

**RESOLUTION**  
**2013 –008**  
**DURLING**

**WHEREAS**, C. Correll and Eleanor Durling (referred to as Durling or Applicant), residing at 43 Mill Road, Whitehouse Station, New Jersey 08889 and 300 Old Bridge Avenue, Mantoloking, New Jersey, 08738 have made Application to the Borough of Mantoloking Planning Board (2013-008); and

**WHEREAS**, the Applicant is the owner of the property for which variance relief is requested which property is known as 300 Old Bridge Avenue, Mantoloking, New Jersey 08738 which is also known as Block 29, Lot 8 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 Daniel M. Hurley, Esq., Starkey, Kelly, Kenneally, Cunningham & Turnbach, the Attorney for the Applicant which was marked B-1 at the meeting; and

Said letter indicated the following preexisting conditions and the variance relief requested:

- a. *Minimum required lot depth – 100 feet is required where just over seventy-five feet (75') exists. This is an existing non-conforming condition.*
- b. Minimum required front yard setback – twenty-five feet (25') is required where just under ten feet (9.8') exists and fifteen feet (15') is proposed.
- c. Minimum required rear yard setback – twenty feet (20') is required for an "interior lot" where approximately twenty feet (19.9') exists and approximately eighteen feet (18') is proposed for the building. The existing rear yard setback for the above grade deck is approximately twenty feet (20') and the proposed setback is ten feet (10').
- d. Minimum required rear yard setback for a pool where twenty feet (20') is required for an "interior lot" and where approximately fourteen feet (14') is proposed.
- e. Maximum permitted Vertical Building Envelope (VBE) where thirty feet (30') is permitted for a dwelling and where thirty feet six inches (30.5') exists/is proposed. This is an existing non-conforming condition.
- f. Maximum permitted lot coverage where thirty percent (30%) is permitted and where nearly thirty-two (31.9%) exists (as noted

on the Architectural Plans) and approximately thirty-one and one half (31.4%) is proposed.

- g. Maximum permitted stairs and platform area into one (1) side yard setback-seventy-five (75) square feet is permitted where 109 square feet is proposed for the stairs perpendicular to Old Bridge Street.

There are certain improvements proposed as above which create an expansion and enlargement of a nonconforming structure (where the structure as existing is presently nonconforming i.e. minimum required rear yard setback, etc.) and which would require relief as follows:

There being both existing nonconforming conditions related to both the lot and structure and in addition to the above variances being required the Applicant must 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. 40:55-D-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 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 structure suffered significant 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 (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**, Mr. Durling made some introductory statements as to his desire to renovate and rehabilitate the existing structure as opposed to razing it and building a complete new structure; and

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

1. Colored aerial view (A-1).
2. Series of six pictures show preexisting Sandy and post Sandy conditions (A-2).
3. Colored Site Plan prepared by Bohler Engineering (A-3).
4. Colored renditions of the north, south, east and west elevations of proposed dwelling (A-4).
5. Architectural drawing of existing home with a view from Old Bridge Street and Bay Avenue (A-5).
6. Three additional Boards showing various elevations, conditions, views and proposed differences (A-6, A-7 and A-8).
7. Architectural rendering of site plan showing proposed pool, additional steps and driveway (A-9).

The Applicant was permitted to retain the Exhibits.

**WHEREAS**, the following Board Members were present at the October 3, 2013 hearing on the matter:

Chairman McIntyre, Ms. Boughton, Ms. Laymon, Messrs. R. McIntyre, Gillingham, Witkowski, Bixby and Daly. Ms. White living within 200 feet of Property recused herself and stepped down from the dais. Ms. Nelson and Mr. Hawkings were absent. All Members in attendance indicated they made a site visit; and

**WHEREAS**, the Applicant was represented at the hearing by Daniel M. Hurley, Esq., 1593 Route 88 West, Brick, New Jersey 08742 who, after introductory remarks called Keith B. Cahill as his first witness; and

Keith B. Cahill testified that he is a Professional Engineer and a Principal of Bohler Engineering, 35 Technology Drive, Warren, N.J., that he has a Bachelor's degree in Civil Engineering from Rutgers University and a Master's Degree from Stevens Institute of Technology, that he has been a licensed Professional Engineer in New Jersey (License No. 42004) for the past 19 years, and that he has testified before many municipal boards and agencies throughout New Jersey. His credentials being accepted he continued his testimony as follows:

1. He visited the site on several occasions and saw the devastated condition of the house as a result of Sandy. The house was off its foundation and, in his opinion, was in danger of total collapse. He frankly testified that his initial reaction was to recommend that the house be razed and that a new structure be built in its place. He testified that the Applicant was insistent that the house be saved and its character preserved.
2. That the house which was built in 1907 sits at the corner of Old Bridge Street and Bay Avenue. That while the front entrance and mailing address of the house is Old Bridge Street, the actual front yard for zoning purposes in the R4A Zone is Bay Avenue.
3. The Property measures 75' on Old Bridge Street and 150' along Bay Avenue. Prior to Sandy the house had a front yard (Bay) setback of 9.8' (25' required), and a southerly corner side yard (Old Bridge) setback of 11' (15' required) and a minimum interior rear yard setback of 19.9' (20' required). The detached garage and a shed on the property pre-Sandy which were destroyed and will not be replaced violated several bulk standards which nonconformities will be eliminated.
4. The 2 ½ story house as it is presently situated was structurally repaired, raised and moved to its now location in the desire of the Applicant to restore the original structure.
5. The proposed location of the restored dwelling results in a shift of the house to the north and to the west. This relocation results in eliminating the minimum corner side yard setback

(Old Bridge) where 11' exists, 15' is required and 20' is proposed. It further reduces the minimum front yard setback where 9.8' exists, 25' is required and 15' is proposed (reduction of existing nonconformity by 5.2' is proposed and requiring a 10' variance). It does, however, increase the minimum interior rear yard setback where 19.9' exists, 20' is required and 10.0' is proposed for the above grade deck (increases nonconformity by 9.9'). The lot coverage existing is 35.4% (3,980.1 sq. ft.), where the maximum permitted is 30.0% and where 30.8% is being proposed which results in a 4.6% reduction.

6. Storm water runoff will be reduced by virtue of reduced lot coverage; and

**WHEREAS**, Mr. Hurley called as his next witness John C. Amelchenko, RA, who testified that he is a Principal of Aquatecture Associates Incorporated, 421 River Road, Point Pleasant Beach, New Jersey 08742, that he has a Bachelor of Arts in Architecture from the New Jersey Institute of Technology, that he is a licensed Architect in New Jersey (A110380) and that he has testified before this Board and before numerous municipal boards and agencies throughout New Jersey. His credentials being accepted he continued his testimony as follows:

1. He visited the site on several occasions and was initially concerned with the physical and structural integrity of the structure and the fact it was built in 1907. The foundation was undermined. However, the interior structural elements such as the chimney, floors and walls were in remarkable shape since the interior did take on water during Sandy up to the second floor level.
2. The house had great character and charm and the Applicants had a great emotional attachment to it. The Applicants desired to preserve and restore the house. The Applicants in their desire to do so had the foundation repaired, raised the house and moved it to the location where it presently sits.
3. That the Aerial Photo (A-1) shows where the house was previously located. That also shows the 475 sq. ft. detached garage and a shed which were totally destroyed and which would not be replaced. The decks and porches which were also destroyed will be replaced although the rear deck will have a smaller configuration and will be 30" above grade which is the same height as previously existed. That there is a proposed 96 sq. foot pool (described by Mr. Durling as a "foot bath") which is generally classified as a soaking pool and designed for "cooling off". He indicated that A9 shows a rendition of the site showing the pool, porches, and decks. It also shows additional stairs and a platform where the maximum permitted area into one (1) side yard setback of 75 square feet and where

51 square feet is proposed for the stairs perpendicular to Old Bridge Street and which will now conform.

4. The house is proposed to have a Vertical Building Envelope (VBE) of 30.5' feet where 30' is permitted. This is an existing nonconforming condition which will not be increased.
5. That the testimony of Mr. Cahill as it related to the shift of the building in a northerly and westerly direction accurately describes the intention of the Applicant's proposal.
6. That the Property is located in Flood Hazard Zone AE where the Base Flood Elevation is 9.0 feet and the required Finished First Floor Elevation is 10'. The Applicant is proposing to raise the house to a First Floor Finished Elevation of 11.5' which is permitted without variance from the Borough Ordinance and does not affect the proposed Vertical Building Envelope (VBE) of 30.5'.
7. The proposed stairs are straight line stairs typical of other Mantoloking and Bay Head construction. The raising of the house and the distance from the ground will be buffered by foundation plantings and lattice.
8. That the pool equipment will be located to the east side of the pool and away from the rear Property line.
9. He believes that the proposed house will fit very well in the neighborhood as it did pre-Sandy and that its preservation is a credit to the Applicant; and

**WHEREAS**, Mr. Hurley called as his last witness John D. Maczuga who testified that he is the Principal of JDM Planning Associates, 614 Harbor Road, Brick, New Jersey, that he has been a licensed Planner of the State of New Jersey since 1976, that he has a Masters Degree in Urban Planning from Rutgers (1972), that he was a Charter Member of AICP, that he has wide experience with both public and private clients, that he has represented both Planning and Zoning Boards and has testified before this Board and many others throughout the State of New Jersey. His credentials having been accepted he continued his testimony as follows:

1. He visited this site and reviewed the Land Use Regulations and Master Plan of the Borough and reviewed Ms. Woolley-Dillon's correspondence of September 23, 2013 (B-1).
2. That the depth of the lot of 75' where 100' is required is a preexisting nonconformity which cannot be made to conform. It is that configuration of the lot (long and narrow) that creates a practical hardship. The 75' depth would require either a front yard or rear yard variance for the proposed dwelling to be preserved. He believes this fully satisfies the proof requirement of N.J.S. 40:55D-70c(1).
3. He repeated the preexisting nonconforming conditions, the preexisting nonconformities which will be reduced, eliminated or enlarged and the variances which will be required as a result



of the shift of the house location as testified to by Mr. Cahill and Mr. Amelchenko.

4. Based upon that testimony he concludes that the c(2) proofs are met in that the raising of the house secures its safety from flood and other natural and man-made disasters (N.J.S. 40:55D-2b) that the preservation and restoration of the dwelling promoted a desirable visual environment (N.J.S. 40:55D-2i). He also believes that there is no negative impact on light, air and open space since the house is what previously existed.
5. He further advances the fact that 155 square feet (1.4%) that the coverage is over the required 30% is de minimis and that there would be no practical benefit to remove that amount of square footage to comply (31.9' existing, 30% required, 31.4% proposed)
6. He believes the reduction in the existing nonconformities provides a better zoning alternative and that the deviation from the requirements of the zoning ordinance would outweigh any detriment. He concludes that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinances of the Borough.
7. Lastly, he believes the preservation of the physical appearance of the existing house is within and enhances the character of the neighborhood and the Borough; and

**WHEREAS**, Mr. McIntyre opened the meeting to interested parties and to the public for any questions or statements and the following came forward:

1. Mr. Scott Hulse who resides at 1215 Bay Avenue directly across Bay Avenue from the Property believes the proposal of the Applicant looks great and advances its approval.
2. Mr. Andrew Bullit who resides at 1112 Bay Avenue believes the Application provides a positive to the neighborhood and urges its approval.

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

1. That the testimony of the Applicants' professionals was comprehensive, credible and persuasive.
2. That the shift of the building and the elimination and reduction of certain preexisting nonconformities and conditions is positive in that it makes the proposed structure more compliant with the zoning ordinance.
3. That the configuration of the lot at 75' in depth and 150' in length and the depth deficiency of 25' (where 100' is required) creates a practical difficulty
4. That the desire of the Applicant to restore and preserve the existing structure is highly commendable in that it preserves a part of

Mantoloking history, fits well into the character of the neighborhood and the Borough in general. That the Borough has lost so many of the beautiful and historical houses and the preservation of this house is a positive for the Borough.

5. That the testimony of the professionals meets the proofs required by both N.J.S. 40:55D-70c(1) and c(2) and the grant of the variances would outweigh any detriment.
6. That the variances being requested can be granted without substantial detriment to the public and without substantial detriment to the zone plan and ordinances of the Borough.

***NOW THEREFORE BE IT RESOLVED***, that for the above findings the Planning Board grants approval to the Applicant, C. Correll and Eleanor Durling, as follows:

1. The variance for maximum front yard setback where 25' is required, 9.8' exists and 15' is proposed and requested is granted.
2. The variance for interior lot rear yard setback where 20' is required, 19.9' exists and 10' is proposed and requested is granted.
3. The variance for minimum interior rear yard setback for the pool (accessory) where 20' is required and 14' is proposed and requested is granted.
4. The variance for lot coverage where 30% is permitted, 31.9% exists and 31.4% is proposed and requested is granted.
5. The enlargement or expansion of the nonconforming structure either vertically or horizontally is granted.
6. The pre-existing nonconformities for lot depth where 100' is required and 75' exists and for Vertical Building Envelope where 30' is permitted and 31.5' exists are recognized as being unchanged; and

***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



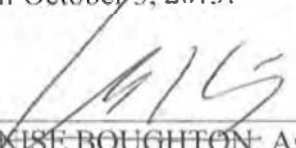
all conditions of said permits and/or approvals, and will submit a copy of any permits to the Board. In the event other agencies require a change in the plans approved by the Board, the Applicant must reapply to the Board for the approval of that change.

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 Bixby*

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.

  
DENISE BOUGHTON, Assistant Secretary  
*COURTNEY BIXBY*

**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				
Elizabeth Nelson				
Denise Boughton			X	
Courtney Bixby			X	
Susan Laymon, (Alt.)		X	X	
Joseph Daly, (Alt.)			X	

Absent: Ms. Nelson, Mr. Hawkings

Not Voting or Rescued: Ms. White

**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, Ms. White