

RESOLUTION

HARTZBAND

WHEREAS, Mark and Lisa Hartzband, 104 Delaware Lane, Franklin Lakes, N.J. 07407 (hereinafter “Applicant”) have made Application to the Planning Board of the Borough of Mantoloking (hereinafter “Board”); and

WHEREAS, the Applicant is the owner of the property known as Block 26, Lot 5 and 5.01 on the Tax Map of the Borough of Mantoloking, Ocean County, New Jersey which is also known as 1217 Ocean Avenue, Mantoloking, New Jersey (Property); and

WHEREAS, the Property is in the R1 Zone of the Borough of Mantoloking; and

WHEREAS, the Applicant came before the Board on April 5, 2007 and made application for various variances which were approved and memorialized by a Resolution dated May 3, 2007, a copy of which is attached as Exhibit B-1. Said Resolution described in detail the relief sought by the Applicant, the findings of the Board, the decision of the Board and the conditions attached to said approval; and

WHEREAS, upon application for a pool zoning permit the Land Use Officer discovered that the plans submitted by Hartzband were not in accordance with the plans as submitted to the Board as part of its previous application on which the Board acted and approved; and

WHEREAS, the Applicant submitted a Pool Plot Plan in which the size of the pool and the material of the decking around the pool deviated from the plans previously considered by the Board; and

WHEREAS, the change of the original plans approved now necessitates this Application for the following three (3) variances; and

WHEREAS, Chapter XXX, Section 30-6.8 a and b and Appendix B provides for an allowable lot coverage in the R1 Residential Zone of 5,260 square feet whereas the Applicant proposes 5,774 square feet (514 square foot variance); and

WHEREAS, Chapter XXX, Section 30-6.11.b.7 requires all air conditioning units or HVAC units shall be located within the building envelope and the Applicant proposes to locate air conditioning units in the front yard setback; and

WHEREAS, Chapter XXX, Appendix B permits an 80% second floor habitable area to first floor habitable area and said ratio will be 145%; and

WHEREAS, the attorney for the Board pointed out that pursuant to the Municipal Land Use Law (MLUL) specifically N.J.S. 40:55D-70d(4) that “an increase in the permitted floor area ratio as defined in ...(C.40:55D-4)” would result in the Applicant having to make a special reasons variance or use variance application in which the zoning board would have exclusive jurisdiction. Floor area ratio is defined in the MLUL as “the sum of the area of all floors of buildings or structures compared to the total area of the site” (N.J.S. 40:55D-4). The Land Use Ordinance does not define its floor area ratio as it relates to the “total area of the site” but permits a ratio of permitted floor area of second, third and half stories to the next floor below. The attorney for the Board, John J. DeVincens, Esq. has ruled that the Borough Land Use Ordinance definition of floor area ratio does not meet the definition of the MLUL (N.J.S. 40:55D-70d(4) and N.J.S. 40:55D-4) and therefore, the Applicant is not required to pursue a special reasons or use variance and can proceed under N.J.S. 40:55D-70c; and

WHEREAS, the Applicant under N.J.S. 40:55D-70c(1) must 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 its case by N.J.S. 40:55D-70c(2) known as the flexible “c”. The Applicant must show that: 1. the Application applies to a specific piece of property; 2. that the 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, John J. DeVincens, Esq., the attorney for the Board ruled that this Application was an ancillary proceeding to the site plan filed by Applicant and that it

would be a matter where the Planning Board has jurisdiction and that the Board would hear this as a Planning Board which would be a nine member Board; and

WHEREAS, the following Board Members were present at the March 6, 2008 hearing on this matter: Chairman Henshaw, Messrs. Gillingham, Witkowski, Brown, Hawkings, Richardson and Ms. Potter and Ms. White; and

WHEREAS, the following Board Members indicated they made a site visit: Chairman Henshaw, Messrs. Gillingham, Witkowski, Brown, Hawkings, Richardson and Ms. Potter and Ms. White; and

WHEREAS, the following exhibits were marked at the meeting held on March 6, 2008:

1. The Resolution of this Board memorialized May 3, 2007 was marked as B-1 and is attached.

2. Correspondence of Thomas S. Guldin, P.E., Land Use Officer to Steven A. Pardes, Esq. dated December 27, 2007 was marked as B-2.

3. Revised Pool Plot Plan prepared by Lindstrom, Diessner & Carr revised to January 21, 2008 was marked as A-1.

4. Barlo & Associates correspondence dated January 21, 2008 to Thomas S. Guldin, P.E. with calculations concerning second floor habitable area to first floor footprint was marked as A-2.

5. Greenworks Environmental January 24, 2008 correspondence to Thomas S. Guldin, P.E. with copy of revised Pool Plot Plan was marked as A-3.

6. A Board with Proposed Alterations and Additions with Perspectives dated March 29, 2007 (Before & After) was marked as A-4.

7. A Board with additional Before & After Perspectives dated March 29, 2007 was marked as A-5.

8. Rendering showing stone level deck was marked as A-6.

9. The Applicant kept the Exhibits marked as A-4, A-5 and A-6.

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 (Article III; Section 8.2N) has been furnished; and

WHEREAS, Steven A. Pardes, Esq. of 1100 Arnold Ave., Point Pleasant Beach, N.J. 08742, represented the Applicant at the meeting of March 6, 2008; and

WHEREAS Mr. Pardes called Paul L. Barlo, AIA, of Barlo & Associates, 92 Mantoloking Road, Brick, N.J. 08723 who indicated to the Board that he was a 1979 graduate of the University of Notre Dame, that he is a licensed architect of the State of New Jersey (License C7498), that he is also a licensed professional planner in New Jersey and that he has testified many times before municipal agencies throughout New Jersey. The Board accepted Mr. Barlo's credentials and he testified as follows:

a. When the Applicant came in at the previous meeting on April 5, 2007 they were much more concerned with the design and configuration of the building. As construction commenced it was believed that the pool was too small and that the material of the deck needed change.

b. The difference of the April 5, 2007 plan and the plan being considered now is that the size of the pool increases from 210 square feet to 409 square feet and that the

pool decking which was originally to be wood has been changed to a stone deck set in concrete and heated.

c. That the changes in the plan create a lot coverage variance of 514 square feet (the previous application did not require a lot coverage variance), an increase from the second floor habitable area ratio from the previous proposed of 111% to 145% (80% permitted) and the location of the air conditioning equipment on the north side of the house within the front yard setback.

d. The second floor habitable area is 3,159 square feet while the first floor footprint including the overhang is 2180 square feet or 145% (3,159 sq. ft. divided by 2,180 sq. ft.). This creates the anomaly in that the Applicant could create significant more first floor building footprint and reduce the 145% to a number closer to 80%. The Applicant does not wish to add additional footprint or building area.

e. The present plan calls for a total lot coverage of 5,774 square feet where 5,260 is permitted. However, 11,250 square feet (45% of lot area) is the permitted total impervious lot coverage while the Applicant proposes 6,183 square feet or 24.7%.

f. He believes there is no detriment to the change in the size of pool, the deck or the deck material as it relates to light, air and open space.

g. The stone deck is no higher than the previously proposed wood deck.

h. Any water generated on site from roof run off or rain would be contained within the site and the change of the wood deck to a stone deck would have an insignificant and nearly imperceptible impact.

i. Relating to the location of the air conditioning equipment it can be moved west toward Ocean Avenue and put within the building envelope and removed from the front yard setback. This would eliminate the requested variance.

j. There is no detrimental visual impact by the changes requested and no negative affect on light, air and open space. There is no negative impact to the zoning ordinance. Although there appears to be a significant impact on the percentages and ratio's those differences are greatly skewed by different factors.

(As an example of this and during the testimony of Mr. Barlo, Thomas S. Guldin, P.E., the Land Use Officer responded to a question by Mr. Richardson that the wooden deck attached to the house is considered as part of the first floor footprint and therefore the 80% second floor ratio is based on a larger footprint. Changing the material to a stone decking, even though it would be the same size and not over eight inches in height, would not be considered as part of the first floor footprint and therefore the second floor to first floor ratio will significantly increase even though there is no functional or size difference. Mr. Guldin further explained that a wood deck is a structure while a stone deck is not considered a structure. Mr. Guldin also explained that the change from a wood deck to a stone deck even though under eight inches in height increases both lot coverage and maximum lot coverage).

k. The pool equipment and heater will be kept in the garage or within an enclosed storage area.

WHEREAS, Mr. Pardes called as his next witness Jeffrey L. Carr of Lindstrom, Diessner & Carr, 136 Drum Point Road, Suite 6, Brick, N.J. 08723 and upon his oath and being duly sworn testified as follows:

a. That he has a Bachelors of Science and a Masters of Science degree from the New Jersey Institute of Technology. He is a licensed professional engineer of New Jersey (Lic. No. 28158) and a New Jersey licensed professional planner (Lic. No. 2764). He has practiced engineering for over thirty (30) years and has appeared before many administrative boards to provide expert engineering and planning testimony. His credentials were accepted and he then gave testimony on this Application.

b. He was responsible for the storm water management aspect of the plan (A1) and the new plan proposed takes into consideration some drainage concerns not covered in the previous plan.

c. This plan provides for an impervious lot coverage of 24.7% where the Applicant would be permitted to have a 45% impervious coverage. The change from the previously proposed wooden deck to the now proposed stone deck increases runoff imperceptibly.

d. This plan has been designed to hold all runoff from roofs and impervious surfaces on the Property.

e. In response to a question previously asked by Mary S. Trachtenberg, 1212 Ocean Avenue as to what will happen to her property if a catastrophic storm occurs, Mr. Carr responded that in the event of a 100 year storm (7 ½" of rain per hour) and with the attendant wind velocities and water surges all properties in the area would be affected. The water from the ocean in the event of such a storm is not runoff water being produced by the improvements on the Applicant's Property. The design of this Property cannot deal with the tidal action, the affect of the tides, moon and wind and this Property cannot be designed to withstand such impacts. A property can be designed to handle 7 ½" of

rain an hour but in this case it cannot be designed to handle the ocean waves coming over the dunes.

f. The change from the wood deck (as per the April 2007 plan) to the stone deck adds minimal runoff. Nonetheless, certain landscape designs concepts have been incorporated in the new plan. Primarily these include what are known as two “rain gardens” which are placed on the westerly side of the Property and are designed to be four (4’) feet lower than the area of the pool. These “rain gardens” are designed to be a depressed area heavily landscaped with native species to promote both improved percolation and a positive visual effect. In addition, the Property can be graded so as to pitch it toward the “rain gardens” to minimize a funnel effect.

g. The Property can be easily designed to meet the Borough requirements to handle a two (2) year storm of 2.3” of rain per hour and this will be done for this Property.

h. The top elevation of the “rain gardens” is 7.3’ and there is a natural higher elevation between the “rain gardens” and Ocean Avenue and that will be maintained.

WHEREAS, the Board was previously informed through counsel that the Applicant has already obtained its Coastal Area Facility Review Act (CAFRA) permit; and

WHEREAS, the Chairman opened the meeting to questions or statements from any interested party to this Application and the following came forward:

1. Mary S. Trachtenberg of 1212 Ocean Avenue questioned the affect of a hurricane on her property as it relates to the improvements proposed by the Application.

This question was answered by Mr. Carr and is included in a recapitulation of his testimony.

2. Walter Bray of 1216 Ocean Avenue indicated:
 - a. He was not opposed to the location of the air conditioning units.
 - b. He believed changing the wood deck to a stone deck creates more impervious surface.
 - c. Believes that the Board should not consider granting the additional lot coverage.

WHEREAS, the Chairman, Mr. Henshaw read a letter from the Environmental Commission dated February 6, 2008 indicating its opposition to granting the requested variances.

WHEREAS, the Board after carefully considering the representations, testimony, exhibits and evidence of the Applicant, their expert and having provided an opportunity for adjoining or interested property owners and the general public to provide testimony and evidence and having considered those comments makes the following findings:

1. That the lot coverage variance of 514 square feet (where none was requested in the previous application) is due in part to the change in the deck material from wood to stone which creates a definitional coverage issue though not an actual increase in coverage.
2. That the impervious lot coverage of 6,183 square feet or 24.7% is substantially lower than the permitted 11,250 square feet and 45%.

3. That the second floor habitable area ratio to first floor of 145% is a skewed number in this case in that the wood deck previously proposed would be considered part of the first floor area on which the ratio would have been calculated, but the stone deck would not be considered as part of the first floor footprint even though the same size and not above eight inches (8") in height. Additionally the Applicant could have added first floor living space which would then have reduced the 145% ratio.

4. This plan, as opposed to the April 5, 2007 approved plan, has some significant and improved landscape features which promote the retention of rain and runoff on the Property. These include the addition of two (2) "rain gardens" each of which is designed to capture water and increase on site percolation. In addition these "rain gardens" will add an aesthetic benefit to the Property and the Applicant has agreed to use native plants and vegetation in the "rain gardens" and in the general landscaping of the Property.

5. That the Applicant has agreed to maintain the natural topography west of the "rain gardens" between the "rain gardens" and Ocean Avenue. That elevation is approximately a foot higher and will also aid in keeping the rain and runoff on the Property.

6. That the rain water and runoff as represented by the Applicant's professionals will be kept and contained on the Property.

7. That the change in the wood deck to a stone deck would have an insignificant impact on runoff.

8. That the Applicant cannot control the tidal affect or wind and velocity on the Ocean water in the event of a catastrophic storm.

9. That the Applicant's professionals have represented that the site has been engineered and designed to meet the Borough requirements to handle a two (2) year storm of 2.3" of rain per hour.

10. That the Applicant has agreed to eliminate the need for a variance for the location of the air conditioning equipment in the front yard setback by shifting the equipment in a westerly direction and placing it within the building envelope and out of all setback areas.

11. The Board discussed the Environmental Commission Letter and believed the Commission did not fully comprehend the skewed numbers of the variances requested.

12. That the change of the wood deck to a stone deck and the increase in the size of the pool does not present a substantial detriment to light, air and open space and does not have any negative visual impact.

13. The variances requested can be granted without substantial impairment to the intent and purpose of the Zoning Ordinances and Master Plan of the Borough nor any substantial detriment to the public good.

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 April 3, 2008 the Application of Mark and Lisa Hartzband for the variances stated hereinafter can be granted in part, 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 (specifically N.J.S. 40:55D-2) and the Ordinances of the

Borough of Mantoloking would be advanced by granting a deviation from the requirements of the Zoning Ordinance of the Borough of Mantoloking on the following conditions:

1. That the Applicant obtain a pool permit, a building permit and a zoning permit as necessary.
2. A separate zoning permit shall be obtained for all proposed fences.
3. A road opening permit shall be obtained for any work within the public right of way.
4. Furnish a copy of Ocean County Soil Conservation District Certification, if applicable.
5. The Applicant shall provide a Surface Water Management Plan to the Borough Engineer for his review and approval if requested.
6. The Applicant shall comply with all submissions and representations made before the Board or were made by their professionals at the March 6, 2008 meeting and in their Application.
7. The Applicant must submit proof of payment of all taxes due to the Borough of Mantoloking at the time of the adoption of the Resolution.
8. 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.
9. The Applicant shall obtain any and all necessary Federal, New Jersey (including any Coastal Area Facility Review Act [CAFRA] permit), (a copy of the already obtained permit shall be provided to the Secretary of the Board) 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.

10. 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.

11. That all conditions included in the Resolution memorialized on May 3, 2007 (Exhibit A1) unless modified by this Resolution shall remain in full force and effect.

12. That the variance requested for the location of the air conditioning units outside the building envelope and within the front yard setback will be withdrawn. The Applicant will relocate the air conditioning units to a location within the building envelope and within all setbacks and will show such new location on any plan submitted for a zoning or building permit.

13. That the Applicant will utilize native plants and species within the “rain gardens” and in doing any landscaping on the Property.

14. That the Applicant will grade the Property so that it pitches towards the “rain gardens” so as to ameliorate any tunnel effect of runoff from the higher elevations on the east to Ocean Avenue on the West. In addition the driveway will remain composed of gravel and will be humped in the middle to divert any runoff to the “rain gardens.”

15. That the Property be designed to handle and contain all runoff on the Property which may be created by a 2 year storm event (2.3”/hour).

16. That the natural topography of the Property between the top elevation of the “rain garden” (7.3”) and Ocean Avenue be increased from 8.0’ to 8.3’.

NOW THEREFORE, BE IT FURTHER RESOLVED that the following variances are approved:

1. A variance of 514 square feet of allowable lot coverage where Chapter XXX, Sections 30-6.8.a and 30-6.8.b and Appendix B which permits 5,260 square feet of lot coverage and the Applicant has requested 5,774 square feet.

2. To allow 145% second floor habitable area to first floor habitable area where such ratio permitted is 80% by Chapter XXX, Appendix B.

3. Note: The Applicant requested a variance to permit the location of the air conditioning units outside the building envelope and in the front yard setback in violation of Chapter XXX, Section 30-6.11.b.7. During the course of this meeting the Applicant agreed to move the air conditioning equipment westerly and within the building envelope thus obviating the necessity for consideration of this matter for a variance.

March 6, 2008 Meeting

MOVED BY: Gillingham

SECONDED: Hawkings

THOSE IN FAVOR: 8

THOSE OPPOSED: 0

THOSE ABSENT OR RECUSED: Bradley, McIntyre, Wagner

THOSE NOT VOTING:

	<u>YES</u>	<u>NO</u>
Nebel	_____	_____
Witkowski (designee)	<u> X </u>	_____
Henshaw	<u> X </u>	_____
Brown	<u> X </u>	_____
Bradley (absent)	_____	_____
Gillingham	<u> X </u>	_____
McIntyre (absent)	_____	_____
Hawkings	<u> X </u>	_____
Richardson	<u> X </u>	_____
Potter	<u> X </u>	_____
Wagner (Alt.) (absent)	_____	_____
White (Alt.)	<u> X </u>	_____

Memorialization of Resolution

April 3, 2008

MOVED BY: Potter

SECONDED: Hawkings

THOSE IN FAVOR: 6

THOSE OPPOSED: 0

THOSE ABSENT OR RECUSED: Witkowski, Bradley, Wagner

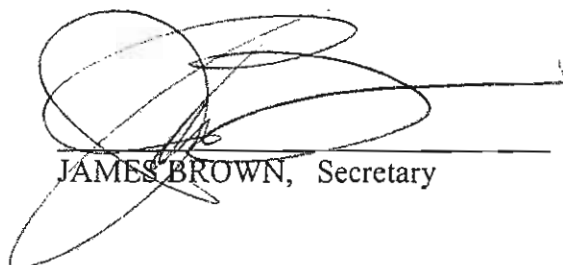
THOSE NOT VOTING: McIntyre, Gillingham*

* - Arrived after vote

	<u>YES</u>	<u>NO</u>
Nebel	_____	_____
Witkowski (designee)	_____	_____
Henshaw	<u> X </u>	_____
Brown	<u> X </u>	_____
Bradley (absent 3/6 mtg.)	_____	_____
Gillingham	_____	_____
McIntyre (absent 3/6 mtg.)	_____	_____
Hawkings	<u> X </u>	_____
Richardson	<u> X </u>	_____
Potter	<u> X </u>	_____
Wagner (Alt.) (absent 3/6 mtg.)	_____	_____
White (Alt.)	<u> X </u>	_____

CERTIFICATION

I, JAMES BROWN, 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 3rd day of April, 2008, and memorializes and confirms the actions taken by the Planning Board in approving the Applicant and its attendant variance at the regular meeting held on March 6, 2008.



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

JAMES BROWN, Secretary