

**TOWNSHIP OF MENDHAM  
BOARD OF ADJUSTMENT  
NOVEMBER 9, 2023  
REGULAR MEETING**

**CALL TO ORDER**

Ms. Parrinello called the meeting to order at 7:02 pm.

**ADEQUATE NOTICE**

Adequate Notice of the 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 18, 2023.

**ROLL CALL**

Present: Mr. Cadmus, Ms. Grant, Mr. Kapner, Mr. Lordi, Mr. Murphy, Chairman Roghanchi, Mr. Strafaci, Mr. Bell, Mr. Wisotsky

Others Present: Mr. Anthony Sposaro, Attorney, Mr. Denis Keenan, Engineer, Mr. Paul Cancilla, Planner

**SALUTE TO THE FLAG:** Led by Chairman Roghanchi

**DESIGNATION OF VOTING MEMBERS WAS DETERMINED**

**MINUTES:** October 12, 2023 Regular Meeting

Chairman Roghanchi made a motion to accept the October 12, 2023 Meeting Minutes as presented. A motion was made, and it was seconded. All agreed.

**NEW BUSINESS:**

Case 8-23

Applicant: Maria Kenigel and Paul Zarou

3 Old Orchard Terrace

Block 127 Lot 119

Bulk & Use Variance

Mr. Anthony Sposaro states that two legal issues have been posed by this application.

1. The question as to whether or not Old Orchard Terrace is a public road or a private road. If Old Orchard Terrace is a public road, the municipality has the obligation to improve it and maintain it, however, if it's a private road, there is no maintenance obligation by the municipality. Both Mr. Sposaro and Mr. Keenan have received proofs and are not

convinced that the Board of Adjustment has the jurisdiction to decide whether or not Old Orchard Terrace is a public or private road. Regarding emergency vehicle road access, there are no negative comments from the Township's fire official and fire chief.

2. Although this is an undersized lot, the Board of Adjustment previously determined that a house could be built on this property. Mr. Sposaro does not believe that variance relief is needed for an undersized lot in this application.

2a. The applicant is requesting variance relief for exceeding floor area ratio (FAR) of approximately 5,789sq. ft., whereas a maximum FAR of 5,462.8sq. ft. is permitted.

Mr. Luke Pontier, Day Pitney, LLP, is present via Zoom and is representing the applicants at 3 Old Orchard Terrace. Mr. Pontier explains that a home existed on this property up until 2001 and that there is a paved road that extends to the dwelling that was there. Mr. Pontier states that if there is a determination that the road is private, as a condition, the applicant is more than willing to workout a maintenance agreement plan to allocate the responsibilities of finances and upkeep for the road.

Mr. Keenan states that the most prudent approach is for the two parties to come to a documented shared agreement – that they take ownership of the road; that they share the responsibilities; and that it's viewed as a common driveway.

Mr. Roghanchi asks Mr. Sposaro, to the extent that the Board does produce a resolution approving this application, can a condition, with regards to a shared road agreement, be included legally.

Mr. Sposaro states, yes, the Board has jurisdiction to ask for that condition. Rather than a condition of approval, however, Mr. Sposaro would like to see if the parties can reach an agreement, in writing, subject to Mr. Sposaro's review and approval as well as the Board Engineers review and approval.

Mr. Pontier continues his testimony and explains that the property at 3 Old Orchard Terrace consists of 1.68 acres and is in an R-3 zone. The property is currently vacant and the applicant proposes to construct a two-story, four-bedroom single family home. The applicant also proposes to construct a swimming pool, patio, fence, driveway, a septic tank and wastewater treatment system, drywells, among other site improvements.

Mr. Pontier states that the applicant is requesting a N.J.S.A. 40:55D-70(d)(4) variance to permit a floor area ratio of approximately 5,789 sq. ft., whereas a maximum FAR of 5,462.8 sq. ft. is permitted. In addition, the applicant is requesting bulk 'c' variance, 40:55D-70(c) for lot area. The applicant is seeking a waiver for the disturbance of steep slopes as well as the waivers noted in the Board engineer's report.

Mr. Pontier states that the proposed improvements are in compliance with a vast majority of the Township's zoning regulations including all setbacks – front, side and rear, and that the character and size of the home fit in well with the surrounding homes and community.

Mr. Pontier explains that 3 Old Orchard Terrace was the subject of Board variance approval, memorialized by resolution on December 14, 2000, which granted a variance relief to permit construction of a single-family dwelling on an undersized lot. Most recently, in July, 2023, the Board of Health reviewed and approved the proposed well and septic system for the subject application.

Mr. Roghanchi asks if a resolution currently exists, does the lot size issue need to be heard? Mr. Sposaro states that variances do not expire provided the zoning has not changed. If the zoning for the subject property is the same as it existed in December, 2000, when the variance was granted, the Board can move forward.

Mr. Pontier explains that a majority of the steep slopes were created by the removal of prior improvements to the property. As a requirement of the previous approval, the existing home on the property was demolished, leaving steep slopes that the current applicant is seeking to rectify and stabilize as part of the application.

Mr. Sposaro swore in Ryan Smith, NJPE & LS, CME, Yannaccone, Villa & Aldrich, LLC.

Mr. Smith explains that the lot at 3 Old Orchard Terrace is encumbered by two wetlands areas, which are noted in the NJDEP Letter of Interpretation. At the westerly inlet are two man-made wetlands swales, which have no buffer. At the southerly end of the property there is a wetland of intermediate resource, which has a 50 ft. wetlands transition area. All of the proposed disturbance is outside of either one of these areas and NJDEP permits will not be required. Mr. Smith further explains that the existing lot slopes from the back to the front, down towards Old Orchard Road, and the steepest slopes run through the middle of the lot. There is an 8ft. high embankment that winds through the property and is steeper than 25% slopes. Because the embankment runs through the middle of the building envelope and disruption to steep slopes is necessary, the applicant will require a design waiver.

By creating a 4ft. high retaining wall in the front and in the back of the home, Mr. Smith describes how the 8ft. embankment will be utilized in an effort to stabilize the steep slopes. With the improvements, the embankment will no longer run through the middle of the lot. The backyard will be flat in order to accommodate a modest patio and a pool.

Mr. Roghanchi asks Mr. Smith to speak to the stormwater management for this property.

Mr. Smith states, to ensure that water from off-site goes around the house, the applicant is proposing 5 inlets surrounding the house and a roof leader collection system, which will be directed to the drywell system. Pending soil testing results, if the groundwater is high, an alternative stormwater maintenance plan will consist of an advanced drainage system (ADS). Mr. Smith states that while the current plan proposed is a safe distance from the wetlands, there is still a chance of high groundwater – resulting in the potential for a change in stormwater management design plans.

Mr. Keenan agrees that the water table at 3 Old Orchard Terrace is a concern. From a storm water standpoint, this project is just under the 1acre threshold for a major development, and pending soil testing results, what Mr. Smith is proposing is acceptable. Mr. Keenan states that the bulk of any runoff water will be directed into the drywells.

Mr. Sposaro asks if the neighboring property is impacted by stormwater runoff from the man-made steep slopes or by the existing topography of the property. Mr. Smith states that the existing steep slopes direct water towards the wetlands. The biggest contributor to the runoff that comes on to both the subject lot and lot 118 is the driveway and the adjacent neighboring property. Mr. Sposaro asks if it's possible that runoff from the driveway and adjacent property owner can be captured and directed into the drywells that are proposed for the project. Mr. Smith states, yes, inlets can be placed uphill so that water can be directed to either a drywell or to an infiltration system. As a condition of approval, Mr. Smith offers to put in a trench drain that connects to the municipal system (for a small portion of the driveway).

Mr. Smith reviews with the Board, comments from Mr. Keenan's Completeness and Preliminary Technical Review.

Comment 1: Mr. Smith has provided testimony as to the location and configuration of the property.

Comment 2: As a condition of approval, results of soil testing will be provided.

Comment 3: If in the future, anything expands beyond what is approved, a Stormwater Major Development would require the applicant to comply with the stormwater regulations relative to that expansion and beyond. Mr. Keenan agrees. Mr. Smith states that on the design plan, and as a condition of approval, the limited disturbance will be staked and construction fencing will be put in place.

Comment 4: A construction fence at the limit of disturbance will be put in place.

Comment 5: Major Development concerns have been addressed in Mr. Smith's testimony.

Comment 6: Mr. Smith will revise sheet 3 of the design plans so that it reflects the correct version of the driveway.

Comment 7: Mr. Smith will revise sheet 3 of the design plans to show the retaining wall.

Comment 8: Mr. Smith will add manhole access into the drywell and if the Advanced Drainage System is utilized, inspection ports will be installed.

Comment 9: Water runoff from the driveway will be addressed with the new inlet system that is proposed.

Comment 10: Mr. Smith explains why he is asking that the waiver for the driveway be at an angle less than 60 degree; a. the roadway only serves two lots. b. when softening the curve, it allows for the raising of the platform without making the driveway too steep.

Comment 11: Mr. Smith will update driveway pavement specifications with Township requirements

Comment 12: Mr. Smith addressed steep slope disturbance limits in his testimony.

Comment 13: Mr. Smith confirms that the applicant is allowed 5462.8 sq. ft. of floor area and a variance is required for the additional 326.2 sq. ft. that is being asked for.

Comment 14: Mr. Smith addressed the Schedule of Requirements in his testimony.

Comment 15: Mr. Smith will comply with revisions to the driveway pavement surfaces.

Comment 16: Mr. Smith states that he was before the Board of Health for construction of a new well and septic system. Approvals were received in July, 2023 and Mr. Smith is in receipt of permits for both the well and septic system.

Comment 17: All requisite inspection schedules shall be added to the design plan.

Comment 18: Mr. Smith acknowledges that any approvals will be subject to all necessary permits required.

Comment 19: Mr. Smith acknowledges that approval from Morris County Soil Conservation District, Mendham Township Health Department, Mendham Tree Preservation and Landscape Committee, are all conditions of approval.

Mr. Keenan states that the design plan proposes a retaining wall as well as a guiderail along the driveway. These proposals must be documented and made clear that they are private improvements in the public right of way. Mr. Smith agrees and will make the documentation.

Ms. Lisa Lomelo, Esq., Murphy, Schiller & Wilkes, LLP is present via Zoom and is representing the homeowners at 20 Old Orchard Road. Ms. Lomelo speaks to Mr. Keenan's recommendation that the site be deed restricted from additional impervious coverage until a stormwater report is submitted and is in compliance. Mr. Keenan responds that the need for a deed restriction is primarily for future homeowners, who may want to improve the property, but are unaware of the finite restrictions involved.

Ms. Lomelo would like to know if any testing was conducted for the stormwater inlets that are at the end of the proposed driveway. Mr. Smith states that testing was not performed, however, he did inspect the inlets and inverts, and while they haven't been maintained, they are functioning as they should be. Ms. Lomelo asks if the piping that underlays the street has been reviewed. Mr. Smith states, no.

Ms. Lomelo and Mr. Smith discuss the clearance of brush and vegetation so that the inlet is accessible. Ms. Lomelo asks if the intention is to disturb any of the vegetation around the inlet. Mr. Smith explains that a pipe will connect the inlet to the trench drain, which will allow for staying within the disturbance area. If, at that time, the inlet is substandard, it will be replaced. Ms. Lomelo points out that the disturbance area is not part of the design plan. Mr. Smith states

that as a condition of approval, plan revisions, to address the disturbance area, will be made before this Board.

Mr. Pontier reiterates, to the extent that any updates to the plans are required as part of Board approval, those plan revision will be made, the limit of disturbance will be updated, and they will remain under the requirements of a major development.

Because there is a question as to whether or not 3 Old Orchard Terrace is a public or private road, Mr. Bell would like to know if there is any bearing on the connection of the inlet to the drainage. Mr. Keenan and Mr. Sposaro explain that if the roadway is a public improvement, then tying in will require approval by the municipality. If the roadway is private, a tie in will improve drainage conditions that already exist.

Ms. Lomelo would like to know how a contractor will be able to access the drain and perform the construction necessary without disturbing the wetlands. Mr. Smith explains that prior to any work being done, a licensed land surveyor will stake out the limited disturbance and a construction fence will be put in place; all machinery and construction will stay within the fencing area. Mr. Smith explains the sequencing of staying within the boundaries for staging, and the construction for the drainage pipe, driveway and home.

Ms. Lomelo asks if a staging plan, showing the area of disturbance as well as the location for the equipment and building materials will be prepared. Mr. Smith states that a staging plan for a single-family home is not something that is normally done, however, Mr. Smith states that included on the design plans will be a note, indicating that all machinery, equipment and construction materials must be maintained within the limited disturbance. Mr. Sposaro states that this is a decision that the Board will determine.

Ms. Lomelo asks if the driveway is constructed to allow emergency vehicles to enter and turn around. Mr. Smith states that the driveway meets the current code of the Mendham Township driveway ordinance. Mr. Pontier adds that the design plans have been reviewed by the Township fire official and no comment was made regarding the driveway and emergency vehicle access and departure.

Ms. Lomelo shares exhibit O2, a survey of the subject property from 1998, and asks if there is a more recent survey of the property. Mr. Smith states that a recent survey of the lot was conducted, which illustrate conditions as they currently exist.

Ms. Lomelo shares exhibit O3, and asks Mr. Smith to explain the survey stake at the subject property line and its proximity to the historic wall of the neighboring property line. Ms. Lomelo would like to confirm that provisions will be put in place so that during any construction the wall is not affected. Mr. Smith acknowledges that the survey stake at the subject property line

is close to the neighboring wall and confirms that his engineering firm is not doing any work within 14ft. of the neighboring property line.

Ms. Lomelo shares Exhibit 04, a photograph of the roadway, and asks Mr. Smith if there are plans in place to avoid damage to grass, pavement and portions of the nearby property - 20 Old Orchard Road. Mr. Smith states that any damage incurred by construction equipment will have to be repaired by the contractor. Mr. Sposaro states that an inspection by the Township's engineer will take place after the work is completed and if any damage to the driveway, as a result of construction equipment, is not repaired, a CO will not be issued.

Mr. Sposaro swore in David Feldman, Principal Architect of Feldman and Feldman Architects.

Mr. Pontier asks Mr. Feldman to share with the Board the floor plans and elevations for the proposed dwelling.

Mr. Feldman states that the size of the proposed dwelling is 5,789 sq. ft., which is 326.2 sq. ft. more than what is permitted. The reasons for exceeding the FAR are based on the applicant's desire for a home that is compatible with the neighborhood and that also meets the needs of their personal esthetic. The applicant is proposing a four-bedroom dwelling. The first floor will consist of a kitchen, breakfast nook, dining room, living room and great room, a study/bedroom, and a three-car garage. In addition, off the kitchen will be a pantry, a mudroom and full bathroom with access from the outdoor patio pool area. An additional half bathroom will exist off of the living area spaces. The second floor will consist of three bedrooms – the master bedroom with a master ensuite bathroom and two additional bedrooms, both of which will have private full bathrooms; a laundry room and an open area great room and foyer. It is the intent to construct this home with an elevator that would go up to the second floor and down to the proposed basement.

Mr. Feldman explains that a stone façade is proposed for the front of the home and that the sides and rear will either be stucco or hardy board. The exterior of the home will be a blend of warm earth-colored tones.

Ms. Lomelo asks if Mr. Feldman knows the square footage of the neighboring homes. Mr. Feldman states that he does not know the square footage of the neighboring homes. Ms. Lomelo asks about reducing the home by 320 sq. ft. Mr. Feldman states that he would have to consult with his clients about a reduction in square footage.

Mr. Sposaro swore in Matt Flynn, Professional Planner.

Mr. Flynn provides an aerial image for the Board to view and reiterates that the subject site is an undersized lot at 1.6 acres in an R-3 zone. The FAR variance is being requested strictly

because of the lot deviation. Per the zoning ordinance, this is a compliant application, where front, side and rear setbacks are met and building height complies. In addition, the subject property is at the end of Old Orchard Road and there's very little impact on the neighboring properties. Mr. Flynn continues that the additional FAR does not equate to any added density and that the proposed home is within the sizing of neighboring homes. Stormwater has been previously addressed and Mr. Flynn believes there are no substantial outstanding issues regarding the matter.

Mr. Flynn discusses the positive and negative criteria of the subject property and states that the benefits outweigh any of the hardships. To the extent that the lot is undersized, so is the proposed dwelling – the site can accommodate the additional FAR and while the lot is currently vacant, the applicants are entitled to a level of reasonable development.

Mr. Paul Cancilla, Mendham Township Planner asks Mr. Flynn if an analysis was conducted of the floor areas of the surrounding properties. Mr. Flynn states that he did not do an analysis of the floor areas of the neighboring properties. Based on the mitigating factors mentioned in his testimony, Mr. Flynn states that he did not find it a necessary step in this case.

Mr. Cancilla asks Mr. Flynn if he knows whether the immediate surrounding area properties are undersized relative to Mendham Township zoning. Mr. Pontier states that of the four lots surrounding the property, three are undersized and one is at 3 acres.

Ms. Grant would like Mr. Flynn to elaborate on why he determines that 326.2 sq. ft. is a modest expansion over the allowed FAR. In particular Ms. Grant asks about the size of the homes in the surrounding area – and inquires if they are much larger or smaller. Mr. Flynn responds that in review of the engineers site plan, some of the building footprints in the area are illustrated, and on paper, reflect a similar size to the proposed dwelling.

Knowing that it's a Mendham Township code, Ms. Grant and Mr. Kapner would like to know if any attempt was made to stay under the FAR. Mr. Pontier states that the applicant and other professionals took great care to design a home that was as compliant as possible and that have similar footprints of the surrounding buildings. Mr. Roghanchi states that while the footprints are similar looking on paper, it doesn't necessarily equate to FAR, and more information should be provided in terms of FAR calculations of surrounding dwellings.

After a brief discussion between Ms. Lomelo and Mr. Flynn, Mr. Sposaro recommends to the applicant and to the Board that Mr. Flynn do further research regarding the size of the adjoining properties and the houses that are constructed on them. The Board will have the benefit of the information in order to make a thorough decision.

Mr. Roghanchi asks if there are any questions or comments from the public.



Mr. Tom Walsh, 26 Old Orchard Road, states that the proposed house at 3 Old Orchard Terrace is significantly larger than all of the surrounding homes. Mr. Walsh continues that he moved to Mendham Township for its bucolic nature and what is being proposed at 3 Old Orchard Terrace is not congruous with the neighborhood and contrasts to what Mr. Flynn has testified.

Mr. Alex Motiuk, 20 Old Orchard Road, states that he and his counsel hope to engage an engineer for the next hearing in December.

Mr. Sposaro states that the application for 3 Old Orchard Terrace will be moved to the next Board of Adjustment meeting, scheduled for December 14, 2023. The public is informed that this meeting will not be re-noticed.

Mr. Sposaro states that the application for 17 Kennaday Road will be moved to the next Board of Adjustment meeting, scheduled for December 14, 2023. The public is informed that this meeting will not be re-noticed.

Mr. Roghanchi confirms that Mr. Pontier and Ms. Lomelo will be prepared for the Board of Adjustment meeting on December 14, 2023. Both Mr. Pontier and Ms. Lomelo agree that they will be prepared for the next meeting.

The meeting was duly adjourned at 9:59 pm.