

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
May 3, 2011
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular 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 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.

ROLL CALL

Mr. Palestina – Present	Mr. Seavey - Present
Mr. Peck – Present	Mr. Smith - Present
Mr. Peralta- Present (Zenjon)	Mr. McCarthy, Alt. I - Present
Mr. Ritger - Absent	
Mr. Schumacher - Present	

Also Present: Mr. Hansen, Board Engineer
Mr. Germinario, Board Attorney
Mr. Humbert, Borough Planner

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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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APPROVAL OF MINUTES

On motion by Mr. Schumacher, second by Mr. Smith and all members being in favor, the minutes of the April 5, 2011 regular meeting of the Board were approved as written.

HEARING OF CASES

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New Cingular Wireless PCS, LLC (AT&T) - Conditional Use Variance/Site Plan
Block 2301, Lot 13, 350 Bernardsville Road

Present: Michael Lavigne, Esq., Pitney Day, LLC – Attorney for the Applicant
Dan Collins, Pinnacle Telecom Group– Chief Technology Office
Frank Pazden, Dewberry-Goodkind – Site Engineer
Peter Tolischus, - Planner for the Applicant
Robert Simon, Esq., Herold Law – Representing Interested Parties

Exhibits: A-2: Summer Photographs prepared by Peter Tolischus dated September, 2010
A-3: Winter Photographs prepared by Peter Tolischus dated March 2011
A-4: Aerial Photograph depicting 5 locations from which photographs were taken

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Mr. Lavigne, Esq. explained that last month public questioning of Mr. Pierson was completed. At this meeting they would be presenting testimony by the Emissions Specialist. A report was previously submitted and is on file with the application. As Dr. Eisenstein is not present, a transcript will be sent to him as agreed at the last meeting.

Mr. Collins, Emissions Specialist, presented his credentials and was accepted as a witness by the Board.

Mr. Collins testified that he prepared, for AT&T, the report titled "Antenna Site FCC RF/Compliance Assessment and Report" dated January 31, 2011. Before reviewing the findings of his report, Mr. Collins explained the applicable standards. There are two standards with which carriers must comply. The first is the Federal Standard of the Federal Communications Commission. That Commission is the single body that can impose and take away a carrier's license. The Standard was adopted in October 1997. According to the experts that developed the standard, life-long human exposure to the radio frequency levels up to and including that standard was considered to present no health risk whatsoever. It is safe for continuous exposure by humans of either sex, all ages, all sizes and under all conditions.

At the same time it adopted the standard, the FCC made available a guidelines bulletin called Bulletin OET 65 which is referenced in his report. It provided standard engineering mathematical formulas for use in calculating the radio frequency levels around the proposed facility so that assurance would be given in advance that a proposed wireless antenna transmission facility would satisfy the standard.

Mr. Collins continued that the standard is not the same for each frequency. The human body is known to behave as an antenna and is more receptive at some frequencies. The standard is stricter in the broadcast range and in the lower cellular frequency range, and it is more relaxed at frequencies over 1500 mgh. In this application, AT&T is proposing a facility that will operate in the 700, 850 and 1900 mgh bands. There is a different standard number that applies to each. Mr. Collins stated that he would be facilitating understanding of the standards by using a reference point of any percentage up to 100 percent as compliant, and anything over 100 percent as out of compliance. That can also be related to other emitting objects including human beings.

Based on the FCC guideline booklet, the formula for calculating the radio frequency level around an antenna facility depends on the antenna height. The longer the distance from the point of interest at the ground to the antenna, the lower the radio frequency level. The level also depends on the number of channels as each channel has a certain amount of power. In addition, it depends on the antenna gain in the horizon direction, but offset by the antenna pattern lower than the horizon. His report contains the proposed AT&T antenna patterns.

Continuing, Mr. Collins explained that the FCC guidelines also encourage the engineers to be extremely conservative when doing calculations. They assume that the transmitter and all of its channels in each frequency band are always operating at full power when they do not always operate at full power. Also, they assume that the minute the system is turned on it is immediately operating at full capacity, meaning all the available channels, in every one of the three frequency bands that AT&T has. In addition, the calculation is made worse by an intervening 100% perfect mirror-like reflection off the ground. Finally, there is some loss of power as the signal leaves the transmitter in the ground and travels up the coaxial cable to the antenna. That is ignored in the calculation.

In terms of AT&T, Mr. Collins testified that when operating in three different frequency bands at maximum capacity in each band with the maximum power per channel for every one of its channels, the worst case calculated radio frequency level around the proposed facility is 1.3 percent of the FCC's limit. That is well below the 100% reference point. It is 75 times below the allowable limit. Based on the reasons previously cited, the 1.3 percent is an overstatement of the actual amount of radio frequency energy one would experience at ground level around the site.

Addressing the State limit, Mr. Collins explained that the Radiation Protection Act in New Jersey has a radio frequency safety limit built into it that is supposed to echo the FCC's. For unexplained reasons, the standard in New Jersey is five times more relaxed than the FCC standard. It is five times less protective. If one satisfies the FCC standard, the New Jersey Standard is automatically satisfied by a factor of five. In this application it is 375 times below the State's limit. To his knowledge, New Jersey is the only state that picked a standard not equal to the FCC, but instead less protective.

Mr. Collins further elaborated by putting the standards in perspective based on other sites and objects. His company has measured close to 20,000 sites around the country, and in some cases have been asked into people's homes, hospitals and buildings to measure the radio frequency levels. Sometimes the locations are near antennas, sometimes they have antennas on them, and sometimes there are no antennas in the vicinity.

The results of measurements of more than 250 residences resulted in the same narrow range of results in terms of radio frequency levels in our homes. The homes included ranch houses in the

middle of Utah and Brooklyn high rises with antennas right outside the window. The radio frequency levels in our homes are almost exclusively driven by radio frequency leakage that incidentally occurs whenever something is plugged in or operated by batteries. Whenever there are moving electrons, there is a little bit of radio frequency leakage. Electromagnetic energy is the same thing as radio frequency energy. The ranges in the homes were between 3 and 7 percent, averaging 5 percent of the same FCC standard. It is more significant than when you go outside underneath a cellular facility.

Responding to questions by Mr. Lavigne, Esq., Mr. Collins addressed the radio frequency from antennas due to collocation by stating that they still comply with the FCC standard. Any time the antennas are off the ground by several stories, it does not make a difference how many carriers there are as long as there are no high-power broadcasters. The wireless industry does not create enough radio frequency energy to cause a problem. The FCC has a regulation that says that for tower-mounted wireless antennas, as long as the antennas are 10 meters, 33 ft. give or take, off the ground, every carrier and all carriers are considered automatically in compliance, and the math does not need to be done. This is called a categorical exclusion.

Mr. Collins stated that he has conservatively calculated RF levels including AT&T, Verizon, T-Mobile, Sprint, Nextel, Clearwire, Metro PCS and all the other carriers with antennas mounted at 32.8 ft, 10 meters. The result is 10 percent which is a shade higher than we get when we get close to our refrigerator motor which is a major contributor at home. His report for this application calculates at 85 ft. to be conservative.

In terms of the impact of the levels within buildings, any time a radio frequency signal goes from outside the building in clear air and gets obstructed by a wall or a ceiling or something similar, it loses a factor of 10 dB. It loses 90 percent of its powers. If the worst case is 1.3 percent, the level in the building would be .13 percent. With the antennas mounted in the cupola the level is less than 1 percent at the highest point inside the building.

Responding to a series of Board questions, Mr. Collins stated that the highest level they have measured is in West Orange, New Jersey on a hill where there are five broadcasters with FM transmitters, not the wireless industry. On a street between two of the antennas they measured 68 percent which is a very high level, but is in compliance. Around a wireless facility the highest they have ever measured was 4 or 5 percent. This was a lower facility in Denver.

The RF levels are higher at the 3 o'clock position from the antennas then they are from the 6 o'clock position where they are significantly less. In the AT&T application the result directly below the facility is .039 percent which is insignificant. In the worst case at a distance of 500 ft. it is 1.3 percent. If the antenna loss were included, it would drop to .65 percent.

Addressing whether any maintenance workers would need to wear protective clothing, Mr. Collins explained that based on OSHA regulations people doing the work will only be in front of the antennas when they are turned off. If they were in a bucket truck in front of the antennas within three feet, they would exceed the FCC's limit. The limit is not exceeded behind the antennas in the cupola and when working there, they do not have to be turned off. Scientific and medical professionals in the EPA, OSHA, NAIC and a number of other agencies have been following developments related to work on the antennas. The FCC standards have been challenged three times since 1997, one case involving the Supreme Court. In each of the three cases, the challenge was rejected as there was lack of evidence to change the standard.

Explaining the concept of the human body as an antenna, Mr. Collins stated that in homes we are antennas all the time. People walk around absorbing energy and basically processing it safely. To get the threshold that the medical professionals think would affect a person, one would have to be exposed at some level 50 times the FCC's limit. One would never get there unless climbing the Empire State Building and being exposed to all the broadcast antennas. Human beings normally never get to a level exceeding 25 percent of the limit which would be when walking down a fairly busy metropolitan hospital corridor with all its leakage. It would have nothing to do with an antenna. There is nothing else in the home that makes the cell RF levels increase.

Moving on to questions related to the impact of the cell phone itself, Mr. Collins explained that in the home people are exposed to the radio waves of a cell phone even it is not on. Similar to a radio, when you turn it on, the radio waves are available. They are not attracted when the radio is turned on. He continued that when a phone is turned on, the phone registers the person's location with the network so that a message can be sent back to the phone. When the phone is turned on and used for speech or other purposes there is a little bit of higher exposure, but there are also standards for cell phones. Every cell phone sold is tested to meet the standard. The results for every model is listed on the FDA and FCC jointly maintained website. Almost in all cases a person receives more exposure from the cell phone or the cordless phone which uses the same

technology. The reason is distance; it is a low powered device. Most cell phones operate at a tenth of a watt, maybe two-tenths. If you reduce the distance closer to the radio frequency source there is a little higher level. They must meet the standard even at minimum distance.

Responding to how the output from the proposed facility would differ from a broadcast facility, Mr. Collins stated that wattage is what matters. From the proposed facility the output would be 800 watts. It may sound like a lot, but it dissipates rather quickly the minute it leaves the antenna such that reception at the phone would be as low as 1/200 billionth of a watt. The broadcast industry, the TV world with UHF, uses 5 million watts of power. FM up to 50,000 watts and AM in the tens of thousands of watts worth of power. Municipal police, fire and ambulance facilities operate at 100 watts per channel which is still more than the 50 being used in this case. In West Orange the 30,000 watts of power measured is a result of the fact that there are five towers in close proximity. Two of the towers have 50,000 watt FM broadcast in the 95 to 100 mgh range. The towers are a couple of hundred feet wide and they are loaded with other industrial and commercial antennas such as whip antennas used by truckers, taxi dispatch and other forms of mobile radio. The cellular antennas are lost in the mud. It is a nicely placed hill where one can see all the way to New York City and probably most of the way to Pennsylvania. At 67 percent it is still within the FCC limits.

Citing another example, Mr. Collins used Overlook Hospital in Summit with 117 transmitting antennas on the roof. It has one low-power 1000 watt FM transmitter. It is a ten-story building. They measured all around the building and cannot find 2 percent.

There being no additional board questions, Chair Seavey opened the meeting to the public for questions of the witness.

Mr. Jerry Gorman, 415 Bernardsville Road stated that he is about the fifteenth closest house to the proposed antennas in the cupola. He is present in support of the Sisters. He stated that he is located at 1600 ft. and verified with Mr. Collins that the maximum was 360 ft. at which the percent is 1.3 percent. He questioned what his family would be exposed to at 1600 ft. Mr. Collins explained the math and stated that it would be a level close to 1/10 of one percent, 1000th of the standard. State-of-the-art measurement equipment cannot measure an increment of less than one half of one percent. Going inside would reduce it 1/10th again.

