

**TOWNSHIP OF MENDHAM  
BOARD OF ADJUSTMENT  
MINUTES  
JUNE 10, 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, Ms. Grant, Mr. Kapner, Mr. Lordi, Mr. Peruyero, Mr. Roghanchi, Chairman Herbes

ABSENT: Mr. Zairi

OTHERS PRESENT: Mr. Clifford Gibbons, Esq., Mr. William Byrne, Ms. Jaime Byrne,

**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 – May 13, 2021 Regular Meeting**

A motion was made to approve the minutes of the May 13, 2021 meeting, and it was seconded. All agreed.

**RESOLUTIONS**

Case 1-21  
59 Roxiticus Road  
B107, Lot 47  
Bulk Variance – Generator

Chairman Herbes entertained a motion to approve Resolution Case 1-21. A motion was made, and it was seconded. All agreed.

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

Chairman Herbes entertained a motion to approve Resolution Case 2-21. A motion was made, and it was seconded. All agreed.

## **NEW BUSINESS**

**CASE – 3-21**

Warren & Christie Gisser  
39 WEST MAIN STREET  
BLOCK 130, LOT 61  
SIDE LOT VARIANCE

Mr. Warren Gisser, the applicant, stated that his property is uniquely narrow and long and as a result, the proposed garage requires a side yard variance since the proposed garage will have a 17-foot side yard setback whereby a 40-foot side yard setback in his property's zone (R-2) is required.

Mr. Gibbons asked Mr. Gisser if he has any witnesses on his behalf, and Mr. Gisser responded that he has two witnesses, Mr. Bill Byrne, his architect, and Ms. Jaime Byrne, Associate architect on the project.

Mr. Keenan stated that he prepared a review for completeness (dated June 7, 2021) and that there were three individual outstanding items that needed to be addressed:

Checklist Item #28 – Presence or absence of wetlands

Checklist Item #30 – Presence or absence of wetlands and state open waters

Checklist Item #39 – Presence of any Flood Hazard Areas on the property

He went on to say that in a letter dated June 9, 2021 from Roth Engineering, LLC (the applicant's engineer) and in updated plans, it was noted that there are no wetlands, flood plains, or flood hazard areas on the property. Mr. Keenan stated that he reviewed the geo web mapping and concurs with the findings of the applicant's engineer based upon NJDEP record mapping. Therefore, he has no objection to deeming the application complete in order to be heard this evening based upon what was now provided. Chairman Herbes deemed the application complete at this point.

Mr. Gibbons swore in Mr. William Byrne and Ms. Jaime Byrne as witnesses on behalf of the applicant.

Mr. Byrne began with an exhibit that was previously prepared and submitted but is a colorized version of the previously submitted exhibit. Essentially, the project consists of a detached garage with two parking bays on grade level along with an upper level, which is accessed from the rear of the structure. The location of this project is on a slope and the sloping sight allows for easy on-grade access to the upper level. The garages are designed in such a way that they can accommodate car and trunk storage. The garage on the main level is accessed from the current driveway area at a right angle to the current garages. The second floor is accessed from grade at the rear as well as from the stairway that extends from the first-floor garages up to the second floor. The proposed garage and second floor measure 28 feet by 28'6" with an extension of 5 feet by 18'6" to accommodate the internal stairway.

Mr. Byrne went on to say that the upper level of the garage space will be finished as a recreation room with easy access to the backyard. This is one large, open room with an enclosed area for mechanical equipment as well as an enclosed area for a bathroom with a sink, a toilet and a shower. Mr. Gibbons inquired if this room would be used for a permanent residence. Mr. Byrne responded that there was nothing expressed to him that this would ever

be used as a guest house or residence. Mr. Gisser clarified that his residence currently has five bathrooms and that his septic is designed based on six bedrooms. This was done by the previous owners of the house. He went on to say that he would work with the Board of Health to ensure that the appropriate measures are taken. Mr. Gisser confirmed that there is no intention in any way to create an occupied space but that this would just be an extension of the home by making the garage a useable space in multiple ways.

Mr. Byrne continued his testimony and referred to his exhibit indicating the exterior elevation sheet and that this exhibit is colorized as well and that there are no other differences from the plans that were already submitted to the Board members. Mr. Gibbons confirmed that since this was already a submitted document that it need not be entered as evidence. Mr. Byrne indicated the front of the proposed structure on the upper left side of the exhibit, which shows the two garage doors straight ahead and the triple window in the recreation room on the upper level. From the driveway side, it presents as a two-story carriage house-type look, which was the design intent. He pointed out the stone foundation and stone details on the left side where the stairway is located. Mr. Byrne then pointed out the right and left side elevation on the right side of the exhibit with an approximation of the grade between the lower level and the upper level. The right-side elevation shows a door that allows access to the stairway from the outside. There is also a stone retaining wall that is not reflected on the plans. He then pointed out the rear elevation of the carriage house on the bottom left of the exhibit, which has double French doors that would lead out to the yard. Mr. Byrne went on to say that the generator location is shown on this plan and is located under the left window on the rear elevation drawing on the exhibit.

Mr. Byrne went on to discuss the site plan exhibit as submitted. On the lower section of the exhibit, the location of the detached garage is indicated, which is 17.2 feet from the back right corner of the garage to the side yard property line. Again, the requirement is a 40-foot setback and that the variance being requested is for approximately 22.8 feet of violation at that location. Some factors to consider is that the garage is located off the existing driveway, which is a convenient location and that it offers an aesthetic value in this proposed site. Mr. Keenan in his review (Item #5) asked whether the proposed structure could be moved any further than the 17.2 feet from the side yard property line currently shown on the plans. Mr. Byrne opined that the garage and the stairway fortunately align with the face of the current garage doors and that it would not be as practical to access the garage base if the structure were moved any further behind the house. Basically, it is now parallel to the garage doors, which works well with the project.

Mr. Byrne went on to say that this property is somewhat unusually configured and has a couple of pre-existing conditions that do not comply with the current zoning. The minimum diameter requirement of the building envelope is 140 feet; however, the lot currently has a diameter of 113.5 feet, which is an existing non-conforming condition. As a result, the existing lot's building envelope is short 26.5 feet and that the variance being requested for the 17.2-foot setback has a 22.8-foot deficiency.

Mr. Byrne's presentation was disrupted due to technical difficulties on his end. Chairman Herbes asked the Board members in the meantime for any comments while waiting for Mr. Byrne to rejoin the meeting.

Mr. DiGiacomo inquired about the location of the new carriage house and what other structures are nearby. Mr. Gisser referred to the site plan and stated that the closest neighbor's home is several hundred feet away from the border of his property, and he added that the carriage house is predominantly near woods. He went on to discuss the generator location and that from a design standpoint, it makes sense to place it where it is proposed. Mr. Gisser stated that it would not be necessary to remove any trees with the project; however, he does have

quite a few ash trees that need to be removed since they are diseased but that this has nothing to do with this project.

Mr. Gibbons referred to the uniqueness and shape of the property that creates a burden to the applicant and asked Mr. Byrnes if it would be in his professional opinion a variance under 40:55D-70 (c) 1 as a hardship or a (c) 2, which is the benefits outweighing the detriments. Mr. Byrne responded that there is certainly a hardship created by the configuration of this property, although it is arguable that there are benefits to this proposal that would also allow for a (c) 2 variance. However, he opined that the reason that this variance is being proposed is because of the unique configuration of this lot and the fact that it does create a hardship because of the narrow building envelope. Mr. Gibbons agreed with this assessment.

Mr. Keenan stated that the bulk of his technical comments in his report have been addressed in the testimony. One item he would like to address, however, is Comment #6 of his review, which notes that if the application disturbs over 3,500 square feet of land that it will trigger a Lot Grading application with the Township. Mr. Gisser confirmed that the project will disturb only 2,500 square feet. Mr. Keenan said that the project does not disturb over an acre of land or generate over ¼ acre of new impervious coverage so it does not trigger any stormwater requirements. Mr. Keenan went on to clarify that if the Board is satisfied with the location of the generator than they would also need to grant variance relief for this as well since it is in the side yard setback.

Mr. Keenan displayed an arial photo of the configuration of the land from March 22<sup>nd</sup> of this year. It shows that the property is very long and narrow and that the house next door, which is most effected, is on another long piece of property but only goes halfway back and that the house itself on this adjacent property fronts close to Main Street. The next closest house is at the end of Abington Way, which is quite a distance with the woods between the two properties. He also stated that he did not see any indication of trees having to be removed after visiting the site and that he does see a challenge in that the more the structure is moved away from the side yard setback, it then presents more of an odd configuration with the building set behind the residence.

