

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
May 4, 2010
Garabrant Center, 4 Wilson Street, 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.

ATTENDANCE

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

Mr. Smith - Present
Mr. Santo - Absent
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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HEARING OF CASES

Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless – Use and Other required variances: Continuation

Block 801, Lot 20, Kings Shopping Center

Mr. Seavey announced that the application would be carried to the Wednesday, June 2, 2010 meeting of the Board. Mr. MacDonald, Esq. clarified with the Board that they would not require the services of Dr. Eisenstein at that time. Ms. Callahan advised that Mr. Humbert might also not be able to attend, but he would send Mr. Drenzler.

Mr. MacDonald, Esq. confirmed for the public that the application would be carried to the Wednesday, June 2, 2010 regular meeting of the Board and that no further public notices with the exception of the customary agenda publication would be made.

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PEGNET, LLC, - Use Variance and Site Plan Waiver : Completeness
Block 305, Lot 1, 61 West Main Street

Vice Chair Seavey announced that the applicant had withdrawn their application.

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Thomas, Edward M. & Tamara G. – Use Variance: **Resolution**
Block 1801, Lot 38, 298 Thomas Road

Present: William Bergman, Esq.

Mr. MacDonald, Esq. presented the following resolution memorializing action take at the April 14, 2010 special meeting of the Board:

RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
BOROUGH OF MENDHAM

WHEREAS, EDWARD M. THOMAS and TAMARA G. THOMAS, have applied to the Board of Adjustment of the Borough of Mendham for permission to construct an addition to the westerly of two existing single family dwellings on Lot 38 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 298 Thomas Road; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicants and after providing the adjoining property owners and the general public with the opportunity to be heard at a Public Hearing on April 14, 2010 has made the following factual findings:

1. The applicants purchased the subject property in December 2009 from Mr. Thomas' mother and father according to the application. 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 form, this property was the subject of a use variance and minor subdivision application before the Board of Adjustment in 2008. At that time this Board approved a subdivision that reconfigured the Thomas property and created Lot 38.01 which was conveyed to the Borough of Mendham and the Schiff Natural Lands Trust for the purpose of permanent preservation. Lot 38 which is the subject of this application was reconfigured in 2008 to be 16.652 acres. The applicants do not propose any change to that lot area by way of this application.
3. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a copy of a Survey of this property dated 12/3/09 prepared by Yannaccone, Villa & Aldrich, LLC and signed on 1/7/2010 by Christopher J. Aldrich, NJ Licensed Land Surveyor.
4. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a 5 page Variance Plan of the Thomas Property dated 1/5/2010, prepared by Yannaccone, Villa & Aldrich, LLC. The 5 pages of the Variance Plan depict details related to the 5 Acre Zone requirements, the existing conditions, the site layout, grading and slope analysis and construction details.
5. The applicants presented, and the Board reviewed with the assistance of the Borough Engineer, a 4 page set of architectural elevations prepared by Passacantando Architects dated 10/30/2009. The 4 pages of the architectural elevations depict the proposed additions to the main dwelling, its associated garage and what has been previously known as the "ice house".
6. As reflected on the Survey and the Variance Plans, there are two (2) single family dwellings on this 16.652 acre lot. As testified to by these applicants and at the time of the 2008 proceedings, all of the principal and accessory structures on the property have existed for a considerable period of time and the property has been in the Thomas family for multiple generations.
7. The primary focus of this application relates to improvements, renovations and enlargement of the primary dwelling as depicted in the above noted Exhibits and as described by the witnesses during the Public Hearing. Renovations and enhancements are also proposed to some of the accessory buildings associated with the primary dwelling. No renovations or enlargements are proposed for the secondary dwelling on the lot or its accessory structures, which are located easterly of the primary dwelling.
8. The proposed renovations do not require any new setback, bulk or coverage variances, i.e. "C-variances". Lot frontage, lot width and pool related setbacks were reviewed and granted in 2008. The current application requires a D(2) variance related to the enlargement of one of the two single family dwellings on the lot. This enlargement is interpreted to be an expansion of a pre existing non conforming use.
9. The Board reviewed the Exhibits and the March 1, 2010 Report from the Borough Health Consultant regarding the acceptability of the current Septic System since the proposed renovations will not change the number of bedrooms in the subject dwelling. There are five (5) bedrooms now and no new bedrooms are proposed.
10. Prior to the actual Public Hearing, the Board received and reviewed the Borough Engineer's Report of February 22, 2010 and in consultation with the Engineer, the

Board deemed the application complete and waived certain completeness details based upon the Borough Engineer's comments.

11. The Board received and reviewed the March 1, 2010 Report from the Borough Fire Code Official. The Board, the applicants and applicants' counsel discussed the Fire Code Official's strong recommendation that the house be "sprinklered". The applicants expressed their reservations about performing this work and the reasons related to same including the cost and the particulars of their existing dwelling. Applicants' counsel explained that since the improvements discussed in the Report are not required by Code at this time, his clients respectfully decline to install them as part of this project.
12. The Board also reviewed and considered the Technical Review items set forth in the Borough Engineer's February 22, 2010 Report. The data, revisions and requirements set forth in the items set forth therein are incorporated herein as Conditions of Approval. The Board notes that the applicants' engineering expert confirmed that his client could and would adhere to these items.
13. The Board received and reviewed with the assistance of the Borough Engineer the January 12, 2010 Report from Environmental Technology, Inc. Based upon the advice of the Borough Engineer, the Board accepts the conclusions set forth in the Report concerning the Freshwater Wetlands Protection Act and the Flood Hazard Area Control Act. The Board notes that a Permit by Rule notification related to activities within the 300 Riparian Zone will be required.
14. No members of the public participated in this application hearing in favor of or, in objection to, the applicants' plans.

WHEREAS, the Board has determined that the D(2)-Variance relief related to the proposed renovation, enlargement and enhancement of the principal of two pre existing dwellings on this 16.652 acre lot requested by the applicants 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 applicants have demonstrated that there is an unusual circumstance related to the multi generational existence of the two dwelling structures, their layout on the Lot and the layout of the numerous accessory structures related to the two single family dwellings. Based upon the Evidence presented, the Board is satisfied that the strict enforcement of the Ordinance to limit a reasonable expansion and upgrade of the primary dwelling would result in an unnecessary and undue hardship to the owners and it would unreasonably restrict the use of this oversized parcel by precluding an appropriately sized addition to the house and some of the accessory structures, for which this unique property is found to be particularly suitable.
2. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed additions will not result in any significant detrimental impact to the surrounding properties, nor to the public good. The Board is satisfied that the proposed building enlargement and coverage will not have any adverse storm water management impacts and there will be no unusual impacts on any of the surrounding residences upon compliance with the agreed upon recommendations of the Borough Engineer.
3. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed additions 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 home 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.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 4th day of May, 2010, that the application of EDWARD M. THOMAS and TAMARA G. THOMAS which was approved on April 14, 2010, be memorialized herein, subject however, to the following conditions:

1. The Additions to the principal and accessory structures 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, subject to the amendments and revisions requested by the Borough Engineer.
2. The approvals herein are subject to all relevant Federal, State, County, and Municipal regulations including: Notification for a Flood Hazard Control Permit By Rule to the NJ DEP; preparation and submission of a Grading and Soil Erosion Control Plan; compliance with the municipal storm water ordinance, if applicable; payment of all: relevant taxes, application fees, review fees and inspection fees; submittal of a Footing and Foundation "AS BUILT" Survey prior to the issuance of a Framing Permit; and, all Plan corrections and/or revisions required by the Borough Engineer's February 22, 2010 Report.

3. The Variance relief granted herein shall expire if not utilized within one year from the date of this Memorializing Resolution.
4. The approvals granted herein are also specifically conditioned upon there being no change to the use of either of the two (2) existing dwellings a Single Family Dwellings.

Mr. Bergman, Esq. acknowledged that he had read the resolution and was in agreement. Mr. MacDonald, Esq. reported that Mr. Hansen had reviewed the resolution and was also in agreement.

ROLL CALL: The result of the roll call of eligible voters was 6 to 0 as follows:

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

The motion carried. The resolution was approved.

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OTHER BUSINESS

Mr. Peck raised a question related to whether there is a mechanism through which the Board of Adjustment can give applicants some indication of whether they would consider a use for a specific location. He cited the example of Pegnet, who had been interested in obtaining an indication before going through the expense of site plans and engineering.

Mr. MacDonald, Esq. advised that the issue does come up from time to time. It becomes more of an issue when there is an applicant contemplating a smaller commercial activity. In the case of the Pegnet application, the Engineer recommended that more detail than submitted would be required for the Board to make a decision. Some municipalities have started having TCCs, but it has historically not been done due to the quasi judicial nature of the Board of Adjustment.

Responding to Mr. Ritger on whether the original resolution for the property in question could have been worded differently to allow for more flexibility for a new business, Mr. MacDonald, Esq. explained that there were several changes of use in the building. It had been a restaurant and an office, before it became a lawyer's office. The building is the only non-residential use in the area. An applicant has a right to bifurcate an application to deal first with the use portion if they so choose. At least with that approach, one can determine whether or not there are major issues or whether any of the public has any concerns.

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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 8:00 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, June 2, 2010 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
Recording Secretary