

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
July 11, 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 7:30PM 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 - Present
Mr. Ritger – Present
Mr. Sisson – Present

Mr. Peralta – Present
Mr. Seavey – Present
Mr. Smith - Present

Alternates:

Mr. Reilly, Alternate I – Present
Ms. Cass, Alternate II - Present

Also Present:

Mr. John Vitale, Attorney

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MINUTES

Mr. Seavey asked for comments on the minutes of the regular meeting of May 2, 2017. There being none, Mr. Smith made a motion to approve the minutes as submitted, and Mr. Ritger seconded. On a voice vote the minutes were approved by the Board.

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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.

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RESOLUTIONS

BOA #4-17 John & Laura Egerter
9 Knollwood Drive
Block 903 Lot 4
C Variance – Second Floor Addition

Mr. Seavey gave a brief overview of the Resolution and with no comments or concerns on behalf of the Board, Mr. Ritger made a motion to approve the Memorialization of the Resolution and Mr. Reilly seconded.

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

In favor: Cass, Palestina, Reilly, Ritger, Sisson, Smith, Seavey
Opposed: None
Abstain: Peralta

The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: May 2, 2017
Memorialized: July 11, 2017

IN THE MATTER OF JOHN AND LAURA EGETER
"C" VARIANCE APPLICATION
BLOCK 903, LOT 4
APPLICATION NO. BOA #4-17

WHEREAS, John and Laura Egeter (hereinafter the "Applicant") 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 2/24/17; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 5/2/17; 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 0.5073 acres located in the ½-Acre Residence Zone at 9 Knollwood Drive. The subject

property is currently developed with a two-story four-bedroom single family residence and associated improvements. The existing dwelling is non-conforming as to its front yard setback of 33.1 feet (measured from the cantilevered second story), where a minimum 50-foot front yard setback is required in the ½-Acre Residence Zone under Ordinance §215-28 and Schedule II.

2. The improvements to the subject property for which the Variance relief is sought comprise an extension of the second floor by 121 feet over the existing garage to provide for a new Master Suite, comprising a Master Bedroom, Master Bath and walk-in closet. The second-floor addition will be flush with the existing second story and will not encroach further into the front yard. Because the addition will add additional building mass to the existing front yard encroachment, however, it requires a 'C' Variance from Ordinance §215-28/Schedule II.

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

- Site and Architectural Plan, consisting of four (4) sheets, prepared by Mendham Design Architects, dated 1/20/17, with Sheet A-1 revised 5/1/17

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

- Copy of a Survey of Land, Borough of Mendham, Morris County, New Jersey, Tax Lot 4, Block 0903, prepared by Richard F. Smith, Jr. dated 7/25/88
- Copy of the Tax Map of the Borough of Mendham, Sheet 9
- Application for Hearing, Mendham Borough Board of Adjustment, with Application Checklist, Site Inspection Form, Owner's Consent to Filing Application, signed 2/24/17

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:

John Hansen, PE, CME, dated 4/10/17

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 3/14/17

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

A-1 Plan Sheet A-1, revised 5/1/17

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:

Daniel Encin, Applicant's architect
Laura Egeter, Applicant

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

The subject property shares the non-conforming front yard setback with many of the other homes on Knollwood Drive due to a zoning amendment after these homes were built. Since the front yard setback line runs through these homes, any addition triggers a 'C' Variance. The proposed addition will complement the existing façade and improve its visual character without any adverse impacts.

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

By reason of the existing non-conforming front yard 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 215-28: promotion of a desirable visual environment.

The detriments associated with the deviation are considered minimal because the proposed addition is consistent with the character and features of 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 50:55D-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. If any NJDEP land use permits are required for the project, they shall be obtained prior to issuance of any building permits.
3. The revised Sheet A-1 with expanded zoning table shall be incorporated in the approved plans.
4. All wetlands within 200 feet of the subject property shall be delineated by a licensed wetlands consultant, and Applicant shall submit a copy of the wetlands consultant's report. The wetlands boundary line shall be shown on the revised plans.

5. 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.

6. 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.

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

8. 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.

9. 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 5/2/17.

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BOA #3-17 Christopher Johnson
15 Balbrook
Block 2601 Lot 2.04
C Variance - Swimming Pool and Cabana

Mr. Seavey gave a brief overview of the Resolution and with no comments or concerns on behalf of the Board, Mr. Smith made a motion to approve the Memorialization of the Resolution and Mr. Palestina seconded.

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

In favor: Cass, Palestina, Reilly, Ritger, Sisson, Smith, Seavey
Opposed: None
Abstain: Peralta

The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: May 2, 2017
Memorialized: July 11, 2017

IN THE MATTER OF CHRISTOPHER JOHNSON
"C" VARIANCE APPLICATION
BLOCK 2601, LOT 204
APPLICATION NO. BOA #3-17

WHEREAS, Christopher Johnson (hereinafter the "Applicant") 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 2/17/17; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 5/2/17; 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 5.0 acres located in the 5-Acre Residence Zone at 15 Balbrook Drive. The subject property is

currently developed with a two-story single family residence and associated improvements. Since the property fronts on Balbrook Drive to the south and Pleasant Valley Road to the north, it has two front yards. The home is served by a private septic system.

2. The improvements to the subject property for which the Variance relief is sought comprise an in-ground pool (1,015 sf), concrete pool surround (1,637 sf), cabana (560 sf) and athletic field (no artificial turf, structures or lighting proposed). The cabana will be connected to the water and septic systems. Since portions of the pool, pool surround and cabana are located in the property's front yard in relation to Pleasant Valley Road, a Variance is required from Ordinance §215-31.1G(1), which prohibits accessory structures and buildings in front yards.

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

- Pool & Cabana Plan, consisting of six (6) sheets, prepared by E&LP, High Bridge, NJ 08829, dated 2/3/17, revised 4/3/17
- Retaining Wall Design by Wayne Ingram, PE, dated 4/3/17

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

- Application for Hearing and Rider, Mendham Borough Board of Adjustment, dated 2/17/17
- Completed Application Checklist
- Site Inspection Form and Owner's Consent Form, both dated 2/17/17
- Tax Certification, dated 2/24/17
- Certified list of property owners within 200 feet, dated 2/17/17
- Existing Conditions Survey, prepared by E&LP, dated May 2016
- Zoning Officer's Denial Letter, dated 3/29/17
- Affidavit of Publication, dated 4/20/17
- Submission letter of Linda Herlihy, Esq., dated 4/5/17
- Response letter of Wayne Ingram, PE, dated 4/4/17

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:

John Hansen, PE, CME, dated 3/20/17 and 4/12/17

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 3/1/17

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

A-1 2014 Aerial Photo of Subject Property and Environs

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

Wayne Ingram, PE, Applicant's engineer
Christopher Johnson, Applicant

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

Aside from the technical front yard non-conformity, the proposed improvements comply with all other applicable bulk standards, setbacks and steep slope requirements. Because of the elevated grade of the proposed improvements and the dense surrounding foliage, the improvements will be effectively screened from neighboring properties, many of which have similar improvements to those proposed here. Trees removed by the construction will be replaced on at least a one-for-one basis. The proposed athletic field will be graded, but will contain no structures, artificial turf or lighting.

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

By reason of the double front yards of the subject property, the strict application of Ordinance Section

215-31.1G(1) 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 215-31.1G(1): promotion of appropriate development and recreational facilities.

The detriments associated with the deviation are considered minimal because the proposed improvements are consistent with those on neighboring property, and the grade and existing dense vegetation of the subject property will effectively screen these improvements from 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 50:55D-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 athletic field will have no structures, artificial turf or lighting.
2. Trees removed during construction will be replaced on at least a one-for-one basis after construction is completed.

3. The temporary construction access driveway will be removed and the grade will be restored to its pre-existing condition with berm after the project is completed.

4. Applicant shall obtain Board of Health approval for the cabana septic connection.

5. 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.

6. Prior to the issuance of any 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.

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 5/2/17.

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APPOINTMENT OF SCHOMMER ENGINEERING, INC. AS A CONSULTING ENGINEER TO THE BOARD OF ADJUSTMENT

Mr. Seavey explained that Ferreiro Engineering has a conflict of interest with the proposed Aryan at Mendham, LLC (Dunkin Donuts) application, and therefore needs to discuss retaining Schommer Engineering, Inc. in anticipation of the upcoming application. Mr. Seavey made a motion to approve the Resolution subject to the Borough’s administration approval of the contracted hourly rates. Mr. Reilly seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In favor: Cass, Palestina, Peralta, Reilly, Ritger, Sisson, Smith, Seavey
Opposed: None
Abstain: None

The resolution follows.

RESOLUTION AUTHORIZING THE APPOINTMENT OF SCHOMMER ENGINEERING, INC. AS A CONSULTING ENGINEER TO THE BOARD OF ADJUSTMENT

WHEREAS, there exists a need for the appointment of a consulting engineer by the Zoning Board of Adjustment of the Borough of Mendham (the “Board”) to review the D Variance/Site Plan Application of Aryan at Mendham, LLC (Block 1501, Lot 11), due to a disqualifying conflict of the regularly appointed Board Engineer; and

WHEREAS, the funds will be available for this purpose from the Applicant’s escrow; and

WHEREAS, Section 40:55D-71 of the Municipal Land Use Law states that the Board may employ, or contract for, and fix the compensation of experts and other staff and services as it may deem necessary; 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 made available for public inspection; and

WHEREAS, Schommer Engineering, Inc., is qualified to provide the engineering services in question; and

WHEREAS, the Board wishes to retain Schommer Engineering, Inc. as a consulting engineer to review the D Variance/Site Plan Application of Aryan at Mendham LLC (Block 1501, Lot 11) and to attend meetings and/or hearings regarding said application.

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

1. Schommer Engineering, Inc. is retained to serve as a consulting engineer to the Board, to review the D Variance/Site Plan Application of Aryan at Mendham LLC (Block 1501, Lot 11) and to attend meetings and/or hearings regarding said application in accordance with the same terms as those set forth in the letter of Richard B. Schommer, Jr., P.E., P.P., dated June 21, 2017, a copy of which is attached hereto.
2. This contract is awarded without competitive bidding as a “Professional Service” under the provisions of the local Public Contracts Law because engineering services are rendered by persons authorized by law to practice a recognized profession.
3. A copy of this resolution shall be published in the official newspaper as designated by the Borough Council as required by law.
4. This resolution shall take effect immediately.

The undersigned does hereby certify the foregoing is a true copy of the Resolution of the Mendham Borough Zoning Board of Adjustment memorializing the action taken by the Board at its meeting of July 11, 2017.

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APPLICATIONS

BOA #5-17 Geri and Tony Rago
1 Peacock lane
 Block 603 Lot 8.01
 C Variance – Garage, Mudroom, Breakfast Room Addition with
 In-Law Suite Above

Present: Geri and Toni Rago, Applicants
Dan Encin, Architect

Geri Rago was sworn. She said that their home has a history as a multiple family residence and boarding house. She also mentioned that her mother-in-law's health is diminishing and they wanted to add a master bedroom and bathroom for her over the garage, accessible by a proposed elevator from the mudroom on the first floor.

Dan Encin, known and qualified by the Board, addressed the Board about the bulk variances being sought. He mentioned that the property is already a pre-existing nonconformity as the 30 foot front yard setback actually runs through the middle of the house. The proposed addition of the master bedroom, master bathroom, mudroom, mud hall and breakfast room area will increase lot coverage by 1,348 square feet and building coverage by 1,019 square feet. He also mentioned that there is no kitchen being added with the addition, so a D variance is not needed. He stated that there is a tenant living in the basement, and submitted exhibit A-1, a letter from the zoning officer of Mendham Borough in 2002, stating that it was a permissible use for this residence.

The Board discussed the various design ideas with Mr. Encin, and Mr. Encin explained that part of the challenge was making the hallway from the elevator to the kitchen, and the kitchen, wheelchair accessible. Mr. Reilly mentioned that the driveway was only 18.34 feet long, and the vehicle depicted in the plans would be longer than the driveway.

Mr. Hansen arrived at 8:38pm and reviewed the application for completeness based off his completeness review of June 27, 2017. He specified that Item #29, *the location of all existing and proposed storm drainage structures and utility lines whether public or privately owned, with pipe sizes, grades and direction of flow, location of inlets, manholes and other appurtenances, should be a condition of approval. Also, the edge of pavement (or Curb) within the Peacock Lane right of way should also be shown on the plans.*

With no further questions regarding completeness, Mr. Seavey made a motion of completeness, and Mr. Peralta seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In favor:	Cass, Palestina, Peralta, Reilly, Ritger, Smith, Sisson, Seavey
Opposed:	None
Abstain:	None

The application was considered complete.

The Board continued its discussion of the proposed increase in impervious and building coverage. Mr. Encin felt that keeping the deck staircase to match the other existing staircases was appropriate. The Board inquired about the applicant hiring a civil engineer for soil grading and drainage as a condition of approval, and the applicant agreed. Upon the suggestion of Mr. Vitale, the Board also requested that the applicant file a deed with the County that new living quarters be occupied by a member of the same family. Mr. McGroarty added that a kitchen cannot be added in the future. Mr. Hansen also mentioned that the technical items in his completeness report should be a condition of approval.

With no public comment, Mr. Seavey made a motion to approve the application with conditions recommended by the professionals, and Mr. Peralta seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In favor:	Cass, Palestina, Peck, Reilly, Ritger, Smith, Seavey, Sisson
Opposed:	None
Abstain:	None

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 the meeting at 9:22pm. On a voice vote, the meeting was adjourned.

The next meeting of the Board will be held on **Tuesday, August 1, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Carolyn Mazucco

Carolyn Mazucco
Board Secretary