

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, October 17, 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 – Present	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 - Present
Mr. Sprandel – Present	Mr. Pace – Alternate 4 – Present
Mr. D’Urso– Present	

Also Present: Mr. Ferriero – Board Engineer
Mr. Germinario – Board Attorney
Ms. Kopsco – Board Planner
Ms. Caldwell – Board Planner

APPROVAL OF MINUTES

Motion by Mr. Egerter, seconded by Mr. Molnar and unanimously carried by voice vote to adopt the minutes of the September 19, 2023 Joint Land Use Board Regular Meeting, as written.

Roll Call:

In Favor: Ms. Bushman, Councilman Andrew, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. D’Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Mr. Kay, and Mr. Pace.

Opposed:

Abstain: Mayor Glassner and Mr. Barker

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.- thanked the Borough for measuring the cell tower and the information on COAH that can be found on the website. Mr. Lupo would like 09-2020 posted on the website and would like to know if there was a planning board review for Master Plan conformity.

Mr. Barth, 99 Dean Rd.- wanted to remind the Board that the NJDEP was going to fine the Borough in relation to the India Brook sewage treatment plant. Since then, all residents have been paying \$300 towards improvements to sewage treatment and would like to know how all of a sudden 75 units can connect. Mr. Ferriero stated that the Borough has done an aggressive plan to reline the sewer collection system and other improvements, which has freed up capacity for other projects.

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

DISCUSSION**Outdoor lighting Ordinance**

Ms. Kopsco explained that the items that Mr. Lupo sent over were reviewed. Ms. Kopsco explained that a majority of what was reviewed was the BUG lighting standard which is back light, up light, and glare. Ms. Kopsco stated that the BUG standard is to minimize light pollution created by commercial outdoor lighting. Ms. Kopsco stated that not all manufacturers supply this rating system because it is voluntary. Ms. Kopsco summarized Ms. Caldwell's review of potential outdoor lighting ordinance changes dated October 13, 2023. Ms. Kopsco explained that the Borough's outdoor lighting ordinances, specifically Sections 195-147 and 195-57.5, were reviewed. Ms. Kopsco explained that the ordinances take into consideration light trespassing and the minimizing of light pollution onto adjacent properties. Ms. Kopsco explained that in the report there are some standards that could potentially be beneficial to add into the lighting ordinance like defining light trespass and defining and requiring full cut off lighting fixtures. Mr. Ritger asked if there is a number that can be used to know if you are in compliance with light trespass? Mr. Ferriero stated that it would be the number of foot candles at the property line. Mr. Ferriero suggested that maximum color temperatures should be in the ordinance as well. Ms. Kopsco stated that determining maximum color temperatures is also in the report. Ms. Kopsco explained that 3500k is typically what an ordinance may require. Ms. Kopsco stated that looking into flush lenses was also in the report.

Mr. Ritger asked for comments. Mr. Barth mentioned the lighting in yards that is on all night and the lighting at Wells Fargo being so bright. Mr. Ferriero stated that he will look into the lighting at Wells Fargo. Mr. D'Urso explained that 4000k would not be harsh and is less expensive when purchasing light fixtures. Mr. Ferriero explained that his recommendation is 3500k. Mr. Ritger asked how would a new application be flagged for this. Mr. Ferriero stated that most building permits go through the zoning officer.

Mr. Lupo, 17 Dean, stated that he shared the Cape May ordinance and there is enforcement and down lighting in that ordinance.

Ms. Caldwell was asked to put together a draft ordinance to be discussed at the next meeting.

Mayor Glassner was excused from the remainder of the meeting due to the fact that she recused herself from the Garbacz application and the remainder of the meeting will take on the role of Board of Adjustment.

RESOLUTION

15-22 Dominik Garbacz
3 Quimby Ln
Block 1901 Lot 45

Mr. Germinario summarized the Garbacz application, and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. D'Urso seconded.

Roll Call:

In Favor: Ms. Bushman, Councilman Andrew, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. D'Urso, Mr. Egerter, Mr. Molnar, Mr. Kay, and Mr. Pace

Opposed:

Abstain: Ms. Garbacz and Mr. Barker

Motion Carried. The resolution follows.

BOROUGH OF MENDHAM JOINT LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

Decided: September 19, 2023

Memorialized: October 17, 2023

**IN THE MATTER OF DOMINIK GARBACZ
"C" VARIANCE APPLICATION
BLOCK 1901, LOT 45
APPLICATION NO. JLUB #15-22**

WHEREAS, Dominik Garbacz (hereinafter the "Applicant") applied to the Borough of Mendham Joint Land Use Board (hereinafter the "Board") for the grant of variances pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 7/20/23; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 9/19/23; 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 1.029 acres located at 3 Quimby Lane in the 1 Acre Residential Zone. It is currently improved with a single family dwelling with a rear deck.

2. The improvements to the subject property for which the Variance relief is sought comprise an extension of the existing deck, which requires bulk variances for building coverage (4,645 SF proposed, 4,332 SF existing, 3,509 SF maximum), and rear yard deck setback (30 ft proposed, 32.9 ft existing, 40 ft minimum).

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

- Deck Plan, dated 6/29/23, revised 9/19/23

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

- Cover letter, dated 7/5/23, prepared by Bernd E. Hefele, Esq.
- Land Development Application, revised 7/20/23, prepared by Dominik Garbacz
- Property Deed
- Zoning Permit denial, dated 7/7/22
- Site Inspection form, dated 7/7/22, prepared by Dominik Garbacz
- Checklist
- Sewer Connection Approval Resolution, dated 1/12/22
- Property Owner's List

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, CME, dated 9/15/23

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

John Zaragoza, Fire Marshal, dated 7/20/23

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

A-1 Updated Deck Plan, revised 9/19/23

8. In the course of the public hearings, the Applicant represented himself, and the Applicant presented his own testimony.

9. The documentary evidence and the testimony of the Applicant adduced the following facts:

Mr. Garbacz testified that the existing deck does not connect to the only rear exit of the house, requiring the use of two sets of steps (to be removed) to access it. The setback relief is necessitated by the shallowness of the lot and conservation easements.

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 shallowness and easements of the subject property, the strict application of the Ordinance 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 detriments associated with the deviation are considered minimal because the proposed deck extension is remote from the view of neighboring properties.

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.

In connection with this approval, a total of two "C" variances are granted.

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).

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. 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.

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

3. 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.

4. 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 9/19/23.

Lisa Smith
Board Secretary

COMPLETENESS

JLUB #13-22
15 W. Main, LLC
15 W. Main St
Block 301 Lot 39
Present: Mr. Gianetti, Applicant's Attorney
Mr. Imperatore, Hampshire Co.
Mr. Maillet, AIA, Architect
Mr. Dean, PE, PTOE, Traffic Engineer
Mr. Banisch, PP, Professional Planner

Mr. Ferriero summarized the completeness review letter dated September 7, 2023 where it was noted that there were a number of waivers requested in the application. Mr. Ferriero stated that subject to the waivers the application can be deemed complete. Mr. Germinario reviewed the public notice and found it to be adequate to proceed.

Motion by Mr. Egerter, seconded by Mr. D'Urso and unanimously carried to deem the application complete.

Roll Call:

In Favor: Ms. Bushman, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. D'Urso, Mr. Egerter, and Ms. Garbacz

Opposed:

Abstain:

The motion carried.

HEARING

JLUB #13-22

15 W. Main, LLC

15 W. Main St

Block 301 Lot 39

Present: Mr. Gianetti, Applicant's Attorney
Mr. Imperatore, Hampshire Co.
Mr. Maillet, AIA, Architect
Mr. Dean, PE, PTOE, Traffic Engineer
Mr. Banisch, PP, Professional Planner

Mr. Gianetti summarized the application for preliminary and final major site plan approval with variance relief associated with the property located at 15 West Main Street in order to convert the third floor from attic space to 2 residential units. Mr. Gianetti explained that a density and parking variance are being requested. Mr. Gianetti stated that with the development that was approved in 2016 a development fee was paid but with respect the current project of 2 units, the applicant proposes that in lieu of paying a development fee, one of the units would be restricted for affordable housing as a moderate-income unit.

Mr. Imperatore was sworn in. Mr. Imperatore described the existing and stated that there will be no improvements made to the exterior other than possibly putting in an EV charger and that the only other change is that they are proposing is to add 2 units to the attic area. Mr. Gianetti asked Mr. Imperatore to describe operations at the site. Mr. Imperatore stated that there were no issues with the operations and no complaints about the parking. Mr. Imperatore explained that with the additional residential unit, he does not foresee any parking issues and stated that he has experienced a shared parking scenario in other towns that he works in. Mr. Imperatore noted that he has never seen the parking lot full. Mr. Imperatore explained that the businesses are open during the day when the residents are typically at work and feels the site can accommodate the 2 additional units. Mr. Ferriero explained that if an EV charging station is installed, one parking spot counts as two. Mr. Imperatore stated that if the Board requires it as part of the approval, they are willing to install one. Ms. Caldwell asked how many charging stations were going to be installed. Mr. Imperatore stated that they were proposing two charging stations were to be installed. Mr. Ritger asked who can use the chargers. Mr. Imperatore stated that anyone can use them and has installed them in other projects. Ms. Bushman noted that there was a variance granted originally and parking spaces to meet that original project were given up from the project your proposing now asking relief on. Mr. Ferriero explained that they were originally short 7 parking spots before and were granted relief and with the 2 charging stations they are still 7 short. Mr. Imperatore stated that there would be no restriction on who can park at the charging stations. Mr. Ritger asked where the charging stations would be located. Mr. Imperatore explained that they would follow the Borough's advice but would suggest near the dumpster area where no one can see them from the road. Mr. Imperatore noted that

there will be no assigned parking for the tenants. Mr. Germinario suggested that the applicant propose the location and the Board Engineer will review and approve it based on whether it makes sense in terms of logistics and electrical wiring required. Ms. Bushman wanted clarification on parking and Mr. Ferriero suggested that she ask the questions of the traffic engineer that will be testifying. Mr. Ferriero stated that on the previous application, 34 spaces were required, and 29 spaces were built, and the current application requires 38 spaces, and 29 spaces are on site.

Chairman Ritger opened the meeting to the public for questions and comments for this witness.

Mr. Lupo, 17 Dean Rd. requested that the EV charging station no logos for advertisements and not be lit up. Mr. Imperatore stated that there will be no light pollution or advertising other than the manufacturer and the display where you pay.

There being no further comments, Mr. Ritger closed public comment.

Mr. Maillet was sworn in and qualified as an expert in architecture.

Mr. Maillet explained that the floor plans propose mirror image units on the 3rd floor of the subject property. Mr. Maillet submitted and described an exhibit which showed one large photo of the front facade and 3 smaller photos which consist of the left facade and 2 store fronts (coffee shop and bees knees) which is the current look of the location. This exhibit was marked as exhibit A-1. Mr. Maillet explained that he was involved in the architecture of the second-floor apartments. Mr. Maillet noted that the building fits into the historical look of the Borough. Mr. Maillet stated that there are no proposed changes to the exterior of the building. Mr. Maillet stated that the proposed units will consist of 2 bedrooms and the units are approximately 1054 sq ft. Mr. Maillet stated that each proposed unit will have one bedroom in the front and one in the rear and between the bedrooms will be the living/kitchen area and bathroom with a shared stairwell to the second floor. Mr. Maillet explained that the tenants can enter/exit from the rear of the building. Ms. Garbacz asked what the dimensions of the bedroom would be. Mr. Maillet stated that they would be approximately 14x16. Mr. Ritger noted that in the submission a sprinkler system was proposed. Mr. Imperatore stated that as a part of the checklist it is required and will be installed. Mr. Maillet stated that the existing windows are sized for egress. Mr. Molnar asked what the current use was and Mr. Maillet stated that it was unfinished. Mr. D'Urso questioned the placement of the current windows and Mr. Maillet explained that the design intent was to not put in any more windows.

Chairman Ritger opened the meeting to the public for questions and comments for this witness. There being none, Mr. Ritger closed public comment.

Mr. Dean was sworn in and qualified as an expert in the field of traffic engineering.

Mr. Dean explained that he analyzed the usage and utilization of the parking. Mr. Dean stated that in response to Mr. Ferriero's review letter addressing the concern about parking adequacy, that the application seeks relief from the ordinance, which requires 38 spaces, and the applicant is providing 29 fixed spaces. Mr. Dean noted a shared parking situation or arrangement, in that there's a combination of business uses that are open during the day and residential uses that experience their peak demand at night. Mr. Dean stated that while monitoring the parking area at different times and days, he found that the least amount of empty spaces was 15 on a Saturday. Mr. Dean noted that given that the requirement for the new apartments could be as many as four, he's confident looking at that surplus that there is adequate parking. Mr. D'Urso asked Mr. Dean to identify the 29 spaces that are available. Mr. Dean explained the locations of the spaces. Ms. Caldwell asked if all the current units are full. Mr. Dean stated that they were full. Ms. Caldwell asked if Mr. Dean had a recommendation on the location of the EV chargers. Mr. Dean suggested the southeast corner of the larger parking field, where there are 18 spaces.

Chairman Ritger opened the meeting to the public for questions and comments for this witness.

Peggy Burke, 8 Bockoven Rd., if the technology improves and the charger charges the cars more rapidly, which would make more traffic using it, would the Board reevaluate? Mr. Ferriero explained that the speed of the charging is not related to the technology, it's the amount of electricity that you get through the system. The charger proposed will probably be around seven kilowatts per hour, which is 50 times less than what those high-speed charges are. Mr. Ferriero noted that a site plan approval would be needed if the applicant wanted to put in a high-speed charger.

There being none, Mr. Ritger closed public comment.

Mr. Banisch was sworn in and qualified as a professional planner.

Mr. Banisch explained that he has been to the site four times in total and has reviewed the aerial photos that indicate the condition of the property prior to the prior approval and the improvements that were made to the site. Mr. Banisch reviewed the ordinance and the affordable housing obligation of the municipality and recommended the inclusion of an affordable unit on this property, which the applicant has consented to provide. Mr. Banisch explained that the applicant is asking for a density variance. Mr. Banisch stated that this community minded on the part of the developer to offer that as part of this proposal and recommends that that's one of the reasons why the board should be able to find special reasons in this case. Mr. Banisch explained that the Borough's ordinance provides some opportunities for relaxation of standards like the parking standard when an applicant comes before the board and proposes to do what is proposed. Mr. Banisch noted that the Board heard from Mr. Dean that there is extra parking on site at any time and this is one of the critical factors that would the site is not over developed. Mr. Banisch explained that using the existing building space to provide the additional units provides the Borough with a series of advantages. Mr. Banisch explained and marked a google earth 3D aerial photo of before and after the improvements as Exhibit A-2. Mr. Banisch noted that the additional dwelling units including the affordable unit will contribute to the well-being of the persons who live there and benefit the neighborhood and the community, both because of the additional housing and because of what the people who live in those units will be engaging in as part of the neighborhood and being able to shop, walk to, shopping and other services. Mr. Banisch explained that the public good is not contravened in any way, but actually is served by the creation of these additional units with specific deficits on the benefit, with there being an additional affordable housing unit. Mr. Banisch noted that there will be more people on the street that puts more businesses in the green overtime. Ms. Caldwell asked if the intent and purpose of the additional parking that was mentioned with the previous renovation would be required for the new proposed units. Mr. Banisch stated that given the fact that there have been no less than 15 parking spots available that there is the proof, and it would have no merit. Mr. Molnar asked if there are any limitations to the parking spaces in the front of the buildings. Mr. Banisch stated that there is not.

Chairman Ritger opened the meeting to the public for questions and comments for this witness. There being none, Mr. Ritger closed public comment.

Mr. Gianetti stated that this is a unique application because we have the benefit of the residential units already there, the building is already there, the space is already there, it's just not being occupied. Mr. Gianetti reminded the Board that existing parking was analyzed which indicated that there's ample parking on the site and there are spots not being used in part because of the shared parking range therefore the site would accommodate two additional units without adding additional parking. Mr. Gianetti noted that Mr. Banisch provided justifications for the positive criteria for a variance and identified the several purposes of the zoning being supported as part of the application with the affordable unit being provided. Mr. Gianetti explained that the proposed helps with the goal of revitalizing the downtown and making a walkable downtown area. Mr. Gianetti noted that with respect to the negative criteria that there really is no negative impact and in fact enhances the community and the general welfare with the affordable unit and the downtown and is furthering the purposes of the zoning.

Chairman Ritger opened the meeting to the public for testimony or comments.

Mr. Lupo, 17 Dean Rd. feels this project will enhance the downtown and conforms with the Master Plan.

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

Mr. Ritger noted that the building is about to be fully sprinklered and the Borough would get another affordable housing unit which are big positives.

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

Roll Call:

In Favor: Ms. Bushman, Mr. Ritger, Mr. Smith, Mr. Sprandel, Mr. D'Urso, Mr. Egerter, and Ms. Garbacz

Opposed:

Abstain:

The motion carried.

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Smith, On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 9:40PM.

The next scheduled regular meeting of the Joint Land Use Board is Tuesday, November 21, 2023 at 7:30PM in the Garabrant Center, 4 Wilson St. , Mendham, NJ.

Respectfully submitted,

Lisa J. Smith

Lisa Smith

Land Use Coordinator