

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
SPECIAL & REORGANIZATION MEETING
January 13, 2015**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The special and reorganization meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Germinario, Board Attorney, at 7:32PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and the *Daily Record* on December 11, 2014 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

OATHS OF OFFICE

Mr. Germinario, Esq. administered the following Oaths of Office:

Mr. McCarthy: Regular Member - 12-31-15
Mr. Palestina: Regular Member - 12-31-18
Mr. Smith: Regular Member - 12-31-18
Ms. Callahan: Alternate I - 12-31-16
Mr. Sisson: Alternate II - 12-31-15

ROLL CALL

Mr. McCarthy - Present	Mr. Smith - Present
Mr. Palestina - Present	Mr. Peck - Present
Mr. Peralta - Present	Mr. Seavey - Present
Mr. Ritger - Present	

Alternates:	Ms. Callahan, Alternate I - Present
	Mr. Sisson, Alternate II - Present

Also Present:	Mr. Germinario, Attorney
	Mr. Hansen, Engineer
	Mr. McGroarty, Planner
	Ms. Kaye, Secretary

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2015 REORGANIZATION

Election of Chair: Mr. Peck nominated Mr. Seavey as Chair, which was seconded by Mr. Peralta. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor:	McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed:	None
Abstentions:	None

The motion carried. Mr. Seavey was elected Chair and assumed leadership of the Board.

Election of Vice-Chair: Mr. Seavey nominated Mr. Peck as Vice Chair, which was seconded by Mr. Smith. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor:	McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed:	None
Abstentions:	None

The motion carried and Mr. Peck was appointed Vice Chair.

Appointment of Board Secretary: Mr. Seavey made a motion to nominate Ms. Kaye as Board Secretary, which was seconded by Mr. Peck. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried and Ms. Kaye was appointed Board Secretary.

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RESOLUTIONS

Board of Adjustment Meeting Dates: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

BE IT RESOLVED that the Board of Adjustment of the Borough of Mendham will meet to discuss or act upon public business at 7:30 p.m. prevailing time on each of the dates set forth below, at the Garabrant Center, 4 Wilson Street, Mendham, NJ:

- Tuesday, February 3, 2015
- Tuesday, March 3
- Tuesday, April 7
- Tuesday, May 5
- Thursday**, June 4
- Tuesday, July 7
- Tuesday, August 4
- Tuesday, September 1
- Tuesday, October 6
- Thursday**, November 5
- Tuesday, December 1
- Tuesday, January 5, 2016

BE IT FURTHER RESOLVED that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted on the bulletin board in the Phoenix House and delivered to the official newspapers in advance as required by law.

With respect to matters presented to this Board by applicants, the public shall be heard during the hearing on the application in accordance with the procedure as established by the Municipal Land Use Law.

Mr. Seavey made a motion to approve the resolution, as written, which was seconded by Mr. Peck.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried. Ms. Kaye will make the appropriate public notification.

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Official Newspapers: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham, Morris County, New Jersey as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act"

aforesaid, the Board of Adjustment of the Borough of Mendham hereby makes the following designations:

1. The *Observer Tribune* and the *Daily Record* having been designated by the Governing Body as the two official newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use Regulations may be placed, as required by law, in either of the designated newspapers.
2. The location for posting of notices of meetings shall be the bulletin board in the Phoenix House, 2 West Main Street, Mendham, NJ, where notices of this kind are normally posted.
3. The sum of \$12.00 per year is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

Mr. Seavey made a motion to approve the resolution, as written, which was seconded by Mr. Peralta.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
 Opposed: None
 Abstentions: None

The motion carried. Ms. Kaye will make the appropriate public notification.

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Appointment of Engineer: Mr. Seavey presented the following resolution that had been included in the meeting packet:

**BOROUGH OF MENDHAM
 MORRIS COUNTY, NEW JERSEY**

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that they may provide engineering services for 2015 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Paul W. Ferriero has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Paul W. Ferriero; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Paul W. Ferriero PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer for 2015, at a total annual cost not to exceed

\$1,000 such sum as duly appropriated for the purposes in the duly adopted municipal budget for 2015; and escrows as required for 2015; and

2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution which was seconded by Mr. Peck.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried and the resolution was approved. Mr. Ferriero was appointed Board Engineer. Ms. Kaye will make the appropriate public notification.

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Appointment of Attorney: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Thomas J. Germinario, JD, PE has submitted a proposal indicating that he may provide legal services for 2015 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Thomas J. Germinario, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Thomas J. Germinario, Esq.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Thomas J. Germinario, Esq. to serve as Board Attorney for the year 2015 at a total annual cost not to exceed \$6,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2015; and escrows as required for 2015; and
2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution, which was seconded by Mr. Peck.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
 Opposed: None
 Abstentions: None

The motion carried and the resolution was approved. Mr. Germinario, Esq. was appointed Board Attorney. Ms. Kaye will make the appropriate public notification.

