

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
January 8, 2013
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 the Board Secretary 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 12, 2012 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:

Bryan Seavey: Regular Member - 12/31/16
John McCarthy: Alternate Member I – 12/31/14

ROLL CALL

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

#####

APPROVAL OF MINUTES

Mr. Seavey made a motion to approve the minutes of the Regular Meeting of December 4, 2012. Mr. Peck seconded. All members being in favor, the minutes were approved.

2013 REORGANIZATION

Election of Chair: Mr. Schumacher made a motion nominating Mr. Seavey as Chair. Mr. Palestina 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:	Palestina, Ritger, Schumacher, Smith, Peck, McCarthy
Opposed:	None
Abstentions:	Seavey

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

#####

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:	Palestina, Ritger, Schumacher, Smith, McCarthy, Seavey
Opposed:	None
Abstentions:	Peck

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

#####

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

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

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

The motion carried. Ms. Callahan was appointed Secretary.

#####

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 5, 2013
 Tuesday, March 5
 Tuesday, April 2
 Tuesday, May 7
Wednesday, June 5
 Tuesday, July 2
 Tuesday, August 6
Wednesday, September 4
 Tuesday, October 1
Wednesday, November 6
 Tuesday, December 3
 Tuesday, January 7, 2014

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. Seavey made a motion to approve the resolution. Mr. Peck seconded. All members being in favor, the resolution was approved. Ms. Callahan will make the appropriate public notifications.

#####

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. Smith seconded.

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

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

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

#####

Appointment of Consulting Engineer: Mr. Seavey presented the following resolution that had been 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 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 submitted a proposal indicating that they will provide engineering services for 2013 in an amount projected to exceed \$17,500 (including escrows); and

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

WHEREAS, Paul W. Ferriero 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 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 for 2013, at a total annual cost not to exceed \$1,000, such sum as duly appropriated for the purposes in the duly adopted municipal budget for 2013; and escrows as required for 2013; 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. Palestina seconded.

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

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

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

#####

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 2013 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 2013 at a total annual cost not to exceed \$10,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2013: 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. Smith seconded.

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

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

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

#####

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 2013 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 2013, at a total cost not to exceed required escrows for 2013; 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: Palestina, Ritger, Schumacher, Smith, McCarthy, Peck, Seavey
 Opposed: None
 Abstentions: None

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

#####

Approval of Annual Report: Mr. Seavey presented the following 2012 Annual Report that had been included in the pre-meeting packages:

**MENDHAM BOROUGH
BOARD OF ADJUSTMENT
ANNUAL REPORT 2012**

OMNIPOINT COMMUNICATIONS, INC. and New York SMSA Limited Partnership d/b/a VERIZON WIRELESS, application for use and other required variances for 120 ft. +/- monopole at Block 801, Lot 20, Kings Shopping Center (**Incomplete and On Hold by Applicant – Remand from Litigation**)

DE NEUFVILLE, PETER – application for extension to previously approved variance at Block 1801, Block 37, Thomas Road: **APPROVED: 2/7/12**

5 HILLTOP HOLDINGS, LLC, application for commercial use of third floor that violates development standards for historic buildings at Block 1902, Lot 21, 5 Hilltop Rd. (Historic Business District/Historic District): **APPROVED: 6/6/12 w/conditions**

INGERSOLL, DEBORAH, application for use variance for office use in an accessory structure, and hardship variances for building coverage, lot coverage, front yard setback and accessory structure height at Block 305, Lot 11, 63 West Main St. (Historic District): **APPROVED 9/12/12 w/conditions** only for building coverage and front yard setback in connection with (1) demolition of the portion of the existing dwelling facing West Main Street; (2) construction of a new 2 story addition in the same location as the portion to be razed; and (3) construction of detached garage structure and driveway area in the northwest quadrant of the property.

BOTTI, JOHN P. II/FLUORTEK, application for hardship variance for violation of side yard setback at Block 301, Lot 75, 45 West Main St. (Historic District): **APPROVED 6/6/12**

ZENJON ENTERPRISES, LLC, application for amended preliminary and final major site plan approval and variances for Block 1501, Lot 11, 25 East Main St. (Historic District). **APPROVED 10/2/12 w/conditions** for 5 residential apartments in rear building

DUFFY, KEVIN & HILLARY, application for hardship variance for addition and shed relocation that violate the building coverage and accessory building location at Block 1901, Lot 6, 4 Prospect St., (Historic District): **APPROVED 10/2/12 w/conditions**

STEFFENS, B. & MURRAY, N., application for Hardship Variances for addition of a porch that violates the front yard setback and the impervious coverage at Block 705, Lot 12, 68 Dean Road. (**ON HOLD at the request of the applicant – pending amendment**)

BARTZAK, LINDA, application for Hardship Variance for construction of a porch and garage extension that violate the front yard setback at Block 201, Lot 29, 6 Deerfield Rd.: **APPROVED 12/4/12 w/conditions**

PATTON, ROBERT & KRISTEN, application for hardship variance for mudroom addition that violates the side yard setback at Block 1903, Lot 12, 3 New Street (Historic District): **HEARING APPROVAL 12/4/12 w/conditions**

REILLY, PHILLIP & JESSICA, REILLY, PHILLIP & JESSICA, application for hardship variance to increase height of home with pre-existing non conforming front yard setback at Block 1902, Lot 8, 14 New Street (Historic District): **HEARING APPROVAL 12/4/12 w/conditions**

**SUMMARY OF CASES
2012**

In 2012 there were 9 cases placed on the Board of Adjustment calendar. Out of those 9 cases, 9 were decided. There are two additional applications that are pending moving into 2012, one being the Omnipoint application for the cell tower which was subject to litigation.

APPLICATIONS ON CALENDAR		9
APPLICATIONS APPROVED		9
APPLICATIONS APPROVED W/CONDITIONS OR MODIFICATIONS	8	
APPLICATIONS DENIED		0
APPLICATIONS PENDING FOR 2013	2	

In terms of the types of variances, the Board dealt with five hardship variances related to setbacks and building/lot coverage. The use variances included approval for a commercial use on the third floor of a historic building, and the approval of an amended application for 5 residential units in a second building on a lot. There was another use variance for an office located in the residential zone, but that was modified during the hearing process. There were also several “C” variances granted with the use variances, but they are not listed separately.

TOTAL APPLICATIONS COMPLETED		9
“C” VARIANCES	5	
“D” VARIANCES	3	
EXTENSION TO VARIANCE TIMEFRAME	1	

APPLICATION FEES

In 2012 the Board of Adjustment collected a total of \$52,401 distributed as follows:

TOTAL FEES COLLECTED		\$52,401
APPLICATION FEES	\$ 9,400	
ESCROW	\$43,001	
COPIES/TAPES	\$ 8	

Mr. Seavey made a motion to approve the annual report as written. Mr. Palestina seconded.

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

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

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

#####

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.

#####

Patton, Robert & Kristen – Hardship Variance
 Block 1903, Lot 12, 3 New Street (Historic District)

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

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION**

Decided: December 4, 2012

Memorialized: January 8, 2013

**IN THE MATTER OF ROBERT & KRISTIN PATTON
“C” VARIANCE APPLICATION
BLOCK 1903, LOT 12**

WHEREAS, Robert and Kristin Patton (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 7/19/12; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 12/4/12; 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 0.494 acres developed with a single family residence and detached garage. The property is located at 3 New Street in the ¼ acre residential/historic district.

2. The improvements to the subject property for which the Variance relief is sought comprise an addition to connect the existing dwelling and the detached garage. The Applicant has submitted an application to the Board of Adjustment because relief is required for exceeding the maximum lot coverage, maximum building coverage, and minimum side yard setback.

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

- Survey of Property prepared by Yannaccone, Villa & Aldrich, LLC, dated 6/4/12
- Survey of Property prepared by Yannaccone, Villa & Aldrich, LLC, modified to depict architectural footprint of proposed addition
- Architectural Plans prepared by Cusano Associates, Inc., NJ, dated 6/8/12, consisting of three (3) sheets (unsigned and unsealed)
- Revised Architectural Plans prepared by Cusano Associates, Inc., NJ, dated 9/2/12, consisting of one (1) sheet
- Variance Plans, prepared by Yannaccone, Villa & Aldrich, LLC, Chester, NJ, dated 9/12/12, last revised 10/10/12, consisting of two (2) sheets

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

- Board of Adjustment application form and attachments, dated 7/19/12
- Application Checklist (undated)
- Zoning Officer's Denial, dated 7/10/12
- Certification of Status of Municipal Tax and Sewer Fees, dated 7/18/12
- Certified list of property owners, dated 7/19/12
- Site Inspection Authorization, dated 7/1/12

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:

Reports of John Hansen, PE, dated 9/21/12
and 10/22/12

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

Report of Historic Preservation Commission,
dated 7/23/12

7. In the course of the public hearings, the Applicant Robert Patton represented himself, and the Applicant presented his own testimony, which is part of the hearing record.

8. The documentary evidence and the testimony of the Applicant adduced the following facts:

Variance relief is required under Ordinance §215, Schedule II, for exceedence of the minimum side yard setback, under §215-31.1H, for exceedence of maximum lot coverage, and under §215-31.1I, for exceedence of permitted building coverage. The proposed addition will have a side yard setback of 6.7 feet, while 10 feet is required. The existing dwelling has a 5.5 foot side yard setback. Proposed lot coverage is 5,349 sq. ft., where 4,330.2 sq. ft. is permitted, but the net increase over the existing is only 92 sq. ft. The proposed building coverage is 2,312 sq. ft., which exceeds the maximum by 139 sq. ft.

The Applicant stated that roof runoff will be directed away from the adjacent property. Building materials and external finishes will match the existing house and garage. The addition will enhance the appearance of the property and will not be visible from the street. The design of the addition has been reviewed and approved by the Historic Preservation Commission.

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

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

The detriments associated with the deviation are considered minimal because the addition will not be visible from the street, and it will not result in increased runoff onto neighboring properties.

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).

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. Prior to the issuance of a Certificate of Occupancy, all site improvements must be completed as shown on the plan and shown on an as-built drawing prepared by a licensed land surveyor.

2. 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.

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

4. 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.

5. 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 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.

#####

Reilly, Phillip & Jessica – Hardship Variance
Block 1902, Lot 8, 14 New Street (Historic District)

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION**

**Decided: December 4, 2012
Memorialized: January 8, 2013**

**IN THE MATTER OF PHILLIP & JESSICA REILLY
“C” VARIANCE APPLICATION
BLOCK 1902, LOT 8**

WHEREAS, Phillip and Jessica Reilly (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 10/23/12; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 12/4/12; 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 0.28 acres developed with a single family residence. The property is located at 14 New Street in the ¼ acre Residential District.

2. The improvements to the subject property for which the Variance relief is sought comprise raising the building by height from 24 feet to 28.5 feet with minimal exterior changes. No land disturbance is proposed. A variance is required because the portion of the home to be raised is within the front yard setback.

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

- Survey entitled, "Plan of Survey, Phillip B. Reilly, III and Jessica M. Reilly, Borough of Mendham, Morris County, New Jersey of Block 1902, Lot 8" prepared by Brunswick West, Inc., Richard S. Zinn, PLS, dated 4/20/11 (unsealed)
- Plans entitled, "Reilly Residence," prepared by Mendham Design Architects, dated 10/19/12, consisting of 3 sheets

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

- Board of Adjustment application form and attachments, dated 10/23/12
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated 10/5/12
- Zoning Officer's Denial, dated 10/3/12
- Site Inspection Authorization, dated 10/23/12
- Certified list of property owners

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:

Report of John Hansen, PE, dated 11/12/12

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

Historic Preservation Commission, dated 2/28/12

7. In the course of the public hearings, the Applicant represented himself, and the Applicant presented his own testimony as well as the testimony of the following witness, which testimony is part of the hearing record:

Daniel Encin, architect

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

The increase in the roof height will render the top floor more usable by increasing the ceiling height. There will be no increase in floor area. The change will not be noticeable from the street. The proposal has been reviewed and approved by the Historic Preservation Commission.

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

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

The detriments associated with the deviation are considered minimal because the subtle change in the roofline will not be noticeable.

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).

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. Prior to issuance of a Certificate of Occupancy, all proposed improvements shall be installed per the approved plan.

2. 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.

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

4. 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.

5. 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 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.

#####

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 7:50 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, February 5, 2013 at 7:30 p.m.

Respectfully submitted,

Diana Callahan
Recording Secretary