

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR AND REORGANIZATIONAL MEETING
February 6, 2018**

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 Ms. Mazzucco, Secretary, 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 December 21, 2017 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Mr. Palestina - Absent	Mr. Peralta – Present
Mr. Reilly – Present	Mr. Ritger – Present
Mr. Seavey – Present	Mr. Sisson – Present
Mr. Smith - Present	

Alternate: Ms. Cass, Alternate I- Absent

Also Present: Mr. Thomas Germanario, Borough Attorney

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2018 REORGANIZATION

Election of Chair: A nomination was made for Mr. Seavey as Chair by Mr. Peralta. There being no additional nominations, on motion made by Mr. Peralta and seconded by Mr. Sisson, a single ballot was cast for Mr. Seavey as Chair.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried and Mr. Seavey was elected Chair.

Election of Vice-Chair: A nomination was made for Mr. Palestina as Vice Chair by Mr. Seavey. There being no additional nominations, on motion made and seconded by Mr. Peralta, a single ballot was cast for Mr. Palestina as Vice Chair.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried and Mr. Palestina was elected Vice Chair.

Appointment of Secretary: A nomination was made for Ms. Mazzucco as Board Secretary by Mr. Seavey, and Mr. Peralta seconded the motion.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried and Ms. Mazzucco was elected Secretary.

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RESOLUTIONS

Board of Adjustment Meeting Dates: Mr. Seavey presented the following resolution that was included in the meeting packet:

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION

BE IT RESOLVED that the Board of Adjustment of the Borough of Mendham will meet to discuss or act upon public business at 7:30 p.m. prevailing time on each of the dates set forth below, at the Garabrant Center, 4 Wilson Street, Mendham, NJ:

Tuesday, February 6, 2018
Tuesday, March 6
Tuesday, April 3
Tuesday, May 1
Tuesday, June 12
Tuesday, July 10
Tuesday, August 7
Tuesday, September 4
Tuesday, October 2
Thursday, November 8
Tuesday, December 4
Tuesday, January 8, 2019

BE IT FURTHER RESOLVED that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted

on the bulletin board in the Phoenix House and delivered to the official newspapers in advance as required by law.

With respect to matters presented to this Board by applicants, the public shall be heard during the hearing on the application in accordance with the procedure as established by the Municipal Land Use Law.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

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

The motion carried. Ms. Mazzucco will make the appropriate public notification.

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Official Newspapers: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham, Morris County, New Jersey as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act" aforesaid, the Board of Adjustment of the Borough of Mendham hereby makes the following designations:

1. The *Observer Tribune* and the *Daily Record* having been designated by the Governing Body as the two official newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use

Regulations may be placed, as required by law, in either of the designated newspapers.

2. The location for posting of notices of meetings shall be the bulletin board in the Phoenix House, 2 West Main Street, Mendham, NJ, where notices of this kind are normally posted.

3. The sum of \$12.00 per year is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

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

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried. Ms. Mazzucco will make the appropriate public notification.

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Appointment of Board Consulting Engineer: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY**

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that they may provide engineering services for 2018 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Paul W. Ferriero has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Paul W. Ferriero; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Paul W. Ferriero PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer for 2018, at a total annual cost not to exceed [\$1,000] such sum as duly appropriated for the purposes in the duly adopted municipal budget for 2018; and escrows as required for 2018; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
5. This Resolution shall take effect as provided herein.

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

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried. Ms. Mazzucco will make the appropriate public notification.

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Appointment of Board Attorney: Mr. Seavey presented the following resolution that was included in the meeting packet:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

RESOLUTION

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Thomas J. Germinario, JD, PE has submitted a proposal indicating that he may provide legal services for 2018 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Thomas J. Germinario, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Thomas J. Germinario, Esq.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Thomas J. Germinario, Esq. to serve as Board Attorney for the year 2018 at a total annual cost not to exceed [\$8,000], such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2018: and escrows as required for 2018; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
6. This Resolution shall take effect as provided herein.

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

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried. Ms. Mazzucco will make the appropriate public notification.

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Annual Report: Mr. Seavey introduced the draft Annual Report to the Board which resulted in discussions about the definition of fast food, as it is not defined in the Borough Ordinance. It was suggested that the possible rationale for mentioning fast food in the Borough Ordinance §195:45A was to have an increased number of parking spaces for that type of establishment.

The Board also discussed the outdoor dining ordinance. Various Board members have heard feedback from business owners in the Borough that the application process for outdoor dining is too time consuming and expensive. A conversation ensued about outdoor dining. It was recommended that the application process for outdoor dining should be a friendlier, less stringent, and cheaper way for local business owners to take advantage of outdoor dining.

Mr. Reilly asked about before and after impact of construction drainage; specifically, as it pertains to water runoff and impervious coverage. Mr. Seavey also mentioned that regarding commercial applications, there should be a checklist that requires an applicant to verify that the construction design is in compliance with what was approved by the Board. He suggested a checklist for each application that the Borough Planner and Engineer would create and verify. Mr. Germanario added that other municipalities require an applicant to return to the Board for an as-built review.

Mr. Ritger commented about the zoning challenges of properties that were built inside of their front yard setbacks.

Mr. Seavey made a motion to approve the annual report with aforementioned conditions, and the motion was seconded by Mr. Sisson.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried, and the annual report follows.

**Office of the
Board of Adjustment**

TO: Honorable Mayor and Council Members
FROM: Mendham Borough Board of Adjustment
DATE: February 6, 2018
RE: Board of Adjustment Annual Report: 2017
CC: Borough of Mendham Planning Board

There were nine Board of Adjustment applications this year which amounted to approximately \$61,000 in combined application and escrow fees, almost a 40% increase from 2016. In January 2017, the Board received an application for a Dunkin Donuts establishment with a drive-thru at 25 East Main Street. Due to its location, it was withdrawn from the Board of Adjustment and expected to be resubmitted without the drive-thru, omitting the variance. As a result of this application, the Board feels it would be

beneficial if there was clarification about fast food, including its relation if any to "drive-thru" or "drive-in" eating facilities. The Board feels a specific definition of drive-in (§215-17) should also be included. §195-45A Table 1 sets forth off-Street parking Requirements which distinguish between "fast-food" and other eating establishments, but the ordinance lacks a definition of fast food. §195-45A also currently treats both the required number of parking spaces and their size, location, etc., as design standards. The Board recommends that the required number of spaces be reclassified to zoning, requiring a C variance if the required number of parking spaces exceeds the number proposed.

It was definitely the year for food establishments in the Borough, 2017 marked the first time in over a decade that the Board heard an application for a new restaurant, *Saporì d'Italia*, at 7 West Main Street. *Saporì d'Italia* has inquired about outdoor dining but has not submitted an amended site plan at this time. The Board is very appreciative for the new outdoor dining ordinance, however the new zoning standards for outdoor dining are a bit stringent as applied to small and limited outdoor eating uses. The Board recommends a friendlier, smaller business approach that is easier, less stringent and cheaper for the business owner.

Another high-profile application that had appeared before the Board seven years ago, T-Mobile and Verizon Wireless, which had been denied by the Board in 2010, was overturned by the Appellate Division of the Superior Court in 2016. The 130-foot proposed cell tower to be erected behind Kings Supermarket was adopted by the Board in August 2017 as a result of the court's decision. This application has not completed resolution compliance at this time.

Although the application for revitalization of 15 West Main Street and the addition of three townhouses on the rear of the property was heard by the Board in 2016, resolution compliance was not completed until November 2017. The work has now begun! It also should be noted that the 29 East Main, LLC application heard by the Board in June 2016, is still undergoing resolution compliance review for their use variance granted for employee parking.

2017 APPLICATIONS

Aryan at Mendham, LLC – Variance relief for drive-thru in historic district for a Dunkin Donuts at Block 1501, Lot 11, 25 East Main Street: **WITHDRAWN**

Matann Simglo, LLC / La Pergola Inc – Site plan waiver approval for a new restaurant at Block 301, Lot 35, 7 West Main Street Street: **APPROVED with conditions**

Christopher Johnson – Variance relief for swimming pool with cabana at Block 2601, Lot 2.04, 15 Balbrook Drive: **APPROVED with conditions**

John and Laura Egerter - Variance relief for a second-floor addition at Block 903, Lot 4, 9 Knollwood Drive: **APPROVED with conditions**

Geri and Tony Rago – Variance relief for garage, mudroom, breakfast nook with in-law suite at Block 603, Lot 8.01, 1 Peacock Lane: **APPROVED with conditions and Restrictive Deed Covenant**

Sarah Slover – Variance relief to detach a garage (remove kitchen) and renovations to both buildings plus a new garage addition Block 1801, Lot 15 at 56 West Main Street: **APPROVED with conditions**

T-Mobile, Verizon Wireless – Variance relief for conditional use of a 130-foot cell tower located in a developed lot at Block 801, Lot 20 at 84-86-88 East Main Street: **APPROVED with conditions**

George and Julia Korunovski – Variance relief for inground pool and patio at Block 703, Lot 3: **WITHDRAWN**

Brett and Patricia Comstock – Variance relief for new front porch at Block 303, Lot 12 at 6 Bockoven Road: **APPROVED with conditions**

Brian and Dawn Nutt – Variance relief for new front porch and second floor addition at Block 201, Lot 28 at 4 Deerfield Road: **APPROVED with conditions**

SUMMARY OF CASES

In 2017 there were nine (9) new applications received, one (1) carried over (from 2010), and two (2) applications withdrawn. Out of the seven (7) remainder cases, all were approved with conditions.

NEW APPLICATIONS ON CALENDAR	10
Applications Approved	8
Application Approved w/ conditions	8
Applications Withdrawn	2
Applications Denied	0
New Applications Pending for 2017	0

There were five (5) applications approved requesting bulk variances this year, the other three (3) applications requested use variances.

TOTAL APPLICATIONS COMPLETED		8
"C" Variances		5
"D" Variances		3

APPLICATION FEES

In 2017, the Board of Adjustment collected a total of \$60,682.48 distributed as follows:

TOTAL FEES COLLECTED	60,682.48
Application	7,000.00
Escrow	53,682.48
OPRA	0.00

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MINUTES

Mr. Seavey asked for comments on the minutes of the regular meeting of December 5, 2017. There being none, Mr. Seavey made a motion to approve the revised minutes and Mr. Smith seconded.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
 Opposed: None
 Abstentions: None

The motion carried.

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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

BOA #5-16

**Mr. and Mrs. La Rosa / Cole
 6 Prospect Street
 Block 1901 Lot 7
 "C" Variance – 1 Year Extension**

Mr. Germanario mentioned that Mr. and Mrs. LaRosa , the former applicant, have moved. He also stated that the extension is feasible because despite the due diligence of the applicant, there were circumstances that existed that would prevent them from starting construction in the 1-year period specified in the memorialization of resolution dated February 2, 2017.

Mr. Seavey made a motion to memorialize the resolution approving the extension and Mr. Smith seconded.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith
Opposed: None
Abstentions: None

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: February 6, 2018

Memorialized: February 6, 2018

**IN THE MATTER OF LAROSA/COLE
EXTENSION OF "C" VARIANCE EXPIRATION PERIOD
BLOCK 1901, LOT 7**

WHEREAS, Jeffrey and Amy LaRosa were granted by the Borough of Mendham Board of Adjustment (hereinafter the "Board") a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by Resolution memorialized February 2, 2017; and

WHEREAS, pursuant to Ordinance Section 124-22 and Condition 6 of the Resolution, the Variance would have expired within one year of the memorialization of the Resolution unless the construction or alteration of the improvements requiring the Variance relief had actually commenced during that time period (the "Variance Expiration Period"); and

WHEREAS, the subject property was purchased by Victor Cole in November 2017; and

WHEREAS, Victor Cole has applied to the Board to extend the Variance Expiration Period by an additional year, during which time he intends to proceed with construction of the approved improvements to the subject property; and

WHEREAS, the Board finds that, in view of the recent change in ownership of the subject property, there is good cause to extend the Variance Expiration Period by an additional year.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve an extension of the Variance Expiration Period by an additional year, to February 2, 2019.

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 February 6, 2018.

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ADJOURNMENT

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

Mr. Seavey adjourned the meeting at 9:40PM.

The next meeting of the Board will be held on **Tuesday, March 6, 2018 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Carolyn Mazzucco

Carolyn Mazzucco
Board Secretary