

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
December 4, 2012  
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 12, 2012 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 - Present  
Mr. McCarthy, Alt I - Present  
Mr. Germinario, Alt II – Absent

Also Present:

Mr. Germinario, Esq., Attorney  
Mr. Hansen, Engineer

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**APPROVAL OF MINUTES**

Mr. Smith made a motion to approve the minutes of the October 2, 2012 regular meeting of the Board. Mr. Ritger seconded. All members being in favor, the minutes were approved.

The meeting of November 7, 2012 was 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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**Bartzak, Linda** – Hardship Variance: **Resolution**  
Block 201, Lot 29, 6 Deerfield Rd.

Mr. Germinario, Esq. presented the following resolution to the Board:

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

**Decided:       October 2, 2012  
Memorialized:   December 4, 2012**

**IN THE MATTER OF LINDA BARTZAK  
“C” VARIANCE APPLICATION  
BLOCK 201, LOT 29**

**WHEREAS**, Linda Bartzak (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 2/6/12; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 10/2/12; 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 1.88 acres and is developed with a single-family residence. The property is located at 6 Deerfield Road in the 1 acre residential district.

2. The improvements to the subject property for which the Variance relief is sought comprise a porch and garage extension that will encroach into the minimum front yard setback. Therefore, relief is required pursuant to section 215 schedule II.

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

- Architectural Plans prepared by Byrne Design Associates, Inc., Chester, NJ, dated May 2, 2011, consisting of five (5) sheets
- Variance Plans, prepared by Careaga Engineering, Inc., Budd Lake, NJ, dated August 10, 2012, consisting of two (2) sheets

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 February 6, 2012
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated February 6, 2012
- Zoning Officer's Denial, dated February 8, 2012
- Site Inspection Authorization, dated February 6, 2012
- Certified list of property owners, dated February 6, 2012
- NJDEP Approval of a Transition Area Waiver and Letter of Interpretation, dated January 11, 2012
- Zoning Permit Application, dated November 11, 2011
- Sketch of subject property and adjoining lots 28 and 30 (unsigned & undated)
- Plan entitled, "Location Property Survey, St. No. 6 Deerfield Road, Tax Lot 29, Block 201, Borough of Mendham, Morris County, New Jersey," prepared by Wm. DiMarzo & Son, Assoc., Inc., Union, NJ, dated May 23, 2008, consisting of one (1) sheet

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, dated 8/27/12

6. In the course of the public hearings, the Applicant represented herself, and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

William Byrne, Applicant's Architect

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

Mr. Byrne described the improvements as consisting of a relocated front entrance and a covered porch extending across the left side of the front elevation to a gazebo, which will connect with the existing rear deck. On the right side of the front elevation, a third garage bay with a cupola detail will be added to the existing two-car garage. The alternative of adding the garage bay to the rear of the existing garage was rejected because it would require removal of an existing mud room and patio area.

Mr. Byrne testified that the proposed front yard setback of 60.2 feet, though non-conforming, will better blend into the existing setback pattern of the adjoining homes, since the home to the right has a setback of approximately 70 feet and the home to the left has a setback of approximately 50 feet. He stated that proposed architectural improvements give the façade of the home a more balanced and aesthetically pleasing appearance. He and the Applicant confirmed that no trees need be removed to implement the improvements.

With respect to the hardship justifying the front yard setback variance, Mr. Byrne testified that a sewer easement runs through the rear of the subject property, thereby forcing the building envelope to be closer to the street and rendering compliance with the front yard setback problematic.

8. 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 Applicant's proposal will enhance the appearance of her home, and that the impact of the variance is mitigated by the openness of the front porch and the low profile of the garage addition. As conditions of granting the variance relief, therefore, the Board will require that the open porch and low garage profile be maintained in the future.

By reason of the sewer easement in the rear of the subject property, the strict application of Ordinance Section 215, Schedule II 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.

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).

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 front porch shall not be enclosed in the future.
2. The height of the garage shall not be increased above that specified in the approved plans.
3. Prior to issuance of a certificate of occupancy, all proposed improvements shall be installed per the approved plan.
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 October 2, 2012.

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

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

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

The motion carried.

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Mr. Seavey recused from Board for both of the following application hearings. Vice Chair Peck assumed leadership of the Board.

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**Patton, Robert & Kristen** – Hardship Variance  
 Block 1903, Lot 12, 3 New Street (Historic District)

Present: Robert Patton, Applicant

**Completeness Review:** Mr. Hansen reviewed the completeness items as identified in the October 22, 2012 Ferriero letter. He recommended that the waivers requested be granted due to the limited nature of the application. The Board did not have any additional comments.

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

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

In Favor: Ritger, Schumacher, Smith, McCarthy, Peck  
 Opposed: None  
 Abstentions: None

The motion carried. The application was deemed complete.

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

Mr. Patton testified that they are planning on adding a mud porch to match the design of the garage and the house. It would have a metal roof to break the spaces. There is currently some grade change between the garage and the home and the mud porch will connect them and provide a better scale and scope. It will have a closet, cubbies and a staircase. In terms of the variances required, they need relief for the sideyard setback and lot and building coverage. The mud porch adds 180 sq. ft. There are existing stairs and a walkway that will be removed. It does not impact the neighbor's view.

After some discussion on the actual numbers, Mr. Hansen advised that the numbers on the plans should be used. There is less than 100 sq. ft. added for lot and building coverage. Addressing Mr. Ritger's question on the existing coverage overage as that they are allowed 4,141 sq. ft. in impervious coverage and planning on going to 5,349 sq. ft., Mr. Patton stated that he had been to the Board of Adjustment in 2001 and received a variance for an addition to the home.

Responding to Mr. Hansen on the pitch of the gutter near driveway, and whether there was a natural pitch to the street, Mr. Patton stated that it is not pitched away, but it can be constructed so that it does not negatively impact the neighbor.

In deliberations, the Board noted that the plan enhanced the property and the neighborhood. There is no detriment to the neighborhood. It does not change the historic nature of the home or the streetscape. There was some concern over the existing impervious overage, but there were also benefits to the addition.

Vice Chair Peck opened the meeting to questions and comments by the public. There being none, the public session was closed.

Mr. Ritger made a motion to approve the application with a condition that an "as built" be submitted before a CO is granted in accordance with the Ferriero letter of October 22, 2012. Mr. Smith seconded.

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

In Favor: Ritger, Schumacher, Smith, McCarthy, Peck  
 Opposed: None  
 Abstentions: None

The motion carried. The application was approved. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the January 8, 2013 meeting of Board.

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**Reilly, Phillip & Jessica** – Hardship Variance  
 Block 1902, Lot 8, 14 New Street (Historic District)

Present: Phillip Reilly, Applicant  
 Daniel Encin, Architect for the Applicant

**Completeness Review:** Mr. Hansen reviewed the Ferriero letter of November 12, 2012 as relates to completeness. It was determined that the applicant had obtained a recommendation from the Historic Preservation Commission. Mr. Hansen recommended that a partial waiver relating to the plans could be granted. There were no further comments from the Board.

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

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

In Favor: Ritger, Schumacher, Smith, McCarthy, Peck  
Opposed: None  
Abstentions: None

The motion carried. The application was deemed complete.

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

Mr. Reilly testified that they purchased their home in May of 2011. During the inspection it was noted that there was a problem with a roof leaking due to gutters. The top floor of the home pitches 4.5 ft. to 7.5ft. They have difficulty walking around, and want to increase the ceiling height. It is a 200 year old home, and they want to maintain the historic nature. The plans call for raising the roof internally, but keeping the look of the home. As the home sits 3.5 ft. into the setback, they need a variance for the increased height as it is non-conforming.

Addressing Board questions, Mr. Reilly stated that there is no increase in square footage. The third floor is 800 sq. ft. and all of the third floor is being increased in height. There is no effect on runoff and the roof and the lot coverage is not changing.

Mr. Encin, architect for the applicant, testified that the inside of the home is being raised, but the cornice around the home will remain. The change will not be noticeable from the street.

In deliberations, the Board agreed that there was minimal change and that the plans improved the usefulness of the home. It is the right time to make the changes as the roof is being replaced. The Historic Preservation Commission is in support of the project.

Vice Chair Peck opened the meeting to questions and comments by the public. There being none, the public session was closed.

Mr. Ritger made a motion to approve the application with a condition for an "as built" in accordance with the Ferriero letter of November 12, 2012. Mr. Schumacher seconded.

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

In Favor: Ritger, Schumacher, Smith, McCarthy, Peck  
Opposed: None  
Abstentions: None

The motion carried. The application was approved. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the January 8, 2013 meeting of the Board.

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## **ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Peck adjourned the meeting at 8:20 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, January 8, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St. This will be the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan  
Recording Secretary