

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
July 1, 2014**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Seavey, Chair, at 7:35PM 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 in the *Daily Record* on January 17, 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.

ROLL CALL

Mr. Palestina - Absent
Mr. Peralta - Present
Mr. Ritger - Present
Mr. Schumacher - Present

Mr. Smith - Present
Mr. Peck - Present
Mr. Seavey - Present

Alternates:

Mr. McCarthy, Alternate I - Absent

Also Present:

Mr. Germinario, Board Attorney
Mr. Hansen, Board Engineer
Ms. Kaye, Board Secretary

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MINUTES

Mr. Ritger made a motion to approve the minutes of the regular meeting of April 1, 2014, which was seconded by Mr. Peck. On a voice vote, all eligible voters (Peralta, Ritger, Smith, Peck) were in favor and the minutes were approved, as written. Mr. Schumacher and Mr. Seavey abstained.

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PUBLIC COMMENT

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

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APPLICATIONS

#03-14 - Spada, Joseph - 1 Thomas Road, Block 1801, Lot 35
Application for variance relief to allow accessory structures in the front yard and within the rear yard setback, to permit solid fencing in the front yard and an appeal for a determination regarding accessory structures

Present: Michael Osterman, Attorney for Applicant
Edward Clark, Landscape Architect for Applicant
Craig Villa, Planner for Applicant

Mr. Hansen reviewed the outstanding checklist items identified in his report dated June 23, 2014 and recommended that a waiver be granted for no. 37 (soil types and proposals for soil erosion and sediment control) and that waivers for completeness only be granted for nos. 9 (copy of official tax map) and 12 (plans signed and sealed by a NJ Professional Engineer and certified by a licensed land surveyor). Mr. Osterman indicated that a copy of the tax map had been attached to the certified list of property owners submitted on June 24, 2014, thus satisfying the requirement under checklist item no. 9. The submission was confirmed.

Mr. Seavey made a motion to grant a waiver for item no. 37, grant a waiver for completeness only for item no. 12 and deem the application complete. The motion was seconded by Mr. Schumacher.

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

In favor: Peralta, Ritger, Schumacher, Smith, Peck, Seavey
Opposed: None
Abstain: None

The motion carried and the application was deemed complete.

Mr. Germinario advised that he had reviewed the public notices and confirmed they were sufficient to confer jurisdiction upon the Board.

Mr. Osterman reviewed the history of the property including the Applicant's purchase of .47 acres from his neighbor to create a rear yard for accessory structures. He further described the design plans and associated variances and added that the Applicant is appealing the Zoning Officer's determination that accessory structures are subject to the same setback requirements as accessory buildings.

Mr. Osterman stated that upon review of the ordinance, he was able to find setback requirements for accessory buildings but was unable to locate any requirements for accessory structures in the 5 acre zone. Applicant is refuting the Zoning Officer's position that accessory structures are regulated as accessory buildings based on the definition of 'building' set forth in the Borough ordinance, i.e., the structure must have a roof and be intended for occupancy. Mr. Osterman reviewed the Board Planner's report dated June 24, 2014 and disagreed with Mr. McGroarty's assertion that all accessory structures are considered accessory buildings under the zoning ordinance. Mr. Germinario agreed that there is some ambiguity regarding the definitions, however, he believes that the intent of the ordinance is to use the terms interchangeably as they relate to setbacks.

Discussion followed regarding the intent of the ordinance and it was determined that accessory structures and accessory buildings are to be treated the same in terms of setback requirements. The Board was unanimous in its decision to deny the appeal and require additional variances for the encroachments of the kitchen area, pizza oven and fireplace.

There was discussion as to whether the combined area of the accessory structures exceeds 50% of the size of the house. It was determined that it does not and therefore, is not subject to an additional variance.

Mr. Clark was sworn and qualified and accepted as an expert by the Board.

Mr. Clark entered into the record the following exhibits:

- A-1 Overview of Subject Property and Adjoining Properties
- A-2 Sectional Views of the Proposed Improvements
- A-3 Simulated Views of Proposed Improvements
- A-4 Renderings of Proposed Improvements
- A-5 Renderings of Proposed Improvements
- A-6 Architectural Rendering of Proposed Gazebo
- A-7 Variance Plan Sheet L-1.2

Referring to the exhibits, Mr. Clark reviewed the placement of each accessory structure and reiterated that the proposed design is the only viable one due to the topography of the property. He demonstrated that the sightlines from various angles are such that visibility of the additional structures will be minimal.

Referring to Mr. Hansen's technical review memorandum dated June 23, 2014, Mr. Clark addressed and agreed to all terms and conditions set forth therein.

Mr. Villa was sworn and qualified and accepted as an expert by the Board.

Mr. Villa reiterated the limitations of the property as a consequence of the topography, i.e., steep slopes, wetlands buffer, riparian buffer, etc. He further detailed the required variances:

1. Portion of the pool located in the front yard
2. Solid retaining wall located in the front yard
3. Gazebo located in the front yard
4. Gazebo encroaches upon 40' rear yard setback by 17.02'
5. Fireplace and pizza oven encroach upon 40' rear setback by 17.21'
6. Kitchen area encroaches upon 40' rear setback by 11.22'

Mr. Villa stated that granting the variances would not result in substantial detriment to the public good nor would it substantially impair the intent of the zoning ordinance.

Mr. Osterman requested the Board's approval to allow his client to apply for a building permit and commence construction prior to the adoption of the resolution. The request was granted with the

understanding that any application made will be at Applicant's risk and that Applicant must comply with all conditions to be set forth in the memorializing resolution.

A lengthy discussion followed regarding the size and placement of the proposed structures and whether there are other design options that would minimize the potential effects on the neighboring property. It was ultimately decided that a condition of approval was for the Applicant to maintain landscape screening behind the fireplace and pizza oven in order to minimize visibility. The following were set forth as conditions for approval:

1. The plan shall be updated to provide a current 200 foot list as prepared by the Borough.
2. The project must comply with the Borough's stormwater requirements for a minor development. The drywell calculations and details on sheet L-2 shall be enlarged so that they are legible and can be reviewed for compliance.
3. The wetlands transition area line/conservation easement line shall be shown on sheet L-1. This line must be staked in the field prior to any disturbance to prevent encroachment by construction equipment or materials. The proposed improvements shall be staked out by a licensed engineer to ensure compliance with the plan.
4. Drainage and septic improvements are proposed in the 300' riparian buffer zone. This area is regulated by the New Jersey Department of Environmental Protection. The required permit or permit-by-rule shall be noted on the plan. If a permit is required, then same must be obtained prior to construction.
5. Revised plans shall note that the site is balanced with respect to earthwork, and that no soil shall be exported from the site.
6. The proposed underground utilities shall be shown on the plan.
7. The area of disturbance shall be labeled on the plan. Any disturbance greater than 5,000 SF will require Morris County Soil Conservation District Approval.
8. The plans shall be signed and sealed by a NJ licensed engineer.
9. A copy of the official tax map shall be added to the plan with the subject property highlighted on the map.
10. Revised plans shall note that landscaping depicted on the variance plan shall be maintained by the property owner and shall not be removed.
11. Applicant may, at his own risk, apply for a building permit prior to the memorialization of this Resolution.
12. The Applicant shall submit a resolution compliance package with a transmittal letter that explains how and where each condition of the Resolution has been addressed on any revised plan submittals. Copies of any required outside agency approvals shall accompany the compliance package.
13. Prior to issuance of a Certificate of Occupancy for the site, all improvements must be installed to the satisfaction of the Borough Engineer (or bonded at the discretion of the Borough Engineer) and shown on an as-built drawing prepared by a NJ Licensed Land Surveyor.
14. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.
15. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.
16. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.
17. Pursuant to Ordinance Section 124-22, the Variance relief granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of the improvements requiring Variance relief has actually been commenced during that time period, provided that the running of the one-year time period shall be tolled during the pending of any appeal of the Board's decision to the Borough Council or to a court of competent jurisdiction.

Mr. Ritger made a motion to approve the application as described, subject to conditions, for memorialization at the next meeting. The motion was seconded by Mr. Schumacher.

ROLL CALL: The result of the roll call was 4 to 2 as follows:

In favor: Peralta, Ritger, Schumacher, Smith
Opposed: Peck, Seavey
Abstain: None

The motion carried.

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ADJOURNMENT

There being no additional business to come before the Board, Mr. Peck made a motion to adjourn which was seconded by Mr. Peralta. On a voice vote, all were in favor.

Mr. Peck adjourned the meeting at 10:04PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, August 5, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Margot G. Kaye

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Board Secretary