

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
July 7, 2016**

Phoenix House, 2 West Main 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 Phoenix House, 2 West Main St, 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 – Present	Mr. Ritger – Present
Mr. Seavey – Present	Mr. Smith - Absent
Mr. Sisson - Absent	

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

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MINUTES

Mr. Reilly made a motion to approve the minutes of the regular meeting of June 9, 2016 which was seconded by Mr. Seavey. 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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RESOLUTIONS

Mr. Seavey introduced the following two resolutions for memorialization.

BOA # 1-16	Men of Mendham, LLC , 106 East Main St, Block 801, Lot 12 Use Variance
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BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION**Decided: June 9, 2016****Memorialized: July 5, 2016****IN THE MATTER OF ROBERT ROMEO T/A MEN OF MENDHAM
"D" VARIANCE APPLICATION
BLOCK 801, LOT 12**

WHEREAS, Robert Romeo t/a Men of Mendham (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-70d (hereinafter the "Variance") by application dated 3/21/16; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 7/5/16; 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. By Resolution dated 8/3/10, the Board granted a "d-1" use variance to the owner of the subject property, 106 Mendham, LLC, for the use of approximately 1,136 square feet of the building at 106 East Main Street as a barber shop for men and boys under the name "Men of Mendham." The subject property is located in the Limited Business zone, in which personal service establishments are not permitted. The Board's approval of the use variance was premised on a maximum of 4 barber chairs and limited the services offered to those of a traditional barber shop as opposed to a full service hair care salon.

2. By letter dated 11/13/13, Borough Zoning Officer Patricia Fischer notified Applicant that the current use

of the Men of Mendham shop had exceeded the scope of the 2010 use variance approval, insofar as the shop was offering services beyond the basic hair cutting of a traditional barber shop, including hair styling, hair coloring, and manicures. Applicant was therefore directed by the Zoning Officer to make an application to this Board for a "d-2" variance, to expand upon the approved non-conforming use.

In accordance with the Zoning Officer's directive, Applicant is now seeking "d-2" variance approval to expand the scope of hair care services offered by his shop - to be renamed "Strandz Family Hair Care" - to include both women's and men's haircuts, hair styling, hair coloring and manicures. To accommodate the expanded hair care services, Applicant seeks approval for an increase in the number of hair care stations from 4 to 7, as well as two hair washing sinks and two manicure stations. Sign panels for "Strandz Family Hair Care" will replace the "Men of Mendham" panels on the site's two existing monuments signs. No expansion of the shop's floor area or parking is proposed. The Board's 2010 Resolution granted a "c" variance for 33 parking stalls (36 required).

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

- Planning Board application for site plan waiver form and attachments, dated 3/21/16
- Conceptual signage sketch and photographs (unsigned and undated)
- Architectural floor plan sketch, dated 2/9/16
- As-Built Survey Plan by Control Layouts, Inc., consisting of 1 sheet, revised 11/20/15

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

- Site Inspection Authorization form, dated 2/9/16
- Certification of Status of Municipal Tax and Sewer Fees, dated 2/16/16
- Owner's Consent to Filing of Application, dated 2/9/16
- Correspondence prepared by Robert A. Romero, dated 11/25/13
- Copy of public notice, dated 4/9/16
- Certified list of property owners, dated 3/28/16

- Zoning Officer Denial form (undated and unsigned)
- Zoning Officer correspondence, dated 11/13/13
- Sewer approval resolution 134-13, dated 11/18/13
- Prior resolution of approval from the Board of Adjustment, dated 8/3/10

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 3/3/16 and 4/25/16

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 2/20/16

7. In the course of the public hearings, no exhibits were marked and are part of the hearing record.

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

Robert Romeo, Applicant

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

There will be no change to the shop's hours of operation or number of employees (4 including Mr. Romeo). Applicant's experience with the expanded hair care services before the intervention of the Zoning Officer indicated that the current 33 parking stalls are sufficient for the business. Aside from the change in the sign panels, there will be no exterior site improvements. The building owner will attend to the maintenance, inspection and testing of the sprinkler system, as required by the Fire Official.

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

The application satisfies the standards for a "d-2" variance, insofar as the site is particularly suited and equipped to providing the expanded hair care services, and such services are consistent with the purpose of the Limited Business zone to serve the needs of local residents. The Board notes that the traditional distinctions between male and female oriented hair care have largely disappeared, and that the provision of inclusive family hair care services of the type proposed by Applicant are in keeping with sound planning. Furthermore, the Board finds that the expanded services will not result in any appreciable negative effects, as the business will manifest no outward signs of the expansion, other than an incidental change of signage.

