

**MENDHAM BOROUGH BOARD OF ADJUSTMENT  
MINUTES OF REGULAR AND REORGANIZATIONAL MEETING  
January 8, 2019**

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 at 7:30 p.m. and the open public meeting statement was read into the record.

**\*\*\*REORGANIZATION\*\*\***

**APPOINTMENTS**

The Board Attorney administered Oaths of Office to the following Board members:

- Richard Smith Regular Member expiring 12/31/22
- Mike Palestina Regular Member expiring 12/31/22
- Bryan Dick Regular Member expiring 12/31/21 (unexpired term of Steve Peralta)
- Jennifer Cass Regular member expiring 12/31/19 (unexpired term of Brennan Reilly)
- John Egerter Alternate #1 expiring 12/31/20 (unexpired term of Jennifer Cass)

**ROLL CALL**

Mr. Seavey	Present
Mr. Palestina	Present
Mr. Ritger	Present
Mr. Sisson	Absent
Mr. Smith	Present
Ms. Cass	Present

Also Present: Mr. Thomas Germinario, Borough Attorney  
Nancy Probst, Acting Board Secretary  
Lisa Smith, Land Use Coordinator

**ELECTION OF OFFICERS**

**CHAIR**

**Motion** by Mr. Palestina, **seconded** by Mr. Dick and unanimously carried by voice vote to nominate **Bryan Seavey** as Chairman. There being no further nominations, a single ballot was cast and **Bryan Seavey** was designated **Chairman**.

**VICE CHAIR**

**Motion** by Chairman Seavey, **seconded** by Mr. Ritger and unanimously carried by voice vote to nominate **Mike Palestina** as Vice Chairman. There being no further nominations, a single ballot was cast and **Mike Palestina** was designated **Vice Chairman**.

**SECRETARY**

**Motion** by Chairman Seavey, **seconded** by Ms. Cass and unanimously carried by voice vote to appoint **Lisa Smith** as **Board Secretary**.

The Chairman opened the floor to public comment. There was none.

**RESOLUTIONS**  
**MEETING DATES**

**Motion** by Chairman Seavey, **seconded** by Mr. Smith and unanimously carried by voice vote to adopt a resolution (as outlined herein) setting forth the meeting dates for 2019 and the first meeting of 2020.

**BOROUGH OF MENDHAM**  
**BOARD OF ADJUSTMENT**  
**RESOLUTION (2019 MEETING DATES)**

**BE IT RESOLVED** that the Board of Adjustment of the Borough of Mendham will meet to discuss or act upon public business at 7:30 p.m. prevailing time on each of the dates set forth below, at the Garabrant Center, 4 Wilson Street, Mendham, NJ:

- Tuesday, February 5, 2019
- Tuesday, March 5
- Tuesday, April 2
- Tuesday, May 7
- Tuesday, June 4
- Tuesday, July 2
- Tuesday, August 6
- Tuesday, September 3
- Tuesday, October 1
- Tuesday, November 5
- Tuesday, December 3
- Tuesday, January 7, 2020

**BE IT FURTHER RESOLVED** that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted on the bulletin board in the Phoenix House and delivered to the official newspapers in advance as required by law.

With respect to matters presented to this Board by applicants, the public shall be heard during the hearing on the application in accordance with the procedure as established by the Municipal Land Use Law.

Dated: January 8, 2019

**OFFICIAL NEWSPAPERS**

**Motion** by Chairman Seavey, **seconded** by Mr. Dick and unanimously carried by voice vote to adopt a resolution (as outlined herein) recognizing the Observer Tribune and The Daily Record as the official newspapers of the Board for 2019.

**BOROUGH OF MENDHAM**  
**BOARD OF ADJUSTMENT**  
**RESOLUTION (OFFICIAL NEWSPAPERS)**

**BE IT RESOLVED** by the Board of Adjustment of the Borough of Mendham, Morris County, New Jersey as follows:

**WHEREAS**, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act" aforesaid, the Board of Adjustment of the Borough of Mendham hereby makes the following designations:

1. The *Observer Tribune* and the *Daily Record* having been designated by the Governing Body as the two official newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use Regulations may be placed, as required by law, in either of the designated newspapers.
2. The location for posting of notices of meetings shall be the bulletin board in the Phoenix House, 2 West Main Street, Mendham, NJ, where notices of this kind are normally posted.
3. The sum of \$12.00 per year is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

Dated: January 8, 2019

## **BOARD ENGINEER**

**Motion** by Chairman Seavey, **seconded** by Mr. Dick and unanimously carried by voice vote to adopt a resolution (as outlined herein) authorizing entry into an agreement with Paul Ferriero, PE, PP of Ferriero Engineering for professional engineering services.

**BOROUGH OF MENDHAM  
MORRIS COUNTY, NEW JERSEY  
BOARD OF ADJUSTMENT  
RESOLUTION – PROFESSIONAL SERVICES (BOARD ENGINEER)**

**WHEREAS**, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

**WHEREAS**, the Business Administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

**WHEREAS**, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that they may provide engineering services for 2019 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is one (1) year; and

**WHEREAS**, Paul W. Ferriero has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

**WHEREAS**, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

**WHEREAS**, the Board of Adjustment of the Borough of Mendham wishes to retain Paul W. Ferriero; and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Paul W. Ferriero PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer for 2019, at a total annual cost not to exceed [\$1,000] such sum as duly appropriated for the purposes in the duly adopted municipal budget for 2019; and escrows as required for 2019; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1) (a).
5. This Resolution shall take effect as provided herein.

DATED: January 8, 2019

## **BOARD ATTORNEY**

**Motion** by Chairman Seavey, **seconded** by Mr. Palestina and unanimously carried by voice vote to adopt a resolution (as outlined herein) authorizing entry into an agreement with Thomas Germinario, Esq. for legal services.

**BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT  
RESOLUTION (BOARD ATTORNEY)**

**WHEREAS**, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, the Business Administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

**WHEREAS**, Thomas J. Germinario, JD, PE has submitted a proposal indicating that he may provide legal services for 2019 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is one (1) year; and

**WHEREAS**, Thomas J. Germinario, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

**WHEREAS**, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

**WHEREAS**, the Board of Adjustment of the Borough of Mendham wishes to retain Thomas J. Germinario, Esq.; and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Thomas J. Germinario, Esq. to serve as Board Attorney for the year 2019 at a total annual cost not to exceed [\$8,000], such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2019; and escrows as required for 2019; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
5. This Resolution shall take effect as provided herein.

DATED: January 8, 2019

## **BOARD PLANNER**

**Motion** by Chairman Seavey, **seconded** by Mr. Smith and unanimously carried by voice vote to adopt a resolution (as outlined herein) authorizing entry into an agreement with Jessica Caldwell, PP, AICP of J. Caldwell & Associates, LLC professional planning services.

**BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT  
RESOLUTION (BOARD PLANNER)**

**WHEREAS**, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Planning Consultant services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

**WHEREAS**, the Business Administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

**WHEREAS**, J. Caldwell & Associates, LLC, has submitted a proposal indicating that they may provide planning services for 2019 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is one (1) year; and

**WHEREAS**, J. Caldwell & Associates, LLC has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

**WHEREAS**, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

**WHEREAS**, the Board of Adjustment of the Borough of Mendham wishes to retain J. Caldwell & Associates, LLC; and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Jessica Caldwell, PP/AICP of the firm J. Caldwell & Associates, LLC, to serve as Planning Consultant for 2019, at a total cost not to exceed required escrows for 2019; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

DATED: January 8, 2019

**\*\*\*REGULAR MEETING\*\*\***

**MINUTES**

**Motion** by Chairman Seavey, **seconded** by Mr. Ritger and unanimously carried by voice vote to adopt the Minutes of **December 4, 2018**, as presented.

**RESOLUTIONS**

Marx (BOA #06-18)

89 Talmage Road (Block 2001, Lot 20)

Bulk Variance

**Motion** by Chairman Seavey, **seconded** by Mr. Smith and unanimously carried to adopt a memorializing resolution (as presented) in the above matter.

Roll Call:

Aye: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Seavey

Nay:

Abstain:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION**

**Decided: December 4, 2018**

**Memorialized: January 8, 2019**

**IN THE MATTER OF DANIEL MARX**

**"C" VARIANCE APPLICATION**

**BLOCK 2001, LOT 20**

WHEREAS, Daniel Marx (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 11/21/18; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 12/4/18; 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 .452 acres located on Talmage Road in the 1-Acre Residence Zone. The property is improved with a two-story frame dwelling and detached garage. The property shares a common driveway with adjoining Lot 19.
2. The improvements to the subject property for which the Variance relief is sought comprise an addition to the existing dwelling including an office on the first floor, expansion of the upstairs bathroom, a closet addition in the master bedroom, and a second upstairs bathroom.
3. The Applicant has submitted the following documents that depict and/or describe the improvements for which the Variance relief is required:
  - Architectural Plans consisting of two sheets, prepared by Kenneth Fox, Architect, dated 11/5/18, revised 11/19/18
4. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:
  - Board of Adjustment Application, dated 10/2/18
  - Application Checklist
  - Owner's Consent to Filing of Application Form
  - Site Inspection Form
  - Zoning Officer's Denial, dated 8/27/18

- Tax Certification
- Property survey by Lakeland Surveying, dated 6/5/18
- Tax Assessor's List, dated 11/19/18
- Copies of public notices

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:

Paul Ferriero, PE, CME, dated 10/24/18 and 11/19/18

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

Neil Schetelick, Zoning Officer, dated 8/27/18

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

A-1 colored site plan rendering

A-2 corrected architectural plan

8. In the course of the public hearings, the Applicant represented himself, and the Applicant presented his own testimony, which testimony is part of the hearing record.

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

The subject lot is less than half the area required by the zone but is subject to the same bulk requirements as a conforming lot size. The narrowness of the lot makes it impossible to comply with required side yard setbacks. A substantial portion of the lot's impervious coverage is due to the common driveway, which serves three other properties.

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

Variance relief is required for maximum impervious coverage (4146 sf required, 6940 sf existing, 7260 sf proposed) and dwelling westerly side yard setback (25 ft required, 25.8 ft existing, 23.9 ft proposed).

By reason of the lot area and narrowness of the subject property, the strict application of Ordinance Section 215-31.1 would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship upon the Applicant. Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

The detriments associated with the deviation are considered minimal because the increase in impervious coverage and reduction in side yard setback are relatively minor. The addition will enhance the character and appearance of the property.

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 application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(1).

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 Variance relief.

1. The building coverage shall be recalculated to include roof overhangs.
2. The Existing Floor Plan shall be corrected to relabel First Floor Plan as Second Floor Plan, and vice-versa.
3. A final survey shall be submitted after the improvements are completed.
4. 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.
5. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.
6. 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.
7. 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 12/4/18.

Ressler (BOA # 03-18)  
73 Mountain Avenue (Block 901, Lot 1)  
Extension of prior approval

**Motion** by Chairman Seavey, **seconded** by Mr. Palestina and unanimously carried to adopt a memorializing resolution (as presented) in the above matter.

Roll Call:

Aye: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Seavey

Nay:

Abstain:

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION

Decided: December 4, 2018

Memorialized: January 8, 2019

**IN THE MATTER OF BRETT AND JAMIE RESSLER**  
**EXTENSION OF "C" VARIANCE EXPIRATION PERIOD**  
**BLOCK 901, LOT 1**

WHEREAS, Brett and Jamie Ressler (hereinafter the "Applicants") were granted by the Borough of Mendham Board of Adjustment (hereinafter the "Board") a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by Resolution memorialized April 3, 2018; and

WHEREAS, pursuant to Ordinance Section 124-22 and Condition 6 of the Resolution, the Variance would have expired within one year of the memorialization of the Resolution unless the construction or alteration of the improvements requiring the Variance relief had actually commenced during that time period (the "Variance Expiration Period"); and

WHEREAS, the Applicants have applied to the Board to extend the Variance Expiration Period by an additional year, during which time they intend to proceed with construction of the approved improvements to the subject property; and

WHEREAS, the Board finds that there is good cause to extend the Variance Expiration Period by an additional year.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve an extension of the Variance Expiration Period by an additional year, to April 3, 2020.

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 December 4, 2018.

**ANNUAL REPORT**

The Board discussed content with respect to preparation of the report for 2018. Chairman Seavey read excerpts from the 2017 report into the record. Aspects of that report [adoption of the outdoor dining ordinance] were discussed at length. The Board concluded that the report would be prepared for discussion at the next meeting.

The Chairman opened the floor to public comment. There was none.

**ADJOURNMENT**

Motion by Chairman Seavey, seconded by Mr. Smith and unanimously carried to adjourn at 8:16 p.m.

Respectfully submitted,

*Nancy Probst*

Nancy Probst, Acting Board Secretary

APPROVED \_\_\_\_\_