

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
REGULAR MEETING  
Tuesday, March 3, 2020  
Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER/FLAG SALUTE**

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Chairman Seavey, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**OPENING STATEMENT**

Notice of this meeting was published in the *Star Ledger* and the *Daily Record* on in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ROLL CALL**

Chairman Seavey – Present	Mr. Dick – Present
Mr. Palestina - Present	Mr. Smith - Present
Ms. Cass – Absent	Mr. Paone– Present
Mr. Ritger – Absent	

Alternate:                    Mr. Egerter, Alternate I- Present  
                                     Alternate II - Vacant

Also present: Mr. Germinario, Esq.  
                      Mr. Ferriero, Engineer

#####

**MINUTES**

Chairman Seavey asked for comments on the minutes of the regular meeting of February 4, 2020. There being no corrections, Chairman Seavey made a motion to approve the minutes as written and Mr. Smith seconded.

**ROLL CALL**

In Favor: Mr. Smith, Mr. Paone, Mr. Dick, Mr. Egerter, and Chairman Seavey  
Opposed:  
Abstain:

**PUBLIC COMMENT**

Chairman 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.

**COMPLETENESS:****BOA #01-20**

Ryan Gleason (Pool)  
3 Mansfield Ct.  
Block 404, Lot 10  
(Variance)

Present: Ryan Gleason  
Kathleen Perez-Garrity

Mr. Ferriero summarized his completeness letter dated February 8, 2020. Mr. Ferriero recommends that the application be waived for completeness and if there is additional in needed it can be brought up in testimony. Mr. Germinario reviewed the public notice and they are all in order.

Motion by Chairman Seavey, seconded by Mr. Palestina and unanimously carried to deem the application complete.

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

In favor: Mr. Palestina, Mr. Smith, Mr. Paone, Mr. Dick, Mr. Egerter, and Chairman Seavey  
Opposed: None  
Abstentions: None

The motion carried.

**HEARINGS:****BOA #01-20**

Ryan Gleason (Pool)  
3 Mansfield Ct.  
Block 404, Lot 10  
(Variance)

Present: Ryan Gleason  
Kathleen Perez-Garrity

Mr. Gleason and Ms. Perez-Garrity were sworn in. Mr. Ryan summarized his application for a pool and patio. Mr. Ferriero outlined the plans and explained that because they were over on lot coverage, a dry well is to be installed. Chairman Seavey asked Mr. Ferriero about the overage in impervious coverage. Mr. Smith questioned the size of the dry well and Mr. Ferriero stated that it is the proper size for the project. Mr. Seavey asked about removing the shed to decrease the lot coverage. Mr. Gleason stated that it was there prior to purchasing the house. Mr. Ferriero suggested that if the shed were to be replaced it would have to be moved out of the easement and that it would be noted in the resolution that an application would not be necessary with regards to lot coverage as long as the shed was the same size and conforms to all the setbacks. Mr. Gleason and Ms. Perez-Garrity agreed to remove the brick patio to decrease the lot coverage. Mr. Ferriero asked if approved, could they proceed at their own risk. Chairman Seavey was fine with that and it would be added to the resolution.

**PUBLIC COMMENT**

Chairman Seavey opened the floor to public comments. Joseph Costagliola of 68 Mountain Ave. was sworn in. Mr. Costagliola questioned the size of the dry well due to the excess water that is already an issue. Mr. Ferriero stated that the design of the drywell was adequate for the project.

Chairman Seavey made a motion to approve the with conditions as outlined in the Resolution and was seconded by Mr. Palestina.

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

In favor: Mr. Palestina, Mr. Smith, Mr. Paone, Mr. Dick, Mr. Egerter, and Chairman Seavey  
Opposed: None  
Abstentions: None

The motion carried.

**RESOLUTION:**

**BOA#03-19**

Six Main St. Mendham, LLC

6 East Main St.

Block 601, Lot 3

**(‘D’ Variances)**

Mr. Germinario summarized the Six Main St. Mendham, LLC bifurcated application and the conditions outlined in the resolution. Chairman Seavey made a motion to memorialize the resolution and Mr. Smith seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

In favor: Mr. Smith, Mr. Paone, Mr. Dick, Mr. Egerter and Chairman Seavey  
Opposed: None  
Abstentions: None

The motion carried. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

*Decided: February 4, 2020*

*Memorialized: March 3, 2020*

**IN THE MATTER OF SIX MAIN ST. MENDHAM, LLC**

**"D" VARIANCE BIFURCATED APPLICATION**

**BLOCK 601, LOT 3**

**APPLICATION NO. BOA #03-19**

*WHEREAS, Six Main St. Mendham, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final site plan approval with "C" and "D" variances, by application dated 10/13/19; and*

**WHEREAS**, the application was bifurcated pursuant to N.J.S.A. 40:55D-76b, and a public hearing was held on 2/4/20 to consider only the "D" variance relief associated with the application; and

**WHEREAS**, the Board has determined that the Applicant has complied with all land use procedural requirements of Chapter 124 of the Ordinance of the Borough of Mendham, and has complied with the procedural requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; and

**WHEREAS**, the Board makes the following findings and conclusions, based on the documents, testimony and other evidence comprising the hearing record:

1. The property which is the subject of the application consists of 0.48 acres (0.44 acres after right-of-way dedication) located in the Historic Business (HB) Zone. The property is improved with a main building comprising a 2-story frame structure with a loft in front and a 1-story masonry structure with a basement in the rear. Two formerly accessory buildings located behind the main building are a 1-story masonry garage and a 2-story frame barn. Vehicular access to the rear buildings is through a common driveway between this Lot 3 and adjoining Lot 4 to the east. The site has 4 parking stalls behind the garage and easement/license rights to use 10 parking spaces belonging to 2 East Main St. after business hours. The Applicant is attempting to obtain approval from the Borough to use some of the Borough's 56 parking spaces behind the site.

2. The development of the subject property for which the "D" Variance relief is sought comprise Preliminary and Final Major Site Plan and Variance approval for a mixed-use structure at 6 East Main Street. The proposal is to convert the main building and two (2) accessory structures into a mixed-use development with three (3) principal structures containing four (4) business spaces and seven (7) apartments with associated storage areas. The main building is proposed to include four (4) commercial business spaces, three (3) on the first floor and one (1) in the basement, along with two (2) storage spaces in the basement. There are four (4) apartments proposed in the main building, two (2) in the garage structure and one (1) in the barn structure. The property is located in the HB Historic Business Zone where commercial uses are permitted, however, due to the uses proposed, the density and location, several use variances are required. Bulk variances are also required for lot area, side yard setback, lot coverage and parking. A variance for sign height is also required.

3. The Applicant has submitted the following documents that depict and/or describe the improvements for which the "D" Variance relief is required:

- Architectural Plans, consisting of eight sheets, dated 9/12/19, prepared by William P. Byrne, Architect
- Preliminary and Final Major Site Plans, consisting of fourteen sheets, dated 9/9/19, prepared by John Hansen, PE, EL&P Associates, Inc.
- Parking and Easement Summary Report, prepared by Grant Homes Companies, dated 4/17/19 (10 pages)

4. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:

- Board of Adjustment Application, Attachments and Checklist, dated 10/3/19, prepared by Jay Grant
- Existing Conditions Plan, sheet 3 of 14, dated 9/9/19, prepared by Wayne J. Ingram, PLS, EL&P Associates, Inc.

5. The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Jessica Caldwell, PP, dated 11/27/19  
Paul Ferriero, PE, dated 11/25/19

6. Borough officials and/or agencies have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Craig Bellamy, Fire Official, dated 11/11/19

7. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

- A-1 Front photo of existing main building
- A-2 Rear photo of main building and access

A-3	Area overview photo
A-4	Aerial photo with overlay details
A-5	Summary of building renovations
A-6	Existing barn building
A-7	Existing garage building
A-8	Proposed barn architectural
A-9	Proposed garage architectural
A-10	Access easement exhibit
A-11	Base map with highlighted easements
A-12	Parking easement from 2 E. Main to 1 E. Main
A-13	Proposed garage floor plan
A-14	Proposed barn floor plan
A-15	Aerial photo with proposed improvements overlay
A-16	Aerial photo with land use overlay

8. In the course of the public hearings, the Applicant was represented by Mark Blount, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Jay Grant, Applicant's principal owner  
 William Byrne, AIA, Applicant's architect  
 John Hansen, PE, Applicant's engineer  
 Phil Abramson, PP, Applicant's planner

9. The documentary evidence and the testimony of Applicant's witnesses adduced the following facts:

Jay Grant testified to the existing and proposed uses on the subject property. Previous uses were all commercial, while proposed is mixed use comprising 4 businesses and 7 residential apartments. With respect to the 10 parking spaces owned by the owner of 2 East Main St., he stated that an easement to him as owner of 1 East Main St. enabled him to license these spaces to 6 East Main St. for use after business hours. He agreed, as a condition of the "D" variance approvals, to file documents granting such a license to 6 East Main St. in perpetuity, to run with title to the property. He also agreed to include a provision in all tenant leases prohibiting parking in these 10 spaces during business hours and to install parking signage to the same effect. Mr. Grant also agreed to dedicate the proposed 1-bedroom apartment in the former garage as an affordable unit.

Architect William Byrne testified regarding the proposed floor plans and architectural treatments of the three buildings, and stated that the Historic Preservation Commission had endorsed them.

Engineer John Hansen testified regarding proposed upgrades to the site which would improve traffic flow, pedestrian safety, lighting, recycling/trash disposal, ADA compliance, and drainage. Regarding the conditional use D(3) variance, he noted that the deviations were all existing conditions of the site.

Planner Phil Abramson testified that the proposed development involved 3 "D" variances:

- D(1) use variance for multiple principal structures on the same lot, since the 2 formerly accessory rear structures (garage and barn) would be converted to principal structures;
- D(3) conditional use variance required for the proposed 2 apartments in the garage buildings, since multi-family dwellings are a conditional use in the HB Zone, and the existing/proposed configuration of the site does not meet the conditions set forth in Ordinance Section 215-15C; and
- D(5) density variance, since the maximum permitted residential density in the HB Zone is 2 families per lot, while 7 apartments are proposed.

Regarding the D(1) variance, Mr. Abramson cited for positive criteria the improved aesthetics and historical restoration associated with the proposed improvements, and safer vehicular and pedestrian access. Mixed use, he stated, allows easier tenant access to jobs and shopping, particularly suited to this commercial village area. He also cited the Applicant's proposal to provide an affordable apartment in the former garage. Master Plan goals encourage diverse housing options and historic preservation, both advanced by this project. Consistent MLUL goals are health and safety, improved traffic flow, desirable visual environment, and historic preservation. Regarding negative criteria, he noted the established neighborhood pattern of out-buildings and shared parking, which would not be adversely affected by this variance.

Regarding the D(3) variance, Mr. Abramson applied the Coventry Square standard, in terms of the suitability of the site notwithstanding non-compliance with conditions. He noted the established neighborhood pattern of non-conforming multi-family uses. He opined that the site will function well in terms of improved parking, pedestrian access and traffic flow.

Regarding the D(5) variance, Mr. Abramson opined that the factors discussed for the other two variances support a finding that the variance serves the purposes of the zone plan and the MLUL.

After the completion of Applicant's testimony, Applicant's counsel agreed that the Applicant will exert best efforts to reach an agreement with the Borough for the use of some of the 56 municipal parking spaces to the rear of the subject property.

10. Based on the hearing record, the Board has made the following findings and conclusions relative to the "D" Variance relief sought by the Applicant:

Based on the hearing record, the Board finds that the Applicant's proofs satisfy the positive and negative criteria for the D(1) variance, as well as the Medici "enhanced quality of proof." For the D(3) variance, Applicant's proofs demonstrate that the site remains suitable for the limited multi-family use proposed, despite not meeting the ordinance conditions. Regarding the D(5) variance, the Board finds that the site can accommodate the problems associated with increased residential density, since there is a trade-off between residential and permitted commercial uses, and the mixture of the two types of uses enables land use efficiencies in the village type setting of this area of the Borough.

In granting this "D" variance relief, the Board also finds that the adequacy of parking for these uses would be much improved were the Applicant to make arrangements with the Borough for use of 51 of the Borough's public parking spaces, as that would satisfy the Ordinance's parking requirements for these uses.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby approve the "D" Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(1), 40:55D-70d(3) and 40:55D-70d(5).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a zoning permit for the improvements requiring "D" Variance relief.

1. Applicant will exert best efforts to reach an agreement with the Borough to use 51 spaces in the public parking area behind the subject property.

2. Should Applicant utilize some or all of the 10 parking spaces belonging to the owner of Lot 2, pursuant to licensing of the easement in favor of Lot 1, then Jay Grant, as owner of Lot 1, will file a perpetual license to run with the title to Lot 6, and Applicant will include provisions in all tenant leases prohibiting parking in these spaces during business hours and post proximate signage to that effect.

3. Applicant will dedicate the 1-bedroom apartment in the garage as an affordable unit consistent with the Borough's affordable housing plan.

4. Pursuant to 40:55D-76b, this bifurcated "D" variance approval is conditioned upon the grant of all required subsequent site plan approvals by this Board, and no such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and the zoning ordinance.

5. 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.

6. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

7. 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.

8. 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.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of 2/4/20.

---

Lisa Smith  
Board Secretary

**BOA#03-19**

Six Main St. Mendham, LLC

6 East Main St.

Block 601, Lot 3

**(Preliminary & Final Site Plan with (c) and (d) variances)**

Present: Jay Grant, Owner

Mark Blount, Attorney

John Hansen, Engineer

William Byrne, Architect

Mr. Blount went over the findings from their conversations with the Borough Council. Mr. Blount received an email from the Borough Attorney that the governing body is in support with coming to an understanding with regards to the parking. Mr. Grant and Mr. Blount will be updating the Council with the information that was requested. Mr. Grant is in the process of getting the traffic engineer up to speed.

Mr. Ferriero questioned how many spaces were requested from the Council. Mr. Blount stated that the Council focused on the overnight spaces. Mr. Ferriero asked if the 51 spaces were requested. Mr. Blount stated that he told the Council that the requirement for the Board was 51 spaces for the entire site but got sidetracked into the 14 overnight spaces which ended up being the focus of the conversation. Mr. Ferriero is going to look into the variances on the surrounding properties. Mr. Ferriero said that the Board is involved with the parking because it is an integral part of the site plan. The Borough consented to have their property to be part of the site plan. Mr. Blount stated that Mr. Semrau said signage, an ordinance for enforcement, paving, maintenance, permitted parking, and lighting and would like the Boards feedback. Chairman Seavey said that the path of least resistance would be for the applicant to go to the Council and ask for the 51 spaces and not to use the other properties.

Mr. Byrne remains under oath. Mr. Byrne gave an overview of the different structures and provided testimony on the features of the exterior and materials being proposed. Mr. Byrne stated that the materials will match the current materials. Mr. Byrne the roofing shingles will remain consistent with the existing roofing. The siding material will be Hardi Plank. Azek type corner post that match the size and scale of the current building. The windows will be new simulated divided light with exterior grill. Mr. Byrne stated that the shingles will be a wood or solid synthetic with hardware. Mr. Ferriero asked if the existing building would be resided and new windows be installed. Mr. Byrne stated that it would not be. Mr. Grant said that he may reside the entire building. Mr. Ferriero suggested they return to the HPC if that were the case. Mr. Byrne explained exhibit A-1 dated March 3, 2020, the building referred to as the garage. Chairman Seavey asked if the back of the building could be more esthetic, ie. Change patterns of the siding or fake doors. Mr. Byrne distributed a handout that marked as A-2, which is the rear elevation of the garage to clarify Mr.

Seavey's concerns. Mr. Byrne introduced A-3 into the record which is the Barn Building with the rear and left side elevation. Chairman asked about the gutters and Mr. Hansen said that the leader drains would be connected and discharge the existing pipes and install a dry well.

#### **PUBLIC COMMENT**

Chairman Seavey opened the meeting to the public for questions. There being none, the public session was closed.

Mr. Hansen remains under oath. Mr. Hansen gave an overview of the site aspects of the site plan application. Access to the site is via a one-way ingress only driveway from Main St. and egress through the Mountain Ave. side.

Mr. Ferriero asked for a revised set of plans. Chairman Seavey asked for a wall section.

The application is being carried to the April 7, 2020 meeting. Not further notice needed.

#####

#### **ADJOURNMENT**

There being no additional business to come before the Board, **Motion** was made by Chairman Seavey, seconded by Mr. Paone. On a voice vote, all were in favor. Chairman Seavey adjourned the meeting at 9:25PM.

The next meeting of the Board will be held on **Tuesday, April 7, 2020 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Lisa Smith*

Lisa Smith  
Land Use Coordinator