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## Planner Report #1

**To:** Mendham Borough Joint Land Use Board

**From:** Jessica C. Caldwell, PP, AICP, LEED-GA  
Joint Land Use Board Planner

**Subject:** Edward Thomas  
Use and Bulk Variance Application (JLUB 7-25)  
Block 1801, Lot 38  
298 Thomas Road  
Borough of Mendham, Morris County, New Jersey

**Date:** May 5, 2025

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Dear Board Members:

1. The purpose of this report is to provide the Board guidance in its review of the Use and Bulk Variance Application submitted by Edward Thomas (the "Applicant"). The Applicant is seeking a use variance to permit a ground-mounted solar power generating system, which is not permitted in the 5-Acre Residence Zone. The system is also an accessory structure, which violates the 40-foot side yard setback.

### **Documents Reviewed**

- One (1) sheet of a Survey and Variance Plan entitled, "Survey and Variance Plan of Lot 38 ~ Block 1801, Borough of Mendham, Morris County, New Jersey," prepared by Yannaccone Villa & Aldrich, LLC, and dated November 21, 2024.
- Solar Array Plans, prepared by Vector Engineers, and dated October 2024.
- Copy of application, checklist, and additional supporting documents.

### **Existing Conditions**

#### ***The Site***

The property in question is Block 1801, Lot 38 and the following should be considered relative to existing conditions on the property:

2. Lot Area: 16.652 Acres (725,370 square feet).
3. The property is located at the end of Thomas Road and has limited frontage.
4. Existing Development:
  - A. Two-story frame dwelling with covered slate porch and slate patio;
  - B. Two-story frame dwelling cottage with patio;





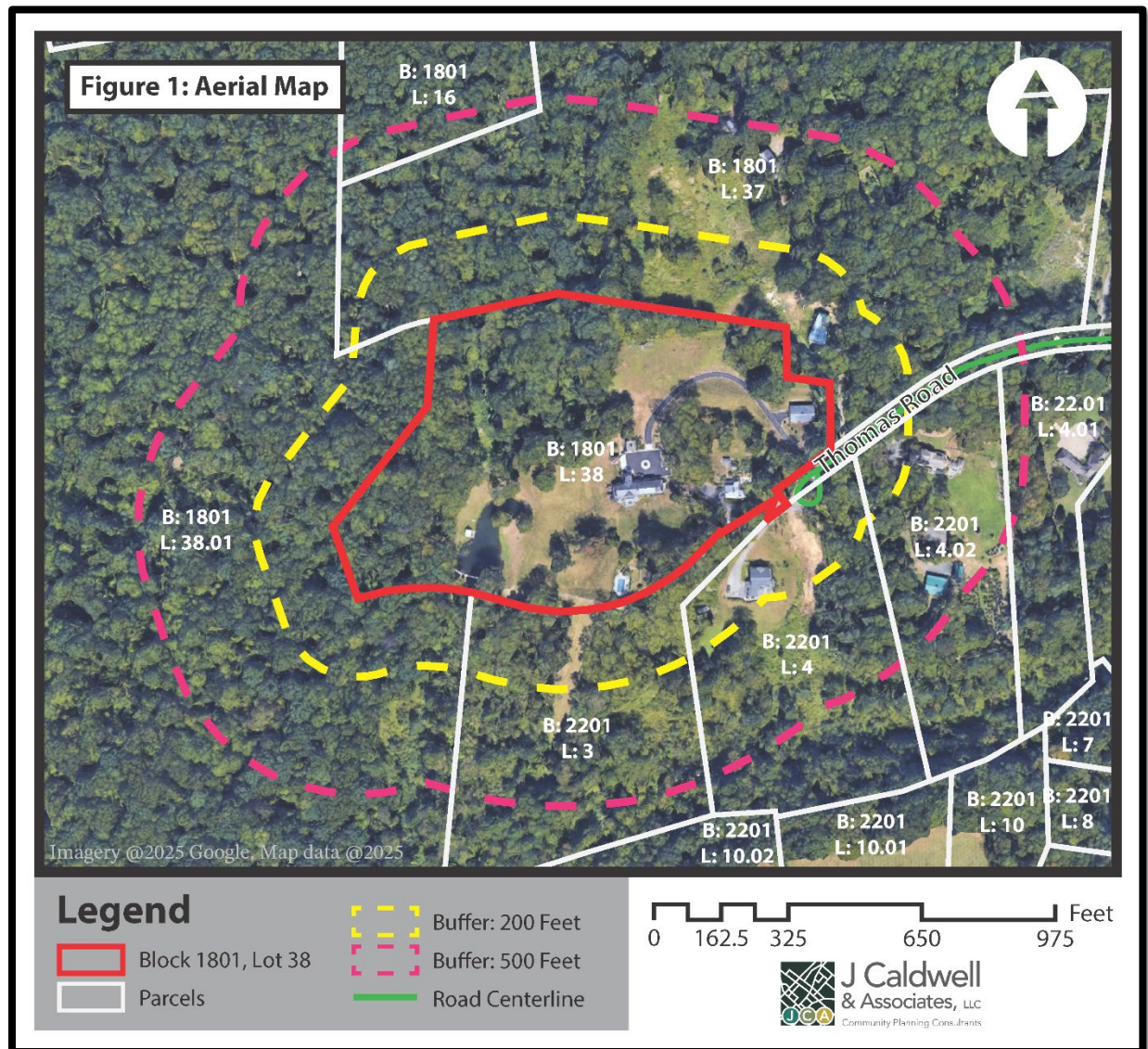
- C. Two (2) garages;
  - D. Three (3)<sup>1</sup> frame sheds;
  - E. Gravel parking area;
  - F. Gravel driveway;
  - G. Stone & masonry walls;
  - H. Pool with patio;
  - I. Pool house;
  - J. Paved driveway;
  - K. Frame building near pond;
  - L. Subsurface fallout shelter;
  - M. Wire fence;
  - N. Concrete pad with generator; and
  - O. Ancillary site improvements.
5. The subject property is located within the Highlands Planning Area; thus, New Jersey Highlands Act Exemptions are not required.

### **Zoning**

6. Block 1801, Lot 38 is located within the **5-Acre Residence Zone**.

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<sup>1</sup> The Survey and Variance Plan, prepared by Yannaccone Villa & Aldrich, LLC, and dated November 21, 2024 displays three (3) frame sheds. However, the Applicant listed four (4) frame sheds in the Existing Lot Coverage table. This office deferred to the illustration.

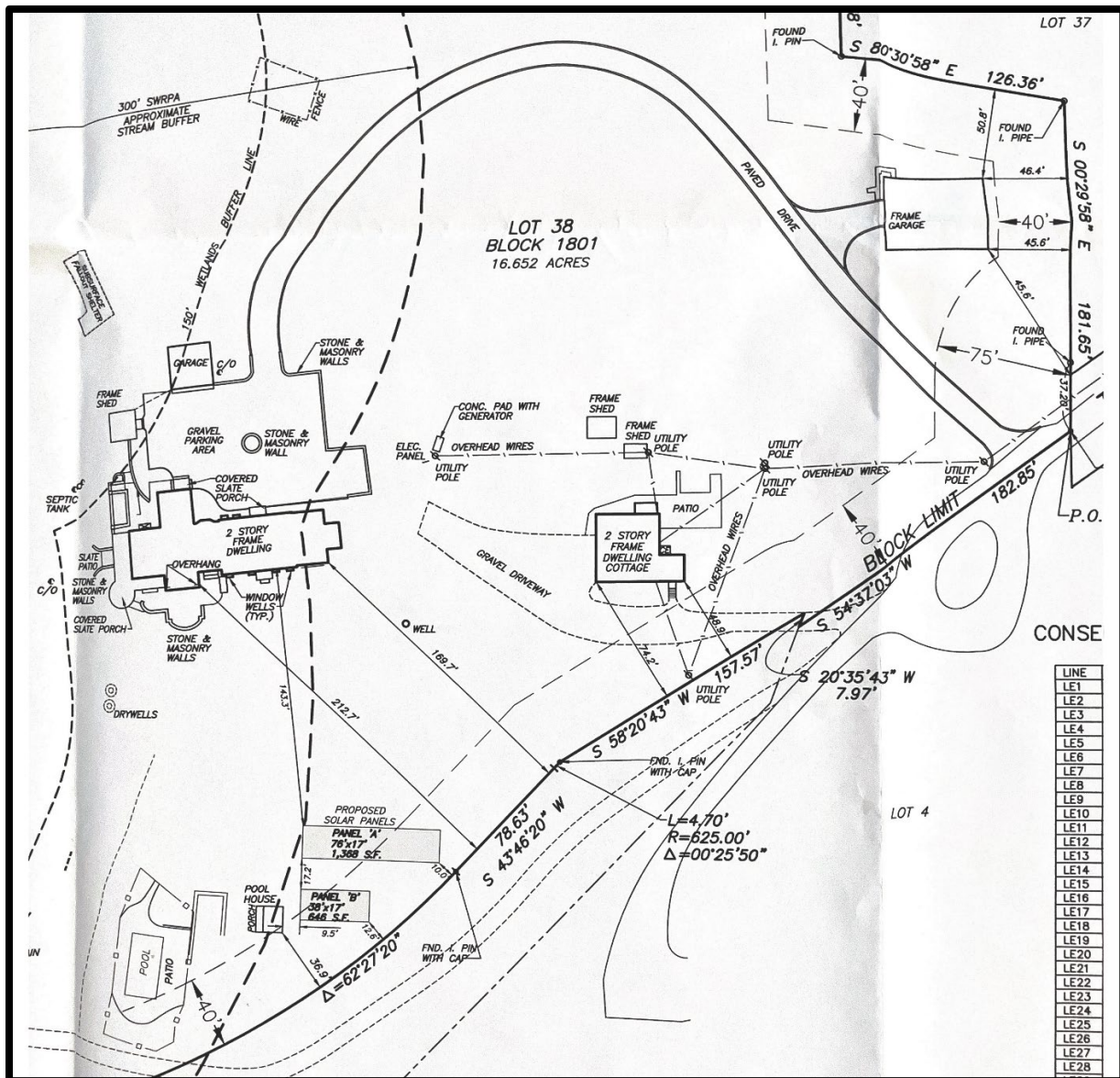






## Proposed Project

7. The Applicant is seeking a use variance to permit a ground-mounted solar power generating system, which is not permitted in the 5-Acre Residence Zone. The system is also an accessory structure, which violates the 40-foot side yard setback.
- A. The Applicant is proposing two (2) ground-mounted solar arrays – Panel 'A' and Panel 'B' – in the south-southeastern portion of the property near the existing pool house. Panel 'A' is proposed to be 76 feet by 17 feet (1,368 square feet), located 10 feet from the side yard property line. Panel 'B' is proposed to be 38 feet by 17 feet (646 square feet), located 12.6 feet from the side yard property line.



Cropped Survey and Variance Plan Highlighting Proposed Ground-Mounted Solar Arrays (bottom left corner), prepared by Yannaccone Villa & Aldrich, LLC, and dated November 21, 2024.



## Use & Bulk Requirements Table

Table 1: 5-Acre Residence Zone<sup>2</sup>

Zone Standard	Required	Existing	Proposed
Min. Lot Area	5 Acres	16,652 Acres	NC
	217,800 SF	725,370 SF	NC
Min. Front Yard Setback (Main Building)	75 FT	> 75 FT	NC
Min. Rear Yard Setback (Main Building)	60 FT	> 60 FT	NC
Min. Side Yard Setback (Main Building)	40 FT	48.9 FT	NC
Min. Front Yard Setback (Accessory Building)	75 FT	81.4 FT	NC
Min. Rear and Side Yard Setback (Accessory Building/Structure)	40 FT	<b>36.9 FT (E)</b>	<b>10.0 FT (V)</b>
Max. Lot Improvement Coverage <sup>3</sup>	10%	5.3%	NC <sup>4</sup>
	72,537 SF	38,584 SF	NC <sup>4</sup>
Max. Building Coverage <sup>5</sup>	4%	1.4%	NC
	29,015 SF	10,211	NC
<b>(E) = Existing Non-Conforming (V) = Variance Required NC = No Changes Proposed</b>			

### Existing Lot Coverage:

House	3,810 SF
Chimney	20 SF
Porches	836 SF
2-Story Frame Dwelling	1,521 SF
2-Story Frame Dwelling Porches	141 SF
Two (2) Garages	2,855 SF
Garage Porch	26 SF
Four (4) Frame Sheds	592 SF
Pool House	211 SF
Frame Building (Pond)	199 SF
Paved Driveway	16,789 SF
Portion of Paved Road	934 SF
Gravel Driveway	5,483 SF
Pool	616 SF
Walks & Patios	4,551 SF
<b>Total Coverage</b>	<b>38,584 SF (5.3%)</b>

### Proposed Lot Coverage:

<b>Solar Panels<sup>3</sup></b>	<b>2,014 SF</b>
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<sup>2</sup> Retrieved from Chapter 215 Zoning Attachment 1 – Schedule I (Schedule Limiting Height and Area of Improvements) and Attachment 2 – Schedule II (Minimum Building Setbacks), and §215-31.1.

<sup>3</sup> Per §215-31.1H(1), lots 130,680 square feet and over in the 5-Acre Residence Zone have a permitted lot coverage of 10%.

<sup>4</sup> As per Municipal Land Use Law, solar arrays do not count towards improved lot coverage. However, solar arrays typically have a foundation system. The foundation may be counted toward the lot coverage.

<sup>5</sup> Per §215-31.1I, lots 130,680 square feet and over in the 5-Acre Residence Zone have a permitted building footprint of 4%.



**8. Use:**

- A. According to § 215-31.1G(4)(d), no ground-mounted solar panel system shall be permitted in the 5-Acre Residence Zone. **The Applicant is proposing a ground-mounted solar panel system, which is not a permitted accessory structure. A variance pursuant to N.J.S.A. 40:55D-70d(1) is required.**
  - i. The proposed system is on the edge of the 300-foot riparian buffer zone, and significant tree coverage will need to be removed for the proposed installation. Testimony shall be required regarding why the Applicant is proposing the system in this location and if other areas further from the riparian buffer zone or property line are viable locations for the solar panels.

**9. Minimum Rear and Side Yard Setback (Accessory Building):**

- A. According to § Chapter 215 Zoning, Attachment 2 – Schedule II (Minimum Building Setbacks), the minimum rear and side yard setback for accessory buildings in the 5-Acre Residence Zone is 40 feet. **There is an existing non-conforming side yard setback of 36.0 feet, and the Applicant is proposing a ground-mounted solar panel system with a side yard setback of 10.0 feet. A variance pursuant to N.J.S.A. 40:55D-70c is required.**

**10. Maximum Lot Improvement Coverage:**

- A. According to § 215-31.1, the maximum permitted total coverage by all principal and accessory building footprints on a lot in the 5-Acre Residence Zone is 10% of the lot area for lots 130,680 square feet and over. The Applicant's lot size is 725,370 square feet, and the maximum permitted lot coverage is 72,537 square feet. The Applicant's existing lot coverage is 38,584 square feet, or 5.3%, which complies. **The Applicant's proposed solar panels are 2,014 square feet. Solar arrays do not count towards lot coverage according to Municipal Land Use Law; however, solar arrays typically have a foundation system. The foundation may be counted toward the lot coverage. Testimony should be provided to confirm the square footage of the foundation system for the ground-mounted solar panel system.**



### **Criteria for Granting “D(1)” Variances:**

- A.** The Land Use Board has the power to grant “d(1)” variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) “in particular cases and for special reasons.” This is the so-called positive criteria of a “d(1)” variance. The courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons” *Medici v. BPR Co.*, 107 N.J. 1 (1987) **(Appendix A)**.
- B.** The MLUL defines solar photovoltaic energy facility as an inherently beneficial use. *Sica v. Wall Township Board of Adjustment*, 127 N.J. 152 (1992) determined that the applicant's burden of proof with respect to satisfying the negative criteria for an inherently beneficial use is significantly less than with respect to a typical non-inherently beneficial use, and that a “balancing test” must be employed for the balancing the positive and negative criteria. There is no “enhanced quality of proof” requirement. Instead, the Board must balance the positive and negative criteria and determine whether, on balance, the “d” variance can be granted without causing substantial detriment to the public good and substantial impairment to the intent and purpose of the zone plan and zoning ordinance **(Appendix B)**.
- C.** The Sica balancing test is as follows:
  - a. First, identify the public interest at stake and make a finding on how compelling the public interest in the proposed use at issue actually is as compared to other inherently beneficial uses. Sica makes clear that not all inherently beneficial uses are equal and some may be less compelling.
  - b. Second, identify the detrimental effects that will ensue from the grant of the variance.
  - c. Third, determine whether any legitimate detrimental effects can be reduced by imposing reasonable conditions on the use.
  - d. Fourth and last, balance the positive and negative criteria and determine whether, on balance, the “d” variance can be granted without causing substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

### **Criteria for Granting “C” Bulk Variances:**

Bulk variances can be granted by the Board, pursuant to N.J.S.A. 40:55D-70c where two provisions exist:

- A.** The first provision for granting a “c” variance is under N.J.S.A. 40:55d-70(c)(1) where the Board must find whether there has been a showing of peculiar exception practical difficulties or exception undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece



of property or the structures uniquely affecting this specific piece of property or the structures lawfully existing thereon. The two-part negative criteria must also be addressed.

The second provision for granting a "c" variance is under N.J.S.A. 40:55D-70(c)(2) where the Board must find that the application related to a unique situation on a specific piece of property, that the purposes of the MLUL (**Appendix A**) would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and the variance will not substantially impair the zone plan or ordinance. Under (c)(2), **the Applicants should show that the proposal is a better zoning alternative to that which is permitted by the ordinance and provides benefits to the community as a whole, not just the Applicants.** The two-part negative criteria must also be addressed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jessica Caldwell". The signature is fluid and cursive, with the first name "Jessica" written in a larger, more prominent script than the last name "Caldwell".

Jessica C. Caldwell, PP, AICP, LEED-GA  
Joint Land Use Board Planner  
**J. Caldwell & Associates, LLC**

cc: Via-Email Only:

Lisa Smith, Land Use Coordinator  
Tom Germinario, Esq., Board Attorney  
Paul Ferriero, PE, PP, Board Engineer  
William P. Munday, Esq. Applicant's Attorney





## **Appendix A**

### **Purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2)**

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
- e. To promote the establishments of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of New Jersey citizens;
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;
- l. To encourage senior citizen community housing construction;
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- n. To promote utilization of renewable energy resources;
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs;
- p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites; and
- q. To ensure that the development of individual municipalities does not unnecessarily encroach upon military facilities or negatively impact the operation of military facilities, and to those ends, to encourage municipalities to collaborate with military facility commanders in planning and implementing appropriate land use controls, thereby improving the vitality of military facilities and protecting against their loss through the Base Realignment and Closure process or mission loss.



## **Appendix B**

### **2006 Borough of Mendham Master Plan Goals and Objectives**

- To retain the small town character of the community by implementing the Village Planning Criteria as adopted for Village Center Clusters to plan for new development within the Village boundary;
- To preserve the rural quality of the Borough and its historic heritage beyond the Village environs;
- To protect and preserve the Borough's open space and natural resources of soils, vegetation, air, and water through the wise use of planning techniques and careful control of land development;
- To maintain a reasonable balance and variety of housing options within an approved housing element;
- To maintain healthy business districts with a diversity of local businesses to serve the residents of Mendham Borough;
- To improve traffic flow and provide for the safe movement of people and vehicles through the Borough while minimizing adverse impact on residential streets;
- To provide adequate local community services and recreational facilities;
- To recognize and encourage preservation and designation of those historic properties and buildings that contribute to the unique atmosphere that is Mendham, particularly those in the Historic District and which are on the State and National Registers of Historic Places;
- To integrate new development and redevelopment into the historic fabric of the Village Center area;
- To maintain the quality and historic character of existing buildings, including all structures which contribute to the Borough's history; and
- To continue to participate in area-wide programs for proper watershed management.