

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
September 12, 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 – Absent
Mr. Smith - Present	

Alternate: Ms. Cass, Alternate I- Present

Also Present: Mr. Thomas Germanario, Borough Attorney

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MINUTES

Mr. Seavey asked for comments on the minutes of the regular meeting of August 1, 2017. Mr. Smith mentioned that there was a typographical error on p. 2, paragraph 4, that "13- foot pole" should be corrected to read "130 foot pole." Mr. Seavey made a motion to approve the revised minutes, and Mr. Ritger seconded. On a voice vote the minutes were approved by the Board.

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RESOLUTIONS

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

Mr. Germanario briefly reviewed the conditions of the resolution. Mr. Seavey made a motion to approve the memorialization of the resolution and Mr. Palestina 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: August 1, 2017

Memorialized: September 12, 2017

**IN THE MATTER OF T-MOBILE NORTHEAST, LLC, AND
 NEW YORK SMSA LIMITED PARTNERSHIP, D/B/A VERIZON
 WIRELESS
 PRELIMINARY AND FINAL SITE PLAN AND
 CONDITIONAL USE VARIANCE APPROVAL
 BLOCK 801, LOT 20
 APPLICATION NO.**

WHEREAS, T-Mobile Northeast, LLC and New York SMSA Limited Partnership, d/b/a Verizon Wireless (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final site plan approval of a wireless telecommunications tower, with variances pursuant to N.J.S.A. 40:55D-70d(3) (the "Conditional Use Variances" or the "Variance Relief") on 9/20/07; and

WHEREAS, the Application requested two Conditional Use Variances: (1) from Ordinance §215-12.5B(9), which requires that wireless towers be located in the rear yard of developed lots (hereinafter the "Rear Yard Condition"), and (2) from Ordinance §215-12.5C(2), which requires that the height of a wireless tower shall not exceed 120 feet; and

WHEREAS, the Application was deemed complete by the Board, and 22 public hearings were held between 6/4/08 and 6/2/10; and

WHEREAS, the Board voted to deny the Application on 6/2/10 and memorialized its denial by Resolution adopted on 7/7/10; and

WHEREAS, with respect to the 130-foot height of the proposed tower, the Resolution acknowledged that the Board had requested this height and did not base the denial of the Application on that variance; and

WHEREAS, with respect to the Rear Yard Condition, the Resolution found that "the inability to comply with the Rear Yard Condition due to the unique and expansive development of the King's Health Club property renders it unsuitable for this Conditional Use"; and

WHEREAS, the Applicant initiated litigation challenging the Board's denial in Superior Court, Law Division and Appellate Division, culminating in the Appellate Division's Opinion filed 2/16/16 (Docket No. A-1357-13T3), which concluded that the Board's denial of the Conditional Use Variance for the Rear Yard Condition was arbitrary, capricious and unreasonable, and granted that Conditional Use Variance; and

WHEREAS, by letter dated 4/27/17, Applicant's counsel requested that the Board grant and memorialize a preliminary and final site plan approval, based on approval of the Conditional Use Variances and the requirements set forth in the Third Technical Review report issued by the Board's Engineer, Ferriero Engineering, Inc., John Hansen, PE, dated 11/25/08 (the "Ferriero Engineering Report"); and

WHEREAS, with its letter of 4/27/17, Applicant submitted revised site plan drawings, consisting of 12 sheets, prepared by Dewberry Engineers, Inc., Jiang Yu, PE, revised to 4/18/17 (the "Revised Site Plans"), in compliance with the Ferriero Engineering Report; and

WHEREAS, Applicant's letter of 4/27/17 further requested that the Board consider a modification to the facility's ground equipment to provide for installation of equipment cabinets (as depicted on Sheet Z-4B) instead of the originally proposed equipment shelter (as depicted on Sheet Z-4A); and

WHEREAS, the Board's Engineer, Ferriero Engineering, Inc., John Hansen, PE, has issued an updated Technical Review report, dated 5/23/17 (the "updated Ferriero Engineering Report"); and

WHEREAS, the Board conducted a public hearing on 8/1/17, with public notice in accordance with N.J.S.A. 40:55D-12; and

WHEREAS, at the public hearing of 8/1/17, Applicant was represented by Richard Schneider, Esq. and presented the testimony of engineer Robert Foley, PE.

WHEREAS, the Board makes the following findings and conclusions, based on the public hearing record:

1. The Revised Site Plans are consistent with the requirements set forth in the Ferriero Engineering Report and the updated Ferriero Engineering Report, subject to the conditions set forth hereinbelow.

2. The Board approves the modification of the facility's ground equipment to provide for the installation of equipment cabinets, as depicted on Sheet Z-4B of the Revised Site Plans, instead of an equipment shelter, as depicted on Sheet Z-4A of the Revised Site Plans. The plans shall be revised to remove the non-applicable alternative depicted on Sheet Z-4A and associated details, and Sheet Z-4B shall be revised in accordance with the conditions herein below.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the preliminary and final site plan, as depicted in the plans described hereinabove, and grants the Conditional Use Variances associated therewith.

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 proposed improvements:

1. The plans have been revised to show an 8 foot high composite fence, however the updated Ferriero Engineering Report indicates that the Board had previously requested an 8 foot high solid wood fence. Applicant shall install an 8 foot high composite fence. Applicant shall submit a sample of the proposed composite fence material to the Board Engineer for approval as to color. Revised plans shall provide fence posts to be set in concrete.

2. The correspondence from the Applicant's attorney notes that references to vinyl fence have been eliminated. However, the fence gate is still labeled on the plans as a 4 foot high vinyl swing gate. The Applicant shall revise the plans to provide an 8-foot composite gate that is consistent with the fence materials.

3. Revised plans shall depict a 3-foot high screen above the fence to screen the canopy from view. The screen shall match the material and color of the fence.

4. Sheet Z-4B shall be revised to reverse the positions of the Verizon Wireless equipment platform and the pole, so that the pole is located to the west of the Verizon Wireless equipment platform, and so that the pole does not align with the traffic aisle.

5. Pursuant to Ordinance §195-58, Applicant shall furnish a performance guarantee for required improvements in an amount determined by the Borough Engineer.

6. Applicant will comply with Ordinance §215-12.6L regarding removal of wireless telecommunications facilities that have not been used for the provision of wireless telecommunications services for a period of six consecutive months.

7. 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.

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

9. 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.

10. Pursuant to Ordinance Section 124-22, the Variance Relief granted herein shall expire within one year of

the memorialization of this Resolution unless the construction or alteration of the improvements requiring the 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 8/1/17.

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

Mr. Germanario briefly reviewed the conditions of the resolution. Mr. Seavey made a motion to approve the memorialization of the resolution, 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: Peralta

The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: August 1, 2017
Memorialized: September 12, 2017

IN THE MATTER OF SARAH SLOVER
"C" VARIANCE APPLICATION
BLOCK 1801, LOT 15

WHEREAS, Sarah Slover (hereinafter the "Applicant") 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 7/6/17; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 8/1/17; 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 5.993 acres located in the 1-Acre Residential (R-1) Zoning District. The property has access from a common driveway with the adjacent lots designated as Block 1801, Lots 15.01 and 15.02 on the Borough of Mendham tax map. The property currently contains a dwelling, swimming pool, natural pond, and the private common driveway. A prior owner constructed a connection from the dwelling to a previously freestanding barn, which contained an accessory apartment, so as to attach the previously freestanding barn to the dwelling to create the larger single-family dwelling that currently exists on the property. The second floor of the previously freestanding barn contained a storage room, two bedrooms, a bathroom, a kitchen, a living room, and a recreation room, which continue to exist in the single-family dwelling today.

2. The Applicant is proposing to renovate the existing dwelling and restore it to its original configuration with a single-family dwelling and separate freestanding barn. The Applicant is further proposing to construct an approximately 1,474 square foot, two-story addition to the single-family dwelling, install a patio, sidewalks, and other related site improvements. The Applicant is proposing to continue the use of the storage

room, two bedrooms, a bathroom, a living room, and a recreation room located on the second floor of the barn for family members or household staff only, but the cooking facilities will be removed so as to avoid the need for a use variance. A three-car detached garage, drywell system, sidewalks, parking area, and driveway were previously approved by the Borough Engineer pursuant to a Lot Development Permit Application on May 18, 2017.

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

- Architectural Plans prepared by Cusano Associates, Inc., dated 7/2/17, consisting of three (3) sheets
- Variance Plans prepared by Yannaccone, Villa & Aldrich, LLC, prepared by Yannaccone, Villa & Aldrich, LLC, dated 6/29/17

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

- Correspondence from Nicole M. Magdziak, Esq., dated 7/6/17, with attachment
- Application for Hearing-Mendham Borough Board of Adjustment, dated 7/6/17
- Application Checklist
- Affidavit of Publication, dated 7/21/17
- Letter of David Krueger, Environmental Technology Inc., dated 7/31/17

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, CME, dated 7/25/17
Chuck McGroarty, PP/AICP, dated 7/27/17

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

Craig Bellamy, Fire Official, dated 7/11/17
Michael Zedalis, Historic Preservation Commission, dated 5/17/17

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

A-1 Rendered Sheet 4 of Variance Plans
A-2 Photos of Existing House
A-3 Rendered Sheet A-1 of Architectural Plans

8. In the course of the public hearings, the Applicant was represented by Thomas J. Malman, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Sarah Slover, Applicant
Craig Villa, PE, PP, CME, engineer/planner
Nicholas Cusano, AIA, architect

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

By removing the connector between the house and the barn, Applicant will restore the historical integrity of both structures and greatly improve their appearance. The proposed addition will upgrade the utility of the home to modern standards. The new driveway and detached three-car garage on the westerly side of the property will better serve the residence and replace the existing garage to be removed with the connector. Based on the ETI letter, there will be no disturbance of regulated wetlands or transition areas. The proposed renovation has been approved by the Borough's Historic Preservation Commission.

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

The Applicant seeks several bulk variances as follows:

- Front yard setback. The existing dwelling is nonconforming with regard to the required front yard setback (75 ft. required; 66.9 ft. existing). The proposed addition to the house will also have a setback of 66.9 ft.
- Building height. The new addition is noted to be 32.6 ft. in height according to Sheet 3 of the site plan, however, the total height of the house, based on an average elevation

equals 38.4 ft., thus exceeding the permitted maximum height of 35 ft.

- Accessory structure(s) footprint. The barn will be reclassified as an accessory structure once it is detached from the house upon the removal of the garage. Per §215-31.1E, an accessory structure, either singly or in combination, shall not exceed 50 percent of the principal building footprint. According to information presented on plan Sheet 3, the barn and a previously approved 3-car garage on western side of lot - both accessory structures - exceed the 50 percent limit of the house footprint by 359 sq. ft.

Regarding the front yard setback variance, the Board notes that the proposed addition is actually set back further from the road (67.8 ft.) than the existing dwelling (66.9 ft.), though still within the 75-foot setback. The expert testimony of Mr. Cusano establishes that full compliance of the addition with the 75-foot setback would create a visually incongruous structure. The Board finds that this variance is justified based on hardship c(1) as well as c(2) benefits outweigh detriments, as detailed herein below.

Regarding the building height variance, the Board notes that the new addition actually makes the overall average height of the structure more conforming to the ordinance, and that this variance enables a beneficial upgrade to the appearance and functionality of the dwelling. Therefore, the Board finds that this variance is justified based on hardship c(1) as well as c(2) benefits outweigh detriments, as detailed herein below.

Regarding the variance for accessory structure footprint, the Board finds that this deviation is unavoidable due to the existing configuration of the structures on the property and is necessary to achieve the beneficial goals of restoring the historical integrity and aesthetic appearance of the property. Also, the deviation of only 359 sq. ft. above the 50% standard is minimum. Therefore, the Board finds that this variance is justified based on hardship c(1) as well as c(2) benefits outweigh detriments, as detailed herein below.

By reason of the existing configuration of the subject property, the strict application of Ordinance 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 Variance so as to allow the requested deviation from Ordinance standards:

- To promote a desirable visual environment through creative development techniques and good civic design and arrangement.
- To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land.

The detriments associated with the deviation are considered minimal because their practical effect is to restore this historic structure to its status prior to previous unauthorized modifications.

Therefore, the grant of the Variance 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 Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(1) and 40:55D-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. The Architectural Plans will be revised to reflect removal of cooking facilities from the kitchen above the barn. The rooms above the barn shall not be utilized as a separate dwelling unit.

2. During construction of the improvements, the subject property must remain in compliance with Ordinance §215-10B with respect to off-street parking.

3. In view of the ETI report, the requirement of a wetlands LOI is waived.

4. Checklist items 4, 6, 31, 32 and 49 waived for completeness purposes shall be provided.

5. Any soil or improvements that will be removed from the property in connection with the project shall be disposed in accordance with all local, state and federal requirements. Soil is not to be deposited elsewhere in the Borough or the surrounding municipalities prior to receiving all required approvals for the receiving site.

6. 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.

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

8. 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.

9. Pursuant to Ordinance Section 124-22, the Variance relief granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of some or all the improvements authorized by this approval 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. Since the testimony by the Applicant was clear that the detached garage construction is intended to be delayed until funds are available for its construction, the ability for the Applicant to construct the detached garage at any time in the future will not

expire, provided that other improvements in the approved plans do commence within one-year from the date of memorialization of this Resolution.

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 8/1/17.

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ADJOURNMENT

With no additional business to come before the Board, Mr. Seavey made a motion to adjourn the meeting at 7:40pm. On a voice vote, the meeting was adjourned.

The next meeting of the Board will be held on **Tuesday, October 3, 2017 at 7:30PM** at the Mountain View School Cafeteria, 100 Dean Road, Mendham, NJ.

Respectfully submitted,

Carolyn Mazzucco

Carolyn Mazzucco
Board Secretary