

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
December 6, 2011
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 Daily Record on January 13, 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 – Present	Mr. Smith - Present
Mr. Peralta- Present	Mr. McCarthy, Alt. I – Absent
Mr. Ritger – Present	Mr. Germinario, Alt. II – Absent
Mr. Schumacher - Present	

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

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APPROVAL OF MINUTES

Mr. Smith made a motion to approve the minutes of the November 22, 2011 special meeting of the Board as written. Mr. Ritger seconded. All members being in favor, the minutes were approved. The regular meetings of October 4 and November 1 had been cancelled.

Mr. Smith made a motion to approve the minutes of the Executive Session of November 22, 2011. Mr. Schumacher seconded. All members being in favor, the minutes were approved.

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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

Syrstatides, Semeon – C and D2 Variances: **Resolution**

Block 801, Lot 30, 5 Dean Road

Mr. Germinario Esq. presented a draft resolution to the Board including an additional condition provided by Mr. Hansen to require the construction, inspection and approval of all improvements including the stormwater management system prior to CO. Mr. Germinario, Esq. recommended that the condition be made part of all on-going approvals.

Mr. Smith pointed out that the resolution contained reference to the home being built on a slab, not just the addition. Board clarified that the addition was to be built on a slab, but the home has a basement. The draft resolution will be revised.

Board also discussed the fact that legally an applicant can appear without having paid their taxes, but that a condition can be added to the resolution requiring them to pay before beginning work.

Mr. Smith made a motion to approve the resolution as revised. Mr. Palestina seconded.

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

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

The motion carried. Following is the revised resolution:

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

**Decided: November 22, 2011
 Memorialized: December 6, 2011**

**IN THE MATTER OF SEMEON SYRISTATIDES
 “C” AND “D” VARIANCE APPLICATION
 BLOCK 801, LOT 30**

WHEREAS, Semeon Syristatides (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of variances pursuant to N.J.S.A. 40:55D-70c and 40:55D-70d (hereinafter the "Variances") by application dated 6/17/11; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 11/22/11; 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 0.39 acres located at 5 Dean Road in the ¼ Acre Residence Zone, and is bordered by the ½ Acre Residence Zone to the north. The subject property is developed with a side-by-side two-family residence with an attached 2-car garage.

2. The improvements to the subject property for which the Variance relief is sought comprises construction of an addition to the rear northerly corner of the structure and a covered porch with steps at the front entranceway. The addition will add 467 square feet (SF) of floor area to the northerly unit, which will include a new downstairs bedroom, bathroom, closet and laundry room. Building coverage will be increased from 1,874 SF to 2,341 SF, which exceeds the limit of 2,084 SF under Ordinance §215-31.1I and therefore requires “C” variance relief. Ordinance §215-15B conditionally allows two-family dwellings in the ¼ Acre Residence Zone on lots of at least ½ acre in size, the existing structure is non-conforming and its expansion requires “D-3” variance relief.

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 Steven Corso Architect, LLC, Bloomfield, NJ, dated April 12, 2011, consisting of two 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 June 17, 2011
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees dated May 26, 2011
- Zoning Officer’s Denial dated August 22, 2011
- Correspondence from Lawrence Cohen, dated August 18, 2011
- Site Inspection Form dated August 18, 2011

5. Borough officials and/or agencies have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Paul Ferriero, PE, Borough Engineer, dated 9/12/11

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

A-1 4 photos of the subject property taken by David Zimmerman, P.P.

- A-2 Aerial photo of the subject property
- O-1 Photo of the subject property taken by Tom Callahan (7 Dean Road)
- O-2 Photo showing ponding on Callahan property
- O-3 Photo showing ponding on Callahan property
- O-4 Photo of the subject property taken by Frank Lupo (17 Dean Road)

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

- Stratos Syristatides, son of the Applicant
- David Zimmerman, professional planner

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

Statos Syristatides, the son of Applicant Semeon Syristatides, testified that he and his son occupy the southerly unit of the two-family residence. He stated that his father has owned the subject property for 20 years and purchased it as a two-family dwelling. The northerly unit of the dwelling is currently occupied by a tenant who will be vacating. The purpose of the addition is to enable the witness' parents (the Applicant and his wife) to occupy the northerly unit. Since the parents are elderly and the mother is disabled, the first-floor bedroom and bath will accommodate their needs. A ramp in the garage will allow the parents to access their unit without having to climb stairs. Mr. Syristatides further testified that the driveway can accommodate 4 cars, that the addition will be built on a slab with no basement, and that the addition will be vinyl-sided to match the existing exterior.

David Zimmerman, P.P., testified that the subject property was developed with a two-family dwelling prior to the enactment of the zoning provision requiring a ½-acre minimum lot size for such dwellings. He opined that the Applicant's proposal meets the Coventry Square test for a "D-3" variance, insofar as it remains suitable for the two-family use despite the deviation from the ½-acre lot area standard. In support of this opinion, Mr. Zimmerman noted that the expanded dwelling will satisfy all bulk requirements, including yard setbacks, with the exception of building coverage. The witness further noted that the large rear yard of the subject property will serve to buffer the addition with respect to the flag lot (Lot 28) to the east, and that existing evergreens will screen it with respect to Lot 31 to the north. Mr. Zimmerman testified that since the Borough's 2006 Master Plan (Section II, p. 13) promotes the development of multi-generational family housing, the proposed addition will help implement one of the Master Plan goals. Regarding the negative criteria, the witness opined that there would be no substantial detrimental impacts. Referring to the photographs marked as Exhibit A-1, he stated that existing foliage will adequately screen the addition from the view of neighboring properties. With respect to the building coverage variance, Mr. Zimmerman testified that the "flexible C" or "C-2" provision justifies this relief, since the Master Plan purpose of multi-generational housing is being advanced.

9. Members of the public Tom Callahan of 7 Dean Road and Frank Lupo of 17 Dean Road commented on the application. Mr. Callahan, the owner of the adjoining property to the north (Lot 31) expressed concerns regarding sufficiency of parking and stormwater runoff, and introduced photos he'd recently taken to illustrate his concerns. Mr. Lupo also stated concerns as to the adequacy of parking, and introduced a recent photo he'd taken in which a vehicle parked in the driveway of the subject property was blocking the sidewalk.

10. 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 subject property can accommodate the modest proposed addition to the existing structure without significantly impacting neighboring properties or the overall character of the neighborhood. Since the screening provided by existing vegetation is an important element in the Board's determination, the Board will require that the revised plan establish a limit of disturbance that will minimize the disturbance of that buffer. To further ensure that increased stormwater runoff will not negatively impact the adjoining lot, the Board will also require installation of a drywell to accommodate runoff from the expanded roof area. In discussions during the course of the hearing, Applicant also agreed to merge the two smaller second floor bedrooms of the northerly unit, so that the total bedroom count remains the same, thereby limiting the intensification of the non-conforming two-family use. With respect to parking, the Board finds that the garage and driveway can accommodate up to six vehicles, and that the modest scale of the proposed addition is not likely to significantly increase parking demand for the two dwelling units.

With respect to both the conditional use "D-3" variance and the building coverage "C-2" variance, the Board finds that the granting of this relief is justified by the benefit associated with providing multi-generational housing opportunities in accordance with the goals of the Borough's Master Plan. In particular, the grant of the building coverage variance is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits associated with provision of

multi-generational housing substantially outweigh the minor detriments associated with the minimal exceedance of the building coverage limit.

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 Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 50:55D-70c(2) and 50:55D-70d(3).

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 vegetated buffer along the common property line with Lot 31 shall remain intact. The Applicant shall take measures necessary to protect this area throughout construction.

2. The Variance Plan shall be revised to include the following:

- a. The 200 foot property owners list.
- b. The limit of land disturbance and soil grading.
- c. The D variance noted in the zoning schedule.
- d. A drywell location and detail. The drywell volume shall be designed for 3 inches of runoff over the proposed increase in impervious coverage.
- e. The downspout and leader drain locations.
- f. The interior renovations necessary to show that there will be no net increase in bedrooms for the structure by merging two of the second floor bedrooms of the northerly unit.
- g. Sump pump outlet location.
- h. Corrected building coverage.

3. All improvements, including the stormwater management system, must be constructed, inspected, and approved prior to the issuance of a certificate of occupancy (either temporary or permanent) for the addition. Any deviation from this condition will require approval from the Board.

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.

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 November 22, 2011.

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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. Peck made a motion to approve the following resolution that had been provided with the pre-meeting packages. Mr. Ritger 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.

The Board moved to Executive Session at 7:45 p.m.

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OTHER BUSINESS

Board noted that they were concerned about three items affecting the streetscape in the Historic District and the Main St. Corridor: (1) Verizon facility maintenance, (2) JCP&L facility appearance at the entry to town and (3) Post Office trailers in disrepair and visible since the vegetation has been removed. They requested that the Board Secretary pass on their concerns.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 8:15 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, January 3, 2011. This will be the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary