

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
June 9, 2014**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Mr. Kraft, Chair, at 8:00PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* on January 23, 2014 and the *Daily Record* on January 16, 2014 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

Mr. Bradley – Absent
Mayor Henry – Present
Ms. Isaacson – Absent
Ms. Lichtenberger - Absent

Administrator Sandman – Present
Councilman Sharkey – Present
Mr. Cascais - Present
Mr. Kraft – Present

Alternates:

Mr. Sprandel, Alternate I – Present
Mr. Kay, Alternate II - Present

Also Present:

Mr. Henry, Attorney

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MINUTES

Mr. Cascais made a motion to approve the minutes of the regular meeting of May 12, 2014, which was seconded by Councilman Sharkey. On a voice vote, all were in favor and the minutes were approved, as written.

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PUBLIC COMMENT

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

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APPLICATIONS

PB #945 Sprandel, David – Minor Subdivision with Variances: **RESOLUTION**
18 North Linden Lane, Block 201, Lot 60

Mr. Kraft asked if there were comments on the resolution memorializing the approval for a minor subdivision of the above referenced property. After discussion, it was agreed that condition '12 (as to cost estimates and bonding),' be deleted from item 18 on page 11.

Upon motion made and seconded, a vote was taken to adopt the resolution, as amended.

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

In favor: Henry, Kay, Sandman, Sharkey, Cascais, Kraft
Opposed: None
Abstentions: Sprandel

The motion carried. Following is the resolution:

MENDHAM BOROUGH PLANNING BOARD**RESOLUTION****GRANTING MINOR SUBDIVISION AND VARIANCE APPROVAL
FOR DAVID SPRANDEL
BLOCK 201, LOT 60
APPLICATION NUMBER PB #945**

WHEREAS, David Sprandel ("Applicant") has applied to the Planning Board of the Borough of Mendham (the "Board") for minor subdivision approval and variance relief to create one new lot and a remainder lot from property located at 18 North Linden Lane and designated Block 201, Lot 60 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a public hearing was held on May 12, 2014, at which time testimony was offered by Applicant and Applicant's engineer, the Board reviewed documents and materials filed by Applicant and Exhibits presented at the hearing, the Board heard a summary and comments 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, and hearing 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 the Subject Property, which property is located at 18 North Linden Lane and is designated Block 201, Lot 60 on the Mendham Borough Tax Map. The Subject Property is located in the R-1 (one acre residential) zone.

2. The Subject Property is a single tract with an area of 2.40 acres. It is roughly rectangular in shape with a portion surrounding the North Linden Lane cul-de-sac, the full lot having a frontage on North Linden Lane of 363 feet. The present lot has a width of approximately 468 feet and an average lot depth of approximately 170 feet.

3. The Subject Property is presently improved with a single family dwelling with attached garage, brick paver patio, and wood deck. The dwelling is located in the central portion of the north/south lot width and faces directly toward the cul-de-sac. An asphalt driveway from the cul-de-sac serves the existing two-car garage. In addition, an in-ground swimming pool with concrete deck and pool house is located within a fenced area in the southerly third of the Subject Property. An accessory shed northwest of the dwelling, a driveway, and a brick grill toward the rear of the property behind the dwelling complete the improvements presently located on site.

4. Although the present dwelling has a front setback of only 41.4 feet (relative to the current 75 foot front setback minimum required), the front setback applicable to the Subject Property at the time of the major subdivision which created this lot and its neighboring lots (and to which the dwelling was built), was only 40 feet. Thus, the present single family dwelling, though non-conforming to the present district regulations, is a pre-existing, non-conforming structure.

5. Portions of the concrete pool deck, the existing pool house, and the existing shed (all identified in finding number 3 above) extend to the rear of the Subject Property beyond the present 40 foot rear setback line, those non-conformities may also have been conforming at the time of construction. The subdivision plat of record depicted only the front setback line, not indicating the applicable dimensions of the rear yard setback or the side yard setback at that time.

6. Except for the referenced non-conforming structure location issues, the Subject Property is conforming in all respects to the requirements of the Borough's zoning ordinance and, in fact, exceeds the minimum required lot area, frontage, and lot width by more than two times.

