

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
REGULAR MEETING  
April 4, 2017**

**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 12, 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. Peck – Absent
Mr. Peralta – Absent	Mr. Ritger – Present
Mr. Seavey – Present	Mr. Smith - Present
Mr. Sisson - Absent	

Alternates:	Mr. Reilly, Alternate I – Present
	Ms. Cass, Alternate II - Present

Also Present:	Mr. Germinario, Board Attorney
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**MINUTES**

Mr. Seavey asked for comments on the minutes of the regular meeting of March 7, 2017, and Ms. Mazzucco commented that Matann Singlo needed to be changed to Matann Simglo, under the applicant section. Mr. Seavey made a motion to approve the revised minutes and Mr. Smith seconded. On a voice vote, the minutes were approved as revised.

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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**

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**RESOLUTIONS**

**BOA #8-16**

**Meadow Spring Farm, LLC and Escada, LLC**  
**11 Horseshoe Bend Road and 480 Bernardsville Road**  
Block 2301 Lot 5 and 10  
"C" and "D" Variance  
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Mr. Germanario reviewed the Resolution for the Board, and Mr. Reilly raised a question about the Borough Ordinance on fence height. With no other comments or concerns, Mr. Ritger made a motion to approve the memorialization of the resolution and Mr. Smith seconded.

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

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

The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: March 7, 2017**  
**Memorialized: April 4, 2017**

**IN THE MATTER OF MEADOW SPRING FARM, LLC AND ESCADA, LLC**  
**MINOR SUBDIVISION, "D" VARIANCE AND "C" VARIANCE APPLICATION**  
**BLOCK 2301, LOTS 5 & 10**

**WHEREAS**, Meadow Spring Farm, LLC and Escada, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for minor subdivision approval and for the grant of variances pursuant to N.J.S.A. 40:55D-70c and 40:55D-70d (hereinafter the "Variances") by application dated 11/1/16; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/7/17; 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 Block 2301, Lots 5 and 10, which are adjoining lots located in the R-5 Five-Acre Residence Zone. Lot 5, which is owned by Co-Applicant Meadow Spring Farm, LLC, contains approximately 18.121 acres and fronts on Horseshoe Bend Road, a private road. Lot 5 is currently improved with a single-family residence (constructed in 1750), a cottage (constructed in 1920), a barn, a detached garage, an in-ground pool, a 265 square-foot block building/shed and associated improvements. Lot 10, which is owned by Co-Applicant Escada, LLC, contains approximately 11.264 acres and fronts on Bernardsville Road and Horseshoe Bend Road. Currently under construction on Lot 10 are a 14,805 square-foot residence, an in-ground pool, cabana, tennis court, patio and related improvements. Lot 5 is traversed by Horseshoe Bend Lane, a private easement which provides access from Horseshoe Bend Road to four properties to the north of Lot 5. The Co-Applicant LLCs are both owned by Robert G. Previdi of Naples, Florida.

2. The Applicant is proposing a minor subdivision, pursuant to which an approximate 2.85 acre portion of Lot 5, bounded by the westerly sideline of Horseshoe Bend Lane and the easterly boundary of Lot 10, will be divided from Lot 5 and merged with Lot 10. The proposed minor subdivision will reduce the area of Lot 5 to approximately 15.273 acres and will increase the size of Lot 10 to approximately 14.122 acres. The proposed minor subdivision results in the transfer of the cottage from Lot 5 to Lot 10. While the current location of the cottage on Lot 5 is a pre-existing non-conforming use, the proposed relocation of the cottage, which serves as a separate residence, to Lot 10 will cause that lot to contain more than one single family residence, so as to constitute a non-conforming use under §215-13.

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

subdivision and the improvements to which the proposed Variances are related:

- Plans entitled *Meadow Spring Farm, LLC & Escada, LLC Minor Subdivision & Variances Plans 480 Bernardsville Road (County Route 525) & 11 Horseshoe Bend Road Lots 5 & 10 - Block 2301, Borough of Mendham, Morris County, NJ* prepared by Candice J. Davis, P.E. of Yannaccone, Villa & Aldrich, LLC, dated 10/28/16, revised 2/22/17 and consisting of five sheets

- Plans entitled *Landscape Design Planting & Fencing Plan/Entry Structures - New Residence 480 Bernardsville Road & 11 Horseshoe Bend Road, Mendham Borough, Morris County, NJ* prepared by Bradley A. Meumann, L.L.A. of Meumann Associates, dated 10/17/16, revised to 2/13/17, and consisting of two sheets

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

- Application and checklist, dated 11/1/16
- Proposal (single page description of proposed subdivision and variances)
- Color photographs of existing and new dwellings
- Survey of Lot 10, Block 2301 prepared by Christopher J. Aldrich, P.L.S. of Yannaccone, Villa & Aldrich, LLC, dated 8/3/15 and consisting of one sheet
- Survey of Lot 5, Block 2301 prepared by Christopher J. Aldrich, P.L.S. of Yannaccone, Villa & Aldrich, LLC, dated 12/14/15 and consisting of one sheet
- Certification of Status of Municipal Tax and Sewer Fees
- 200 Foot Property Owner List, as prepared by the Borough of Mendham
- Morris County Planning Board review letter, dated 12/5/16

5. The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Chuck McGroarty, PP/AICP, dated 1/26/17

John Hansen, PE/CME, dated 12/12/16

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 11/3/16

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

- A-1 Highlighted Minor Subdivision Plan Sheet, Sheet 4 of 5
- A-2 Rendered Landscape Plan, Sheet 1 of 2
- A-3 Rendered Landscape Plan, Sheet 2 of 2
- A-4 Landscape Fence Details
- A-5 Landscape Fence and Entrance Details
- A-6 Revised Fencing along Horseshoe Bend Road
- A-7 Entrance Structures at Bernardsville Road
- A-8 Entrance Structures at Horseshoe Bend Road
- A-9 Rendered Expanded Lot 10 Development Plan

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

Greg Yannaccone, PE, Applicant's civil engineer  
Bradley Meumann, LLA, Applicant's landscape architect  
Steve Lydon, PP, Applicant's planner  
Candice Davis, PE, Applicant's civil engineer

9. The documentary evidence and the testimony presented at the public hearing adduced the following:

The expert testimony of the Applicant's civil engineer Greg Yannaccone provided a description of the existing conditions of each lot, including existing structures and structures currently under construction, and the proposed lot line adjustment. The expert testimony of the Applicant's landscape architect Bradley Meumann provided a description of the proposed landscaping to be placed on Lot 10 and the proposed entry gates and fencing to be installed on Lot 10.

The expert testimony of Applicant's planner Steve Lydon asserted that, since the proposed minor subdivision and related d(1) variance for the second single-family dwelling on Lot 10 will create no new lots and no new dwellings, it is consistent with the Master Plan goal of maintaining the "open and rural" character of this

area of the Borough. With respect to the positive criteria supporting the D-1 variance, Mr. Lydon identified the MLUL purposes of advancing the appropriate use/development of land and providing adequate air, light and open space. The witness opined that the Applicant's proposal advances the MLUL goals by dividing the tract along a more appropriate boundary, that being the Horseshoe Bend Lane access easement. Regarding the negative criteria, Mr. Lydon opined that, since nothing is changing "on the ground," there are no adverse effects and no substantial impairment to the Master Plan and Zone Plan of the Borough. Furthermore, he contended that the expanded Lot 10, being almost three times the five-acre size required by the zoning, is particularly well suited to accommodate a second dwelling.

With respect to the bulk variances sought by the Applicant for non-conforming fencing, Mr. Lydon testified that the 8-foot height of the deer fencing is justified under the MLUL's c(1) hardship criteria, based on the subject property's size and vegetation, which attracts deer, and also under c(2) criteria of promoting a desirable visual environment, since the proposed fencing will not obstruct views and is similar to deer fencing on neighboring properties. Similarly, Mr. Lydon asserted that the variances relating to the decorative steel fencing and associated masonry pillars are warranted under the c(2) criteria by enhancing the appearance of Lot 10 from Bernardsville Road, consistent with similar fencing on the neighboring properties.

Mr. Lydon also opined that, for the purpose of determining setbacks, Horseshoe Bend Lane should not be considered as establishing front yard setbacks for either of the two lots, because it is a private access easement rather than a street.

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

On the basis of the testimony of the Applicant's planner, the Board finds that the granting of a d(1) use variance with respect to the location of more than

one single-family dwelling on expanded Lot 10, contrary to the uses permitted in the R-5 zone under §215-13, is warranted with respect to both positive and negative criteria. The transfer of the cottage from Lot 5 to Lot 10 results in no physical changes to the site and has no impacts on other properties. The technical deviation from the R-5 zoning is justified based on the functionally more appropriate property boundary along Horseshoe Bend Lane.

The Board further finds that the bulk variances from §§215-29.B(2) and 215-29.B(3) with respect to non-conformities of the front entrance gates, decorative fence and deer fence are justified, as testified by Applicant's planner, on the basis of c(1) hardship criteria relating to the particular attraction of the subject property to deer, and the basis of c(2) criteria with respect to the enhancement of the visual environment and consistency with similar improvements on neighboring properties.

The Board also adopts the position of both Applicant's and the Board's planner that the Horseshoe Bend Lane private access easement does not constitute a street for the purposes of establishing a front yard setback for either Lot 5 or Lot 10.

**NOW, THEREFORE, BE IT RESOLVED,** that the Board does hereby approve the minor subdivision and grants the Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(1), 40:55D-70c(1) and 40:55D-70c(2).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the filing of minor subdivision deeds.

1. There shall be no expansion of the cottage without further approval of this Board. Should the cottage be damaged or partially or totally destroyed, it may be re-built only to its present size, based on a 1590 sf footprint and partial one and two stories.
2. The plans shall be revised to reduce the extension of decorative steel fencing and masonry piers along Horseshoe Bend Road and replace them with 8-foot mesh deer fencing in accordance with Exhibit A-6.

3. Mesh deer fencing along the portion of the Lot 10 westerly property line where chain link fencing has been installed on Lot 11 shall be installed only if the fencing on Lot 11 is removed.

4. Revised plans shall depict the setback of the decorative steel fencing and masonry piers along Bernardsville Road to match the setback of fencing along the Bernardsville Road frontage of adjoining Lot 11.

5. The block shed on the easterly side of Horseshoe Bend Lane shall be removed before the minor subdivision deeds are filed.

6. Minor subdivision deeds shall be reviewed and approved by the Board Attorney and the Board Engineer prior to filing. The deed for Lot 10 shall refer to this Resolution, a copy of which shall be filed with the deed.

7. All application, escrow and inspection fees shall be paid in full and current at the time of filing the minor subdivision deeds. 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.

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

9. 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.

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 3/7/17.

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**BOA #2-17**

**Matann Simglo, LLC**  
**7 West Main Street**  
Block 301 Lot 35  
Site Plan Waiver



Mr. Germanario reviewed the Resolution for the Board. With no other comments or concerns, Mr. Seavey made a motion to approve the memorialization of the resolution and Mr. Ritger seconded.

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

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

The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: March 7, 2017**  
**Memorialized: April 4, 2017**

**IN THE MATTER OF MATANN SIMGLO, LLC**  
**SITE PLAN WAIVER**  
**BLOCK 301, LOT 35**

**WHEREAS**, Matann Simglo, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for a waiver of site plan approval; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/7/17; and

**WHEREAS**, the Board has determined that the Applicant has complied with all land use procedural requirements of Chapter 124 of the Ordinance of the Borough of Mendham, and has complied with the procedural requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; and

**WHEREAS**, the Board makes the following findings and conclusions, based on the documents, testimony and other evidence comprising the hearing record:

1. The property which is the subject of the application is located in the Historic Business Zone

and is served by public water and public sewer. The structure on the site is located close to West Main Street, a County Road, with onsite parking on the north side of the property, behind the rear of the structure. Driveway access to the parking area is a one-way configuration with ingress on the east side of the structure and egress on the west side of the structure. By resolution of 1/2/07, the Board waived site plan approval and granted a d(1) variance for the occupation of these premises by La Pergola, Inc., an Italian specialty store. At that time, La Pergola constituted a fourth business user on the premises, which was not permitted under §215-18. Also at that time, sewer restrictions on the premises (Borough Council Resolution 170-06) limited on-site food preparation and prohibited on-site food consumption. Those restrictions have since been lifted (Borough Council Resolution 111-16), and additional sewer capacity has been allocated to the former La Pergola premises, so as to enable on-site food preparation and consumption.

2. The Applicant now before the Board proposes to occupy the space previously occupied by La Pergola with a pizzeria, offering traditional Italian specialties prepared on the premises, to include on-site consumption (4 tables, 8 seats), as well as take-out and deliveries. Applicant's business will occupy one-half of the first floor and the basement. Because there is currently only one other business use in the building, Applicant's proposed use complies with §215-18 and hence does not require a d(1) variance.

3. The Applicant has submitted the following documents that depict and/or describe the improvements for which a waiver of site plan approval is requested:

- Proposed Floor Plans prepared by Mendham Design Architects consisting of one (1) sheet dated 1/11/17
- Proposed Installation of Commercial Kitchen plans prepared by Karl Stockerl, PE, Clifton, NJ consisting of five (5) sheets, dated 10/19/16
- Sign detail, dated 9/1/16 prepared by JHM Signs
- Site Plan exhibit, prepared by Dynamic Engineering Consultants, PC, dated 12/19/06, last revised 3/30/07

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

- Application for Hearing, Mendham Borough Board of Adjustment, with Application Checklist and Site Inspection Form
- Borough Council Resolution #170-06, dated 8/21/06
- Borough Council Resolution #111-16, dated 7/18/16
- Board of Adjustment Resolution memorialized 1/2/07
- Morris County Planning Board site plan report, dated 3/27/06
- Correspondence from Anthony Sposaro, Esq. to John Hansen, PE, dated 3/2/17
- Certification of Status of Municipal Tax and Sewer Fees
- Owner's Consent to Filing of Application
- Affidavit of Ownership
- Floor area calculations, prepared by Daniel A. Encin of Mendham Design Architects

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 3/1/17

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

Historic Preservation Commission (HPC),  
dated 11/23/16

Craig Bellamy, Fire Official, dated 1/21/17

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

- A-1 Sign detail approved by the HPC
- A-2 Previous LaFamiglia sign photo
- A-3 Daniel Encin letter regarding floor area
- A-4 Morris County Planning Board Site Plan Waiver, dated 3/27/06
- A-5 Exhaust fan sound data
- A-6 Exhaust fan sound data

8. In the course of the public hearings, the Applicant was represented by Anthony J. Sposaro, Esq., and the Applicant presented the testimony of the

Applicant, which testimony is part of the hearing record.

9. The documentary evidence and the testimony of the Applicant adduced the following facts:

The Applicant proposes to operate the pizzeria business under the name "Sapori d'Italia," offering pizza and other traditional Italian specialties, all prepared on site, for on-site consumption, take-out and delivery. There will be no exterior site changes, aside from re-labeling the existing sign with the new business name. Inside the premises, a new range/oven with appurtenant exhaust will be installed in the basement, and a new pizza oven with appurtenant exhaust will be installed on the first floor. Four two-seat dining tables will also be added on the first floor. The business will be served by 12 existing parking spaces, consistent with Ordinance requirements. Hours of operation will be 11am-9pm weekdays and 11am-10:30pm on weekends.

10. Based on the hearing record, the Board finds that this is a change of tenancy in which the new business is similar to the previous one, with no exterior site improvements and limited interior improvements not requiring site plan review. Therefore, the Board finds that it can best serve the public interest by waiving site plan approval, subject to the conditions hereinbelow.

**NOW, THEREFORE, BE IT RESOLVED,** that the Board does hereby waive site plan approval, subject to the following conditions, which shall be satisfied before the issuance of a continuing certificate of occupancy for the premises:

1. Applicant shall submit an updated site plan waiver from the Morris County Planning Board.

2. A new concrete apron shall be installed on the exit driveway. A construction detail for the apron shall be submitted for review and approval of the Borough Engineer prior to construction.

3. Striping of parking stalls shall be refreshed.

4. The business shall comply with Borough Ordinance noise generation standards.

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 3/7/17.

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**ADJOURNMENT**

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn the meeting at 7:50pm. On a voice vote, the meeting was adjourned.

The next meeting of the Board will be held on **Tuesday, May 2, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Carolyn Mazucco*

Carolyn Mazucco  
Board Secretary