

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
December 7, 2010
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Vice Chair Seavey at 7:30 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 on January 14, 2010 and the Daily Record on January 11, 2010 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 – Present
Mr. Seavey - Present

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

Also Present:

Mr. MacDonald, Attorney
Mr. Hansen, Engineer

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PUBLIC COMMENT

Vice 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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APPROVAL OF MINUTES

On motion by Mr. Smith, second by Mr. Ritger and all members being in favor, the minutes of the November 3, 2010 regular meeting of the Board were approved as written.

HEARING OF CASES

Peter deNeufville – Use Variance
Block 1801, Lot 37, Thomas Road

Present: Peter deNeufville, Applicant
John deNeufville, Father of Applicant
James Thomas, Interested Party
Edward Thomas, Interested Party
Thomas Malman, Esq., Attorney for the Applicant
Mark Hewitt, Architect

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction to proceed.

Mr. Hansen led the Board through the completeness items as identified in the Ferriero letter dated December 16, 2010. After presentation of the details, Mr. McCarthy made a motion to deem the application complete. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The application was deemed complete. The hearing would commence.

Mr. Malman, Esq. explained that the applicant would like to relocate an existing historic home, originally on the Thomas property, to his property. The plan is to annex it to a guest house. This would increase the size of an existing non-conforming structure. The home is currently sitting on a trailer on the Thomas property.

Mr. Mark Hewitt, Architect, presented his credentials to the Board and was accepted as a witness. Mr. Hewitt testified that he was charged with developing a design for the guest house that would utilize and save the Pitney-Thomas Farmhouse, an 18th century structure. He presented a Powerpoint presentation to the Board that outlined the history of the farmhouse, the various locations on which it had been situated on the Thomas property, the historical relevance of the architecture, and its importance to the family.

Continuing with emphasis on the guest house, Mr. Hewitt stated that it would be used mainly for family. It is slightly visible from the Thomas property. The guest house is currently 900 sq. ft and the farmhouse would be attached to it forming an "L" shape. Mr. John deNeufville clarified that it had originally been built after WWII for a veteran who worked on the property.

In terms of the variance, Mr. Hewitt testified that moving the farmhouse would further the Historic Preservation Element of the Borough Master Plan. They would be giving an historic structure a new use. The structure is associated with two families with a long Mendham Borough history. The historic land use pattern of the property with several buildings would be continued. A large portion of the land is conservation land. Mr. Malman, Esq. added that there is no negative impact to the neighbors. The existing and the new structure are visible through a screen of trees. It is the guest house and not the main house.

Responding to Mr. Peralta, Mr. Hewitt stated that 100% of the frame of the farmhouse is being preserved. They will need to replace some clapboard and roofing. They are maintaining the existing slate roof. Walls will be moved inside, but the form and structure of the two building will remain intact.

Addressing Mr. Ritger's concern about the low headroom in the building, Mr. Hewitt advised that it was being maintained. In the 18th Century large families lived in structures of these dimensions. Mr. Jim Thomas added that he had used the farmhouse as the kitchen wing of his home.

Mr. Malman, Esq. summarized that the applicant was seeking a D2 variance for the expansion of a non-conforming use. The structure is accessory to the main residence. It is for single family use. The Land Use Law permits the preservation of historic structures. The home is not on the Register, but has unique ties to Mendham. In terms of the positive criteria, there is no negative impact as the structure is located on 40 plus acres. There is also a large conservation easement on the property. In terms of the negative criteria, it is only visible to the Thomas family and they do not have a problem.

Responding to Mr. Seavey's request for clarification on the nature and use of all the buildings on the property, Mr. Hewitt stated that the property is 40 plus acres. There is a conservation area. In the residential zone of the property there is a swimming pool, changing structure, a two-story 1940s house and a small garage. The buildings are not seen from Thomas Road. There is also a guest cottage and a driveway. There is a garage across the driveway that will be removed. Mr. Peter deNeufville added that there is a barn off the main driveway.

Responding to Mr. Ritger on whether they had plans to build a new garage, Mr. Peter deNeufville responded that they did not have plans at this time. He also clarified for Mr. Palestina that the cottage would be used on weekends by brothers and friends.

Mr. Smith questioned Mr. Hansen on the zoning stipulation that did not permit an accessory structure to be greater than 50% of the principal structure. Mr. Hansen advised that the cottage will be greater in size than the principal structure, and that an additional variance would be required. Responding to Mr. Palestina on the fact that the main house will continue to be smaller

even if Mr. deNeufville would add an addition, Mr. MacDonald, Esq. advised that, if that were the case, then the previously granted variance would be diminished.

Addressing Mr. Peralta on whether there would be any change to the status of the property on which the farmhouse was originally located, Mr. MacDonald, Esq. did not perceive any modification to the zoning status. Mr. Malman, Esq. clarified with Mr. Edward Thomas that removal of the kitchen wing and subsequent rebuilding was part of the plans submitted for the Main House on the Thomas property.

In final discussions, Mr. Seavey requested that there be a limitation on the guest cottage for family or a worker. It could not be a rental home, which could change the nature of the property and the intensity of the area. Mr. Hansen reviewed the technical aspects of the Ferriero letter dated November 16, 2010 and indicated that the following items would still be needed:

(1)building height, (2)Soil Erosion and Grading Plan, (3)compliance with Stormwater and Septic Regulations,(4)a wetlands map, and (5)identification of any trees coming down. He recommended that the foundation location survey could be waived. The applicant had no objections and indicated that they were already working with the Bernards Health Department.

Mr. MacDonald, Esq. clarified the setback lines for the conservation easement as measured from the property lines, and questioned a small triangle that appeared to identified as part of the residential zone. Mr. Edward deNeufville advised that the land had previously been sent aside as a prospective tennis court.

Chair Seavey concluded that all properties are unique, and that the Borough should look at all of them as such. He was concerned that while there is currently family continuity, there could be a future sale and it would not be used by the family. Overall it is very valuable to maintain the historic value.

Chair opened the meeting to the public. There being no additional public present, the public session was closed.

Mr. Palestina made a motion to approve a D2 variance for the expansion of a pre-existing, non-conforming residence. There would also be an ancillary C variance for the accessory structure that would be greater than 50% of the size of the main structure. All the conditions such as engineering and restriction to family/worker use previously discussed would apply. The foundation location survey would be waived.

Mr. Ritger seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution for the January 4, 2011 regular meeting of the Board.

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Mt. Hermon Hills Company, LLC – Hardship Variance: **Resolution**
 Block 1801, Lot 36.03, 4 Thomas Road

Mr. MacDonald, Esq. presented the following draft resolution memorializing action taken at the November 3, 2010 meeting to the Board:

**RESOLUTION OF FINDINGS AND CONCLUSIONS
 BOARD OF ADJUSTMENT
 BOROUGH OF MENDHAM**

WHEREAS, Mt. Hermon Hills Company, LLC, has applied to the Board of Adjustment of the Borough of Mendham for permission to retain a driveway within the easterly side yard of a single family dwellings on Lot 36.03 in Block 1801 on the Tax Map of the Borough of Mendham, which premises are in the 5 Acre Residence Zone, and the subject dwelling is also designated as 4 Thomas Road; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and after providing the adjoining property owners and the general public with the

opportunity to be heard at a Public Hearing on November 3, 2010 has made the following factual findings:

1. The applicant purchased the subject property in January 2005 from Mr. John P. deNeufville. The subject property is located in the southerly portion of the Borough and it is accessed by Thomas Road which extends in a westerly direction off of Hilltop Road.
2. As referenced in the application forms and the Exhibits, the subject property is 10.6112 acres with 823.75 feet of frontage along the northerly side of Thomas Road. The lot extends to a depth in excess of 610 feet. The existing single family dwelling is located on the westerly half of the lot.
3. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a copy of a Survey of this property dated 7/22/09 prepared by Yannaccone, Villa & Aldrich, LLC and signed on 7/28/2010 by Christopher J. Aldrich, NJ Licensed Land Surveyor.
4. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a 3 page Driveway Variance Plan of the subject property dated 8/23/2010, prepared by Yannaccone, Villa & Aldrich, LLC. The 3 pages of the Variance Plan depict details related to the 5 Acre Zone requirements, the environmental constraints related to soils and slopes, the site layout, grading and details related to the As Built driveway compared to the location of the originally proposed driveway.
5. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a copy of a Wetlands Map of this property dated 1/7/2000. Testimony at the hearing indicated that there are no wetlands on the subject property.
6. As reflected on the Survey and the Variance Plans, there is a single family dwelling on this 10.6112 acre lot. As testified to by a member of the applicant LLC, there are also certain accessory structures that are used as a "workshop" and a "cabana".
7. The primary focus of this application relates to the new driveway that was constructed from Thomas Road to the newly renovated single family dwelling. The driveway was originally approved at a location inside of the easterly side setback of 40 feet as required by the Zoning Ordinance. The actual driveway, as installed, and as proposed, enters the lot at its southeast corner and comes within 4 feet of the sideline before it gradually curves back toward the middle of the lot.
8. The current application requests a C (2) and/or a C (1) variance to permit the driveway to remain in its nonconforming location. The R-5 Zone, in effect, requires the driveway to be at least 40 feet from the sideline.
9. The Board reviewed the Exhibits and the October 6, 2010 Report from the Borough Engineer regarding impervious coverage, storm water collection, construction access and sight distances on Thomas Road.
10. The testimony on behalf of the applicant addressed the questions and clarifications requested by the Borough Engineer. The applicant also explained that the primary driving force behind the variance request relates to applicant's builder attempting to avoid the removal of numerous mature trees that would have been required to locate the driveway in its original complying location.
11. The Board noted the decrease in impervious coverage effectuated by the revised driveway layout and the lack of any foreseeable impact on the adjoining property.
12. No members of the public participated in this application hearing in favor of or, in objection to, the applicant's plans.

WHEREAS, the Board has determined that the C(2)/C(1)-Variance relief related to the proposed alternate driveway location requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. The Board is satisfied from the Evidence presented at the Public Hearing that the applicant has demonstrated that there is an unusual circumstance related to the pre existing dwelling and the design need to access it from the west side of the lot. Based upon the Evidence presented, the Board is satisfied that the strict enforcement of the Ordinance would result in an unnecessary and undue removal of existing trees with no appreciable benefit to any surrounding property, nor anyone traveling along Thomas Road. The Board finds the alternate driveway location will have the positive benefit of preserving the afore referenced trees
2. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed driveway location will not result in any significant detrimental impact to the surrounding properties, nor to the public good. The Board is satisfied that the proposed driveway will not have any adverse storm water management impacts and there will be no unusual impacts on any of the surrounding residences.
3. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed driveway will not result in any significant detrimental impact to the Borough Zone Plan for this 5 Acre Residence Zone due to the fact that the proposed

driveway and the related improvements will be in keeping with the neighborhood characteristics and the characteristics of the larger residences in the Borough's 5 Acre Zones. The proposed driveway location will not result in an appearance of overcrowding in the factual setting of this property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 7th day of December, 2010, that the application of Mt. Hermon Hills Company, LLC which was approved on November 3, 2010, be memorialized herein, subject however, to the following conditions:

1. The subject driveway approved herein shall be constructed in conformance with the testimony and in conformance with the Exhibits that were provided to the Board with the application materials and described during the Public Hearing.
2. The approvals herein are subject to all relevant Federal, State, County, and Municipal regulations including payment of all: relevant taxes, application fees, review fees and inspection fees; and, submittal of an updated driveway "AS BUILT" Survey, if additional work is performed on the new driveway.
3. The Variance relief granted herein shall expire if not utilized within one year from the date of this Memorializing Resolution, in the event that additional work on the driveway is still required.

Mr. Peralta made a motion to approve the resolution. Mr. Ritger seconded.

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

In Favor: Peralta, Smith, Ritger, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. The resolution was approved.

OTHER BUSINESS

Mr. MacDonald, Esq. updated the Board on the Omnipoint complaint. A meeting was held on December 3, 2010 with Judge Bonzonelis for the scheduling of the briefs and hearing. The motion was approved for Mr. Isko's intervention. The target date for the oral argument is May 13, 2011. Documentation from the application will need to be provided to the court by January 31, 2011.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Seavey adjourned the meeting at 9:05 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, January 4, 2011 at 7:30 p.m. This will be the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary