

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
July 10, 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 – Present  
Mr. Peck – Absent  
Mr. Peralta – Present  
Mr. Schumacher – Present  
Mr. Seavey - Present

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

Also Present:

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

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**APPROVAL OF MINUTES**

Mr. Schumacher made a motion to approve the minutes of the June 6, 2012 regular meeting of the Board as written. Mr. Peralta 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**

**Ingersoll, Deborah** – Use Variance and Hardship Variances (**Continuation**)  
Block 305, Lot 11, 63 West Main St. (Historic District)

Present: Deborah Ingersoll, Applicant  
Brent Ingersoll, Applicant  
Thomas Malman, Esq., Attorney for the Applicant  
Craig Villa, Engineer for the Applicant  
Kimberly Tone, Architect for the Applicant  
David Zimmerman, Planner for the Applicant

Exhibits: A-17: Elevation Facing Main (Sheet A-3)  
A-18: Left Side Elevation (Sheet A-4)  
A-19: First Floor Plan (Sheet A-1)  
A-20: Second Floor Plan (Sheet A-2)  
A-21: Barn Elevation (Sheet A-6)  
A-22: First & Second Floor Plan of Barn (Sheet A-5)

- A-23: Mendham BOA resolution: Sims 1993  
A-24: Mendham BOA resolution: Farina 2010

Mr. Malman, Esq. provided a summary indicating that the applicants are requesting a “D” Variance for a business use in a residential zone and “C” Variances for impervious coverage, building coverage and front yard setback. Based on feedback from the prior meeting, they have reduced the front yard setback to 27 ft from 24 ft. along with the impervious coverage and the building coverage.

Addressing the Board question on the why the impervious coverage is currently over the ordinance allowable without a variance, Mr. Malman, Esq. explained that there had been a variance with the in-law suite addition, but subsequent to that there was an addition made to the home that required only a building permit. When that addition was presented to the town, the size of the whole lot was used including the right-of-way which made the lot larger and the coverage lower. The sidewalk had also not been counted. The calculations were done incorrectly. Subsequent to the second addition, the applicant also added a gravel driveway that increased the coverage. No variance was obtained. The new plans being submitted by the applicant show reduced coverage from what exists today, but the coverage is still over the allowable.

Ms. Kim Tone, Architect entered Exhibits A-17 through A-22, colored renderings of the revised plans as submitted to the Board. She provided a series of comparisons to the first set of plans that had been submitted:

- In comparing Exhibit A-8 with A-17 she stated that the chimney had been removed and the setback reduced to 27 ft. The height is the same, but a gable has been created and a second level is set back 5 ft. from the lower level so as to not close off the street. There is a small roof overhang of 8 inches on the first level to allow water to direct from the foundation. This extends beyond the 27 ft.
- In terms of the driveway view and the comparison of Exhibit A-9 to A-18, Ms. Tone explained that the building has been shortened and moved in about 3 ft. on the first floor and 8 feet on the second floor. There is a cedar shingle roof, with copper roofing on the porch. There will be Marvin SDL windows.
- The comparison of Exhibit A-6 to A-19 shows that on the first floor they have tightened up the dining room space by removing the chimney. They opened the porch area and narrowed the dimensions of the living room.
- The second floor, Exhibits A-7 and A-20, shows that the number of bedrooms remains the same, but the master bedroom has been tightened up and runs from front to back.
- The barn elevation, A-11 and A-21, indicates that the size of the overall plan has been reduced. Previously it had been 1200/1300 sq. ft., and now it is a little over 900 sq. ft. There is a three car garage with an office above. Referring back to A-1, Ms. Tone pointed out the original barn on the property and stated that they took some inspiration from it. It had a main piece and a shed roof. The proposed barn is now 25 ft. to the ridge and 5 ft. to the top of the cupola. There is no weathervane. The previous plans were 25 ft. to the ridge, 10 ft. to the top of the cupola that had a weathervane. She continued that there is a faux door which is not operational on the side of the structure facing the road. The parking is proposed for the rear. There will be cedar shakes and copper on the cupola. Responding to Mr. Seavey on whether the rear facing door was recommended by the HPC, Mr. Malman, Esq. advised that it is more attractive, even though it increases the coverage.
- In describing the floor plans, Exhibits A-10 and A-22, Ms. Tone explained that previously there had been an entire second floor. There is now 582 sq. ft. of office and 32 ft. for a powder room. The dimensions previously submitted were 28 ft. by 48 ft., and the barn is now 37 ft. by 25 ft.

Chair opened the meeting to the public for questions of Ms. Tone.

Responding to Mr. Jim Vollmuth, 52 West Main St., Ms. Tone stated that the garage is now a three car garage. Utilizing the exhibits, she clarified the location of the garage indicating that it had been moved forward.

Addressing a question from Mr. Fuller, 50 West Main St., on the design of the front of the home, Ms. Tone explained that the first story portion of the living room had been redesigned to look like an enclosed porch along the street. The second floor is now 5 ft. back from the first level along the street. Mr. Fuller noted that the first floor juts out 5 ft. from the second floor.

There being no additional questions, Chair Seavey closed the public session.

Mr. Craig Villa, Engineer for the applicant advised that the plans he would be using had been provided to the Board. In terms of the changes, they have reduced the front yard setback, reduced lot coverage and reduced building coverage. The addition size has been reduced. The office/garage barn has been reduced from four cars to three, and the office space is now 600 sq. ft. The garage barn has been moved forward 16.4 ft. to the edge of the gravel area. There is now a four car parking space area 10 ft. instead of 12 ft. Behind the barn the gravel area has been reduced from 30 ft. to 24 ft. In terms of the existing patios one has been reduced 3 -4 ft. to allow for planting areas. Another gravel patio has been removed completely. The sidewalks have been reduced from 4 ft. wide to 3 ft. wide.

Continuing, Mr. Villa explained that the front yard setback was originally proposed at 24 ft. The ordinance is 75 ft. They are now proposing 27.2 ft. from the County right-of-way. The intensification has been eliminated. There is also an overhang that needs to be added so that the actual setback is 26.5 ft. The building area of the home shows a net decrease of 47 sq. ft. There is 80 sq. ft. of addition and a reduction of the existing coverage of 128 sq. ft.

Explaining the building coverage further, Mr. Villa stated that the existing building coverage is 3435 and the allowable is 3636. The open porch does not count under the ordinance so it has been removed. They are proposing 4289 sq. ft., and will be 653 sq. ft over allowable including the barn. The barn is now at 901 sq. ft.

In terms of the lot coverage, the existing lot coverage is 11,417 sq. ft and the allowable is 9089 sq. ft. The last set of plans proposed 13,554 sq. ft and the new plans propose 10,968 sq. ft, which is less than the existing. They are 1879 sq. ft. over the allowable. He continued that if the garage doors were flipped to the front, there would be a savings in coverage of 48 ft. x 10 ft. The rear door entry is better for traffic circulation and provides a better visual for the neighbors as the cars are not seen. If the barn were moved any further forward, it would infringe on the neighbor's yard. The two drywells that were proposed previously are now not necessary, but they will leave them in the plans. In terms of the barn, there are a lot of detached garages/barns in the area, and it will add to the character. The neighboring businesses have turnarounds. The County has not yet seen this plan, but it should be acceptable.

Responding to Mr. Schumacher on why the coverage is about 2,000 sq. ft. over at the present time, Mr. Villa stated that it is mostly gravel placed on the property without a permit. It is located mainly in front of the proposed garage and is an area about 65 x 32 ft.

Responding to Mr. Smith on what would prevent a new owner from paving the gravel area, Mr. Hansen advised that there is already a developed look. If it is gravel or pavement, after a few seasons, it will not make much difference from a drainage perspective as it becomes compacted.

Addressing the parking, Mr. Villa continued that there are four existing parking spaces today. The area is 22 ft. x 50 ft. for about 1100 sq. ft. There are four spaces next to the house, 3 spaces in the garage and parking behind the garage. The garage is 901 sq. ft.

Mr. Germinario, Esq. confirmed that the area graveled without permits is 2018 sq. ft.

Mr. Fuller questioned the existing coverage when the applicant purchased the home. Mr. Villa did not know. Mr. Hansen advised that it should be on the plans.

Mr. Vollmuth stated that he was advised by the County that for a common drive one needed to maintain 36 ft. in width. Mr. Villa stated that the County has not required it in this case.

As the planning portion of the hearing had not been completed in June, Chair requested that Mr. McGroarty provide his comments on Mr. Zimmerman's testimony.

Mr. McGroarty, Board Planner, referenced his report dated July 9, 2012. He stated that while the Mendham Borough Master Plan does make comments related to home occupations, any changes to the ordinance have not occurred. The applicant has reduced the office space and the barn, but they need to justify the use variance. Testimony at the last meeting referred to the neighboring properties as not residential in character, but the applicant needs to still prove that this site is suitable for the use. Mr. McGroarty questioned whether the site was suited as the use generated the need for other variances. It was his professional opinion that if it cannot satisfy the other improvements, it is not suited. He also referenced the "Kaufman" Supreme Court Case which determined that in the case of C2 variances, they cannot just be for the benefit of the homeowner; they must be for the benefit of the community. He questioned whether there was a basis for increased building and lot coverage as a better zoning alternative.

Mr. Malman, Esq. introduced two resolutions, A-23 and A-24, the Sims resolution from 1993 and the Farina resolution from 2010. He stated that the properties on either side of the applicant have had business uses for many years. The Sims property was a restaurant and then became a real estate office before becoming an attorney's office. At one time the second floor was residential. There is a gravel parking area in the rear. The Farina property was a dentist office before becoming an account office. The Board approved 1200 sq. ft. for the use. D1 variances were granted in each case.

In terms of intensity of use, in those resolutions the Board approved two to three full time employees and clients coming three times per week. This applicant's use is less intense with no clients and no visitors. They are suited to a D1 variance. The Master Plan is antiquated. The business on top of the garage is a plus. It is set back from the street. The site is suited based on what is happening on the neighboring lots.

Responding to Mr. Peralta on whether the other businesses were there for a long period, Mr. Malman, Esq. stated that they were. They had changed from residential to commercial. Mr. Peralta noted that they were already businesses, and that they did not change from residential to business. Mr. McCarthy also noted that there was not any construction associated with the approvals.

Mr. Seavey reiterated that the accountant did not change the property. With the other applicant there had been some building access issues, and the approval allowed it to be brought back to a safe environment. He was concerned that other residents in the area could also come in requesting D1s, and then why not make the zone a business zone. Mr. McGroarty referenced page 255, section 13.3 in Cox. He stated that the Governing Body has made a conscious decision not to change the zoning.

Mr. McCarthy again referenced the Kaufman Case and questioned the public benefit to be derived from the variances. Mr. Malman, Esq. stated that there is a public benefit to having the carriage house in the rear. It looks good and it removes the cars from public view. Mr. Palestina noted that even though the barn is being proposed, they are still planning on having parking spaces in the front.

Responding to Mr. Germinario, Esq. on whether he would recommend having the garage doors face the rear of the property if they were talking residential instead of office use and a D1 variance, Mr. Zimmerman stated that there is an argument both ways. With the doors in the rear, the cars are not seen. There are some towns such as Bernardsville that do not like the doors facing the street. On the other hand, if the doors faced front, coverage would be saved. Mr. Ingersoll added that they prefer the doors to the rear. They have six cars in the family.

Mr. Palestina again questioned the number of cars that would be present indicating that if there were 6 family cars and three employee cars, there would be nine cars. Mrs. Ingersoll stated that there would be a gap and all cars would not be there at the same time, as the family leaves in the morning and then the employees come. Mr. Germinario, Esq. advised the Board that the variance would run with the property regardless of the current situation.

Mr. Malman, Esq. provided his summary indicating that the setback has been reduced from the previous 24 ft. The second floor has been moved back 5 ft. on the street side. In terms of the C1 front yard variance, the topography is an issue as the home is located where it was built a long time ago. They are improving the front as the basement floods and the ceiling height is low. They are providing a better visual environment. There is no coverage issue for the structure.

In terms of the lot and building coverage, the issue is whether or not the Board wants the carriage house. It is an attractive design, and it does not adversely affect the neighbors.

Responding to the Chair on whether the applicant wanted an "all or nothing" vote or individual votes on the variances, Mr. Malman, Esq. stated that he would consider the individual votes. Mr. Germinario, Esq. advised that given the Planner's comment that the lot and building coverage are tied to the D1 variance, he would support a vote on the C1 for the setback, but that there should be a second vote on the D1, lot and building coverage.

Chair opened the meeting to the public for general comments.

Mr. Jim Vollmuth stated that when he bought his home, he looked at the neighborhood and noted a dentist office and an old law office. He did not buy intending to be located in a commercial zone. It is not a good use of the area. He has a home office, but it complies. He is also concerned about what will happen with the Thompson House. He also has setback issues and is limited.

He objects to the commercial use and the lot coverage. He would be surrounded by commercial properties.

Mr. Fuller echoed Mr. Vollmuth's comments related to the commercial use. There is no value to the community and there are too many wild cards. There might not be heavy equipment, but there could be pickup trucks. From an aesthetic perspective, the property has not been positive since day one. There is no regard for the zoning as they are over allowance. There is a five car parking lot in front of the house that he looks at. There was no intention to save the historic nature of the property. The front was left unpainted, and it is an architectural hodgepodge. He also noted that in the Historic Preservation Commission report there was reference to the fact that there is no front door. They are proposing a wall to wall window that looks like an enclosed porch. They are currently operating against the zoning regulations and nothing has been done. He is not in favor of the application.

During Board deliberations, members expressed their concerns on the D variance, but appeared more receptive to changes to the main home:

- Mr. Peralta was concerned that there would be an intensification of the area and the traffic. There is already commercial use in the area. This would provide the potential for small trucks coming in should the property change hands. He agrees with the planner that the C variances are driven with the D variance.
- Mr. Smith was opposed to the front renovation, but with the changes, it is a better fit. It does not replicate the original home, but the front yard is better. He does not support the business use. It should be in the home structure as that would keep the activity toned down.
- Mr. Schumacher shared the previous comments on the commercial use. The Master Plan references home occupation, but the Council did not act on any changes. They need to show the benefit to the community. He appreciates the work that has been done, but it is a one acre lot with a large barn. He is not in favor.
- Mr. Palestina expressed concern that there are currently violations to the ordinances. He would support the front yard setback, but is opposed to the D variance.
- Mr. McCarthy was concerned that there is a business operation now, but thought the applicants gave an honest presentation. He did not see the benefits to the community and to zoning. He only saw the benefits to the applicant.
- Mr. Seavey stated that he would struggle with a D1 on the residential site. The other uses in the area were pre-existing non-conforming and were already there. Those uses were determined to lessen the intensity when they came before the Board, and this application with three C variances intensifies use. There are also properties along Lake Drive that must be taken into consideration. He would support the front yard setback. The garage is great, but there would need to be modifications to the impervious coverage.

Mr. Malman, Esq. advised that they would currently postpone the vote on the D Variance and determine if they would make any modifications. They would like to go forward with the vote on the front yard setback. He questioned whether the Board would be agreeable to considering the office in the home.

Through a conceptual poll, Mr. Peralta expressed his comments to the effect that the town has created office space that could be used. Mr. Schumacher agreed. Mr. Palestina was not in favor of it, and Mr. McCarthy stated that the case law does not change if the office is in the home. It advances the purpose of the owner. Mr. Smith thought that it could limit the business.

Mr. Seavey made a motion to approve the C1 variance for the front yard setback with the impervious coverage returning to ordinance allowable requirement. Additional conditions would be approval by the Historic Preservation Commission, Morris County approval, correction of the in-law suite connecting door based on the previous approval, and a foundation location survey. Mr. Palestina seconded.

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

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

The motion carried. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the August 7 regular meeting of the Board. Mr. Malman, Esq. will advise the Board Secretary if the applicant will return for a continued hearing on August 7.

Application is carried to the August 7, 2012 meeting without further notice.

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Board took a short break ten minute break.

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**Zenjon Enterprises, LLC** – Amended Preliminary and Final Site Plan and Variances  
Block 1501, Lot 11, 25 East Main St. (Historic District)

Present: Robert Simon, Esq., Attorney for the Applicant  
Jonathan Krasney, Applicant  
David Fantina, Engineer for the Applicant  
Lawrence Appel, Architect for the Applicant  
Peter Steck, Planner for the Applicant

Exhibits: A-1: Architectural Plan Sheet 3 of 10 last revision 3/1/12  
A-2 Previous approval side elevations dated 6/7/11

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

Mr. Simon, Esq. introduced the application stating that they received preliminary and final site plan approval previously from the Board for two office uses in each building. They were to reconstruct/replicate the existing front structure. They are still proposing a two phase site plan and the cottage in the front will still have two office uses. The change is to the rear building in Phase 2. There is not a significant change in design, and they want to retain the two businesses, but change them to a dental/medical use and add three residential apartments to the second floor and two to the third floor.

They are proposing the change as the applicant has encountered difficulty getting the project off the ground. It was suggested to him to convert part of the second building to residential. This would attract tenants and financing, while keeping the building compatible with the District and providing a mixed use building. There would be complementary traffic flow.

In terms of the variances required, a D variance is required for more than two separate uses in the rear building. The site will still need to remain suitable. There was a previous C variance granted for parking as 45 would have been required for both phases and only 41 were provided. For the revised application, for both Phase 1 and Phase 2, the requirement goes to 51, but only 45 are provided. With the uses there will not be any overlapping demand for spaces.

Mr. Fantina, Engineer, marked Exhibit A-1, the previously approved plan, and referenced Sheet 3 of 10. He testified that Phase 1 of the project will be exactly as previous approved. In Phase 2, the landscaping, lighting and drainage is the same, and the only change is the footprint of the rear building which is slightly longer and taller. The footprint will be going from 2835 sq. ft. to 3111 sq. ft, a 260 sq. ft. increase. The new building requires 51 parking spaces whereas only 45 are proposed.

In discussion with Mr. Hansen, Mr. Fantina referred to a note on the plans indicating that the fire lanes would be coordinated with the Fire Official. Mr. Hansen advised that there had been communication with the Fire Official, and he had previously provided a sketch of the requested location. They should be shown on the plans.

Mr. Simon, Esq. stated that they had received Morris County approval. Ms. Callahan confirmed that the Board had also received a copy of the County letter.

Mr. Fantina reviewed items in Mr. Hansen's letter dated May 23, 2012. He stated that there would not be any decks or patios. There are no plans for outdoor recreation areas. He confirmed the parking required as 51 which requires a variance for Phase 2. There would not be any parking reserved for the apartments.

In terms of the site lighting, they had previous approval for lighting to be turned off at 9:00 p.m. They did have the entrance lights for the residential. Mr. Hansen advised that with the residential use, all night lighting would be needed as people would be coming home at all hours. They would need to determine the best type of lighting and how it would be shielded.

Mr. Fantina explained that medical waste will be handled in accordance with the ordinances. They do expect to have two- 4 yard dumpsters, one for recycling and one for waste. They would be emptied two times per week. They still need to determine where the mailboxes will be located. They need to speak with the Post Office.

Mr. McGroarty, Board Planner, stated that the tree removal and replacement should be added to the plans. He was also concerned that the Board know how many doctors would be present in the offices as more parking would be required. Mr. Simon, Esq. stated that they will request the parking and the limitation based on square footage, and then the Board can limit the doctors. It was Mr. McGroarty's opinion that the approach would be difficult to monitor.

Mr. McGroarty also questioned how tenants dispose of their trash. He did not believe having the tenants use a trash bin in the rear would work. Some apartments have a superintendent or have the containment next to the building.

Mr. Seavey confirmed that given the residential nature of the application, the rear building would have sprinklers.

Chair opened the meeting to questions to Mr. Fantina by the public. There being none, the public session was closed.

Mr. Lawrence Appel, Architect for the applicant, testified that there is no change to the front building. The rear building will have a mix of uses, but they do not significantly change the building. Apartments are being added to the upper floors. Exhibit A-2 from the previous approval showing side elevations dated 6-7-11 was marked.

Mr. Appel explained that the plan is for three apartments on the second floor which was originally approved for general office and two apartments on the third floor which was originally approved for attic space. The first floor will be medical office instead of the previously approved general office. There will be two medical suites. They will use sprinklers in the building.

In their review with the HPC, the Commission stated that the building did not face Main Street, and it would not have the same scrutiny as the one that did. They applauded the residential use. The application includes the materials list from the first application's original testimony, but that was amended during the hearing to agree to the same materials for the front and back buildings. For this application, they agree to what was agreed to in the prior application approval.

In discussion on the change in the height from 34.6 ft. to 37.10 feet and the change in footprint from 2835 sq. ft. to 3111 sq. ft., Mr. Appel explained that in this building there is an elevator, a sprinkler room, an equipment room and accessible bathrooms that had to be conforming. The gable was raised. The medical spaces height was increased to 10 ft. from the previous 9 ft. for the fire rating and sound. The size of the façade of the rear building went from 1,660 to 2079 sq. ft.

Mr. Pealta confirmed with Mr. Appel that there was not a change in the quality of the building, and that the back building would be the same as the front building in materials and architectural design. Responding to Chair Seavey, Mr. Appel stated that the apartments would not be age restricted. There would be 8 bedrooms in total, 3 two bedroom apartments and 2 one bedroom apartments. The design is in anticipation of young professionals. Each use in the building will have its own entry; there will be two medical entries and one residential entry.

Discussion took place on when the next hearing on the application would take place. Given schedules of the applicant, the hearing will be continued at the Wednesday, September 5 meeting of the Board. The applicant will also contact the Board Secretary to see if there is a possibility of arranging a date for a special meeting.

#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 11:05 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, August 7, 2012, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary

