

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
March 2, 2010
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Santo 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 on January 14, 2010 and the Daily Record on January 11, 2010 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ATTENDANCE

Mr. Palestina – Present	Mr. Smith - Present
Mr. Peck – Present	Mr. Santo - Present
Mr. Peralta – Present (til 7:45 p.m.)	Mr. Ritger, Alt. I - Present
Mr. Schumacher – Present	Mr. McCarthy, Alt II – Present (til 7:45 p.m.)
Mr. Seavey - Present	

Also Present:

Mr. MacDonald, Attorney
Mr. Quamme, Engineer
Mr. Humbert, Planner
Dr. Eisenstein, Telecom Consultant

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MINUTES

On motion made by Mr. Smith, seconded by Mr. Schumacher and carried, the minutes of the February 2, 2010 regular meeting of the Board were approved as written.

PUBLIC COMMENT

Chair Santo 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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HEARING OF CASES

Peggnat, LLC - Use Variance and Site Plan Waiver: **Completeness Only**
Block 305, Lot 1, 61 West Main Street

Completeness to be carried to the April 6, 2010 meeting.

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Thomas, Edward M. & Tamara G. – Use Variance: **Completeness Only**
Block 1801, Lot 38, 298 Thomas Road

Present: William Bergman, Esq.

As the applicant was not present, Board would not hear the completeness review. Completeness and hearing, if completeness is determined will be conducted at the next meeting.

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Mr. Peralta recused from the Board. Mr. McCarthy left the Board.

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Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless – Use and Other required variances: **Continuation**

Block 801, Lot 20, Kings Shopping Center

Present: Richard Schneider, Esq. – Attorney for the Applicant
Robert Simon, Esq. – Attorney for Mr. Isko
George Ritter – Planner for Mr. Isko

Exhibits: I-17: T-Mobile's PCS broadband license consisting of 7 pages
I-18: Verizon's PCS broadband license
I-19: Letter from Historic Preservation Commission dated 12/4/09
A-29: Federal Communications Commission document under Docket Number
08-165

Mr. MacDonald, Esq. advised the Board that he had received a call from an attorney friend of Ms. Kaplan who advised him that she would not be attending.

After some procedural matters, Mr. Simon, Esq. called Mr. Ritter for redirect. Responding to a series of questions by Mr. Simon, Esq., Mr. Ritter clarified that if a planning board could not grant relief of a conditional use, the application would go to the Board of Adjustment. In terms of making his planning conclusions, in addition to considering the testimony of Mr. Isko's experts, he reviewed the hearing testimony and the reports that were placed into evidence by the applicant. He conducted his own research on the Borough's Master Plan and Main Street Corridor Ordinances. He read transcripts of the meetings he did not attend.

Responding to Mr. Simon, Esq. on the deviations of the application from the Wireless Telecommunications Ordinance, Mr. Ritter stated that there were close to ten as related to the "D-3" variance and seven in relation to a "C" variance. Addressing the Telecommunications Act of 1996, as relates to Section 5 of the Borough's Wireless Telecommunications Ordinance, Mr. Ritter did not believe that it prohibits or has the effect of prohibiting the provision of personal wireless services. Section 5 puts forth proof of necessity for the WT facility required. It is similar to the Federal Communications wording. It is up to the applicant to prove that there is a need.

Mr. Simon, Esq. entered Exhibits I-17 and I-18, the broadband PCS licenses of T-Mobile and Verizon and referenced the Sections C-4 and H-2(I) of the telecommunications ordinance that referenced FCC mandated coverage and conformance with the FCC license. Providing his interpretation of the exhibits, Mr. Ritter stated that they appear to indicate the current status of the Verizon Wireless and T-Mobile licenses.

After objection by Mr. Schneider, Esq. to the relevance of the testimony of Mr. Ritter as a planner, not an RF expert, and Mr. MacDonald, Esq. questioning as to the how the testimony related to redirect, Mr. Simon, Esq. advised that the testimony was related to the Wireless Telecommunications Ordinance and its requirements.

Continuing, Mr. Ritter referred to build-out deadlines for the various carriers. He explained that for Verizon Wireless, the first build-out deadline was 12/7/2003 and the second at 1/3/2007. There are no further build-out requirements that he sees listed on the license. The expiration date of the license is 1/3/2017. T-Mobile build-out deadlines are 12/14/1999 and 12/14/2004. There do not appear to be any additional build-out dates. His conclusion was that both T-Mobile and Verizon have met their build-out in that they have valid licenses moving forward.

Mr. Schneider, Esq. objected to Mr. Ritter's qualifications to make the conclusion. Mr. MacDonald, Esq. requested foundation for Mr. Ritter's expertise to offer the opinion. Mr. Simon, Esq. stated that there is an issue in the case as to what is defined as FCC mandated coverage at 1900 megahertz. Mr. MacDonald, Esq. advised that what is being read in the columns is being read correctly, but further foundation is needed if Mr. Ritter is going to offer an opinion to the Board. Build-out deadline first and second would need to be defined, but the qualifications of Mr. Ritter as a planner to do so is in question. Mr. Simon, Esq. responded that Mr. Ritter can opine as to what is meant by FCC mandated coverage in conjunction with the Wireless

Telecommunications Ordinance and in conjunction with the testimony that had been presented so far in the application. There was a question from the last meeting as to whether build-out has taken place to maintain the license. Mr. Schneider, Esq. raised his concern that the question was not raised when Mr. Graiff was present, and now it is being directed to a planner.

Mr. MacDonald, Esq. advised that he did not follow how the planner is qualified to testify on whether there has been an FCC build-out or non-build out, or compliance with some deadlines. He did not know how that issue was connected to direct and redirect. As to the ordinance, Mr. Ritter is a planner, and the Board has accepted his qualification to opine on what is in the ordinances. There is a distinction between that and reading and interpreting the FCC licenses.

Responding to the Chair, Dr. Eisenstein stated that build-out does not mean final build-out. It is an on-going process, and that is why the licenses have first and second build out. When the carriers apply for their licenses again they will have third, forth, etc build-out until they meet the criteria. The FCC does not mandate anything along the lines of power levels. The only statement that the FCC relies on is a substantially better than mediocre level of service. It is up to the experts in the field to determine whether a certain power level provides it.

Continuing, Dr. Eisenstein stated the license is not final as it can be suspended at any time. If the carriers deviated, even a couple of hertz, from frequencies that they have been allocated, the FCC can step in and suspend their license. They can suspend a license for quality of service. For each exhibit there is an expiration date, and at that time the carriers are going to have to come forward and show that they have continued the build-out process. If they have not done the proper build-out their license could be denied. Build-out does not mean the carrier is done; it is an ongoing process.

Responding to Mr. Peck on what the deadline date means in the exhibits, Dr. Eisenstein stated that in the case of I-17, at the time they applied for their renewal, they had a deadline of 2014. When they go up for their license, they are going to have to show the FCC that they have been conducting themselves and building out their facilities in order to provide a level of service substantially better than mediocre and satisfying other things such as access to 911. If they meet that, a new road will be put forward and they will get a new license. If they do not meet it, the FCC cannot renew the license or they may chose to suspend it. They do not get the license permanently. The FCC is allowing them to lease the frequencies on which they have bid.

Responding to Mr. Simon, Esq. on what the first build-out meant, Dr. Eisenstein explained that the initial build-out in the 90s was based on a percentage of area in the metropolitan district that had to be covered. The second build-out added on a percentage of population. In 1999 they also began building out the emergency 911 system. They need to build out for new frequencies.

Responding to Mr. Simon, Esq. on whether the ability of the carriers to maintain their licenses at 1900 megahertz would be affected if the application is denied, Dr. Eisenstein stated that he did not know the answer as it would depend on whether or not they were able to show that their customers were unable to maintain a substantially better than mediocre level of service in the region. It would then affect the renewal. In terms of the one application, if there were alot of complaints to the FCC, it could affect their licensing right now, but usually the FCC would not come in until license renewal. The FCC is governed by the Telecommunications Act and they do not mandate coverage. A substantially better than mediocre level of service must be maintained.

Mr. MacDonald, Esq. and Mr. Simon, Esq. exchanged a series of questions and answers as to the legal issues of relating the Borough Telecommunications Ordinance language of FCC mandated coverage to the carriers' ability to maintain their license. Mr. Simon, Esq. proffered that based on the ordinance, the Board would need to know the FCC mandated coverage and the license requirements. Mr. MacDonald, Esq. again stated that he did not see the foundation for Mr. Ritter offering those opinions.

Mr. Simon, Esq. referenced the Omnipoint versus the Board of Adjustment of Bedminster Township case that was decided by the Appellate Division and denied by the New Jersey Supreme Court in 2001. It was a conditional use application reviewed against their ordinance containing standards. Mr. Ritter stated that the Borough ordinance contains similar conditional use standards. In all the cases he is familiar with, the applicants need to address a gap in service based on the ordinances. In terms of Section 5, it places a burden on all of the applicants to show the need for the facility. If the applicant fails to do that, then it brings into question all the other variances that would flow from that.

Continuing to answer Mr. Simon's questions, Mr. Ritter stated that he did not think that Section 5 was vague. The industry has set general standards that the applicants can use to demonstrate whether the need exists. The ordinance would fall under the four tests of Sprint Spectrum. One

of the tests is that the applicant has to prove that the area is not already being served by another wireless telecommunications provider. He does not recall seeing in any of the documentation that the applicant has identified what other carriers may or may not be providing service to this area.

In terms of other sites in the East Business District that appear to fulfill the one-and-a-half acre minimum lot size requirement for the district, Mr. Ritter answered that there are more than the one that could have been chosen. The tower could be located in any zone provided that the applicant meets the location requirements of Section B. In terms of the height, the 120 ft. height in the ordinance is the maximum. The maximum height in the district for a building is 35 ft.

Addressing relief required, Mr. Ritter stated that he thought that nonconforming conditional uses would need to be addressed even if all the Wireless Telecommunications requirements were met because the ordinance does require that in addition to meeting the requirement for the telecommunications ordinances that they must comply with all the underlying zoning regulations of the site they chose. If they are going into a nonconforming condition, or a nonconforming use, or a pre-existing condition, they would have to address that as part of their application.

Mr. Simon, Esq. entered Exhibit I-19, a letter from the Historic Preservation Commission dated December 4, 2009. It was written in response to an invitation to comment as to the proposed telecommunications facility at the Mendham Village Shopping Center.

Mr. Schneider, Esq. clarified that the submittal from the Historic Commission was only as a result of the relocation within the Kings Shopping Center. He could provide the Board with the May 22, 2007 approval from the State Historic Preservation Office that indicates that the project would not adversely affect historic properties. To suggest moving the tower a couple of hundred feet will change that is a waste of time.

Mr. Simon, Esq. disagreed. The approval was from before the application even began. The application has changed. When any application is submitted, various commissions can provide comment. The Historic Preservation Commission issued two letters. What the State Commission stated in 2007 is irrelevant to any questioning he is going to ask of Mr. Ritter with regard to a commission of Mendham Borough that is a bit more in tune with the issues of the present application. When a court reviews an application, they have been known to give deference to a local commission.

Mr. Schneider, Esq. continued that it might be true if the letter from the State Historic Preservation Commission was relative to the application, but it is pending before another state agency. The letter is addressed to the consultant for the applicant in conjunction with an application to another governing body. Mr. Simon, Esq. added that the Historic Preservation Commission copied the Board of Adjustment.

Chair acknowledged the objection and requested that Mr. Simon proceed.

Responding to Mr. Simon, Esq., Mr. Ritter referenced the Main Street Corridor cited in the letter as it recognizes the visual importance of the section of town. It helps to create a sense of entrance to the community and a transition into the historic district. He continued that the Historic Commission has similar concerns with the scale and the potential impact of the size in relationship to the existing village structure, the size of the structures along Main Street and the historic area. They are concerned that in the fall, the tower may very well be visible from many areas along Main Street and the historic sites. In terms of his own opinion, he is concerned with the scale of the pole as it is one of the most visible areas of the community as it is the village shopping center. It will have far reaching impact on both the character of Main Street, the Main Street Corridor and the historic area, and it will affect everyone coming to the shopping center.

In terms of the height, the comments in the letter are consistent with his observation. He has pointed out that the shopping center is a one-story building. The tower is proposed at 130 ft. The location is a prominent location and the scale will be very detrimental to the long-term goals expressed in the master plan for maintaining the character of the Main Street Corridor and the historic area. It is detrimental to the visual character.

Continuing to respond to Mr. Simon, Esq. on whether the applicants have met the positive or negative criteria for the required variance relief, Mr. Ritter stated that he did not think that they have proven that the proposed variances and the relief sought have been mitigated to such an extent that this is an appropriate location. The negative aspects of the scale, its potential impact on the town's Master Plan, and zone plan are sufficient that they have failed to meet the burden of proof.

