

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
November 6, 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 7:32PM 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 - Absent
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. Smith made a motion to approve the minutes of the regular meeting of October 7, 2014, which was seconded by Mr. Peralta. 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

#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: **Resolution**

Mr. Seavey requested comments on the following resolution memorializing the Board's approval to allow 8' deer fencing where 4' & 6' are permitted:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
Decided: October 7, 2014
Memorialized: November 6, 2014**

**IN THE MATTER OF RYAN DEWEY and CHRISTA GENERO
"C" VARIANCE APPLICATION
BLOCK 2201, LOT 19.02**

WHEREAS, Ryan Dewey and Christa Genero (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 6/27/14; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 10/7/14; 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 6.05 acres located in the 5-acre Residential Zone. It is currently developed with a single family residence and a detached barn. The property is somewhat environmentally constrained by state regulated freshwater wetlands, freshwater wetland transition areas, and riparian stream buffers.

2. The improvements to the subject property for which the Variance relief is sought comprises construction of an eight foot deer fence where a maximum of four feet (front yard) and six feet (side and rear yards) is permitted pursuant to Ord. §215-29B. The fence materials are specified as 8' treated wooden posts with 6" black solid lock wire.

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

- Board of Adjustment application form and attachments, dated 6/27/14
- Survey prepared by Ernest Hausman, PLS, dated 10/4/12, revised 9/11/14

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

- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated 6/2/14
- Site Inspection Authorization form, dated 6/27/14
- 200' owners list prepared by the Tax Assessor's office, dated 5/30/14
- Color Image entitled Woodland Vegetation Map 2013 depicting lot location and surrounding area, undated
- Property deed, dated 10/16/12
- Letter from David C. Krueger, President, Environmental Technology, Inc., dated 9/16/14

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:

John Hansen, PE, CME, dated 7/22/14

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

Zoning Officer's Denial, dated 7/8/14

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

- A-1 Forestry Management Plan 2013
- A-2 Woodland Data and 2014 Farmland Assessment Application
- A-3 DEP approval letter 6/5/13
- A-4 2015 Farmland Assessment application
- A-5 Photo of typical 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
- A-9 Markup of Hausman survey with approximate proposed fence location
- A-10 Pictures of 8' deer fence on Lot 19.04

8. 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:

Ryan Dewey and
Christa Genero, Applicants

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

Under a pending farmland assessment application, the subject property is subject to a woodland management plan, pursuant to which Applicant has planted approximately 100 trees. In order to protect these trees from deer, Applicant needs to construct an 8-foot fence. The proposed fence and accompanying gates are 6" solid lock wire in black with 8" treated fence posts. Along Pleasant Valley Road, the fence will be set back behind an existing berm and tree line. Landscape screening will be provided along the easterly property line.

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

Since agricultural uses are permitted in this zone, and the relief requested enables such use, it is not inconsistent with the zone plan. The proposed fence will be unobtrusive and will have no significant adverse visual impacts on neighboring properties, due to existing topography and vegetative screening.

Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviation will substantially outweigh the detriments.

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. 50:55D-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. The 8' fence shall comprise 6" black solid lock wire with 8" treated fence posts, spaced 20 feet apart, except at property corners, where post spacing may be closer.

2. A cattle grate shall be provided at the entrance of the existing driveway. A wooden entry gate for vehicles may be provided at the location of a gravel driveway along Pleasant Valley Road, set back not less than 30 feet from the road. Two man gates may be provided along the westerly and/or northerly property lines, but no gates shall be provided along the easterly property line.

3. Landscaping shall be provided to screen the fence from view along the boundary of Lot 18. Same to be shown on the plan along with a schedule of plants to be installed.

4. Along Pleasant Valley Road, the fence shall be located outside the right-of-way and set back a minimum distance of 17'4" from the property line.

5. The event that Applicant or its successor(s) in title do not obtain a farmland assessment or the farmland assessment for the property is terminated, the 8' fence shall be removed or replaced with a conforming fence.

6. Within the wetlands transition areas of the site, the fence shall be constructed without footings and/or foundations for the fence posts. All fence construction must be located outside the wetlands boundary and floodway, and its construction shall not result in the removal of existing trees. The plan shall be revised to show the location of the proposed fence as described in testimony.

7. The Applicant must call for a utility markout prior to the installation of any fence posts.

8. The proposed fence shall be staked by a licensed surveyor to ensure that it is constructed on the subject property in the approved location.

9. The drawing shall be updated to include the required signature lines.

10. Prior to the issuance of any permits, Applicant shall submit a resolution compliance package. The package shall include revised plans and documents, and a transmittal letter than explains how and where each condition of the resolution has been addressed.

11. 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.

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

13. 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.

14. 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.

15. All improvements must be constructed in accordance with the approved plans and inspected by the Borough Engineer or his representative.

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 10/7/14.

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

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

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

The motion carried and the resolution was approved.

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#05-14 Prior, Harold - 12 Garabrant Street, Block 402, Lot 7 – Application for variance relief for building coverage and lot coverage for new single family dwelling: **Completeness/Hearing, if deemed complete**

Present:	Harold Prior, Applicant
	Vincent Kramer, Attorney for Applicant
	James Mastronardy, Engineer for Applicant

Mr. Hansen stated that the application was substantially complete and recommended that the hearing proceed with a caveat that item no. 11 on the checklist (survey prepared by a licensed surveyor) be a condition of approval.

Mr. Seavey made a motion to grant a waiver for completeness only for checklist item no. 11 and deem the application complete. The motion 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, Schumacher, Smith, 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. Kramer provided a history of the property and stated that it was a pre-existing non-conforming lot with two (2) small dwellings and a shed when purchased by the Applicant in 1991. Applicant is now seeking approval to demolish the three (3) existing structures and construct a single-family dwelling. Applicant is also requesting variance relief for lot coverage (4,247 sq.ft. where 4,037 is allowed) and for building coverage (2,912 sq.ft. where 2,114 is allowed).

The following exhibits were entered into the record:

- A-1 Photograph of the existing conditions on the property
- A-2 Color rendering of the proposed single-family structure

Mr. Prior was sworn and stated that he has owned the property for over 23 years and would like to raze the three (3) existing structures and construct a 4-bedroom single-family home to better accommodate his family.

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

Mr. Seavey opened the floor to questions from the Board. Mr. Peralta requested confirmation that the shed would be demolished as well. Mr. Prior proposed that the shed be used for storage for approximately 6-9 months and then razed to allow for completion of the last 25% of the project. The two (2) dwelling units will be demolished prior to the start of the project. Mr. Palestina requested confirmation regarding the height of the proposed structure as it compares to the 40' allowed by ordinance. Applicant confirmed the height of the proposed dwelling is 37'4" while the height of the existing structures is approximately 20'.

Mr. Mastronardy was sworn, qualified and accepted as a professional by the Board. Mr. Mastronardy testified that the site plan was prepared based on a June 24, 2014 property survey and not on Applicant's original 1991 survey.

Mr. Mastronardy addressed the proposed lot coverage and pointed out that although it exceeds the permitted amount, it will be approx 1,400 fewer sq.ft. than the current conditions. He further indicated that there will be less runoff since the design includes two (2) seepage pits strategically located to collect rainwater as well as sump pump water. The proposed driveway will also reduce runoff by redirecting it away from the street and toward the seepage pits. Mr. Mastronardy further explained that unlike the current conditions where the structures encroach upon the front and side yard setbacks, the proposed design fits entirely within the building envelope. He further stated that the open porches were included in his building coverage calculation but without the porches, the coverage is de minimis (111 sq. ft.). Mr. Mastronardy added that the design adds to aesthetics of the street and will not result in any detriment to the zoning plan.

Referring to Mr. Hansen's technical review memorandum dated October 10, 2014, Mr. Mastronardy addressed and agreed to all terms and conditions set forth therein.

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

Mr. Seavey asked whether a variance is required for the under-sized lot. Mr. Germinario concluded that an existing non-conforming lot that predates the ordinance does not require a variance in order to be developed.

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

Mr. Seavey opened the floor to questions from the Board. Mr. Ritger inquired as to the proposed curb cut and Mr. Mastronardy confirmed that it will be narrower than the present curb cut. Mr. Ritger also received confirmation that the neighboring lot is in the 1-acre zone.

Mr. Smith requested confirmation of the size of the garage. Applicant confirmed it was a single-door, 2-car garage.

Discussion followed regarding whether the open porches should be included in the building coverage calculation as defined in section 215-1 in the Borough code. The Board agreed that due to the open design of the porches, the non-conforming amount of coverage is significantly less

than if the porches were enclosed. There was consensus that the porches must remain open and that the calculations be revised on the plans.

Mr. Seavey opened the floor to questions/comments from the public. Mr. Tom Pienciak of 16 Garabrant Street indicated his support for the project stating that it is an improvement to the neighborhood and that the streetscape supports the requested variance relief. He also stated that the presence of the seepage pits will help improve surface water conditions on the street.

Mr. Seavey closed the public portion of the hearing.

Mr. Seavey confirmed that the Engineer will handle the details for the basement sump pump water that will run to the downspout then to the seepage pit.

Mr. Kramer summarized the application and clarified that the proposed non-conformities are more closely conforming than the current conditions. He also stated that the benefits far outweigh the detriments and asked that the Board consider those factors while deliberating the application.

Mr. Seavey set forth the following as conditions for approval:

- 1. Existing shed may remain during construction for up to nine (9) months
- 2. Coverage amounts must be confirmed
- 3. The porches are to remain open
- 4. All conditions set forth in the Engineer’s October 10, 2014 technical memorandum must be met

Mr. Seavey 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. Palestina.

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

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

The motion carried and the application was approved.

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**#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:
 Resolution**

Mr. Seavey requested comments on the following resolution memorializing the Board’s approval to grant an extension of amended preliminary and final major site plan approval and variances:

**MENDHAM BOROUGH ZONING BOARD OF ADJUSTMENT
 RESOLUTION OF MEMORIALIZATION
 Approved: October 7, 2014
 Memorialized: November 6, 2014**

**IN THE MATTER OF ZENJON ENTERPRISES, LLC
 EXTENSION OF AMENDED PRELIMINARY AND FINAL SITE PLAN
 APPROVALS AND VARIANCES APPROVAL
 BLOCK 1801, LOT 37**

WHEREAS, Zenjon Enterprises, LLC (hereinafter known as the “Applicant”) obtained approval from the Mendham Borough Zoning Board of Adjustment (hereinafter known as the “Board”) by Resolution dated 10/2/12, for amended preliminary and final site plan approvals with variances pursuant to N.J.S.A. 40:55D-70c and d, with respect to construction of an office building (the “Approvals”); and

WHEREAS, pursuant to Condition 18 of the Resolution and Ordinance §124-22, the variances expired as of 10/2/13, but the Approvals with the variances were extended through 12/31/14 pursuant to N.J.S.A. 40:55D-136.1 et. seq; and

WHEREAS, the Applicant has requested from the Board an extension the Approvals for an additional period of one year, through 12/31/15; and

WHEREAS, a public hearing was held on 10/7/14, no notice being required; and

WHEREAS, the Board has determined that the requested extension of the Approvals is justified based on economic conditions impacting the local market for office space.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby grant the requested extension of the Applicant’s Approvals with variances for an additional period of one year through 12/31/15, pursuant to N.J.S.A. 40:55D-52a.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Board at its regular meeting of 10/7/14.

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

ROLL CALL: The result of the roll call was 5 to 0 as follows:

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

The motion carried and the resolution was approved.

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ADJOURNMENT

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

Mr. Seavey adjourned the meeting at 8:37PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, December 2, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Margot G. Kaye

Margot G. Kaye
Board Secretary