

**RESOLUTION
2014 – 006
DIANE KING**

WHEREAS, Diane King, 1212 Avenue of the Americas, 7th Floor, New York, NY 10036 and 1005 East Avenue, Mantoloking, New Jersey 08738 (herein referred to Applicant or King) made Application (2014-006) to the Mantoloking Planning Board (Board); and

WHEREAS, the Applicant is the owner of the Property which is the subject of this Application and known as Block 5, Lots 4 and 4.01 on the Tax Map of the Borough of Mantoloking and also known as 1005 East Avenue, Mantoloking, New Jersey 08738; and

WHEREAS, the Property is in the R-3C Zone of the Borough; and

WHEREAS, on July 21, 2015, Barbara Allen Woolley-Dillon, P.P., A.I.C.P., the Borough Zoning Official/Land Use Administrator issued a third letter to Bruce M. Sattin, Esq., Szaferman Lakind, 101 Grovers Mill Road, Suite 200, Laurenceville, New Jersey 08648, the Attorneys for Applicant, which letter was a formal Certification of Completeness (marked as B-1); and

WHEREAS, said Certification of Completeness indicates, inter alia, the following:

“The original plans submitted to the Borough indicated that the at-grade deck located between the dwelling and the southerly lot line were an “existing non-conforming condition.” Since the at-grade deck was being elevated as part of the house it was believed by the applicant’s professionals that this existing non-conforming condition would be “grandfathered” and not require additional variance relief. This does not appear to be the case.

The original plans submitted to the Borough in early 2014 indicated that there was an existing at grade deck located between the dwelling and the southerly property line. The existing dwelling is located at a setback of ten feet (10’) on the southerly side of the property. This is minimum required side yard setback for this zoning district. The Zoning Ordinance does not permit decks or walkways to be located in the side yard setbacks. The Survey prepared by William J. Fiore, Inc., dated January 10, 2005 indicates that there was no walkway or “deck” of any kind (either at-grade or above grade) located between the dwelling and the southerly property line.

The Zoning Office has records relating to Zoning Permits dating back to at least 1994. This office has no record of issuing any Zoning Permits for a deck or walkway in the southerly side yard – between the dwelling and property line. There is no record of any variance application being submitted to or approved by the Joint Land Use Board of the Borough of Mantoloking (Board) relating to a “deck” or walkway in the southern side yard setback.

The walkway or at grade deck appears to have been installed after the 2005 Survey was performed. There are no records of any approvals – from either the Zoning Official, Joint

Land Use Board, or Construction Official – relating to the installation of a “deck” or walkway in the side yard setback. Since this improvement was never officially approved at any level by the Borough, this non-conforming side yard setback cannot be considered as one that is “lawfully existing” on the property. Therefore, the applicant **MUST** seek variance relief from the Board to allow the above grade deck that spans the southern side of the dwelling and extends out thirty-five feet (35’) beyond the Ocean side façade of the building to remain as part of the improvements shown on the plan.

The deck area shown near the East Avenue side of the property (covered with a roof) was also not shown on the 2005 Fire Survey. This improvement cannot be located any closer than ten feet (10’) from the southern property line. This office has no record of any approvals that would permit the proposed improvements to encroach approximately five feet (5’) into the minimum required side yard setback of ten feet (10’). Again, since this improvement was never officially approved at any level by the Borough, this non-conforming side yard setback cannot be considered as one that is “lawfully existing” on the property. Therefore, the applicant **MUST** seek variance relief from the Board to allow the above grade deck with a roof located on the western (East Avenue) side of the dwelling to remain as part of the improvements shown on the plan”; and

WHEREAS, Ms. Dillon concluded that the following variances would be required:

- Minimum required front yard and/or average front yard setback for the deck – sixty feet (60’) is required or the average setback of the dwellings on lots located within 200 feet of the subject property, located on the same side of the street, excluding the subject parcel or approximately sixty-five feet (65’) is required, where just over thirty-eight feet (38.17’) is proposed for the existing deck. One of the former decks was located at a setback of forty feet (40’) from the Dune Line.
- Minimum required side yard setback for the deck – ten feet (10’) is required where five feet (5’) is proposed for the existing decks.
- Maximum Permitted Lot Coverage – a maximum of thirty percent (30%) Lot Coverage for a typical lot size of 12,000 square feet is permitted with a sliding scale approach taken for larger lots. Based on the size of the existing lot, a maximum of 3,832 square feet is permitted where 2,640 square feet existed and 5,260 square feet is proposed.

However, as the meeting progressed it became clear that due to different information contained on exhibits submitted with the Application that several additional variances would be needed to include:

- The expansion of a non-conforming structure, either horizontally or vertically, pursuant to Chapter XXX, Section 30-6.5.
- The deck on the north side of the house is required to have a ten (10) foot sideyard setback and 9.9’ is proposed.

- The southwest covered deck of 5'x9' requires a ten foot (10') side yard setback and five foot (5') is provided; and

WHEREAS, it became obvious during the testimony that the Applicant was dealing with different sets of surveys and plans by different professionals and it was extremely difficult to reconcile what occurred; and

WHEREAS, although submitted by the Applicant with its Application it is here necessary to outline the plans and surveys:

1. Mellilo Architecture Addition and Alterations for The King Residence A-2, Sheet 3 of 9 showing South and West Elevation dated March 12, 2014.
2. Mellilo Architecture Addition and Alterations for The King Residence A-1, Sheet 2 of 9 showing Floor Plan dated April 21, 2014.
3. Mellilo Architecture Addition and Alterations for The King Residence Sheet A-1.2 showing First Floor Plan, Sheet A-2 showing South and West Elevations and Sheet A-3 showing North and East Elevations all dated June 29, 2015.
4. John W. Ford, P.E., Variance Plan for 1005 East Avenue, Lot 4, Block 5 on the Borough of Mantoloking Tax Map, Project 26142 dated October 21, 2014.
5. William J. Fiore, Inc., Building Under Construction Survey for 1005 East Avenue, Lot 4, Block 5 on the Borough of Mantoloking Tax Map dated June 5, 2015.
6. William J. Fiore, Inc., Survey Plat, Lot 4, Block 5 on the Borough of Mantoloking Tax Map, Project No. 16775 dated January 10, 2005, with Lot Coverage Calculation (prior to Sandy).
7. William J. Fiore, Inc., Survey Plat, Lot 4, Block 5 on the Borough of Mantoloking Tax Map, Project No. 16775 (no date), with Lot Coverage (Post Sandy).
8. John W. Ford, P.E., L.S., Grading/Plot Plan, Lot 4, Block 5 on the Borough of Mantoloking Tax Map dated August 12, 2013 revised to March 17, 2014; and

WHEREAS, in addition to the immediate above the only matters entered into the record were a photorealistic picture of the house looking west from the Ocean and an inspection of the pilings for the rear and front deck dated July 25, 2014 subject and contingent upon obtaining zoning approval; and

WHEREAS, in order to prove its case and be granted the variance relief being requested above the Applicant under N.J.S.A. 40:55D-70c, must if the 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.

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 and 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 a purpose of zoning as stated in N.J.S. 40:55D-2 and the undue hardship (the "positive criteria").

The Applicant can also choose to prove its case by N.J.S. 40:50D-70c(2) known as the flexible "c". The Applicant must show that : 1) the Application applies to specific piece of property; 2) that the purpose of the MLUL would be advanced by the deviation from the requirements of the zoning ordinances; 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, 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, the following Board Members were present at the meeting of August 6, 2015 at which this matter was heard: Chairman Witkowski, Ms. Jane White, Ms. Denise Boughton, Ms. Susan Laymon, Ms. Elizabeth Nelson, Messrs. Steve Gillingham, Robert McIntyre, Mark Hawkings, Courtney Bixby and Michael Duggan; and

WHEREAS, the Applicant was represented at the hearing by Thomas J. Manzo, Esq., Szaferman Lakind, 101 Grovers Mill Road, Suite 200, Laurenceville, New Jersey 08648 and after indicating that Ms. King purchased the Property in 2004 and believed that it was a pre-existing valid non-conforming use called his first witness; and

WHEREAS, Joseph Longo of Abatare Builders, Inc., 92 Mantoloking Road, Brick, New Jersey, who was duly sworn and testified as follows:

1. He was in charge of the construction done on the King residence which essentially was to raise the existing walkway on the south side of the Property from an on grade to an elevated wooden sidewalk which ran five feet (5') by forty-six feet (46') and was even with the first floor level.

2. He believed a permit was issued for the 5'x46' deck and the pilings for the rear and front deck and produced an Inspection Report dated July 25, 2014, issued by the

Borough. However, he admitted that upon reading the Report it clearly indicated it was contingent on zoning approval which was never obtained.

3. It was here that Mr. Manzo asked to formally amend this Application to include the five foot (5') south side yard setback where ten feet (10') was required and for the two foot (2') projection of the chimney into the deck where 12" is permitted; and

4. He also said that after Super Storm Sandy there were two decks at two different levels and that the on grade rear deck was raised and expanded and a new front yard (Oceanside) raised deck was created; and

5. Here, Ms. King (being sworn) indicated the original on-grade south side sidewalk consisted of flagstones and was in very bad shape; and

6. That there were two sets of Plans, one prepared by the architect and one prepared by the surveyor and structural engineer. The Plans on site and on which he followed were those prepared by the surveyor and structural engineer. The architectural plans were the Plans to be used. This was later confirmed by the architect, Michael Mellilo; and

WHEREAS, Mr. Manzo called as his second witness, Michael Mellilo, AIA, N.J. License AI 10928, 402 Higgins Avenue, Brielle, New Jersey 08730 whose credentials were accepted, testified as follows:

1. That he was the design architect for the King residence. He was not retained to inspect the ongoing building progress but visited the site periodically; and

2. That the Plans that were to be used for building were the architectural plans and not those of the structural engineer and surveyor; and

3. That the work (pilings and decks) was completed when he first found out the wrong plans were used; and

WHEREAS, Mr. Manzo then called Allison Coffin, P.P., A.I.C.P., of James W. Higgins Associates, 823 Est Park Avenue, Ocean, NJ 07712 who being duly sworn and her credentials accepted testified as follows:

1. That the Application meets the following purposes of zoning (N.J.S. 40:55-2 et. seq.).

a) and b) the raising of the deck would promote and secure safety from flood.

c) would provide adequate light, air and open space.

i. provide and promote a desirable visual environmental in that the decks break up the façade and are consistent with the house directly to the south; and

2. The decks would promote more availability for outdoor living and the south side elevated deck would provide access to the doors on the first floor of habitable living space.

3. Decks are common along the Oceanside.

4. The coverage does not exceed total Lot coverage.

5. That the variances requested can be granted without substantial detriment to the public good or substantial detriment to the ordinances and Master Plan of the Borough; and

WHEREAS, Ms. Witkowski opened the meeting for comments and questions and Meryl Gonchar, Esq., of Greenbaum, Smith & Rowe came forward and indicated she was the attorney for Ms. Shreyer, Block 5, Lot 5, the house directly south to that of Ms. King and that her Client supports the approval of the requested relief; and

WHEREAS, the following comments and findings were made by Members of the Board:

1. Robert McIntyre. The only variance he could support was for the north deck sideyard setback where ten feet (10') is required and 9.9' is proposed. He believes that the lot coverage created by the decks is excessive.

2. Susan Laymon. Believes the overall lot coverage, the reduced front yard setback and the deck on the east side create an overbuilt condition. This sentiment was essentially also voiced by Chairman Witkowski, Michael Duggan, Denise Boughton, Elizabeth Nelson, Joseph Daly and Mark Hawkings.

3. Steve Gillingham. Was troubled by the circumstances that allowed the building of such an elaborate project without approvals.

4. Jane White. Feels that a 37% over permitted lot coverage is overwhelming and cannot be supported.

5. Courtney Bixby. The mistakes made were those of Applicant's professionals which resulted in the requested variance relief; and

WHEREAS, the Applicant's professionals provided no credible evidence as to why the improvements undertaken were done without obtaining any approvals from the Borough of Mantoloking; and

WHEREAS, despite not obtaining the requisite approvals there was no showing that even if the builder utilized the appropriate Plan that the building would have conformed; and

WHEREAS, there is no clear connection between the claimed lot conditions and the alleged mistakes; and

WHEREAS, the hardship has been created by the acts, and omissions and negligence of the owner and her professionals and was self-created. Undue hardship can have no application where the owner or the professionals are responsible for the hardship and not one imposed by the terms of the Ordinance; and

WHEREAS, the Applicant had no right to build without first obtaining the necessary permits nor obtaining or applying for a variance; and

WHEREAS, the Applicant after the fact and construction being completed cannot belatedly request variance relief since such conduct can lead to unconscionable results; and

WHEREAS, a separate vote on each of the variances requested by Applicant was taken which resulted in a unanimous approval of the north side yard variance where ten feet (10') was required and 9'9" was provided and a unanimous vote to deny the following:

a) Minimum required front yard and /or average front yard setback for the deck – sixty feet (60') is required or the average setback of the dwellings on lots located within 200 feet of the subject property, located on the same side of the street, excluding the subject parcel of approximately sixty-five feet (65') is required, where just over thirty-eight feet (38.17') is proposed for the existing deck. One of the former decks was located at a setback of forty feet (40') from the Dune Line.

b) Minimum required side yard setback for the deck – ten feet (10') is required where five feet is proposed for the existing decks.

c) Maximum Permitted Lot Coverage – a maximum of thirty percent (30%) Lot Coverage for a typical lot size of 12,000 square feet is permitted with a sliding scale approach taken for larger lots. Based on the size of the existing lot, a maximum of 3,832 square feet is permitted where 2,640 square feet existed and 5,260 square feet is proposed.

d) The expansion of a non-conforming structure, either horizontally or vertically, pursuant to Chapter XXX, Section 30-6.5.

e) The deck on the north side of the house is required to have a ten foot (10') sideyard setback and 9.9' is proposed.

