

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
December 3, 2013
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Seavey at 7:30 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 and the Daily Record on January 17, 2013 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 – Absent
Mr. Schumacher – Present
Mr. Seavey – Present

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

Also Present:

Tom Germinario, Esq., Attorney
John Hansen, Engineer

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APPROVAL OF MINUTES

Mr. Seavey made a motion to approve the minutes of the November 6, 2013 regular meeting and of the Board as written. Mr. Peck seconded. All members being in favor, the minutes were approved.

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PUBLIC COMMENT

Chair Seavey opened the meeting to the public for comment on anything not on the agenda. There being no comment, the public comment sessions was closed.

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Botti, John – Hardship Variance
Block 301, Lot 74, 45 West Main St.

Mr. Germinario, Esq. advised the Board that a potential issue with impervious coverage exists with the application. In that case, notice provided would not be sufficient. The applicant's attorney is reviewing the application, and pending the outcome, new notice for the January meeting may be required. The application is carried based on the existing notice until January pending the additional notice requirement.

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Bess, John & Joan – Hardship Variance: **Resolution**
Block 1401, Lot 10.02, 3 Windymere Lane

Mr. Germinario, Esq. presented the following resolution to the Board that had been included with their pre-meeting packages:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION**

**Decided: November 6, 2013
Memorialized: December 3, 2013**

**IN THE MATTER OF JOHN AND JOAN BESS
“C” VARIANCE APPLICATION
BLOCK 1401, LOT 10.02**

WHEREAS, John and Joan Bess (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 9/11/13; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 11/6/13; 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 1.0 acres and is developed with a single family residence. The property is located at 3 Windymere Lane in the 1 acre residential district.

2. The improvements to the subject property for which the Variance relief is sought comprise an emergency generator that will sit on a proposed 16 square foot polymer pad, to be located behind the existing residence. Approval is also requested for the existing driveway and patio improvements, which the application indicates, did not receive permits when constructed approximately 16 years ago. A C variance is required for lot coverage.

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

- Variance Plan, consisting of three sheets, prepared by Yannaccone, Villa & Aldrich, LLC, dated September 9, 2013

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

- Board of Adjustment application form and attachments, dated September 11, 2013
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated September 4, 2013
- Zoning Officers Denial, dated September 11, 2013
- Site Inspection Authorization form, dated September 11, 2013
- Letter to Board of Adjustment prepared by Thomas J. Malman, Esq., dated September 11, 2013
- Dwelling Location Survey prepared by Joseph F. Barbieri, Jr. PLS, Totowa, NJ, dated April 11, 1995 and revised September 5, 2013
- Copy of Tax Map 14
- Certified List of Property Owners from Tax Assessor's Office, dated September 9, 2013

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 10/7/13

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

- A-1 Colored rendering of the Variance Plan
- A-2 Series of 21 photographs of existing site conditions

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

Craig Villa, Applicant's engineer
John Bess, Applicant

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

The Applicant's learned that their property exceeded the lot coverage limitation when they applied for a construction permit to install the proposed generator pad. The excess lot coverage resulted from driveway and patio improvements that the Applicants installed just after acquiring the property in the mid 1990's. Those driveway and patio improvements have not been altered since they were installed approximately 16 years ago. When those improvements were installed, the contractor did not obtain a building permit and the Applicants were not advised that the work would require a lot coverage variance.

At the time that the Applicants installed the driveway and patio improvements, they also installed a comprehensive drainage system of grass and stone swales and underground drainage improvements. These drainage improvements have had the effect of improving the drainage conditions on the property and on the neighboring properties to the east. These improvements have helped address not only stormwater run-off from the improvements on the property but also run-off from neighboring properties to the west.

Because the Applicants never requested or obtained a variance for the driveway and patio work, they are now, in addition to requesting variance relief for the proposed generator pad, requesting that relief. The Applicants submit that the requested variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2) because the benefits of granting the variance will substantially outweigh any detriments. Moreover, the variance relief, if granted, will not have any substantial detriment on neighboring properties or the zone plan. To the contrary, the drainage improvements associated with the existing improvements have operated to prevent drainage problems on the subject property and neighboring properties.

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

By reason of the existence of the non-conforming lot coverage for the past 16 years without Applicant's knowledge, and the Applicant's installation of drainage improvements which offset any adverse effects of the non-conformity, the strict application of Ordinance Section 215-31.1 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.

Furthermore, the purposes of the Municipal Land Use Law and the Borough of Mendham Land Use Ordinance would be advanced by granting the Variance so as to allow the requested deviation from Ordinance Section 215-31.1, pursuant to N.J.S.A. 40:55D-70c(2), because the public benefits associated with the drainage improvements installed by the Applicant outweigh any detriments associated with the deviation.

The detriments associated with the deviation are considered minimal because the testimony of both the Applicant's engineer Mr. Villa and the Board engineer Mr. Bolio both confirm that there are no drainage problems associated with the existing and proposed improvements on the subject property.

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(1) and 50:55D-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 drainage improvements currently existing on the subject property, both as installed by the Applicant and as provided by the original developer of the property, shall be maintained. Prior to any future substantial alterations of said drainage improvements, an amended variance approval from this Board will be required.

2. The drainage improvements currently existing on the subject property, as well as associated off-site drainage facilities to which such improvements directly connect, shall be depicted on a revised survey, which shall become an exhibit to this Resolution.

3. Revised plans shall provide consistent north arrow references.

4. The required number of revised drawings shall be submitted to the Board for signature.

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 11/6/13.

There were no additional Board comments.

Mr. Seavey made a motion to approve the resolution. Mr. Smith seconded.

ROLL CALL: The result of the roll call of eligible voters 4 to 0 as follows:

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

The motion carried. The resolution was approved.

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DISCUSSION:

Board of Adjustment 2013 Annual Report: The Board had requested a discussion to identify issues that would be included in the draft Annual Report to be presented at their January reorganization meeting. The following issues were identified:

- **Outdoor Dining:** While they are generally in favor of outdoor dining, members wanted additional clarification from the Governing Body on the criteria related to site issues such as safety, noise, lighting, traffic patterns, hours of operation, etc. They were also interested in knowing if there were specific zones that were under consideration. Mr. Germinario, Esq. clarified that it is important to have objective conditional use standards when making a decision.
- **Generators/Air Conditioners:** Board discussed that to come to the Board of Adjustment for a variance for 15 sq. ft. for a generator or air conditioner pad is costly and time consuming. They want to request that the Council consider excluding generators and air conditioners with less than 15 sq. ft. from the coverage calculations provided that the existing lot coverage is conforming. In addition to this issue for single family residential lots, they would like clarification on the Council's position relative to the Commons and other multi-family locations.
- **Other:** The Board briefly discussed external wood burning stoves and coverage associated with swales and stone walls. They determined that at this time, they would handle those on a case by case basis.

Board requested that Ms. Callahan include the Outdoor Dining and the Generator/Air Conditioner concerns in the Draft Annual Report for their review at the January meeting.

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Reorganization Meeting Reschedule: As the Borough Council rescheduled its reorganization meeting for January 7 and the Board of Adjustment is dependent on Council appointments, they would need to move their regularly scheduled January 7 meeting to another date. Prior to the meeting, the members had provided Ms. Callahan with their availability. Upon review, Board determined that they would reschedule their January meeting for Tuesday, January 14, 2014. Ms. Callahan will provide the appropriate special meeting notice. In addition, based on professional meeting conflicts when the Board is bumped to first Wednesday by the Borough Council, the Board determined that instead of the Wednesday meetings when this occurred, they would prefer

to have the meeting on the first Thursday. Those dates will be included in the draft meeting dates presented to the Board in January.

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EXECUTIVE SESSION

After completion of the resolution, Mr. Seavey made a motion to move into Executive Session Mr. Smith seconded. All members being in favor, the Board entered Executive Session at 8:05 p.m.

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OTHER BUSINESS

Board requested that, as noted in Mr. Hansen's report dealing with the Botti application, they would like to hear testimony on any potential use of the accessory building.

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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 8:30 p.m. The next meeting of the Board of Adjustment will be held on Tuesday, January 14, 2014, at 7:30 p.m. at the Garabrant Center, 4 Wilson St. This will be a special meeting and also be the reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary