

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, April 19, 2022
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

The 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.

ROLL CALL

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

Mr. Ritger – Present
Mr. Egerter – Present
Mr. Kay- Alternate 1A- Present
Mr. Bradley – Alternate 2A - Present
Ms. Garbacz – Alternate 3A - Present
Mr. D’Urso– Alternate 4A - Absent
Mr. Barker – Alternate 1B – Absent
Mr. Pace – Alternate 2B - Present

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

APPROVAL OF MINUTES

Motion by Mr. Kay, seconded by Mr. Egerter and unanimously carried by voice vote to adopt the Minutes of the February 15, 2022 Joint Land Use Board Regular Meeting, as presented.

Roll Call:

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

Opposed:

Abstain: Mayor Glassner, Mr. Smith, Mr. Dick, and Mr. Bradley

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**JLUB #02-21**

Racioppi
11 Sterling Ave
Block 704 Lot 7

Chairman Ritger stated that the application is being carried at the applicants request to the May 17, 2022 meeting with no further notice required.

JLUB #16-21

Anna Hackman
2 Spring Meadow Lane
Block 1801 Lot 36.01

Mr. Quamme explained that the application is requesting “c” variance approval for the construction of an eight-foot fence around the perimeter of the property at 2 Spring Meadow Lane. Mr. Quamme summarized the completeness letter dated March 3, 2022 where there were a number of waivers requested and ones that weren’t requested. Mr. Ferriero had no objection to granting the waivers for the checklist items that were requested and for those that were not requested. Mr. Quamme highlighted checklist item #30 which is related to screening and landscaping. While there are no objections for the waivers, the Board should evaluate the requirement as part of the application. Subject to the Board granting the waivers, the application can be deemed complete. Mr. Germinario stated that the Board can grant the waiver for the screening for completeness purposes only and reserve the right to require at the hearing. Mr. Ritger asked about the accuracy of the site plan. Mr. Quamme stated that a description during the hearing can be made and be a condition of approval.

Mr. Germinario stated that he has reviewed the public notices and they are in order and the Board has jurisdiction to hear this application.

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

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

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Bradley, Ms. Garbacz, and Mr. Pace

Opposed:

Abstain:

The motion carried.

JLUB #12-21

Paul Velez
7 Oak Forest Lane
Block 2401 Lot 31.04

Chairman Ritger stated that the application is being adjourned to the May 7, 2022 and the applicant will have to renote to include an additional variance.

JLUB #03-22

Wolfmeyer/Bravo
75 West Main Street
Block 201 Lot 25

Mr. Quamme explained that the application is requesting a “c” variance approval for setbacks associated with the proposed detached garage at 75 West Main St. Mr. Quamme summarized the completeness letter dated March 5, 2022 where Mr. Ferriero had no objection to granting the waivers for the checklist items that were requested and for those that were not requested. Mr. Quamme highlighted checklist item #34 which is related to existing and proposed contours. While there are no objections for the waivers, the Board should evaluate the requirement as part of the application. Subject to the Board granting the waivers, the application can be deemed complete. Mr. Ritger asked about the notices.

Mr. Germinario stated that he has reviewed the public notices and they are in order and the Board has jurisdiction to hear this application. Mr. Egerter asked if where it says 3 feet from the property, does that mean the property line. Mr. Ritger stated that it is what it shows and should say that.

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

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

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Bradley, Ms. Garbacz, and Mr. Pace

Opposed:

Abstain:

The motion carried.

JLUB #05-22

James Molnar
32 Hilltop Rd.
Block 2001 Lot 3

Mr. Quamme explained that the application is requesting a “c” variance approval for setbacks associated with the proposed additions to the existing single-family dwelling located at 32 Hilltop Rd. Mr. Quamme summarized the completeness letter dated March 5, 2022 where Mr. Ferriero had no objections to granting the waivers for the checklist items to deem this application complete but would like to note item #34, existing and proposed contours. There will be an increase in lot coverage of more than 1000 feet therefor the existing and proposed contours will likely need to be a condition of approval and a lot grading permit will need to be a condition of approval. Mr. Germinario stated that he has reviewed the public notices and they are in order and the Board has jurisdiction to hear this application.

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

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

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Bradley, Ms. Garbacz, and Mr. Pace

Opposed:

Abstain:

The motion carried.

HEARINGS

JLUB #16-21

Anna Hackman
2 Spring Meadow Lane
Block 1801 Lot 36.01

Present: Ms. Hackman– Applicant
Mr. Gelber - Applicant

Ms. Hackman and Mr. Gelber were sworn in. Ms. Hackman summarized her application and the necessity for an 8' perimeter aluminum fence that closely matches existing fence due to the deer eating her plants at her certified organic farm. Ms. Hackman showed the Board a picture of an example of the metal which was marked as Exhibit A-1 and another picture of the side view of the fence which was marked Exhibit A-2. Mr. Ritger asked if Ms. Hackman was going to install a perimeter deer fence and leave the existing rodent fencing. Ms. Hackman stated that it would be too difficult to remove the existing fencing. Mr. Ritger asked for clarification regarding the placement of the fencing. Ms. Hackman explained that she intended to attach the new fence to her neighbors existing fences which are 6 feet. Mr. Ritger stated his concern that when using a neighbor's fence, the neighbor could move, and the new neighbor may take the fence down. Ms. Hackman stated that she has spoken to the neighbors and may remove their fence and install hers because it will be a better-quality fence. After discussion with the Board, Ms. Hackman decided to install her own fence. Mr. Quamme asked for a description of the gate. Ms. Hackman stated that the gate has not been formalized but showed a picture of an example of the type of gate marked at the top of the page which was marked Exhibit A-3. Ms. Garbacz asked if Ms. Hackman was meeting the requirements of production that the grant required. Ms. Hackman stated that she is exceeding what is required. Mr. Egerter stated that in the application it shows the existing fence and would like clarification on what the proposed fence would be. Ms. Hackman stated that the new fencing would be the same as the existing except the openings would be 2"x4". Mr. Sprandel stated that while at the property, only one neighbor, Lot 28, could be seen and feels the fence would be unintrusive.

Mr. Ritger asked for a new survey where the new fence is proposed to include the height and location of the gate. Ms. Hackman stated that getting a new survey would be expensive. Mayor Glassner and Mr. Bradley agreed. Ms. Hackman agreed to having her surveyor, Yannacone, and the Borough's engineer stake out the corners and vertices of the new fence line with a string line and have the construction department come and inspect. Ms. Hackman agreed to the following conditions of approval that will be included in the resolution,

1. Fire Marshall's approval for the specifics and operations of the gate.
2. Staking of the fence line with applicants' surveyor and Board's engineer and having the construction department inspect and approve.
3. The fence will be relocated between the trees and the dwelling on the Spring Meadow Lane side of the property.
4. Materials that are being approved are in accordance with the exhibits.

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

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

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Bradley, Ms. Garbacz, and Mr. Pace

Opposed:

Abstain:

The motion carried.

JLUB #03-22

Wolfmeyer/Bravo
75 West Main Street
Block 201 Lot 25

Present: Mr. & Ms. Wolfmeyer – Applicant

Ms. Magdziak – Attorney

Mr. Scialla – Architect

Ms. Magdziak explained that the application is to demolish a single car garage and replace with a new two car garage that is approximately 528 sq. ft. Ms. Magdziak stated that the Wolfmeyer's back out onto West Main Street which can be difficult and unsafe, which is the reasoning for the proposed turnaround area in the driveway. Ms. Magdziak stated that the property is in the Historic District and the Wolfmeyer's received approval from the Historic Preservation Commission. Ms. Magdziak explained that they are seeking a variance for side yard setback. Ms. Magdziak stated that they received the Board Engineer that states the measurement of the 3 feet is to the wall of the structure which it is.

Mr. & Ms. Wolfmeyer and Mr. Scialla were sworn in.

Mr. Scialla stated that he reviewed Mr. Ferriero's report concerning the overhang of the building and are holding to the 2-foot existing setback of the existing garage to the new garage by shifting the garage over. Mr. Scialla stated the additional coverage has not yet been calculated but will be less than 1000 sq. ft. Mr. Scialla explained that when adding the new garage covering and the new driveway and backup space coverage it comes to approximately 975sq ft. and once the existing garage and driveway are deducted, the coverage will be well below the 1000sq. ft. Mr. Ritger asked that the calculations be submitted on the drawing. Mr. Germinario stated that adding the calculations to the drawing will be a condition of approval. Mr. Scialla explained the location of the property and the existing conditions that were submitted to the Board. Mr. Germinario questioned if one of the arguments would be the location of the existing driveway and that the new garage cannot be moved more into the interior of the lot otherwise the driveway would need to be ripped up. Mr. Scialla stated that this was correct and that in do that would also increase coverage. Mr. Scialla described the proposed new garage plans that were submitted to the Board and explained that the design is consistent with the Historic District. Ms. Magdziak asked Mr. Scialla if this application was approved by the Historic Preservation Commission. Mr. Scialla stated that it was approved. Ms. Magdziak asked Mr. Scialla if one of the reasons for the HPC approval was because of the design of the overhangs and roof line. Mr. Scialla confirmed that it was. Mr. Quamme questioned if there will be a concrete walkway to the man door on the right side of the garage. Mr. Scialla stated that presently it is open space and is not proposed. Ms. Magdziak asked Mr. Scialla if the proposed garage was one story. Mr. Scialla stated that it is only one story, and the height of the building is shown on the plans. Mr. Germinario asked if the height was compliant with accessory structures and Mr. Scialla stated that it is. Mr. Germinario stated that if there was approval given, it could be for a C (1) case in terms of the extreme narrowness of the lot and need to maintain a usable backyard between the house and the proposed garage. Mr. Germinario stated that this can also be a C (2) because the alternative would be ripping up a large part of the existing driveway and increasing impervious coverage. Ms. Magdziak stated that the general welfare and safety is also reasoning for a C (2).

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

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

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Mr. Bradley, Ms. Garbacz, and Mr. Pace

Opposed:

Abstain:

The motion carried.

JLUB #05-22

James Molnar
32 Hilltop Rd.
Block 2001 Lot 3

Present: Mr. Molnar – Applicant

Mr. Molnar was sworn in.

Mr. Molnar asked if the overhang is the point in which the side yard setback is determined. Mr. Quamme stated that it was based on the definition. Mr. Molnar stated that he has 3-foot overhangs all around the house and the variance that he is requesting is within the same footprint. Mr. Ritger stated that if the overhang is in the side yard setback, that makes it a preexisting non-conforming condition and if that is the case and you are making a modification you would need a variance. Mr. Germinario stated that if you are putting additional mass into the side yard setback you would need a variance. Mr. Molnar stated that the new addition is conforming. Mr. Molnar explained that with the 3-foot overhang the foundation is sitting almost 3 feet conforming and is keeping the same foundation line just coming forward with less of an overhang. Mr. Ritger stated that looking at the plans and even if the proposed addition in the front aligned with the 2-car garage would still be in the side yard setback. Mr. Germinario stated that the northern section of the addition is new building footprint and is within the setback so even though it's not any more or may be less than the existing, the proposed plan adds new structure into the setback. Mr. Molnar stated that right now the structure is 23.7' off to a 3' overhang and the proposed structure with a 1' overhang so that would make it 26'-27' off the setback. Mr. Ritger stated that the setback is 25' and the existing is at 23.7' which is non-compliant and anything that you do to the house that is an addition would need a variance. Mr. Germinario explained that if there is no additional building mass, horizontally or vertically, built into the setback, a variance would not be needed. Mr. Germinario asked if the proposed addition is going under that existing overhang. Mr. Molnar stated that the whole roof is coming off and will be keeping with the foundation line. Mr. Ritger asked if the non-conformity is being removed from the existing house and Mr. Molnar agreed that it was. Mr. Molnar had the Board reference the pictures of the existing house that is in that application. Mr. Sprandel asked if Mr. Molar explained to zoning about the roof overhang. Mr. Molnar stated that he did not. Mr. Germinario stated that based on Mr. Molnar's testimony the proposed will not be 24.2' because the overhang is coming off. Mr. Germinario asked the Board Secretary to communicate with the Zoning Officer that the Board finds that with the removal of the existing roof that the setback would not require a variance. Mr. Germinario stated that the Zoning Officer had no way of knowing at the time about the roof overhang and based on the information he was given did not make an error. The Board has determined that there is nothing needed to come before the Board.

RESOLUTIONS**JLUB #09-21**

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

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

Roll Call:

In Favor: Ms. Bushman, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Garbacz, and Mr. Pace.

Opposed:

Abstain: Mayor Glassner, Mr. Smith, and Mr. Bradley

The motion carried. The resolution follows.

BOROUGH OF MENDHAM JOINT LAND USE BOARD**RESOLUTION OF MEMORIALIZATION**

Decided: February 15, 2022

Memorialized: April 19, 2022

IN THE MATTER OF MATTHEW & SAMANTHA TUOHY**"C" VARIANCE APPLICATION**

BLOCK 1901, LOT 20.01

APPLICATION NO. JLUB #09-21

WHEREAS, Matthew & Samantha Tuohy (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 6/29/21; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 2/15/22; 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 45,002 sq. ft. located in the 1 Acre Residential Zone. The property is improved with a two-story dwelling with a rear wooden deck, and it has no existing zoning non-conformities. An existing pedestrian dirt path traverses the northeast corner of the property.

2. The improvements to the subject property for which the Variance relief is sought comprise construction in the rear yard of a 750 sq. pool and spa, partially surrounded by a 662 sq. ft. patio, a 2 ft. retaining wall with stairs, and a 4 ft. enclosure fence. The Applicant proposes to relocate the pedestrian path along the westerly property line of adjoining Lot 20. The complete improvements will result in an increase of lot coverage to approximately 9,805 sq. ft. (21.92%), where 8,200 sq. ft. (18.22%) is existing and 8,784 sq. ft. (19.51%) is permitted.

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

- Pool Grading Plan, revised through 1/7/22, prepared by Mark J. Mantyla, PE, PLS
- Landscape Plan, dated 11/22/21

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

- Land Development Application, dated 6/29/21, prepared by Hilary P. Ulz, Esq.
- Memorandum in Support of Application, dated 6/29/21, by Hilary P. Ulz, Esq.
- Subdivision approval resolutions, dated 6/9/77 and 7/14/77
- Checklist
- Certificate of Paid Taxes/Sewer fees, dated 6/29/21
- Zoning Officer's Denial Letter, dated 2/17/21
- Site Inspection Form, dated 6/29/21, prepared by Hilary P. Ulz, Esq.
- Certified Property Owners List

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 7/30/21, 9/20/21, 2/2/22

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

- Zoning Officer Denial Letter, dated 2/17/21

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

- A-1 Colorized Landscape Plan, revised 2/7/22
- A-2 Photo of Dirt Path

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

Mark Mantyla, PE

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

Applicants contend that the pool/spa improvements are in character with the surrounding properties, where the average pool size is 813 sq. ft. In order to become more compliant, the size proposed in their zoning permit application has been reduced. The property itself has a topography with a grade change of more than 15 feet sloping downward from the northeast rear corner of the property to the northwest corner. This downward sloping topography in the rear yard limits the useable area of the rear yard as well as necessitates the need for retaining walls and steps to access different levels of the property safely.

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

By reason of the topography and existing structures of the subject property, the strict application of the Ordinance with respect to lot coverage 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 following purposes of the Municipal Land Use Law and the Borough of Mendham Land Use Ordinance would be advanced by granting the Variance so as to allow the requested deviation from the Ordinance Section with respect to lot coverage: The improvements proposed by this application advance the purposes of zoning in that the proposal creates an enhancement to an established, permitted use and the promotion of a desirable visual environment N.J.S.A. 40:55D-2i. The proposal therefore advances the intent of the zoning ordinance and master plan.

The detriments associated with the deviation are considered minimal because stormwater drainage is proposed and will be appropriately managed, and the proposal is consistent with the character of homes in the neighborhood.

Therefore, 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(1) and 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. Revised calculation of the proposed lot coverage shall be submitted and approved by the Board Engineer, and the plans shall be revised accordingly.

2. The note on the plan regarding re-routing the existing path shall be removed.

3. The location of the existing septic system shall be staked out prior to construction to ensure the 50' setback to the drywell is maintained.

4. The overflow pipe from the drywell must be backfilled with clayey material within 50' of the septic system.

5. The stone around the drywell shall be 2½" clean stone.

6. The corporate seal shall be removed from the Landscape Plan to be submitted for signature.

7. The proposed landscaping appears to be in direct conflict with the location of the drywell and the overflow pipe. The drainage improvements shall be plotted on the landscaping plan and the conflicts resolved.

8. Approval from the Morris County Soil Conservation District is required.

9. 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.

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

11. 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.

12. 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 February 15, 2022.

Lisa Smith
Board Secretary

DISCUSSION ITEMS

Mayor Glassner indicated that there will be a cleanup at the newly acquired property behind the Methodist Church .

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Smith, seconded by Mr. Egerter. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 9:35PM. The next meeting of the Board will be held on Tuesday, May 17, 2022 at 7:30 PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator