

**TOWNSHIP OF MENDHAM
BOARD OF ADJUSTMENT
MINUTES
May 13, 2021
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, 2021.”

ROLL CALL

PRESENT Mr. Cadmus, Mr. DiGiacomo, Mr. Kapner, Mr. Lordi, Mr. Peruyero, Mr. Roghanchi,
Mr. Zairi, Chairman Herbes

ABSENT: Ms. Grant

OTHERS PRESENT: Mr. Clifford Gibbons, Esq.

SALUTE TO THE FLAG: Led by Ms. Foley

Chairman Herbes stated that there is a quorum and that all the members present are eligible to vote.

APPROVAL OF MINUTES – January 14, 2021 Reorganization Meeting

A motion was made to approve the minutes of the January 14, 2021 meeting, and it was seconded. All agreed.

NEW BUSINESS

Case 2-21
43 Old Mill Road
Block 113, Lot 15
Bulk Variance – Undersized Lot

Mr. Michael Selvaggi of Laery, Selvaggi, Abromitis & Cohen entered an appearance as Counsel on behalf of the applicant, Anthony Malangone, as well as the applicant's engineer Mr. Thomas Schaffer. He stated that the applicant is seeking a C-1 variance to raze the existing dwelling and garage and build a very modest 26 x 60 dwelling, along with a new garage and the installation of a new septic system. The current building is within the front yard setback, and the proposed building will also be in the front yard setback. The property is significantly impacted by regulated wetlands and wetland buffer areas and that because of the constraints of the

environmental regulations, the location of the new dwelling is limited to its current location. He clarified that a variance would still be required in order to accommodate the front yard setback. Mr. Selvaggi went on to explain that the property owner would prefer to have the location of the house set back further; however, again this is not possible because of the environmental constraints.

Mr. Selvaggi requested that Mr. Thomas Schaffer, engineer for the applicant, be sworn in in order to hear his testimony on the application. Mr. Clifford Gibbons, Board attorney, swore in Mr. Thomas Schaffer. To all allow for a voir dire by the Board and persons in attendance, Mr. Schaffer stated that he graduated from NJIT in 1989 and stated that he worked at several engineering firms over the years and has been practicing engineering for over 40 years. He now owns his own company, Schaffer Civil Engineering and that his engineering license is still current. He also has testified in front of other Land Use Boards around northern New Jersey. There were no questions from any of the Board members regarding Mr. Schaffer's qualifications, and he was accepted as an expert witness.

Mr. Schaffer began by saying that the applicant purchased the property for his retirement years and that he wished to construct a modest, one-level home. Because of the environmental site constraints, the house could not be placed further back on the property and that only 750 square feet of additional area was allowed in its existing footprint, which also includes a driveway and garage. He went on to say that a GP24 was obtained for the septic system and that the GP8 was received for the buildings. Also, the flood hazard area applicability determination has not yet been received but that Mr. Schaffer was told by Mr. Cramer, his wetlands scientist, that it should be received in about 30 days.

Mr. Selvaggi referred to Comment #6, Page 2 in Mr. Keenan's report dated May 9, 2021, which sites whether the proposed building could be moved back any further than 20 feet from the property line and whether this is the maximum setback that can be provided. Mr. Schaffer responded that if it was moved back 20 feet, then that credit on the building area is lost. The regulations are dictating where the house can be constructed on the property and that anything beyond where the house is proposed would be detrimental to the size of the home, the garage and driveway that the applicant would like to have.

Mr. Selvaggi asked Mr. Schaffer whether any trees or other vegetation are being removed to accommodate this project. Mr. Schaffer responded that there are no trees being removed since the plan is to stay within the current footprint. This includes the septic system as well. He confirmed that the non-conformity with the bulk variances is no greater than the non-conformity that currently exists. Mr. Selvaggi referred again to Mr. Keenan's report – Comment #7 with regards to other additional information required for the building permit. Mr. Schaffer stated that the intention is to submit a Lot Grading Plan to the Township for approval. He also stated that there will be no relief from steep slopes required because the house expansion is within a flat area and that the septic is also in a flat area. The deck also does not affect steep slopes. Mr. Schaffer stated that a dry well is not necessary for the 750-square feet of increased area to the existing structure. Mr. Schaffer clarified that the limits of disturbance will be sited with a grading and soil erosion plan and will meet the requirements. As far as stormwater regulations are concerned, there will be 750 square feet of impervious area and that the disturbance will be under one acre and will not exceed the thresholds for Major Stormwater Development.

Mr. Selvaggi pointed out that the existing non-conforming condition presently there is not being exacerbated and that the proposed house is very modest in size. The unique environmental constraints are creating a hardship for the applicant to comply.

Chairman Herbes asked for any questions or comments from the Board members. Mr. Clifford Gibbons inquired as to whether there was any other property available adjacent to this property

that would enable this project to be brought into conformity. Mr. Schaffer responded that the wetland areas impact the adjacent property as well and that there is no property contiguous to this that could be used because there is an easement with a driveway that abuts the applicant's property line. Chairman Herbes inquired as to whether there were any streams or wetlands on the property, and Mr. Schaffer responded that the wetlands were delineated and that approximately half the property is defined as wetlands and perhaps a quarter of the property is a flood hazard area. The buffer encumbers the entire property along with the flood hazard area buffer and that the three permits mentioned earlier are what the applicant has obtained or in the process of obtaining. Mr. Schaffer added that there is about 35 feet between the wetlands and the structure.

Mr. Keenan stated that Mr. Schaffer's testimony was a thorough explanation of the site and that the site is highly encumbered with the wetlands, flood plains and riparian buffers so there are very few options as to what can be done. He went on to say that it would be a challenge to move the structure back further since the square footage from the front of the building would be lost and that it would be a detriment to the applicant's ability to build a comfortable sized home. He opined that the testimony provided satisfied his questions and concerns in his report and that the applicant is very limited in what they can do along with zero options with regards to the adjacent property.

Chairman Herbes opened the meeting to the public. Ms. Foley stated that she saw no hands from the public. Chairman Herbes then closed the public portion of the meeting.

Chairman Herbes entertained a motion to approve the variance subject to the applicant obtaining all the necessary building permits and inspections required by the Building Department. A motion was made by Mr. Roghanchi and seconded by Mr. Zairi.

Upon roll call:

AYES: Mr. Cadmus, Mr. DiGiacomo, Mr. Lordi, Mr. Peruyero, Mr. Roghanchi, Mr. Zairi,
Chairman Herbes.

NAYES: None

Motion carried.

Case 2-21
59 Roxiticus Road
B107, Lot 47
Bulk Variance - Generator

Mr. Peter Donnelly of Donnelly, Minter & Kelly, LLC located in Morristown, NJ entered an appearance as Counsel on behalf of the applicants, John and Jeanne Galbraith. This is an application related to 59 Roxiticus Road with the request for an approval of a natural gas generator along the side of the house. The house is currently in a residential zone called the Ralston Historic District and the side yard setback in that zone is 50 feet. He went on to say that the house is currently situated in the setback at just under 30 feet and that the applicant would like to install the generator on the side of the house where the setback is currently about 30 feet and next to some air conditioner condensers. Mr. Donnelly stated that the application includes the manufacturer's specifications along with a survey where the generator is proposed to be located. There are also some pictures of the area in general that was also included in the application. Mr. Donnelly stated that he has one witness for the application, who is the homeowner, Mr. John Galbraith. Mr. Gibbons swore in Mr. John C. Galbraith as a witness.

Mr. Galbraith began by saying that he has been experiencing multiple outages over the years and that being in a rural area, the power company is slower in restoring power than in other areas. This has been an issue, especially since there is a working well on the property and that he would like to install a natural gas generator for emergency purposes. Mr. Galbraith went on to say that the reason for the proposed location on the right side of the house is because there are two air conditioner condensers already located there along with the electrical boxes, which are also located at that side of the house. It is also near where the natural gas runs into the house from the road. From this perspective, it is convenient and that he would prefer not having the unit on the left side of the house or in the back of the house, which is a casual area for outdoor sitting.

Mr. Galbraith went on to say that he lives next to a working farm (Wilmerding Farm) with a very large field that does not have a house on it that is near to his property. There are sheep further up the hill on the Wilmerding property and that the closest house is across the street. The closest house on his side of the road is probably at least a tenth of a mile down the road by the bridge.

Mr. Donnelly referred to the manufacturer's specification, which states that the minimum installation from the house is 18 inches and that the electrician will comply with this specification. Mr. Donnelly also discussed the manufacturer's specifications with regards to the noise level and what would be required with regards to the maintenance of the generator.

Mr. Zairi inquired as to why the generator cannot be placed in the corner of the lot further north since it would then be further away from the house. It would also be less of a noise factor for the neighbor across the street as well as for the homeowner. Mr. Galbraith responded that the further away the generator is from the proposed location, then more lines would have to be run along with the fact that the septic and septic field are located in that area. He opined that since the air conditioning condensers are already in the proposed location for the generator that it makes sense to have the generator there as well. He also opined that it would not be as aesthetically pleasing further back. Ms. Foley confirmed that she has the zoning officer's denial for the location of the generator as submitted on the survey to the building department.

Mr. Cadmus inquired whether the applicant would be willing to provide some sort of landscaping in the immediate area of the proposed generator in order to provide visual screening and potential noise mitigation. Mr. Donnelly agreed that this can be done around the unit but with the caveat that the manufacturer specifications are met as far as clearance of any vegetation around the machine. He clarified also that this is an enclosed generator so it is considerably quieter.

Mr. Cadmus referred to the adjacent farm with sheep and asked for clarification as to the distance from the generator to where the sheep graze. Mr. Galbraith stated that the area where the sheep are located is probably about 2/10ths of a mile away. Mr. Donnelly referred to an exhibit that was submitted with the application that shows the field and described where the sheep are in relation to Mr. Galbraith's property. He went on to say that from the first fence located on the field the generator is approximately 26 feet away followed by a driveway and then a second fence where the sheep graze beyond. Mr. Keenan shared an aerial of the property for the Board members in order to see the area more clearly in relation to the Galbraith property and pointed out where the generator proposed location would be in relation to the two fences. Mr. Keenan stated that the separation from the generator to the first fence is about 30 feet and 47 – 50 feet to the second fence. He clarified that the house across the street is part of the same farmland parcel and approximately 150 feet away. The house is set low on Roxiticus Road and Union Schoolhouse Road, and he identified other structures on the aerial, which was a barn and a garage. These are quite a distance from the Galbraith property.

Mr. Donnelly went on to say that the applicant would coordinate with the Township regarding landscaping around the generator and that perhaps small evergreens would be appropriate since they would provide year-round coverage. Mr. Donnelly stated for Mr. DiGiacomo that the generator is a 24-KW generator.

Mr. Lordi stated that the house across the street is far enough away from the generator and has a fence in front of it and that the sheep are quite far away as well. He opined that the proposed location is the best area for the generator and stated that the generator would not even be seen from the street because of the trees and brush that are currently there.

Mr. Gibbons stated that he would recommend a condition of approval that the landscaping be subject to the approval of the application. Mr. Lordi opined again that additional landscaping is not necessary.

Mr. Keenan referred back to the arial and stated that the testimony addressed the issues involved with the application. He opined that the location of the generator makes sense since the electrical box is in that location as well and that the other areas discussed are really not suitable for placement of the unit. The proposed location is ideal because of the layout of the property, and Mr. Keenan also stated that the proposed location would have little impact on the surrounding properties. He went on to say that he would be cautious about putting landscaping around the generator since it is important that the generator not have any growth close to it for efficiency purposes. Mr. Keenan referred to an exhibit that was submitted as part of the application that shows the property and the house, and he pointed out the location of the septic field.

Mr. Keenan concluded his testimony, and Chairman Herbes opened the meeting to the public. Ms. Foley stated that there were no questions from the public, and Chairman Herbes closed the public portion of the meeting.

Chairman Herbes entertained a motion to approve the variance without the request for added landscaping. A motion was made by Mr. DiGiacomo, and it was seconded by Mr. Lordi.

Upon roll call:

AYES: Mr. Cadmus, Mr. DiGiacomo, Mr. Lordi, Mr. Peruyero, Mr. Roghanchi, Mr. Zairi, Chairman Herbes.

NAYES: None

SUCH MATTERS THAT RIGHTFULLY COME BEFORE THE BOARD

Ms. Foley stated that there are no other matters before the Board.

GENERAL CORRESPONDENCE

None

Chairman Herbes opened the meeting to the public. After seeing and hearing no comment, Chairman Herbes closed the meeting to the public.

The meeting was duly adjourned at 8:26 pm.

Respectfully submitted,

Beth Foley
Board Secretary