7. Applicant proposes to create one new lot (proposed Lot 60.01) with a lot area of approximately 1.063 acres. Proposed Lot 60.01 would front on the North Linden Lane cul-de-sac. It is proposed to be configured in a way which results in a 42.19 foot lot frontage (relative to the ordinance required minimum of 120 feet) and a lot width of 99.81 feet (relative to the ordinance required minimum of 150 feet). In all other respects, proposed Lot 60.01 would conform to and comply with all district regulations and other requirements of the Mendham Borough Zoning Ordinance.

8. The present conditions on the Subject Property, as well as the geometry and layout of the proposed lots resulting from the requested minor subdivision, are depicted in plans prepared by James G. Glasson, P.E., Civil Engineering, Inc., 1 Cove Street, Budd Lake, New Jersey (6 sheets) entitled

"Proposed Minor Subdivision & Variance Plans for Lot 60 Block 201" dated June 19, 2013 and revised through March 24, 2014 (the "Plans").

9. Applicant's engineer testified that the proposed subdivision line was based on leaving the existing driveway access and driveway on Remainder Lot 60 to serve the existing dwelling and maintaining existing accessory setbacks, including the 20 foot side yard setback for the existing shed resulting from the new lot boundary line. With those existing physical criteria in mind, a straight line could be drawn from the cul-de-sac to the rear lot line to create proposed Lot 60.01. The resulting new Lot 60.01, though having an ample building envelope, would, of necessity, be somewhat pie-shaped. In turn, this would lead to the reduced lot frontage of 42.19 feet and the reduced lot width of 99.81 feet. Lot shape and dimensions of this sort are not uncommon when lots are created surrounding a cul-de-sac. Notwithstanding these reduced dimensions, Applicant's engineer testified that there is ample space for a safe and efficient driveway access into proposed Lot 60.01 and for the location of an appropriate single family dwelling within the resulting building envelope. In fact, he observed, the building envelope on proposed Lot 60.01 is larger and more regular in shape than the building envelope on the already-developed Remainder Lot 60.

10. The Board explored the impacts on the northerly portion of the Subject Property of a wetlands buffer and a state-imposed Riparian Buffer. Applicant's engineer indicated that there were no wetlands on the Subject Property, but that a wetlands transition area (buffer) from wetlands on adjoining properties extended on to the Subject Property. He went on to testify, however, that no construction, development or soil disturbance was proposed or intended for any of the area encompassed by the wetlands buffer. In addition, he indicated that NJDEP had determined that the schematic plans for development of the proposed new lot would not involve any disturbance in the Riparian Buffer other than in already-disturbed grassed areas (disturbed prior to the now-applicable NJDEP regulations). Therefore, grading, development and construction consistent with the submitted schematic proposal could be undertaken in accordance with a "Permit by Rule".

11. As a result of the relationship between the proposed new lot, the potential development for residential purposes of that lot, and the wetlands buffer and Riparian Buffer areas, Applicant and the Board agreed to several protective conditions, as follows:

(a) the rear setback line of the building envelope for proposed Lot 60.01 will be modified to run coincident with the boundary on proposed Lot 60.01 of the wetlands transition area;

(b) a conservation easement for the benefit of the Borough will be imposed upon the entire portion of the Subject Property where the wetlands transition area is located;

(c) the lot development plan ultimately utilized for construction on proposed Lot 60.01 shall be consistent in terms of development location and proposed grading with the plans submitted to NJDEP which gave rise to the determination that a Permit by Rule development could proceed; and

(d) the Plans shall be revised to depict a Limit of Disturbance, which location and manner of implementation and enforcement shall be to the satisfaction of the Borough Engineer.

12. Applicant's engineer proceeded to testify, informing the Board that a sanitary sewer connection had been approved by the governing body of the Borough of Mendham, Morris County Soil Conservation District approval had been obtained for potential development of the property, and that Morris County Planning Board approval for the minor subdivision was obtained. He further testified that, although electric service was provided to the existing dwelling by overhead wires, electric service and other utilities to serve new Lot 60.01 would be installed underground.

13. The Board and the Applicant's engineer discussed the review letter dated May 7, 2014 from the Borough Engineer. Applicant's engineer agreed that the Applicant could and would comply with the comments of the Borough Engineer set forth in the May 7, 2014 letter. This would include the noted plan revisions to be made, the modification of the rear setback line on the new lot, the establishment of the conservation easement, and certain ordinance compliance requirements.

14. Applicant's engineer explained that the subdivision itself was quite straightforward. The lot did not involve significant slopes and ultimate development of the proposed new lot would not require significant grading. The narrowed frontage and reduced lot width in the front of the lot resulted from the geometric conditions applicable to the overall Subject Property, as well as the existing development and location of existing structures. Although in theory a conforming subdivision with full frontages and lot widths could be created out of the entirety of the Subject Property, this would require demolition and removal of the existing dwelling and, in all likelihood, the other existing structural improvements on the property. Since the present dwelling is in good condition, structurally sound, and well maintained, as are the accessory structures ancillary to the dwelling, such a solution

would result in great economic waste. He further pointed out that the proposed new lot would be consistent with most of the lots in the area. He urged that the negative criteria were further satisfied in that the building envelope on the proposed new lot is larger and more regular than that which would apply to the Remainder Lot 60; the development of the proposed new lot will not require disturbance of any environmentally sensitive area; a dwelling in keeping with the neighborhood could be constructed in a conforming location; and no significant grading will have to be undertaken in connection with the ultimate development of proposed Lot 60.01.

15. One neighbor raised several questions about the desirability or propriety of permitting the additional lot to be created. She questioned why the separate lot at the rear of the cul-de-sac had not been "allowed" at the time of approval of the original "Deerfield" subdivision (in the early 1960s). She also indicated concern about noise and road damage relating to construction which would ultimately be undertaken on the proposed new lot.

16. No actual information or evidence was offered that the proposed one acre lot at the rear of the cul-de-sac had not been "allowed" as part of the original subdivision, as distinguished from it merely representing the lot layout selected by the developer at the time. As to potential noise and activity during construction, this is permitted activity throughout the Borough and the State, is of limited duration, and is subject to regulatory controls on hours and noise levels. Damage to Borough roads or infrastructure, beyond ordinary vehicular wear and tear, can be dealt with in any required road opening permits.

17. Another neighbor raised concerns about impacts on the wetlands and pointed out that there appeared to have been some tree cutting in the wetlands area. She also suggested that variance relief should not be granted because the Borough ordinances should control.

18. The Board pointed out that any activities within the wetlands were not occurring on the Subject Property and were not subject to the jurisdiction of the Board in connection with this Application. Furthermore, the NJDEP and other approvals obtained or to be obtained by Applicant addressed the question of potential impacts resulting from activities on the Subject Property and found the proposed site development to be acceptable. Beyond that, variance relief is available as a matter of law when the Applicant can demonstrate appropriate circumstances.

19. Based upon the facts and circumstances shown by all of the foregoing, the Board concluded that the legal requirements for minor subdivision approval, the "c" variance relief for frontage and lot width on proposed Lot 60.01, and the technical variance relief for the pre-existing non-conforming dwelling now on a reduced-sized Remainder Lot 60, had been satisfied by Applicant and that, with appropriate conditions, the minor subdivision could be approved and the variance relief could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

BE IT FURTHER RESOLVED that, based upon the foregoing, the Application for minor subdivision approval, together with "c" variance relief to permit the creation of proposed Lot 60.01 with 42.19 feet of road frontage on the North Linden Lane cul-de-sac and a lot width of 99.81 feet, as well as the Remainder Lot 60 and its improvements, be and hereby is granted and approved, subject to the following conditions:

1. Subdivision and development of the Subject Property shall be in accordance with the plans presented (including plan revisions 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. 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, its subdivision, or its development, including road opening permits for any work to be done in the public right-of-way.

3. 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.

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

5. Applicant shall comply with the comments of the Borough Engineer set forth in his May 7, 2014 letter regarding this minor subdivision Application, including the Plan revisions identified with respect to Sheets 1, 2, 3 and 4.

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

7. Clearance limits are to be depicted on the final Plans, established on site, marked and fenced to the satisfaction of the Borough Engineer prior to commencement of any clearing, site work or construction.

8. Tree removal and replacement shall be in compliance with Borough Ordinance §202. This shall be shown and noted on the Plans as a

plan revision. The final location of replacement trees shall be to the satisfaction of the Borough Engineer.

9. Subdivision Deeds -- separate deeds for each of the two (2) 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 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 and restrictions as follows:

(a) referencing the reduced building envelope at the rear (northerly) setback line of proposed Lot 60.01;

(b) referencing a Conservation Easement to be imposed over the wetlands transition area at the rear of proposed Lot 60.01;

(c) reference to creation of this approved subdivision, subject to conditions of approval set forth in the memorializing resolution. After approval of the form and content of the deeds, 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.

10. Applicant shall prepare a Grant of Conservation Easement with a metes and bounds description for the easement to be established encompassing the wetlands transition area on the northerly portion of proposed Lot 60.01. The grant of easement shall be to the Borough of Mendham and the proposed grant document shall be submitted to the Borough Attorney and the Borough Engineer for review and approval as to form and content. After approval of the document, it shall be recorded by Applicant in the Office of the Morris County Clerk, and Applicant shall thereafter furnish a copy of the document with recording information to the Mendham Borough Planning Board.

11. Conservation easement markers, in accordance with the Borough ordinance, shall be installed to the satisfaction of the Borough Engineer.

12. Cost estimates for any work to be done in the public right-of-way shall be submitted for review and approval by the Borough Engineer. After approval, and prior to undertaking any site or construction work, Applicant shall furnish a performance guarantee in the amount of 120% of the approved estimate (with 10% of the total to be in cash) in a form satisfactory to the Borough Attorney and the Borough Engineer. Applicant shall comply with the terms and conditions of any required road opening permit for work in or affecting, or resulting in damage to, the public right-of-way.

13. Applicant shall comply with the conditions of sewer connection approval granted by the governing body.

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

15. Any lot development or grading plan submitted for work to be done on proposed Lot 60.01 shall be consistent with the plan and grading plan submitted to NJDEP upon which the "Permit by Rule" determination was made. A lot development plan shall be filed and approved prior to issuance of any construction permit.

16. The dry well to be installed on the Subject Property at the time of development shall be sized in accordance with that required for actual impervious surface identified in the lot development plan.

17. Electric service and other utilities for proposed Lot 60.01 shall be installed under ground.

18. Conditions 2 (as to subdivision), 3, 4, 5 (as to Plan revisions), 6 (as to Plan revisions), 7 (as to Plan revisions), 8 (as to Plan revisions), 9 (as to approved documents), 10 (as to approved documents), 13 (as applicable), and 14 (as applicable) must be satisfied prior to the Board's signing of the subdivision plan or the subdivision deeds.

BE IT FURTHER RESOLVED that this Resolution, adopted this 9th day of June, 2014, memorializes the action of the Board, as set forth above, taken at its meeting of May 12, 2014.

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OTHER BUSINESS**July 2014 Meeting Date**

Due to scheduling of the Garabrant Center, it was announced that the July 14, 2014 meeting date would have to be changed. After Board discussion, Tuesday, July 15th and Monday July 21st were established as possible dates. It was agreed that Mr. Kraft would work with Ms. Kaye to select the appropriate date and notify the Board.

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ADJOURNMENT

There being no additional business to come before the Board, upon motion made, seconded and carried, Mr. Kraft adjourned the meeting at 8:12PM.

The next regular meeting of the Planning Board scheduled on **Monday, July 14, 2014 has been rescheduled to Tuesday, July 15, 2014 at 8:00PM p.m.** at the Garabrant Center, 4 Wilson St., Mendham, NJ.

Respectfully submitted,

Margot G. Kaye

Margot G. Kaye, Secretary
Mendham Borough Planning Board