

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
January 3, 2012
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular and reorganization meeting of the Board of Adjustment was called to order by Chair Seavey at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 13, 2011 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

OATHS OF OFFICE

Mr. Germinario, Esq. administered the following Oaths of Office:

Stephen Peck – Regular Member: 12/31/15
Charles Schumacher – Regular Member: 12/31/15
Anthony Germinario – Alternate II: 12/31/13

ROLL CALL

Mr. Palestina – Absent	Mr. Smith – Present
Mr. Peck – Present	Mr. Ritger, - Present
Mr. Peralta – Present	Mr. McCarthy, Alt I – Present
Mr. Schumacher – Present	Mr. Germinario, Alt II - Present
Mr. Seavey - Present	

Also Present:	Mr. Germinario, Esq., Attorney
	Mr. Hansen, Engineer

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APPROVAL OF MINUTES

Mr. Ritger made a motion to approve the minutes of the Regular Meeting of December 6, 2011. Mr. Schumacher seconded. All members being in favor, the minutes were approved.

Mr. Peck made a motion to approve the minutes of the Executive Session of December 6, 2011. Mr. Ritger seconded. All members being in favor, the minutes were approved.

2012 REORGANIZATION

Election of Chair: Mr. Germinario, Esq. assumed leadership for the election of the Chair. Mr. Ritger made a motion nominating Mr. Seavey as Chair. Mr. Peck seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 6 to 0 with 1 abstention as follows:

In Favor:	Peck, Peralta, Ritger, Schumacher, Smith, McCarthy
Opposed:	None
Abstentions:	Seavey

The motion carried. Mr. Seavey was elected Chair. He assumed leadership of the Board.

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Election of Vice Chair: Mr. Seavey made a motion nominating Mr. Peck as Vice Chair. Mr. Smith seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 6 to 0 with 1 abstention as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. Mr. Peck was elected Vice Chair.

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Election of Secretary: Mr. Seavey made a motion appointing Ms. Callahan as Secretary and Recording Secretary. Mr. Ritger seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. Ms. Callahan was appointed Secretary.

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Meeting Dates Approval: Mr. Seavey presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT
MEETING DATES**

BE IT RESOLVED that the Board of Adjustment of the Borough of Mendham will meet to discuss or act upon public business at 7:30 p.m. prevailing time on each of the dates set forth below, at the Garabrant Center, 4 Wilson Street, Mendham, NJ:

- Tuesday, February 7, 2012
- Tuesday, March 6
- Tuesday, April 3
- Tuesday, May 1
- Wednesday, June 6**
- Tuesday, July 10
- Tuesday, August 7
- Wednesday, September 5**
- Tuesday, October 2
- Wednesday, November 7**
- Tuesday, December 4
- Tuesday, January 8, 2013

BE IT FURTHER RESOLVED that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted on the bulletin board in the Phoenix House and delivered to the official newspapers in advance as required by law.

With respect to matters presented to this Board by applicants, the public shall be heard during the hearing on the application in accordance with the procedure as established by the Municipal Land Use Law.

Mr. Schumacher made a motion to approve the resolution. Mr. Seavey seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

Ms. Callahan will make appropriate public notice.

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Designation of Official Newspapers: Mr. Seavey presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham, Morris County, New Jersey as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act" aforesaid, the Board of Adjustment of the Borough of Mendham hereby makes the following designations:

1. The Observer Tribune and the Morristown Daily Record having been designated by the Governing Body as the two official newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use Regulations may be placed, as required by law, in either of the designated newspapers.
2. The location for posting of notices of meetings shall be the bulletin board in the Phoenix House, 2 West Main Street, Mendham, NJ, where notices of this kind are normally posted.
3. The sum of \$12.00 per year is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

Mr. Seavey made a motion to approve the resolution. Mr. Peralta seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. The resolution was approved. Ms. Callahan will make appropriate public notification.

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Responding to Mr. Ritger's question on logic associated with the dollar amounts in the professional resolutions, Ms. Callahan explained that the \$17,500 indicates the need for pay to play documentation and with the uncertainty of escrow amounts, we request the documentation from all professionals. The number associated with the budget is part of the Land Use Budget that is associated with the Borough lines and varies by the type of work a professional needs to do for the Board. It provides a cap. The final element is the escrows that can vary depending on the number and type of applications. There is no definitive number associated with escrows.

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Mr. Seavey presented the following resolution that had been included in the pre-meeting packages. He advised the Board that Engineering would be provided on a month-to-month basis until an RFP is evaluated.

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Consulting Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has provided services in 2011 based about a proposal and terms of services and those terms shall continue on a month to month basis in 2012 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is month to month but not to exceed one year; and

WHEREAS, Paul W. Ferriero has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Paul W. Ferriero.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Paul W. Ferriero PE & PP of the firm Ferriero Engineering Incorporated to serve as Consulting Engineer on a month to month basis, at a total cost not to exceed \$1,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2012; and escrows as required; and

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

5. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed: None
Abstentions: None

The motion carried. The resolution was approved. Ms. Callahan will make the appropriate public notification.

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Appointment of Board Attorney: Mr. Seavey presented the following resolution that was provided to the Board with their pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Thomas J. Germinario, J.D., P.E. has submitted a proposal indicating that he will provide legal services for 2012 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is 1 year; and

WHEREAS, Thomas J. Germinario, Esq. has completed and submitted a Business Entity Disclosure Certification which certifies that he has not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the

previous one year, and that the contract will prohibit him from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Thomas J. Germinario, Esq.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Thomas J. Germinario, Esq. to serve as Board Attorney for the year 2012 at a total annual cost not to exceed \$11,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2012: and escrows as required; and

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.

3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.

4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).

6. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Smith seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey

Opposed: None

Abstentions: None

The motion carried. The resolution was approved. Ms. Callahan will make the appropriate public notification.

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Appointment of Board Planner: Mr. Seavey presented the following resolution that was included in the pre-meeting packages:

**RESOLUTION
BOROUGH OF MENDHAM
BOARD OF ADJUSTMENT**

WHEREAS, the Board of Adjustment of the Borough of Mendham has a need to acquire professional Planning Consultant services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and,

WHEREAS, the business administrator has determined and certified in writing that the value of the services will exceed \$17,500 (including escrows); and

WHEREAS, Banisch Associates, Inc has submitted a proposal indicating that they will provide planning services for 2012 in an amount projected to exceed \$17,500 (including escrows); and

WHEREAS, the anticipated term of this contract is 1 year; and

WHEREAS, Banisch Associates, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to a political or candidate committee of the Borough Council in the Borough of Mendham in the previous one year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, this resolution is subject to the Chief Financial Officer certifying to the availability of funds; and

WHEREAS, the Board of Adjustment of the Borough of Mendham wishes to retain Banish Associates, Inc.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract itself must be available for public inspection.

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham as follows:

1. That the Board of Adjustment of the Borough of Mendham retain Charles T. McGroarty, PP/AICP of the firm Banisch Associates, Inc. to serve as Planning Consultant for 2012, at a total cost not to exceed required escrows for 2012; and
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
4. That a notice of this action shall be published once in the official newspapers of the Board of Adjustment of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
7. This Resolution shall take effect as provided herein.

Mr. Seavey made a motion to approve the resolution. Mr. Smith seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
 Opposed: None
 Abstentions: None

The motion carried. The resolution was approved. Ms. Callahan will make the appropriate public notification.

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Approval of Annual Report: Mr. Seavey presented the following 2011 Annual Report that had been included in the pre-meeting packages:

**MENDHAM BOROUGH
 BOARD OF ADJUSTMENT
 ANNUAL REPORT 2011**

PETER DeNEUFVILLE, application for use variance to move a historic farmhouse from an adjacent property and attach it as a wing to an existing guest cottage on his property at Block 1801, Lot 37, Thomas Road.: **Approved w/conditions**

NEW CINGULAR WIRELESS PCS, LLC (AT&T), application for 9 antennae in an existing cupola and equipment cabinets in an existing attic space at Block 2301, Lot 13, 350 Bernardsville Rd.: **Approved w/conditions**

ZENJON ENTERPRISES, LLC – application for preliminary and final major site plan approval, variances and interpretation at Block 1501, Lot 11, 25 East Main St. (Historic District) – **Approved w/conditions**

MICERA, JOHN & MONICA, application for variance for previously installed lights on driveway entrance piers that exceed the 4 ft. height limitation at Block 2401, Lot 20, 20 Spring Hill Road. **Approved w/conditions**

SANSONE, RONALD & LAURA, application for hardship variance for construction of an addition that violates the lot coverage at Block 404, Lot 14, 6 Mansfield Court. **Approved w/conditions**

SYRISTATIDES, SEMEON – application for variances: C variance for exceedence of permitted building coverage and D3 variance for expansion of non-conforming use at Block 801, Lot 30, 5 Dean Road. **Approved w/conditions**

**SUMMARY OF CASES
2011**

In 2011 there were 6 cases placed on the Board of Adjustment calendar. Out of those 6 cases, 6 were decided.

APPLICATIONS ON CALENDAR		6
APPLICATIONS CARRIED TO 2012		0
APPLICATIONS APPROVED		6
APPLICATIONS APPROVED W/CONDITIONS OR MODIFICATIONS	6	
APPLICATIONS DENIED		0
APPLICATIONS WITHDRAWN		0

In terms of the types of variances, the Board primarily dealt with four use variances for cell antennae, a pre-existing non-conforming multifamily, the move of a historic farmhouse, and a major site plan for the redevelopment of property with two buildings on one lot. The hardship variances were for an addition and driveway piers/lights. There were also several “C” variances granted with the use variances, but they are not listed separately.

TOTAL APPLICATIONS COMPLETED		6
“C” VARIANCES	2	
“D” VARIANCES	4	
EXTENSION TO VARIANCE TIMEFRAME	0	

APPLICATION FEES

In 2011 the Board of Adjustment collected a total of \$42,936 distributed as follows:

TOTAL FEES COLLECTED		\$42,936
APPLICATION FEES	\$ 4,200	
ESCROW	\$38,686	
COPIES/TAPES	\$ 50	

Board discussed their desire to have the Borough Council clarify some of the elements of the Cell Tower Ordinance based on their experience with working cases. Mr. Germinario, Esq. will speak with the Borough Attorney.

Mr. Peck made a motion to approve the annual report as written. Mr. Peralta seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, McCarthy, Seavey
 Opposed: None
 Abstentions: None

The motion carried. The annual report was approved. Ms. Callahan will forward it to the Council and Planning Board.

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PUBLIC COMMENT

Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 8:10 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, February 7, 2012 at 7:30 p.m.

Respectfully submitted,

Diana Callahan
Recording Secretary