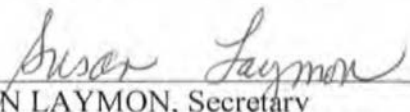
f) The southwest covered deck of 5'x9' requires a 10' side yard setback and 5' is provided; and

NOW, THEREFORE, for the facts and reasons above, the Mantoloking Planning Board finds that the relief requested by the Applicant cannot be granted without subsequent detriment to the public good and would substantially impair the intent and the purpose of the Zone plan and ordinances of the Borough and on this 3rd day of September, 2015 denies the relief as requested by the Applicant.

NOW BE IT FURTHER RESOLVED, that Resolution be referred to the Mayor and Council of the Borough of Mantoloking for any action it deems necessary as a result of the Applicant's conduct in building without necessary zoning approval or permits as outlined in Ms. Dillion's letter of July 21, 2015.

CERTIFICATION

I, Susan Laymon, 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 September, 2015, and memorializes and confirms the actions taken by the Planning Board in now approving in part and denying in part the request by Applicant for relief at the regular meeting held on August 6, 2014.



SUSAN LAYMON, Secretary

**MEETING OF AUGUST 6, 2015
TO PREPARE A RESOLUTION TO APPROVE THE NORTH SIDEYARD
SETBACK VARIANCE WHERE 10' IS REQUIRED AND 9'9" IS PROPOSED**

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

Absent :

Not Voting or Recused:

**MEETING OF SEPTEMBER 3, 2015
VOTE TO APPROVE THE NORTH
SIDEYARD SETBACK VARIANCE WHERE 10' IS REQUIRED AND 9'9" IS
PROPOSED**

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

Absent :

Not Voting or Recused:

**MEETING OF AUGUST 6, 2015
TO PREPARE A RESOLUTION TO DENY**

a) Minimum required front yard and /or average front yard setback for the deck – sixty feet (60') is required or the average setback of the dwellings on lots located within 200 feet of the subject property, located on the same side of the street, excluding the subject parcel of approximately sixty-five feet (65') is required, where just over thirty-eight feet (38.17') is proposed for the existing deck. One of the former decks was located at a setback of forty feet (40') from the Dune Line.

b) Minimum required side yard setback for the deck – ten feet (10') is required where five feet is proposed for the existing decks.

c) Maximum Permitted Lot Coverage – a maximum of thirty percent (30%) Lot Coverage for a typical lot size of 12,000 square feet is permitted with a sliding scale approach taken for larger lots. Based on the size of the existing lot, a maximum of 3,832 square feet is permitted where 2,640 square feet existed and 5,260 square feet is proposed.

d) The expansion of a non-conforming structure either horizontally or vertically pursuant to Chapter XXX, Section 30-6.5.

e) The deck on the north side of the house is required to have a ten foot (10') sideyard setback and 9.9' is proposed.

f) The southwest covered deck of 5'x9' requires a 10' side yard setback and 5' is provided.

**A SEPARATE VOTE WAS TAKEN ON EACH BUT THE RESULTS WERE
IDENTICAL**

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

Absent:

Not Voting or Recused:

**MEETING OF SEPTEMBER 3, 2015
TO DENY**

a) Minimum required front yard and /or average front yard setback for the deck – sixty feet (60') is required or the average setback of the dwellings on lots located within 200 feet of the subject property, located on the same side of the street, excluding the subject parcel of approximately sixty-five feet (65') is required, where just over thirty-eight feet (38.17') is proposed for the existing deck. One of the former decks was located at a setback of forty feet (40') from the Dune Line.

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c) Maximum Permitted Lot Coverage – a maximum of thirty percent (30%) Lot Coverage for a typical lot size of 12,000 square feet is permitted with a sliding scale approach taken for larger lots. Based on the size of the existing lot, a maximum of 3,832 square feet is permitted where 2,640 square feet existed and 5,260 square feet is proposed.

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e) The deck on the north side of the house is required to have a ten foot (10') sideyard setback and 9.9' is proposed.

f) The southwest covered deck of 5'x9' requires a 10' side yard setback and 5' is provided.

**A SEPARATE VOTE WAS TAKEN ON EACH BUT THE RESULTS WERE
IDENTICAL**

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

Absent:

Not Voting or Recused: