted without substantial detriment to the public good (no one came to object to the Application as some indication) and the grant of the variance would outweigh the detriment and would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**NOW THEREFORE BE IT RESOLVED**, that for the above findings the Planning Board grants approval to the Applicant, David E. Cundey, as follows:

1. That the Applicant's request to vertically increase, enlarge and expand the second floor habitable living area of a preexisting nonconforming structure on a nonconforming lot to add a Master Bedroom Suite,

porch and second bedroom all as shown on the Jeffrey D. Cundey, AIA Plans Sheet No. A-2 as submitted is granted.

***NOW, BE IT FURTHER RESOLVED***, that the approval as immediately above stated is granted on the following conditions:

1. That the Applicant obtain a building permit prior to commencing any construction on the Property. A building permit must be obtained within two (2) years from the date of this Resolution or this Resolution will be deemed null and void and of no effect.
2. The Applicant furnish a copy of Ocean County Soil Conservation District Certification, if applicable.
3. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking.
4. Applicant will provide Proof of Publication of a Notice of Decision of the Board to the Secretary of the Board within 30 days from receipt of Resolution.
5. The Applicant shall obtain any and all necessary Federal, New Jersey (including any Coastal Area Facility Review Act (CAFRA) permits, County of Ocean or local 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 to the Board. In the event other agencies require a change in the plans approved by the Board, the Applicant must reapply to the Board for the approval of that change.
6. The Applicant shall pay any and all costs required by the Applicant to be made pursuant to N.J.S. 40:44D-35 et. seq. and all fees incurred by the Board in reviewing this Application. The failure of the Applicant to deposit or provide such fees, after being directed to do so, shall render any approval granted hereunder null and void.
7. The testimony, deliberations and stipulations made at the hearing are hereby 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.
8. 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 in question.
9. The terms, conditions and stipulation imposed upon that Applicant in this approval are an integral and material part of the actions of this Board in that the Board 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.
10. All the representations and statements made by the Applicant at the hearing on October 3, 2013, shall be considered and deemed to be relied upon 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.

## CERTIFICATION

*Courtney Beyer*  
I, ~~Denise Boughton~~, Assistant 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 the 24<sup>th</sup> day of October, 2013, 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 October 3, 2013.

*MB*  
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DENISE BOUGHTON, Assistant Secretary  
*COURTNEY BEYER*

**MEETING OF OCTOBER 3, 2013  
TO PREPARE A RESOLUTION TO APPROVE**

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

Absent: Ms. Nelson, Mr. Hawkings

Not Voting or Rescued: Mr. Bixby



# MEETING OF OCTOBER 24, 2013

## VOTE TO APPROVE RESOLUTION

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

Absent :

Not Voting or Rescued: Ms. Nelson, Mr. Hawkings, Mr. Bixby