

**MINUTES OF THE  
REGULAR MEETING  
MENDHAM BOROUGH PLANNING BOARD  
November 13, 2017**

**Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER**

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

**OPENING STATEMENT**

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on January 12, 2017 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.

**ATTENDANCE**

|                              |                             |
|------------------------------|-----------------------------|
| Mayor Henry – Absent         | Mr. Kraft - Present         |
| Mr. Bradley – Absent         | Mr. Cascais – Absent        |
| Mr. Kay – Present            | Ms. Landau, Alt II – Absent |
| Ms. Lichtenberger – Present  | Ms. Masse, Alt I – Present  |
| Councilman Sharkey – Present | Mr. Sprandel – Present      |

Also Present: Mr. Henry, Esquire

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**MINUTES**

Mr. Kraft asked the Board for any comments on the minutes of the regularly scheduled meeting of October 10, 2017. There being none, Ms. Lichtenberger made a motion to approve the minutes as written and Mr. Sprandel seconded. On a voice vote the minutes were approved.

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**PUBLIC COMMENT**

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

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**RESOLUTIONS**

**PB #1-17      David and Douglas Ketchum**  
7 Horseshoe Bend Road  
Block 2301 Lot 4  
Major Subdivision

Mr. Henry discussed changes to item number 19 in the draft Resolution. With no comments by the Board, Ms. Lichtenberger made a motion to approve the application and adopt the Resolution, and Mr. Sprandel seconded.

ROLL CALL:      The result of the roll call was 6 to 0 as follows:  
In favor:        Kay, Lichtenberger, Masse, Sharkey, Sprandel, Kraft  
Opposed:        None  
Abstentions:    None

The motion carried. The Resolution follows.

**MENDHAM BOROUGH PLANNING BOARD**

**RESOLUTION**

**GRANTING PRELIMINARY AND FINAL MAJOR SUBDIVISION  
APPROVAL  
WITH DESIGN STANDARD EXCEPTION RELIEF  
FOR DAVID AND DOUGLAS KETCHUM  
BLOCK 2301, LOT 4  
APPLICATION PB# 1-17**

WHEREAS, David and Douglas Ketchum (“Applicants”) have applied to the Planning Board of the Borough of Mendham (the “Board”) for preliminary and final major subdivision approval with design standard relief with respect to property located at 7 Horseshoe Bend Road and designated Block 2301, Lot 4 on the Tax Map of the Borough of Mendham (the “Subject Property”); and

WHEREAS, following Board agreement to several checklist waivers for “completeness”, a hearing was held by the Board on October 10, 2017 at its regular public meeting, at which time representatives of the Applicants testified as to the proposed major subdivision; the Board reviewed the documents and materials filed by

Applicant and members of the public and the Board's professionals were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered the Applicants' submissions for the requested subdivision approval and design standard exception relief, including testimony presented on behalf of Applicants, the comments of the Board's consultants, and comments from members of the public;

NOW THEREFORE BE IT RESOLVED that, based upon the forgoing, the Board makes the following findings of fact and conclusions of law:

1. Applicants are the owners of the Subject Property located at 7 Horseshoe Bend Road (Tax Map Block 2301, Lot 4), in the Borough of Mendham. The property is located in the 5 Acre Residential Zone District and is presently improved with one single family dwelling and related residential improvements.
2. The Subject Property fronts on Horseshoe Bend Road, a private road. As a result of the property fronting on a private road, the proposed subdivision is required by ordinance to be treated as a major subdivision.
3. The Subject Property is a single lot of 41.69 acres to the Deed Line (center of the road) and a calculated net acreage of 40.8 acres to the Right-of-Way line. The Subject Property is affected by slopes, ponds, streams, and environmental constraints.
4. Applicants propose to create two new lots, along with a remainder for a total of three lots. The proposed remainder lot (Lot 4.01), which will contain the existing dwelling, has a net acreage of 27.37 acres. Proposed lot 4.02 has a net

acreage of 5.03 acres. Proposed lot 4.03 has a net acreage of 8.39 acres. The proposed new lots (4.02 and 4.03) are conforming to all bulk standards.

5. The Subject Property, including the proposed new lots, will be served by public water. Septic disposal will be by way of individual systems on each lot. The Health Department has reported that soil testing results showed that the proposed new lots (4.02 and 4.03) would support septic systems in accordance with the current N.J.A.C. 7:9A standards.

6. Applicant submitted a plan set prepared by Yannacone Villa & Aldrich, LLC entitled "Preliminary Major Subdivision Plans, 7 Horseshoe Bend Road, Lot 4, Block 2301, Mendham Borough, Morris County, New Jersey" (7 sheets) dated March 27, 2017 (hereinafter the "Plans").

7. Applicant also submitted a proposed Map of the final proposed major subdivision prepared by Yannacone Villa & Aldrich, LLC (1 sheet) entitled "Final Map Ketchum Property" (hereinafter the "Final Map").

8. Referring to the Plans, Applicants' engineer testified that there were several NJDEP regulated areas, including Riparian Zones, fresh water wetlands and associated transition areas, and State Open Waters. In addition, the Plans depicted certain areas of steep slopes, subject to limitation on disturbance under the Mendham Borough Slope Ordinance. Nevertheless, he testified, the plan and its anticipated residential development will involve no significant steep slope disturbances and the proposed new lots will be developable without affecting NJDEP regulated areas.

9. In addition, Applicants' engineer confirmed that the proposed development would be required to satisfy Major Storm Water Development regulations, and will be designed to do so.

10. Applicants' attention was called to the July 24, 2017 review letter from the Borough Engineer. Applicants' engineer confirmed that Applicants would comply with all of the Borough Engineer's comments and recommendations.

11. The Board explored the issue of the design standard exception required to permit the creation of two additional lots fronting on Horseshoe Bend Road, a private street not built to public road standards. Such private streets under the applicable Borough Ordinances are limited to streets created to serve no more than five lots. Horseshoe Bend Road was created more than 30 years ago in a subdivision which was approved to permit almost twice that many lots. Subsequently, specific lots have been added now totaling 12 lots being served by Horseshoe Bend Road (exclusive of the five lots located on Horseshoe Bend Lane which utilize a small portion of Horseshoe Bend Road for access to the Bernardsville Road). The addition of the two lots proposed in this subdivision would increase the total being served directly by Horseshoe Bend Road to 14 (19 when including the 5 lots on Horseshoe Bend Lane).

12. Applicants' Engineer testified that Horseshoe Bend Road was as wide as a number of the public roads in the Borough; that most of it was hard-packed gravel; that maintenance obligations of the abutting owners were set forth in a recorded document, which document also provided that subsequent owners of developed lots would automatically be subject to the provisions of that maintenance

agreement and obligated for their pro rata shares of maintenance and upkeep; and that it had functioned adequately for years for use by both ordinary vehicular traffic and Emergency Services. His opinion was that an additional two residential lots would cause no meaningful negative impact on the functioning, upkeep, or safety of those on the road or on others in the Borough.

13. Applicants' position, therefore, with respect to the desired design standard exception permitting additional lots to be added to the private street offered a balance of unreasonable limitation if a 41 acre parcel could not be divided to create a total of three residential lots, coupled with the unreasonable cost to rebuild Horseshoe Bend Road according to public road specifications, as against continuation of a functionally adequate hard packed gravel surface road, subject to relatively limited use and resulting in no significant negative impacts.

14. While accepting the Applicants' arguments supporting the grant of the waiver with respect to additional lots (an exception from the otherwise-applicable design standard), except to expressly address that waiver, the Board makes no findings, conclusions, or determinations regarding the rights and/or obligations of these parties or others with respect to Horseshoe Bend Road, a private street.

15. Applicants noted that the Morris County Planning Board had approved the subdivision application from the county perspective, and acknowledged that the county Board's conditions of approval had to be satisfied.

16. Applicants acknowledged receipt of the comment memorandum from the Borough's Fire Official. They declined to accept a condition which would require subsequent residential dwellings constructed on the new lots to be sprinklered,

pointing out that such systems are not required by any applicable construction code.

They did indicate, by way of mitigation of any risk, that there are fire hydrants directly in front of the new lots served by the public water supply. They also confirmed that development would otherwise be in accordance with the Fire Official's comments.

17. On the subject of a Letter of Interpretation from the NJDEP, Applicants pointed out that they had filed their application for the LOI, but had not yet received the response from NJDEP. They acknowledged that a condition of approval would be the obtaining of an LOI which did not adversely affect the proposed new lots and the ability to proceed with residential construction on each consistent with the Plans for which approval from this Board is sought.

18. Several neighboring property owners addressed the Board. There were some comments from off-site owners who had not been permitted to utilize Horseshoe Bend Road as their frontage and their mailing address. The Board indicated that such matters were not within its jurisdiction. Other comments, however, related to concerns about subsequent incursions into the NJDEP regulated areas which might be free of later Board evaluation and could negatively impact not only the regulated areas themselves but impacts on adjoining properties.

19. As a result of all of the foregoing, the Board discussed the imposition of Borough conservation easements coincident with the various NJDEP regulated areas on both proposed lots 4.01 and 4.03. During that discussion, it became apparent that the NJDEP regulated areas on proposed lot 4.03 might rationally have such a conservation easement superimposed on the area contained within the 300 ft. Riparian Zone Line, provided that certain limited activities would be permitted by such

easement, but that the NJDEP regulated areas on proposed lot 4.01 did not lend itself to this treatment. The Riparian Zone on proposed lot 4.01 encompass so much of the property, including the existing residential dwelling and related structures and a dam at the northerly end of the lake, that the imposition of such an additional conservation easement would be problematic. As such, the Board concluded that the conservation easements on proposed lots 4.01 and 4.03 should be treated differently.

With respect to the conservation easement on proposed lot 4.01, it was suggested that it be superimposed on those areas bounded by the limits of the depicted State Open Waters, wetlands, and 150 ft. wetlands transition areas. The Applicant was in agreement with this approach, provided the Borough's conservation easement for proposed lot 4.01 was drafted to permit the installation of any and all improvements or work that may be authorized by a NJDEP permit in these respective zones and areas.

With respect to the conservation easement on proposed lot 4.03, it was suggested that it be superimposed on those areas bounded by the limits of the Riparian Zone. The Applicant was in agreement with this approach provided that the Borough's conservation easement for proposed lot 4.03 was drafted to permit the installation of any infrastructure improvements, including, but not limited to, drainage improvements and utilities, that may be authorized by a NJDEP permit. The installation of optional residential accessory facilities would not be permitted.

20. Based upon all of the forgoing, the Board concluded that, with appropriate conditions, an exception to the design standard relating to the maximum number of lots permitted on a private street should and could be granted and that it could further grant Preliminary and Final Major Subdivision Approval for subdivision



of the Subject Property consistent with the Plans and with the Final Map submitted (subject to required revisions being completed to the satisfaction of the Borough Engineer).

BE IT FURTHER RESOLVED, that the Planning Board of the Borough of Mendham hereby approves and grants Preliminary and Final Major Subdivision Approval with respect to property presently designated Block 2301, Lot 4 on the Mendham Borough Tax Map to create a total of three lots (two new lots, one remainder lot), also granting design standard exception relief to permit the two new proposed residential lots to be created fronting on Horseshoe Bend Road, a private street, subject to the following conditions:

1. Applicants shall comply with all applicable regulations and obtain licenses, permits and other approvals which may be required, whether from any municipal, county, state or federal board, body or agency having jurisdiction over the subject property or the project.

2. All open taxes, as well as municipal charges, Application and escrow fees, and funding of sufficient escrow to cover unbilled work to the completion of the project, shall be paid by Applicants.

3. Applicants shall comply with the Borough Engineer's July 24, 2017 comment letter as to Plan and other comments and recommendations, Plan Revisions, and proposed conditions of approval.

4. Without limiting the generality of Conditions Nos. 1 and 3, Applicants shall: a) Furnish an updated/current Tax Certification;

- b) Obtain and furnish a current LOI from NJDEP;
  - c) Obtain and furnish a MCSCD Certification of the Plan;
5. Applicants shall confirm Lot designations with the Borough's Tax Assessor.
  6. Deed descriptions and lot closure calculations shall be submitted by Applicants to the Borough Engineer for review and approval.
  7. Conservation easement(s) to the Borough shall be prepared by Applicants and submitted to the Borough Attorney and the Borough Engineer for review and approval as to form and content. After such approval, Applicants shall record the document(s) in the Office of the Morris County Clerk and shall furnish copies with recording information to the Board. Markers shall be installed on the Subject Property in conformity to Ordinance requirements in a manner satisfactory to the Borough Engineer.
  8. Applicants shall satisfy any applicable Affordable Housing requirements.
  9. Applicants shall satisfy County Planning Board conditions of approval.
  10. The Final Map, or plat, shall be filed with the county recording officer in accordance with all applicable statutory requirements.
  11. If compliance with any condition of approval results in a change or changes to the substance or content of the approved Plan, Applicant must return to the Board for Board review and approval of the revised Plan.

12. Development shall be in accordance with the Applicants' submissions to the Board, the testimony adduced at the public hearing, and the findings, conclusions, and conditions of approval set forth in this Resolution.

13. Individual lot grading/development plans shall be submitted for review and approved by the Borough Engineer prior to site work or the issuance of any construction permits.

14. Condition numbers 1, 2 (to current), 3, 4, 5, 6, 7 (as to preparation and approval of documents), 9, and 11 (if applicable) shall be satisfied prior to signing of the Final Map (plat).

BE IT FURTHER RESOLVED that this Resolution, adopted this 13<sup>th</sup> day of November, 2017, memorializes the action taken by the Board, as set forth above, taken at its meeting on October 10, 2017.

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**OTHER DISCUSSION ITEM**

**Proposed Ordinance No. 11-17 – Site Plan Exclusions**

Mr. Kraft explained that the Borough Council has introduced a new ordinance for site plan exclusions which is intended to expedite business in the Borough as well as reduce paperwork for the applicant. Mr. Henry added that the Planning Board needs to determine if the ordinance is consistent with the Borough's Master Plan. Mr. Henry also recommended adding language in the paragraph B (3) to include changes of use/tenancy/ownership from a non-conforming to a permitted use.

Mr. Sprandel suggested that some sort of mechanism be implemented to advise the Board of decisions made by the engineer and zoning officer, and the Board agreed with this suggestion. With no more comments by the Board, Mr. Sharkey made a motion to recommend the proposed ordinance with Mr. Henry's edits, and Ms. Lichtenberger seconded.

ROLL CALL: The result of the roll call was 6 to 0 as follows:  
In favor: Kay, Lichtenberger, Masse, Sharkey, Sprandel, Kraft  
Opposed: None  
Abstentions: None

The motion carried.

November 13, 2017

Planning Board

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**OTHER RESOLUTIONS**

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**ADJOURNMENT**

With no further comment from the Board or Professionals, the meeting was adjourned at 8:05pm on a voice vote. The next regular scheduled meeting of the Planning Board will be held on **Monday, December 11, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham.

Respectfully submitted,

*Carolyn Mazucco*

Carolyn Mazucco  
Board Secretary