

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
November 3, 2010
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Vice Chair Seavey at 7:40 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 January 14, 2010 and the Daily Record on January 11, 2010 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 – Present
Mr. Peralta – Present
Mr. Schumacher – Absent
Mr. Seavey - Present

Mr. Smith – Present
Mr. Ritger, Alt. I - Present
Mr. McCarthy, Alt II – Present

Also Present:

Mr. MacDonald, Attorney
Mr. Hansen, Engineer

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PUBLIC COMMENT

Vice 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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APPROVAL OF MINUTES

On motion by Mr. Peralta, second by Mr. Ritger and all members being in favor, the minutes of the October 5, 2010 regular meeting of the Board were approved as written.

HEARING OF CASES

Mt. Hermon Hills Company, LLC – Hardship Variance
Block 1801, Lot 36.03, 4 Thomas Road

Present: Thomas Malman, Esq., Attorney for the Applicant
John deNeufville, Applicant
Craig Villa, Engineer for the Applicant

Exhibits: A-1: View from Thomas Road with existing driveway and plan driveway indicated by red flags
A-2: View showing approved driveway location
A-3: View from house showing existing and planned areas

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction.

Mr. Malman, Esq. explained that the applicant is in the process of constructing a home, and the driveway that has been constructed is not in accordance with the original plans that had been approved. The builder moved the driveway to avoid the need to cut down trees. The application is to obtain approval to leave the driveway where it has been constructed versus moving it back to the original plan location. The driveway is within 3 to 4 ft. of the sideline. Mr. deNefuville's home is located next to that of his son Peter.

Mr. Villa testified that the plan he was referencing for testimony was the same as that submitted to the Board with the application. He described the location of the property as the second lot from Hilltop Road on the north side of Thomas Road. It is Block 1801, Lot 36.03 and is 10.88 acres. The home that is under construction is located 263 ft. back from the right of way. In order not to take out trees, the driveway was constructed closer to the side yard than approved in the original plans. The driveway is currently gravel and is located 3 to 4 ft. from the property line at its closest point. It moves back to the location of the driveway in the plans as it moves up toward the house.

Utilizing Exhibits A-1, A-2 and A-3, Mr. Villa illustrated that area of the existing driveway and the treed area where the plans originally showed the driveway. He stated that there are in excess of 12 to 15 trees some 30 in, 12 to 14 inches and 8 inches. There are also some saplings. Thomas Road is a lightly travelled road. The trees form a buffer to and from the home for Mr. deNeufville. There is no impact on the neighboring property. Mr. Peter deNeufville's home is located at a distance. There have not been any complaints given the existing location of the driveway.

Referring to Mr. Ferriero's letter dated October 6, 2010, Mr. Villa addressed the following points:

- There would be a slight decrease of 600 sq. ft. in impervious coverage versus the approved driveway
- The stormwater collection will be done in accordance with the original design. The runoff is pitched to the east and runs to the catch basin. The drainage is not affected.
- There is no grading required on the neighbor's property. There are low shrubs and if the driveway were paved, the applicant would only be adding 2 inches of asphalt.
- In terms of the site distance there is a slight curve to the west, but there is 375 sq. ft to the west and 400 sq. ft to the east.

Addressing Board questions, Mr. Villa stated that the original farm road was not used as a final driveway given its steep topography and the fact that it is located in the middle of the field. They did not see any immediate additional subdivision of the land. In terms of whether there had been clearing done to put in the existing driveway, Mr. deNeufville stated that the builder had looked at the plans and did not want to knock down trees. He tried to find a path. Some smaller trees were cleared for construction purposes. Addressing the gate, Mr. deNeufville explained that the fence is part of the Hidden Pond Tree Farm. It is a manually operated farm gate. Mr. Hansen explained that a variance would not be needed as long as it is part of the fence that is compliant.

Continuing to address Board questions on the LOI, Mr. Hansen explained that while the expiration date of the LOI in the application package has occurred, there are no wetlands on the property. LOI's are set for 5 years as theoretically a line could change, but without wetlands on the property, that would not happen in this case. Mr. Villa confirmed that there are no wetlands and nothing has changed.

Mr. Hansen did not have any concern with the inlet drain. Mr. deNeufville clarified the outbuildings being constructed as a workshop and a cabana.

In deliberations, the Board indicated that it was reasonable not to cut the remaining trees. The neighbor did not have an issue, and future neighbors not related, would also not have a negative impact. The impervious coverage is dropping.

Mr. Peralta made a motion to approve the application. Mr. Ritger seconded.

Mr. MacDonald, Esq. summarized the variance as, according to the C2 zoning criteria, providing a better zoning alternative and in accordance with the C1 criteria, the topography and existing conditions with the trees justify the hardship criteria.

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

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution for the December 7, 2010 regular meeting of the Board.

OTHER BUSINESS

Mr. MacDonald, Esq. updated the Board on the Omnipoint complaint. A status conference meeting had been held on November 3, 2010 at which time Mr. Simon, Esq. on behalf of Mr. Isko filed a motion to intervene in the case. As a result, a briefing schedule was not provided. It is not clear at this time if the carriers will object to Mr. Isko intervening. Another meeting will be held on December 3, 2010. He estimated that it would be early March until the public hearing would be held. He explained the procedure to the Board indicating that there is no new testimony. The record is used and briefs are filed by the attorney. If Mr. Isko is permitted to intervene, Mr. Simon, Esq. will also file a brief. Many broad based issues would be introduced again reflecting the many exhibits and the interpretation of the Borough ordinance. There is also another application for antennae that has been filed for the Sisters of Christian Charity.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Seavey adjourned the meeting at 8:40 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, December 7, 2010 at 7:30 p.m.

Respectfully submitted,

Diana Callahan
Recording Secretary