

RESOLUTION

FIORE

WHEREAS, Theodore Fiore, 11 Cherokee Trail, Florham Park, N.J. 07932 and 941 East Avenue, Mantoloking, N.J. (hereinafter "Applicant") has made Application to the Planning Board of the Borough of Mantoloking (hereinafter "Board"); and

WHEREAS the Applicant is the owner of the property for which several variances are being requested which is known as Block 3, Lots 2 and 2.01 on the Tax Map of the Borough of Mantoloking, Ocean County, New Jersey which is also known as 941 East Avenue, Mantoloking, New Jersey (Property); and

WHEREAS, the Applicant requests a variance to deviate from the strict enforcement of the Zoning Ordinance of the Borough of Mantoloking and more specifically from Chapter XXX, Section 30- 6.12 A and B which provides:

A. Building height shall be measured from the elevation of the crown of the road at the center of the lot in question. The building height of corner lots shall be measured from the elevation of the lower of the crowns of the intersecting roads. The building height of lots with front and rear yards abutting streets shall be measured from the elevation of the lower of the crowns of the two streets.

B. Building height shall be limited to the maximums set forth in Appendix B, Bulk Standards; and

WHEREAS, the Property is in the R.3B Zone of the Borough and Appendix B of the Zoning Ordinance provides for a maximum height of the roof to be 35 feet; and

WHEREAS, the Applicant proposes a roof height of 37.77' which exceeds the maximum height permitted by 2.77' and thus requires a variance; and

WHEREAS, the Municipal Land Use Law (MLUL) (N.J.S. 40:55D-70d(6)) provides that a special reason or use variance is required where the height of a principal structure exceeds 10 feet or 10% of the maximum height permitted; and

WHEREAS, the variance requested by the Applicant of 2.77' does not exceed the maximum height permitted (35') by 10 feet or 10% (3.5') and, therefore, it will be considered to be a "c" variance and determined by N.J.S. 40:55D-70c; and

WHEREAS, the Applicant also requests a variance to deviate from the strict application of Chapter XXX, Section 30-4.10.h. which provides that:

All pools shall be constructed within the building envelope, with the exception of bayfront or lagoon lots, where a pool may be constructed not less than eighteen (18) feet from the mean high water line or bulkhead line.

WHEREAS, the Applicant proposes to construct a swimming pool in the rear yard (East Avenue side) twenty five feet (25') from the rear property line. The R3B Zone Appendix B, Bulk Standards require a 50 foot rear yard setback. Therefore, the Applicant would require a 25' rear yard setback variance; and

WHEREAS, the Applicant under N.J.S. 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; and

WHEREAS, 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 Ordinances 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 stated in N.J.S. 40:55D-2 and the undue hardship (the “positive criteria”); and

WHEREAS, the Applicant can also choose to prove his 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 purposes of the MLUL would be advanced by a deviation from the requirements 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, as is required by the Municipal Land Use Law of New Jersey (N.J.S. 40:55D-1 et.seq.) and the Land Use Ordinance of the Borough of Mantoloking (Chap. XXX, Sections 30-3n.2 and 3n.3) has been furnished; and

WHEREAS, the following Board Members were present at the October 1, 2009 hearing on this matter: Messrs. Henshaw, Hawkings, Witkowski, Gillingham, T. McIntyre and Ms. Potter, Ms. White, Ms. Nelson and Ms. Boughton. All of those present also acknowledged making a site visit.

WHEREAS, Mr. R. McIntyre was recused since he lives on property within 200 feet of the Applicant's Property; and

WHEREAS, Ms. Boughton had previous work done by Mr. Melillo, the architect for the Applicant, and this being revealed to the Applicant's attorney and after some discussion, the attorney for the Applicant waived any conflict or color of conflict and agreed that Ms. Boughton could sit on this Application and Ms. Boughton indicating on the record that she could hear the Application and decide the matter fairly it was determined she would participate; and

WHEREAS, William T. Gage Esq. of 536 Lake Avenue, Bay Head, N.J. 08742, represented the Applicant at the October 1, 2009 meeting; and

WHEREAS, the following exhibits were marked at the meeting held on October 1, 2009:

1. Correspondence of Vito M. Marinaccio, Land Use Officer dated May 7 and May 28, 2009 was marked as B-1.

2. Topographic Survey for Lots 2 & 2.01 Block 3, prepared by Ronald W. Post, Surveying, Inc. dated September 11, 2007 as Project No. 070616 and revised to March 16, 2009 was marked as A-1.

3. Survey Plot Plan prepared by Ronald W. Post Surveying, Inc. dated June 30, 2009 May 11, 2007 as Project 070616 with revisions to September 11, 2009 was marked as A-2.

Several renderings of front and rear elevations of proposed dwelling were marked as A-3.

4. The Applicant kept Exhibits A-1, A-2 and A-3; and

WHEREAS, Mr. Gage called as his first witness the Applicant, Theodore Fiore who being sworn testified as follows:

1. That he has owned the Property for over ten (10) years.
2. The Property is improved with a three (3) story single family eighty year old house with a basement.
3. Generally the dwelling is “nice and in good shape” but there was some renovation and remedial work that was needed and when he contacted Mr. Melillo, an architect, he was advised that the work was more extensive than anticipated and because the work would implicate more than 50% of the existing house the entire house would have to be brought up to existing codes.
4. As such it became more economically feasible and practical to raze the existing house and have a new house constructed on the Property.
5. The reason he desired a pool was that he has a sister who has “down syndrome” and that would be more conducive to her visits to the shore; and

WHEREAS, Mr. Gage then called Michael Melillo, AIA, with offices at 1325 Warren Avenue, Spring Lake Heights, N.J., who indicated he received his Architectural degree from the New Jersey Institute of Technology (NJIT), is licensed in New Jersey (License No. 10928) and has testified before many boards. Having been qualified and accepted, Mr. Melillo testified as follows:

1. That he was contacted by the Applicant to, at first design certain renovations to the existing dwelling on the Property. After a review of the house and considering its age and the fact that the scope of renovations may have required the entire

house to be brought up to code that the better, most practical and most economic course would be to raze the existing house and construct a new dwelling.

2. The proposed new house designed was a classic shingle style 2 ½ story structure.

3. The house is designed at 37.77' above the crown of the road (East Avenue) which is 2.77' above the maximum allowed of 35' in the R-3B Zone. The height of 37.77 feet is identical to the residential dwelling immediately to the north and 1.63' less than the 38.4' height of the house immediately to the south. Additionally the house to be razed on the Property is 44.06 feet high and therefore the proposed house will be 6.29' less in height than that which exists.

4. The majority of the Property and the entire part of the Property on which the existing dwelling and the proposed new dwelling is located in the VE 12 Flood Elevation Zone which would require the first floor base elevation to be 12' and therefore, to accommodate construction the house would require a 13' first floor base elevation. This greatly constricts the height of any dwelling to be constructed on the Property.

5. The pool must be in the rear property side of the proposed dwelling since the Department of Environmental Protection Coastal Area Facility Review Act regulations would prevent the location of the pool in the front yard (Atlantic Ocean side); and

WHEREAS, Mr. Gage then called Robert Burdick, PE, PP with offices at 1023 Ocean Road, Point Pleasant, NJ who has previously testified before this Board and whose credentials were accepted, testified as follows:

1. That he visited the Property and reviewed the survey and proposed site plan.

2. His visit to the Property indicates that there are single family residential dwellings on the lots directly to the north and south of the Property. The Atlantic Ocean is to the east and to the west of the Property across the street from East Avenue there are smaller single family homes on significantly smaller lots all located in the R-6A Zone.

3. There is an already existing single family dwelling on the Property and an existing free standing garage (an accessory structure). The existing house is 44.06' in height which exceeds the R-3B Zone maximum permitted of 35' by 9.06'. In addition the garage to be eliminated as proposed by this Application is a nonconforming structure in that it is located 2.9' from the northerly side yard where 10' is required and 9.6' from the rear yard setback requirement for accessory structures where 25' is required.

4. That the use of the Property for a single family dwelling conforms.

5. That the replacement of a conforming single family dwelling with a new single family dwelling results in no detriment.

6. The proposed elimination of the free standing garage results in the elimination of the existing nonconformities created by the garage structure.

7. That the proposed plans bring the Property into overall closer conformity with the R-3B Zone requirements.

8. That the design of the proposed new house creates a desirable and improved aesthetic impact and that the elimination of the garage creates a less intrusive impact than would the construction of the proposed swimming pool. The swimming pool would only require a 4' fence where the garage to be eliminated is 15' high.

- 9. That the proposed pool is consistent with the location of the pool to the property immediately to the south (25' from rear property line), but that it is not consistent with the pool location of the dwelling two houses to the south which is 50' from the rear property lines.

10. That the location of the pool outside the building envelope and within the rear yard setback is neither a substantial detriment to the zone plan or to the public good.

11. That the location of the pool within the rear yard setback is dictated by CAFRA requirements.

12. That the proposed plan for the Property will advance the public safety in that the new construction of the dwelling will meet all current building codes, flood and wind protection requirements.

13. That the 2.7' height variance for the roof of the proposed dwelling is justified because of the base first floor elevation of the VE12 Zone, that it reduces the height of the existing dwelling and that it is the same or less in height of the neighboring structures immediately to the north and south.

14. That the Master Plan of the Borough encourages new development which insures it is within the character of the neighborhood and he feels the new house does.

15. That the proposed plan meets the purposes of zoning as outlined in N.J.S. 40:55D-2 as follows:

b. the property will be upgraded to comply with the current codes and will better secure the Property from fire and flood

c. that the design will protect and promote private and public open space in that the lot coverage is compliant with the R-3B Zone requirements

i. that there would be an enhanced visual environment because the house as designed is of an attractive design, the nonconforming garage would be removed and the redesigned proposed landscaping would enhance the Property.

16. That on the basis of the above the variances required for the Property can 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; and

WHEREAS, the Board in recent years has undergone significant review of the Borough's Land Use Ordinances and the subjects of the height of dwellings and swimming pools were of considerable importance in that review. The Board decided that it should have input from its planner concerning this Application; and

WHEREAS, Thomas Planning Associates, LLC of Brielle, New Jersey served as a planning consultant to the Borough and to the Board through the most recent revision of the Master Plan, the Land Use Ordinances and the Reexamination; and

WHEREAS, Andrew Thomas is a partner in Thomas Planning Associates and was involved in the recent reviews and discussions concerning the revision of the Master Deed, the Land Use Ordinances and the Reexamination; and

WHEREAS, although the Board is thoroughly familiar with Mr. Thomas's credentials, it was determined that for purpose of the record they should be stated; and

WHEREAS, after being sworn Mr. Thomas indicated the following:

a. He has a Bachelor's Degree in Geography from Florida State University and a Masters Degree in Planning, also from Florida State University.

b. He is a Licensed Professional Planner in the State of New Jersey and is a member of the American Institute of Certified Planners.

c. He has prepared Master Plans, land use and planning studies, zoning ordinances and zoning maps, affordable housing plans, GIS planning maps, etc.

d. He has prepared conceptual designs for residential and commercial properties for developers in conjunction with engineers who do the final designs; and

e. He has testified as a planner before this Board and numerous municipal boards in Ocean and Monmouth Counties as well as other municipalities in the State and has served as a municipal planner for the Borough of Farmingdale, Monmouth Beach and Lower Township and his firm currently acts in that capacity for West Long Branch, Freehold, Manchester, Colts Neck, Allentown and Roosevelt; and

WHEREAS, he has visited the Property and neighborhood and testified as follows:

1. That he has reviewed the Master Plan, Zoning Ordinances, Reexamination Plan and the GIS mapping of the Borough.

2. That he is fully aware of the Plan proposed by the Applicant for the Property and is cognizant of the variances requested and the statutory criteria necessary under the Municipal Land Use Act (MLUL).

3. That he was present when Mr. Burdick testified on behalf of the Applicant.

4. That he believes the testimony in this matter more appropriately fits into N.J.S. 40:55D-70(c)2.

5. That he is not in agreement with Mr. Burdick's testimony as it relates to the pool, for the following reasons:

a. the overall purpose of yard setbacks is related to the purposes of zoning as outlined in the MLUL. Setbacks protect adjoining properties from intrusions of sound, intrusions of light and glare and provide for open space between buildings and structures.

b. In 2002, the Borough, through its engineer and planner, undertook a major project to comprehensively review all the developed and undeveloped parcels in the Borough to determine lot areas and frontages. The result was a land use plan that established 12 residential districts. The districts were established so that a minimum of 70 percent or more of the lots in each district were conforming. A land use element was adopted by the Planning Board in November 2002. The land use element became the basis for developing the new zoning districts maps and regulations. The 12 residential districts were adopted by Ordinance No. 465 on October 6, 2003 to be consistent with the Master Plan.

