

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
October 7, 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 7:30PM 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 - Absent  
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. Germinario, Board Attorney  
Mr. Hansen, Board Engineer  
Ms. Kaye, Board Secretary

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**MINUTES**

Mr. Seavey made a motion to approve the minutes of the regular meeting of September 4, 2014, which was seconded by Mr. Smith. On a voice vote, all eligible voters were in favor and the minutes were approved, as written.

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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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**APPLICATIONS**

**#12-05 – Zenjon Enterprises, 25 East Main Street, Block 1501, Lot 11 – request for extension of amended preliminary and final major site plan approval and variances:  
Hearing**

Present: Robert Simon, Attorney for Applicant

Mr. Simon stated that preliminary and final site plan approval and variances were granted approximately two (2) years ago and although those approvals expired in October 2013, the Permit Extension Act advanced the expiration date to December 31, 2014. Mr. Simon indicated that due to the economic downturn, the Applicant has had difficulty marketing the project and securing finance. Consequently, Applicant is requesting that the approvals be extended an additional year to December 31, 2015.

Mr. Germinario confirmed that the Board has the discretion to grant three (3) one-year extensions and advised that there is sufficient justification to grant the extension, as requested.

Mr. Schumacher made a motion to approve the extension for memorialization at the next meeting. The motion was seconded by Mr. Peck.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

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

The motion carried and the extension was approved.

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**#04-14 Dewey, Ryan & Genero (Dewey), 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/Hearing, if deemed complete**

Present: Ryan Dewey & Christa Genero Dewey, Applicants  
Anthony Sposaro, Attorney for Applicant

Mr. Hansen reiterated that the plan must be revised to include a number of checklist items that were identified in his report dated July 22, 2014. He recommended that waivers for completeness only be granted for those items and that the hearing proceed.

Mr. Seavey made a motion to grant waivers for completeness only and deem the application complete. The motion was seconded by Mr. Peralta.

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

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

The motion carried 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. Sposaro noted that a report was received from Dave Krueger of Environmental Technology Inc. that addresses what is and is not permitted within the wetlands buffer area, the flood hazard control area and the floodway. Mr. Germinario requested a copy of the revised survey referenced in Mr. Krueger’s report which Mr. Sposaro then distributed. Mr. Sposaro confirmed that the final fence placement would be outside the wetlands area, the flood ways and any area regulated by the Flood Hazard Control Act.

Mr. Sposaro described the property as being in the 5-acre residential zone where agriculture is a principal, permitted use. He indicated that the Applicants have prepared a 10-year woodland management plan which was approved by the NJDEP on June 5, 2013 and hope to qualify for farmland assessment in 2017. Mr. Sposaro further stated that the Applicants have planted approximately 100 trees that are temporarily caged but will be decimated by deer once the cages are removed. Accordingly, Applicants are requesting that they be permitted to install an 8’ deer fence around the perimeter of the property to protect the woodland/farmland.

Mr. Sposaro discussed the resolutions of several past applications and opined that relief was granted based on fact-sensitive information, particularly for agricultural reasons. He explained that the woodland management plan for the property will be ineffective should deer-fencing not be permitted.

Mr. Dewey was sworn and stated that he and his wife have resided on the 6.05 acre property for a little over two (2) years.

Mr. Sposaro entered the following exhibits into the record:

- A-1 2013 Forestry Management Plan
- A-2 Woodland Data and 2014 Farmland Assessment Application
- A-3 DEP Woodland Management Plan approval letter dated June 5, 2013
- A-4 2015 Farmland Assessment application including invoices for harvested wood sold
- A-5 Photo of typical 8’ wire mesh deer fencing
- A-6 Photo of gates for deer fencing
- A-7 Photo of 6” solid lock wire
- A-8 Photo of split-board fencing

Mr. Dewey confirmed that he received fifty (50) trees in 2013 and fifty (50) in 2014. He added that all have been planted and that it is his understanding that the cages currently surrounding them are only a temporary measure, i.e., cages must be removed to allow for tree growth and weed control.

Mr. Seavey opened the floor to questions from the public. Mrs. DeGregori of 79 Pleasant Valley Road inquired as to the location of the proposed gates and the appearance of the gates as seen from the roadway.

Mrs. Dewey was sworn and stated that no gates will be installed on the easterly common boundary with Mrs. DeGregori’s property. Applicants are proposing to install one (1) vehicle gate on Pleasant Valley Road toward the middle of the property to allow farm access and one (1) man gate each will be installed on the west side of the property as well as the rear to allow access to the woodland. Mrs. Dewey also stated that they are proposing a 10’ cattle grate across the driveway.

Applicants confirmed that the fence line will be set off from the street and behind the tree line on Pleasant Valley Road. In response to a question regarding tree/shrub removal on the easterly property line, Applicants indicated that invasives were removed and that they intend to replant the buffer.

Mr. Seavey closed the public portion of the hearing.

Mr. Ritger requested that the Applicants mark the survey to show the approximate fence and gate locations, which was entered into the record as Exhibit A-9. Mr. Dewey indicated that the majority of the property requires fencing so that farm activities can be increased in order to qualify for farm assessment, i.e., since 2.05 acres are under woodland management, the remaining 4 acres must be utilized to the extent possible. He further confirmed that the height of the gates would be the same height as the fencing. A discussion followed regarding alternate fence options and locations.

Mr. Sposaro entered into the record pictures of the 8' deer fence located on the westerly neighboring lot 19.04 designated as Exhibit A-10.

Mr. Seavey opened the floor to comments from the public. Mrs. DeGregori suggested that the fence run behind the tree line facing Pleasant Valley Road so that it wouldn't be visible from the street. Discussion followed and it was agreed that the Applicants would mark on the property the proposed location of the fence for inspection and approval by the Board Engineer.

A poll of the Board found that Members were supportive of the agriculture and believed in this case that 8' fencing would allow for the preservation of same. The following were set forth as conditions for approval:

1. Farming income is to be substantiated annually and the fence removed if and when farm activity ceases
2. Buffer between property to the east must be replanted
3. Vehicle gate will be installed at a 30' setback from Pleasant Valley Road
4. One (1) man gate will be located on each the west side and rear of the property
5. Setback of fencing will be staked or painted for Engineer's inspection
6. Fence posts will be placed 20' apart except at the corners where they will be closer for structural purposes
7. 6x6 black wire mesh will be used
8. Fence will be installed without footings and outside the wetlands boundary and floodway
9. No trees are to be removed to accommodate the installation
10. Fence location must be 25' from McVicker's Brook
11. Final plans will comply with the technical components set forth Mr. Hansen's review memorandum dated July 22, 2014

Mr. Smith made a motion to approve the application as described, subject to the above conditions, for memorialization at the next meeting. The motion was seconded by Mr. Peck.

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

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

The motion carried and the application was approved.

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**#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: **Resolution**

Mr. Seavey requested comments on the draft resolution memorializing the Board's approval to grant variance relief for front yard setback, impervious coverage and expansion of a non-conforming use. It was agreed that reference to striping the parking spaces be deleted from condition no. 7 and revised as below:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
Decided: September 3, 2014  
Memorialized: October 7, 2014**

**IN THE MATTER OF GEORGE DeANGELO  
"D-2" & "C" VARIANCE APPLICATION  
BLOCK 302, LOT 4**

**WHEREAS**, George DeAngelo (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-70d and 70c (hereinafter the "Variances") by application dated 4/17/14; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 9/3/14; 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 is a corner lot consisting of approximately 0.20 acres. It is currently developed with a two family residence, served by public water and sewer, and a detached accessory structure. It is located in the ¼ acre residential zoning district and also the Historic Overlay zoning district.

2. The improvements to the subject property for which the Variance relief is sought comprise a two story addition on the south side of the existing dwelling. Variances are required for the expansion of a non-conforming use, front yard setback as set forth in Section 215, Schedule II, and the impervious coverage requirements as set forth in Section 215-31.1H.

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

- Plans entitled 2-Family Dwelling Addition Zoning Board Application 59 West Main Street Block 302 Lot 4, prepared by Lloyd S. Stephenson Jr. AIA, dated 4/8/14 with revision of 5/27/14 and consisting of seven sheets (A001, A101, A102, A201, A301, A302, A303), with sheet A101 further revised 8/22/14.

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

- Correspondence and Zoning Permit Application Denial prepared by Patricia Fischer, dated 10/16/12 and 11/27/12
- Application for Sanitary Sewer Connection, dated 5/24/14
- Board of Adjustment application form and attachments, dated 5/24/14
- Site Inspection Authorization form, dated 5/24/14
- Board of Adjustment application form and attachments, dated 4/17/14
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated 4/17/14
- Site Inspection Authorization form, dated 4/17/14
- Letter of Stephen Schepis, Esq. to Board of Adjustment, dated 4/17/14
- Memo from Historic Commission, dated 3/6/14
- Color Image depicting lot location and surrounding area, undated
- Color Image showing 4 views of the existing lot conditions, undated
- Property Survey prepared by Wm. F. Zimmerly & Associates, dated 5/11/12, revised 8/4/14
- Email from Craig Bellamy (Fire Official), dated 6/23/14

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:

Chuck McGroarty, PP/AICP, dated 7/29/14  
John Hansen, PE/CME, dated 6/30/14 and 8/29/14

6. Borough officials and/or agencies have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Historic Preservation Commission, dated 3/6/14

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

- A-1 Existing Conditions Photos
- A-2 Updated Sheet A101, revised 8/4/14
- A-3 Morris County Planning Board letter, dated 8/5/14
- A-4 Zimmerly Survey, revised to 8/4/14
- A-5 Parking Exhibit
- A-6 Mendham Borough Zoning Ordinance, dated 4/2/51
- A-7 Tax Assessor Letter of 2/7/95 and property card
- A-8 Updated Sheet A101, revised 8/22/14

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

George DeAngelo, Applicant  
Meghan Hunscher, Professional Planner  
Lloyd Stephenson, Jr., Architect

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

The existing two-family house was built in 1950, prior to adoption of the Borough's first zoning ordinance in 1951. The property did not become non-conforming as to use until 1988, when the ordinance was amended to require ½ acre of lot area for two-family homes. Therefore, the existing two-family home is a pre-existing non-conforming use, the proposed expansion of which requires a variance pursuant to N.J.S.A. 40:55D-70d(2). The proposed addition and associated architectural features will significantly improve the appearance of the subject property, render it more compatible with the neighborhood, and enhance its historic qualities, as evidenced by the HPC report. The elimination of the West Main Street driveway and some of the paved parking area along the Lake Drive frontage will result in a minimal increase of lot coverage relative to the existing condition. Furthermore, the removal of the West Main Street driveway will improve traffic safety by eliminating the backing out of parked cars onto West Main Street.

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

With respect to the D-2 Variance, the Board finds that the proposed improvements will advance the following MLUL purposes:

(a) promoting public safety and free flow of traffic, by the elimination of vehicles backing out onto West Main Street;

(b) promoting environmental protection, by eliminating paved areas on the subject property;

(c) promoting a desirable visual environment, by upgrading the architectural features of the dwelling; and

(d) promoting historic conservation, by making the dwelling more conforming with the historic style of neighboring properties.

With regard to negative impacts of the expanded non-conforming use, the Board finds that the proposed improvement will have no significant negative impacts on the character of the neighborhood, nor will it impair the intent and purpose of the zone plan.

With respect to the C variances for the lot coverage and front yard setback, the Board finds that the elimination of the West Main Street driveway will minimize the increase in lot coverage, and that further encroachment of the addition into the Lake Drive front yard will have no appreciable adverse impact. The grant of both C variances is warranted pursuant to 40:55D-70c(2), because the safety and aesthetic benefits of the improvements substantially outweigh the detriments. With respect to the Lake Drive setback, the narrow lot width of the subject property also presents an exceptional difficulty and hardship warranting variance relief pursuant to N.J.S.A. 40:55D-70c(1).

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 Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(2), 40:55D-70c(1) and 40:55D-70c(2).

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. Applicant shall file a deed of dedication to Morris County for 25 feet of right-of-way from the center line of West Main Street (County Route 510).

2. Applicant shall provide the Board Engineer with a calculation of the proposed increase in total lot coverage relative to the condition prior to the unauthorized site work referenced in the Zoning Officer's letter of 11/27/12. If the Board Engineer determines that the increase in lot coverage exceeds 1000 sq. ft., Applicant shall revise the plans to comply with the requirements of ordinance §215-12.5 relating to stormwater management.

3. Revised plans shall depict the removal of the paved area south of parking space #3 and its replacement by a lawn area.

4. Revised plans shall indicate the removal of the depressed curb and driveway apron along West Main Street. Construction details shall be provided for installation of full-face curbing and a grassed strip between the sidewalk and the curb.

5. Revised plans shall indicate the removal of the southerly depressed curb and driveway apron along Lake Drive. Construction details shall be provided for installation of full-face curbing and a grassed strip between the sidewalk and the curb.

6. Revised plans shall provide details of fencing and/or landscaping along the easterly property line for the purpose of screening the rear parking area.

7. Revised plans shall note that Spaces #1 and 2 shall be assigned to one tenant and Spaces #3 and 4 to the other.

8. Construction access shall be from Lake Drive only.

9. If the approved improvements are not installed within one year of this resolution, the unauthorized impervious coverage referred to in the Zoning Officer's letter of 11/27/12 shall be removed to the satisfaction of the Zoning Officer.

10. Revised plans shall comply with the following requirements of the HPC:

(a) vinyl shutters, if used, will be half the width of the window, or in lieu of shutters, 3½" casing will be used to match the 3½" casing used on the rest of the house;

(b) the front door will match door shown on drawings, dated 9/25/13 with one modification, i.e., single glass side lights rather than leaded glass side lights; and

(c) all windows to be SDL.

11. A sight triangle easement shall be dedicated to the Borough of Mendham at the southwest corner of the property. The dimensions of the sight triangle easement shall be 10 feet (Lake Drive) by 30 feet (County Road) once the right of way has been determined. This area shall be restricted from fencing or plantings in excess of 30 inches in height. The proposed easement shall be shown on the variance plan.

12. Applicant shall obtain sewer flow approval from the Governing Body.

13. The existing and proposed utility locations shall be

shown on the plan.

14. Any checklist items waived for completeness purposes only shall be submitted or provided on the revised plans if required by the Board Engineer.

15. All improvements within road right-of-ways shall be bonded before issuance of building permits.

16. 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.

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

18. 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.

19. 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 9/3/14.

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

ROLL CALL: The result of the roll call was 4 to 0 as follows:

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

The motion carried and the resolution was approved.

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Mr. Ritger asked whether Board members have a duty to report existing violations to the Zoning Officer. Mr. Seavey stated that if a violation is observed during construction, then perhaps the Zoning Officer should be notified. Mr. Germinario confirmed that there is no duty beyond that of an ordinary citizen.

#### **OTHER BUSINESS**

Cell Tower – Mr. Germinario reported that a date for oral argument has not yet been set but is expected to be late 2014 or early 2015.

#### **ADJOURNMENT**

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

Mr. Seavey adjourned the meeting at 9:17PM.

The next regular scheduled meeting of the Board will be held on **Thursday, November 6, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Margot G. Kaye*

Margot G. Kaye  
Board Secretary