

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
February 4, 2014**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Seavey, Board Chair, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* on January 23, 2014 and in the *Daily Record* on January 17, 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.

ROLL CALL

Mr. Palestina - Present
Mr. Peralta - Present
Mr. Ritger - Present
Mr. Schumacher - Present

Mr. Smith - Present
Mr. Peck - Present
Mr. Seavey - Present

Alternates:

Mr. McCarthy, Alternate I - Present

Also Present:

Mr. Hansen, Engineer
Ms. Kaye, Secretary

####

MINUTES

After a review of the minutes, the Board discussed the use of the word "future" on submitted plans, i.e., an indication of work to be performed outside the scope of any current application. It was agreed that any ambiguity must be flagged and clarified prior to an application being approved in order to avoid any unintended consequences.

On motion made, seconded and carried, the minutes of the reorganization and regular meeting of January 14, 2014 were approved, as amended, to clarify language on page 7, paragraph two, first sentence regarding application process oversights.

On motion made, seconded and carried, the minutes of the executive session of January 14, 2014 were approved, as written.

####

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.

####

HEARINGS

#01-14 - Holly Manor Healthcare - Minor Site Plan: Completeness Review
Block 502, Lot 1, 84 Cold Hill Road

Mr. Seavey announced that this application was being carried over to the March 4, 2014 meeting and as such, additional notice will not be required. Mr. Hansen suggested the Board have a discussion regarding Completeness and updated the Board on the status of the application.

Mr. Hansen referred to his Completeness Review letter dated January 21, 2014 and stated that the application had been deemed incomplete. Additional documentation was submitted and the application is now complete, subject to the Board's consideration of requests for waivers for completeness. The Applicant requested waivers for completeness on checklist item nos. 11 (survey prepared by a licensed surveyor) & 17 (key map showing the location of the tract and surrounding properties). Mr. Hansen stated that with regard to checklist item no. 11, there is a notation on the plan that references the survey. For item no. 17, while there is a key map, it does not indicate everything within 1000'. Based upon his review, Mr. Hansen confirmed that the requirements have been satisfied and recommended that the application be deemed complete.

There was question as to whether appropriate notice had been made. Mr. Hansen verified that Applicant provided a certified list of property owners within 200' and included the list on the plan. He added that Mr. Germinario, Esq. will determine whether the notice requirement has been satisfied at the start of the hearing.

Mr. Seavey made a motion to deem the application complete with waivers, which was seconded by Mr. Peck.

On a voice vote, all were in favor and motion carried. The application was deemed complete and the hearing carried over to the March 4, 2014 regular scheduled meeting. Ms. Kaye will notify the Applicant of same.

#13-04 - Botti, John – Hardship Variance: Resolution
Block 301, Lot 75, 45 West Main Street

Mr. Seavey requested comments on the draft resolution memorializing the Board's approval to permit a deck and stairs to remain in violation of the side yard setback requirements. The conditions set forth on page 4, nos. 1-8, were discussed and it was reaffirmed that although the storage area is additional living space for the primary residence, it cannot be used as a dwelling unit.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION**

Decided: January 14, 2014
Memorialized: February 4, 2014

**IN THE MATTER OF JOHN BOTTI
"C" VARIANCE APPLICATION
BLOCK 301, LOT 75**

WHEREAS, John Botti (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 9/11/13; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 1/14/14; and

WHEREAS, the Board has determined that the Applicant has complied with all land use procedural requirements of Chapter 124 of the Ordinance of the Borough of Mendham, and has complied with the procedural requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; and

WHEREAS, the Board makes the following findings and conclusions, based on the documents, testimony and other evidence comprising the hearing record:

1. The property which is the subject of the application consists of approximately 0.23 acres and is developed with a single family residence and a detached accessory structure. The property is located at 45 West Main Street in the ½ acre residential district. The property was most recently before the Board in 2012. At that time, the site was under construction and the application was required because it was determined by the Zoning Officer that the structure was constructed too close to the easterly side line. The Applicant was granted relief from the side yard setback requirements set forth in ordinance section 215 schedule II.

2. The improvements to the subject property for which the Variance relief is sought comprise a deck and stairs that were constructed on the easterly side of the accessory structure, within the side yard setback. C variances are required for the encroachment of these structures within the side yard and for excess building coverage.

3. The Applicant has submitted the following documents that depict and/or describe the improvements for which the Variance relief is required:

- Final Grading As-Built prepared by Frank R. DeSantis, PLS, Toms River, NJ, dated January 18, 2013

4. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:

- Board of Adjustment application form and attachments, dated July 29, 2013
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated July 25, 2013

- Zoning Officers Denial, dated April 16, 2012
- Site Inspection Authorization form, dated July 29, 2013
- Site Inspection Authorization form, dated July 29, 2013
- Letter to Board of Adjustment, dated September 11, 2013
- Application to Morris County Planning Board
- Zoning Officer's Review, dated July 16, 2013 and February 13, 2013
- Copy of Tax Map Sheet 3

5. The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

John E. Hansen, PE, dated 10/4/13

6. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

A-1 Construction Plans, dated 11/3/11,
stamped 6/28/12

7. In the course of the public hearings, the Applicant was represented by Anthony Sposaro, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

John Paul Botti, III, Applicant

8. The documentary evidence and the testimony of the Applicant and/or Applicant's witnesses adduced the following facts:

In the plans submitted to the Board in connection with the C variance granted (Resolution of 6/6/2012) for the 7 ½" encroachment of the accessory building foundation to the easterly side yard setback, exterior stair and a deck for the accessory building were labelled "future construction." When these plans were submitted to the Construction Official, he erroneously interpreted that the Board had approved setback variances for the stairs and deck, as well as the foundation, and he approved the plans for construction. The Applicant also mistakenly believed that the 2012 variance approved also applied to the deck and stairs. As a result, the deck and stairs were constructed per the approved plans, and after-the-fact C variance relief is required for the sideyard setback of the stairs (5.87' vs. 15' required) and the deck (4.54' vs. 15' required), as well as for building coverage (2282 sq. ft. vs. 2194 allowance).

9. Based on the hearing record, the Board has made the following findings and conclusions relative to the Variance relief sought by the Applicant:

Due to the non-culpable confusion associated with the scope of the Board's review with respect to the "future construction" indicated on the 2012 plans, the Board finds that strict compliance with the Ordinance requirements would impose an unreasonable hardship on the Applicant, and grants the requested relief, subject to the conditions set forth herein.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(1).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a zoning permit for the improvements requiring Variance relief.

1. The second level of the accessory structure shall not be rented separately from the dwelling on the property, nor shall it be occupied as a residence, nor provided with a kitchen.

2. The deck shall not be used for storage.

3. The deck shall not be enclosed above or below, except for lattice below.

4. Impervious coverage shall not be increased above the existing 3,313.55 sq. ft.

5. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection

fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.

6. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

7. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.

8. Pursuant to Ordinance Section 124-22, the Variance relief granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of the improvements requiring Variance relief has actually been commenced during that time period, provided that the running of the one-year time period shall be tolled during the pending of any appeal of the Board's decision to the Borough Council or to a court of competent jurisdiction.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of 1/14/14.

Mr. Seavey made a motion to adopt the resolution, as written, which was seconded by Mr. Smith. Mr. McCarthy was eligible to vote in Mr. Schumacher's place.

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.

####

ADJOURNMENT

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

Chair Seavey adjourned the meeting at 7:57PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, March 4, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Margot G. Kaye

Margot G. Kaye
Recording Secretary