

**TOWNSHIP OF MENDHAM
BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 12, 2019
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.”

ROLL CALL

PRESENT Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, Chairman Herbes

ABSENT: Mr. Peruyero, Mr. Zairi, Mr. Roghanchi

OTHERS PRESENT: Mr. Mark Blount, Esq., Mr. Denis Keenan, Engineer

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 – March 14, 2019

A motion was made to approve the minutes of the March 14, 2019 meeting, and it was seconded. Upon roll call:

AYES: Mr. DiGiacomo, Ms. Grant, Mr. Guthrie, Mr. Lordi, Ms. Luciano, 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

Chairman Herbes stated that all of the members received the 9/9/19 update with regards to the Lombardo project and that Ms. Lombardo was unable to attend the meeting because of a prior commitment. There were no further comments from the Board members.

NEW BUSINESS

Case 2-18

BLOCK 119, LOT 2

APPLICANT: Edward W. Douglas

7 Combs Hollow Road

APPLICATION: Bulk Variance

Ms. Judy Fairweather entered an appearance as Counsel on behalf of the applicant, Mr. Edward Douglas. Mr. Blount swore in Ms. Fairweather and Mr. Edward Douglas, who was the first witness to testify.

Mr. Edward Douglas stated that he lives at 5 Parkwood Lane, which is about three houses away from the subject property and that he is the owner of 7 Combs Hollow Road. Ms. Fairweather asked Mr. Douglas to explain to the Board why he wishes to keep the two-car garage on the property, which was built approximately 50 years ago.

Chairman Herbes interjected that he would like Mr. Keenan to discuss the waivers first in order to deem the application complete.

Mr. Keenan referred to his report dated September 8, 2019. He went on to say that he reviewed the application and checklist for variance relief. It was noted that Checklist Item #60 was missing, which was Verification of Denial by the Zoning Officer. Ms. Foley stated that she was in possession of the Verification of Denial by the prior Zoning Officer, Mr. Russ Heiney. Chairman Herbes then deemed the application complete without any required waivers.

Ms. Fairweather continued with Mr. Douglas' testimony and asked if it was his intention to refurbish the outside of the existing garage so that it would blend in with the new single family dwelling. Mr. Douglas confirmed that this would be his intention and that he wishes to retain the two-car garage since he has a large family of six children, five of whom are of driving age and all of whom live at home. The new single family dwelling has a 7-car garage, and since he and his wife have two cars each, they are at maximum capacity as far as the garage is concerned. He went on to say that he also owns equipment, which is used to clear the driveway of snow. The two-car garage would be an auxiliary structure used to store this equipment and various vehicles. Mr. Douglas also stated that the garage area would offer additional parking for when guests spend time at the house.

Ms. Fairweather clarified for Mr. Guthrie that a variance is being requested since the new single family dwelling is further back than the garage and violates Section 21-6.4d of the ordinance whereby no accessory structure shall be located closer to a street than the principal building. She confirmed that if a new auxiliary structure was to be built, it would need to be constructed behind the house.

Ms. Grant inquired as to the appearance of the garage since it is the applicant's intention for the garage to blend in with the new single family structure. Mr. Douglas responded that the siding will be replaced to match the wood of the single family dwelling. The shingles will also be replaced.

Mr. Guthrie inquired about the structure that sits across the driveway on the plans. Ms. Fairweather responded that it is a 2-story dwelling that was the original house on the property and has since been razed.

Ms. Fairweather called her next witness, Mr. Joseph R. Golden, engineer for the applicant. Mr. Blount swore Mr. Golden in as a witness for the applicant. Mr. Golden stated that he is a licensed professional engineer in the State of New Jersey and received his undergraduate degree in 1982. He has a Master's Degree as well. He became a licensed engineer in 1986 and currently serves as a Planning Board engineer on five separate Boards along with being a Township engineer. Chairman Herbes stated that the Board accepted Mr. Goldman's qualifications as an expert witness.

Mr. Goldman marked his first exhibit as Exhibit A-1 with today's date of September 12, 2019. This is a color rendering of the entire site and is entitled Variance Exhibit. He stated that the rendering is a little different than the plans submitted to the Board members since he removed much of the extraneous items. However, everything within the property boundary is the same. Mr. Goldman stated that he did review Mr. Keenan's report of September 8, 2019 and that there were several items missing on the plan. All of these items have since been added to the plan. These are more housekeeping items and not particularly pertinent to the garage. Chairman Herbes asked Mr. Goldman to elaborate on the updates that were made in reference to Items 8 and 9 in Mr. Keenan's report regarding the zoning table. Mr. Goldman stated that the proposed side yard setback is 103.0 feet with another side yard setback of 132.8 (not listed) feet and that there are two front yard setbacks of a proposed 170.5 feet with a slight encumbrance on a front setback for the existing garage.

Mr. Goldman pointed out the location of the original home, which was located on the southwesterly portion of the property and relatively close to the road. This home was within the setback requirements at the time it was built, which was very close to the road. However, with the current setback requirements in this zone, the home would never have been allowed at that location. The original house has since been razed, and there is an access driveway that runs through the site, which he pointed out on the rendering. Mr. Goldman also referred to the darker green area on the exhibit that traverses along the north side of the property. He explained that this area is somewhat wooded so there is some natural screening, which has been cleaned up to have a more manicured appearance. The 2-car garage will have the same appearance as the main house so it will blend into the wooded area and should fit in nicely. Mr. Goldman stated that he has satisfied all the items on the engineer's report and that the updated plan was sent to Mr. Keenan only yesterday. When Mr. Keenan approves the plan, then copies will be sent to the Board, which will include any other changes Mr. Keenan wishes to make.

Mr. Guthrie inquired as to why the existing structure needs a variance. Mr. Blount explained that because of the relocation of the home the garage is now located in the front of the main house, which violates the ordinance. Mr. Goldman outlined where the original house was located on the lot and stated that the garage was not in the front yard of the original house. With the new location of the single family dwelling, it is now considered in the front yard of the principle structure. It was confirmed for Mr. Guthrie that the garage will only be used for various types of vehicles and that there is no intention of using the structure for residential living purposes. Also, the old driveway, which terminated much sooner to the original house, is still being utilized to access the site. Mr. Guthrie inquired whether the accessory structure can still be used as an apartment if the owner wished to do so, and Mr. Blount responded that this could not be used as an accessory apartment without coming back to the Board for relief. He stated that a building permit would not be allowed. Ms. Fairweather stated that one of the conditions of approval is that it must be used as a garage for various types of vehicles.

Mr. Keenan referred to his report dated September 8, 2019 and wanted to state for the record that the accuracy of the setbacks has been addressed and reflected on the plans and to note that the garage, which is a pre-existing, non-conforming structure, is located within the front yard setback. Since the application is to determine if the garage is permitted to remain,

consideration should be given to the non-compliant setback. If the Board decides to grant approval, it should include variance relief for the garage setback.

Ms. Fairweather called her next witness Ms. Jessica Caldwell, Planner for the witness, who stated her business address of 145 Spring Street, Union, New Jersey. Mr. Blount swore Ms. Caldwell in as witness to the applicant. Ms. Caldwell stated that she has a Master's Degree in urban and regional planning from Portland State University and a Bachelor's Degree in Planning and Public Policy in Management from University of Oregon. She went on to say that she has been practicing as a Planner for over 20 years and that she has a firm in Newton, New Jersey. She represents 13 municipalities in New Jersey, one of which is Mendham Borough and has been accepted as an expert in Planning for over 100 Boards. Chairman Herbes stated that the Board accepted Ms. Caldwell's qualifications as an expert witness for the applicant.

Ms. Caldwell cited Ordinance Section 21-6.4 in order to explain why a variance is required. The subject garage is a pre-existing, non-conforming structure, which was behind the prior residence before the structure was razed. The garage remained and is 42.3 feet from Combs Hollow Road with a setback requirement of 60 feet. As a result, it is within the front yard setback. Also, the ordinance does not permit an accessory structure in the front yard setback or in front of a principle structure. The new single family dwelling was constructed behind the existing garage because of the configuration of the property and the way the house needed to be built.

Ms. Caldwell continued to say that this is a bulk variance or a variance that can be granted under Section C, 40:55D-70C of the Municipal Land Use Law and that there are two provisions for granting these variances. She stated that this is the classic C1 hardship case whereby the structure is pre-existing on the site and to move the structure would create a hardship. She went on to say that the existing setback of 42.3 feet within the 60-foot setback requirement is not an overly egregious encroachment into the setback. From a negative criteria standpoint the structure does not impact the neighborhood since it has been pre-existing for some time and that the applicant does plan to improve the appearance of the garage, which will blend with the new home. Ms. Caldwell opined that this will be a benefit for the neighborhood, and she stated that there really are no negative impacts to the adjacent properties. The neighboring area encompasses many estates, which have large lots, large homes and homes with carriage houses so that this lot is not inconsistent with the character of the area. She opined that because of the pre-existing nature of the structure, which has been there for quite a while, that the garage does not negatively impact the zoning ordinances. Ms. Caldwell stated that the applicant plans on making improvements to the garage within the next two months as soon as the single family dwelling is complete.

Mr. Keenan clarified that the correct setback of the garage is not 42.3 feet. This was shown on the original plans before it was updated. Based on the updated plan, the correct setback of the garage is 85.1 feet with a front yard setback of 89.5 feet. It was originally and incorrectly measured on the original plans from the easement line to the garage (42.3 feet) and not the property line to the garage, which is now correctly stated to be 85.1 feet.

Ms. Fairweather stated that it makes sense to allow the applicant to keep the existing garage and that it will blend in with the house and that she respectfully requests that the Board approve the variance.

Chairman Herbes opened the meeting to the public. Seeing or hearing no one, he closed the public portion of the meeting.

Chairman Herbes asked the Board members for their input regarding the application. Mr. Guthrie opined that the applicant did a very good job in presenting the application and that to

move the building would be a hardship. He does not see any reason to deny the application and that he is in favor of approving the variance. Chairman Herbes agreed that it would be a hardship for the applicant to remove the structure and build another one somewhere else on the property, especially since it is a pre-existing structure. If anything, the visual appearance has been improved with the new single family dwelling moved further back. Ms. Grant opined that she agreed with the Planner whereby there is nothing offensive about the structure visually either from the road or to the property itself. In fact, she opined that it will look very charming.

Chairman Herbes entertained a motion which includes the condition that the final plan be submitted to the Township Engineer for approval and that the requested variance relief from Ordinance 21-6-6.4d will be noted in the resolution as being granted along with the pre-existing non-conformity of the setback. A motion was made by Mr. DiGiacomo, and it was seconded by Mr. Guthrie.

Upon roll call:

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

Motion carried.

SUCH MATTERS THAT RIGHTFULLY COME BEFORE THE BOARD

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

GENERAL CORRESPONDENCE

None

The meeting was duly adjourned at 7:58 pm.

Respectfully submitted,

Beth Foley
Board Secretary