

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
August 1, 2017**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Seavey, Chair, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on January 12, 2017 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Mr. Palestina - Present	Mr. Peralta – Absent
Mr. Reilly – Present	Mr. Ritger – Present
Mr. Seavey – Present	Mr. Sisson – Present
Mr. Smith - Present	

Alternate: Ms. Cass, Alternate I- Present

Also Present: Mr. Thomas Germanario, Borough Attorney
Mr. John Hansen, Borough Engineer
Mr. Chuck McGroarty, Borough Planner

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MINUTES

Mr. Seavey asked for comments on the minutes of the regular meeting of July 11, 2017. There being none, Mr. Ritger made a motion to approve the minutes as submitted, and Mr. Palestina seconded. On a voice vote the minutes were approved by the Board.

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PUBLIC COMMENT

Mr. Seavey opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

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APPLICATIONS

BOA #8-03	T-Mobile / Verizon
	84-86-88 East Main Street
	Mendham, NJ 07945
	Block: 801, Lot: 20
	T-Mobile Site: NJ-07247D

Present: Mr. Richard Schneider, Attorney
Mr. Robert Foley, Engineer

Mr. Schneider gave an overview of the application to construct a 130-foot wireless communications tower, resembling a flagless flagpole, in the Kings Shopping Center. The original application had been filed in September 2007 and after 22 public hearings was denied by the Board of Adjustment. The denial was overturned by New Jersey Appellate Division of Superior Court and claimed the Board denial of the use variance was "arbitrary, capricious, and unreasonable" and granted the use variance for the location.

He mentioned that in the 10 years that had lapsed, technology had changed, and that Verizon now uses cabinets instead of shelters. He also discussed the fencing composed of a composite material that looked like wood and that there would be an 8' high swing gate. The color had not been determined.

Mr. Foley was sworn and qualified. He said that the plans were exactly the same as what was submitted 10 years ago and that the compound, size 18' X 72', would be located behind Kings and in front of Mendham Health and Racquet Club. Around its perimeter would be decorative lattice top fencing with 36 boxwoods placed in front. The pole has the ability to carry up to four wireless carriers, and he mentioned there are two open spots. He stated that the telecom cabinets are slightly smaller and plain grey in color. He also mentioned that there will be a designated area for municipal equipment within the compound. Eight parking spaces in total will be removed as a result of the compound which will be added on the east side of Kings by the Apothecary. He also said that a technician will infrequently monitor the equipment in an unmarked SUV during business hours.

Mr. Seavey asked about the generator, and Mr. Foley mentioned that it is quieter than what was initially proposed and would be run once a month for 30 minutes. There was concern by the Board about the canopy over the equipment as it was 11' high, 3' higher than the 8' fence. The Board suggested a netting material between the canopy and the fence that matched the color of the fence and the applicant agreed. Mr. Ritger asked if the compound could be flip flopped with the Verizon equipment on the easterly side of the pole, and T-mobile equipment on the westerly side, mirroring what was presented on the plans on sheet Z-4B. Mr. Ritger said that otherwise the 130 foot pole would be in the line of sight down the traffic aisle. The applicant agreed to comply with this request.

Mr. Hansen commented about the intended color of the fence, screening treatment (netting), and canopy. He also requested that the fence posts be set in concrete. The applicant agreed to submit samples to Mr. Hansen for approval.

Mr. Seavey made a motion to approve the site plan with the above conditions and Mr. Smith seconded.

ROLL CALL: The result of the roll call was 4 to 0 as follows:

In favor:	Palestina, Ritger, Smith, Seavey
Opposed:	None
Abstain:	Cass, Reilly

The site plan was approved.

BOA #6-17 Sarah Slover
56 West Main Street
Block 1801, Lot 15
Bulk and Use Variance

Present: Ms. Sarah Slover
Mr. Tom Malman, Attorney
Mr. Craig Villa, Engineer
Mr. Nick Cusano, Architect

Mr. Hansen reviewed his completeness report dated July 25, 2017.

With no comments by the Board regarding completeness, Mr. Seavey made a motion of completeness, and Mr. Smith seconded.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

In favor: Cass, Palestina, Reilly, Ritger, Smith, Seavey
Opposed: None
Abstain: None

The application was considered complete.

Mr. Malman, Mr. Villa, and Mr. Cusano were all sworn. Mr. Malman explained that Ms. Slover is interested in restoring her home to its previous condition by removing a connecting garage between the house and barn. He mentioned that Ms. Slover needs three bulk variances to do this, and that a use variance is no longer needed as Ms. Slover has agreed to remove the stove from the barn.

Mrs. Slover was sworn. She told the Board that the barn already had an existing kitchen when she'd purchased the home in 2012, and her son currently resides there today. When she purchased the house it was in foreclosure, and needed renovation and repairs. She feels that removing the white garage in the middle of the home will greatly improve her residence aesthetically, and create a more user-friendly home as the addition will provide for living space on the 1st floor and a master bedroom and bathroom on the 2nd floor.

Mr. Villa mentioned that the property is over 5 acres in a 1-acre zone. He presented exhibit A-1, a soil and grading plan of her property. The exhibit also added a proposed three car garage on the west side of the property with a new driveway and parking area. The Historic Preservation Commission (HPC) had already reviewed the additional parking and driveway and their recommendations had been incorporated into the plans. The HPC has also reviewed the addition, and thought the plans were wonderful. The plans for the garage have not yet been reviewed by the HPC, and the applicant agreed to comply with HPC requirements when and if the garage is built.

Mr. Villa explained the three variances were being sought by the applicant. There is a required 75' front yard setback in the 1-acre zone. Although, the proposed addition to the east side of the house will be 66.9', the same as the existing home, a variance is required when the building height is calculated using the average elevation around the home. He also added that a three-car garage is proposed, but not planned at this time, and if constructed the total amount of accessory structures on the property will exceed 50% of the size of the principal structure by 359 square feet. He also mentioned that the application meets the classification of "permit-by-rule" in a disturbed riparian zone and doesn't need approval from the NJDEP.

Mr. Cusano submitted a photo of the current home, exhibit A-2, and commented on the house's "chunkiness" inside and its length, 212 feet end to end. The addition they are proposing will be on the east side of the main home. It is proposed to be 1 ½ stories high with ship lap siding, stone work and roof to match the existing home, including matching shutters and copper gutters.

Mr. Seavey opened up the meeting for public comment, and neighbors of Ms. Slover at 52 West Main Street spoke about the wonderful improvements she’s been doing to the property and how they were in favor of her proposed plans.

The Board discussed whether a deed restriction was needed about not making the barn into a separate living facility or if it should just be a condition of the resolution. After much discussion, it was decided it would be a condition of the resolution. Mr. Hansen added that the Board accept Mr. David Krueger’s letter dated July 31, 2017, and waive the Letter of Intent (LOI) from NJDEP.

Mr. Seavey made a motion to approve the application with conditions and Mr. Reilly seconded the motion.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

In favor: Cass, Palestina, Reilly, Ritger, Smith, Seavey
Opposed: None
Abstain: None

The motion passed.

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RESOLUTIONS

BOA #5-17 Geri and Tony Rago
1 Peacock lane
Block 603 Lot 8.01
C Variance – Garage, Mudroom, Breakfast Room Addition with
In-Law Suite Above

Mr. Germanario gave a brief overview of the Resolution after a few clarifications by the Board, Mr. Seavey made a motion to approve the Memorialization of the Resolution and Mr. Reilly seconded.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

In favor: Cass, Palestina, Reilly, Ritger, Smith, Seavey
Opposed: None
Abstain: Peralta

The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: July 11, 2017
Memorialized: August 1, 2017

IN THE MATTER OF GERI AND TONY RAGO
"C" VARIANCE APPLICATION
BLOCK 603, LOT 8.01

WHEREAS, Geri and Tony Rago (hereinafter the "Applicants") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variances pursuant to N.J.S.A. 40:55D-70c by application dated 4/17/17; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 7/11/17; and

WHEREAS, the Board has determined that the Applicant has complied with all land use procedural requirements of Chapter 124 of the Ordinance of the Borough of Mendham, and has complied with the procedural requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; and

WHEREAS, the Board makes the following findings and conclusions, based on the documents, testimony and other evidence comprising the hearing record:

1. The property which is the subject of the application consists of approximately 0.48 acres located at the corner of Peacock Lane and East Main Street in the ¼ Acre Residential Zone. The property is currently developed with a 2-story frame dwelling and a 1½ story detached garage.

2. The improvements to the subject property for which the variance relief is sought comprise building additions to accommodate an expanded attached garage, new mudroom and breakfast room on the first floor, and an in-law suite above the garage with a separate entrance. "C" variances are required for lot coverage and building coverage (the "Variances").

3. The Applicant has submitted the following documents that depict and/or describe the improvements for which the Variances are required:

- Architectural Plans consisting of 7 Sheets prepared by Daniel Encin, revised 5/23/17

4. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:

- Application for Hearing, dated 4/17/17
- Application Checklist, dated 4/17/17
- Owner's Consent, dated 4/17/17
- Zoning Permit Application, dated 4/20/17
- Application for Sanitary Sewer Connection, dated 4/17/17
- Tax Certification, dated 4/18/17
- Historic Preservation Commission Letter, dated 1/25/17
- Two Color renderings of proposed front and side building elevations
- Property Survey by Frederick Meola, dated 4/29/02

5. The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

John Hansen, PE, dated 5/17/17 and 6/27/17
Chuck McGroarty, PP, dated 6/5/17

6. Borough officials and/or agencies have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

Michael Zedalis, Historic Preservation Committee,
dated 1/25/17

7. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

A-1 Zoning Officer Letter regarding pre-existing non-conforming status of two-family residence
A-2 Historic Preservation Commission Letter,
dated 1/25/17

8. In the course of the public hearings, the Applicants represented themselves, and the Applicants presented the testimony of the following witness, which testimony is part of the hearing record:

Daniel Encin, AIA, Applicant's architect

9. The documentary evidence and the testimony of the Applicant and/or Applicant's witnesses adduced the following facts:

Applicant Geri Rago testified that the prior use of the

premises was a rooming house and in a state of much needed repair when they purchased the property in 2002. She testified when they purchased the property they received a letter from the Mendham Borough Zoning Officer stating the premises was a non-conforming two family residence that predated the existing zoning ordinance. She testified when they purchased the premises there was and still is to this date an apartment in the basement, which has been and still is occupied by a tenant. The basement has its own means of ingress and egress. She also mentioned that her mother-in-law's health is declining, and they wanted to add a master bedroom and bathroom for her over the garage, accessible by a proposed elevator from the mudroom on the first floor.

Applicant's architect Dan Encin testified about the bulk Variances being sought. He mentioned that the property is already a pre-existing nonconformity, as the 30 foot front yard setback actually runs through the middle of the house. The proposed addition of the master bedroom, master bathroom, mudroom, mud hall and breakfast room area will increase lot coverage by 1,348 square feet and building coverage by 1,019 square feet. He also stated that there is no kitchen being added in connection with the in-law suite, so a D variance is not needed. He stated that there is a tenant living in the basement, and submitted exhibit A-1, a letter from the zoning officer of Mendham Borough in 2002, stating that it was a pre-existing non-conforming use for this residence.

Also marked as Exhibit "A-2" was the Historic Committee review letter dated 1/25/17, with which the Applicants agreed to comply.

10. Based on the hearing record, the Board has made the following findings and conclusions relative to the Variances sought by the Applicant:

By reason of the existing configuration of the subject property, the strict application of Ordinance Section 215-28 would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship upon the Applicant. Therefore, the grant of the Variances is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

The following purposes of the Municipal Land Use Law and

the Borough of Mendham Land Use Ordinance would be advanced by granting the Variances so as to allow the requested deviation from Ordinance Section 215-28: appropriate use and development of land, and promotion of a desirable visual environment.

The detriments associated with the deviation are considered minimal because the proposed addition will blend in seamlessly with and complement the existing architecture of the dwelling.

Therefore, the grant of the Variances is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviation will substantially outweigh the detriments.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the application and grant the Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(1) and 50:55D-70c(2).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a zoning permit for the improvements requiring Variance relief.

1. Applicants shall comply with the conditions of the Historic Preservation Commission's approval, as set forth in their letter of 1/25/17.
2. Applicants shall submit to the Board Engineer completeness check list items 29 and 47.
3. The sight easement description provided with the application shall be shown on the plan.
4. A restrictive deed covenant shall be filed limiting the use of the in-law suite to occupation by a member of the same family unit occupying the remainder of the dwelling and prohibiting separate cooking facilities in the in-law suite. Prior to filing, the restrictive deed

covenant shall be submitted to the Board Attorney for review and approval.

5. The distance from the proposed addition to Peacock Lane at the cul-de-sac bulb shall be dimensioned on the plan, and the edge of pavement or curb within the Peacock Lane right-of-way shall be shown on the plan.

6. Approval from the Borough Engineer is required for the Sanitary Sewer Connection application.

7. The proposed garage will be located approximately 5 feet closer to the street line than currently exists. The distance from the curb line in Peacock Lane to the face of the proposed garage shall be provided, so as to confirm that vehicles parked in front of the garage will not extend into the traveled way of Peacock Lane.

8. The project meets the definition of a minor stormwater development. Section 215-12.5B.(2)(b) requires Rate/Volume control. Seepage pits or other infiltration measures shall be provided with a capacity of three inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be 2 ½ inch clean stone, and a design void ratio of 33% shall be used. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices.

9. Any wells or septic systems (if any exist) within 100' of the property shall be shown on the plan or a note provided stating that none exist.

10. If soil is to be removed from the site, it must be transported and disposed in accordance with all federal, state and local regulations. No soil is to be deposited in Mendham Borough or neighboring municipalities without all proper approvals for the receiving site.

11. Applicants shall hire a civil engineer to prepare a plan to address the soil grading and drainage requirements

of the project.

12. Prior to the issuance of any permits, the Applicants shall submit a resolution compliance package. The package shall include revised plans and documents, and a transmittal letter that explains how and where each condition of the resolution has been addressed.

13. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.

14. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

15. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.

16. Pursuant to Ordinance Section 124-22, the Variances granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of the improvements requiring Variance relief has actually been commenced during that time period, provided that the running of the one-year time period shall be tolled during the pending of any appeal of the Board's decision to the Borough Council or to a court of competent jurisdiction.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of 7/11/17.

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ADJOURNMENT

There being no additional business to come before the Board, Mr. Seavey made a motion to adjourn the meeting at 9:47pm. On a voice vote, the meeting was adjourned.

The next meeting of the Board will be held on **Tuesday, September 12, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Carolyn Mazzucco

Carolyn Mazzucco
Board Secretary