

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
REGULAR MEETING  
December 5, 2017**

**Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Seavey, Chair, at 7:35PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**OPENING STATEMENT**

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on January 12, 2017 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ROLL CALL**

Mr. Palestina - Absent  
Mr. Reilly - Absent  
Mr. Seavey - Present  
Mr. Smith - Present

Mr. Peralta - Present  
Mr. Ritger - Absent  
Mr. Sisson - Absent

Alternate:

Ms. Cass, Alternate I- Present

Also Present:

Mr. Thomas Germanario, Borough Attorney

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**MINUTES**

Mr. Seavey asked for comments on the minutes of the regular meeting of November 9, 2017. There being none, Mr. Seavey made a motion to approve the minutes, and Mr. Smith seconded. On a voice vote the minutes were approved by the Board.

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**PUBLIC COMMENT**

Mr. Seavey opened the meeting for public comment on anything not on the agenda. There being none the public comment session was closed.

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**RESOLUTIONS**

**BOA #8-17**

**Brett and Patricia Comstock**

6 Bockoven Road  
Block 801, Lot 20

Bulk Variance: Front Yard Setback, Lot Coverage and Building Coverage

Mr. Germanario reviewed the draft resolution and the conditions with which the variance was granted. Mr. Smith made a motion to approve the resolution and Mr. Seavey seconded.

ROLL CALL: The result of the roll call was 4 to 0 as follows:

In favor: Cass, Peralta, Smith, Seavey  
 Opposed: None  
 Abstain: None

The motion passed. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: November 9, 2017**  
**Memorialized: December 5, 2017**

**IN THE MATTER OF BRETT & PATRICIA COMSTOCK**  
**"C" VARIANCE APPLICATION**  
**BLOCK 303, LOT 12**

**WHEREAS**, Brett and Patricia Comstock (hereinafter the "Applicants") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variances") by application dated 9/16/17; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 11/9/17; 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 approximately 0.5 acres located in the ½-Acre Residential Zone, with an existing two-story dwelling and associated improvements. The existing building and lot coverages both exceed the requirements of the ½-acre zone.

2. The improvements to the subject property for which the Variance relief is sought comprises a front porch addition. The project proposes a 46.1' separation distance from the front property line, which represents an encroachment into the 50' front yard setback. The existing front yard setback is 50.6'. The proposed improvements will result in an increase in building coverage. Lot coverage will remain unchanged.

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

- Architectural Plans prepared by Mendham Design Architects, revised 8/24/17, consisting of three (3) sheets

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

- Application for Hearing, with Application Checklist and Site Inspection Form
- Zoning Officer Denial, dated 7/19/17
- Survey prepared by DP Sweeney & Associates, dated 6/19/14, (unsigned and unsealed)

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:

John Hansen, PE, dated 10/25/17

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

Craig Bellamy, Fire Official, dated 10/3/17

7. In the course of the public hearings, no exhibits were marked as part of the hearing record.

8. In the course of the public hearings, the Applicants represented themselves, and the Applicants presented the testimony of the following witnesses, which testimony is part of the hearing record:

Dan Encin, architect

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

Patricia Comstock testified that the primary purpose of the porch addition was to improve the appearance of the dwelling. Dan Encin testified that the new porch will extend about 4 feet into the 50-foot front yard setback. He stated that lot coverage would remain unchanged, because 120 sq. ft. of existing patio would be removed to offset the front porch. Building coverage will increase by 158 sq. ft., thereby exceeding the maximum permitted by 47 sq. ft. Mr. Encin testified that the close proximity of the front yard setback to the existing home presents a hardship, and that a public benefit will result from the improved appearance of the house.

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 encroachment of the proposed front porch into the required 50-foot front yard setback requires relief from Ordinance §215-28, while the increase in building coverage requires relief from §215-31.1I. Although the existing lot coverage is nonconforming, since lot coverage is not being increased, no relief is required.

With respect to the setback variance, the Board finds that the 4-foot encroachment is relatively minor and will not adversely affect the appearance of the dwelling from the street. On the contrary, the front porch addition will enhance the home's appearance and will render it more consistent with the design of neighboring homes.

With respect to the building coverage variance, the Board finds that the 47-square foot increase is minimal and will not increase the perceived size of the dwelling, but rather will enhance both its appearance and its compatibility with neighboring homes.

Therefore, the Board concludes that approval of both of the foregoing variances is warranted pursuant to N.J.S.A. 40:55D-70c(1), because the close proximity of the front yard setback line to the existing dwelling and

the pre-existing building coverage present exceptional practical difficulties in terms of improvements to the front façade of the dwelling. The relief is also warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviations from Ordinance requirements 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.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby approve the application and grant the Variances 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 porch shall not be enclosed, nor shall a second story addition be added to the dwelling without further approvals of this Board.
2. The drainage from the roof of the porch shall be tied into the existing roof drainage system in a manner acceptable to the Board Engineer. The architect's plan shall be revised to detail how this connection is proposed.
3. If soil is to be removed from the site, it must be transported and disposed in accordance with all federal, state and local regulations. No soil is to be deposited in Mendham Borough or neighboring municipalities without all proper approvals for the receiving site.
4. Prior to the issuance of any building permits, the Applicant shall submit a resolution compliance package. The package shall include revised plans and documents, and a transmittal letter that explains how and where each condition of the resolution has been addressed.
5. 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.

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

7. 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.

8. 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 Board of Adjustment memorializing the action taken by the Board at its meeting of 11/9/17.

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**BOA #9-17 Dawn and Brian Nutt**  
4 Deerfield Rd  
Block 201, Lot 28  
Bulk Variance – Front Yard Setback

Mr. Germanario reviewed the draft resolution and the conditions with which the variance was granted. Mr. Smith made a motion to approve the resolution and Mr. Seavey seconded.

ROLL CALL: The result of the roll call was 4 to 0 as follows:

In favor: Cass, Peralta, Smith, Seavey  
Opposed: None  
Abstain: None

The motion passed. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT****RESOLUTION OF MEMORIALIZATION**

**Decided: November 9, 2017**

**Memorialized: December 5, 2017**

**IN THE MATTER OF BRIAN AND DAWN NUTT  
"C" VARIANCE APPLICATION  
BLOCK 201, LOT 28**

**WHEREAS**, Brian and Dawn Nutt (hereinafter the "Applicants") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 9/22/17; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 11/9/17; 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 approximately 1.03 acres located in the 1-Acre Residential Zone, with an existing one-story dwelling and associated improvements. The existing dwelling foundation is located 49.97' from the front property line, which does not comply with the minimum 75' front yard setback required by the 1-Acre Zone.

2. The improvements to the subject property for which the Variance relief is sought comprises the construction of a second-floor addition, a garage addition and covered front porch.

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

-Architectural Plans prepared by Mendham Design Architects, revised 8/30/17, consisting of five (5) sheets

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

-Application for Hearing, with Application Checklist and Site Inspection Form

-Survey prepared by KTJ Associates, LLC, Neshanic Station, NJ, dated 4/26/17, (unsigned and unsealed)

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:

John Hansen, PE, dated 10/26/17

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

Craig Bellamy, Fire Official, dated 10/3/17

7. In the course of the public hearings, no exhibits were marked as part of the hearing record.

8. In the course of the public hearings, the Applicants represented themselves, and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Dan Encin, architect

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

The Applicants testified that the additions to the existing ranch home are needed to accommodate their maturing children, and that the expanded dwelling will be more consistent with the character of neighboring



homes. Dan Encin testified that two-thirds of the existing home is within the 75-foot front yard setback, and that most homes in this area are also within the front yard setback, which was changed after these homes were built. A sewer easement in the rear yard of the subject property also forced the building envelope forward toward the street. The front porch addition improves the appearance of the front façade. Therefore, Mr. Encin opined that the variance is justified on the basis of both c(1) hardship and c(2) public benefits.

10. 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 from Ordinance §215-29 is required, because the proposed front porch and second story additions will intensify the existing encroachment into the required 75-foot front yard, and the front porch addition will further encroach by about 2.5 feet.

Because the 75-foot setback line runs through the existing dwelling, the configuration of the property presents exceptional difficulties and imposes an undue hardship if Ordinance requirements are strictly applied. Therefore, relief is warranted pursuant to N.J.S.A. 40:55D-70c(1). Moreover, the Board finds that the proposed improvements will enhance the appearance of the dwelling so that the benefits of the deviation from zone standards outweighs the detriment and justifies relief pursuant to N.J.S.A. 40:55D-70c(2).

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.

**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. If soil is to be removed from the site, it must be transported and disposed in accordance with all federal, state and local regulations. No soil is to be deposited in Mendham Borough or neighboring municipalities without all proper approvals for the receiving site.

2. The existing shed on the property within the sanitary sewer easement shall be relocated outside the easement if it interferes with work that needs to be done within the easement.

3. If the threshold coverage or disturbance limits for the minor development stormwater ordinance are triggered, stormwater management will be required.

4. Prior to the issuance of any building permits, the Applicant shall submit a resolution compliance package. The package shall include revised plans and documents, and a transmittal letter that explains how and where each condition of the resolution has been addressed.

5. 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.

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

7. 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.

8. 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 Board of Adjustment memorializing the action taken by the Board at its meeting of 11/9/17.

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#### **ADJOURNMENT**

With no additional business to come before the Board, Mr. Seavey made a motion to adjourn the meeting at 7.45pm. On a voice vote, the meeting was adjourned.

The next regular and reorganizational meeting of the Board will be held on **Tuesday, January 9, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Carolyn Mazzucco*

Carolyn Mazzucco  
Board Secretary