

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, September 21, 2021
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

The regular meeting of the Joint Land Use Board was called to order at 7:30PM and the open public meeting statement was read into the record at the Garabrant Center, 4 Wilson St., Mendham, NJ.

ROLL CALL

Mayor Glassner – Present
Ms. Bushman – Present
Councilman Reilly – Present
Mr. Paone – Present
Mr. Smith – Present
Mr. Sprandel – Present
Mr. Dick – Absent

Mr. Ritger – Present
Mr. Egerter – Present
Mr. Kay- Alternate 1A- Present
Mr. Bradley – Alternate 2A - Absent
Vacant – Alternate 3A
Mr. Corona – Alternate 4A – Absent
Mr. Sullivan – Aternate1B – Present
Ms. D’Urso – Alternate 2B - Present

Also Present: Mr. Germinario, Board Attorney
Mr. Ferriero, Board Engineer
Ms. Caldwell, Board Planner

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MINUTES

Chairman Ritger asked for comments on the minutes of the August 17, 2021, Regular Meeting. There being none, Mr. Smith made a motion to approve the minutes as written and Mr. Paone seconded.

Roll Call:

In Favor: Ms. Bushman, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Sullivan, and Ms. D’Urso.

Opposed:

Abstain: Mayor Glassner and Councilman Reilly.

Motion Carried

PUBLIC COMMENT

Chairman Ritger 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:

- a) **JLUB #09-21**
Matthew & Samantha Tuohy
7 Whispering Ivy Path
Block 1901 Lot 20.01

Councilman Reilly recused himself.

Mr. Ferriero suggested that in addition to notice that the application will be carried that the completeness can be determined. Mr. Ferriero summarized his completeness letter dated September 20, 2021. Mr. Ferriero recommends that the application be waived for completeness and if there is additional in needed it can be brought up in testimony.

Motion by Mr. Sprandel, seconded by Mr. Kay and unanimously carried to deem the application complete.

ROLL CALL: The result of the roll call was 10 to 0 as follows:

In Favor: Mayor Glassner, Ms. Bushman, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain: Councilman Reilly

The motion carried.

HEARINGS:

- a) **JLUB #09-21**
Matthew & Samantha Tuohy
7 Whispering Ivy Path
Block 1901 Lot 20.01

Mr. Germinario stated that the application is being carried at the applicants request to the October 19, 2021 meeting with no further notice required.

RESOLUTION:

- a) **JLUB #10-21**
Daniel & Judith Miller
18 Brookfield Way
Block 1401 Lot 16

Mr. Germinario summarized the Miller application and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. Paone seconded.

ROLL CALL: The result of the roll call was 10 to 0 as follows:

In Favor: Mayor Glassner, Ms. Bushman, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain: Councilman Reilly

The motion carried.

BOROUGH OF MENDHAM JOINT LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

*Decided: August 17, 2021
Memorialized: September 21, 2021*

*IN THE MATTER OF DANIEL AND JUDITH MILLER
"C" VARIANCE APPLICATION
BLOCK 1401, LOT 16
APPLICATION NO. JLUB #10-21*

WHEREAS, Daniel and Judith Miller (hereinafter the "Applicant") applied to the Borough of Mendham Joint Land Use Board (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 6/28/21; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 8/17/21; 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 1.009 acres (43,954 SF) located in the 1-Acre Residential District, improved with a single-family dwelling.

2. The improvements to the subject property for which the Variance relief is sought comprise construction of a pool and patio exceeding the permitted lot coverage on lot 16 in block 1401 at 14 Brookfield Way. The pool is under construction based on a permit for a plan that complies with the permitted lot coverage.

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

Variance Plan, dated 8/3/21, prepared by Catherine A. Mueller, PE

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

*Land Development Application and memorandum, dated 6/28/21, prepared by Judith Miller
Checklist*

Certificate of Paid Taxes/Sewer fees, dated 6/30/21

Zoning Officer's Denial Letter, dated 6/14/21

Site Inspection Form, dated 6/28/21, prepared by Judith Miller

Certified Property Owners List

Tax map

Survey, dated 3/22/21, prepared by Marc J. Cifone, PLS

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 7/26/21

6. In the course of the public hearings, the Applicants represented themselves, and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

*Catherine Mueller, PE, Applicant's engineer
Judith Miller, Applicant*

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

The property, under existing conditions, is almost at the maximum impervious coverage allowed. This is due to a large circular driveway which existed when the Applicant purchased the property. The Applicant wishes to construct a pool for their family to enjoy and previously applied for a permit to construct only the pool. To make that permit compliant, portions of the driveway and an existing walkway were proposed to be removed. The Applicant is seeking a coverage variance to construct a modest patio adjacent to the pool along with a narrow walkway around the water surface for maintenance and safety, as well as an 8x10' pool shed and a 4x10' equipment pad. The proposed improvements will result in a total impervious coverage of 9,852 SF, as compared to 8,088 SF existing and 8,732 SF maximum allowed.

Catherine Mueller, PE, testified that the stormwater system currently being installed has been designed to handle runoff from the pool patio and sidewalk as well as the pool itself. Overflow outflow from that system will be toward the front of the subject property and not impacting the neighboring lot. A County Soil Conservation Permit has been issued for the pool itself and will be modified to cover the surrounding patio and walkway as well.

Upon discussion, the Applicant agreed to the Board's recommendation that a 5x20' walkway be extended from the house patio to the pool patio for safety purposes. This will increase the proposed impervious coverage from 9,852 SF to 9,952 SF.

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

Due to the existing development of the property, the addition of a patio and walkway to the pool under construction requires a minimal exceedance of the lot impervious coverage, which has been mitigated by removal of portions of the existing driveway and walkway.

By reason of the existing development of the subject property, the strict application of Ordinance Section 215-29 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 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 pool construction permit was previously issued based on a plan with conforming lot coverage. That plan included a stormwater management plan, which shall be implemented consistent with the currently approved plan.
2. Expanded approval from the Morris County Soil Conservation District is required.
3. The Variance Plan shall be revised to depict a 5x20' walkway between the house patio and the pool patio. Accordingly, the granted variance relief has been increased to allow a total of 9,952 SF of impervious coverage to accommodate the new walkway.
4. As part of resolution compliance, revised stormwater calculations shall be submitted.
5. The variance relief granted herein shall be considered effective as of the approval date of 8/17/21.
6. 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.
7. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.
8. 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.

9. 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 Joint Land Use Board memorializing the action taken by the Board at its meeting of 8/17/22.

*Lisa Smith
Board Secretary*

b) RESOLUTION FINDING MASTER PLAN CONSISTENCY

Ms. Caldwell summarized the report finding Master Plan Consistency for Ordinance #13-2021 dated September 15, 2021.

Councilman Reilly made a motion to memorialize the resolution and Ms. D'Urso seconded.

ROLL CALL: The result of the roll call was 11 to 0 as follows:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

The motion carried.

DISCUSSION ITEMS:

- a) Master Plan Conformity Review of the Proposed New Ordinances
 - i. Ordinance # 13-2021

Mr. Germinario stated that this Ordinance was introduced and that there was a report completed by Ms. Caldwell. Ms. Caldwell summarized the Ordinance for outdoor dining and seating and the Master Plan Consistency. Mr. Egerter asked if this Ordinance is different from what is being done now. Mr. Ferriero stated that the Ordinance was being done to codify and make it permitted in the ordinance rather than authorized under an emergency order by the Governor. Mr. Ferriero stated that with this Ordinance there is a distinction between outdoor seating and outdoor dining. Mr. Paone asked what happens in the period between Nov 30th and April. Ms. Caldwell stated that the furniture would be removed during those months if it is on the sidewalk and close down other areas. Mr. Reilly asked if a bench outside their establishment is considered outdoor seating and would it require a permit. Mr. Ferriero stated that if you go back and look at their approvals, the benches were probably not included and should have been part of the site plan. Mr. Ritger stated that as the Ordinance is written there is no distinction between outdoor seating and outdoor dining. Mr. Ferriero stated it is understood that that dining means service. Mr. Germinario stated that it is what the definitions says it is in the Ordinance. Mr. Ritger stated that in the definitions it does not say that outdoor dining has table service. Mr. Reilly stated that the outdoor seating says it does not include table service. Mr. Ritger asked if the definition should be clarified. Mr. Germinario stated that in the definition, that outdoor dining is accessory to a restaurant and restaurant by definition is one that has table service. Councilman Reilly questioned the removal of outdoor seating every night. Ms. Caldwell stated that this is meant for seating that is on the sidewalks. Councilman Reilly questioned the removal of the benches in the wintertime and not being able to control someone from sitting there from December through April. After discussion, the Board suggested that the outdoor seating portion of the Ordinance should be changed to year-round. Mayor Glassner stated that the fee

schedule should be removed from the Ordinance so that the Ordinance would not have to be changed when there is a change in fees. Mr. Germinario stated that if the changes are made and the Ordinance has to be reintroduced it would have to come before the Board again.

b) Commons Overlay

Ms. Caldwell summarized the report titled Mendham Commons Overlay Zone dated September 15, 2021. Ms. Caldwell stated that idea is to limit variance requirements for a development that is in the ¼ acre zone but developed to a different standard. The prevailing setbacks in the zone were looked at within the development to determine what type of setback would allow for things like decks on the buildings. Mr. Ritger asked with regards to the overlay, what would the next step be. Ms. Caldwell stated that a draft Ordinance can be presented to the Mayor and Council.

c) Prevailing Setbacks

Ms. Caldwell stated that in the past there was discussion of prevailing setbacks and also some setback exceptions. Ms. Caldwell summarized the analysis done on the areas identified as potentially problematic and the zone they were in. Ms. Caldwell summarized the Ordinance drafted with the language of the types of exceptions.

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Sprandel seconded by Ms. D'Urso. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 8:40PM.

Respectfully submitted,

Lisa Smith

Lisa Smith
Land Use Coordinator