

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
Tuesday, May 7, 2019
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Chairman Seavey, at 7:39PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Star Ledger* and the *Daily Record* on in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Chairman Seavey – Present	Mr. Dick – Present
Mr. Palestina - Absent	Mr. Smith - Present
Ms. Cass – Present	Mr. Sisson – Absent
Mr. Ritger – Present	

Alternate: Mr. Egerter, Alternate I- Absent
 Mr. Felber, Alternate II - Absent

Also present: Mr. Germinario, Esq.

#####

MINUTES

Chairman Seavey asked for comments on the minutes of the regular meeting of April 2, 2019. There being no corrections, Chairman Seavey made a motion to approve the minutes as written and Mr. Dick seconded.

ROLL CALL

In Favor: Chairman Seavey, Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Dick, and Mr. Egerter
Opposed:
Abstain:

RESOLUTIONS

BOA#04-18 Richard & Joyce Grogan
16 Maple Ave.
Block 406, Lot 13
Bulk Variance- Setback

Mr. Germanario summarized the Grogan application and the conditions outlined in the resolution. Chairman Seavey asked that the covered portion be added to the Resolution. Mr. Germanario will revise the resolution to include the covered porch shall not be enclosed. Chairman Seavey made a motion to memorialize the resolution subject to the amendment and Mr. Dick seconded.

ROLL CALL: The result of the roll call was 3 to 0 as follows:

In favor: Mr. Dick, Mr. Ritger, Chairman Seavey
Opposed: None
Abstentions: Mr. Smith

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: April 2, 2019

Memorialized: May 7, 2019

**IN THE MATTER OF RICHARD AND JOYCE GROGAN
"C" VARIANCE APPLICATION
BLOCK 406, LOT 13**

WHEREAS, Richard and Joyce Grogan (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 7/2/18; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 4/2/19; 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 1.897 acres located in the 1-Acre Residential Zone. The property is improved with an existing 2-story frame dwelling, the front portion of which lies within the minimum 75-foot front yard setback. The property is traversed by sanitary sewer line and water line easements, which constrain the building envelope to the north side and west/rear. Based on the wetlands investigation by Environmental Technology Inc., the existing dwelling is located in a riparian buffer zone.

2. The improvements to the subject property for which the Variance relief is sought comprise a front addition that will include a living room extension and a covered porch and vestibule.

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

- Board of Adjustment Application, dated 7/2/18
- Architectural Plans consisting of three sheets, prepared by Thomas A. Robinson,

Long Valley, NJ, dated 10/20/18, revised 2/14/19

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

- *Boundary and Location Survey, dated 7/10/14, revised 10/29/18*
- *Application Checklist*
- *Application for Sanitary Sewer Connection, dated 7/2/18*
- *Owner's Consent to Filing of Application Form, dated 7/2/18*
- *Owner's Consent to Filing of Application Form, dated 7/2/18*
- *Site Inspection Form, dated 7/2/18*
- *Tax Certification, dated 3/25/19*
- *Zoning Permit Application, dated 6/25/18*
- *Zoning Permit Application Denial, dated 6/27/18*
- *Affidavit of Publication, dated 3/21/19*
- *Letter of David Grogan, Environmental Technology Inc., dated 2/20/19*

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:

- *Paul Ferriero, PE, CME, Borough Engineer, dated 8/24/18*

6. In the course of the public hearings, no exhibits were marked as part of the hearing record.

7. In the course of the public hearings, the Applicants represented themselves, and the Applicant presented their own testimony, which testimony is part of the hearing record.

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

The Ordinance requirement for a 75-foot front yard setback was enacted after the homes along Maple Avenue were built. The existing setback pattern shows front yard setbacks less than Applicant's to the south and becoming greater to the north, with the subject property being in a transitional area. In 2016, Applicant constructed an addition to the rear left corner of the home, but further additions to the side and rear are constrained by the sewer and water line easements, which force the building envelope to be closer to the road. The proposed addition will improve the appearance of the dwelling by balancing the previous rear addition and providing proportional balance to the façade. Since the proposed addition will not add significantly to the width of the dwelling, the mass of the building as seen from the road will not increase. Since the proposed covered porch will not be enclosed, it also will not add mass to the streetscape view. The report of Environmental Technology Inc. indicates that the proposed addition is consistent with a permit-by-rule under the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13-7.10) and so will not require NJDEP authorization.

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

A variance is required from Ordinance §215-28 Schedule II with respect to the minimum 75-foot front yard setback in the 1-Acre Residential Zone. The Board finds that the front of the existing dwelling lies within the setback line, and that this is typical of other homes along Maple Avenue, which pre-date the ordinance requirement. Expansion of the dwelling to the side and rear is constrained by existing sewer and water line easements.

By reason of the existing development and constraints of the subject property, the strict application of Ordinance Section 215-28/Schedule II would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship

upon the Applicant. Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

The proposed addition also advances the purposes of the Municipal Land Use Law insofar as it promotes a desirable visual environment by improving the dwelling façade and making it proportional to the rest of the dwelling.

The detriments associated with the deviation are considered minimal because they are typical of the existing front yard setback pattern in this neighborhood.

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

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

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

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

1. The front yard setback variance granted herein shall require that the covered porch addition, including the steps, be set back not less than 37 feet from the street right-of-way line (ROW), with the porch itself not less than 39' from the ROW. The living room/vestibule addition shall be setback not less than 44.5 feet from the ROW. The size and dimensions of the addition shall not be greater than that shown of the approved plan.

2. The covered porch addition shall not be enclosed.

3. The minimum lot width (150') and maximum building height (40') requirements and the existing lot width and existing/proposed building height shall be added to the site plan.

4. According to the NJDEP NJ Geoweb, the existing dwelling is located within approximately 200 feet of a category 1 stream (tributary to North Branch Raritan River; FW2-TPC1) which has a 300' riparian buffer associated with it. The riparian buffer shall be depicted on the plans, and activities in the buffer shall be consistent with a permit-by-rule under the Flood Hazard Area Control Act Rules.

5. The architectural plans show building offsets to property lines calculated to the ten thousandths of an inch. This is impractical and beyond the accuracy of any survey measurement tools. The proposed setbacks shall be given to the nearest tenth of a foot. A final survey is required as a condition of this approval.

5. 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.

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

7. 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.

8. 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.

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 4/2/19.

Lisa Smith
Board Secretary

BOA # 07-18 Wayne & Lynn Dubin
51 Hardscrabble Road
Block 2401, Lot 18
(Deer Fence)

Mr. Germanario summarized the Dubin application and the conditions outlined in the resolution. Chairman Seavey made a motion to memorialize the resolution and Mr. Ritger seconded.

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

In favor: Mr. Dick, Mr. Ritger, Chairman Seavey, Mr. Smith
Opposed: None
Abstentions: None

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: April 2, 2019
Memorialized: May 7, 2019

IN THE MATTER OF WAYNE AND LYNN DUBIN
"C" VARIANCE APPLICATION
BLOCK 2401, LOT 18

WHEREAS, Wayne and Lynn Dubin (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 3/4/19; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 4/2/19; and

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

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

1. The property which is the subject of the application consists of approximately 5.78 acres located in the 5-Acre Residential Zone. The property is developed with an existing one-story frame dwelling with a detached garage, driveway, tennis court, pool and associated improvements. The existing dwelling is in a non-conforming location and the lot is substandard. The property fronts on Hardscrabble Road to the east and Oak Forest Road to the south.

2. The improvements to the subject property for which the Variance relief is sought comprise an 8-foot perimeter deer fence, which requires relief from Ordinance §215-29B, which limits fencing in the front yard to 4 feet (§215-29B(2)) and fencing in the side and rear yard setbacks to 6 feet (§215-29B(3)).

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

- Board of Adjustment Application, dated 3/4/19
- Fence Plan, consisting of one sheet revised through 1/14/19, prepared by David E. Fantina, PE

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

- Application Checklist
- Application for Sanitary Sewer Connection, dated 3/4/19
- Owner's Consent to Filing of Application Form, dated 3/4/19
- Site Inspection Form, dated 3/4/19
- Zoning Permit Application, dated 5/19/18
- Zoning Officer's Denial, dated 5/30/18
- Tax Certification, dated 3/6/19
- Public Notice and Affidavit of Publication, dated 3/14/19
- York Fence Co. Proposal, dated 10/22/18

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:

Paul Ferriero, PE, CME, Borough Engineer,
dated 12/17/18 and 3/25/19

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

- A-1 Colored Highlighted Fence Plan
- A-2 Photo of proposed 8' pool code deer mesh fence

7. In the course of the public hearings, the Applicants represented themselves, and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

William Byrne, Architect and Professional Planner
Emile DeVito, NJ Conservation Foundation

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

The purpose of the 8-foot deer fencing is to protect and restore the native forest and undergrowth vegetation and eliminate invasive plants. One of the goals of the Borough's Master Plan is conservation of natural woodland vegetation and control of

deer population which threatens it. The area to be protected by the proposed fencing is unique insofar as it has always been forested and never was disturbed by agricultural uses. Such areas of native soil are optimal for forest restoration, which cannot succeed without protection from deer. The proposed 8-foot fencing will be pool code deer mesh, except for nearest the dwelling in the section of fence highlighted in blue on Exhibit A-1, which will be decorative black metal fencing.

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

The proposed deer fencing requires a variance from Ordinance §215-29B, since the 8-foot fence traverses both the front yards (maximum 4 feet) and the westerly rear yard setback (maximum 6 feet).

The Board finds that granting this Variance will promote the goals of the Borough Master Plan by conserving a unique undisturbed native forest and protecting it from deer depredation. The Variance will also promote the purposes of the Municipal Land Use Law, insofar as it will promote the conservation of valuable natural resources and a desirable visual environment.

The detriments associated with the deviation are considered minimal because, as depicted in Exhibit A-2, the deer mesh fencing will blend into the forest and undergrowth and will not be visually obtrusive.

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

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(2).

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

1. The Fence Plan shall be revised to specify that the 8-foot fencing will be pool code deer mesh, except for an area adjacent to the dwelling to be designated on the Plan for black metal decorative fencing.

2. The fencing along Hardscrabble Road will be no closer than 70 feet from the road centerline.

3. Since the grant of this Variance is based on the use of the 8-foot fencing to enable forest restoration activities, the Variance will terminate and non-conforming fencing shall be removed should any of the following requirements be violated: (a) the fencing shall be repaired and maintained so as to effectively exclude deer from entering the restoration area, (b) no trees shall be removed from the restoration area unless they are diseased or present a safety hazard, and (c) with the exception of invasive species, native undergrowth vegetation in the restoration area shall not be removed.

4. The approval signature block shall be expanded to include the Board Secretary and Engineer.

5. 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.

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

7. 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.

8. 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.

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 4/2/19.

Lisa Smith
Board Secretary

#####

PUBLIC COMMENT

Chairman 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.

ADJOURNMENT

There being no additional business to come before the Board, **Motion** was made by Chairman Seavey. On a voice vote, all were in favor. Chairman Seavey adjourned the meeting at 7:50PM.

The next meeting of the Board will be held on **Tuesday, June 11, 2019 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa Smith

Lisa Smith
Land Use Coordinator