

**TOWNSHIP OF MENDHAM
BOARD OF ADJUSTMENT
DECEMBER 14, 2023
REGULAR MEETING**

CALL TO ORDER

Ms. Parrinello called the meeting to order at 7:00 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

SALUTE TO THE FLAG: Led by Chairman Roghanchi

DESIGNATION OF VOTING MEMBERS WAS DETERMINED

MINUTES: November 9, 2023, Regular Meeting

Chairman Roghanchi made a motion to accept the November 9, 2023, Meeting Minutes as presented. A motion was made, and it was seconded. All agreed.

PENDING BUSINESS:

Case 8-23

Applicant: Maria Kenigel and Paul Zarou

3 Old Orchard Terrace

Block 127 Lot 119

Bulk & Use Variance

Mr. Arjan Roghanchi explains that the scope of the application for 3 Old Orchard Terrace has been modified and that the FAR variance is no longer being requested. The applicant is requesting approval for steep slopes only.

Mr. Denis Keenan confirms that the applicant has revised the architectural plans to remove the FAR variance request. The applicant has identified that they are seeking a waiver for steep slopes. Mr. Keenan expresses concern with the level of disturbance proposed, as the applicant

is just under the threshold of a major stormwater development, however, the proposed stormwater improvement plans comply with applicable stormwater regulations.

Mr. Anthony Sposaro explains that when the application for 3 Old Orchard Terrace was submitted, there was an unanswered question as to whether the road was public or private. The Board has not received confirmation from the governing body or from the administration as to the nature of the roadway in question. Mr. Sposaro states that the fire chief and the fire marshal have no comment where road access is concerned, and that Mr. Smith, in his testimony, confirms the roadway is wide enough to meet municipal requirements for a driveway while also allowing appropriate access for emergency vehicles. The Board of Adjustment cannot require the owner and neighbor to enter into a maintenance agreement for the roadway, however, it is certainly encouraged. The Board's concern is that the private road provides safe emergency access to the subject lot, and the Board has determined that it does.

Mr. Luke Pontier, Day Pitney, LLP, is present via Zoom and is representing the applicants at 3 Old Orchard Terrace. Mr. Pontier states that revised plans have been submitted, which reflect a reduced square footage of the home to bring it into compliance with the FAR requirements. The applicants are only seeking a waiver for steep slopes. Mr. Pontier states that Mr. David Feldman, architect, and Mr. Ryan Smith, engineer, are present and will provide brief testimony to cover the changes that were made to each of their plans.

Mr. Sposaro states that Mr. David Feldman, Principal Architect of Feldman and Feldman Architects, is still under oath.

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

Mr. Feldman explains that the dwelling has been reduced by the 327sq. ft. that the applicant was over on the FAR. The garage, kitchen bump out, study and some area space on the second floor have all been reduced, bringing the home to a total square footage of 5,462sq. ft. Mr. Feldman states that while the design of the home has been reduced, it does not compromise the original esthetics of the dwelling.

Mr. Roghanchi asks if there are any questions from the Board or from Council.

Ms. Lisa Lomelo, Esq., Murphy, Schiller & Wilkes, LLP, and Mr. Feldman discuss the proposed elevator. Mr. Feldman explains that the elevator will be a residential elevator, meeting all requirements of state and Township requirements.

Mr. Sposaro states that Ryan Smith, NJPE & LS, CME, Yannaccone, Villa & Aldrich, LLC, is still under oath.

Mr. Smith states that there are minimal changes to the lot grading design plan - the driveway and back patio have been moved ever so slightly. To contain and restrict development to the areas of disturbance as depicted on the design plans, Mr. Smith explains that silt fencing will be installed. All fencing will be staked by a licensed land surveyor prior to construction. Mr. Smith states that a catch basin has been added to the swale in between the subject lot and lot 118. An inlet and trench drain have been added to catch remaining runoff.

Mr. Smith reviews with the Board the Technical Letter provided by Mr. Keenan. Mr. Smith, in his revised design plans and testimony, has addressed comments 1-11 to satisfy the requests of the Board and its professionals.

Mr. Roghanchi asks if Ms. Lomelo has any questions for Mr. Smith.

Ms. Lomelo asks Mr. Smith if the impervious coverage has been reduced. Mr. Smith states that there was a slight reduction in coverage and as a result the project is 143sq. ft. under what is considered a major stormwater development.

Ms. Lomelo questions the nature of whether Old Orchard Terrace is a private or public roadway, and how the current stormwater infrastructure will be maintained and who will maintain it.

Mr. Sposaro states that it is not known who constructed those improvements or who owns them. It has not been demonstrated to the municipality's satisfaction that this is a public road, and absent any proofs or acknowledgement by the governing body, it remains a private roadway.

Ms. Lomelo poses that if any upgrades are required of the existing stormwater drainage system, will the area of disturbance be increased? Mr. Keenan states that there is no knowledge of any existing infrastructure failure. If there is a problem with the pipe that runs downstream, it should be viewed as a repair of that pipe and not of the proposed project. Mr. Keenan states that Mr. Smith has delivered a plan that ties into the current system appropriately.

Ms. Lomelo asks how any damage to the neighboring property, incurred by construction, will be addressed. Mr. Smith states that any damage incurred by construction equipment will have to be repaired by the contractor. Mr. Pontier and Mr. Sposaro both agree that contractors are not allowed to trespass on the neighboring property; contractors will be advised ahead of construction to not enter lot 118; and any damage to the neighboring property will be the responsibility of the applicant.

Ms. Lomelo asks Mr. Smith if there was an attempt to reduce the egregiously excessive lot coverage, as indicated by the Environmental Commissions Report. Mr. Smith responds that the project was reduced so that it remained below the thresholds of a major stormwater development.

Ms. Lomelo has no further questions for Mr. Smith.

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

Mr. Pontier, in his closing, speaks of the adjustments that the applicant, along with their professionals have made to the application and design plans for 3 Old Orchard Terrace. Requests from the Board as well as the neighbors have been addressed and taken into consideration, as evidenced by the revisions. Mr. Pontier respectfully requests that the Board grant a positive vote and approval for this application, as the applicants are looking forward to building a home in and being a part of the Mendham Township community.

Ms. Lomelo, in her closing, would like to place a statement on the record that addresses the issue of Old Orchard Terrace being a private or public roadway. If the roadway is private, in essence it's an easement that would then require consent of use from the neighboring property owner. Allowing this Board to issue a vote without knowing whether this roadway is private or public is an issue that should be addressed in advance of a final decision. Ms. Lomelo continues that a condition should require that the applicant, prior to approval, either petition the Township Committee to formally vacate or dedicate the roadway or seek clarification in a court proceeding. Not knowing whether this is an easement will create issues for the applicant once they have their approval.

Mr. Sposaro states that the roadway is not an easement. There have been no claims or proofs that the adjoining property owner owns the private roadway.

Mr. Roghanchi briefly summarizes the scope of the project and explains that ultimately, the Board is tasked with the decision of whether to grant relief of the disturbance requirements – a waiver for steep slopes. Mr. Roghanchi expresses his appreciation for the concerns brought on by all parties, in particular, the question of the roadway, concerns of lot disturbance, construction, damage, and stormwater. Mr. Roghanchi reminds those in attendance that the question of the road is not before this Board in any capacity. The Board of Adjustment is not in the position to determine the nature of ownership of Old Orchard Terrace.

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

Mr. Roghanchi makes a motion to grant relief for the steep slope disturbance subject to the numerous conditions that have been brought up on a technical basis. Mr. Murphy seconded the motion.

UPON ROLL CALL:

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

NOTICE TO THE PUBLIC:

Mr. Sposaro states that the application for 10 Queens Court will be moved to the next Board of Adjustment meeting, scheduled for January 11, 2024. 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 January 11, 2024. The public is informed that this meeting will not be re-noticed.

Mr. Sposaro acknowledges that Mr. Strafaci excused himself early from the November 9, 2023 Board of Adjustment meeting, however, has listened to the meeting in its entirety and signed a waiver with the Board of Adjustment Secretary stating that he listened to the meeting (11/9/23). Mr. Strafaci has voting rights for this meeting, December 14, 2023.

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

The meeting was duly adjourned at 8:13 pm.