

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
March 1, 2016**

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* and in the *Daily Record* on January 28, 2016 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

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

Alternates:	Mr. Reilly, Alternate I – Present
	Ms. Glassner, Alternate II – Present, Arrived at 7:51pm

Also Present:	Mr. Germinario, Board Attorney
	Mr. Hansen, Board Engineer

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MINUTES

Mr. Seavey made a motion to approve the minutes of the reorganization and regular meeting of February 2, 2016 which was seconded by Mr. Peck. 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

BOA # 10-15 Stillwell and Sandford, Block 601, Lot 17
2nd Floor Addition, Bulk Variance

Present: Mr. and Mrs. Sandford, Applicant
Mr. Eric Trepka, Architect

Mr. Hansen explained that he had no objection to waiving six items for the completeness review. Mr. Seavey made a motion to approve the application for completeness and Mr. Peck seconded the motion.

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

In favor: Palestina, Peck, Reilly, Ritger, Seavey, Smith
Opposed: None
Abstain: None

The motion carried.

The applicants were sworn. Mr. Trepka explained the details of the addition, which is primarily an addition to the second floor. The footprint of the house stays the same and when completed will be a 4 bedroom/ 3 bathroom single family residence with new windows, siding, and roof. The front porch will be unenclosed.

A member of the board suggested no spotlights or floodlights permitted, and Mr. Seavey motioned to approve the application with that condition. Mr. Palestina seconded the motion.

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

In favor: Palestina, Peck, Reilly, Ritger, Seavey, Smith
Opposed: None
Abstain: None

The motion carried.

RESOLUTIONS

BOA # 09-15 15 Wet Main LLC, 15 West Main St, Block 301, Lot 39
Preliminary and Final Major Sit Plan

Mr. Germanario highlighted various sections of the resolution for the Board and Mr. Seavey motioned to approve the resolution. Mr. Smith seconded the motion. Following is the Resolution of Memorialization:

RESOLUTION OF MEMORIALIZATION

Decided: February 2, 2016
Memorialized: March 1, 2016

IN THE MATTER OF 15 WEST MAIN LLC
PRELIMINARY AND FINAL MAJOR SITE PLAN,
"D" & "C" VARIANCE APPLICATION
BLOCK 0301, LOT 39

WHEREAS, 15 West Main LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final major site plan approval, including the grant of variances pursuant to N.J.S.A. 40:55D-70c and 70d by application dated 9/28/15; and

WHEREAS, the application was deemed complete by the Board, and a public hearings were held on 1/12/16 and 2/2/16; 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 0.809 acres located in the Historic Business Zone and the Historic Overlay Zone. The property is currently the site of a three-story historic building consisting of three businesses and two apartments. The businesses are located on the first floor and the apartments are located on the second floor. The third floor of the building is vacant. Additionally, there are two one-story buildings at the rear of the property that each contain a business. A total of five businesses and two residential apartments currently exist on the property. All of the existing structures are connected to public water and sewer.

2. The Applicant is proposing to upgrade the existing three-story historic building, in which the existing three businesses and two apartments will remain. These upgrades will include new windows, shutters, upgraded siding, and landscaping improvements. The Applicant is further proposing to

reconfigure the site circulation and parking areas on the property. Currently, there is parking in front of the three-story historic building. The Applicant is proposing to install a patio area and a lawn area with associated landscaping in the front of this building in place of the existing parking spaces. The parking area will be relocated to the west and rear of the existing three-story historic building. The Applicant is further proposing to demolish the two existing one-story structures and construct three townhouse units in the rear of the property. Each two-story townhouse unit will be approximately 2,550 square feet and will include a kitchen, living area, and half bath on the first floor and three bedrooms and two baths on the second floor. Each townhouse unit will also contain a garage and deck. The Applicant is proposing landscaping along the sides and rear of the townhouse units. Various site improvements are proposed, including paved and curbed parking areas, utility improvements, landscaping and lighting improvements. D and C variances are required for the project as proposed.

3. The Applicant has submitted the following documents that depict and/or describe the proposed improvements:

- Preliminary & Final Site Plans, prepared by Craig Villa, PE of Yannaccone, Villa & Aldrich, LLC, dated 09/16/15, and revised through 11/03/15, consisting of seven sheets
- Planting Plan, Planting Details, and Lighting Plan, prepared by Brian Bosenberg of B.W. Bosenberg Landscape Architecture, consisting of three sheets - Sheets 1 and 2 are dated 09/18/15 and sheet 3 is dated 11/06/15 - Sheet 1 is revised through 11/06/15
- Architectural plans, prepared by Nicholas Cusano, AIA of Cusano Associates, Inc., dated 09/16/15, consisting of five 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 09/28/15
- Application Checklist
- Survey of Lot 39, Block 0301, prepared by

Christopher J. Aldrich, PLS, dated 03/27/02, revised notes dated 05/07/02 consisting of one sheet

- Correspondence from Thomas J. Malman, Esq., dated 11/10/15
- Correspondence from Craig R. Villa, PE, dated 11/03/15
- Morris County Site Plan Report, dated 10/30/15
- Resolution #183-15 from Mayor and Council approving the Sanitary Sewer Connection application

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 10/30/15 and 01/04/16
Chuck McGroarty, PP, AICP, dated 01/04/16

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

Craig Bellamy, Fire Official, dated 01/02/16
Historic Preservation Commission, dated 03/20/15

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

A-1 Aerial Photo of Subject Property & Surrounding Area

A-2 Rendered Site Plan/Landscaping

A-3 Photos of Existing Site Conditions

A-4 Photo of Historic Building Front Facade

A-5 Rendering of Historic Building Front Facade

A-6 Rendering of Townhouse Building

A-7 Model of Townhouse Building

A-8 Rendered Street View

A-9 Site Cross-Section

A-10 Revised Site Plan Exhibit, Sheet 1 of 2, prepared by Craig Villa, PE, dated 2/2/16

A-11 Revised Grading and Utility Plan Exhibit, Sheet 2 of 2, prepared by Craig Villa, PE, dated 2/2/16

A-12 Revised Planting Plan, Sheet 1 of 4, prepared by Brian Bosenberg, revised 2/2/16

A-13 Revised Lighting Plan, Sunset to 11 p.m.,

Sheet 3 of 4, prepared by Brian Bosenberg,
revised 2/2/16
A-14 Revised Lighting Plan, After 11 p.m.,
Sheet 4 of 4, prepared by Brian Bosenberg,
revised 2/2/16

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

Michael Calandra, Hampshire Companies, developer
Craig Villa, PE, civil engineer
Nicholas Cusano, AIA, architect
Jim Mazzucco, landscape architect
David Zimmerman, PP, professional planner

9. The subject property exhibits the following pre-existing non-conforming conditions, which will not be affected by the proposed improvements:

- The existing historic building contains three businesses, whereas the maximum number of business entities per historic building in this zone is two (§215-18B).
- The existing historic building has a side yard setback of less than one foot (0.6 ft.) to the east side lot line, whereas a minimum setback of 10 feet is required.

10. The proposed improvements require relief from the following provisions of the Borough's Land Use & Zoning ordinances:

- Density

Maximum density in the Historic Business zone is two families per lot (§215-19A), which currently exist within the historic building to remain. Applicant's proposal to add three new residential units increases this density, which thus required a "d-5" variance.

- Conditional Use

Residential use is permitted in the Historic Business Zone in accordance with §215-17 "Uses permitted," subsection 'A' which reads: "Any use permitted within any residential zone." The ¼-Acre Residence Zone permits

multifamily dwellings (townhouses, senior citizen complexes and apartment complexes), but as a conditional use having a minimum lot area of four acres (subject property is .8089 acres) and specific bulk standards which are as follows:

- minimum lot width: 400 ft. (subject property lot width is 154.41 ft.)
- minimum lot depth: 400 ft. (subject property lot depth is 257 ft.)
- minimum width of two side yards, each: 100 ft. (proposed side yards are 15.6 & 15 ft.)
- minimum depth of rear yard: 100 ft. (proposed rear yard is 32.8 ft.)
- minimum depth of front yard: 100 ft. (existing front yard is 29.9 ft.)

The property in question does not satisfy the minimum lot area, minimum lot width, depth or side yard setbacks and the proposed townhouses do not meet the minimum front and rear setbacks. As such the deviations from the conditional use standards required 'd-3' variance relief.

- Lot Coverage

As noted above the existing lot coverage of 91.5 percent exceeds the maximum permitted limit of 65 percent (§215-19A). The proposed site plan improves this condition by reducing the coverage to 66.8 percent. Because this proposal involves physical alterations to the site, "c" variance relief is required to exceed the permitted limit.

- Parking

The proposed development requires 34 on-site parking spaces (§215-19D(3)), while 29 spaces are proposed, thereby requiring a "c" variance.

- Dumpster Enclosure

An 8-foot fence height is proposed for the rear and sides of the dumpster enclosure, while the ordinance (§215-29B) allows a maximum of 6 feet, thereby requiring a "c" variance.

- Design Waivers

Parking stall dimensions of 10'x20' are required (§195-45c(2)(b)), while 9'x18' and 10'x18' stalls are proposed. A 30-foot driveway width is required (§195-45D), while a 24-foot width is proposed. Maximum lighting intensity at the property boundary of 0.1 fc is required (§195-57.5G), while 0.4 fc is proposed.

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

The Board finds that the "d-5" density variance and the "d-3" conditional use variance will serve to promote the following purposes of zoning pursuant to the Municipal Land Use Law, NJSA 40:55D-2:

(h) To encourage the location and design of transportation routes which will promote the free flow of traffic ...;

(i) To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

(j) To promote the conservation of historic sites and districts

More specifically, the Board finds that this variance relief will serve to promote the restoration of the historic "Freeman Brothers" building, more than a century old, a project which the Borough's Historic Preservation Commission has endorsed. The proposed improvement will also relocate the existing parking in front of the historic building, which is both a visual blight and presents a traffic safety hazard due to vehicles backing out onto Main Street, and replace it with an attractive bluestone patio with benches. These improvements will significantly enhance the streetscape appearance of the property and will be an asset to the Historic Business Zone.

The proposed variance relief will also upgrade the site by removing the two old commercial buildings in the rear of the property, which have fallen into disrepair, and eliminating the unsightly

outdoor storage of commercial materials and equipment associated with these two buildings. By replacing these two buildings with three new and attractive residential buildings, the rear of the subject property will become much more compatible with the adjoining residential uses there. The proposed development enabled by this variance relief will also significantly upgrade the stormwater controls on the site and limit runoff onto neighboring properties.

The Board further finds, with respect to the "d-5" variance relief, that the proposed site improvements will accommodate the problems associated with the increased density through the improved parking and driveway configurations, enhanced landscaping and stormwater controls, as well as a significant decrease in impervious coverage from 91.5% existing to 66.8% proposed. With respect to the "d-3" variance, the Board finds that the site continues to be appropriate for the proposed residential townhouse uses, because the rear area of the lot where these uses will be located is surrounded by residential uses, is well buffered visually from Main Street by the natural topography of the property, and will be further buffered by the substantial landscaping that Applicant has proposed. The reconfigured parking, driveway and sidewalk configurations will integrate the residential and commercial uses on the site so that these uses complement rather than conflict with one another. The proposed mix of uses also comports well with the surrounding uses, which are predominantly commercial in the front of the property and predominantly residential in the rear.

With respect to the "c" variances for lot coverage and parking spaces, the Board finds that this relief is warranted both on the basis of "c-1" hardship, in relation to the existing constraints of the subject property, and on the basis of "c-2" public benefits of the deviations substantially outweighing the detriments. The Board notes that impervious coverage will be substantially reduced (91.5% to 66.8%) compared to existing conditions, and the parking will be significantly improved as compared to the existing parking in front of the

commercial building and in the unstriped gravel parking area to the west. With respect to the "c" variance for the partial 8-foot height of the dumpster enclosure, the Board has suggested this to the Applicant to better screen the dumpsters because the Board finds that the relief is warranted on the basis of "c-2" aesthetic benefits outweighing minimal detriments. Likewise, the design waivers with respect to parking stall dimensions and driveway width will improve overall circulation of traffic within the site while enabling a substantial reduction in impervious coverage. Very minimal detriments are associated with the design waiver for lighting intensity, since the area of exceedance is at the boundary of the Weichert commercial property.

The Board further finds that the foregoing 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. The Board finds that the relief granted herein advances the Borough's Master Plan goals with reference to preservation of historic buildings, providing a variety of housing types, and promoting mixed-use development where appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the preliminary and final major site plan application and grant the "d" and "c" variances and design waivers requested by the Applicant, as described hereinabove.

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a building permit for the improvements.

1. Revised plans shall be submitted incorporating the revisions depicted in hearing Exhibits A-10 through A-14 inclusive, as well as the further revisions required by the following conditions.

2. The easement for the public sewer line has been relocated around the townhouses. Construction details shall be provided on revised plans, which will note that the new sewer layout is subject to Treatment Works Approval from the NJDEP.

3. Revised plans shall depict the proposed dumpster enclosure as 8 feet in height at the rear and sides and 6 feet in height in front, with a man-door in one side of the enclosure. The enclosure material shall be specified as board-on-board, and details shall be provided.

4. The deed of the subject property shall incorporate a restrictive covenant prohibiting the regrading and/or filling of the depressed infiltration basin area in the rear of the property. The restricted area will be identified by a note on the revised plans and by a metes-and-bounds description in the deed, which shall be approved by the Board engineer. The wording of the deed restriction shall be reviewed and approved by the Board attorney.

5. Lease/sale agreements and deeds for the commercial building and the townhouses will incorporate provisions for periodic contributions from tenants/owners toward the maintenance of common facilities on the site, including without limitation stormwater controls, drywells and landscaping. A property management company shall be engaged to provide the requisite site maintenance.

6. Boats and/or recreational vehicles shall not be stored or parked in the site's parking stalls. Specific parking stalls shall be assigned to each of the townhouse units in front of their respective garages. Townhouse occupants will be limited to the use of no more than three parking stalls per unit.

7. The size of rear decks of the townhouse units shall not be increased without further approval of this Board.

8. No floodlights shall be installed on the rear of either the commercial building or the townhouses.

9. Revised plans shall note that the townhouses will not have basements, and that all mechanical units will be located in the attics with the exception of the air conditioning units.

10. A two-year maintenance guarantee shall be provided for all landscaping materials.

11. Improvements to the commercial building shall be completed or bonded prior to issuance of certificates of occupancy for the townhouse units. If bonded, the bonding amount to be determined by the Borough Engineer.

12. The access driveway and improvements within or adjacent to the County right-of-way shall be approved by the Morris County Planning Board.

13. Revised plans shall depict the correct 150' wetlands buffer and 300' riparian buffer locations on the subject property. Applicant shall obtain all required NJDEP approvals for proposed disturbance within regulated areas.

14. The Site Plan shall be revised as follows:

a) The project is a minor development with regard to stormwater management. All notes shall reflect that and the project should demonstrate compliance with the minor development standards.

b) The height of the wall behind parking stalls 5-8 shall be increased to 30", and a revised detail submitted for approval by the Board Engineer.

c) If the apartments/townhomes need to have sprinklers per code for fire-fighting purposes, the plans shall provide this note.

15. The Grading and Utility Plan shall be revised as follows:

a) Descriptions of all easements shall be provided to the Borough Engineer for review and approval. Easement language is subject to approval from the Borough Attorney.

b) Revised plans shall note that electric utility service to the commercial building shall be installed underground if permitted by the utility company. If underground installation is not permitted by the utility company, or the cost of the underground installation is determined by the Borough Engineer to be prohibitive, then the above-ground connection shall be relocated so as to be less visually obtrusive than the current location.

c) The proposed electric, telephone, cable lines are

to be installed approximately 2' off of the property line. The Applicant's engineer shall confirm whether the lines can be installed without disturbing the adjacent property. The junction box/transformer pad shall be labeled.

16. The Soil Erosion and Sediment Control Plan shall be revised as follows:

- a) This plan shall note that certification from the Morris County Soil Conservation District is required.
- b) Additional information is required as to how stormwater runoff during construction will be mitigated.
- c) The sequence of construction shall be revised to detail the timing of the installation of the new sewer main.

17. The Construction Details and Profile shall be revised as follows:

- a) The plan shall note that all improvements within the County right-of-way are subject to approval from Morris County.
- b) This plan shall note that it requires certification from the Morris County Soil Conservation District.

18. Sanitary Sewer Details and Profile shall be revised as follows:

- a) The plan shall note that it is subject to approval as part of the treatment works permit application by the NJDEP.
- b) Watertight locking covers shall be specified for the manholes.

19. Planting Plan and Details shall include a signature block so that the final version can be recorded with the site plan and utilized as a construction and inspection document.

20. The Lighting Plan shall be revised as follows:

- a) A detail for the fixture designated "1W" shall be provided on the plan.
- b) This plan shall include a signature block so that the final version can be recorded with the site plan and utilized as a construction and inspection document.

21. Stormwater Management Plan shall be revised as follows:

- a) The project is a minor development with regard to stormwater management. All notes shall reflect that and the project shall demonstrate compliance with the minor development standards.
- b) The Applicant shall provide calculations ensuring there is no increase in the peak rate or volume of runoff to any offsite properties as a result of the development, for all storm events.
- c) Applicant's Engineer shall confirm whether there will be concentrated runoff onto adjacent Lot 40 from the proposed driveway/parking lot as it transitions to the grass pavers. Additional spot grades shall be provided in this area to confirm drainage patterns.
- d) The plans depict a low area at the rear of the site that the proposed parking lot generally drains to and where drywells for townhouse rooftop runoff will be installed. This low area will effectively act as an infiltration basin with extended detention. Soil tests and calculations shall be provided to ensure the basin and drywells will function and drain within 72 hours. Additional information on any overflow shall be provided.
- e) Drywells for the proposed townhome roof areas shall be designed for 3" of runoff for the proposed roof area. Soil testing shall be performed prior to signing the plans to confirm the soil permeability and regional water table elevation.
- f) Applicant's engineer shall confirm whether there are any wells or septic systems within 100 feet of the low area.

22. Cost estimates shall be provided for all public improvements in order to determine the amount of bonding and inspection escrow.

23. Letters directed to the Chairman of the Board and signed by a responsible official of all utility companies, etc. providing service to the site shall be provided.

24. This Resolution incorporates the conditions of the Borough sewer approval.

25. There will be no overhead obstructions over the access roadways or over the parking area to the 3 residential units or over the commercial parking area.

26. The 24 foot aisle ways in the two parking areas will be deemed Fire Lanes and will be kept clear of all obstructions.

27. The access roads will be constructed to handle vehicle weights of 77,000 pounds.

28. All applicable Building and Fire Codes shall be adhered to in the construction of the units.

29. 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.

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

31. 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.

32. 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. Upon application to the Board, the Board may extend the one-year time period based on proof, to the reasonable satisfaction of the Board, that the developer was prevented from proceeding with the construction or alteration of the improvements requiring variance relief because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals.

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 2/2/16.

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

In favor: Glassner, Reilly, Seavey, Smith,
Opposed: None
Abstain: Palestina, Peck, Ritger

The motion carried.

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CLOSED SESSION

Mr. Seavey made a motion for the Board to enter into closed session regarding the discussion of litigation between T-Mobile Northeast LLC et al. v. Borough of Mendham Zoning Board of Adjustment. Mr Peck seconded.

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

In favor: Glassner, Palestina, Peck, Reilly, Ritger, Seavey, Smith,
Opposed: None
Abstain: None

The Board entered into closed session at 7:56pm.

On a voice vote, the Board returned to open session at 8:42pm.

ADJOURNMENT

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn and Mr. Ritger seconded. On a voice vote, the meeting was adjourned at 8:45pm.

The next meeting of the Board will be held on **Tuesday, April 5, 2016 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Carolyn Mazzucco

Carolyn Mazzucco
Board Secretary