

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
REGULAR MEETING  
April 3, 2018**

**Phoenix House, 2 West Main Street, Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Seavey, at 7:32PM at the Phoenix House, 2 West Main Street, Mendham, NJ.

**OPENING STATEMENT**

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on February 15, 2018 in accordance with the Open Public Meetings Act and the location change was posted on the bulletin board of the Phoenix House as well as the door of the Garabrant Center.

**ROLL CALL**

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

Mr. Peralta – Absent  
Mr. Ritger – Present  
Mr. Sisson – Absent

Alternate:

Ms. Cass, Alternate I- Present

Also Present:

Mr. Thomas Germanario, Borough Attorney  
Mr. Mark Denisiuk, Borough Engineer

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**PUBLIC COMMENT**

Mr. Seavey opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

Mr. Seavey mentioned that he would be switching the order of the agenda so that the applicant could be heard first.

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**APPLICATIONS**

**BOA #7-17    George and Julianna Korunovski**  
14 Sterling Avenue  
Block 703, Lot 3  
Bulk Variance – Lot Coverage

Present:            Ms. Julianna Korunovski, Applicant

Mr. Denisiuk discussed the waivers recommended for completeness from Mr. Ferriero's letter dated March 21, 2018. However, he recommended that the applicant provide a survey to the Board as a condition of approval and add signature lines to the engineering plans. Mr. Seavey made a motion for completeness of the application, and Mr. Reilly seconded.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith  
Opposed: None  
Abstentions: None

The motion carried.

Mrs. Korunovski was sworn. She explained that they wanted to install a 14' X 30' in-ground pool which would need a variance for impervious coverage, as well as keep their 8' X 10' shed intact in the same location, which would need a variance for side and rear yard setbacks. She explained that the configuration of her property, which has a driveway that extends behind the house due to the rear entrance of the garage, and explained that it was the contributing factor to exceeding the property's impervious coverage. She also mentioned that they shrunk the pool size as much possible and that the pool will be approximately 5 to 5 1/2 feet deep. In regards to the shed, it sits on a bed of gravel and is obscured from the street by a tree. She added that if they moved the shed per the setback requirements it would be in the middle of the property.

Mr. Denisiuk mentioned that the drainage around the pool would be dramatically improved if changed to a perimeter drain around the pool. The Board discussed the engineer's suggestion and decided that the plans should be modified to incorporate a perimeter trench drain. Discussions continued about storm-water runoff, as the Board was concerned that the proposed seepage tank was not large enough. There was also a concern about pool overflows and where the pool would be drained when closing the pool. After much discussion the Board felt the addition of a second 500 gallon seepage tank would be warranted.

The engineer also noted that the plans mentioned a percolation test at the time of excavation, and added that another percolation test could be performed near the seepage tanks prior to issuance of permits. The Board felt that the applicant should return to the Board for further review of storm-water facilities if there isn't adequate percolation. The Board further decided that an existing and as built survey should be required prior to certification of approval.

The Board felt the shed was pre-existing when the Korunovski's purchased the property and due to the size and location of the property, had a negligible impact.

Mr. Seavey made a motion to approve the application with conditions, and Mr. Smith seconded.

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

In favor: Peralta, Reilly, Ritger, Seavey, Sisson, Smith  
Opposed: None  
Abstentions: None

The motion carried.

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**2018 REORGANIZATION – APPOINTMENT OF BOARD PLANNER**

**Appointment of Board Planner:** Mr. Seavey presented the following resolution that was included in the meeting packet:

Mr. Seavey made a motion to approve the resolution, as written, which was seconded by Mr. Smith.

**BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT**

**RESOLUTION**

**WHEREAS**, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Planning Consultant services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

**WHEREAS**, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

**WHEREAS**, J. Caldwell & Associates, LLC, has submitted a proposal indicating that they may provide planning services for 2018 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is one (1) year; and

**WHEREAS**, J. Caldwell & Associates, LLC has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one (1) year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

**WHEREAS**, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

**WHEREAS**, the Board of Adjustment of the Borough of Mendham wishes to retain J. Caldwell & Associates, LLC; and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Jessica Caldwell, PP/AICP of the firm J. Caldwell & Associates, LLC, to serve as Planning Consultant for 2018, at a total cost not to exceed required escrows for 2018; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are

services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

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

In favor: Cass, Palestina, Reilly, Ritger, Seavey, Smith  
Opposed: None  
Abstentions: None

The motion carried. Ms. Mazzucco will make the appropriate public notification.

**RESOLUTIONS**

**BOA #1-18 Robert & Amanda Murray**  
127 Hardscrabble Road  
Block 2401, Lot 28  
Bulk Variance – Front Yard Setback

Mr. Germanario summarized the Murray application and the conditions outlined in the resolution. Mr. Seavey made a motion to memorialize the resolution and Mr. Reilly seconded.

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

In favor: Cass, Palestina, Reilly, Ritger, Seavey, Smith  
Opposed: None  
Abstentions: None

The motion carried. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: March 6, 2018**  
**Memorialized: April 3, 2018**

**IN THE MATTER OF ROBERT AND AMANDA MURRAY**  
**"C" VARIANCE APPLICATION**  
**BLOCK 2401, LOT 14**

**WHEREAS**, Robert and Amanda Murray (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variances pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance relief") by application dated 12/29/17; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/6/18; 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 24,972.3 sf (0.57 acres) located in the 5-Acre Residence Zone and improved with a two-story single family dwelling having a rear wooden deck. The subject property has existing non-conformities for lot area, front yard and side yard setbacks and lot coverage.

2. The improvements to the subject property for which the Variance relief is sought comprises expansion of the existing deck to include a pergola. The expanded deck will encroach on the front and side yards and cause an exceedance of the maximum allowable lot coverage requiring the variance relief.

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

- Architectural Plans, consisting of four sheets, dated 12/26/17, prepared by Daniel A. Encin, architect

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

- Board of Adjustment Application, dated 12/29/17, prepared by Amanda Murray
- Checklist
- Site Inspection Form, dated 12/29/17, prepared by Amanda Murray
- Certificate of Paid Taxes, dated 12/29/17
- GIS map
- Site photos
- Tax map
- Newspaper Notice Affidavit 2/15/18

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, PP, dated 1/29/18

6. 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:

Robert Murray, owner  
Daniel Encin, architect

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

Mr. Encin testified that impervious coverage will increase by 319 sq. ft. to proposed 5107 sq. ft. from existing 4688 sq. ft. (based on lot area measured to the right-of-way line). The existing house is set back 146 ft. from the right-of-way, while the deck addition will be set back 417 ft. from the right-of-way. Much of the existing impervious coverage is due to the turn-around area for cars at the head of the driveway, since there is no garage. The deck will have a hinged skirt to allow access to the underlying septic tank. A 30-foot row of evergreens will be installed to screen the deck and pergola from the view of Lot 13.

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

The Board finds that a hardship exists due to the atypical size and shape of the lot, which causes the entire existing dwelling to be outside the permitted building envelope. Consequently, any additions to the existing dwelling would require setback variances. The exceedance of the impervious coverage limit is minimal and without substantial impact on the appearance of the dwelling from the street or neighboring properties, many of which also have non-conforming lot coverage.

By reason of the size and shape of the subject property, the strict application of Ordinance Sections 215-28 and 215-31.1 would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship upon the Applicant. Therefore, the grant of the Variance relief is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

The following 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 215-28 and 215-31.1: NJSA 40:55D-2i, promotion of a desirable visual environment.

The detriments associated with the deviation are considered minimal because the proposed improvements are minimally visible from the street and neighboring properties.

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.

**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. Applicant may increase the existing lot coverage by up to 350 ft. in order to allow for a walkway.

2. The existing downspout near the deck addition will be relocated and directed away from the house.

3. Revised plans shall note that the deck shall have a hinged skirt to permit access to the underlying septic tank, and that the construction of the deck over the septic tank will require Board of Health approval.

4. A 30-foot row of evergreens 6' to 8' in height shall be installed centered on the sight line from Lot 13. The evergreen species shall be approved by the Board engineer.

5. Only low-voltage lighting shall be used on the deck and pergola. No spotlights shall be used.

6. The side yard setback of the deck shall not exceed 18.5 ft.

7. 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.

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

9. 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.

10. 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 3/6/18.

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**BOA #3-18 Brett and Jamie Ressler**  
73 Mountain Ave  
Block 901, Lot 1  
Bulk Variance - Setbacks and Height

Mr. Germanario summarized the Ressler application and the conditions outlined in the resolution. Mr. Seavey made a motion to memorialize the resolution and Mr. Reilly seconded.

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

In favor: Reilly, Ritger, Seavey, Smith  
Opposed: None  
Abstentions: None

The motion carried. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: March 6, 2018**  
**Memorialized: April 3, 2016**

**IN THE MATTER OF BRETT AND JAMIE RESSLER**  
**"C" VARIANCE APPLICATION**  
**BLOCK 901, LOT 1**

**WHEREAS**, Brett and Jamie Ressler (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 Relief") by application dated 12/28/17; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/6/18; 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 1.468± acres located in the 1-Acre Residence Zone. The existing single-story dwelling lies entirely outside the building envelope and within the front yard.

2. The improvements to the subject property for which the Variance relief is sought comprise a second floor addition with 3 new bedrooms and a bathroom, a kitchen addition of the right side, a covered entry and concrete stoop to replace the existing front stoop, and outdoor condenser unit for central air-conditioning. The existing smaller downstairs bedroom will be converted to a sitting room for the main bedroom, so that there will be a total of four bedrooms. Variance relief is required from §215-28 for front yard setback (75' minimum vs. 17.73' proposed) and side yard setback (25' minimum vs. 9.5' proposed). Variance relief from §215-31.1A is required for building height (35' maximum vs. 35.5' proposed).

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

- Survey consisting of one sheet, prepared by Frank R. DeSantis, P.L.S., dated 10/9/13
- Architectural Plans consisting of four sheets, prepared by Mendham Design Architectures, dated 12/26/17

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

- Board of Adjustment Application, dated 12/20/17

- Application Checklist
- Application for Sanitary Sewer Connection
- Owner's Consent to Filing of Application Form
- Site Inspection Form
- Tax Certification

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, PP, dated 2/19/18

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 2/2/18

7. In the course of the public hearings, the following exhibit was marked and are part of the hearing record:

A-1 Revised site plan sheets A-2 and A-2, revised 3/5/18

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:

Brett Ressler, owner  
Daniel Encin, architect

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

The Resslerers are a young couple planning to start a family, which will require more living space. Mr. Encin testified that the entire house is outside the allowable building envelope, and that the proposed improvements will make the house more consistent with the neighborhood.

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 Board finds that the two setback variances are justified on the basis of hardship. Due to the extremely elongated shape of the subject property, the existing dwelling is entirely outside the building envelope and any type of addition would trigger front and side yard setback variances. The minimal .5' building height variance is justified because the benefits of the proposed improvements, in terms of streetscape appearance and functionality of the dwelling, outweigh the minimal detriments.

By reason of the unusual shape of the subject property, the strict application of Ordinance Section 215-28 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 following 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 Section 215-31.1A: NJSA 40:55D-2i, promotion of a desirable visual environment.

The detriments associated with the deviation are considered minimal because they are consistent with the character of the neighboring dwellings.

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.

**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. Revised plans consistent with Exhibit A-1 shall be submitted.

2. In the zoning table on Sheet A-1, the allowable building height shall be corrected to 35 feet.

3. 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.

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

5. 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.

6. 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 3/6/18.

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**BOA #2-18 Simple Coffee Mendham, LLC**  
15 West Main Street  
Block 301, Lot 39  
SPW - Expansion

Mr. Germanario summarized the Simple Coffee expansion application and the conditions outlined in the resolution, pointing out a few typographical errors to be corrected. Mr. Seavey made a motion to memorialize the resolution and Mr. Smith seconded.

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

In favor: Reilly, Ritger, Seavey, Smith  
Opposed: None  
Abstentions: None

The motion carried. The resolution follows.

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Decided: March 6, 2018**  
**Memorialized: April 3, 2018**

**IN THE MATTER OF SIMPLE COFFEE MENDHAM LLC  
MINOR SITE PLAN AND "C" VARIANCE APPLICATION  
BLOCK 301, LOT 39**

**WHEREAS**, Simple Coffee Mendham LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a minor site plan approval and variances pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance Relief") by application dated 2/1/18; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/6/18; 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 0.8089 acres located in the Historic Business Zone and the Historic Overlay Zone. The property is

currently the site of a three-story historic building comprising three first floor businesses and two second floor apartments. The rear of the property currently contains two one-story business buildings, which are to be replaced by three new townhouse units pursuant to the Board's site plan approval Resolution of 3/1/16. The Board's Resolution also approved "C" variances for parking (34 spaces required, 29 proposed) and lot coverage (65% maximum, 66.8% proposed), as well as "D" variances from residential density and residential conditional use standards.

By Resolution of 11/19/15, the Planning Board granted site plan waiver approval for the retail tenancy of Applicant Simple Coffee LLC in 405 sf of the first floor of the historic building. The use was described in the Planning Board Resolution as a "retail shop for the sale of coffee, baked goods and packaged snacks ... other than the preparation of coffee, there will be no cooking, baking or food preparation on site ... there will be no tables, chairs or counters for consumption of coffee within the retail establishment ... geared entirely to take out by customers." The Planning Board found that the 29 shared parking spaces on the site were sufficient for Applicant's needs.

2. Simple Coffee is proposing to lease an additional 324 sf of the interior space within the building. No exterior changes to the building or the site are proposed. The additional interior space, which will be taken from the adjacent tenant space without increasing the size of the building, will be used for a small seating area that will accommodate three tables and six chairs, a new ADA accessible bathroom (replacing an existing bathroom) and a small storage area. The proposed improvements are intended to allow for a better customer experience without altering the nature or intensity of the business.

The proposed improvements require the following relief from ordinance standards:

- "C" variance from §215-19A, which limits lot coverage to not more than 65%, while 66% is proposed.
- "C" variance from §§215-18c(1) and 215-19D(3), which require 34 on-site parking spaces, while 29 are proposed.
- Design waiver from §195-45c(2)(b), which requires parking stall dimensions of 10x20', while 9x18' and 10x18' stalls are proposed.

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

- Revised Site Plan Exhibits, consisting of 1 sheet, prepared by Craig Villa, PE, dated 2/2/16
- Proposed Floor Plan, consisting of 1 sheet, prepared by Lyons McConnell Architectural Construction, dated 11/10/17

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

- Hearing Application with "Proposal," dated 2/1/18
- Application Checklist
- Application for Sewer Connection, dated 1/18/18
- Owner's Consent, dated 1/12/18
- Tax Certification, dated 12/13/17

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, PP, dated 2/28/18

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 2/16/18

7. In the course of the public hearings, the Applicant was represented by Thomas Malman, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

David Walters, Applicant's co-owner

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

Mr. Walters testified that there will be no changes to the business operations, which will continue to be retail sale of coffee and pre-packaged food.



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

With respect to variance for lot coverage, the Board's Resolution of 3/1/16 granted equivalent relief and the rationale remains the same, since the overall development of the site will reduce lot coverage from 91.5% to proposed 66%.

With respect to the parking variance and design waiver, the equivalent relief was also granted by the Board's Resolution of 3/1/16. The Board agrees with the Planning Board's finding in its 11/19/15 Resolution that, because of this Applicant's early morning peak hours, the proposed 29 stalls shared with the other two businesses will be sufficient.

Therefore, the grant of the Variance Relief 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.

**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(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. Other than preparation of coffee, there shall be no cooking, baking or food preparation on site.
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 Board of Adjustment memorializing the action taken by the Board at its meeting of 3/6/18.

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#### **MINUTES**

Mr. Seavey asked for comments on the minutes of the regular meeting of March 6, 2018. Mr. Smith noted that the last sentence in the Ressler application needed to be corrected to "35.5 feet, a half foot over the permitted height." Mr. Seavey made a motion to approve the revised minutes and Mr. Reilly seconded. On a voice vote the motion carried.

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#### **ADJOURNMENT**

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn at 8:50pm. On a voice vote, all were in favor.

The next meeting of the Board will be held on Tuesday, May 1, 2018 at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Carolyn Mazzucco*

Carolyn Mazzucco  
Board Secretary