

**MINUTES OF THE  
MENDHAM BOROUGH JOINT LAND USE BOARD  
REORGANIZATION/REGULAR MEETING  
Tuesday, February 15, 2022  
Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER/FLAG SALUTE**

The Reorganization/ Regular meeting of the Mendham Borough Joint Land Use Board was called to order at 7:30 p.m. and the open public meeting statement was read into the record.

**APPOINTMENTS/OATHS OF OFFICE**

The Mr. Germinario, Board Attorney, administered Oaths of Office to the following Board members:

- Joyce Bushman Administrator (Class II) – Term expires 12/31/2022
- John Egerter– Regular Member - Term expires 12/31/2025
- Keith Kay – Alternate 2a Member - Term expires 12/31/2022

**ROLL CALL**

Mayor Glassner – Absent	Mr. Ritger – Present
Ms. Bushman – Present	Mr. Egerter – Present
Councilman Andrew – Present	Mr. Kay- Alternate 1A- Present
Mr. Paone – Absent	Mr. Bradley – Alternate 2A - Absent
Mr. Smith – Absent	Ms. Garbacz – Alternate 3A - Present
Mr. Sprandel – Present	VACANT – Alternate 4A
Mr. Dick – Absent	Mr. Sullivan – Aternate1B – Present
	Mr. Pace – Alternate 2B - Present

Also Present: Mr. Quamme – Board Engineer  
Mr. Germinario – Board Attorney

**APPROVAL OF MINUTES**

Motion by Councilman Andrew, seconded by Mr. Pace and unanimously carried by voice vote to adopt the Minutes of the January 18, 2022 Joint Land Use Board Regular Meeting, as presented.

**Roll Call:**

**In Favor:** Councilman Andrew, Mr. Sprandel, Mr. Ritger, Ms. Garbacz, Mr. Sullivan, and Mr. Pace

**Opposed:**

**Abstain:** Ms. Bushman, Mr. Egerter, and Mr. Kay

**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.

**HEARINGS****JLUB #09-21**

Matthew & Samantha Tuohy  
7 Whispering Ivy Path  
Block 1901 Lot 20.01

**Present:** Mr. & Ms. Touhy – Applicant  
Ms. Alfonso – Attorney  
Mr. Mantyla – Engineer

Mr. Mantyla was sworn in. Mr. Germinario asked if Ms. Alfonso wanted to qualify Mr. Mantyla as an expert. Ms. Alfonso proceeded to ask Mr. Mantyla his qualifications. Mr. Mantyla explained his qualifications and stated that his license is in good standing with the State of NJ. Mr. Germinario asked if Mr. Mantyla also has his planners license and Mr. Mantyla had stated that he does. Mr. Germinario asked what Mr. Mantyla's discipline was in engineering and Mr. Mantyla stated that it was Civil Engineering.

Mr. Ritger asked the Board if there were any questions regarding Mr. Mantyla's qualifications. There being none, Mr. Mantyla was accepted as an expert witness. Mr. Germinario stated that he had reviewed the applicants notices and they were in order and the Board does have jurisdiction to proceed. Mr. & Ms. Touhy were sworn in. Mr. Ritger explained that there was a completeness hearing previously done on this application. Ms. Alfonso explained that Mr. & Ms. Touhy have reached out to their neighbors regarding this application for a pool and have revised the plan based on their conversations. Ms. Alfonso gave background regarding the application and explained that there was a pool at this location previously based on her research. Ms. Alfonso addressed the pedestrian easement that is on the adjacent lot and is not on the Touhy's property. Ms. Alfonso stated that appears that people using the pedestrian easement are using the corner portion of the Touhy's property to walk on. Ms. Alfonso stated the proposed plan is for a pool and patio paving two thirds around the pool. Ms. Alfonso explained that a variance is needed for lot coverage. Mr. Mantyla explained the existing property and summarized the proposed improvements. Mr. Mantyla stated that the location of the proposed pool is the only place that is not steep or incumbered by the septic. Mr. Mantyla explained that changes were made to the plans to lower the pool by 2 feet, add a retaining wall, and install an overflow based on neighbors' requests. Mr. Mantyla explained that the application has a proposed 9805sq. ft. and 8784sq. ft is permitted. Ms. Alfonso asked Mr. Mantyla to explain that they are in fact not rerouting the easement that was noted on the plan. Mr. Mantyla stated that the easement is entirely on Lot 20 and was established when subdivision was done. Mr. Mantyla explained that the path is only dirt, there is no gravel or borders.

Ms. Alfonso stated that revised plans will be filed that are consistent with Mr. Ferriero's report dated February 2, 2022 to move the landscaping away from the pipe and will comply with the other comments noted on the report. Ms. Alfonso stated that they would agree to that being a condition of approval.

Mr. Ritger asked if there was a plan that was color coded to show what was impermeable. Mr. Mantyla stated that the summary of the improvement's coverage is under the chart on the plans. Mr. Mantyla submitted exhibit A-1; a colored version of the Landscape Plan revised on 2/7/22. Mr. Ritger stated that there are items on the plan that are not included in the impervious coverage total. Mr. Germinario asked Mr. Mantyla if he personally inspected the site to prepare the plan. Mr. Mantyla stated that he did. Mr. Germinario asked why the plan shows the easement going through the subject property. Mr. Mantyla stated that it was because that was where the pachysandra was worn away. Mr. Germinario stated that on the plans it says to reroute the existing path in the walkway easement and would like to know how this will be done. Ms. Alfonso explained that there is nothing to do because there is no actual path, and a fence has been put up. Mr. Germinario questioned if the fence mentioned was the proposed fence on the plans and Mr. Mantyla stated that it was. Ms. Alfonso explained that when the plans were made, the fence was proposed but around June or July the applicant received the zoning permit for the fence and had the new one installed and the

old one removed. Mr. Germinario questioned if the new fence that was put up stopped people from following the existing path. Ms. Alfonso stated that the people can follow where the actual easement is. Ms. Alfonso showed a picture, marked exhibit A-2, of the dirt path where people were walking before the fence was put up. Mr. Sprandel states that before the fence was put up, people were in fact walking on the Touhy's property in the back corner. Mr. Mantyla stated that this was correct.

Mr. Kay asked for clarification on the change in elevation of the pool. Mr. Mantyla explained that the pool, patio and retaining wall were lowered based on the neighbor's request. Councilman Andrew questioned the dry well plan. Mr. Mantyla explained the sizing and locations of the dry wells. Ms. Garbacz asked what the timeline of the project would be, and Ms. Alfonso stated, as soon as possible. Mr. Egerter asked if all of the engineer's requests will be met, and Ms. Alfonso stated that the applicants agree to make the requested changes. Mr. Ritger asked Mr. Quamme if retaining walls are included in lot coverage. Mr. Mantyla stated he contacted Zoning and was told it did not. Mr. Quamme stated that he is unsure of the Borough's ordinance and asked if it was a block or solid wall. Mr. Mantyla stated that the was is block. Mr. Quamme will look into the ordinance. Mr. Ritger is requesting a new calculation of the impervious coverage be a condition of approval.

Mr. Sprandel made a motion to approve the application with conditions as outlined in the Resolution and was seconded by Mr. Pace.

**Roll Call:**

**In Favor:** Ms. Bushman, Councilman Andrew, Mr. Sprandel, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Garbacz, Mr. Sullivan, and Mr. Pace.

**Opposed:**

**Abstain:**

**The motion carried.**

**RESOLUTIONS**

**JLUB # 17-21**

Norman Clausen  
54 West Main St  
Block 1801 Lot 15.02

Mr. Germinario summarized the Clausen application and the conditions outlined in the resolution. Mr. Sprandel made a motion to memorialize the resolution and Mr. Pace seconded.

**Roll Call:**

**In Favor:** Ms. Bushman, Councilman Andrew, Mr. Sprandel, Mr. Ritger, Ms. Garbacz, Mr. Sullivan, and Mr. Pace.

**Opposed:**

**Abstain:** Mr. Kay

**The motion carried. The resolution follows.**

**BOROUGH OF MENDHAM JOINT LAND USE BOARD**

**RESOLUTION OF MEMORIALIZATION**

**Decided: January 18, 2022**  
**Memorialized: February 15, 2022**

**IN THE MATTER OF NORMAN CLAUSEN  
"C" VARIANCE APPLICATION  
BLOCK 1801, LOT 15.02  
APPLICATION NO. JLUB #17-21**

**WHEREAS**, Norman Clausen (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 10/28/21; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 1/18/22; 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 2.858 acres located in the 1-Acre Residence Zone. The property fronts on a private road extending southerly from West Main Street and is improved with a 2½ story frame dwelling.

2. "C" Variance relief is required in connection with an array of roof-mounted solar panels which have been installed based on a permit mistakenly issued by the Township of Mendham. Approval of the installation was denied by the Borough Zoning Officer because the panels are offset 18 inches from the pitched roof perimeter, while Ordinance §215-31.1G(4)(b) requires a minimum 4 foot offset.

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

- Solar System Installation Plans, prepared by Green Power Energy, consisting of 18 sheets, dated 6/24/21

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

- Land Development Application, dated 10/28/21, prepared by Norman Clausen
- Checklist
- Project Description
- Zoning Officer's Denial Letter, dated 7/19/21
- Certificate of Paid Taxes, dated 10/18/21
- Site Inspection Form, dated 10/13/21
- Property Survey, dated 10/3/20, prepared by Jeffrey S. Gunn, PLS
- Solar Installation Plans, dated 6/24/21

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, dated 11/29/21

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

Eric Dornfeld, solar professional

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

Due to a confusion between Applicant's street address and an identical street address in Mendham Township, Applicant's solar contractor mistakenly submitted the building permit application to the Township, which approved it based on their standards, which permit the solar panels to extend within 18 inches of the roof perimeter, which is also the standard of the NJ Uniform Construction Code (NJUCC). Applicant testified that the solar panels are not visible to the public nor to any neighboring residences, and that removal of the panels would cause costly damage to the roof of the dwelling.

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

The Board finds that the rationale for the Borough's Ordinance requiring a greater solar panel offset from the roof perimeter is primarily aesthetic, in terms of the appearance of the solar installation to the public and neighboring residences. Applicant's unchallenged testimony indicates that the solar installation is not visible from any vantage point outside of his own property. Moreover, since the installation does comply with the NJUCC, the public purpose of allowing sufficient access to the roof by fire and emergency personnel is served. The Board also recognizes the public benefits of solar installations, which advance the purposes of the MLUL.

Therefore, since the detriments associated with the deviation are minimal, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviation will substantially outweigh the detriments.

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(2).

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. 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.

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

3. 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.

4. 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 1/18/21.

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Lisa Smith  
Board Secretary

## DISCUSSION ITEMS

Mr. Ritger asked why the Board is receiving notices of applications of surrounding towns. Ms. Smith explained that just as the applicants that come before the Board have to notice within the 200' list, so do other towns. The Board will also receive notices if there are any ordinance changes in surrounding towns.

Ms. Smith announced that this would be Mr. Sullivan's last meeting because he is now a Councilman and Mr. Corona has resigned.

#### **ADJOURNMENT**

There being no additional business to come before the Board, Motion was made by Mr. Egerter, seconded by Councilman Andrew. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 8:35PM.

The next meeting of the Board will be held on Tuesday, March 15, 2022 at 7:30 PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Lisa J. Smith*

Lisa Smith  
Land Use Coordinator