

**RESOLUTION# 2023-12 RESOLUTION OF
DENIAL OF APPEAL
HENRY & SARAH DEWING
APPLICATION #PB-2023-03**

IN THE MATTER OF HENRY & SARAH DEWING APPEAL : LAND USE BOARD OF THE BOROUGH
: OF MANTOLOKING
: APP NUMBER 2023-003
: SUBJECT PROPERTY
: BLOCK 34; LOT 14
: 1314 OCEAN AVENUE

WHEREAS, an appeal has been made to the Borough of Mantoloking Land Use Board (the "Board") by Henry and Sarah Dewing (the "appellant"), for appealing the permits issued by the Engineer and the Zoning officer dated June 8, 2023. The subject parcel is shown as Lot 34 in Block 14 on the Borough Tax Map and commonly known as 1314 Ocean Avenue in the Borough of Mantoloking, Ocean County, New Jersey, and said premises being located in the R-5A Residential - **Zone; and**

WHEREAS, the Appellants have satisfied the noticing requirements of the New Jersey Municipal Land Use Law and provided proof of same to the Mantoloking Land Use Board; and

WHEREAS, the Appellants are represented by Michele R. Donato, Esquire; and

WHEREAS, the Mantoloking Land Use Board reviewed the application, documents, plans, and exhibits as submitted, and listened to the applicant and received information from its professional staff; and

WHEREAS, the Board heard the testimony and the evidence presented by the appellants and received comments from the public.

NOW, THEREFORE BE IT RESOLVED, that the Planning Board of the Borough of Mantoloking, County of Ocean, and State of New Jersey, on September 22, 2022 made the following findings:

1. The Board found the application complete.
2. According to the application, the Appellants are appealing the Zoning permit issued by the Borough Zoning officer on June 8, 2023 and the Borough Engineer's letter dated June 8, 2023 (attached hereto and incorporated herein)

3. In support of the appeal, the Appellant submitted the following documents:
 - A. A letter by Michele R. Donato dated June 27, 2023 and a statement of reasons for the appeal consisting of eight pages and 45 reasons for the appeal.

4. During the public hearing held on August 3, 2023, and September 7, 2023; the Land Use Board discussed the following review letters prepared by the Board's professionals, the contents of which are hereby adopted and incorporated in full:
 - A. Zoning approval letter dated June 8, 2023, by the Planning Board Deputy Land Use Official, Larry Plevier.
 - B. Borough Engineer's letter dated June 8, 2023, by the Planning Board Engineer, Larry Plevier.
 - C. A July 28, 2023 letter by the Zoning Officer, Larry Plevier consisting of five pages.
 - D. A Memorandum prepared by the Board Attorney dated July 25, 2023, to the Land Use Board

5. The Planning Board has received no other review letters/memos from the Mantoloking Officials.

6. During the public hearing, the following exhibits were marked into evidence:
 - A. A-1 disk/stick prepared by Appellant.
 - B. Color photos marked A-2 through A-30
 - C. B-1 Appeal letter dated August 21, 2023 by Ms. Michelle R. Donato
 - D. A-31 second disk/stick with additional photos prepared by the appellant.
 - E. O-1 to O-8 color photos introduced by Ken Nicosia
 - F. N-1 Letter from John Jackson Esq, dated September 7, 2023
 - G. N-2 Disc/ stick photos introduced by Ken Nicosia, Jr

Meeting of August 3, 2023:

7. Based upon the comments of the Appellant's Attorney, Michele R. Donato, Esquire, the Board heard the following:
 - A. The Appellants are seeking to appeal the decisions made in the two letters issued on June 8, 2023, by Larry Plevier who serves as the Borough Engineer and Zoning Officer for the Borough of Mantoloking.

8. Based upon the sworn testimony of Henry Dewing, the Board heard the following comments.
 - A. He explained how alterations to the lot (1314 Ocean Ave) next to his residence have taken place.
 - B. There was a removal of the old dwelling and now the property is a vacant lot.
 - C. He has observed cinder blocks being installed and the construction of a "wall" along the property line, on three sides of the property. He further stated that the grading on the property had changed. He raised concerns that work was being done either without a permit or in violation of stop work orders.
 - D. Mr. Dewing introduced exhibit A-1, which is a memory stick containing photos that he had taken depicting the subject property at different points in time. One photo was taken during a storm depicting the flooding that occurs. He explained each photo and the conditions that were present.

9. Based upon the testimony of the Appellant's Engineer Thomas Creelman, P.E. the Board heard the following:
 - A. In his opinion the "wall" installed around the subject property was not installed properly and therefore was not operating properly.
 - B. He believed the drainage plan submitted was faulty, it will not work, and therefore should not be accepted by the Borough.

10. The Borough Zoning officer, who also is the Borough Engineer Larry Plevier, P.E. responded, and the Board heard the following:
 - A. Mr. Plevier indicated that he issued two separate letters for the site in question, one as the Borough Engineer and a second letter as the zoning officer.
 - B. He further indicated that he followed the municipal ordinances in question in reviewing the site. The plans submitted

complied with the Surface Management Code Ordinance and referred to his July 28th, 2023, letter which provided an in-depth detail as to his reasoning and justification for his actions.

- C. Mr. Plevier distinguished for the Board as to which decisions, which were made as a Zoning Officer and what decisions were made as the Borough Engineer. The reason for two separate letters on June 8th.
 - D. He further indicated the drainage plans submitted by the owner of 1314 Ocean Ave have received approval from the DEP and FEMA. Since the plans met compliance with the Municipal Ordinance, State and Federal standards the permit was issued.
11. The Board retained an independent Engineer, Robert Mannix P.E. P.P. to assist the Board in its determination.
- A. Mr. Mannix opined that the Mantoloking Borough Surface Management Code required that the lot owner handle all surface water on its own property. The plan submitted and reviewed by the Borough Engineer did comply with the municipal ordinance.
 - B. He further added that the zoning officer performed an administrative action essentially confirming that the Borough engineer did review the plan.
12. The meeting was opened to the public:
- A. Mr. Nicosia, one of the owners of 1314 Ocean Ave and the builder, indicated that a stop work order is in place. As a result, the drainage system as approved is not a finished product as of this date. Once completed it will function properly. He stated that he was aware of the flooding situation in the area, and he had his engineers design a plan that would take any and all water from this lot and direct it to the street per the ordinance. He will be in compliance with the Municipal, State and Federal standards as to drainage. He introduced exhibits marked O-1 through O-8 which are colored photos of the lot from different angles and adjoining properties. The photos showed the existing conditions and the conditions that were in existing prior to any construction taking place.
 - B. Several adjoining property owners and concerned citizens testified. The “wall” on three sides of the property was of major concern. The adjoining property owners did not want any water directed to their property. This type of retaining “wall” should not be permitted and the drainage situation will be worse not better. The adjacent property owners and concerned citizens echoed the issues raised by the Dewing’s.

13. Mr. John Jackson Esq. who represents the property owner of 1314 Ocean Ave asked that his letter dated September 7th, 2023 be marked as an Exhibit N-1.
14. Ms. Michele Donato sought to file a second appeal which was determined to be out of time. That request was marked A-31 for the record.
15. Ms. Michele Donato continued to present her case with regard to the issues raised in Dewing's original appeal.
 - A. Mr. Dewing introduces Exhibit A-32 which is a second photo containing various photos. He again described each photo showing pictures of the "wall" in question as well as other walls that exist in the Borough.
 - B. Mr. Dewing indicated that the "wall" in question is unique and up to four feet high, being used as a retaining wall. This wall is not permitted under the ordinance and the Board should overrule the zoning officer and Engineers' decision.
16. The Borough engineer and Zoning officer Larry Plevier stated walls are permitted in the Borough.
 - A. In this area of the Borough the surface water naturally flows east to west. Around 1314 Ocean Ave the lots are in a natural low area. The drainage system approved for the lot in question will have a positive discharge to the front of the property towards the roadway and away from the low spot in the rear of the property.
17. Several neighbors came forward and commented on the drainage system for the lot in question.
 - A. Essentially comments made raised concerns that no water from 1314 Ocean Ave be directed to their property and the wall should be not permitted.
 - B. Members of the public questioned whether the master plan and the Borough ordinances need to be changed with respect to walls and surface water/drainage opposing this "wall" as constructed.
18. Kenneth Nicosia, Jr. the property owner's son introduced exhibit N-2, a photo disc.
 - A. He described each photo describing the lot in question and comparing the "wall" to neighboring properties. Mr. Nicosia showed photos of neighboring properties that had walls used in drainage systems.
19. John Toto P.E. who was hired by Mr. Nicosia to design a drainage system for 1314 Ocean Ave.
 - A. Mr. Toto testified that the drainage system was designed to capture surface water on this lot and direct the water to the front of the property towards the road. He further stated that once the system is completed it will function properly as designed.

CONCLUSIONS OF LAW

WHEREAS, the Board has determined that the Appellant's appeal pursuant to N.J.S.A. 40:55D-70a for the Zoning Permit, Flood Plain Permit and Stormwater permit for the property located at 1314 Ocean Ave is DENIED; and

WHEREAS, the Board has determined that the decisions made by the Borough Zoning Officer and the Borough Engineer are consistent with the existing Mantoloking Borough Ordinances; and

WHEREAS, the proofs presented by the appellants did not reflect that the decisions rendered by the Borough Engineer and Borough Zoning Officer in the two letters dated June 8th, 2023 were inconsistent or contrary to the Mantoloking Land Use Ordinances; and

WHEREAS, the Appellants did not meet their burden of proof to overrule the Borough Engineer and Borough Zoning Officer determinations.

WHEREAS, the Board has determined that the permissions granted in the June 8th letters were under the existing Land Use Ordinances and the Board is constrained from deviating from same unless the Land Use Ordinances are amended in the future; and

WHEREAS, the Board has determined that the decisions made by Larry Plevier in the two letters issued on dated June 8, 2023, are sustained; and

WHEREAS, the Board has determined that the relief sought by the Appellants is denied.

NOW, THEREFORE, BE IT RESOLVED, by the Mantoloking Land Use Board, in the County of Ocean and State of New Jersey, on the 21st day of September 2023, upon a motion made by Brett Radi and seconded by Joan Mattia, that the appeal of Henry and Sarah Dewing is DENIED, and the zoning letter dated June 8, 2023 by the Zoning Officer Larry Plevier and Engineering Letter dated June 8, 2023 by Larry Plevier are sustained.

1. Publication of a notice of this decision will be published in the official newspaper of the Mantoloking Land Use Board.

ADOPTED this **21st** day of **September 2023**.

VOTE ON ROLL CALL:

IN FAVOR: Brett Radi, John Wesson, Susan Laymon, Beth Nelson, Joan Mattia, Betsy Nelson

ABSTAINED: None

OPPOSED: None

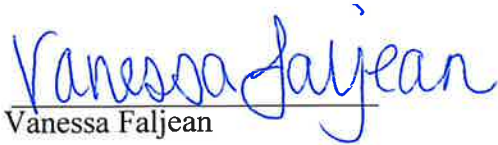
NOT- PRESENT: Christine Beck, Garret Vreeland, Denise Boughton

CERTIFICATION

It is hereby certified that the attached is a true copy of the Resolution for Appeal #2023-003, approved on September 21, 2023, and duly adopted as to form by the Mantoloking Land Use Board and memorialized at its regular meeting held on November 2, 2023.



Beth Nelson
Chairwoman
Borough of Mantoloking
Land Use Board



Vanessa Faljean
Secretary
Borough of Mantoloking
Land Use Board