

**AMENDED
RESOLUTION
2013 – 0006
ROSE**

WHEREAS, ADAM R. ROSE (referred to as Rose or Applicant), P.O. Box 657, Cross River, New York 10518 and 957 Ocean Avenue, Mantoloking, New Jersey 08723 has made Application to the Borough of Mantoloking Planning Board (2013 – 0006); and

WHEREAS, the Applicant is the owner of the property for which variance relief is requested which property is known as 957 Ocean Avenue, Mantoloking, New Jersey 08738 which is also known as Block 8, Lot 16 on the Tax Map of the Borough of Mantoloking (Property); and

WHEREAS, the Property is in the R6A Zone of the Borough of Mantoloking; and

WHEREAS, the house that is located on the Property, although its entrance is facing Newman Place, its actual front is considered Ocean Avenue; and

WHEREAS, on August 26, 2013, Barbara Allen Wooley-Dillon, P.P., AICP, the Land Use Administrator of the Borough of Mantoloking issued a letter to William T. Gage, Esq., the Attorney for the Applicant which was marked B-1 at the meeting; and

WHEREAS, subsequent to the issuance of the letter and after discussion with the Applicant's professional the plans were revised to reduce the variances requested to:

- a. Minimum required front yard setback where the greater of fourteen feet (14') or the average front yard setback of the properties within 200 feet is required which in this matter has been determined to be 21.86' and 16.08 is proposed from the westerly Property line (Ocean Avenue) to the existing air conditioning/condenser unit and the proposed generator (Units); and
- b. Maximum permitted encroachment into a yard area by ordinary projections from a building where certain architectural features of a building such as sills, chimneys, flues and eaves are permitted to encroach no more than one foot (1') into the minimum required yard areas and the existing chimney encroaches into said minimum required front yard setback by just under three feet (2.9'); 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-7(c)(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 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, the Applicant submitted the following Exhibit to support his Application for the relief request and which was marked:

1. A two sided board showing the location of the house on the Property and a rendering of the dwelling as constructed; and

WHEREAS, the following Board Members were present at the September 3, 2013 hearing on the matter: Mr. T. McIntyre, Chair, Ms. Nelson, Ms. Boughton, Ms. Laymon, Messrs. Gillingham, R. McIntyre, Witkowski, Hawkings, Bixby and Daly. All Members in attendance indicated they made a site visit; and

WHEREAS, the Applicant was represented at the hearing by William T. Gage, Esq., 536 Lake Avenue, Bay Head, New Jersey 08742 who, after introductory remarks called John C. Almelchenko, RA as his first witness; and

WHEREAS, Mr. Almelchenko stated that he has a Bachelor of Arts in Architecture from the New Jersey Institute of Technology, that he has NJ License AL10380, that he has testified before numerous Boards in New Jersey and that he is associated with Aquatecture Associates Incorporated, 421 River Avenue, Point Pleasant Beach, New Jersey. His credentials being accepted he testified as follows:

1. The existing dwelling had significant damage from super storm Sandy.
2. The house has been elevated two (2') feet in place and most of the work has been completed.
3. A large garage/shed has been removed.
4. The purpose of locating the air conditioner and condenser Units on Ocean Avenue (the Ordinance front yard) was to put it on the actual side wall of the house on the Ocean Avenue side where there is constant traffic and where the noise created by the Units would have little or no impact on neighbors. The alternatives would be to place it on the actual front entrance side facing Newman Place, a low traffic residential street with other residences or to the actual rear of the house which has an adjacent residence. Neither of these would require the front yard variance, but from a planning standpoint would be far more detrimental. (Ms. Dillon indicated she believed that the grant of the front yard variance (Ocean Avenue) was far better than locating the Units where the sight and noise would greatly impact the aesthetics of the Property, the streetscape on Newman Place and possible noise impact on neighbors even though no variance would be required).
5. Since Ocean Avenue is the front yard, no fence of any significant height to impact the sight of the Units could be constructed without obtaining a variance and violating site triangle requirements, the Units will be shielded by a "green screen". The top height of the raised Units would be approximately five (5') feet.
6. The fireplace has been reconstructed in place (same footprint) and no on the ground expansion has occurred.
7. The plans as submitted show the air conditioner/generator Units on the south side of the fireplace. (Mr. Gage asked if the Board would approve one of the Units on the south side and one on the north side of the chimney to present a more aesthetic appearance and to provide greater flexibility in providing landscaping).
8. The north west side of the dwelling which contained a screened-in jalousied window porch was severely damaged by Sandy. That has been rebuilt as a single story addition and raised as the house has been raised (Ms. Dillon confirmed she had closely monitored this and that there was no expansion or increase).

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

1. William Corbet, 958 East Avenue, Block 8, Lot 13. Mr. Corbet testified that he had no problem with the requests of Applicant and urged the Board to grant an approval; and

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

1. The testimony of Mr. Almelchenko was credible.
2. That the location of the air conditioning condenser/generator Units on the Ocean Avenue (front yard) of the Property is more preferable than

locating them in the side yard (facing Newman Place) or in the northerly side yard (back of house) where no variance would be required. The location of the Units on the Ocean Avenue side would place them in an area adjacent to a heavily trafficked road and where significant noise exists as opposed on the more residential Newman Place.

3. That there would be no substantial detriment to the public good and the grant of the variance would not create any adverse effect.
4. There would be no substantial detriment or impact to the Zone plan or the Land Use Ordinance of the Borough in that, while Ocean Avenue is considered the front yard, the actual front entrance of the house is on Newman Place and therefore, the setback requirements become somewhat skewed.
5. That the presentation of the Applicant's professional meets the criteria set forth for the grant of the variance pursuant to N.J.S.A. 40:55D-70c(1) and c(2) and satisfied the requirements of the negative and positive criteria.
6. Ms. Dillon concurs as to the findings in 3, 4 and 5 in this WHEREAS.

NOW THEREFORE BE IT RESOLVED, that for the above findings the Planning Board grants approval to the Applicant, Adam R. Rose, as follows:

1. That the minimum front yard setback where 21.86' is required and 16.08' is provided from Ocean Avenue, the front yard is granted.
2. That the maximum permitted encroachment into a yard area by the chimney where 1' is permitted and where it encroaches by 2.9' is granted.
3. That the requested 33.1% lot coverage where 30.0% is the maximum is granted.
4. Splitting the Units, one to the north of the chimney and one to the south of the chimney as requested at the time of the hearing is also approved and granted.

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

1. That the Applicant obtain a building permit prior to commencing any construction on the Property. A building permit must be obtained within two (2) years from the date of this Resolution or this Resolution will be deemed null and void and of no effect.
2. The Applicant furnish a copy of Ocean County Soil Conservation District Certification, if applicable.
3. The Applicant must submit proof of payment of all real estate taxes due to the Borough of Mantoloking.
4. Applicant will provide Proof of Publication of a Notice of Decision of the Board to the Secretary of the Board within 30 days from receipt of Resolution.
5. The Applicant shall obtain any and all necessary Federal, New Jersey (including any Coastal Area Facility Review Act (CAFRA) permits,

County of Ocean or local permits and/or Approvals for each agency or board having regulatory jurisdiction over this development and fulfill all conditions of said permits and/or approvals, and will submit a copy of any permits to the Board. In the event other agencies require a change in the plans approved by the Board, the Applicant must reapply to the Board for the approval of that change.

6. The Applicant shall pay any and all costs required by the Applicant to be made pursuant to N.J.S. 40:44D-35 et. seq. and all fees incurred by the Board in reviewing this Application. The failure of the Applicant to deposit or provide such fees, after being directed to do so, shall render any approval granted hereunder null and void.
7. The testimony, deliberations and stipulations made at the hearing are hereby incorporated by reference and to the extent same impose additional or more detailed conditions of approval, same are hereby adopted as if each were set forth herein at length.
8. The terms and conditions contained herein shall be binding upon all successors, assigns, personal representatives, heirs and each and every other person or entity taking possession or title with respect to the Property in question.
9. The terms, conditions and stipulation imposed upon that Applicant in this approval are an integral and material part of the actions of this Board in that the Board would not or may not have voted affirmatively for said approval without the imposition of the terms, conditions and stipulations contained in this Resolution and on the record.
10. All the representations and statements made by the Applicant at the hearing on June 6, 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

I, Elizabeth Nelson, 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 of September, 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 September 19, 2013 and amended on October 3, 2013.


ELIZABETH NELSON, Secretary

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

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.)

Moved	Seconded	Yes	No
		X	
		X	
		X	
		X	
		X	
		X	
		X	
		X	
	X	X	
		X	

Absent : Ms. Jane G. White

Not Voting or Rescued: None

MEETING OF SEPTEMBER 19, 2013
VOTE TO APPROVE RESOLUTION

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

Absent :

Not Voting or Rescued:

MEETING OF OCTOBER 3, 2013
VOTE TO APPROVE AMENDED 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: