

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
September 5, 2012
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Seavey at 7:40 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 12, 2012 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Mr. Palestina – Present
Mr. Peck – Absent
Mr. Peralta – Present
Mr. Schumacher – Absent
Mr. Seavey – Present

Mr. Smith – Present
Mr. Ritger, - Present
Mr. McCarthy, Alt I – Absent
Mr. Germinario, Alt II – Present

Also Present:

Mr. Germinario, Esq., Attorney
Mr. Hansen, Engineer

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APPROVAL OF MINUTES

Mr. Smith made a motion to approve the minutes of the August 7, 2012 regular meeting of the Board as amended with clarification on the correct roll call for the Ingersoll application. Mr. Ritger seconded. All members being in favor, the minutes were approved.

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PUBLIC COMMENT

Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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Duffy, Kevin & Hillary – Hardship Variance
Block 1901, Lot 6, 4 Prospect St. (Historic District)

Present: Kevin Duffy, Applicant
Nick Bensley, Architect for the Applicant

Exhibits: A-1: First Floor Floor Plan
A-2: Letter dated January 31, 2001 from Rosalie Lauerman to Robert Snedaker,
Zoning Officer
O-1: Photos 1-6 taken approximately August by Mr. LaRosa

Mr. Germinario, Esq. advised that the notices had been reviewed at the August 7, 2012 meeting, and that the Board has jurisdiction to proceed.

Mr. Bensley provided his credentials and was accepted as an expert witness by the Board. He began his presentation by entering Exhibit A-1, a first floor plan that had not been previously provided to the Board. He explained that the home is a two family residence on an oversized lot. It has an in-law suite. The home is non-conforming for building coverage which will increase slightly with the addition, the side yard setback for an accessory structure that they are looking to maintain to relocate the shed, and accessory structure in the front yard that they want to maintain.

Upon reviewing the floor plan and a memo from Ms. Rosalie Lauerman to Robert Snedaker, Zoning Officer of Mendham Borough dated January 31, 2001, Mr. Germinario, Esq. questioned the in-law suite that is usually permitted under Use Variance by the Board of Adjustment. He was concerned that the application had not referenced the two kitchens, bathrooms and bedroom identified in the memo entered. It had not been identified as a two-family.

Responding to Mr. Hansen on whether it had legally been approved, Mr. Duffy stated that the only documentation he has is the letter that has been submitted. Mr. Duffy stated that when he had purchased the home, it had been advertised as a two family home by his realtor and the seller's attorney. His grandmother in-law now resides there.

Mr. Germinario, Esq. continued that the letter is not sufficient proof. The Board would need to know if there is documentation making it legal or whether it had been grandfathered. If the applicant were going forward with the addition to the two-family home even if it were grandfathered, they would require a Use Variance, and notices were not made. The process would be much more complex. If he would go forward as a single family home, he would not be able to use the home with the in-law suite.

Mr. Seavey explained that the issue is important as a two-family and in-law suite would be presented differently. In the case of the in-law suite, if it were approved as a use variance, some conditions would be applied. There is the possibility it was created prior to zoning, but that would need to be shown. It also could have been approved by the Borough, but proof was needed.

After further discussion and investigation and review of the Borough Code, Mr. Germinario, Esq. noted that in Article V, Section 215.15 of the Borough Code there is reference to the fact that a two family home is permitted in the ¼ acre zone providing the lot is a half acre or more. In this case the property is slightly over 1 acre. It does not specifically deal with an in-law suite, but there are two independent living units. It is permitted based on the ordinance, and the application could proceed.

Mr. Bensley proceeded with his testimony stating that they are requesting zoning relief for building coverage, an accessory structure in the front yard and a sideyard setback of 3 ft. for the accessory structure. He referred to the site plan pointing out the existing structure as located 290 ft. back from the road, 130 ft. from the side neighbor and 150 ft. from the rear. All the property around the rear of the home is densely wooded, and not much of the neighbors is seen from the rear. There is a slight slope down.

In terms of the home, the in-law suite is 1182 sq. ft, and is one story. There is a common entry. The primary residence of the home is 3900 sq. ft and includes four bedrooms, 3.5 baths and a two car garage. There is no mudroom and the kitchen is small. The entry from the garage is used as the primary entrance, and there is no coverage from bad weather. There is a porch off to the side which is a play area for the children. The plan to provide more functional space includes taking down the existing garage, and creating a new garage that is moved forward with doors facing the street. There is an access issue to the garage as the driveway narrows. By moving the garage forward, a mudroom can be created. The kitchen is expanded, and a family area is added. There will be a playroom over the new garage. The net increase in building coverage is 224 sq. ft.

Mr. Bensley described the elevations indicating that they are trying to respect the existing character, but enhance it. They are creating a covered pathway to the mudroom. The current home has horizontal shiplap and an asphalt grey roof. They will be matched as well as the windows. The new fireplace will also match the existing brick. The garage will have carriage doors. There is a shared driveway, and it will remain gravel.

Addressing the shed, Mr. Bensley stated that it is not on a foundation. It is located on skids. If left in its current location, there would be limited accessibility to the back yard. As accessory structures need to be 10 ft. from the principal structure, they would like to move it forward. It would be adjacent to the existing accessory structure on the neighbor's property. In this case, the front yard is the rear yard as all activity takes place in the front yard. They are planning on putting in more landscaping.

Mr. Germinario, Esq. raised the concern of the Historic Preservation Commission that in its new location, the shed would block the neighbor's garage window. Mr. Bensley stated that the neighbor's garage has two windows. They would not be blocking the primary window, but they are located in front of the window in the shed in the rear.

Mr. Ritger pointed out that there is a stockade fence that runs along the property line, and questioned whether it would block the neighbor's window. Mr. Bensley stated that part of it would be blocked.

Mr. Bensley explained the hardships. They have an oversized lot, but they are getting penalized for it. If the lot was split in half with one house in the front, and another in the rear, both lots could conform. Secondly, 80% of the residence is comprised of first floor. It is not big volumetrically as it is spread out on the property. In terms of the shed, they are handicapped by the fact that the bulk of the property is front yard and the shed should be accessible where the contents are needed.

Chair opened the meeting to Board questions. Addressing Mr. Ritger's question on how the lot size was determined, Mr. Hansen stated that it was taken from the survey completed by a licensed surveyor. The calculations for the coverage are done to the right of way. In this case they have been completed correctly.

Responding to Mr. Germinario, Esq. on why there is a hardship associated with the larger lot, Mr. Bensley stated there is a sliding scale to determine imperious coverage and the percentage decreases as the size of the lot gets larger.

Chair opened the meeting to questions by the public.

Mr. Jeff LaRosa, 6 Prospect St. asked a series of questions on the size and the location of the shed and fence. Mr. Bensley addressed his questions stating that the shed is about 10 ft. tall. The stockade fence is 6 ft. tall. There is a slope and a swale, and there would be a retaining wall for the shed to rest on in the rear to make it level. They did not consider other locations as the applicant wanted to put the shed at the location they chose. They did not look at the area where there is a large tree.

There being no additional questions by the public, the public session was closed.

Responding to Mr. Seavey on the hardship associated with the side yard setback, Mr. Bensley stated that they could place it on the left or the right side. On the left side there is limited space, and they did not want to put it right on top of the driveway. As there is only 16 ft. from the driveway to the property line, they wanted to push it back so that it was not too close to the driveway. Mr. Duffy stated that the shed was at its current location when he purchased the home, and he would like it near the driveway as there is some heavy equipment stored.

Addressing Mr. Seavey on whether the shed could be placed anywhere else on the lot to satisfy the neighbor and the setback, Mr. Duffy stated that he did not want to place it near the neighbor, but he did not want to remove trees. The proposed location hides it from the streetscape. When he originally spoke with his neighbor, he thought the neighbor was okay with moving it back from the main window. He could move it out about 5 ft. which would provide a greater separation.

Board discussed another option with the applicant related to moving the shed closer to an existing tree, but it would not be feasible.

Chair Seavey stated that the applicant had two issues. The first, that there was no hardship, and the second that the neighbor does not support it. Mr. Duffy suggested moving his shed further back to edge of the neighbor's garage, but then he would need to move his compost pile in front of the shed. Chair opened the meeting to public comment.

Mr. Jeff LaRosa, 6 Prospect St. stated that the only problem he has with the application is the proposed location of the shed. It does not meet a hardship standard. It is his understanding that there will be a retaining wall under the rear of the shed making it 12 ft. in height. There is also only an 8 ft. separation between the proposed shed and his garage. The applicant does not want it 8 ft. from their new garage, but they would like to place it 8 ft. from his garage. He has several concerns which he has mentioned to the applicant:

1. Lighting: He entered 6 photos that showed the proposed shed location in relationship to his garage and home. He has one window in his garage on the side

- facing his home and two windows on the side that would face the Duffy property. His garage faces north and the shed would block the light that moves east to south.
2. Moisture: He has had to redo the garage for the second time given the moisture. There are pine trees to the rear that block some sun, and the shed would only make the issue worse.
 3. Aesthetics: If the shed is located where proposed and they landscape, the landscaping will block the front window. If the shed is placed where they propose, he would be looking at it from his patio.
 4. Drainage: If the roof of the shed slopes toward their property, there would be a drainage concern.

Mr. LaRosa continued that Mr. Duffy could move the compost pile to make space for the shed. He also has a long yard and could locate it anywhere on the other side of the driveway. He cannot meet the hardship standard. Mr. Duffy has an acre and he has a half acre. Putting two buildings so close does not make sense.

After some discussion with the applicant, Mr. Bensley approached the Board showing them a proposed new location on the survey. They could move the shed more to the rear and reduce the size of the compost pile. The rear of the shed would align with the southeast corner of property and there would be about a 5 ft. setback. He could move it back so it aligns with the back of the neighbor property and the compost pile could be moved forward.

Chair Seavey stated that he understood the argument that if the property were two lots, it would be more beneficial for the impervious coverage, and that in this case the volume of the home is based on 1-story which could be beneficial to the neighbors. That configuration, however, leads to a larger footprint. In terms of the shed, he believed that the neighbor would be trading a shed next to his garage for a compost pile if it were moved up. There are other options on his property. The neighbor does not want to look at it, and he probably does not want to look at it either. The Board does not govern mulch piles.

Mr. Germinario made a motion to approve the amended application as proposed with the shed relocated to align with the southeast corner of the property. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 5 to 1 to 0 as follows:

In Favor: Palestina, Peralta, Ritger, Smith, Germinario
 Opposed: Seavey
 Abstentions: None

The motion carried. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the October 2, 2012 regular meeting of the Board.

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Ingersoll, Deborah – Use and Hardship Variances
 Block 305, Lot 11, 63 West Main St. (Historic District)

Chair announced that the resolution associated with this application would be carried to the Wednesday, September 12, 2012 special meeting of the Board.

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Zenjon Enterprises, LLC – Amended Preliminary and Amended Final Major Site Plan
 Block 1501, Lot 11, 25 East Main St. (Historic District)

Chair announced that the application would be carried and heard at the special meeting scheduled for Wednesday, September 12, 2012.

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Steffens, B. & Murray, N. – Hardship Variances
 Block 705, Lot 12, 68 Dean Road

Chair announced that at the request of the applicant, the application would be carried to the Tuesday, October 2, 2012 regular meeting of the Board.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 9:35 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, October 2, 2012, at 7:30 p.m. at the Garabrant Center, 4 Wilson St. There will be a special meeting of the Board held on Wednesday, September 12, 2012 at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary