

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, August 15, 2023 - 7:30PM
Garabrant Center, 4 Wilson Street, Mendham, NJ.**

CALL TO ORDER/FLAG SALUTE

The regular meeting of the Mendham Borough Joint Land Use Board was called to order at 7:30 p.m. and the open public meeting statement was read into the record.

ROLL CALL

Mayor Glassner – Present	Mr. Egerter – Present
Ms. Bushman – Absent	Ms. Garbacz – Present
Councilman Andrew – Present	Mr. Molnar – Alternate 1 - Present
Mr. Ritger – Present	Mr. Kay- Alternate 2- Present
Mr. Smith – Present	Mr. Barker – Alternate 3 - Absent
Mr. Sprandel – Absent	Mr. Pace – Alternate 4 – Present
Mr. D’Urso– Absent	

Also Present: Ms. King – Board Engineer
Mr. Germinario – Board Attorney
Ms. Kopsco - Board Planner

Mayor Glassner and Councilman Andrew excused themselves from the meeting because the application being heard includes a D variance.

APPROVAL OF MINUTES

Mr. Smith noted that the date for the minutes was incorrect and should May 16, 2023.
Motion by Mr. Smith, seconded by Mr. Molnar and unanimously carried by voice vote to adopt the Minutes of the July 18, 2023 Joint Land Use Board Regular Meeting, as revised.

Roll Call:

In Favor: Mr. Ritger, Mr. Smith, Mr. Egerter, Ms. Garbacz, Mr. Molnar, and Mr. Kay.

Opposed:

Abstain: Mr. Pace

Motion Carried

PUBLIC COMMENT

Chairman Ritger opened the meeting to the public for questions and comments on items not included on the agenda or any pending applications.

Mr. Lupo, 17 Dean Rd. explained that at the last meeting he questioned if the antenna at the shopping center required a D6 variance due to the height and Mr. Ferriero stated at the last meeting that there was a request for a certified height being submitted. Mr. Lupo asked if the Board knows the actual height and is a variance needed. Mr. Ritger stated that the Board was not made aware of the height. Ms. Kopsco stated that as of the previous week, they have not received a response to the letter that was sent out. Mr. Lupo asked how long do they have to respond. Ms. Kopsco stated that she didn’t recall and suggested reaching out to Mr. Rosendale, the code enforcement official. Mr. Lupo asked if V-Fee filed an appeal against the interpretation. Mr. Germinario explained that they had.

There being no further comments, the public session was closed.

RESOLUTION

02-23 Kuchinski
24 Franklin Rd
Block 1706 Lot 10

Mr. Germinario summarized the Kuchinski application, and the conditions outlined in the resolution. Mr. Molnar made a motion to memorialize the resolution and Mr. Egerter seconded.

Roll Call:

In Favor: Mr. Ritger, Mr. Smith, Mr. Egerter, Ms. Garbacz, Mr. Molnar, and Mr. Kay

Opposed:

Abstain: Mr. Pace.

Motion Carried. The resolution follows.

BOROUGH OF MENDHAM JOINT LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

Decided: July 18, 2023

Memorialized: August 15, 2023

IN THE MATTER OF ROBERT AND MELINDA KUCHINSKI
"D-2" & "C" VARIANCE APPLICATION
BLOCK 1706, LOT 10
APPLICATION NO. JLUB #02-23

WHEREAS, Robert and Melinda Kuchinski (hereinafter the "Applicant") applied to the Borough of Mendham Joint Land Use Board (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 4/7/23; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 7/18/23; 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 1.07 acres in the 1-Acre Residential Zone, and is improved with a 2-story single family dwelling, a detached garage, a deck, patio, walks and driveway. The dwelling includes an existing non-conforming in-law suite. The property received a D-1 variance by Resolution of the Borough Board of Adjustment memorialized 8/2/2005 for an addition to the detached garage for a "Senior Accommodation Suite" to serve as living quarters for the then-owner's elderly father. Resolution Condition #2 required filing of a deed restriction limiting the use of the property to a single-family dwelling, notwithstanding the D-1 variance. The garage senior living accommodations were never constructed, and Applicant now proposes to abandon that aspect of the 2005 Resolution along with the associated D-1 variance approval.

2. The improvements to the subject property for which the Variance relief is sought comprise removal of the existing wood deck and patio, and construction of a new deck and an addition to the dwelling which will expand the existing family room and kitchen. The proposed improvements require C variances for side yard setback and lot coverage, and D-2 variance for expansion of the main dwelling having a non-conforming in-law suite.

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

- *Site Plans, consisting of five sheets, dated 4/5/23 and revised through 6/1/23, prepared by Daniel A. Encin, RA*

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

- *Land Development Application, dated 4/7/23, prepared by Robert Kuchinski*
- *Site Inspection Form*
- *Zoning Officer Denial of Application, dated 2/15/23*
- *Application for Sanitary Sewer Connection Waiver, dated 4/7/23*
- *Site Photos*
- *Checklist*
- *Property Owners List*
- *Certificate of Paid Taxes and Utility Fees, dated 1/20/23*

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, CME, dated 7/7/03
Jessica Caldwell, PP, AICP, dated 7/14/03

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

Ted Messler, ECOSST, dated 4/18/23

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

- A-1 *NJ GIS Map Satellite Image of the structure in question*
- A-2 *Photo of swing set*

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 A. Encin, Architect

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

Dan Encin testified that the in-law suite within the dwelling is a pre-existing non-conforming condition which is not to be expanded by this application. The side yard variance is an existing condition that is not being changed, except for the added mass of the main dwelling. He opined that the increase in impervious coverage of 283 sq. ft., minimized by removal of the existing patio, would be handled by the existing site drainage, but agreed to comply with the Board Engineer should he determine that additional storm water recharge is needed. Mr. Encin further agreed, on behalf of the Applicant, either to confirm the filing of a deed restriction in accordance with the 2005 Resolution, or to record such a deed restriction as a condition of approval.

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 pursuant to N.J.S.A. 40:55D-70d(2) is required because the dwelling containing a pre-existing non-conforming in-law suite is being expanded. The Board finds that the non-conforming use itself is not being expanded, and that special reasons relating to appropriate development and desirable visual environment (N.J.S.A. 40:55D-2a and i) apply here. Furthermore, detriments associated with this variance are minimal or none.

The variance for side yard setback is also justified pursuant to N.J.S.A. 40:55D-70c(1) because it is an existing condition of the property that is affected only insofar as the mass of the dwelling is being increased. Here again, the detrimental effects are minimal to none.

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.

11. *In summary, the Board hereby grants a total of one "C" variance and one "D" variance in connection with this application.*

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-70d(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 shall submit to the Board Attorney either: (a) proof of recordation of a deed restriction, in accordance with the Mendham Borough Board of Adjustment Resolution memorialized on 8/2/2005, stating that the dwelling on the subject property "is, and remains, a ONE FAMILY DWELLING and not a Two Family Dwelling," or (b) a draft deed restriction to the same effect for approval by the Board Attorney prior to recording with the County.

2. Applicant shall submit to the Board Engineer a sketch plan of the existing storm water and drainage facilities on the subject property and shall implement any improvements thereto required by the Board Engineer to address the increased impervious coverage resulting from this approval.

3. The provisions of the 8/2/2005 Board of Adjustment Resolution with respect to a "Senior Accommodation Suite" in the detached garage and the associated variance pursuant to N.J.S.A. 40:55D-70d(1) are hereby abandoned by the Applicant.

4. 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.

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

6. 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.

7. 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 Joint Land Use Board memorializing the action taken by the Board at its meeting of 7/18/23.

Lisa Smith
Board Secretary

COMPLETENESS

17-22 Mendham Library
10 Hilltop Rd
Block 1501 Lot 37

Present: Mr. Sposaro – Attorney
Ms. Munley – President of Board
Ms. Harrington – Landscape Architect
Mr. Fox – Professional Engineer

Mr. Ritger informed the public that during the completeness portion of the meeting there is no public comment.

Ms. King summarized Mr. Ferriero's technical review letter dated August 2, 2023 and Mr. Ferriero recommends that the application be deemed complete. Mr. Sposaro stated that the completeness review letter dated June 10, 2023 identifies the checklist items that waivers be granted for. Mr. Sposaro asked that the Board grant those waivers and deem the application complete. Mr. Germinario reviewed the public notice and found it to be adequate.

Motion by Mr. Smith, seconded by Mr. Kay and unanimously carried to deem the application complete.

Roll Call:

In Favor: Mr. Ritger, Mr. Smith, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Mr. Kay, and Mr. Pace.

Opposed:

Abstain:

The motion carried.

HEARING

17-22 Mendham Library
10 Hilltop Rd
Block 1501 Lot 37

Present: Mr. Sposaro – Attorney
Ms. Munley – President of Board
Ms. Harrington – Landscape Architect
Mr. Fox – Professional Engineer

Mr. Sposaro explained that the application being made is for minor site plan approval and D variance relief because a library is a conditional permitted use in the zone district however not all of the conditions can be satisfied.

Ms. Munley was sworn in. Ms. Munley explained that she is President of the Board at the library and gave an overview of the improvements being proposed. Ms. Munley stated that the idea to make the outdoor seating area came during Covid when people couldn't come into the library. Mr. Sposaro asked if outdoor seating was unusual for a library and Ms. Munley stated that it wasn't. Mr. Germinario asked what type of entity the Mendham Free Library was. Ms. Munley stated that it is a 501C funded by appeals, fundraisers, and money from the Borough. Mr. Sposaro asked how long the library was in existence. Ms. Munley stated it was started in 1937 in this location. Mr. Germinario asked if in Mr. Sposaro's summary he stated that many of the improvements that are non-conforming to conditional use standards predate the ordinance proposed in those standards. Mr. Sposaro stated that he is unsure of the dates of the ordinances.

Ms. Harrington was sworn in. Ms. Harrington described her qualifications and background as a Landscape Architect and was deemed an expert witness. Ms. Harrington explained the colored rendering of sheet 2 of 5 which was marked as Exhibit A-1 which shows the patios and the 3D perspectives, shed, and materials which was marked as Exhibit A-2. Ms. Harrington explained that there will be low voltage lighting that will go off at 10pm. Mr. Germinario asked if the planner had a preference to the type of lighting. Ms. Kopsco stated that there was no preference as long as it complied with the code. Mr. Ritger asked for a description of where the lights will be placed. Ms. Harrington explained the lighting shown on the plan. Mr. Sposaro asked Ms. Harrington to explain the height of the fencing. Ms. Harrington stated that the height of the fence is under 6 feet and are reusing the same fence that is there if it can be salvaged. Mr. Sposaro asked with regard to Ms. Caldwell's report if there is any land on either side of the property that can be purchased to make it comply with the 5-acre zone? Ms. Harrington stated that she wasn't aware of any. Mr. Sposaro asked if there was a change in the front yard setback. Ms. Harrington stated that there is no change in what is proposed. Mr. Sposaro asked if there was a change in the side yard setbacks. Ms. Harrington stated that there is no change in what is proposed. Mr. Sposaro asked Ms. Harrington to point out where the shed is and if other locations were considered that would not exceed the setback for an accessory structure. Ms. Harrington explained that the new shed's location along the access drive isle was due to easier access and to keep uses together. Mr. Germinario asked Mr. Sposaro if the applicant was requesting a C-2 variance. Mr. Sposaro confirmed. Mr. Sposaro asked Ms. Harrington if the proposed would have any adverse effects on the neighboring properties. Ms. Harrington stated that there wouldn't be and that it would be an improvement to the library and the community at large. Mr. Germinario stated that there are D-3 variances needed and the standard would be that the property remains suitable for this use despite the fact that it

does not meet the conditional use standards. Ms. Harrington explained that the proposed improvements not having the minimum of 5 acres do not detract from the suitability of the property for the library to function. Mr. Sposaro stated that the property has been used for a library for nearly 100 years is testament to the fact that it is an appropriate use for the site. Mr. Sposaro also explained that the same would hold true for the various setbacks that are not being exacerbated and the ones that are, are not significant. Mr. Germinario asked Ms. Harrington whether the proposed improvements, despite intensifying the deviation for the conditional use standard, actually make the property more suitable for the use? Ms. Harrington agreed with Mr. Germinario's statement. Mr. Kay asked if the lighting on the retaining wall would be enough for security reasons. Ms. Harrington stated that the goal is to provide enough lighting for the people who are there for security and safety purposes. Ms. Harrington also noted that the timer for the lighting is there so as to not invite people there after hours. Ms. Garbacz asked if there was going to be any permanent seating. Ms. Harrington explained that the wall will be the only permanent seating and that any tables and chairs that are used will be stored in the shed. Ms. Garbacz stated that she likes the idea. Mr. Molnar pointed out the dripline of the large tree and asked if the area would be disturbed. Ms. Harrington explained that they will not disturb the area too much.

Mr. Ritger asked if the seating area would prohibit skateboarders. Ms. Harrington stated that they may put notches on the caps to prevent skateboarders. Mr. Ritger asked for the setback locations and dimensions to be updated on the plans as a condition and a gutter on the shed facing the walkway be added as a condition. Mr. Sposaro agreed to those conditions. Mr. Germinario asked the intent of the outdoor electrical outlets that was a question in the engineer's report. Ms. Harrington stated that the outlets proposed near the outdoor classroom would be used for presentations put on by the library and the others could be used for people to charge cell phones or laptops. Ms. Kopsco asked how often employees would be going out to the shed. Ms. Munley stated that the shed would only be used for outdoor presentations and would not be an everyday thing.

Mr. Ritger asked if there were any public comments or questions. Mr. Lupo, 17 Dean Rd. asked if the state would come in asking for a safety barrier. Mr. Sposaro stated that the Municipal Engineer can look at the issue and make suggestions if any other site improvements are warranted. Mr. Sposaro stated that from their perspective, the design of the site is both benign, safe, and user friendly.

There being no other questions, public comment was closed.

Mr. Fox was sworn in. Mr. Fox described his qualifications and background as a professional engineer and was deemed an expert witness.

Mr. Fox explained the purpose and location of the dry well which was shown on sheet one of one of the plans submitted dated March 10, 2023 and stated that the plan will be updated in response to Mr. Ferriero's report.

Mr. Ritger asked why was that spot chosen. Mr. Fox explained that when looking at the site, they tried to mimic the existing drainage pattern and place the dry well where there would be the least disturbance.

Mr. Sposaro stated that the Morris County Planning Board approved the site plan. Mr. Sposaro noted that the Historic Preservation Commission approved the plans as well.

Mr. Ritger asked if there were any public comments or questions. There being none, public comment was closed.

Mr. Egerter made a motion to approve the application with conditions as outlined in the Resolution and was seconded by Mr. Molnar.

Roll Call:

In Favor: Mr. Ritger, Mr. Smith, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Mr. Kay, and Mr. Pace.

Opposed:

Abstain:

Motion Carried

DISCUSSION

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Smith, seconded by Mr. Egerter. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 8:30PM. The next scheduled regular meeting of the Joint Land Use Board is Tuesday, September 19, 2023 at 7:30PM in the Garabrant Center, 4 Wilson St. , Mendham, NJ.

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator