

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, June 18, 2024- 7:30PM
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	Mr. Egerter – Present
Ms. Bushman – Present	Ms. Garbacz – Present
Councilman Sullivan – Absent	Mr. Molnar –Present
Mr. Smith – Present	Ms. Traut – Alternate 1 -Present
Mr. Sprandel – Absent	Mr. Kay- Alternate 2- Present
Mr. D’Urso– Present	Mr. Barker – Alternate 3 - Absent
	Mr. Pace – Alternate 4 – Absent

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

APPROVAL OF MINUTES

Motion by Mr. Smith, seconded by Mr. Egerter and unanimously carried by voice vote to adopt the minutes of the May 21, 2024, Joint Land Use Board Regular Meeting, as written.

Roll Call:

In Favor: Mr. Smith, Mr. D’Urso, Mr. Egerter, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain: Mayor Glassner, Ms. Bushman and Ms. Garbacz.

Motion Carried

PUBLIC COMMENT

Chairman D’Urso opened the meeting to the public for questions and comments on items not included on the agenda or any pending applications.

Frank Lupo, 17 Dean Rd. commented on Mr. Eisenstein being hired as the board consultant. Mr. D’Urso explained that the comment is regarding a pending application and cannot be discussed. Mr. Germinario agreed that the comment was related to a pending application. Mr. Lupo asked when the time would be to comment on the resolution to appoint Mr. Eisenstein and Mr. Germinario explained hiring of consultants is not subject to public comment and is the Board’s decision.

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

RESOLUTION

06-24 Ortiz
53 East Main Street
Blk 1501 Lot 24

Mr. Germinario summarized the Ortiz application, and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. Egerter seconded.

Roll Call:

In Favor: Mr. Smith, Mr. D'Urso, Mr. Egerter, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain: Mayor Glassner, Ms. Bushman and Ms. Garbacz.

Motion Carried

The resolution follows.

BOROUGH OF MENDHAM JOINT LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

Decided: May 21, 2024

Memorialized: June 18, 2024

**IN THE MATTER OF JESSE & KATHRYN ORTIZ
"C" VARIANCE APPLICATION
BLOCK 1501, LOT 24
APPLICATION NO. JLUB #06-24**

WHEREAS, Jesse & Kathryn Ortiz (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 3/15/24; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 5/21/24; 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 22,655 sq. ft. (.52 acres) located at 53 East Main Street in the $\frac{1}{4}$ acre residential zone. The property is improved with a 1½-story frame dwelling with paver patio and driveway and an existing approximately 15' x 15' detached frame garage situated 2 feet from the easterly property line.

2. The improvements to the subject property for which the Variance relief is sought comprise construction of a new 24' x 28' garage at the site of the existing garage. The new garage would be less than 2 feet from the easterly property line, depending on the roof/gutter overhand. By Resolution memorialized 2/23/23, the Board approved "C" variances for accessory building side yard setback, accessory building height, accessory building size, and lot coverage. However, due to an error in Applicant's submissions, the granted lot coverage variance was insufficient, and additional relief is now requested.

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

- Boundary Survey and Proposed Garage Plan, consisting of one sheet, revised through 2/6/24, prepared by John S. Simmons, LS
- Architectural Plans, consisting of 11 sheets dated 5/30/23, prepared by James Koppenhauer, R.A.
- Drywell Design, consisting of one sheet, dated 5/24/23, prepared by Alfred A. Stewart, PE, PLS

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

- Land Development Application, dated 3/15/24, prepared by Kathryn Ortiz
- Property Owner's Consent, dated 3/15/24, prepared by Kathryn Ortiz
- Site Inspection Form, dated 3/15/24, prepared by Kathryn Ortiz

- Checklist
- Sewer Connection Application, dated 3/15/24
- Property Owner's List
- Tax Certificate, undated
- Zoning Officer's denial letter, undated

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 4/29/24

6. In the course of the public hearings, the Applicant was represented by John Mills, Esq.

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

The testimony indicated that the existing garage is in poor condition and unsightly. Moreover, it does not provide adequate storage in view of the absence of a basement in the dwelling. The larger 2-story garage would accommodate two vehicles and yard equipment storage on the upper level. Other than electric, no utilities will be installed. Increasing the setback of the new garage relative to the old footprint is impractical due to the location of a large tree and the existing alignment of the driveway. The proposed footprint and height of the new garage are consistent with those of other detached garages in the neighborhood. Regarding the garage height, it's only non-conforming relative to the setback and is less than the generally permitted accessory height (21' vs. 35'). Regarding footprint area, the new garage will be set back approximately 135 ft. from the street. With respect to lot coverage, the existing paver patio and driveway create an existing lot coverage already close to the permitted limit of 20%.

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

A variance was previously granted for accessory building for side yard setback, pursuant to Ordinance §215-28, Schedule II, which provides for a minimum 10-foot setback, while Applicant proposed less than 2 feet.

A variance was previously granted for accessory building height within 12 feet of a property lot line, pursuant to Ordinance §215-29A(1), which prohibits over one story, while Applicant proposed two stories.

A variance was previously granted from Ordinance §215-31.1E, for accessory building footprint area greater than 50% of the principal building footprint area.

A new variance is required, pursuant to Ordinance §215-31.1H, which provides for a maximum lot average 20%, while Applicant proposes 24.8%.

By reason of the existing configuration of the subject property and its driveway, the strict application of Ordinance Section 215-31.1H 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 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 Ordinance Sections 215-31.1H, insofar as the appearance and functionality of the subject property would be improved by upgrading the existing garage, which is unsightly and lacking adequate storage space.

The detriments associated with the deviation are considered minimal because the new garage will be compatible with those in surrounding properties and will be set back far enough from the street not to be visually obtrusive.

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.

9. 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(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. The conditions of the Resolution memorialized 2/23/23 remain in effect.*
- 2. 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.*
- 3. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.*
- 4. 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.*
- 5. 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 5/21/24.

*Lisa Smith
Board Secretary*

COMPLETENESS

07-24 Thomas Veman
465 Cherry Lane
Blk 2401 Lot 28

Mr. Ferriero explained that the application for 465 Cherry Lane is for a steep slope variance. Mr. Ferriero stated that he had written a letter dated May 13, 2024, that noted the application was incomplete because the certificate certifying paid taxes was missing and now has been provided. Mr. Ferriero noted that based on that he recommends deeming the application complete. Mr. D'Urso asked about Mr. Ferriero's June 13th letter and Mr. Ferriero stated that the Board is only working on completeness and the June letter would be discussed during the hearing.

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

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. D'Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain:

Motion Carried

HEARING

07-24 Thomas Veman
 465 Cherry Lane
 Blk 2401 Lot 28
 Present: Mr. Hefele – Attorney

Mr. Germinario reviewed the public notice and found it to be adequate to proceed.

Mr. Hefele explained that they received the June 13, 2024, letter from Mr. Ferriero after the application was already noticed for the June 18, 2024 meeting. Mr. Hefele requested the opportunity to make the modifications to the application and have the hearing carried to the July 16, 2024, meeting with no further notice required.

RESOLUTION**ADOPT RESOLUTION APPOINTING DR. EISENSTEIN AS BOARD CONSULTANT FOR FCC COMPLIANCE**

Mr. Germinario explained the resolution to appoint Dr. Eisenstein and his qualifications. Mr. Germinario noted that the fees for this consultant would be paid out of the applicant's escrow. Mr. D'Urso noted that in Dr. Eisenstein's proposal it states that Dr. Eisenstein has not worked for any provider and so he feels he is an independent individual. Mayor Glassner asked who Dr. Eisenstein was representing the last time he did a review. Mr. Germinario stated that he was a consultant for the Board. Mr. Molnar asked if Dr. Eisenstein was being hired by the applicant. Mr. Ferriero stated that he is being hired by the Board. Ms. Bushman asked what the selection process was for this. Mr. Germinario stated that he recommended the consultant and noted that Dr. Eisenstein is independent and has reviewed his credentials. Ms. Bushman noted that the experts are paid out of escrow accounts by the applicants and not from taxpayers' dollars. Mr. Egerter that he was the consultant when the cell tower was originally approved and knows the area. Mr. Germinario stated that this is why he was proposing him as the consultant.

Motion by Mr. Smith, seconded by Mr. Molnar, to adopt the resolution appointing Dr. Eisenstein as Board consultant for FCC compliance.

Roll Call:

In Favor: Mr. Smith, Mr. D'Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain: Mayor Glassner and Ms. Bushman

Motion Carried

The resolution follows.

*RESOLUTION
 OF
 THE MENDHAM BOROUGH JOINT LAND USE BOARD*

WHEREAS, the Joint Land Use Board (hereinafter the "Board") has determined that there exists a need for the services of an expert consultant in matters involving compliance with FCC standards for radio frequency emissions from wireless telecommunications facilities (hereinafter, the "Services"); and

WHEREAS, the Local Public Contracts Law permits the engagement and the appointment of firms and/or individuals for such "professional services" without competitive bids due to the specialized nature of their area of expertise; and

WHEREAS, the Board has considered the attached Proposal, dated May 21, 2024, submitted by BRUCE A. EISENSTEIN, Ph.D., P.E. (hereinafter, the "Consultant"); and

WHEREAS, the Board has determined that the Consultant is well qualified to perform the Services; and

WHEREAS, the Consultant's fees and related expenses, as set forth in the attached Proposal, will be paid from escrow funds of applications for which the Services are needed; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40:A-11 et. seq.) requires that the resolution authorizing the award of contracts for "Professional Services" without competitive bids and the contract itself must be made available for public inspection.

NOW, THEREFORE, BE IT RESOLVED on this 21st day of May, 2024, by the Joint Land Use Board of the Borough of Mendham, Morris County, New Jersey that:
Bruce A. Eisenstein, Ph.D., P.E. is retained, on an as-needed basis, as an outside consultant to assist the Board in connection with matters involving compliance with FCC standards for radio frequency emissions from wireless telecommunications facilities.

A copy of this Resolution shall be published in the Observer-Tribune as required by law within ten (10) days of its passage.

DATED: June 18, 2024

Richard Smith, Vice Chairman

ATTEST:

Lisa Smith, Board Secretary

Mayor Glassner recused herself due to the D variance.

EXECUTIVE SESSION- RESOLUTION

- a. "Litigation, Negotiations and Attorney-Client Privilege

Motion by Mr. Smith and seconded by Mr. Egerter to enter executive session.

Roll Call:

In Favor: Ms. Bushman, Mr. Smith, Mr. D'Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain:

Motion Carried

The Board entered executive session at 7:56pm

Motion by Mr. Smith and seconded by Mr. Molnar to return to the regular meeting at 8:35pm.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Mr. Smith, Mr. D’Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain:

Motion Carried

Mr. D’Urso stated that after reviewing the proposed consent order between V-Fee Mendham Apartments and the Joint Land Use Board a motion to hold a public hearing for the proposed consent order.

Motion made by Ms. Bushman, seconded by Mr. Molnar to adopt the resolution to have a public hearing regarding the consent order.

Roll Call:

In Favor: Ms. Bushman, Mr. Smith, Mr. D’Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain:

Motion Carried

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

WHEREAS, the Joint Land Use Board (the “Board”) is a party defendant, along with the Borough of Mendham (the “Borough”), in litigation in the Superior Court, Law Division, Docket No. MRS-L-1319-23, in which V-Fee Mendham Apartments, LLC, is the plaintiff (the “V-Fee Litigation”); and

WHEREAS, V-Fee has filed an application with the Board seeking preliminary and final major site plan approval with bulk variance relief (the “Application”) to permit construction of a project containing an inclusionary, multi-family residential component (the “Project”) on property designated as Block 801, Lot 20, of the Borough’s tax map (the “Property”); and

WHEREAS, pursuant to N.J.S.A. 40:55D-70(b), the Board has interpreted Ordinance §§215-12.6B(7) and (8) to require a variance under N.J.S.A. 40:55D-70d(3) (the “d(3) variance”), because the Project calls for construction of 75 residential dwellings within 250 feet of the existing cell tower on the Property; and

WHEREAS, in the V-Fee Litigation, V-Fee has challenged the Board’s aforesaid requirement of the d(3) variance in connection with the Application, on the basis that said requirement is inconsistent with its affordable housing Settlement Agreement with the Borough of December 23, 2019, and

WHEREAS, the Borough Mayor and Council has approved Resolution #80-2024, authorizing the Municipal Attorney to enter into a Consent Order to settle the V-Fee Litigation on the basis of the Board’s withdrawing the d(3) variance requirement and instead requiring V-Fee to submit to the Board competent documentary proof of the cell tower’s operation in compliance with applicable FCC and NJDEP radio frequency exposure limits with respect to future residential occupants of the Project; and

WHEREAS, the Board Attorney and the Municipal Attorney have negotiated with counsel for V-Fee a draft Consent Order, a copy of which is attached hereto, which would effectuate the purposes of Resolution #80-2024, and the Board Attorney has reviewed the draft Consent Order with the Board in closed session on June 18, 2024.

NOW, THEREFORE, BE IT RESOLVED, that the Joint Land Use Board will schedule a public hearing, on notice advertised to the public, to consider the settlement of the V-Fee Litigation on the basis of the draft Consent Order, and following such hearing, will publicly vote thereon and memorialize its decision.

DATED: June 18, 2024

JOINT LAND USE BOARD
OF THE BOROUGH OF MENDHAM

Richard Smith, Vice Chairman

ATTEST:

Lisa Smith, Board Secretary

ADJOURNMENT

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

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator