

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
July 8, 2013
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Acting Chair Kopcsik at 8:00 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S OPENING STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 17, 2013 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

ATTENDANCE:

Mayor Henry – Absent
Mr. Bradley – Present
Mr. Cascais - Present
Mr. Gertler – Absent

Mr. Kraft - Absent
Mrs. Kopcsik – Present
Mrs. Lichtenberger - Absent
Ms. Sandman – Present
Councilman Sharkey - Present

Alternates:

Mr. Cavanaugh, Alternate I – Absent
Ms. Isaccson, Alternate II – Present

Also Present:

Mr. Henry, Attorney
Mr. Ferriero, Engineer
Ms. Callahan, Secretary

Given the absence of Chair Kraft and Vice Chair Gertler, Mrs. Kopcsik served as Chair for the meeting.

MINUTES

On motion made by Mr. Bradley, second by Councilman Sharkey and carried, the minutes of the regular meeting of June 10, 2013 were approved with clarifying language pertaining to the discussion of trees in the Mt. Hermon Hills application.

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PUBLIC COMMENT

Chair opened the meeting to questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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HEARING

#941 – Mt. Hermon Hills Company, LLC – Minor Subdivision (Continuation)
Block 1801, Lots 35 & 36.03, Hilltop & Thomas Road

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

Mr. Henry, Esq. had provided the Board with a draft resolution based on direction from the June 10 meeting. In terms of the requirement for a Letter of Interpretation from the DEP, Mr. Henry, Esq. recommended that the language be adjusted to reflect that if the LOI is different from that depicted on the plans submitted, the applicant should return to the Board unless the Board Engineer is satisfied that it does not affect the basis for approval. He also recommended clarification to the condition pertaining to the conservation easements indicating that they should be consistent with the LOI from the DEP and that documentation should be provided to the Borough Attorney and

Engineer. Deeds and easements should also be filed with Morris County. Markers would also be required.

Ms. Callahan advised that, while absent from the last meeting, Mr. Cascais had listened to the recording of the meeting and provided her with certification.

Councilman Sharkey made a motion to approve the resolution and the application with the amendments proposed by Mr. Henry, Esq. Mr. Cascais seconded.

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

In Favor: Bradley, Cascais, Kopcsik, Sandman, Sharkey, Isaccson
 Opposed: None
 Abstentions: None

The motion carried. The application and the resolution were approved.

Following is the approved resolution:

**MENDHAM BOROUGH PLANNING BOARD
 RESOLUTION
 GRANTING MINOR SUBDIVISION AND LOT LINE ADJUSTMENT APPROVAL
 FOR MT. HERMON HILLS COMPANY, LLC
 BLOCK 1801, LOTS 35 & 36.03
 APPLICATION NO. 941**

WHEREAS, Mt. Hermon Hills Company, LLC (“Applicant”) has applied to the Planning Board of the Borough of Mendham (the “Board”) for minor subdivision approval and lot line adjustment to create three lots out of property located on Thomas Road and presently designated Block 1801, Lots 35 & 36.03 on the Tax Map of the Borough of Mendham (the “Subject Property”); and

WHEREAS, a public hearing was held on June 10, 2013, at which time testimony was offered by Applicant’s engineer, Craig Villa, and by John DeNeufville, the principal in Mt. Hermon Hills Company, LLC, the Board reviewed the documents and materials filed by Applicant, the Board heard legal argument from Applicant’s attorney, the Board reviewed reports from and comments from its professional consultants, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered and deliberated upon the testimony and materials submitted by and on behalf of Applicant, the reports and recommendations of the Board’s consultants and professional staff, the arguments of Applicant’s counsel, and there being no comments from members of the public;

NOW THEREFORE BE IT RESOLVED that, based upon the foregoing, the Board makes the following findings of fact and conclusions of law:

1. Applicant is the owner of property located on Thomas Road and designated Block 1801, Lot 36.03 on the Mendham Borough Tax Map. Joseph Spada is the owner of property located on Thomas Road (the corner of Thomas Road and Hilltop Road), designated Block 1801, Lot 35. Joseph Spada has consented to the prosecution of this Application by Applicant. Together the two existing lots (Lot 35 and Lot 36.03) constitute the “Subject Property” which is located in the 5 Acre Residence Zone.

2. The property designated Lot 36.03 is approximately 10.611 acres and that designated Lot 35 is approximately 5.054 acres. The Applicant proposes to subdivide in such a manner as to create three lots out of the present two lots constituting the Subject Property. A portion of the easterly side of present Lot 36.03 would be added to the present Lot 35. Following this lot line adjustment, the remainder of present Lot 36.03 would be divided in such a manner as to form a new lot proposed to be designated Lot 36.04 and leaving the remainder Lot 36.03, each of the three lots resulting from these proposed changes being in excess of 5.0 acres and in conformity with all bulk regulations applicable to the Zone District.

3. The initially proposed subdivision and lot line adjustment and related engineering data are all as set forth on plans prepared by Yannaccone, Villa & Aldrich, LLC (4 sheets), the Title Sheet being dated April 5, 2013 and sheets 2, 3 and 4 being dated April 9, 2013, all of the foregoing being revised May 20, 2013 (hereinafter the “Plans”).

4. At the hearing on June 10, 2013, Applicant introduced as Exhibit A-1 a revised plan prepared by Yannaccone, Villa & Aldrich, LLC (1 sheet) dated June 10, 2013 entitled “Minor Subdivision Plan, Alternate Exhibit”, which proposed a different lot line adjustment between the easterly side of the present Lot 36.03 and Lot 35 (hereinafter the “Alternate Plan”). Applicant’s engineer reviewed the Plans and the Alternate Plan with the Board detailing the differences in the

lot line adjustment line (westerly side line of Lot 35) simplified in response to comments from the Borough Planner and Borough Engineer concerning lot geometry.

5. The Alternate Plan depicted a lot line adjustment along the westerly side of present Lot 35, adding approximately 0.470 acres to the present Lot 35, resulting in the modified proposed Lot 35 having a lot area of 5.524 acres (following dedications to the Borough and to Morris County along Thomas Road and Hilltop Road, respectively). In addition, the Alternate Plan depicted a division of the balance of Lot 36.03 into two lots, proposed Lot 36.04 at 5.056 acres and the remainder Lot 36.03 at 5.085 acres.

6. Applicant's engineer testified that the revision to the lot line adjustment along the westerly side of Lot 35 created a less complex lot line and a more regular proposed Lot 36.04. He agreed that the proposed Lot 36.04 was still not a simple rectangle, but had adequate lot width and a sufficient building envelope to permit development as a single family residence. He further testified that the lots proposed in the Alternate Plan would still satisfy all bulk criteria in the district standards applicable to the 5 Acre Residence Zone.

7. In answer to questions regarding the need for the lot line adjustment on the westerly side of Lot 35, Applicant's engineer testified that the owner of Lot 35 wanted to increase the yard area on the western side of his lot. The dwelling on present Lot 35 is in a now-nonconforming location as to that property line. The addition of the proposed lot area on the rear two-thirds of the westerly side of Lot 35 will cure both the setback deficiency from the westerly property line and the now-nonconforming height of the dwelling relative to its setback from that property line. The lot line adjustment will alleviate both nonconformities (compliant when the dwelling was built but nonconforming as to present district standards), and will provide an area where the owner of Lot 35 can locate accessory structures and/or create more outdoor living space on the westerly side of the dwelling.

8. There was significant discussion of the proposed access drive to proposed Lot 36.04 (utilizing the bed of an existing gravel farm road/driveway). This gave rise to questions concerning sight distances along Thomas Road, the likely location of a dwelling if constructed on proposed Lot 36.04, the impact of construction location on applicability of differing storm water management requirements, the ability to clear brush or other vegetative material from the Riparian Zone affecting the front of the proposed lot, and other interrelated questions concerning potential development of the proposed lot. Applicant's engineer testified that the sight lines can be achieved through the trimming of brush, and that no tree removal will be required, thus not constituting a regulated activity in a riparian buffer under the development scenario depicted.

9. The Borough Engineer pointed out that if a larger dwelling were to be built farther toward the rear of proposed Lot 36.04 than the "typical dwelling" which is depicted, the additional soil disturbance could lead to a "Major Development" classification with additional environmental constraints being applied. In this event, there might be an inability to do any clearing along the frontage and, in any event, more extensive and rigorous storm water management facilities and practices would be required. It was suggested, and Applicant agreed, that since the development capacity of the proposed new Lot 36.04 is being urged on the basis of the "typical dwelling" in the front third of the property, that the subdivision plan be Noted and a document be recorded in the office of the Morris County Clerk, advising of the limitations of development without further reviews being required, which might result in constraining the manner in which the lot can be developed. It was also observed that prior to any development of the new lot, a lot development plan will have to be submitted to the Borough for review and approval.

10. The Board observed that there were a number of places on the Subject Property where wetlands were depicted and buffer areas identified. Applicant's engineer testified that none of the wetlands, nor associated transition areas, were impacted by any of the proposed lot line changes, the subdivision itself, or the potential development depicted on the Alternate Plan. He reiterated that there was no specific construction proposed at this time on any of the properties, and that any construction at a later date would have to go through the normal zoning, construction, and engineering reviews required for the type of construction proposed.

11. The Board also discussed Applicant's proposal that a utility easement be created along the new boundary between proposed Lot 36.04 and remainder Lot 36.03. Present Lot 36.03 has been improved with a single family residence, garage, swimming pool, pool house, and miscellaneous accessory structures. Utility lines have been run to accommodate water and drainage lines servicing the existing improvements. The proposed lot line to create Lot 36.04 passes through those utility lines, resulting in portions of the lines being underground on proposed Lot 36.04. The Alternate Plan depicts a proposed Utility Easement on the westerly side of proposed Lot 36.04, permitting the utility lines to remain as presently located, though achieving this by permitting them to cross over from remainder Lot 36.03 onto proposed Lot 36.04 and then back again onto remainder Lot 36.03. Although the Borough Engineer would prefer to see the utility lines relocated and contained solely on the property which they serve, the Board concluded that under these circumstances (a high cost to relocate, the modest intrusion into proposed Lot 36.04, the location of the utility lines within the side yard setback which will apply to proposed Lot 36.04 -- therefore not an area where any construction would be anticipated), together with the fact that the easement will be a matter of record known to any potential buyer of proposed Lot 36.04), the utility lines could be

left in their present locations and the subdivision could be permitted with the imposition of the recorded easement to identify their location.

12. It was observed that the Alternate Plan in its Zoning Schedule also made the plan revision requested by the Borough Planner relating to side and rear yard setback details on the proposed new Lot 36.04 and Lot 35 following the proposed lot line adjustment.

13. The Board and Applicant generally reviewed the June 7, 2013 comment letter from the Borough Engineer. The Board indicated that as a condition of any approval, it would require an updated Letter of Interpretation from the NJDEP. Satisfaction of this condition must precede signing of a subdivision deed or map. In addition, the updated LOI number would be added to the plan as a plan revision, prior to the Board signing the plan and endorsing the subdivision deed.

14. Applicant agreed that it could comply with the comments and requirements set forth in the Borough Engineer's June 7, 2013 letter, including the requested plan revisions. Applicant's engineer confirmed that he would address the comments to the satisfaction of the Borough Engineer.

15. Applicant's engineer testified that soil studies, as required, had been done to confirm the ability to install appropriate septic disposal systems on proposed Lot 36.04.

16. Based upon all of the foregoing, the Board determined that the requirements for minor subdivision approval and lot line adjustment had been satisfied by Applicant and that, with appropriate conditions, this minor subdivision and lot line adjustment could be approved.

BE IT FURTHER RESOLVED that, based upon the foregoing, the Application of Mt. Hermon Hills Company, LLC for minor subdivision approval and a lot line adjustment to permit the creation of three lots out of the existing Lots 35 and 36.03 in Block 1801, as depicted on the Plans (referenced above), as modified by the Alternate Plan (referenced above), to create a modified Lot 35, a new proposed Lot 36.04 and a remainder Lot 36.03, all of said lots fronting on Thomas Road, be and hereby is granted and approved, subject to the following conditions:

1. Subdivision and lot line adjustment of the Subject Property shall be in accordance with the plans presented (including plan revisions identified in the Borough Engineer's June 7, 2013 comment letter and to satisfy approval conditions), testimony given at the public hearing, the findings and conclusions of the Board, and the conditions of approval set forth herein.

2. Prior to the issuance of a construction permit on proposed Lot 36.04, a lot development plan shall be submitted to the Borough Engineer for review and approval.

3. A Letter of Interpretation shall be obtained from NJDEP with respect to the Subject Property. In the event the Letter of Interpretation, is not consistent with the wetlands and transition areas depicted on the Plans and the Alternate Plan submitted to the Board, Applicant must return to the Board, unless the Borough Engineer is satisfied that the variation(s) does/do not affect the basis for approval of this subdivision. The Letter of Interpretation shall be noted by number on the final Plans prior to Board signing of the final plans and the subdivision deeds.

4. Applicant shall obtain all other permits and approvals required from any board, body or agency, whether municipal, county, state or federal, relating to the Subject Property and its subdivision, including but not limited to compliance with County Planning Board requirements.

5. All taxes, fees, escrows and municipal charges shall be paid and current, and in sufficient amount for completion of the Application and activities required to satisfy the conditions of approval.

6. Applicant shall confirm the correct lot designations with the Borough Tax Assessor.

7. Subdivision Deeds -- Separate deeds for each of the three (3) lots -- shall be prepared by Applicant and submitted to the Planning Board Attorney and the Borough Engineer for review and approval as to form and content. Deed descriptions and lot closure calculations shall be submitted to the Borough Engineer. Each deed shall contain standard language and information sufficient for a grant from the owner(s) to him/her/their/itself, chain of title deed references to facilitate subsequent searches, appropriate subdivision recitals, a metes and bounds description consistent with the final revised Plans as approved by the Borough Engineer, and shall set forth covenants, restrictions and recitals as follows:

(a) Proposed Lot 36.04 -- which shall be identified in its deed as "New Lot _____", (per Tax Assessor):

(i) Under the Borough Stormwater Management regulations and NJDEP rules, any development of the lot in excess of 0.25 acres of impervious surface or 1 acre of disturbance will result in a project classified as a "Major Development" and additional environmental constraints will apply;

(ii) The easement for utilities (water line and drainage) serving remainder Lot 36.03 shall be referenced;

(iii) Reference shall be made to creation of the lot by this approved subdivision and, specifically, a recital that the lot is subject to all conditions of approval set forth in the Board's Resolution adopted July 8, 2013.

(b) Remainder Lot 36.03 -- which shall be identified in its deed as "Remainder Lot 36.03" or "New Lot _____" (per Tax Assessor):

(i) Reference shall be made to creation of this approved subdivision;

(ii) Specific reference shall be made to the lot being subject to all conditions of approval set forth in the Board’s Resolution adopted July 8, 2013.

(c) Proposed Lot 35 -- shall be identified in its deed as “New Lot _____” (per Tax Assessor) and reference shall be made to creation of this approved subdivision with specific reference to the lot being subject to all conditions of approval set forth in the Board’s Resolution adopted July 8, 2013.

In addition, one or more conservation easements shall be created for the protection of all wetlands, transition areas and/or state open waters delineated on the Subject Property and verified and determined by the NJDEP in the Letter of Interpretation to be obtained by Applicant (condition #3, above). Documents in recordable form to create the easement(s) shall be submitted to the Borough Attorney and the Borough Engineer for approval as to form and content. Metes and bounds descriptions shall be provided for each easement area. The easement documents shall provide for and reference the installation of markers in accordance with the Borough ordinance requirements for conservation easements. After approval of the form and content of the deeds and conservation easement(s), they shall be recorded by Applicant in the office of the Morris County Clerk, and Applicant shall thereafter furnish copies of the documents with recording information to the Mendham Borough Planning Board.

8. Applicant shall prepare deeds of dedication to Morris County [to be approved by Morris County] and to the Borough of Mendham. The deeds of dedication shall be submitted, together with lot descriptions and closure calculations, to the Borough Engineer and the Borough Attorney. After approval of the form and content of the deed to the Borough of Mendham, it shall be recorded in accordance with the directions received from the Borough Attorney.

9. Tree removal permit required for the new lot shall comply with ordinance requirements.

10. A Limit of Disturbance & Tree Protection Plan is to be approved by the Borough Engineer and depicted on the final Plans for the subdivision. Protective measures shall be put in place prior to any site work or construction being commenced.

11. A Grant of Easement for the utility lines crossing onto proposed Lot 36.04 which serve remainder Lot 36.03 shall be submitted, together with a metes and bounds description and closure calculations, to the Borough Engineer and the Planning Board Attorney, for their review and approval. After approval of the form and content of the Grant of Easement, Applicant shall record same (simultaneously with, but following the subdivision deeds) in the office of the Morris County Clerk, and Applicant shall thereafter furnish copies of the document with recording information to the Mendham Borough Planning Board.

12. Applicant shall comply with the comments of the Borough Engineer and make plan revisions in accordance with his June 7, 2013 comment letter.

13. Prior to any clearing, site work or construction on proposed Lot 36.04, clearance limits are to be established on site, marked and fenced to the satisfaction of the Borough Engineer, and incorporated into the lot development plan.

14. Applicant shall comply with any applicable Affordable Housing requirements and/or Scarce Resource Protection Restrictions to the satisfaction of the Borough Attorney.

15. Applicant should demonstrate to the satisfaction of the Borough Engineer that adequate sight distances will be available at the intersection of the proposed driveway for proposed Lot 36.04 and Thomas Road. If any clearing or grading is required to achieve compliance, NJDEP permits, as applicable, must be identified on the final Plans and obtained by Applicant prior to signing by the Board.

16. A certification or letter of exemption from the Morris County Soil Conservation District shall be obtained by Applicant.

17. Conditions 3, 4, 5 (to current), 6, 7, 8, 9 (as to approved plans, if applicable), 10, 11, 12, 14 (as applicable), 15 and 16 must be satisfied prior to the Board’s signing of the subdivision plan or the subdivision deeds.

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OTHER BUSINESS

Ms. Callahan advised the Board that the Mendham Borough Historic District Expansion had been added to the NJ State Register on June 11, 2013. The application is now being sent to Washington for the National Register.

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TRC UPDATES (Information Only)

Ms. Callahan reviewed the approved and pending applications with the Board.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Acting Chair Kopcsik adjourned the meeting at 8:15 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, August 12, 2013 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan
Recording Secretary

