

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Thursday, March 21, 2023
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

ROLL CALL

Mayor Glassner – Present	Mr. Egerter – Present
Ms. Bushman – Present	Ms. Garbacz – Present
Councilman Andrew – Present	Mr. Molnar – Alternate 1 - Present
Mr. Ritger – Present	Mr. Kay- Alternate 2- Present
Mr. Smith – Present	Mr. Barker – Alternate 3 - Present
Mr. Sprandel – Present	Mr. Pace – Alternate 4 – Present
Mr. D’Urso– Present	

Also Present: Mr. Ferriero – Board Engineer
Mr. Germinario – Board Attorney
Ms. Caldwell- Dykstra - Board Planner

APPROVAL OF MINUTES

Mr. Ritger noted that on the first page of the minutes under resolutions change Ortiz to Weijlard in the first sentence.

Motion by Mr. Smith, seconded by Mr. Molnar and unanimously carried by voice vote to adopt the Minutes of the February 23, 2023 Joint Land Use Board Meeting, as revised.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Andrew, Mr. Ritger, Mr. Smith, Mr. D’Urso, Mr. Egerter, Mr. Molnar, and Mr. Barker

Opposed:

Abstain: Mr. Sprandel, Ms. Garbacz, Mr. Kay, and Mr. Pace

Motion Carried

Chairman Ritger stated that the Accordia application will not be heard at this meeting and that it will be heard at the April 18, 2023 meeting that will be held at the Hilltop Elementary School cafeteria and no further notice is needed.

PUBLIC COMMENT

Chairman Ritger opened the meeting to the public for questions and comments on items not included on the agenda or any application pending before the Board. Mr. Lupo, 17 Dean Rd, questioned the traffic pattern change that was published and asked if the Planning Board had anything to do with it. Mayor Glassner explained that the press release that was put out by the County was an error. The press release was changed to the Borough Council approved participating in a study. Counties were allowed to submit 2 locations for study only. Morris County selected from the Cold Hill traffic light to the High School to be studied for pedestrian access.

There being no further comments, the public session was closed.

RESOLUTIONS

27-22 Velez-shed
7 Oak Forest Lane
Block 2401 Lot 31.04

Present: Mr. Bergman – Attorney

Mr. Germinario summarized the Velez application and the conditions outlined in the resolution. Mayor Glassner made a motion to memorialize the resolution and Mr. D’Urso seconded.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Andrew, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. D’Urso, Mr. Egerter, Mr. Molnar, and Mr. Barker

Opposed:

Abstain: Ms. Garbacz, Mr. Kay, and Mr. Pace

Motion carried. The resolution follows.

BOROUGH OF MENDHAM JOINT LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

*Decided: February 23, 2023
Memorialized: March 21, 2023*

*IN THE MATTER OF PAUL VELEZ
"C" VARIANCE APPLICATION
BLOCK 2401, LOT 31.04
APPLICATION NO. JLUB #27-22*

WHEREAS, Paul Velez (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 12/5/22; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 2/23/23; 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 5.096 acres located at 7 Oak Forest Lane in the 5-Acre Residential Zone. The property is developed with a two-story frame dwelling, a detached garage, in-ground swimming pool and associated accessory structures. By Resolution memorialized 9/20/22, (the "2022 Resolution"), the Board approved variance relief to construct a 49' x 79.5' (3,896 sq. ft.) sports court, surrounded by a fence not to exceed 63" in height. The improvements will increase the lot coverage from 11.9% (26,415 sq. ft.) to 13.19% (29,279 sq. ft.), where the permitted maximum is 10% (22,198 sq. ft.). To mitigate the additional lot coverage, an additional dry well was required to be installed to accept the runoff from the roof leaders of the detached garage.

2. The Applicant requests a variance to permit an 8'x10' prefabricated shed to be placed on the Property within the fencing of the sport court for storage of equipment to be utilized in the use of the sport court by Applicant's family. The placement of the prefabricated shed on the Property will increase the lot coverage calculation by 80 sq. ft. from the previously approved 29,279 sq. ft. to 29,359 sq. ft., resulting in lot coverage increase of .04% from 13.19% requiring a "C" variance. The Board Engineer has indicated that the existing drywell design is sufficient to handle the increased impervious coverage associated with the shed.

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

Building Permit Plot Plan with Variances #7 Oak Forest Lane, prepared by Matthew Wilder, PE, consisting of one sheet, dated 4/19/21, revised to 4/15/22

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

Land Development Application, dated 12/5/22, prepared by Paul Velez
Application Rider
Land Use Board Resolution memorialized 9/20/22
Checklist
Certificate of Paid Taxes/Sewer fees, dated 11/18/22
Site Inspection Form, dated 12/5/22, prepared by Paul Velez
Certified Property Owners List
Zoning Officer's Denial Letter, dated 9/28/22

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 2/8/23

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

John Zaragoza, Fire Marshal, dated 2/2/23

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

A-1 Proposed type of shed

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

Paul Velez, Applicant

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

Due to a miscommunication with the Zoning Officer, Applicant did not think the shed required a variance. It was later determined that, due to the small increase in lot coverage, variance relief was required.

10. 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 proposed trench drain surrounding the sports court will adequately offset the increased impervious coverage, and that the new dry well for garage runoff will provide a public benefit by reducing runoff below current conditions and promoting groundwater recharge. The impacts of the increase in lot coverage are negligible.

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.

11. In summary, the Board hereby grants a total of one "C" variance in connection with this application.

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.

No lighting will be installed in connection with the shed, nor shall the shed height exceed 10 ft.

All conditions of the Board's 2022 Resolution remain in effect.

3. 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.

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

5. 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.

6. 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 2/29/23.

Lisa Smith
Board Secretary

DISCUSSION ITEMS

The Board discussed and agreed to the following meeting date corrections.

1. Previously advertised meeting of June 21, 2023 will be changed to Tuesday, June 20, 2023
2. Previously advertised meeting of July 20, 2023 will be changed to Tuesday, July 18, 2023

Motion by Ms. Bushman, seconded by Mr. Smith. On a voice vote, all were in favor of approving the change in meeting dates.

The motion carried.

COMPLETENESS

23-22 V-Fee Mendham Apartments, LLC
84-86-88 East Main St
Block 801 Lot 20

Present: Mr. Miller – Attorney

Mr. Ritger informed the public that during the completeness portion of the meeting there is no public comment. Mr. Germinario explained that the application's completeness is based on a checklist and the Board merely determining whether all the checklist items have been satisfied and once found complete would go to a public hearing on the merits. Mr. Germinario stated that this application would not be going to a public hearing tonight. Mr. Germinario explained that the Joint Land Use Board combined the functions of the Planning Board and the Board of Adjustment. In the Planning Board mode, the Mayor (Class 1) and the Councilman (Class 3) are voting members but when dealing with D variances the Board becomes the Board of Adjustment and the Class 1 and 3 members are not able to sit on those applications. Mr. Germinario stated that the Board's professionals have identified 2 potential D variances, a D1 and D3 variance so the jurisdiction of the Board at this time will be the Board of Adjustment.

Mr. D'Urso recused himself.

Mr. Germinario stated that the Board's professionals are recommending that the application be found incomplete because the applicant has not applied for the 2 D variances that the professionals have identified.

Ms. Caldwell stated that it has been determined that there is a D1 use variance because the climate-controlled vehicle storage that is being proposed is not permitted use in the zone. Ms. Caldwell stated that the wireless tower on the site which is closer than 250' of a residential site created the other D variance needed. Ms. Caldwell explained that the applicant was asked to amend their application, but they have not. Mr. Germinario advised the applicant's council that if they wish they can reserve the right to contest the applicability of either of both variances so they are not prejudicing themselves in making the application but to complete the checklist requirement they must submit the application.

Mr. Miller would like to reserve the right to contest the determination of the Board and stated that there have been discussions as far as the D variance relief. Mr. Miller stated that in his opinion the application could be deemed complete and if during the hearing D variances are needed, the applicant will notice accordingly. Mr. Miller noted that they reserve the right to contest the determination of the Board, should the Board deem the application incomplete.

Mr. Germinario stated that the preliminary determination has been made by the Board's professionals that these 2 D variances are required, therefore from a checklist standpoint an application for these variances must be submitted in order to be complete and you may do so reserving the right to argue that those variances aren't required. Since the Board's professionals determined the D variances are needed a new application must be submitted in order to get to the jurisdiction point where the Board can hear the application. Mr. Miller asked if an amended application is required. Ms. Smith stated that there is a separate checklist for a D variance. Mr. Miller asked if that would be the only thing open. Ms. Smith stated that there are also fees involved. Mr. Ferriero stated that the application could be deemed complete with a couple of waivers that were noted in his report, but the major issue came up when additional variances were needed that were not in the original application. Mr. Miller asked if another completeness would be needed. Mr. Germinario stated that the completeness and the start of the hearing could be scheduled for the same meeting. Mr. Miller asked how to notice since it is uncertain as to how many variances are required. Mr. Germinario suggested adding the words "If required."

Motion by Mr. Smith, seconded by Mr. Egarter and unanimously carried to deem the application incomplete.

Roll Call:

In Favor: Ms. Bushman, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. Egarter, Ms. Garbacz, Mr. Molnar, Mr. Kay, Mr. Barker, and Mr. Pace.

Opposed:

Abstain: Mayor Glassner, Councilman Andrew, and Mr. D'Urso

The motion carried.

DISCUSSION ITEMS

Mr. Ritger asked if those who sign in will speak in the order they signed in. Ms. Smith stated that those who want to speak can raise their hand.

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Ms. Bushman, seconded by Mr. Smith. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 8:01PM. The next scheduled regular meeting of the Joint Land Use Board is Tuesday, April 18, 2023 at 7:30PM in the Hilltop Elementary School Cafeteria, 12 Hilltop Road, Mendham, NJ.

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator

