

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD  
REGULAR MEETING HELD MAY 24, 2023**

The meeting was called to order by Chairman Giordano at 7:01 p.m., who asked for a roll call.  
Upon roll call:

**ROLL CALL**

**PRESENT:** Ms. Neibart, Mr. D'Emidio, Ms. DeMeo, Mr. Johnson, Mr. Mayer, Mr. Perri,  
Chairman Giordano  
**ABSENT:** Ms. Moreen, Mr. Maglione  
**Others present:** Mr. Brad Carney, Mr. Dennis Keenan, Mr. Paul Cancilla, Mr. Roy Messaros

**SALUTE TO THE FLAG**

**ADEQUATE NOTICE** of this meeting of the Mendham Township Planning Board was given as follows: Notice was sent to the Daily Record and the Observer Tribune on January 6, 2023 and Notice was filed with the Township Clerk on January 6, 2023.

This meeting is a quasi-judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision with decorum and civility appropriate to a quasi-judicial hearing being maintained at all times.

**MINUTES**

A motion was made to approve the minutes from the January 18, 2023 meeting, and it was seconded. All agreed. A motion was made to approve the February 15, 2023 meeting with a correction regarding the vote for approval of the memorializing resolution for Lawrence Farmland, LLC. A motion was made, and it was seconded. All approved.

**APPLICATION – PB-22-02**

Optimum Development, LLC  
Block 116, L47  
Preliminary and Final Major Subdivision Approval

Mr. Michael Lipari of Mandelbaum Barret made an appearance on behalf of the applicant, Optimum Development Group Corp. and stated that the applicant is seeking minor subdivision approval in order to subdivide one oversized lot into two conforming sized lots. He went on to say that the application is slightly complicated due to an interpretation of the private driveways that are located on either side of the subject property and that those driveways on the property are being considered streets according to the Board's professionals. This interpretation in turn re-classifies the applicant's property as a corner lot and that as a result, some of the bulk requirements on the property are increased, which requires variances. Mr. Lipari stated that while the applicant does not agree with the interpretation that the driveways on the adjacent lots are considered streets, the variances being required can be justified and opined that this plan requiring the variances is the most appropriate plan and a better planning alternative than if the applicant were to strictly comply with bulk requirements of the zone.

Mr. Lipari went on to say that the ordinance has a requirement for a minimum lot geometry circle of 250 feet. For corner lots, this increases by 25%, which would make the lot geometry circle

312.5 feet. Since the applicant did not believe that the lots were technically corner lots since the adjacent properties contained private driveways, the subdivision was designed to comply with the 250-foot lot geometry circle. This standard is, therefore, met for lots that are not corner lots. He stated that the variance is being requested because it is of the opinion that it would be a better plan with a variance. Mr. Lipari went on to say that in order to comply with the strict requirements of the lot geometry circle, the proposed houses would have to be pushed significantly further back from the lot, which would result in a significant increase in impervious surface and would require the removal of a substantially larger number of trees than what is being proposed with a variance. These are large caliber trees that the applicant is trying to avoid removing along with the intent to minimize impervious coverage. As a result, and as an alternate plan, the houses have been pushed forward; however, the lot geometry circles do not comply with the increased regulation for corner lots.

Mr. Lipari went on to discuss the professional review letters, which also pointed out a building envelope circle of 150 feet. He stated that while the application does comply with this, it was mentioned in their review letters of a possibility of a variance for this as well. If this is the case, then the applicant would like to seek a variance for building envelope.

Chairman Giordano interjected that it seems that the presentation is going to be contingent upon whether the private driveways are considered streets or just private driveways and that this should be clarified first. Mr. Keenan explained that the issue comes down to the definition of a street, which he read to the Board. Due to the fact that the driveways are filed on a recorded map (plat) as a public or private right of way, it is then classified as a street.

Mr. Carney swore in Mr. Raphael Martinez of 191 Benjamin Street, Toms River and engineer for the applicant, and Mr. Anthony Mortezaei, the applicant who is also an engineer and planner in his own right but will not be testifying as such.

Mr. Martinez marked his first exhibit (Figure 2) as Exhibit A1 with today's date. Mr. Lipari stated that this exhibit is a site plan sheet that was prepared by Mr. Martinez and is titled "Grade and Drainage Plan and Profile", Sheet 5 of 9. It is superimposed on one of the submitted plans since it is being used as an exhibit so "Figure 2" in red letters was added to the sheet. He went on to explain for Mr. Mayer that the frontage of Lot 1.01 is Mountainside Avenue. It was clarified that if the driveway is considered a street, then the properties are corner lots but that if it is considered a private driveway then there is not enough frontage. Mr. Messaros added that Mr. Keenan is correct in that a street is defined to mean what is shown on a plat that is approved pursuant to law, which is what is represented here, and he opined that it is not within the Board's discretion to deviate from the ordinance. It is Princeton Hydro's position that this is a street and that this is not up for debate. They are corner lots and that there are 4C bulk variances being requested. He also stated the application does not actually indicate that this is a minor subdivision and would ask that the application be amended to provide whether this is Preliminary & Final Major Subdivision. He went on to say that the application also references a D use variance and that he would request that the application be amended to delete the reference to a D use variance. Mr. Lipari responded that this is a minor subdivision application and that there is no D variance being requested and that it should be amended on the record as such. Mr. Lipari stated that a variance is being requested since the Board and its professionals have taken the position that this is a corner lot and that the roads are therefore streets.

Mr. Messaros explained that since variances are now being sought that this is no longer a minor subdivision application and that it becomes a major subdivision. The issue then becomes whether the applicant is seeking Preliminary and Final Major Subdivision approval or just Major Preliminary Subdivision approval. Mr. Lipari confirmed that the applicant is seeking Preliminary and Final

Major Subdivision Approval and that the application is being amended from a minor subdivision application to a Preliminary and Final Major Subdivision application with the reference to a D use variance being deleted. Chairman Giordano confirmed that the application will be represented with the amendment as discussed with the properties considered corner lots with streets and not private driveways.

Mr. Lipari continued his testimony and stated that the issue becomes the Lot Geometry Circle since it is a corner lot. The previous Lot Geometry Circle was 250 feet but that it would need to be increased to 312.5 feet with the new location. He explained that the statutory criteria will remain since he opined that both criteria could be satisfied under both the C1 criteria and the C2 criteria. The C1 criteria is considered a hardship variance and that this application would qualify for this because the corners lots were created by previous grants of applications for subdivisions that created these driveways to be streets since they were put on a plat. As a result, it then restricted the rights of the applicant's property to be developed in accordance with other properties on that frontage since it now becomes a corner lot. Secondly, Mr. Lipari opined that the applicant also meets the C2 criteria since this is a far better zoning alternative than to comply strictly with the ordinance. He went on to say that in order to comply strictly with the Lot Geometry Circle radius requirement, the impervious surface on the lot would need to be increased significantly since the house would need to be pushed back and thereby making the driveway longer in order to reach the house location. A significant number of large trees would need to be removed, which the applicant would rather avoid doing (and by avoid doing would be in compliance with the Tree Preservation ordinance, which requires a maximum preservation of trees on developed lots). The benefits of granting the variance aligns with the goals of the Municipal Land Use Law and that the variance would not create detriment to the surrounding properties.

Mr. Raphael Martinez made an appearance as the engineer on behalf of the applicant. As a voir dire, Mr. Martinez stated that he attended Rutgers University in 1986 and that he is a licensed, professional engineer in the State of New Jersey, Delaware and Illinois. He is also a certified municipal engineer in New Jersey and that his licenses are current. Mr. Martinez confirmed that he has provided testimony with other Planning Boards in New Jersey and also served as a municipal engineer for several townships. There were no questions from any of the Board members or public regarding Mr. Martinez' qualifications, and he was accepted by the Board as an expert witness for the applicant.

Mr. Martinez referred to his exhibit, which is marked as Exhibit A-2 (Sheet 1 of 1) with today's date and has a date of February 17, 2023. This contains notations by Mr. Martinez. Mr. Lipari marked the next exhibit as Exhibit A-3 with today's date and has currently 14 photographs on the display of various pictures taken of the site. He marked the photographs as A-3A through A-3N.

Mr. Martinez referred to Exhibit A-2 and stated that he provided the minimum widths for the two lots, which also include the Lot Geometry Circles. The Lot Geometry Circle for Lot 1.01 had to be pushed back because of the odd shape of the property and as a result, encroaches on critical slopes on this part of the site. Also, the driveway will be much longer and this configuration requires the removal of 30 large diameter trees. In the front, there would be the need to remove 12 smaller trees. Mr. Mayer opined that if the driveway was reconfigured, there would be less of a need to remove so many trees. Mr. Martinez agreed that some impacts could be eliminated; however, there are still significant impacts with tree removal because of the septic fields as well. He discussed the driveway ramifications further along with the location of the septic fields, which have better percolation rates in the planned location on the lot. Mr. Martinez went on to point out the swale on the Exhibit that would be required in order to control the drainage from the increase of impervious surface from the driveway and that this swale would also impact tree removal. He opined that this is why it is a better plan to keep the house further up front in order to minimize

the disturbance on the property by minimizing the removal of trees, minimize impervious coverage, and eliminate the need for additional drainage to the area. He clarified that the requirement for a Lot Geometry Circle for a corner lot would be 312 feet with 250 feet being the minimum and that the Lot Geometry Circle for a corner lot that would require a variance would be what is indicated on the plans currently. Mr. Lipari referred to the site plans – Sheet 2 of 9 - that were submitted to the Board, which indicated the Lot Geometry Circle on Lot 1.01. Mr. Martinez explained that this indicates a 250-foot Lot Geometry Circle with the house pushed up toward the front of the property and that Lot 1.02 remains unchanged.

Mr. Martinez went on to say that with the house pushed up front, then all the steep slope areas in the back of the property would be deeded by the applicant as a conservation easement for preservation purposes. There was some further discussion regarding placement of the Lot Geometry Circle, and Mr. Martinez referred to Exhibit A-2, which is also Figure 1 for purposes of the discussion. Mr. Perri inquired as to how much more impervious surface there would be if the applicant extended the driveway to comply with the larger Lot Geometry Circle. Mr. Martinez stated the driveway is about 400 feet by 15 feet – 6000 feet, and Mr. Lipari stated that instead of trying to comply with the requirements of the ordinance that a request for variance relief with the house moved up would be a better overall plan for the Township. Mr. D'Emidio opined that he prefers considerably the plan on Sheet 2 of 9 with the house pushed up (with the variance on the 250-foot Lot Geometry Circles) than the plan on Exhibit A-2 – Figure 1 with the house pushed back. He opined that there is no harm to the neighborhood or to the Township. The Board members agreed that this is a better plan with less disturbance with everything on the property.

Mr. Carney stated that the testimony given thus far refers to the positive criteria for a C2 variance, whereby the benefits of the deviation would substantially outweigh any detriment. He asked Mr. Lipari to provide any negative criteria, and Mr. Lipari responded that he does not see, based on the testimony, any negatives to the application. He does not believe that any of the professionals have raised any real negative impact to the neighborhood and that this better plan is more in line with Chapter 23 of the Township ordinance, which is the Tree Preservation Ordinance. He opined that not only is it not a detriment to the neighborhood but a positive plan for the neighboring properties and that it also furthers the goals of the Master Plan and ordinance. Mr. Martinez agreed with Mr. Lipari and confirmed for Ms. Neibart again that the steep slopes in the back of the property would be deeded as a conservation easement. This area is about 440 feet by 150 feet (approximately 2 acres). Also, there would be a greater distance between the neighboring houses by moving the house forward. Mr. Mortezaei pointed out that with the longer driveway (with the house pushed back) the emergency services vehicles would have a longer distance to reach the house.

Mr. Carney stated that he has up to this point heard testimony regarding the C-2 variance for the 3 bulk variances as to the Lot Geometry Circle and the Building Envelope Circles. However, he has not heard any testimony regarding a variance for the driveway, which is supposed to be located 125 feet from the center line of the road. The reports stated that it is 107 feet away from Homan Lane. Mr. Lipari requested that a variance for the driveway be made separately, if possible, and Mr. Martinez opined that the driveway path on the plan, which is a straight line, is a better site distance. Mr. D'Emidio stated that he has no issue with the location of the driveway with the better plan with the suggestion that the engineer be allowed to have some liberties with respect to the exact placement of the driveway during the Lot Development phase. Mr. Keenan stated that this should be a matter for the record that relief is being granted from the requirement of 125 feet with no less than 100 feet from the neighboring lot. Ms. DeMeo referred to Sheet 4 of 9 and stated that there was a discrepancy on the plan with regards to the number of trees stated on the sheet that would be removed with that of the number of trees being removed on Sheet 5 or 9, and Mr. Keenan clarified that this Board is not approving any tree removal since there is no

proposed development at this point. What is shown currently on the plan is a conceptual layout and that a Lot Grading Permit application and Tree Removal permit would need to be submitted indicating the trees that would need to be removed once a development plan is submitted should the application be approved by the Planning Board.

Ms. DeMeo referred to the report submitted from The Natural Heritage search and that based on this search, she opined that perhaps it should be considered that there be no tree removal between April 1<sup>st</sup> through November 15<sup>th</sup> because of the Indiana bats. It was agreed that there would be no tree removal during this period.

Mr. Mayer noted some minor discrepancies on the plans, and Mr. Lipari stated that should the application be approved that any discrepancies would be corrected on any final plans submitted to the Township.

Chairman Giordano confirmed the notation with Mr. Carney that the Indiana bat tree removal restriction period will be part of the resolution.

Mr. Johnson stated that he noticed that the driveways have a substantial number of lights and would ask the applicant to reduce the number of lights. Mr. Lipari stated that this is not technically part of the application for the subdivision; however, this will be noted and will be adjusted accordingly but that any lighting would need to comply with the Township ordinance. Mr. Martinez stated that he will reduce the number of lights and move the lights further back. There was also some discussion regarding the utility poles and what the utility companies will allow and that this would need to be worked out at the time of construction permit.

Mr. Mayer raised a concern of the site distance going east on Mountainside Road and what would be proposed to improve this site distance. Mr. Martinez responded that there is over 250 feet of site distance in this area, which is also required. Mr. Lipari stated that it will be confirmed with Mr. Keenan that the site triangles are satisfied. There was some further discussion regarding the site distance.

Mr. Mayer inquired about any landscaping requirements for this major subdivision, and Mr. Keenan said that there are requirements; however, since there is no development being proposed, then a waiver would be in order.

Mr. Martinez confirmed that the existing building and barn on the property will be removed before the Lot Grading application is submitted. Also, some other impervious surfaces on the property will be removed and returned to grass as much as possible as well.

Chairman Giordano entertained a motion to open the meeting to the public. A motion was made, and it was seconded. All agreed.

Ms. Audrey Von Poelnitz of Lot 46 (Mountainside Road) approached the microphone and stated that she and her husband are the Homan Lane owners. She stated that American Water has an easement through Lot 47 to her property higher up. She went on to say that the water lines have not been documented on the map and the home sites are located right on their water line where there is an easement. Ms. Von Poelnitz raised her concerns about disruption as the homes are built and that she would like to be ensured that there will be no water lines removed. She went on to say that they (Lot 46) have an easement to access their property from the previous owner, Mrs. Martin (from around 1910) and that nowhere in all these proposals does it indicate their easement to enter their property from the Old Schoolhouse Lane, which comes to Mountainside

Road. Ms. Von Poelnitz stated that she needs to see their easement access along the Old Schoolhouse Lane right through the property and American Water Company's easement.

Ms. Von Poelnitz also inquired as to whether the applicant plans to put an additional water hydrant onto Mountainside Road since there is currently an issue with the number of water hydrants on this road. Mr. Martinez responded that he believes that all of the Old Schoolhouse Lane easements have been abandoned; however, this will be confirmed again. Mr. Lipari stated that the water service to the Von Poelnitz property will not be impacted in any way and that any water lines on the applicant's property will be relocated in accordance with the utility companies. There was some further discussion regarding the water line to the proposed properties. Mr. Lipari confirmed that the official licensed surveyor stated that the utility easement has been abandoned or that it would have been put on the plans had it existed. This is the surveyor's representations that are signed, sealed and delivered to this Board. However, Mr. Lipari stated that he will again confirm with the surveyor that the utility easement was abandoned. He stated, however, that should by chance this is not the case, then the easement or the water line or both would be relocated, if necessary. He opined that American Water Company will ensure that the water service to the Von Poelnitz property is not disrupted. Mr. Lipari stated that this is typical construction of a single-family home and that the applicant will work with the utility company to ensure that no water lines are affected. Mr. Mortezaei confirmed that he will do everything in accordance to what American Water Company dictates.

Chairman Giordano entertained a motion to close the meeting to the public. A motion was made, and it was seconded. All agreed.

Mr. Lipari stated that he does not have a second witness and that all of the issues and concerns have been addressed.

Mr. Paul Cancilla of H2M stated that the positive criteria for the C variances have been addressed and that the four variances have been identified. However, he would like to have the negative criteria addressed by the applicant as well. Mr. Martinez stated that he does not see any detriment to the neighbors or neighborhood (surrounding area) based upon this plan and that there are no negative criteria with regards to each of the variances – lot geometry circle for each lot, building envelope coverage and the distance between the driveway.

Mr. Roy Messaros stated that his review comments submitted were really related to Exhibit 2 – Figure 1 and that because there will no longer be steep slope disturbance and a long 550-foot driveway that his comments disappear. He went on to say that he is in favor of what has been discussed since he does not like the long driveway that impinges on the steep slope area.

Mr. Keenan had no further comments.

Chairman Giordano entertained a motion to open the meeting to the public for general comments. A motion was made, and it was seconded. All agreed.

Ms. Von Poelnitz inquired as to how the validity of the 1910 easement will be followed up, which offers access to them to enter this property to go up to their land. Mr. Lipari responded that again he will research this and whether there still is an easement that continues to exist to this day. He asked Ms. Von Poelnitz to follow up with him on this matter and to provide any information she may have with regards to the easement. Chairman Giordano added that the new conservation easement dedicated at the back of the property would also need to be addressed should there already be an easement on that land. It was confirmed that these houses will be served by public water.

Chairman Giordano entertained a motion to close the meeting to the public. A motion was made, and it was seconded. All agreed.

Ms. DeMeo inquired as to the purpose of Exhibit A3, and Mr. Lipari stated that it just wasn't addressed. Exhibit A3 was going to depict existing conditions and proposed development but he opined that it is not necessary to address this. Mr. Mayer inquired as to why the applicant did not consider using Homan Lane for access, and Mr. Lipari explained that there were concerns with the neighboring homeowners so this scenario was avoided.

Chairman Giordano stated the items to be addressed:

- The application should be revised to correctly state what is being sought – listing the variances and deleting the D variance.
- One or two comments in the engineering report with regards to some additional changes to be made, if outstanding.
- The tree schedule will be noted.
- Sheet 4 of 9 will be revised to correct the Title block and signature lines.

Mr. Lipari stated that he will forward to the Board an amended application document.

Mr. Carney listed the conditions of approval as follows:

- Four bulk variances - two bulk variances for the lot geometry circles, one bulk variance for the building envelope circle, and one bulk variance on the driveway width of 107 feet instead of 125 feet but no less than 100 feet from the Homan Lane center line to the driveway of the adjacent lot.
- A deed restriction of a conservation easement of the steep slope area, which is approximately two acres (approximately 440 feet by 150 feet). This conservation easement would still be owned by the applicant. Also, the placement of markers designating the property boundaries should be installed. Mr. Martinez stated that these have been put on the construction details already.
- Trees will not be removed between April 1<sup>st</sup> and November 15<sup>th</sup> to protect the Indiana bat.
- The existing structures on the lot will be demolished prior to approval of a Lot Grading Permit application for Lot 1.01.
- The water service to Lot 46 will not be interrupted or impacted in any way.

Mr. Lipari stated that the lot designation will be determined by the tax assessor as well as the address. He also stated that the lighting will be removed from the plans as part of the final draft.

Chairman Giordano entertained a motion to direct Mr. Carney or any other member of the firm Maraziti Falcon, LLP to draft a resolution approving a Major Preliminary and Final Subdivision for PB 22-02, Block 116, Lot 47, 239 Mountainside Road subject to the items outlined above. Mr.

Mayer brought up the issue of the easement and whether this should be a condition of approval, and Mr. Lipari stated that this was not necessary and that a licensed surveyor has stated that the easement was abandoned; however, as stated earlier, Mr. Lipari will confirm this again. Chairman Giordano discussed some of the comments from the various committees and entities, and Ms. DeMeo stated that the Environmental Commission's comments have all been addressed. Chairman Giordano stated that Fire Protection is waiting on fire flow from the hydrant near this address from the water company. DPW stated there should not be any lighting within 15 feet of the road in order to prevent any damages to the lights that can occur. Mr. Mayer stated that there is nothing on the plans that addresses Princeton Hydro's comment in their review letter regarding the runoff coming down the driveway onto Mountainside Road. Mr. Messaros responded that the comment was related to the 557-foot-long driveway, which, is no longer a consideration; however, any length driveway runoff would still need to be addressed. Mr. Martinez stated that this has already been addressed with a 150-foot swale that is on the plan. Mr. Mayer also stated that there was another Princeton Hydro comment with regards to time of concentration calculations and that these were not included in the drainage report. Mr. Messaros responded that this comment was requesting further clarification in terms of the consideration of the longer driveway, which again is no longer a consideration. Mr. Keenan added that any stormwater calculations provided by the applicant are theoretical and that a real design must be provided when the applicant applies for a Lot Grading Permit. Each of these lots individually will be considered major developments since they are considered as a whole a stormwater project and will each have their own Lot Grading Plan.

A motion was made by Ms. Neibart, and it was seconded by Mr. Perri.

Upon roll call:

AYES: Ms. Neibart, Mr. D'Emidio, Ms. DeMeo, Mr. Johnson, Mr. Perri, Mr. Mayer, Chairman Giordano

NAYES: None

Ms. Foley stated that any future meetings will now be held at the Mendham Township Elementary School Cafeteria.

It was announced that this application will be continued at the next scheduled Planning Board meeting on Wednesday, June 21, 2023 at the Mendham Township Elementary School Cafeteria at 7:00 pm.

Chairman Giordano entertained a motion to open the meeting to the public. A motion was made, and it was seconded. All agreed.

Seeing no one, Chairman Giordano entertained a motion to close the meeting to the public. A motion was made, and it was seconded. All agree.

Chairman Giordano made a motion to adjourn the meeting. A motion was made, and it was seconded. All agreed.

The meeting adjourned at 9:25 pm.

Respectively Submitted,

Beth Foley  
Planning Board Secretary