

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
SPECIAL MEETING
November 22, 2011
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The special meeting of the Board of Adjustment was called to order by Chair Seavey at 7:45 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune on November 17, 2011 and Daily Record on November 11, 2011 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. Seavey – Present
Mr. Peck – Absent	Mr. Smith - Present
Mr. Peralta- Present	Mr. McCarthy, Alt. I – Present
Mr. Ritger – Present	Mr. Germinario, Alt. II – Present
Mr. Schumacher - Present	

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

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APPROVAL OF MINUTES

Mr. Peralta made a motion to approve the minutes of the September 7, 2011 regular meeting of the Board as written. Mr. Palestina seconded. All members being in favor, the minutes were approved. The regular meetings of October 4 and November 1 had been cancelled.

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PUBLIC COMMENT

Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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HEARING OF CASES

Syristatides, Semeon – C and D2 Variances: **Completeness/If Complete Hearing**

Block 801, Lot 30, 5 Dean Road

Present: Stratos Syristides, Son of Applicant
 Lawrence Cohen, Esq., Attorney for Applicant
 David Zimmerman, Professional Planner

Exhibits: A-1: Series of Four (4) Photos depicting front, rear and sides of home
 O-1: Photo centered on garage
 0-2: Photo with water pooling at the rear
 0-3: Photo close up of water pooling
 0-4: Photo of cars in sidewalk

Completeness Review

Mr. Hansen reviewed the Ferriero letter of September 12, 2011 regarding completeness items. He recommended that completeness be granted, but several items be updated pending the Board decision.

Mr. Smith made a motion to deem the application complete. Mr. Seavey seconded.

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

In Favor: Palestina, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. The application was deemed complete.

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Mr. Cohen, Esq. summarized the application explaining that 5 Dean Road is a pre-existing two family home in the quarter acre zone. The applicant is proposing an addition to one unit for the owner and his wife. They currently have another home in Mendham, but need to move to a one floor smaller unit for health reasons. The proposed addition is 467 sq. ft and consists of a bedroom, bathroom, closet and laundry room. They would not use the upstairs.

Addressing the variances required, Mr. Cohen, Esq. stated that a C variance for building coverage is needed. The allowable coverage is 2084 sq. ft., and they would be going to 2341 sq. ft. The decks are not counted in the coverage calculation. As the property is .39 acres and a half acre would be required for a two family in the quarter acre zone, a D variance is required. The home is 30 years old, but the ordinance was amended in 1988 to require the half acre. As this is a condition of a conditional use, there is less of a degree of burden of proof. They need to show that it is not detrimental to the surrounding zoning plan. For the C2 variance for coverage they must show that the benefits outweigh the detriments.

Mr. Germinario, Esq. advised the Board that he had reviewed the public notices and that the Board had jurisdiction to proceed.

Mr. Startos Syristatides, son of the applicant, testified that he has lived at the location for two years. He and his son live in the right side when facing the home. They have owned the property for 20 years and bought it as a two family. They currently rent out the other side.

Utilizing the architectural plan that had been submitted to the Board, Mr. Syristatides explained that the 467 sq. ft. addition would be located behind the unit on the left hand side. The purpose would be to house his parents. His parents are elderly and his mother is disabled. Describing the interior he stated that there would be a small ramp to the laundry room from the garage. There will be a bathroom to the left and a bedroom and bathroom to the back. The second story will not be used. The addition will be built on a slab and there is a two car garage. There is parking for 4 to 6 cars in the driveway. In terms of the exterior, the front is currently vinyl and the sides are shingle. The plan is for the entire building to have vinyl siding.

Responding to Board questions, Mr. Syristatides explained that there is currently no bathroom on the first floor. There are two bathrooms on the second floor. They are not proposing a new front porch. The existing porch would be covered and new concrete steps and a walk constructed. Mr. Cohen, Esq. advised that everything is within the setbacks, and they are only requesting building coverage and relief from the half acre requirement.

Chair opened the meeting to the public for questions of the witness. Mr. Frank Lupo, 17 Dean Road clarified that the side for the proposed addition is currently a rental. Mr. Syristatides stated that the tenant is moving out and his parents will move in. The current tenant has a lot of junk and three vehicles which will be gone. Going forward there will be three vehicles: his parents, his and his son's.

Addressing a question by Mr. Thomas Callahan on whether his parent's existing single family home could not be modified, Mr. Syristatides stated that they did not want to do that.

There being no additional questions from the public, the public session was closed.

Mr. David Zimmerman, Professional Planner, presented his credentials and was accepted as a witness by the Board.

Mr. Zimmerman testified that a half acre is required for a two family home in the quarter acre zone. This property is .39 of an acre versus .50. They are requesting a conditional use variance from the standard. They are also 10% over on coverage.

Utilizing Exhibit A-1, a series of photos, Mr. Zimmerman described the lot and its relationship to the surrounding lots. With photo #1 he identified the two doors, one for each unit, the two car garage with a long apron, and the foliage on one side and the stockade fence on the other. On photo #2 he identified the rear yard and the location of the proposed addition which would be attached to the garage. The addition would maintain the same side yard and there is a buffer of tress to the rear. He identified photo #3 as showing the property to the east and the flag lot directly in the rear. He reiterated that there is room for the addition. In the final photo, #4, he showed the property to the north side. Presenting Exhibit A-2, Mr. Zimmerman presented an aerial view of the Lot 30, the subject property.

Responding to Mr. Seavey's question, Mr. Zimmerman stated that the white pipe seen on photo #2 is a leader drain.

Mr. Zimmerman continued that in accordance with the Coventry Square case they are not focusing on the use, but on the deviation from the standards. There is somewhat less acreage than required, but what is being proposed is appropriate. The setbacks are satisfied. There is still ample room in the rear, and there is more side yard than required. The front yard is not changed. The site and the property can accommodate a small addition.

Continuing, Mr. Zimmerman related the application to the Borough's 2006 Master Plan. He referenced page #13 and cited the focus on multigenerational housing. They are not proposing to add an additional unit, but are adding a bedroom to an existing unit to accommodate seniors. There is no detriment to the public good as it is a modest addition. The photos show that the existing foliage will screen it. In terms of any impairment to the Zoning Ordinance and the Master Plan, the MLUL encourages senior citizen housing. It is a unique property.

In terms of the C variance, they are not claiming a hardship, but rather are requesting a "flexible C" variance as the benefits outweigh the negatives. There are social benefits due to the senior housing. It is identified in the Master Plan. There is no negative impact. There is adequate parking on the property, and none is required on the street.

During Board questions, Mr. Palestina questioned the location of the downspouts from the deck and their relationship to the property line. Mr. Cohen, Esq. advised that they could submit a proposal on how to handle the water and perhaps move the pipes to the rear.

Mr. Seavey noted that the home is currently a two family with 6 bedrooms on .39 acres. He questioned whether it could be converted to a single family, 6 bedroom home. He also noted it could be a two family with a unit upstairs and a downstairs unit for a disabled person. The challenge they currently face is that there is not bedroom on the first floor. His concern was that at some point, the Syristatides' will leave and someone else will move in. If approved, the home will be large with another bedroom.

Mr. Cohen, Esq. stated that a single family home is a permitted use in the area. He had also discussed the possibility with his client of eliminating one of the small bedrooms upstairs. That would allow the home to remain a three bedroom unit.

Chair Seavey opened the meeting to public questions of Mr. Zimmerman. There being none, the public session was closed.

Responding to Mr. Hansen on whether there would be room for equipment to pass between the buffer on the side and the addition without removing trees, Mr. Cohen, Esq. advised it would work. They would be willing to preserve the existing buffer.

Mr. Germinario, Esq. clarified that they are trying to make the case that if a one family can be placed on a quarter acre, but the ordinance requires a half acre for a two family, that there is enough room on this lot for a two family as there is sufficient parking and appropriate setbacks. It is not a one family to a two family, but an increment over the existing two family. Mr. Cohen, Esq. added that there is substantial tree growth and a driveway before getting to the next home. There is driveway in the rear, and on the other side there is a 27 ft. setback versus a 10 ft. sideyard.

Responding to Mr. Ritger on whether they had considered building within the existing foot print of the garage and not expand the home, Mr. Zimmerman stated that most people today want a garage and it is part of the standards. The corner section is appropriate for the addition. It could be done, but it would be a second or third priority option.

Addressing Mr. Seavey on whether the property is pre-existing, non-conforming, Mr. Cohen, Esq. stated that it is a legal two family. It was designed as a two family and built as one originally. It is at least 30 years old and predates the 1988 ordinance requiring a half acre.

Chair opened the meeting to comments by the public.

Mr. Tom Callahan, 7 Dean Road stated that he had a petition from neighbors against the addition and a summary letter. After some discussion it was determined that the petition could not be accepted as the neighbors would need to be present to testify. The letter was distributed, but Mr. Callahan would need to testify to the points in the letter.

Mr. Callahan stated that this is the only commercial property in the area and they are expanding the space. There is a reason that the ordinance requires a half acre. There are parking issues to begin with as they now have five cars that cross the sidewalk. He entered Exhibit 0-1 showing the two car garage and indicating that the cars are not parked in the garage. With Exhibits 0-2 and 0-3 he identified water pooling to the rear. He had to install a berm in the back corner of his property. The property could be modified as it exists.

Mr. Frank Lupo, 17 Dean Road stated that has an objection as the addition represents an intensification of a use. The home should be transformed to a single family. There is a parking issue. He entered Exhibit 0-4 showing cars three deep in the driveway and over the sidewalk. There is a public safety issue.

Mr. Cohen, Esq. addressed the public comments stating that the property is a residential, not a commercial property. There is nothing that prohibits a rental in Mendham Borough. What they are proposing helps the parking problem. Section 215-14 of the Borough Code indicates that there needs to be at least a two car garage. It is an enforcement problem if the cars are blocking the sidewalk. As the entrance to the unit will be through the garage, the garage will not be cluttered. They are also reducing the number of people occupying the home. There are two people on one side and two on the other. It is still a two family unit. They will eliminate one bedroom and retain the same number of bedrooms.

Mr. Cohen, Esq. continued that they are adding 11% coverage, not 25% as stated. The decks are not included. They are not changing the front entry. They will work the drainage issues with the Borough Engineer. There are other two family homes on the street.

Responding to Mr. Palestina on whether the parking could be limited thus putting the responsibility on the landlord as opposed to on the police, Mr. Germinario, Esq. advised that it could through a condition in the resolution. After some discussion it was noted that Messrs. Callahan and Lupo had not called the police requesting enforcement. Addressing Mr. Schumacher on whether a deed restriction could be placed on the home as a mother/daughter, Mr. Cohen, Esq. stated that the home is a two family and is permitted in the zone.

In deliberations the Board expressed concerns over the drainage issues. They also noted that Dean Road in total has water issues. The house runoff and the sump pump should be addressed. Mr. Hansen advised that they could require a drywell designed for three inches of runoff. It was also the Board's desire that the home remain a two family and that a third rental not be created. The parking situation would appear to be solved, and homes in Mendham can be rented. Any parking issues are police enforcement issues. It was not over-intensifying the site and the setbacks were not negatively impacted.

The Board noted that a requirement be that the upstairs bedroom be removed. It would be preferred that the house need be added to in the future. Also, the buffer between the properties should be maintained. The front entry is improved with the roof and the enhancement. Overall, the Board was in favor of creating single level living accommodations for seniors.

Mr. Hansen added that if the Board approved the application a final survey would be required prior to CO and #5 in the checklist would need to be supplied.

Mr. Palestina made a motion to approve C and D variances with the conditions that (1) a drywell designed for 3 inches of runoff be used and the sump pump location be revaluated, (2) a bedroom be removed and the unit remain 3 bedrooms, (3) a note be added to the architectural drawings

indicating that vinyl siding will be used all around to match the color of the front, and (4) vegetation be preserved between lots 30 and 31. Mr. McCarthy seconded.

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

In Favor: Palestina, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. Mr. Germinario, Esq. will prepare a resolution for the December 6 regular meeting of the Board.

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EXECUTIVE SESSION

Matter of Litigation: T-Mobile Northeast LLC and Verizon Wireless vs. Borough of Mendham
Board of Adjustment

Mr. Peralta recused from the Executive Session.

Mr. Seavey made a motion to approve the following resolution and move into Executive Session at 9:30 p.m. Mr. Palestina seconded:

**BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT
MORRIS COUNTY, NEW JERSEY**

BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham, in the County of Morris and State of New Jersey (hereinafter referred to as the “Board”) as follows:

WHEREAS, it is necessary for the Board to discuss matters relating to T-Mobile Northeast LLC, et al., vs. Borough of Mendham Zoning Board of Adjustment, docket no. MRS-L-2719-10PW (hereinafter referred to as the “Litigation”), which matters are permitted to be discussed in closed session in the absence of the public pursuant to Section 7.b. of the Open Public Meetings Act (Chapter 231 of the Public Laws of the State of New Jersey for 1975); and

WHEREAS, the Board has determined that it is necessary in the public interest that the matters in fact be discussed in closed session, and has determined that the results of the discussion can be disclosed to the public when all issues involved in the Litigation have been resolved.

NOW, THEREFORE IT IS RESOLVED that the public be excluded from the ensuing portion of this meeting, during which only the aforesaid matters will be discussed.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 9:40 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, December 6, 2011.

Respectfully submitted,

Diana Callahan
Recording Secretary