Mr. Gibbons inquired whether the notice to the paper included language indicating that should other variances be deemed necessary in the course of the application that this would be covered by language in the notice indicating as such. Mr. Gisser responded and read what was noticed regarding this point – “such other relief as may be required will also be sought.” Mr. Gibbons acknowledged this as acceptable.

Mr. Lordi inquired about the generator and whether it is acceptable to be placed under the window. Mr. Gisser responded that it would comply with the manufacturer’s specification that is required in terms of distance for this type of unit.

Chairman Herbes opened the meeting to the public. Ms. Foley stated that she sees no hands from the public. Chairman Herbes closed the meeting to the public.

Chairman Herbes opened the meeting up for discussion by the Board members. Mr. DiGiacomo stated that he saw no objections by the neighbors, which alleviates any concerns he has and stated that he is in favor of the variance. Chairman Herbes added that this particular garage will not be in close proximity to any of the other residences based on the configuration of the two lots where the houses are located. Mr. Kapner added that his only concern would be the adjacent lot where the house is located on the Main Street and whereby a house would be pushed further back if someday there would be new construction on this adjacent lot. However, based on the map, the proposed structure does seem far enough back to the adjacent lot so he does not see this as an issue. Mr. Cadmus inquired about the house directly to the left of the

subject property, which seems to him to be the closest. However, he noted that the new proposed structure is on the right side of the applicant's home, which creates a shield. He assumes that this neighbor does not object to this since he would otherwise most likely be present at this meeting. Mr. Cadmus stated that he is inclined to have no issue with the variances being sought. Mr. Gisser confirmed that he will be planting some natural buffer on the 17-foot setback side. There were no other Board comments.

A motion was made by Mr. Lordi to approve the variance for the side yard setback as well as the related variance for the generator, and it was seconded by Mr. DiGiacomo.

Upon roll call:

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

NAYES: None

Mr. Gibbons stated that he will prepare a resolution of memorialization for the approval, which will become available to Mr. Gisser.

### **SUCH MATTERS THAT RIGHTFULLY COME BEFORE THE BOARD**

CASE 3-16

Block 117, Lot 55: 17 Calais Road

APPLICANT: Sal & Jennifer Lombardo

APPLICATION: Add'l Extension to Ordinance 12-2009

Chairman Herbes stated that an update regarding 17 Calais Road was submitted and distributed to all the Board members. The Board members confirmed receipt of this update. Ms. Foley stated that Ms. Lombardo is not present at the meeting, and Chairman Herbes asked the Board members if there were any questions or concerns that they wish to raise with regards to the update. Ms. Foley clarified that that they would be receiving a TCO and not a CO when ready to occupy the new single-family dwelling. Mr. Gibbons raised some of the implications should the application not be extended with an approval from the Board. He stated that it would be better if the Board granted the extension with the consent of the applicant present in order to extend any deadlines for consideration. Chairman Herbes clarified that Ms. Lombardo has been obtaining extensions for a couple of years now. Mr. Lordi inquired if this application sets a precedent moving forward with other potential applicants, and Mr. Gibbons clarified that each application by law must be considered on its own unique facts. Chairman Herbes asked Ms. Foley to reach out to Ms. Lombardo and ask her to attend the next meeting and that if she does not attend that the Board will deny continuing with the application. He suggested that relief continue to be granted until the next meeting when Ms. Lombardo will hopefully appear before the Board for discussion with regards to her ongoing project. All the Board members agreed with Chairman Herbes' suggestion.

### **CASES PENDING**

Ms. Foley stated that there are no further applications submitted at this time but that there may be an application submitted shortly.

### **GENERAL CORRESPONDENCE**

There was some conversation regarding the continuation of the zoom meetings and whether the Board of Adjustment meetings should be kept as a virtual meeting or resort back to in-house meetings since there has been a lifting of the various requirements as far as people meeting in person as a result of Covid. Ms. Foley clarified that people would still have to be six feet apart

at an in-person meeting, which could be challenging. It was agreed that the Board will continue to meet via zoom.

Chairman Herbes stated that the next Board of Adjustment meeting is July 8, 2021 at 7:30pm

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 8:33 pm.

Respectfully submitted,

Beth Foley  
Board Secretary