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. 50:55D-70d(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. Applicant will obtain approval from the Borough Mayor and Council for any increased sanitary sewer flow associated with the expansion of hair care services.
2. Plans shall be revised to include approval signature lines, in accordance with checklist item 24. Revised plans shall be signed by the Board Chairman, Secretary and Engineer.
3. The building owner 106 Mendham, LLC, will maintain, inspect and test the sprinkler system as required by the Borough Fire Official.
4. 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.

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

6. 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.

7. 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 6/9/16.

There being no comments, Mr. Seavey made a motion to memorialize the resolution and Mr. Peck seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

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

BOA # 2-16 **29 East Main Realty, LLC**, 29 East Main St, Block 801, Lot 12
Use and Bulk Variance

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: June 9, 2016
Memorialized: July 5, 2016

IN THE MATTER OF 29 EAST MAIN REALTY LLC

**"D" VARIANCE APPLICATION
BLOCK 13, LOT 1501**

WHEREAS, 29 East Main Realty LLC (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-70d (hereinafter the "Variance") by application dated 2/17/16; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 6/9/16; 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 a 1.3 acre parcel having 168 feet of frontage on the south side of East Main Street and containing a two story building with an attached canopy over drive-through lanes. The building, currently vacant, was formerly occupied by a bank. The property is improved with a paved parking lot providing 33 parking spaces. Lot 13 in Block 1501 is located within the Borough's Historic Business Zone and also within the Historic Zone Overlay. The permitted uses in the Historic Business Zone are set forth in §215.17. Since providing off-street parking for off-premises use is not a permitted principal use, a 'd-1' use variance is required.

2. Applicant's proposal would add another 11 parking spaces along the easterly side of the existing parking lot, including 5 within the drive-through lane area for a total of 44 striped parking spaces. Of the 44 parking spaces, Applicant proposes to lease 21 spaces

to a neighboring business, identified as the Audi Mendham automobile dealership, for employee parking. The remaining 23 parking spaces would be available for the new tenant of the bank building, identified as Safeway Enterprises, LLC, for a permitted business office use. Of the total 44 spaces, the proposed 21 leased parking stalls are in the three rows in the rear/southern portion of the property, with 11 spaces in the rearmost row, 8 spaces in the next rearmost row, and 2 spaces in the third row from the rear.

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

- Preliminary & Final Site Plan, consisting of two (2) sheets, prepared by EKA Associates, P.A. of Scotch Plains, NJ, dated February 18, 2016, revised through 5/17/16
- Boundary and Topographic Survey of Audi of Mendham, prepared by EKA Associates, P.A. of Scotch Plains, NJ, dated 8/12/14 and revised through 5/20/15, consisting of one (1) sheet

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

- Applicant for Hearing, dated 2/17/16
- Owner's Consent to Filing of Application, dated 2/17/16
- Borough of Mendham Application Checklist
- Historic Preservation Committee Application for Review with Checklist, dated 2/17/16
- Letter of Paul C. Pawlowski, Esq., dated 5/26/16
- Michael J. Tobia, P.P., Outline of Testimony, dated 6/7/16
- Morris County Planning Board Advisory Review Letter, dated 5/6/16

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:

John Hansen, PE, CME, dated 3/21/16

Chuck McGroarty, PP, AICP, dated 4/15/16

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 2/27/16

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

A-1 Photo of Bank Façade
A-2 Aerial Photo of Subject Property
A-3 Site Plan, Sheet 2

8. In the course of the public hearings, the Applicant was represented by Theodore Schiller, Esq., and Paul Pawlowski, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Chris Preziosi, owner of Audi Mendham and Safeway Enterprises, LLC

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

Based on its approximate floor area of 5800 square feet, the bank building requires 23 parking spaces for a business office use, in accordance with Ordinance Section 195-45A. Therefore, with the proposed lease of the bank building to Safeway Enterprises, LLC ("Safeway") for business office use, the remaining 21 parking spaces on the site will be available for lease to a neighboring business. Applicant's testimony indicates that Safeway provides management services for various automobile dealerships (including Audi Mendham) and real estate holding companies. Safeway conducts no retail or auto dealership activities, has 12 employees, generates minimal delivery/pickup activity and minimal office waste. Hours of operation will be 8 a.m. to 6 p.m., Monday through Friday, with occasional Saturday hours. To the extent 3 of Safeway's employee parking stalls in the rear will block the dumpster, employee cars will be moved as needed or trash pickup scheduled for non-business hours. The excess 21 parking spaces will be leased to the Audi Mendham dealership for

employee parking only, with no parking of inventory vehicles permitted.

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

The subject application meets the particular suitability test pursuant to N.J.S.A. 40:55D-70d(1), for the following reasons:

a. The subject property is within walking distance of multiple local businesses, including the Audi Mendham dealership across the street.

b. The subject property will have excess parking, based on the Safeway tenancy in the bank building.

c. The proposed parking will reduce the demand for on-street parking in the area of the Main Street business district, allowing on-street parking to be used for other business and residential purposes.

d. The proposed leased parking is located behind the former bank building and is largely hidden from public view.

e. By locating Safeway Enterprises within the former bank building, the Applicant returns this property to a productive use that is specifically permitted in the Historic Business zone.

Regarding the negative criteria, the project promotes the public good and is not a substantial detriment to same. It will allow for an expansion of needed parking for neighboring businesses while simultaneously bringing a new, productive business office use into the Mendham business district. The proposed use will not involve any alterations to the former bank building or its front yard landscaping and curb appeal. The proposed use will not result in any change to the historic architectural treatments of the subject building. By limiting parking to the rear of the office site, there will be no significant visual impact to East Main Street. There will be no change in paving, coverage, setbacks or buffering at the site.

The Board finds that the proposed use is a relatively minor departure from the Historic Business zone requirements, for the following reasons:

a. The Applicant will protect the historic streetscape of the subject property.

b. Parking is a permitted accessory use in the Historic Business zone.

c. Applicant's parking proposal is too unique and localized to have been contemplated by the Borough master planning process.

d. The physical improvements needed for the proposed parking have already been constructed, and consequently the impacts of same have long since been established.

The Board therefore 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.

11. Approval of this application also requires a design waiver from Ordinance Section 195-42c(2)(b), which requires parking stall dimensions of 10 x 20 feet, while 23 of the proposed parking stalls (14 in the rearmost row and 3 along the eastern lot line) are 9 feet wide. Since these stalls are all designated for employee parking (11 for Audi and 6 for Safeway), the 10-foot width associated with retail uses is not needed here, and the requested relief is therefore appropriate.

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-70d(1), as well as the design waiver for parking stall dimensions.

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. This approval is subject to the following conditions, as to which Applicant has stipulated:

- a. Use of the subject property will be limited to employee parking only.
- b. Leased employee parking will be limited to the rear of the parking lot so as allow Safeway Enterprises to use the parking stalls closer to the building.
- c. No parking shall take place in the front yard.
- d. No parking shall take place in front of or under the drive through canopy.
- e. No dealership inventory parking shall take place on the subject property.
- f. No parking related to the Audi Mendham service department shall take place on the subject property.
- g. No Audi or other neighboring business signs shall be erected on the subject property.

2. If parking spaces are in the future leased to a local business other than Audi Mendham, further review and approval by this Board will be required.

3. Prior to occupancy of the former bank building or occupancy of the proposed leased employee parking stalls, by Safeway Enterprises, Applicant will obtain site plan approval from this Board.

4. Exterior lighting will comply with the Board's Resolution of 4/4/95.

5. Applicant and Safeway will control the use of the 3 parking stalls in front of the dumpster to enable access to the dumpster when needed.

6. Prior to occupancy of the former bank building or occupancy of the proposed leased employee parking stalls, the entire parking lot shall be resurfaced or seal-coated and re-striped.

7. On Sheet 1, Applicant and owner shall sign this sheet once all plan revisions have been made and prior to signature by the Board Chairman.

8. Sheet 2 shall be revised as follows:

- a. The required number of parking stalls per the existing structure shall be included in the parking table.
- b. Signage shall be provided in accordance with MUTCD requirements to prohibit vehicles from travelling against the one-way driveway flow. Details of the signage shall be added to the plans.
- c. The area south of the last parallel parking stall shall be restricted from parking by signage to allow for access in and out of the southernmost stall.

9. Applicant's engineer shall submit revised plans and documents with a transmittal letter clearly indicating how each condition of the approving resolution has been satisfied.

10. All site improvements shall be installed (or bonded at the discretion of the Borough Engineer) prior to issuance of a certificate of occupancy for the site.

11. This approval is subject to Morris County Planning Board approval.

12. 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.

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

14. 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.

15. 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 6/9/16.

Mr. Reilly asked about the signage in front of the property. Mr. Germanario responded telephonically that signage concerns would be addressed with the Safeway Enterprises LLC site plan application. Mr. Peck made a motion to memorialize the resolution and Mr. Seavey seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

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

The motion carried.

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ADJOURNMENT

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn the meeting and on a voice vote, the meeting was adjourned at 7:42 pm.

The next meeting of the Board will be held on **Tuesday, August 2, 2016 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Carolyn Mazzucco

Carolyn Mazzucco
Board Secretary