In terms of the Sprint Sectrum test, Mr. Ritter did not believe that the applicant has met it. The applicant has not investigated, on a priority basis, various sites in town before coming to the conclusion that this was the only site. There was not a good-faith effort to locate the facility in the least intrusive way. It appears that the firehouse was the only site that was looked at in depth, and that other technologies and alternative sites were overlooked. There was not any effort made to inform the Board of other carriers that serve this area.

Addressing the goals of the Telecommunications ordinance, Mr. Ritter stated that it is clearly in conflict with several goals. It is also in conflict with the goals in the Main Street Corridor as well as those listed in the Master Plan in terms of maintaining a visual quality of the Main Street Corridor and historic area of the Borough.

In terms of the positive and negative criteria, Mr. Ritter stated that the potential negative impacts of constructing the facility in the location far outweigh the positive benefits that are being drawn. The detriment in this case outweighs any of the public good that might come from putting the facility in this location. It would be within the Board's consideration to deny the application.

Responding to Mr. Schneider's recross-examination, Mr. Ritter, stated that he believed that in reference to Section B-5, the proof of necessity, there are industry standards that are used to judge these types of applications. He did not recall any municipal ordinance that specifically contains a standard. The most widely used standard that has come before his Boards are the accepted level of service somewhere around minus 84, 85 db. Whether it is a reasonable standard in this case, he is not sure as the issue before the Board is whether or not there is a significant gap.

Addressing Mr. Schneider's lines of questioning on the need for information on other carrier service in the area, Mr. Ritter answered that under Sprint Spectrum it is one of the criteria. Mr. Schneider, Esq. advised Mr. Ritter that under Federal Communications Docket Number W-2-08-165 the FCC said that a one-service provider rule is irrelevant. He entered Exhibit A-29, a proceeding before the Federal Communications Commission under Docket Number 08-165 adopted November 18, 2009 and released on November 18, 2009.

After reading from the document, Mr. Ritter stated that if it is the only reason the facility is being denied, it is probably on thin ice. It is not conclusionary.

After some back and forth, Mr. Ritter responded to Mr. Schneider, Esq. on whether the Main Street Corridor Ordinance was passed before or after the Borough of Mendham Wireless Communications Ordinance by indicating that the Main Street Corridor Ordinance was adopted December 17, 2007 and the Wireless Telecommunications Ordinance was adopted May 5, 2008. It would appear the Governing Body was aware of the Main Street Corridor Ordinance when the telecommunications ordinance was adopted.

Responding to Mr. Schneider on whether the Historic Commission had reviewed the site plan, the photo simulations, or the visual analysis of Mr. Kronk, Mr. Ritter was not sure whether or not they had.

Mr. Simon, Esq. questioned Mr. Ritter on the changing nature of application over time. Mr. Ritter stated that these types of applications have the tendency to be modified and revised. Not everyone in the loop is privy to all the changes that are made at a particular time. In terms of the standards, Mr. Ritter repeated that most town ordinances do not actually list any specific criteria for that. The applicants have used negative 85 and negative 84 as general criteria. He is not aware of any Federal, State case law, ordinance or requirement that specifies that negative 84 or negative 84 should be used.

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Board took a 15 minute recess.

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Chair announced that the meeting would be opened for final public comments. The April meeting would be reserved in its entirety for the Omnipoint applications to hear the summations of Messrs. Schneider and Simon. The Board would move to deliberations. The Board is proposing a special meeting in April to work the other pending application.

Mr. Dan Pierson, 23 Dean Road stated that he lives directly behind the wetlands behind the Racquet Club, and it is annoying to see the lights from the racket club. He wanted to bring to the Board's attention that while there looks like a broad amount of forestry that separates the parking lot and the area to his backyard, even in the summer, one can see straight through it. It is

deceptive as from the maps and the satellite it looks like a large area of forestry. He would feel like the tower is in his backyard, next to the swing set where his children play and where they would like to place a pool one day. It would not be an environment where a future buyer of the home would consider it a nice setting in Mendham. It would be disproportionate to other properties that would not be subject to the view.

Mr. Lupo, 17 Dean Road, stated that after all the months of hearings, questions still remain open, and he has more questions than when he started. In his opinion, when he comes to a hearing, the facts, that may be simple such as what he researched on the FCC licenses, seem to get distorted. He continued that Mr. Graiff had addressed how to read the build-out last month: fifty percent of the population in the MTA, the Morris area. If that's the build-out, you satisfied your build-out. The second build-out is 75 percent. Then there are renewals, and if they do not meet renewals, they get a warning.

Mr. Lupo continued that the shopping center is our centralized home. He bought the house because the shopping center was located conveniently. A tower placed right in the center does not work. It is disproportional and it does not fit in with the community. With the snow piled up, the parking was a disaster, and he does not understand how the parking will work. Placing a tower in our face is not appropriate. Daytop is beautiful and it fits the neighborhood. DelBarton is so well camouflaged that you actually have to stop to look for it. They worked to keep the height to the tree height. Conifer can be seen and is not a fantastic job. One will not be able to drive around the proposed tower coming down 24. It is the only way into Mendham. He concluded with anything but a pole in the middle of our community.

Dick Doherty, 11 Dean Road, stated that he has been to the last 14 or 15 hearings. He is still not clear on whether a cell tower is required in the Borough of Mendham. The applicant believes it is, Dr. Eisenstein believes it is, and Mr. Graiff believes it is not. If there is a vote to build a tower, he would ask that some of the alternative technologies be given additional thought. We should investigate and rule out that possibility before putting in a tower.

Dan Bierals, 24 Forest Drive, stated that he has young children, and it has not been proven to him that it is not hazardous to his children's health. It will also not help property values.

Janina Zychowski, 18 Forest Drive, was also concerned about the health issues. After sitting through the meetings, she did not see the need for the tower. She is opposed.

There being no additional comments by the public, the public session was closed.

Chair announced that the hearing would be carried to the Tuesday, April 6, 2010 regular meeting of the Board. Summations and deliberations would occur. Mr. MacDonald, Esq. advised that the applicant will not be required to send further notice. Mr. Schneider, Esq. agreed to an extension of time through April 6.

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Skuraton, Susan & James - Hardship Variance: **Resolution**
Block 304, Lot 9, 8 Aster Terrace

Mr. MacDonald, Esq. presented the following resolution memorializing action taken at the February 2, 2010 meeting to the Board:

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
BOROUGH OF MENDHAM**

WHEREAS, JAMES G. SKURATON and SUSAN B. SKURATON, have applied to the Board of Adjustment of the Borough of Mendham for permission to construct an addition to the existing single family dwelling located at 8 Astor Terrace also known as Lot 9 in Block 304 on the Tax Map of the Borough of Mendham, which premises are in the 1/4 Acre Residence Zone; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and after providing the adjoining property owners and the general public with the opportunity to be heard at a Public Hearing on February 2, 2010 has made the following factual findings:

1. The applicants purchased the subject property in July 1996 according to the application and the copy of the title Deed. The lot is located on the southerly side of Aster Terrace across from the intersection with Birch Street, with 265 feet of frontage on the street and extending to a depth of approximately 123 feet on the easterly side

- and 90 feet on the westerly side from the edge of the street right of way to a rear width of approximately 150 feet along the irregular shoreline of Cosma Lake.
2. The property is currently improved with a single family dwelling and related accessory structures, including a driveway, an attached garage, a detached two car garage, a concrete patio, paver walkways and a small shed behind the detached garage. The applicants presented, and the Board reviewed, a copy of a Survey of the PQ dated 6/13/09 revised to 11/8/09 prepared by Richard T. Watson, Professional Land Surveyor.
 3. The applicants' existing and proposed improvements were shown on the 2 page Residential Alteration Plan dated 4/9/09 and revised through 1/5/2010 prepared by Volker Architect, Inc.
 4. The Impervious Coverage of the Existing and Proposed Improvements as defined in Section 215-31.1 H. of the Mendham Code after the proposed additions would appear to exceed the allowable limitation according to the Zoning Officer Denial dated 5/1/09, even after removal of a portion of the existing driveway leading to the current attached garage. Thus, a C-Variance is required and has been requested.
 5. The existing and proposed structures also result in the need for a C- Variance related to Section 215-31.1 I of the Mendham Code which sets forth the limitations on the maximum principal and accessory Building Coverage. The applicants existing and proposed coverage would appear to exceed the permitted maximum according to the Zoning Officer Denial dated 5/1/09.
 6. During the course of the Public Hearing, the applicants agreed to amend their Plan to: eliminate the Concrete Patio behind the detached garage; and, eliminate a section of the Paver Walkway from the lake up toward the Concrete Patio.
 7. The Board and the applicants discussed the applicants' current and proposed improvements on the lot and the drainage characteristics of the property. The applicants and the Board also reviewed the specific characteristics of the House, the Lot size and the proximity of the neighboring houses and the lack of any significant visibility or "massing" issues of the proposed house.
 8. The Board received and reviewed the Borough Engineer's Reports of November 9, 2009 and in consultation with the Engineer, the Board deemed the application complete and waived certain completeness details based upon the Borough Engineer's comments.
 9. The Board also reviewed and considered the 11 Technical Review items set forth in Section III of the Borough Engineer's Report. The data, revisions and requirements set forth in the 11 items are incorporated herein as Conditions of Approval.
 10. The Board and the applicants discussed the Board's continuing concern that the proposed House and the Accessory Structures not be expanded or enlarged in the future due to the impact on the impervious coverage. The applicants agreed that the converted attached garage area and the new construction immediately behind it would be limited to a height of one (1) story in order to assuage any concerns about an overly massive appearance to the detriment of the neighboring properties.
 11. No members of the public participated in this application hearing in favor of or, in objection to, the applicants' plans.

WHEREAS, the Board has determined that the C-Variance relief for Total Impervious Coverage and Total Principal and Accessory Building Coverage requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. The Board is satisfied from the evidence presented at the Public Hearing that the applicants have demonstrated that there is an unusual circumstance related to the impact of the existing structures and their layout on the lot including the detached garage. Based upon the evidence presented, the Board is satisfied that the strict enforcement of the current Total Impervious Coverage and Total Building Coverage limitations would result in an unnecessary and undue hardship to the owners and it would unreasonably restrict the use of this somewhat oversized parcel by precluding a modestly sized addition.
2. The Board is satisfied from the evidence presented at the Public Hearing that the proposed one story additions including the area behind the attached garage section will not result in any significant detrimental impact to the surrounding properties, nor to the public good. The Board is satisfied that the proposed building footprints and coverage will not have any adverse storm water management impact and there will be no unusual impact on any of the surrounding residences based upon compliance with the recommendations of the Borough Engineer.
3. The Board is satisfied from the evidence presented at the Public Hearing that the proposed one story additions will not result in any significant detrimental impact to the Borough Zone Plan for this 1/4 Acre Residence Zone due to the fact that the additional improvements will not cause any additional storm water runoff to the

neighbors' properties and the proposed home will be in keeping with the neighborhood characteristics.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 2nd day of March, 2010, that the application of JAMES G. SKURATON and SUSAN B. SKURATON which was approved on February 2, 2010, be memorialized herein, subject however, to the following conditions:

1. The Home Additions approved herein shall be constructed in conformance with the testimony and in conformance with the Exhibits revised through 1/5/2010 that were provided to the Board with the application materials and described during the Public Hearing, subject to the REMOVAL of the concrete patio behind the garage and a portion of the paver walkway from the southwest corner up to the concrete patio.
2. The approvals herein are subject to all relevant Federal, State, County, and Municipal regulations including: procurement of a Flood Hazard Control Permit and General permit #8 from the NJ DEP; preparation of a grading and soil erosion control plan; the municipal storm water ordinance, if applicable; payment of all relevant taxes, application fees, review fees and inspection fees; and, submittal of a Footing and Foundation "AS BUILT" Survey prior to the issuance of a Framing Permit, etc., per the Engineer's 11/9/09 Report.
3. The variance relief granted herein shall expire if not utilized within one year from the date of this Memorializing Resolution.
4. The approvals granted herein are also specifically conditioned upon there being no further enlargement or expansion of the Impervious Coverage/Building Coverage without additional review and approvals, if required; and, compliance with the applicants' representation at the public Hearing that the addition will be no more than one (1) story high.

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

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

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

The motion carried. The resolution was approved.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Santo adjourned the meeting at 10:00 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, April 6, 2010 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ. The Board Secretary will research dates for a special meeting in April.

Respectfully submitted,

Diana Callahan
Recording Secretary