

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #06-2021

**AN ORDINANCE OF THE BOROUGH OF MENDHAM, IN THE COUNTY OF MORRIS AND
STATE OF NEW JERSEY, AUTHORIZING THE ACCEPTANCE OF AN EASEMENT IN FAVOR OF THE
BOROUGH OF MENDHAM FOR A PORTION OF THE PROPERTY KNOWN AS BLOCK 1901, LOT 19**

WHEREAS, KJW Development Company Mendham LLC made application for a 5 lot residential property extending off of Muirfield Lane, which also established new lots on Whispering Ivy Way and Prospect Street; and

WHEREAS, the application for development raised concerns from members of the public with respect to pedestrian access from the Muirfield Lane/Heather Hill neighborhoods to the Main Street downtown area of the Borough of Mendham; and

WHEREAS, these concerns were placed on the record before the Planning Board during the application process for the development of these residential properties in the vicinity of Prospect Street; and

WHEREAS, it has been a long-standing concern to ensure pedestrian access via sidewalks and easements to avoid walking on Hilltop Road, which is a County road within the Borough of Mendham; and

WHEREAS, former Administrator and Fire Chief, Robert Snedaker, at a Planning Board hearing of April 14, 1997 indicated the following:

"The Borough has been struggling with the issues of sidewalks along Hilltop Road for many years. Property owners on Hilltop Road opposed the sidewalk when proposed. The Borough would have to condemn property in order to construct it and the Borough has always been reluctant to condemn private property. Residents on Heather Hill Way said that they did not want their children walking along Hilltop Road even with a sidewalk" (Minutes of Planning Board Meeting April 14, 1997); and

WHEREAS, KJW Development on behalf of their principal Patrick O'Neill, then proposed a dedication of land for a pedestrian walkway; and

WHEREAS, KJW agreed to provide a pedestrian easement and the applicant received the benefit by doing so of an additional buildable lot:

Mr. Malman, representing the applicant, said that the application has been revised to reflect a dedication of land for a pedestrian walkway. In order to accommodate the walkway, an additional building lot has been created. The new lot will not have frontage on a public street and will be accessed via the existing easement from Prospect Street. Applicant is requesting variances for the lack of frontage as well as for lot width. The additional lot conforms in all other respects. The pedestrian path cuts through the originally proposed three-acre lot creating a sixth lot, approximately 1 acre in size. The path will extend from Muirfield Lane extension (now known as Whispering Ivy Path) to the existing Prospect Street extension, remaining west of the existing house on Lot 19. Applicant could not give the public access to the Prospect Street extension. The applicants currently live on the property, plan to continue to live there and wish to satisfy all their neighbors (Mendham Planning Board Minutes April 14, 1997); and

WHEREAS, the Planning Board approved an additional buildable lot and accordingly, by Resolution dated June 9, 1997, the subdivision of 6 lots with the condition that the right-of-way dedication of a pedestrian walk path would be created, however the Borough would have to obtain the necessary connection to the easement area along the private right-of-way of Prospect Street (Mendham Borough Planning Board Resolution dated June 9, 1997); and

WHEREAS, immediately upon receiving said approval, and the time to appeal concluded on October 9, 1997, the principals of the applicant, Mary Kay O'Neill, entered into a restrictive easement with Whitney and Mary Beth Baldwin, Block 1901, Lot 19, in an effort to preclude the Borough and the public from obtaining the connection easement to private property for the benefit of the residents of Whispering Ivy Way and Muirfield Lane; and

WHEREAS, the easement between the parties was a direct effort to contravene the request of the public and the Planning Board and the easement that was provided by Ms. Baldwin stated:

"nothing herein is intended to, nor shall be construed as, creating any right in or for the benefit of the general public, nor shall this easement be construed as a grant for any public purpose" (Morris County Deed Book 4713, Page 222); and

WHEREAS, notwithstanding receiving the benefit of a multiple lot residential development within the pristine community of the Borough of Mendham, the developer sought to extinguish the ability of residents to have pedestrian access to connect to a private easement that was promised and required by way of the Planning Board approval whereby the developer also received an additional buildable lot; and

WHEREAS, the easement between Baldwin and Mary Kay O'Neill dated October 2, 1997 did not preclude the ability of general public access and fortunately a successor owner in title, Michael E. Hock and Marion J. Hock, Block 1901, Lot 19, have graciously come forward to provide for an opportunity for a 10 foot wide walking path easement on the private property of Mr. and Mrs. Hock for the pedestrian benefit of the general public; and

WHEREAS, this connectivity will address the long-standing need to memorialize the public's pedestrian need to access Main Street Mendham; and

WHEREAS, the Borough Engineer reviewed the area of the proposed easement which included a traffic count, his familiarity with the area in question, review of police reports and the existing right-of-way area in question; and

WHEREAS, the Engineer concluded that pedestrian traffic in the area of the Prospect Street right-of-way would have a de minimus impact and would not impair the ability of the residents with access from the private road to use the access area; and

WHEREAS, the Borough Engineer further concluded that the combination of low levels of pedestrian and vehicular traffic "do not unreasonably interfere with the easement holder's ability to use the easement," and a copy of this report dated March 19, 2021, is incorporated as part of this ordinance; and

WHEREAS, in November of 2020, the administration conducted an informal meeting with residents in the vicinity of Prospect Street to receive their input, questions and concerns with respect to a proposed connecting easement in the area of Prospect Street. The administration reports that there was overwhelming support for the pedestrian access easement.

THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Mendham, in the County of Morris and State of New Jersey as follows:

The Mayor is hereby authorized to enter into a deed of easement with Michael and Marion Hock for a portion of Block 1901, Lot 19, in accordance with a deed of easement which is incorporated as part of this ordinance and on file with the Borough Clerk; and

BE IT FURTHER RESOLVED that the easement is limited to pedestrian use, no motorized vehicles, and from dawn to dusk for a term of one year.

#

Introduced: April 14, 2021
Public Hearing: April 26, 2021