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Appointment of Planner: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Planning Consultant services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Banisch Associates, Inc has submitted a proposal indicating that they may provide planning services for 2015 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Banisch Associates, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Banish Associates, Inc.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Charles T. McGroarty, PP/AICP of the firm Banisch Associates, Inc. to serve as Planning Consultant for 2015, at a total cost not to exceed required escrows for 2015; and
2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution which was seconded by Mr. Peralta.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
 Opposed: None
 Abstentions: None

The motion carried and the resolution was approved. Mr. McGroarty was appointed Board Planner. Ms. Kaye will make the appropriate public notification.

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MINUTES

On motion made and seconded, the minutes of the regular meeting of December 2, 2014 were approved, as written, by all eligible voters.

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ANNUAL REPORT

Mr. Seavey reviewed the content of the Annual Report and Mr. Peck suggested that small utility pads for A/C condensers and generators be added. Discussion followed regarding possible parameters to be considered including impervious coverage and setbacks, and whether the Commons should have jurisdiction over those residents. The Board approved and Ms. Kaye agreed to revise the report for Mr. Seavey's signature.

Mr. Seavey made a motion to approve distribution of the Annual Report, as amended, which was seconded by Mr. Peck.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
 Opposed: None
 Abstentions: None

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PUBLIC COMMENT

Mr. Seavey opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

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HEARINGS

#06-14 **Ferrara, Thomas** – 13 Franklin Street, Block 1708, Lot 7
Variance relief for the addition of a senior accommodation suite

Present: Thomas Ferrara, Applicant
 Lawrence Fox, Esq., Attorney for Applicant
 John Heyrich, Architect for Applicant
 Paul Ferrara, Applicant's Son

Mr. Hansen referred to his Completeness Review memorandum dated December 17, 2014 and identified eleven (11) incomplete items. Given the scope of the project, he recommended that waivers be granted for completeness only and the hearing proceed. Mr. Seavey made a motion to grant the waivers and deem the application complete, which was seconded by Mr. Smith.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried. Waivers were granted for completeness only and the application was deemed complete.

Mr. Germinario, Esq. advised that he had reviewed the public notices and confirmed they were sufficient to confer jurisdiction upon the Board.

Mr. Fox reviewed the scope of the application and stated that Mr. Ferrara is requesting a use variance to construct an addition to be used as a senior accommodation suite. He indicated that Mr. Ferrara will live in the added space while his son and family reside in the existing home.

Messrs. Ferrara and Mr. Heyrich were sworn. Mr. T. Ferrara testified as to the reasons for the senior apartment which are primarily health and companionship in nature. He confirmed that while the suite will offer some privacy, the two (2) living spaces are connected and that the dwelling will remain a single-family, i.e., the addition will not be used as a second residence.

Mr. Seavey opened the floor to questions from the public. There being none, Mr. Seavey closed the public portion of the hearing.

Mr. P. Ferrara identified himself as a 15-year member of the Borough Fire Department and reiterated that the dwelling will be a shared single-family structure.

Mr. Heyrich was qualified and accepted by the Board as a professional.

Exhibit A-1 was entered into the record and includes four (4) color photographs of the existing structure posted on a board.

Referring to the floorplan, Mr. Heyrich outlined the details of the project and stated that the square footage of the structure will increase by 1,139 sq.ft. with an additional 261 sq.ft. on the first floor and 878 sq.ft. on the second for a total of 3,288 sq.ft. for the entire dwelling. The proposed design includes an exterior door that opens into a space where one can either enter the existing home or walk up an open staircase to the second floor suite.

Mr. Heyrich stated that the exterior elements of the addition will match the current structure and will maintain the colonial character of the surrounding single-family homes. He further confirmed that no additional variances are required for the project. Mr. Fox justified the project by referencing the Master Plan which specifically favors multi-generational housing in the Borough and concluded that the proposal satisfies the positive criteria under the MLUL.

Mr. Seavey opened the floor to questions from the public. There being none, Mr. Seavey closed the public portion of the hearing.

After discussion, the following conditions were proposed by the Board and accepted by the Applicant:

1. The house may not contain more than five (5) bedrooms without further Board approval;
2. The staircase from the first floor of the addition to the second floor shall remain open to provide unobstructed access to the primary living space;
3. As recommended by the Professionals, a deed restriction shall be filed to prevent two-family use in the future; and
4. A record plan shall be prepared by the architect that includes the deficient checklist items identified in Mr. Hansen's December 17, 2014 memorandum.

Mr. Seavey made a motion to approve the application subject to the above conditions, which was seconded by Mr. Palestina.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In favor: McCarthy, Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried and application was approved. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the February 3, 2015 regular meeting of the Board. Ms. Kaye will make the appropriate public notification.

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NEW BUSINESS

Ordinance amendment for extended family living arrangements - Mr. Germinario reviewed the current process which requires an applicant to apply for a use variance for a two-family dwelling and then file a deed restriction forbidding same. He opined that the process is contradictory and recommended that senior suites be regarded as a conditional use subject to Board approval only if established standards are not met. Mr. McGroarty agreed with Mr. Germinario's recommendation.

Members - Mr. Seavey welcomed Ms. Callahan and Mr. Sisson to the Board.

ADJOURNMENT

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn which was seconded by Mr. Peck. On a voice vote, all were in favor.

Mr. Seavey adjourned the meeting at 8:35PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, February 3, 2015 at 7:30PM** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Margot G. Kaye

Margot G. Kaye
Board Secretary