Since that time the Land Use regulations were codified in 2006 and the Borough has reexamined its Master Plan in a Report adopted in December 2007 as required by the Municipal Land Use Law.

From a planning perspective the Borough did exactly what it was supposed to do – analyze the existing conditions as the basis for the

Master Plan and then determine the zoning regulations for each zone district.

6. Another important consideration in application of the zoning district regulations is to consider the characteristics of the surrounding neighborhood. In this neighborhood there are several distinct characteristics:

a. East Avenue is a narrow one way roadway. The R.O.W. is 40 feet in width which is about 10 feet narrower than a standard residential roadway of 50 feet.

b. The properties to the east of East Avenue have buildings that front on the Ocean and to the rear on East Avenue, so they essentially have two front yards. However, the side of the house that faces East Avenue is treated as the rear yard in the zoning regulations. Residents use that portion of the yard for open space, parking area and as the entrance to the home.

c. There are several accessory garage buildings along East Avenue. There are 13 separate garages in the East Avenue neighborhood surrounding the subject property from Lyman Avenue to the Bay Head border on the Ocean side of the road.

d. Building locations are tight in this area. Lots along the Ocean are setback from the designated scarp line toward East Avenue, and the houses to the west of East Avenue are very small and narrow (with a width of approximately 70 ft. and depth of +/- 80 ft.). Homes on the west

side of East Avenue are approximately 10 feet from the East Avenue R.O.W.

7. That neighborhood characteristics were taken into consideration when determining the zoning regulations for this area.

a. Setbacks for front, rear and side were determined by measuring the building setbacks of existing buildings. Building setbacks were a basis, in part, for determining the zone districts.

b. One of the regulations the Borough implemented as a result of the comprehensive study was that pools must be located within the building envelope.

c. Another regulation that was implemented was that free-standing garages are permitted in the rear yard of the R-3B zone.

8. This application includes a request for variances that are not in keeping with the overall planning purposes of the Borough Zoning Ordinance in terms of building setbacks and the characteristics of the neighborhood. The Application is contrary to the zoning regulations developed by the Borough to create consistent zoning regulations for individual neighborhoods within the Borough.

The Applicant has not asked for a de minimis variance for the pool area and specifically they are asking for a 25 foot rear yard variance where 50 feet is required and only 25 feet is proposed.

9. Concerning the pool:

a. The proposed pool is 25 feet from the East Avenue R.O.W. and only 75 feet from the front of the house across the street. If the pool deck area is included in the overall pool development, the overall pool complex is located only +/- 61 feet from the front of the house across East Avenue.

b. There are two existing pools nearest to and south of the property along East Avenue in the rear yard (or in the yard closest to East Avenue). The one pool was built in 1971 and the other was in 1998 – which occurred before the 2002 Land Use Element and 2003 Zoning Ordinance went into effect.

c. He counted 7 pools out of 66 lots along East Avenue (10% of the properties). Some pools are located in the front yard, some in the rear yard, some on the side yard.

d. Having a pool in the rear yard is not the character of the neighborhood.

10. That there are planning issues to consider with pools as follows:

a. They are active recreation areas used by their owners and their guests mostly in the summertime. Pool activity can be noisy.

b. Pools have filters and pumps and some have heaters that run at specified times all of which also can be noisy.

c. If pools are separated from the house they have to be fully enclosed – which creates more impervious surface on the lot.

d. Single family homes and pools within the building envelope can be accomplished on properties in the R-3B zone since they have sufficient depth.

11. That he reviewed the proposed configuration of the building, pool, garage, porch and deck on the property and made the following comments:

a. The building envelope for the property is approximately 3,900 sq. ft. which is consistent throughout the neighborhood within the zone in which the site is located.

b. The size of the lot meets the zoning requirements for width and depth so there is no apparent hardship based on the size and shape of the lot and resulting building envelope.

12. That as to the building height variance, the proposed building height is substantially less than what is existing – 44.06 feet vs. 37.77 feet proposed. It is similar in height to the house to the north and less than the house to the south. The maximum height in the zone is 35 feet and the Applicant is requesting a variance of 2.77 feet. From a planning standpoint, in reviewing the existing home versus the proposed home and how it fits into the neighborhood there is not much he can disagree with the Application on this issue. The only thing he points out is the Applicant is taking down the existing home and potentially could construct a home in accordance with the ordinance.

13. That in his opinion, testimony for this Application did not satisfy the positive criteria required by the MLUL with special reasons why the design they chose to use (which includes two variances) is a better zoning alternative than not complying with the ordinance.

a. It was his opinion that the Application has not met the negative criteria. What is proposed is not consistent with nor will it enhance the Borough zone plan.

b. The proposed development of a pool at this location on the lot is inconsistent with the character of the neighborhood as delineated by the R-3B Zone District.

c. The proposed pool is eliminating open space in the rear yard by not meeting the setback.

d. Pools are active recreation uses that have the potential to create noise and the proposed location is especially close to the front of existing nearby houses across the street which is only approximately 10 feet from the roadway R.O.W.; and

WHEREAS, it should be noted that though not part of the record Mr. Thomas, Mr. Gage, Mr. Fiore, Mr. Melillo and Mr. Burdick engaged in a meeting to explore possible alternate locations for the swimming pool. No member of the Board took part in this discussion. The results of that discussion were reported by Mr. Gage to the Board and it was determined that they could not arrive at a possible alternative location in that Mr. Melillo informed the Board that any location eastward of the house would not be

approved by CAFRA and to move the pool into the building envelope would create a reduction in the size of the proposed house; and

WHEREAS, Chairman Henshaw opened the meeting for questions of the Applicant, the professionals and witnesses and there being none opened the meeting for comments or statements. The following statements were made:

1. Joseph DeAmicis residing at 941 Ocean Avenue indicates he is the chairman of the Mantoloking Environmental Commission of the Borough. The Commission is not in favor of the granting the variance for the construction of the pool outside the building envelope for the following reasons:

a. that this Property and the two properties to the south create major discharge on East Avenue and therefore, to the Bay.

b. the pool creates more discharge when it is located 25' from the rear property line (East Avenue side) than it would if it met the 50' setback requirement.

c. that the pavers, driveway and concrete apron will create unnecessary impervious surfaces and create unacceptable runoff.

Mr. Gage and Mr. Burdick questioned Mr. DeAmicis and countered the testimony as follows:

a. the maximum lot coverage of the proposed plan is 42.9% whereas 45% is permitted.

b. the plan as proposed meets the Borough Ordinance for Stormwater Management in that it provides for 1 cubic foot of storage per 4' of proposed

impervious and the State only requires 1 cubic foot of storage for 12' of proposed impervious.

- c. the driveway is graded to permeable areas.

William J. Corbett, Jr. residing at 958 East Avenue testified he believed the application would be a benefit. He likes the look of the proposed house especially in that the staggered roof lines are more preferable than what exists. He also believes the Applicant should get credit for reducing the height of the existing house and he would prefer to see the free standing garage removed and replaced by the pool. He has no objection to the location of the pool and he further believes the plan would be a good thing for the neighborhood; and

WHEREAS, Chairman Henshaw then closed the public portion of the meeting and asked for comments from the members of the Board. The following then ensued:

1. Ms. Nelson felt that the design of the house was very well done and would fit well in the neighborhood.

2. Mr. Hawkings complimented the architect on his design and although he likes to see compliance with the Ordinance he believes in this case the height variance is justified because it significantly reduces what exists and that it is of equal or lower height than the two immediately adjacent houses. He does have significant reservations concerning the location of the pool outside the building envelope.

3. Mr. Gillingham believes the arguments for the 2.77' building height variance are persuasive but the arguments for the pool location are not persuasive to him. He feels that the pool can be located within the building envelope even though it may reduce the size of the proposed house.

4. Mr. Witkowski is persuaded that the height can be granted under the circumstances presented by this Application, that the house design does not look excessive but the location of the pool creates a very large deviation from the Ordinance and gives him concern.

5. Mr. Thomas McIntyre believes the house as designed fits the character of the neighborhood and does not overwhelm.

6. Ms. Potter has no problem with the height of the proposed house and believes the variance can be granted without detriment. She also believes the design is beautiful.

7. Ms. White concurs with the opinions expressed by the other members.

8. Ms. Boughton agrees that the height variance is appropriate to be granted in this case.

9. Mr. Henshaw agrees that the proposed building height would not be an issue with him; and

WHEREAS, the Board after carefully considering the representations, testimony, exhibits and evidence of the Applicant's professionals and experts and having considered the testimony of the Board's planning consultant and having heard the comments of the interested property owners and the general public and all having made a site visit now make the following findings:

1. That the construction of the proposed house will promote a safer environment for the Applicant and for the Borough in that the new house will be constructed under updated and new construction standards designed to better withstand the effect of natural events.

2. That the new house constitutes an aesthetic benefit and a substantial upgrade to the visual environment of the neighborhood and the Borough and fits in with the character of the neighborhood.

3. That the location of the house sixty feet (60') from the scarp line (front setback) and from the rear property line will meet the setbacks of the R-3B Zone.

4. That the variance requested for 2.77' above the permitted 35' height, while it does exceed that which is permitted, will result in a reduction of the existing height nonconformity of 44.06' by 6.29'.

5. That while the Board is concerned about the enforcement of the Borough's height restrictions it understands that under certain circumstances that it becomes necessary to deviate from those standards. The Board recognizes that, in this case, the relevant elevations of the street, Property and flood hazard restrictions support the need for consideration of relief. In addition, the Board recognizes that the architect designed the interior ceiling heights to a reasonable and architecturally proper limit (9' first level, 9' second level and 8' third level).

6. That the proposed height of the new dwelling is the same height of the northerly house and less than the house immediately to the south.

7. That the existing house is substandard relating to the new FEMA guidelines concerning base flood elevation, hurricane protection and wind and water velocity criteria.

8. That the pool does not fit in with the general character of the neighborhood and that the variance to locate the pool outside of the building envelope and within 25' from the rear property line represents a significant deviation.

9. That as testified to by Mr. Thomas, the Board in its recent reviews of the Master Plan, Land Use Ordinances and Reexamination Plan spent considerable time on the subject of swimming pools and determined that the location of a swimming pool in the building envelope was critical to provide open space in the rear yard and that the setbacks as established were to protect adjoining properties from intrusions of sound and light and to provide for open space between buildings and structures.

10. That the construction of the pool in its proposed location would constitute a major intrusion into the rear yard setback and would require a significant deviation from the zoning requirements in the R-3B Zone.

11. That the construction of the pool would result in a substantial detriment to the public good due to its proximity to the properties on the west side of East Avenue and that it does not fit in with the character of the neighborhood and would constitute a substantial impairment of the intent and purpose of the Zoning Ordinances of the Borough which took into consideration in its passage the location of swimming pools and determined that they should be located within the building envelope.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Mantoloking based on the finding of facts specifically stated heretofore that on November 5, 2009 the Application of Theodore Fiore for the building height variance of 2.77' which is a deviation from Chapter XXX, Section 30.6.12 A and B and Appendices A and B which permit a 35' height can be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the Zoning Ordinance and Master Plan of the Borough of Mantoloking, and further the Board finds that the purposes of the Municipal Land Use Law (N.J.S. 40:55D-1 et. seq.)

and specifically N.J.S. 40:55D-2(b) (c) and (i) would be advanced and that the benefits of granting of the variances and deviations from the strict enforcement of the Zoning Ordinance would substantially outweigh any detriment on the following conditions:

1. That the Applicant obtain a building permit.
2. That the Applicant show the proposed sanitary sewer lateral to the existing cleanout.
3. That the Applicant provide construction details of road restoration, concrete sidewalk, curb and apron if any.
4. A separate zoning permit shall be obtained for any proposed fence.
5. A road opening permit shall be obtained for any work within the public right of way.
6. The Applicant furnish a copy of Ocean County Soil Conservation District Certification, if applicable.
7. The Applicant shall provide a Surface Water Management Plan to the Borough Engineer for his review and approval if requested.
8. The Applicant must submit proof of payment of all due taxes to the Borough of Mantoloking.
9. 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 receipt of the Resolution.
10. The Applicant shall obtain any and all necessary Federal, New Jersey (including any Coastal Area Facility Review Act [CAFRA] permit), 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 approval, 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 re-apply to the Board for approval of that change.

11. 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.

12. That the Applicant shall obtain a building permit within two (2) years of the date of this Resolution provided in Chapter XXX, Section 30-3.3c. In the event the Applicant does not obtain a building permit within the time prescribed, this Resolution shall be declared null and void.

13. Construction is to conform to the Architectural drawings and survey and plot plan submitted with this Application and presented at the Public Hearing of October 1, 2009.

14. Any modifications to the plans as set forth above must be reported to the Zoning Officer.

15. The testimony, deliberations and stipulations of 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.

16. 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 premises in question.

17. The terms, conditions and stipulations imposed upon the Applicant in this approval are an integral and material part of the actions of this Board in that the Board would not have voted affirmatively for said approval of the height variance without the imposition of the terms, conditions and stipulations contained in this resolution and on the record.

18. All the representations and statements made by the Applicant, as well as the Applicant's representatives and witnesses at the hearing on October 1, 2009, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance, shall be deemed a breach of this condition of approval and shall subject this Application to further review on this Board's own motion.

19. In the event the Board determines that it reasonably relied upon any misstatement or misrepresentation and same is material to the granting of the subject Application, then and in that case any approvals previously granted may be rescinded and any improvements at that time and place on the premises in question shall not be in compliance with the ordinances of the Borough of Mantoloking.

20. No clearing, grading or construction shall take place on the Property without a Development Permit.

21. No occupancy of the Property shall take place without a Certificate of Occupancy.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the variance to construct the proposed swimming pool requiring a deviation from Chapter XXX, Section 4.10h which requires a swimming pool to be constructed within the building envelope is denied for the reasons and findings herein.

MEETING OF OCTOBER 1
VOTE RELATING TO VARIANCE FOR SWIMMING POOL

	Moved	Seconded	Yes	No
G. Russell Henshaw				X
Richard R. Bradley				
Robert S. McIntyre				
D. Mark Hawkings		X		X
Stanley Witkowski				X
Evan S. Gillingham	X			X
Thomas McIntyre				X
Marilyn Potter				X
Jane G. White				X
Betsy Nelson (Alt.)				X
Denise Boughton (Alt.)				X

Absent: Richard R. Bradley
 Not Voting or Recused: Robert S. McIntyre

MEETING OF NOVEMBER 5, 2009

	Moved	Seconded	Yes	No
G. Russell Henshaw				✓
Richard R. Bradley				
Robert S. McIntyre				
D. Mark Hawkings		✓		✓
Stanley Witkowski				✓
Evan S. Gillingham	✓			✓
Thomas McIntyre				✓
Marilyn Potter				
Jane G. White				✓
Betsy Nelson (Alt.)				✓
Denise Boughton (Alt.)				✓

Absent: *Richard R. Bradley, Marilyn Potter*
 Not Voting or Recused: *Robert S. McIntyre*

MEETING OF OCTOBER 1
VOTE RELATING TO HEIGHT VARIANCE

	Moved	Seconded	Yes	No
G. Russell Henshaw			X	
Richard R. Bradley				
Robert S. McIntyre				
D. Mark Hawkings		X	X	
Stanley Witkowski			X	
Evan S. Gillingham	X		X	
Thomas McIntyre			X	
Marilyn Potter			X	
Jane G. White			X	
Betsy Nelson (Alt.)			X	
Denise Boughton (Alt.)			X	

Absent: Richard R. Bradley

Not Voting or Recused: Robert S. McIntyre

MEETING OF NOVEMBER 5, 2009

	Moved	Seconded	Yes	No
G. Russell Henshaw			✓	
Richard R. Bradley				
Robert S. McIntyre				
D. Mark Hawkings			✓	
Stanley Witkowski		✓	✓	
Evan S. Gillingham	✓		✓	
Thomas McIntyre			✓	
Marilyn Potter				
Jane G. White			✓	
Betsy Nelson (Alt.)			✓	
Denise Boughton (Alt.)			✓	

Absent: Richard R. Bradley, Marilyn Potter

Not Voting or Recused: Robert S. McIntyre

CERTIFICATION

I, D. MARK HAWKINGS, 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 5th day of November, 2009, and memorializes and confirms the actions taken by the Planning Board in approving in part and denying in part the request by Applicant for variance relief at the regular meeting held on October 1, 2009.

A handwritten signature in dark ink, appearing to read "D. Mark Hawkins", is written over a horizontal line.

D. MARK HAWKINGS,
Assistant Secretary