

**TOWNSHIP OF MENDHAM
BOARD OF ADJUSTMENT
MINUTES
February 14, 2019
REORGANIZATION and REGULAR MEETING**

CALL TO ORDER

Ms. Foley called the meeting to order at 7:30 pm.

ADEQUATE NOTICE

“ADEQUATE NOTICE of this meeting of the Board of Adjustment of the Township of Mendham was given as required by the Open Public Meetings Act as follows: notice was given to the DAILY RECORD and the OBSERVER TRIBUNE, notice was posted on the bulletin board in Township Hall, and notice was filed with the Township Clerk on January 11, 2019.”

OATHS OF OFFICE

Mr. Sposaro administered the Oaths of Office to Ms. Brenda Grant, Mr. Ryan Guthrie, Mr. Nicholas Lordi, Mr. Arjan Roghanchi.

ROLL CALL

PRESENT Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Mr. Herbes
ABSENT: Mr. Peruyero, Mr. Zairi

SALUTE TO THE FLAG: Led by Ms. Foley

CALL FOR NOMINATION OF CHAIRMAN (by Secretary)

Ms. Foley called for a nomination for Chairman of the Board of Adjustment for 2019.

Mr. Roghanchi made a motion to nominate Mr. Stephen Herbes for roll of Chairman of the Board of Adjustment for 2019, and it was seconded by Ms. Luciano.

Ms. Foley closed the nominations for roll of Chairman of the Board of Adjustment for 2019 after there were no further nominations.

A motion was made, and it was seconded to approve Mr. Herbes as Chairman of the Board of Adjustment for 2019. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
ABSTAIN: Mr. Herbes

Motion carried.

Ms. Foley turned the meeting over to Chairman Herbes.

CALL FOR NOMINATION OF VICE CHAIRMAN

Chairman Herbes called for a nomination for roll of Vice Chairman of the Board of Adjustment for 2019. Mr. DiGiacomo made a motion to nominate Mr. Guthrie, and it was seconded by Chairman Herbes.

Chairman Herbes closed the nomination for roll of Vice Chairman of the Board of Adjustment for 2019 after there were no further nominations. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Lordi, Ms. Luciano, Mr. Roghanchi, Chairman Herbes
ABSTAIN: Mr. Guthrie

Motion carried.

Chairman Herbes entertained a motion to reappoint Mr. Anthony Sposaro as the Board of Adjustment attorney for 2019. A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Chairman Herbes

Motion carried.

Chairman Herbes entertained a motion to reappoint Mr. Denis Keenan from the firm French & Parrello Associates as the engineer for the Board of Adjustment for 2019. A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano Mr. Roghanchi,
Chairman Herbes

Motion carried.

Mr. Sposaro referred to the three Reorganization resolutions for approval:

REORANIZATION RESOLUTIONS

OPEN PUBLIC MEETINGS ACT

REGULAR MEETING SCHEDULE - 2019

REAFFIRMATION OF RULES AND REGULATIONS

Chairman Herbes entertained a motion to approve the three resolutions. A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Chairman Herbes

Motion carried.

APPROVAL OF MINUTES – APRIL 12, 2018

A motion was made to accept the minutes for the April 12, 2018 meeting, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Mr. Guthrie, Chairman Herbes.

OLD BUSINESS

Case 3-16

Block 117, Lot 55: 17 Calais Road

APPLICANT: Sal & Jennifer Lombardo

APPLICATION: Additional Extension to Ordinance 12-2009

Ms. Lombardo approached the microphone. She began by saying that their project for a new single family dwelling is slowly moving forward and stated that her husband is doing most of the work while holding down a full time job. She went on to say that there were many unforeseen issues with the project that needed to be addressed, which were not projected in the original scope of the project. She outlined a few of these items. Ms. Lombardo confirmed that she submitted to the Board an updated time line and that it is her expectation that a temporary CO could possibly be obtained in May, 2019.

Mr. Guthrie inquired as to whether there is a time restriction on obtaining a temporary CO with regards to this project. Mr. Sposaro responded that in accordance with the ordinance, an individual is required to demolish the existing home before construction commences on the new dwelling. The Board of Adjustment deviated from this by allowing for the construction to commence with the understanding that it would be completed within a reasonable period of time. He went on to say that it has unfortunately taken a lot longer than anticipated and that as a result, the Lombardo's were asked to return to the Board periodically for an update along with monthly updates submitted via email. Historically, Mr. Sposaro stated that the Lombardo's have made significant progress and that they seem to be close to obtaining a temporary CO. Ms. Lombardo stated that any of the members are welcome to visit the site at any time and that she has reached out to the various Township inspectors for any questions that she has had.

Ms. Foley inquired as to whether Ms. Lombardo would need to return to the Board's March meeting for another update, and Chairman Herbes proposed that Ms. Lombardo just submit an update via email without having to return to the Board in March. He requested that she return to the Board, however, at their April meeting. There were no objections from the Board members in allowing this, and Ms. Lombardo agreed to this as well. Ms. Lombardo thanked the Board for its patience throughout this project.

Case 5-17

BLOCK 131.01, LOT 1

APPLICANT: Pitney Property – Township of Mendham

1 Cold Hill road

APPLICATION: Extension of the Variances for an Additional Year

Mr. Matthew Petracca, Mendham Township attorney, approached the microphone. Mr. Sposaro explained that the Board of Adjustment granted Preliminary and Final Site Plan approval together with conditional use and bulk variances last year in association with the development of the Pitney property. The resolution approving the Pitney subdivision application is dated February 8, 2018 and that the variances under the terms of the resolution expire after one year, if construction has not commenced. Mr. Sposaro stated that he did receive communication from the Township attorney requesting that this condition of approval be extended for an additional year and that he communicated to Mr. Petracca that he was free to appear before the Board. However, Mr. Sposaro explained that under the Municipal Land Use Act a notice to the public and newspapers is required when relief is being sought from a condition of the approval. Mr. Sposaro confirmed that this was accomplished and that the notices were all in order. He also stated that it is his understanding that the Township is in the process of selling some of the property and that as a result, construction has not commenced. He opined that there is no

reason not to extend the variances for an additional year. Mr. Petracca confirmed this and stated that Committeeman Mr. Nick Monaghan is also present for any questions from the Board members. Mr. Petracca added that there was a public sale of two of the lots, which are under contract, with the third lot designated for Open Space. He stated that the Township would like to maintain the status quo under the contract of sale. Mr. Sposaro confirmed that it was the municipality that was granted the variance relief after submitting their application to the Board of Adjustment and explained that the technical purpose is to extend this approval for an additional year in order to afford the Township the opportunity to complete the sale with the intent of construction commencing within the next year by a developer.

Chairman Herbes opened the meeting to the public.

Mr. Anastasio Konidaris of 6 Ballantine Road approached the microphone and stated that he supports the extension of the variances for an additional year. He opined that the Township did a good job of subdividing the properties with a good plan to preserve the seven acres for Open Space. There was a successful auction a few months ago for the remaining five acres and that it is logical to extend the time line given the slow pace to completion of the deal.

Chairman Herbes entertained a motion to extend the variances for an additional year. A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Chairman Herbes

Motion carried.

NEW BUSINESS

CASE 1-19

Block 127, Lot 75.04

APPLICANT: Frederick V. Martin III

8 Ascot Lane

APPLICATION: Bulk Variance

Mr. Martin made an appearance as the applicant and was sworn in by Mr. Sposaro. He explained that he is seeking a variance for a garden shed, which he added to the far northwest corner of the property. He stated that he did a great deal of research before installing the shed to understand the Township's rules and regulations of what would be applicable or not applicable for such a structure. He discovered that the setback requirement for a shed is ten feet off of the property line, and he proceeded with installing the shed even though he came to realize that this was not correct. Mr. Martin explained that he has an interest in gardening and landscaping as a hobby, which was the impetus behind installing the shed. Because of his hobby he had many pieces of heavy duty equipment, which he could no longer fit in his garage, and as a result, he was placing this equipment in the back of the property along the back fence. He went on to say that his concern became the issue of aesthetics and that something needed to be done to improve the appearance in the back by consolidating and shielding all of the equipment. He referred to the application exhibits that he submitted to the Board, which indicates the before and after shots of what he had accomplished and opined that the shed clearly was a great improvement in appearance over what was previously there. Mr. Martin stated that he is requesting from the Board approval for the variance under the condition that he would provide any additional screening necessary.

Mr. Martin continued his discussion with the hardship criteria, which was the impetus behind the project. He referred to the exhibits in the application packet that show what happens after a rain

storm on his property. The property is basically square in shape with his house in the middle but explained that there is about a 20-foot elevation drop, which creates a great deal of runoff. There is runoff behind his house and in front of his house, which led to finding a location for the shed. He went on to say that the property is in the R-3 zone with 50-foot side and rear yard setbacks, and as a result, this caused a dilemma in complying with these setbacks. Every location on his property that he was identifying for the placement of the shed within the setback requirement had serious, significant runoff during storms. Also, the setback requirements would place the shed in the middle of his property, which would not only make it visible from the back, but would be in a line of sight from all the other neighboring properties. Mr. Martin explained, therefore, that his goal was to blend the shed as much as possible into the environment and that the setback requirements would not allow for this. He went on to say that the northwest part of his property is the highest elevation, which must have previously been some type of garden since there were no trees or bushes at this location. There was minimal disturbance to the environment for the placement of the shed, and this location was also surrounded by pine trees, which are on the property line as well as in front and along the side. The placement of the shed anywhere else on his property would have created more land disturbance along with the shed itself being a very visible entity to the surrounding neighborhood. Mr. Martin opined that all of the mentioned criteria led to placing the shed in its current location. He also stated that the current location was the furthest away from his neighbor behind his property and that after discussing the shed with the neighbor to the north, who has a pool house, it was agreed that the pool house obscures the shed anyway. Mr. Martin stated that because of the uniqueness of his property, which created a hardship, that he was not selfish or self-centered in his goal of placing the shed in its current location. He opined that it was the most suitable location for the shed but stated that through the process, he should have better researched references to sheds of this size. It was wrongfully his interpretation that the shed only needed to be ten feet from the property line.

Mr. Martin went on to say that the reason for his appearance before the Board was because the Zoning Officer noticed the shed on his property during a routine inspection of an open permit on his kitchen and illuminated the fact that the shed violated the setback ordinance and that he must apply to the Board of Adjustment for variance relief. Mr. Martin also wanted to ensure that his insurance covers the shed, which would only be the case if a permit was submitted and approved for it.

Chairman Herbes asked the Board members if they had any questions for Mr. Martin. Ms. Grant inquired as to whether any of his neighbors had any problem with the location of the shed. Mr. Martin stated that he did attempt to reach out to the neighbor behind him but that either they were away or he was away traveling for business. He opined that it was his burden to contact them and that he did not do this; however, at the time, he thought that where he placed the shed was truly the best location. Ms. Grant inquired as to what would have been the difference if the shed was moved just inside the setback requirement. Mr. Martin responded that again the issue was the water runoff down the property and that he also has a sprinkler system in that area. He also went on to say that the area inside the setback would have needed to be graded in order to make the area level since it is all slope. Mr. Martin also stated that he did not want to interrupt the natural flow of water that was diverted around the house and wished to avoid runoff issues to his house by disturbing the property.

Mr. Sposaro inquired if any of the neighbors on the adjoining properties can see the shed since there is a fair amount of substantial vegetation on these adjoining properties. Mr. Martin stated that there is substantial vegetation; however, he has committed to his neighbor that it would be his intent in the spring to plant additional vegetation that will camouflage the shed. He also pointed out that he carefully considered the color of the shed, which he had painted to blend in with the environment. Mr. Roghanchi inquired as to how often applications are heard regarding this type of issue. Mr. Sposaro responded that this is not at all unusual and that at times there

are residents who simply try to get away with installing a shed and must then seek relief if it is discovered by the town that it is violating the ordinance. However, there are other times when residents act in good faith in thinking that they comply with the ordinance but have not. Mr. Sposaro stated that for the most part residents frequently are not aware of regulations associated with sheds. He confirmed that approving variances post project does not set any precedent for future applications and that each application is considered on its own merits.

Ms. Grant inquired whether the shed would be a cloud on the title of this property without the variance. Mr. Sposaro responded that this would not show up in a title search. He further clarified for her that if there is a violation to an ordinance, in general, that this may lead to an investigation since often there are structures that not only encroach upon a setback but also encroach upon someone else's property line. This would raise an issue; however, if the issue is within the four corners of the property itself, this will not affect the title search.

Mr. Sposaro referred to Mr. Keenan's engineering report dated November 5, 2018, which included recommendations for a number of waivers to be granted and that the application must be deemed complete by the Board in order to proceed with the hearing. Mr. Keenan reviewed each of the waiver requests as outlined in his report and stated that the waiver requests are all reasonable in his opinion.

Chairman Herbes entertained a motion to deem the application complete. A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Chairman Herbes

Motion carried.

Mr. Keenan continued with the remainder of his report and reviewed the seven other comments listed in the report. The comments basically summarize the application, and Mr. Keenan stated that he had the opportunity to visit the property prior to preparing the report. Mr. Keenan highlighted the fact that he does agree with what Mr. Martin indicated in that if the shed was moved away from the property line in order to become compliant with the zoning requirements that it would then be located on a slope, which would require a lot of disturbance. This would also reduce the screening. Also, if it was moved further into the rear of the yard, the shed would be highly visible. He also agreed with the issue of water runoff. Mr. Keenan opined that the current location of the shed is very logical, and he went on to say that a request for relief at this location is substantially reasonable considering the existing topography, existing screening and existing drainage issues. Mr. Keenan also referred to his exhibits in the report, which indicates the fact that the shed is very obscure, and he stated that if the variance was approved that a permit could be obtained.

Chairman Herbes opened the meeting to the public.

Mr. David Garfinkel of 30 Mount Pleasant Road approached the microphone and stated that he and his wife are Mr. Martin's neighbors and that his property is a flag lot. He went on to say that when the shed was built a couple of years ago he assumed that it was in compliance with the town's requirements. When he was notified in a letter that Mr. Martin was applying for a variance, he became involved. Mr. Garfinkel stated that it was his idea to speak with Mr. Martin this evening about planting 6–8 foot trees as a barrier. He went on to say that the shed can be seen very clearly from his driveway and visually seen overall from his property since it is in the far corner towards the Garfinkel property. Mr. Garfinkel requested that the Board consider having Mr. Martin plant barrier trees behind the shed so it is less visible to them and stated that he believes Mr. Martin is in agreement with this. Chairman Herbes inquired as to how many

trees Mr. Garfinkel would like to see planted, and Mr. Garfinkel responded that perhaps six 6- 8 foot trees be planted. Mr. Sposaro suggested that this should be delegated to the engineer, who could make a determination as to what is appropriate. There was some discussion regarding the location and type of trees around the shed, and Mr. Garfinkel stated that his attorney suggested planting 6-8 foot buffer trees; however, he is open to other suggestions that would be aesthetically pleasing. Mr. Keenan added that it would be just a matter of choosing the right vegetation for the area. Mr. Garfinkel stated that prior to the shed being installed there was a fenced in garden and that this is where the shed was installed.

Ms. Cheryl Garfinkel of 30 Mount Pleasant Road approached the microphone and stated that when they moved into their property most of the vegetation was pine trees located on their side of the property; however, these trees on their property were trimmed up as they matured, and therefore, as a result, the shed is now quite apparent and an eyesore. Ms. Garfinkel stated that they would be open to any kind of compromise. Mr. Sposaro suggested that the engineer address the vegetation issue and that if the parties reach an impasse and cannot come to an agreement as to what should be done, then the applicant must return for another appearance before the Board. Mr. Keenan stated that he will be speaking with his firm's landscape architect regarding the type of trees that should be planted.

Chairman Herbes opened the subject up for discussion amongst the Board members. Mr. Roghanchi asked that if the shed had been built and a variance granted whether there would be a remedy for the new unsightly view if the trees were subsequently trimmed after the relief. It was clarified that there would be no retroactive remedy.

Mr. Guthrie stated that there seems to be a compromise between the two homeowners and that if they can come to an agreement with the engineer on a long term remedy, he would see no further issue. He commented on possible ramifications to any new homeowners that would move in years from now and that he would hope for a logical, long term solution to this issue. Chairman Herbes stated that it would be a condition to the approval that the applicant cooperate with the engineer with regards to new vegetation in order to obscure the shed from the Garfinkel's property with the further condition that the applicant would need to return for another appearance before the Board if an agreement could not be reached. Mr. Sposaro stated that Mr. Keenan will report back to the Board as to whether the issue has been resolved between Mr. Martin and the Garfinkels.

Chairman Herbes entertained a motion to approve the requested variance subject to the condition that vegetation cover is obtained with the consultation of the Township's engineer and with the understanding that it will obscure this area along with the fact that if an agreement cannot be reached between the two parties, then the applicant must return for another appearance before the Board. Mr. Sposaro stated that meeting this condition in the spring will not hold up Mr. Martin from applying for a building permit for the shed at this time.

A motion was made, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Mr. Roghanchi,
Chairman Herbes

CASES PENDING

CASE 2-19

BLOCK 119, LOT 2

APPLICANT: Edward W. Douglas

APPLICATION: Bulk Variance

Ms. Foley stated that she was still waiting for engineering plans to be submitted. This applicant does wish to be heard in March; however, this could potentially be delayed again, if there is no submission in time.

SUCH MATTERS THAT RIGHTFULLY COME BEFORE THE BOARD

Mr. Guthrie remarked that after several members of the Planning Board and Board of Adjustment met with the Township Committee for a workshop meeting to discuss a combined Land Use Board, it was decided by the Township Committee to keep the two Boards separate. He went on to say that at the meeting, however, the Planning Board Chairman and other members of the Board of Adjustment who were present all recommended to the Township Committee that the former Board of Adjustment Chairman, Mr. Rich Brusco, be reappointed back onto the Board of Adjustment. Mr. Guthrie requested that if at any point anyone were to step down from the Board of Adjustment that it would be recommended again to the Township Committee that they reappoint Mr. Brusco. He stated that he has spoken to Mr. Brusco and that he is very willing to serve on the Board again as a member. Mr. Guthrie opined that Mr. Brusco could mentor new leadership on this Board and that he wishes that the Board of Adjustment would consider this suggestion to the Township Committee. Chairman Herbes opined that this was an excellent suggestion and supports Mr. Guthrie's observations that former Chairman Brusco was an incredibly knowledgeable, talented individual and that it was a tremendous loss to this Board when he was not reappointed. He went on to say that it would be a tremendous gain to this Board and to the Township if he were reappointed to the Board of Adjustment. Mr. Guthrie went on to further discuss the history of why perhaps former Chairman Brusco was not reappointed and referred to the Pitney application that was heard by this Board in 2017. One of the committee members at the time became visibly upset when former Chairman Brusco requested additional information on two of the variances and there was some angry verbal exchange. Mr. Guthrie opined that former Chairman Brusco was punished by not being reappointed for what he thought was in the best interest of the town. Mr. Guthrie further opined that this sets a bad precedent.

GENERAL CORRESPONDENCE

None

The meeting was duly adjourned at 8:32 pm.

Respectfully submitted,

Beth Foley
Board Secretary