**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: September 1, 2020**

**Memorialized: October 6, 2020**

**IN THE MATTER OF JUSTIN ZACCONE**

**“C” VARIANCE APPLICATION**

**BLOCK 401, LOT 7**

**WHEREAS,** Justin Zaccone (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 4/30/20; and

**WHEREAS,** the application was deemed complete by the Board, and a public hearing was held on 8/4/20; 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 0.84 acre located in the ½-Acre Residence Zone and fronting on Gunther Street. The property is improved with a 2-story frame dwelling and 2 accessory sheds.

2. The improvements to the subject property for which the Variance relief is sought comprise a new 1½-story accessory frame barn located 2.7 ft. from the southerly side property line and within 10 ft. of the easterly dwelling wall. Pursuant to Ordinance §215.28, accessory buildings are required to have a minimum 15 ft. sideyard setback. Pursuant to §215-29A, accessory buildings between 5 and 12 ft. of a lot line shall not be over 1 story high, and no accessory building shall be located within 10 feet of a wall of a main building unless attached thereto.

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

* Property Survey, dated 3/21/19, prepared by Richard S. Hudson, PLS

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

* Board of Adjustment Application and Checklist, 4/30/20, prepared by Justin Zaccone
* Zoning Officer’s Denial Letter, dated 3/9/20
* Property Owner’s Consent, dated 4/13/20, prepared by Justin Zaccone
* Site Inspection Form, dated 4/14/20, prepared by Justin Zaccone
* Tax Certification, dated 4/13/20
* Sewer Connection Application (waiver request)
* Certified Property Owners List
* Property Photographs and Neighbor Proximity
* Architectural Plans, consisting of 11 sheets, dated 4/9/20, prepared by Elvin Engel, architect

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, dated 6/2/20

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

7. In the course of the public hearings, the Applicant represented himself, and testified on his own behalf.

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

The Applicant testified that the barn structure was delivered to his property in February. Its purpose is to provide space for his wife’s office and fitness equipment because of limited room in the main dwelling. Applicant was unaware of the zoning requirements cited by the Zoning Office. He agreed that an existing smaller shed in northeast corner of the lot, which encroaches on the rear and side yard setbacks, would be relocated out of the setbacks and that the concrete pad supporting it would be removed. He testified that the barn was buffered from the neighboring property by surrounding vegetation. He agreed that, if a foundation were required for the barn, the barn would not be relocated closer to the side yard setback or the main dwelling.

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 Board finds that the benefits associated with the elimination of the existing non-confirming shed and the reduction in lot coverage associated with removal of its concrete pad outweigh the minor detriments associated with the deviations related to the new barn. Moreover, the barn is a better planning alternative for adding needed living space than would be an addition to the main dwelling.

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 existing shed in the northeast corner of the property shall be relocated outside the side and rear yard setbacks, and the supporting concrete pad shall be removed.

2. If the barn is relocated in order to provide a foundation for it, it shall not be located closer to either the southerly property line or the main dwelling.

3. The tax and utility payment certification shall be updated.

4. The barn exceeds 200 square feet and therefore a construction permit is required. An application must be made to the Construction Department.

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 9/1/20.

Lisa Smith

Board Secretary