

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
August 5, 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, Chair, at 7:33PM 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 - Absent
Mr. Peralta - Present (7:37PM)
Mr. Ritger - Present
Mr. Schumacher - Absent

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

Alternates:

Mr. McCarthy, Alternate I - Absent

Also Present:

Mr. Germinario, Board Attorney
Mr. Hansen, Board Engineer
Mr. McGroarty, Board Planner
Ms. Kaye, Board Secretary

#####

MINUTES

Mr. Ritger made a motion to approve the minutes of the regular meeting of July 1, 2014, which was seconded by Mr. Seavey. On a voice vote, all were in favor and the minutes 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.

#####

APPLICATIONS

#03-14 Spada, Joseph - 1 Thomas Road, Block 1801, Lot 35 - Application for variance relief to allow accessory structures in the front yard and within the rear yard setback, to permit solid fencing in the front yard and an appeal for a determination regarding accessory structures: **Resolution**

Mr. Seavey requested comments on the following draft resolution memorializing the Board's approval to allow accessory structures in the front yard and within the rear yard setback, to permit solid fencing in the front yard and to deny the appeal for a determination regarding accessory structures:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
Decided: July 1, 2014
Memorialized: August 5, 2014**

**IN THE MATTER OF JOSEPH SPADA
"C" VARIANCE APPLICATION AND APPEAL FROM ZONING OFFICER
DETERMINATION
BLOCK 1801, LOT 35**

WHEREAS, Joseph Spada (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of variances pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variances") and appeal from a determination of the Borough Zoning Officer pursuant to N.J.S.A. 40:55D-70a (hereinafter the "Appeal") by application dated 6/10/14; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 7/1/14; 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 5.52 acres in the 5 acre residential zone. It is developed with a single family dwelling served by public water and a private septic system. The applicant has recently received approval from the Zoning Officer for a pool house structure. However, the proposed pool and associated outdoor living improvements were denied by the Zoning Officer, by letter dated 4/24/14, because they did not comply with the bulk standards of the zone.

2. The present application seeks bulk variance relief to locate a portion of an in-ground pool within the "front yard" (215-31.1.G(1)) established by the residential dwelling and other improvements (gazebo, solid wall) within restricted front and rear yard setbacks. The improvements in question are depicted on plans entitled *Variance Plans Spada Residence 1 Thomas Road* prepared by Edward Clark, L.A., dated February 2, 2012, revised through May 12, 2014 and consisting of 10 sheets. Applicant also appeals the Zoning Officer's determination (per N.J.S.A. 40:55D-70a), that the proposed outdoor kitchen, fireplace, and pizza oven are subject to the rear yard setback requirement applicable to accessory buildings. In the alternative, the Applicant requests a variance from that requirement for those accessory structures.

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

Variance Plans Spada Residence 1 Thomas Road,
prepared by Edward Clark, L.A., dated
February 2, 2012, revised through May 12, 2014
and consisting of 10 sheets

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 June 9, 2014
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees (unsigned and undated)
- Site Inspection Authorization form (undated)
- Minor Sub division Deed April 16, 2014- between Joseph Spada and Joseph Spada
- Minor Sub division Deed April 16, 2014- between Mt. Hermon Hills Company , LLC and Joseph Spada
- Letter of Interpretation from Department of Environmental Protection.
- Zoning Officer's denial dated April 24, 2014.

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 Hansen, PE, CME, dated 6/23/14
 Chuck McGroarty, PP, AICP, dated 6/24/14

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

A-1 Overview of Subject Property and Adjoining Properties
 A-2 Sectional Views of the Proposed Improvements
 A-3 Simulated Views of Proposed Improvements
 A-4 Renderings of Proposed Improvements
 A-5 Renderings of Proposed Improvements
 A-6 Architectural Rendering of Proposed Gazebo
 A-7 Variance Plan Sheet L-1.2

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

Ed Clark, licensed landscape architect
 Craig Villa, licensed professional planner
 and licensed professional engineer

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

The existing dwelling is set back far to the rear of the property, due to wetlands, transition areas, and stream buffers encumbering virtually all of the front yard. Locating improvements to the rear of the property is problematic due to steep slopes of 15%-20%. Based on sight line profiles prepared by Mr. Clark, the improvements will be barely visible from Thomas Road and the adjoining property to the west. The Applicant proposes to provide extensive landscaping around the improvements to further mitigate their visual impact.

The following variances are required in connection with this application:

- Section 215-31.1.G(1) to allow accessory structures in a front yard, namely a pool and gazebo
- Section 215-28 to allow an accessory building (gazebo) and accessory structures (outdoor kitchen, barbeque, fireplace pizza oven, and patio) within the required 40 foot rear yard setback
- Section 215-29.B(2) to allow a solid fence of 3'-11" in height in a front yard

9. Based on the report of the Board Planner Chuck McGroarty dated 6/24/14, the Board determines that the proposed outdoor kitchen, barbeque, fireplace and pizza oven constitute accessory structures which are subject to the 40-foot rear yard setback pursuant to Section 215-28. The Board therefore denies Applicant's Appeal and upholds the Zoning Officer's findings in this matter.

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

By reason of the shape, topography and wetland/stream buffer constraints of the subject property, the strict application of Ordinance Sections 215-28, 215-29, and 215-31.1G(1) would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship upon the Applicant. Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

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 deny the Appeal and does hereby approve the application and grant the Variances 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 plan shall be updated to provide a current 200 foot list as prepared by the Borough.

2. The project must comply with the Borough's stormwater requirements for a minor development. The drywell calculations and details on sheet L-2 shall be enlarged so that they are legible and can be reviewed for compliance.

3. The wetlands transition area line/conservation easement line shall be shown on sheet L-1. This line must be staked in the field prior to any disturbance to prevent encroachment by construction equipment or materials. The proposed improvements shall be staked out by a licensed engineer to ensure compliance with the plan.

4. Drainage and septic improvements are proposed in the 300' riparian buffer zone. This area is regulated by the New Jersey Department of Environmental Protection. The required permit or permit-by-rule shall be noted on the plan. If a permit is required, then same must be obtained prior to construction.

5. Revised plans shall note that the site is balanced with respect to earthwork, and that no soil shall be exported from the site.

6. The proposed underground utilities shall be shown on the plan.

7. The area of disturbance shall be labeled on the plan. Any disturbance greater than 5,000 SF will require Morris County Soil Conservation District Approval.

8. The plans shall be signed and sealed by a NJ licensed engineer.

9. A copy of the official tax map shall be added to the plan with the subject property highlighted on the map.

10. Revised plans shall note that landscaping depicted on the variance plan shall be maintained by the property owner and shall not be removed.

11. Applicant may, at his own risk, apply for a building permit prior to the memorialization of this Resolution.

12. The Applicant shall submit a resolution compliance package with a transmittal letter that explains how and where each condition of the Resolution has been addressed on any revised plan submittals. Copies of any required outside agency approvals shall accompany the compliance package.

13. Prior to issuance of a Certificate of Occupancy for the site, all improvements must be installed to the satisfaction of the Borough Engineer (or bonded at the discretion of the Borough Engineer) and shown on an as-built drawing prepared by a NJ Licensed Land Surveyor.

14. 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.

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

16. 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.

17. 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 July 1, 2014.

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

ROLL CALL: The result of the roll call was 3 to 0 as follows:

In favor: Peralta, Ritger, Smith
 Opposed: None
 Abstain: Peck, Seavey

The motion carried and the resolution was approved.

Mr. Ritger asked whether the Board should have a discussion regarding the fence ordinance as it relates to a retaining wall or similar structure. Mr. Seavey confirmed that he had noted same for future discussion.

#04-14 Dewey, Ryan & Genero, Christa – 95 Pleasant Valley Road, Block 2201, Lot 19.02 – Application for variance relief to allow 8' deer fencing where 4' & 6' are allowed:
Completeness

Mr. Hansen confirmed that he had reviewed the application and that a number of items had not yet been addressed. He recommended that Board deem the application incomplete at this time.

Mr. Seavey made a motion to deem the application incomplete, which was seconded by Mr. Peck. On a voice vote, all were in favor and the application was deemed incomplete. Application will be heard at the next regular scheduled meeting on September 4, 2014.

#02-14 DeAngelo, George – 59 West Main Street, Block 302, Lot 4 - Application for variance relief for front yard setback, impervious coverage and expansion of a non-conforming use: **Completeness/Hearing, if deemed complete**

Present: George DeAngelo, Applicant
 Steven Schepis, Attorney for Applicant
 Lloyd Stephenson, Architect for Applicant
 Meghan Hunscher, Planner for Applicant

Mr. Hansen reviewed the outstanding checklist items identified in his report dated June 30, 2014 and recommended that waivers for completeness only be granted for nos. 12 (plans signed and sealed by a NJ Professional Engineer and certified by a licensed land surveyor), 17 (key map), 24 (approval signature lines), 29 (storm drainage structures and utilities lines) and 37 (soil types and proposals for soil erosion and sediment control). Checklist item no. 10 (written receipt for the County Planning Board) was received on August 5, 2014.

Mr. Seavey made a motion to grant waivers for completeness only for item nos. 12, 17, 24, 29 and 37 and deem the application complete. The motion was seconded by Mr. Smith. On a voice vote, all were in favor and the application was deemed complete.

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

Mr. Schepis acknowledged that five (5) Board members were present, therefore, a unanimous affirmative vote is required for the "d" variance to be approved. After discussion as to whether the hearing should continue or be carried over, the Applicant decided to move forward with the hearing.

Mr. Schepis reviewed the application and provided a history of the Applicant's appearances before the Historic Preservation Commission (HPC). Applicant is proposing to build a 15' foot addition on the front exterior of his two-family residence and increase the number of bedrooms in both rental units (from two to three in the first floor unit and from one to two in the second floor unit). He reviewed the current floor plan of the home and indicated that the Applicant may be willing to reduce some of the existing impervious coverage by removing the West Main Street driveway.

Mr. Schepis outlined the 'c' variance relief requested:

1. Lake Road front yard setback of 5.8' where 30' is required
2. Impervious coverage of 48% where 30% is allowed (48% includes the West Main Street driveway as currently presented on the plans)

Applicant is also seeking a 'd' various for the expansion of a non-conforming use, i.e., a two-family dwelling in the ¼ acre zone on a .2 acre parcel where at least a .5 acre is required.

Mr. DeAngelo was sworn and provided testimony regarding his intended use of the property. Mr. Schepis entered into the record Exhibit A-1 (exterior/interior photographs of the house). Mr. DeAngelo identified the proposed enhancements which include:

1. A 15' addition to the front exterior
2. HardiePlank siding
3. Landscaping
4. New windows and shutters
5. New front door with sidelights
6. ADA compliant bathrooms in both units

Mr. Seavey opened the floor to questions from the Board. In response to a question regarding the approximately 600' of additional lot coverage that was added without approvals, Mr. DeAngelo stated that he had wanted to expand the driveway in October 2012 but was told by the Zoning Officer that there may be an issue with impervious coverage. He further testified that he did not receive formal notification from the Zoning Officer regarding same until after the paving had been completed.

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

Mr. Stephenson was sworn and qualified and accepted as an expert by the Board.

Mr. Stephenson entered into the record the following exhibits:

- A-2 Plan Sheet A1.01
- A-3 Letter from Morris County Planning Board dated August 5, 2014
- A-4 Survey revised to include right-of-way
- A-5 Parking plan sketch

Referring to the exhibits, Mr. Stephenson presented the existing conditions of the property and set forth the proposed interior improvements along with the exterior elements that were approved by the HPC. He further discussed the 25' right of way as per the County Planning Board and agreed to the execution of a deed of dedication as a condition of approval. Mr. Stephenson also proposed an alternate site plan that would significantly reduce the amount of impervious coverage by removing the driveway and curb cut on West Main Street and adding a paver walkway around the house. He indicated that the rear parking area would accommodate four (4) vehicles thus exceeding the 3.5 spaces required by the Residential Site Improvement Standards.

Mr. Seavey opened the floor to questions/comments from the Board. A discussion followed regarding the removal of the West Main Street driveway and the aesthetics of stacked parking. It was suggested that screening would improve the driveway from a visual standpoint while removal of the West Main Street curb cut and driveway would be beneficial from a safety perspective. Mr. Hansen added that filling in the curb cut removes the possibility of overflow parking in the yard.

Mr. Seavey reviewed the recommendations from the HPC to include:

1. HardiePlank siding
2. Shutters that are ½ the width of the windows or 3½" casing in lieu of shutters
3. SDL windows
4. Front door with single sidelights

Mr. Seavey further stated that the drawings would have to be revised to reflect all elements discussed during the hearing.

At 9:05PM, Mr. Schepis requested a five minute break.

The meeting resumed at 9:15PM.

Mr. Schepis stated that Mr. Stephenson would revise his drawing and provide calculations that limit impervious coverage to 30-35%.

Mr. Seavey opened the floor to questions/comments from the public. Mr. Robert Klemme of 55 West Main Street inquired about limitations on occupancy in a rental unit. Mr. Hansen indicated that the number of bedrooms would dictate occupancy and that the Board of Health would regulate any potential overcrowding issues. Mr. Ritger added that property owners are required to register rental units annually.

Mr. Klemme also requested confirmation of the number of bathrooms and clarification regarding basement access which is from the interior of the home only. Mr. Stephenson reiterated that the basement cannot be used as livable space.

Ms. Hunscher was sworn and qualified and accepted as an expert by the Board.

Ms. Hunscher stated that she had conducted a historical investigation and entered into the record the following exhibits:

- A-6 Mendham Borough Zoning Ordinance (1951)
- A-7 Letter from Tax Assessor's file dated February 7, 1995

Referring to the exhibits, Ms. Hunscher stated that the 1951 zoning ordinance permitted two-family homes on .25 acre lots, thus making the structure a pre-existing non-conformity that is 'grandfathered'. She further indicated that the home was a two-family dwelling at least as far back as 1968 (as per Exhibit A-7) and that the requirement changed to a .5 acre minimum in 1988.

Ms. Hunscher introduced case law to help substantiate Applicant's position. She stated that the addition will help maintain the prevailing setback and the exterior enhancements will be more visually consistent with the adjacent home. The design is also more in keeping with the Historic District. She further stated that the proposed larger home will not have a negative impact on surrounding property values. Ms. Hunscher concluded that the granting of the bulk variances should be virtually automatic if the 'd' variance is granted. Accordingly, granting the requested variances would not result in substantial detriment to the public good nor would it substantially impair the intent of the zoning ordinance.

Mr. Seavey opened the floor to questions/comments from the Board. Mr. McGroarty reaffirmed his recommendation for removal of the West Main Street driveway and stated that he disagreed with Ms. Hunscher's assertion that the "c" variance relief is automatic under the 'd' variance.

Mr. Seavey opened the floor to questions/comments from the public. Mr. Klemme stated that he had no questions, but supports the proposed development of the property.

Mr. Schepis agreed that the plans would be modified and resubmitted for the September 4, 2014 meeting. Required revisions include:

- Change 'office' to 'bedroom' on each floor
- Add parking plan
- Revise calculations
- Include an easement for corner screening
- Identify encroachment as a front yard setback rather than side yard
- Change required lot area for a two-family dwelling from ¼ acre to ½ acre
- Include locations of any HVAC pad, generator, etc.
- Provide landscaping elements

A signed, sealed copy of the survey showing the County right-of-way must also be submitted.

Mr. Schepis requested that notice be preserved and carried over to the September 4, 2014 meeting.

#####

ADJOURNMENT

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

Mr. Seavey adjourned the meeting at 9:58PM.

The next regular scheduled meeting of the Board will be held on **Thursday, September 4, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Margot G. Kaye

Margot G. Kaye
Board Secretary