Responding to Mr. Gorman on whether the transmitters in this fairly low-density area would always be operating at full power, Mr. Collins explained that it depends on the technology of the provider and how many people are actually using the system. He uses the assumption that they are always at full power with maximum capacity. In lighter areas of population density that may not be the case. The question should be addressed to Mr. Pierson, the RF Engineer as relates to AT&T.

Addressing Mr. Gorman's comment and question relative to the New York Times article indicating that one should complain to carrier when low bars occur as the phone must transmit more power, Mr. Collins related that if the phone is farther away from a base station, the signal loses energy with distance and the phone that might have operated at a tenth of a watt on a normal basis actually cranks up to two-tenths of a watt which is not overly significant. That also can happen in cases where there are many people trying to use the system at once.

Mr. Simon, Esq. questioned why other countries have levels for maximum radiation that are literally hundreds of times lower than we have in the United States. Mr. Collins stated that he would not speculate. He has done some reading and does not believe that all the countries that claim they have adopted lower standards have actually done so. One such standard was actually less than human beings emit to each other when hugging. He has not reviewed any of the studies that the standards are based on.

Addressing Mr. Simon, Esq. on whether an individual would differ in their response to a similar level of radiation depending on their standard of health, Mr. Collins reiterated that according to the FCC, the standard is safe for human beings of either sex, all ages, all sizes and under all conditions. The "under all conditions" relates to body temperatures. He could not comment on whether it pertained to high blood pressure and other medical conditions. There are quotes available from other respected authorities such as the American Cancer Society and the Food and Drug Administration.

Clarifying the height, 93 ft and/or 85 ft., at which he did his study, Mr. Collins reiterated that it was at 85 ft., the shorter of the two. As he did not know which antennas would be at 93 ft., he calculated them all at 85 ft. Frequencies would need to be obtained from the RF Engineer. In terms of his report, he was asked to prepare it a matter of weeks before it was submitted. He has been shown a copy of the "Evaluation of RF Emissions" report prepared by Glen Kreisberg.

Mr. Simon, Esq. referred to "MPE Report, Site W-1018, 350 Bernardsville Road, Mendham, New Jersey, August 5th, 2010, Evaluation of RF Emissions at AT&T Site W-1018 Theoretical MPE Study and Certification" which was included with the application submission. Mr. Collins stated that at the time he was asked to prepare a report, he did not know another report had been completed. He continued that he was asked to prepare his report as the previous one uses an incredibly brute-force method of proving compliance which does not take into account the antenna patterns. Instead, it hypothetically points the antennas from whatever height they are proposed (85 ft.) straight down to the ground, progressively walking away from the facility out to about 500 feet and doing calculations as if the antennas were pointed directly at the points of interest at ground. That results in a worst case level directly below the antennas which is amphitheatrical to the reality that he described earlier. The RF levels get progressively lower as they get farther away from the antennas as there is no accounting for the antenna radiation pattern in the vertical plane. Mr. Kreisberg concluded that the level below the facility at a distance of one foot would be 1.7 percent of the FCC's limit. Mr. Collins reiterated that he calculated 1.3 percent.

Further clarifying why he was asked to do the report if the calculations were so close, Mr. Collins explained that his report is the type typically used in New Jersey, New York City, Pennsylvania, and most of the other states in which he works. The Connecticut Siting Council likes to see the report the way Mr. Kreisberg calculated it. They say that if the limit is not exceeded with the antennas pointed down at the closest distance, it is a clear demonstration of compliance. If the standard is exceeded then a report like his is completed. He believes the FCC has stipulated the way it should be done. He obtained the information to complete his report from Black & Veatch on behalf of AT&T. He has never reviewed Mr. Kreisberg's radio frequency report.

There being no additional questions by the public, Chair Seavey closed the public session.

Continuing with additional Board questions, Mr. Collins addressed the impact of additional carriers in the cupola. He assumed a second carrier could be Verizon who is most closely aligned with AT&T in terms of the number of channels, powers levels, frequency bands and the potential exposure levels they create at the same height. Verizon uses one less 40-watt channel than AT&T in the lower frequency band and the result would probably be an additional 1.2 percent which would make the total 2.5 percent, a conservative calculation. The other carriers would cause a fraction of one percent based on the fact that they do not offer as many channels as the larger players do and they do not use more than 20 watts.

Given the octagonal shape of the cupola, Mr. Collins thought it might possible to add one additional carrier. The fact that AT&T is stacking antennas suggested to him that there is not a lot of space in any one level. If the space existed, they probably would have used two antennas.

In terms of Mr. Kriesberg's report, Mr. Collins expressed his opinion that he used the methodology as building in lobes to an excel program requires a bit of trick programming that no everyone knows. He thought that Mr. Kriesberg used the brute-force method to say they were in compliance.

Responding to whether there would be 100 percent power throughout a 24 hour period, Mr. Collins stated that the answer is a radio frequency detail. He did, however comment on his report. The day that AT&T turns on their system, they are not going to operate the number of channels that are in his report. How many they will operate is a radio frequency question. At the Board's request he provided two questions they should ask. The first should be addressed to the RF Engineer, but he was not sure whether that engineer could also address the second question.

- Based on the technology used for any one of the channels in any one of the frequency bands, is the transmission always at the highest power or does the power level vary in time with any factor?
- How many channels are they planning on turning on when they turn it on in each frequency band?

There being no additional question, Board proceeded with the next witness.

Mr. Frank Pazden, Site Engineer, presented his credentials and was accepted as a witness.

Utilizing the site plans dated Final Zoning, August 4th, 2010, previously submitted to the Board, Mr. Pazden testified to the site conditions and the additional equipment for which the applicant is seeking approval. He first addressed the overall site plan on Sheet ZO-1. The building in which the facility is to be located is set back approximately 425 from Hilltop Road and the closest point to Bernardsville Road is approximately 783 feet. The setbacks to the north are 1,093 ft. and to the east 1,558 feet. Everything that they propose will be located within the existing building so that there will not be any proposed ground disturbance with the exception of routing power to the

facility. Using Z-02 he indicated that the power will be routed underground across an existing paved parking area and along the basement line into the building basement telephone room from an existing generator shelter. It will be routed up the utility shaft to the top of the building. As an unmanned facility, it does not require water or sanitation service. The electric will be routed up to the attic that is now an existing vacant area that was previously used for storage. That is where the equipment room will be installed.

Addressing upgrades of the electrical service, Mr. Pazden explained that the existing transformer that is located next to the generator shelter may potentially be upgraded. It is an existing 150 KVA transformer and would be upgraded one size. They studied the main power feed that is currently in place in the peak months when air conditioning is used in the building, and it is right around its max power. There is an empty conduit that feeds that service so no disturbance would be required. The service is fed from Kerby Lane where there is an existing utility pole. Electrical service is routed underground and the telephone to the building is routed overhead.

Elaborating on the installation of the facility in the cupola, Mr. Pazden stated that the top of the cupola is approximately 120 ft. above grade. The cupola is an octagon, eight-sided. There will be two levels of antennas that will be placed inside the openings in the cupola. As they are three and a half feet wide, there will be two antennas on the lower section with the third antenna mounted above. Three of the openings would be used, leaving five vacant for potential future collocators. All the openings in the cupola would be treated with an RF transparent fiberglass screen mounted on the inside. The screen would be made to look like the masonry blocks of the façade and match the colors of the existing cupola. There will be a uniform look on all sides. There is a dark black-greenish screen in the cupola today to keep out the birds.

Continuing with more detail on the equipment room, Mr. Pazden explained that they had completed a structural analysis on the building. They are planning on enclosing an area 10 x 21 ft. in the attic for the equipment room. The room will have two air conditioning units and the air handlers will be placed outside the cupola. The location of handlers is approximately 20 ft. above the floor height of the equipment room. It is accessed through an existing door via a ladder. The handlers, condensing units, are 44 inches tall. The parapet wall that screens them is 48 inches tall, and there are ornamental spires at the corners that are as high as seven feet tall. They are entirely shielded from any view from grade.

Addressing building codes requirements, Mr. Pazden stated that the design of the RF screening wall and the mounting of the antennas would meet IBC code for buildings. Additionally, as it is an antenna structure, it is designed to meet the telecommunications industry standard that has a higher wind criteria. The facility itself is monitored 24 hours a day, seven days a week remotely for any type of problem with the equipment intrusion in the room, fire or any other issues. Building permits and inspection by the Borough Construction Code Official would be required.

Continuing, Mr. Pazden testified that maintenance visits would occur every 4 to 6 weeks. The technician would use a standard parking spot that is already at the location. There are no lights proposed inside the cupola or on the exterior. There is no exterior signage with the exception of some typical identification signs on the actual door of the equipment room interior to the building. There is no generator proposed. The existing facility does have a backup generator and that would provide the power if needed. They have reviewed Mr. Ferriero's letter dated February 1, 2011, and if the plan is approved, they can make the changes as a condition of approval.

Responding to Board questions, Mr. Pazden stated that the generator that exists does have enough capacity to maintain the building and the wireless facility even though the transformer may be upgraded. The generator does not run every circuit in the building. It is basically kept for essential services. They would make sure that any upgrade to any panels that would be required would be completed, but the actual generator itself is adequate.

In terms of the fiberglass screening, the top of the cupola area is now an off-white/beige. The current screening is green-patina like. They can match either color. Mr. Seavey deferred to the Sisters, but recommended that it might look nicer if it was not the same color as the masonry. That way it would look like a dark room as it does now and not a solid block of concrete on the top of the roof.

There being no additional Board questions, Chair Seavey opened the meeting to questions by the public.

Mr. Frank Lupo, 17 Dean Road, questioned Mr. Pazden on whether he had antenna specifications. He responded that they were originally provided by Black & Veatch who were working through AT&T. Following on, Mr. Lupo asked for the azimuths. Responding, Mr.

Pazden stated that the azimuth for the alpha sector is 35 degrees, beta is 125 degrees, and the gamma is 305 degrees.

Mr. Harry Riskin, 10 Cromwell Lane, questioned the distance from the cupola building to Cromwell Lane. After review, Mr. Pazden advised that the Cromwell Lane property line would be about 1200 ft. from the building. The cupola would be about 1400 ft. Addressing Mr. Riskin's question on the number of openings in the cupola, Mr. Pazden stated there are eight and their application is confined to three. Other applicants would need to come before the Board to use the other five openings.

Mr. Simon, Esq. referred to Z-03. He questioned whether there would be room for additional carriers. Mr. Pazden explained that the space is now 38 x 25 ft. They will be occupying a little less than half of the space. Depending on what another carrier would propose, there is ample space for a collocator. In terms of whether there would be room for a third carrier, it would depend on the equipment layout. Some carriers only require 1 or 2 cabinets, so it might be possible. A normal equipment room is a 10 x 20 ft. area that one would find at the base of a tower. There is room. If additional carriers were to propose to collocate, another structural integrity evaluation would be done; however the area is a concrete slab supported with some steel beams. If additional carriers came, they might need to locate condensers on the roof as well to cool another equipment room. There are two condensers as they are redundant systems should one fail. Some carriers do have a cooling fan within their cabinets so they would not necessarily need to have condensers. Mr. Pazden reiterated that the condensers would not be seen unless looking at them from above.

There being no additional questions from the public, the public session was closed.

Board questioned whether the capacity of the generator would need to be increased if there were collocators. Mr. Pazden replied that the electric service that is utilized is a 200-amp service. It is not in full draw. He could not state the exact remaining capacity. When the AT&T facility is completed, the 200 amp breaker panel will not be filled to capacity. There is a 30-amp service for the air conditioning. The different equipment panels run on some of the breakers, but it is not running on the full 200 amps. That is the typical install. The generator itself has a separate emergency panel. It supplies power to electric and to some of the main facilities. They do not have a main air conditioning system, but a lot of window units. That panel will stay status quo.

Mr. Humbert confirmed with Mr. Pazden that the height of the parapet is 48 inches and the height of the condensers are 44 inches.

There being no additional questions, Board moved to the next witness.

Mr. Peter Tolischus, planner for the applicant, presented his credentials and was accepted as an expert witness.

Mr. Tolischus introduced his visual impact study prepared on October 10, 2010. It was submitted to the Board. He completed two sets of photographs. He originally took the photographs in September of 2010 with foliage. Later as the hearing moved toward winter, he again took photographs with leaves not on the trees. A-2, the summer photographs, and A-3, the winter photographs were marked for identification. A-4, an aerial view based on State of New Jersey data was also marked.

Utilizing A-4, Mr. Tolischus explained that it represents the five sites from which he took the photographs. Photo #1 was taken directly from the parking lot to obtain a very clear view of the cupola and how it would look after the antennas were placed on the inside. For Photos #2 & #3 he was located on Hilltop Road at a distance of 1500 and 860 feet. The cupola is barely visible. Photos #4 & #5 were taken from the intersection of Pleasant Valley Road and Bliss Road. In summertime the cupola is barely visible. Retaking the pictures in the wintertime and using A-3, Mr. Tolischus explained that one can barely see something through the branches. He took an additional photo #6 from Bernardsville Road and the full cupola is seen. Also using A-3 he stated that, following the engineer's directive, they used a cover for the window in the cupola that would match the outside masonry color as opposed to the current greenish look of the existing copper screening. There is an alternative, and the Board has expressed an opinion.

Summarizing, Mr. Tolischus testified that the most important point about the visual impact study is that he does not have a visual impact. It is not a new tower with antennas. It is not antennas placed on top of a rooftop sticking above the parapet. The antennas are concealed inside a cupola with screening, either the green copper tone or the masonry tone. The second point is that not only are the antennas inside the cupola so that they are not seen, but depending on the season, the cupola itself and the entire facility is really not that visible from the public roads. He does not see

any negative impact from the facility. The ground equipment also cannot be seen as in other facilities. It is located inside the attic space and the air conditioners are about four inches below the parapet, but that assumes one is standing level at the parapet. If one is standing some 100 or 80 feet from the parapet, one will never look over the top. He does not see any visual impact at all from the facility. Mr. Tolischus provided small scale handouts for the Board. His testimony was concluded for the evening.

Board discussed with Mr. Lavigne, Esq. the possibility of a special meeting on Tuesday, May 31. While the date would still be investigated, Mr. Lavigne, Esq. announced to the public the continuation of the application at that date. If it did not occur, re-notice to the public would take place.

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Board took a 5-minute break. Mr. Peralta, who is recused from the AT&T application, joined the Board for the Zenjon application.

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Zenjon Enterprises, LLC – Preliminary and Final Site Plan/Variances/Interpretation
Block 1501, Lot 11, 25 East Main St. (Historic District): **Continuation**

Present: Robert Simon, Esq., Attorney for Applicant
David Fantina, Engineer for the Applicant
Lawrence Appel, Appel Design Architects, Architect for the Applicant
Jonathan Krasney, Zenjon Enterprises, LLC

Mr. Fantina reviewed Mr. Ferriero's letter dated May 2, 2011 responding to the updated plans that had been submitted by the applicant. He explained the following:

- The underground infiltration system has been redesigned based on comments from the County and Mr. Hansen. There will be less runoff, and it will not run to the neighbor. In terms of the remaining pipe, it will be sawed off, and they will work with the neighbor for grading. They will grade the wall on their property. The pipe will not be removed from the neighboring lot.
- In terms of variances and design waivers, they will need a waiver from the parking requirement for Phase I. According to the ordinance, one space is needed for every 250 sq. ft. and a multiple of 20% overage is required for a non-historic building. They are using the historic building calculation without the 20% overage for the front building, and in Phase I they require 17 spaces, but are requesting 15. The proposed uses do not generate the need for a lot of parking, and they can do fifteen without a lot of land disturbance. In Phase II they would use the 20% overage for the second building, and in total they will be creating 45 in Phase II and comply.
- A signage schedule will be shown on the plans.
- They will comply with the ADA requirements with appropriate grading.
- They will provide appropriate maintenance to the stormwater system.
- He confirmed that the rear side yard setback is in compliance.
- In terms of the parking lot itself, Phase I is temporary, and they do not want to repave and then need to pull it out. They would seal coat and then repave in Phase II.
- They want to use the existing concrete pad in Phase I. It is deteriorating, but they will use an enclosure. In Phase II, a new one will be constructed. Two totters will be placed on the concrete pad.
- The stormwater management volume will be reduced. The calculations will follow. They are developing a plan to submit to the County and are working with Mr. Hansen.

Mr. Hansen raised the issue of whether the front building could be considered a historic structure when it was being demolished and rebuilt. Mr. Humbert also raised the same issue in his report. If it were not a historic building, the parking requirement for Phase I would be greater. In response to his question on how much of the building would be demolished, Mr. Simon, Esq. stated that the architect would be addressing the issue. Mr. Hansen advised that the Board would need to determine whether it is an historic structure or a replication.

In terms of the parking lot, Mr. Hansen questioned how the repaving of the lot would be enforced if it is proposed for Phase II. Mr. Jonathan Krasney stated that he is in the financial advisory business and has high end clients. He wants to fix up the building and have his clients be impressed with it. He does not want to have to repave the parking lot twice. Mr. Hansen added that it is difficult to get a parking lot to look new even with seal coating. In a phased application, the applicant may have good intentions, but there is no guarantee that Phase II would take place.

The Board would need to explore an appropriate type of seal coating and whether a bond would be required. Mr. Fantina should also provide the specification for the seal coating.

Mr. Hansen advised that the Board would need more detail on why the design waivers are required. Messrs. Simon, Esq. and Fantina stated that they reviewed them at the last meeting. Chair requested that every page and every item of Mr. Ferriero's letter be reviewed. The following additional items were discussed:

- Mr. Hansen advised that an underground infiltration system is being used instead of a dry detention basin. This allows for control of both the rate and volume of runoff. What he is requesting is no increase. Mr. Fantina stated that there is no change in the watershed patterns.
- In terms of whether the freestanding sign would have information pertaining to all the clients in both buildings to direct visitors, Mr. Fantina advised that the architect would address the issue.
- Mr. Hansen advised that the development on the site is maximized, and that they would not be able to lose any dirt on the site.
- It was noted that the Board had received a letter from the Fire Official. Secretary read the letter into the record. Mr. Simon, Esq. advised that he would review the letter and address the issues.
- According to Mr. Fantina, the front yard setback would not be changed from what it is today. They would just be adding to it.
- In terms of the driveway isle width, Mr. Fantina stated that 24 ft. is required, but they are requesting 22 ft. That should be ample. In the rear, the backup lanes are 24 ft.
- Mr. Fantina stated that parking stall requirements under ordinance are 10 x 20 ft. They are using 9 ft. x 18 ft. He would need to calculate the requirement under the ordinance requirement. Chair requested it be supplied at the next meeting.
- Mr. Fantina explained that the driveway on lot 12 and theirs are very close. That exists today. The ordinance requires a separation of 20 ft. Chair noted that the setback looked like 10 ft., not 20 ft. toward the rear. Mr. Fantina clarified the requirement is for driveways. Chair again noted that it looked closer on both the east and the west sides. Mr. Hansen advised that since the front building is being taken down, there is an opportunity to make the development on the lot more conforming. It would require a smaller building. Mr. Fantina advised that there had been discussion with the HPC on moving the building one way or another.
- In terms of the designated loading area, Mr. Fantina explained that the applicant does not expect large vehicles for delivery. Mr. Hansen commented that it would be reasonable to waive it for an office type use.
- The sign would be located within 6 inches of the right-of-way. Mr. Hansen requested it staked by a survey. Mr. Fantina stated that they would be asking the County if they can move their sign into the right-of-way. The signs on either side are already in the right of way and would block theirs.
- Mr. Simon, Esq. advised that a deed restriction on maintenance for the stormwater system is acceptable.

Mr. Humbert stated that he agreed with Mr. Hansen's findings on the design waivers and would discuss them further with the planner when he appeared.

Chair opened the meeting to questions of the witness by the public. There being none, the public session was closed.

Mr. Appel presented his credentials and was accepted as a witness.

Mr. Appel testified to the process that they have followed in getting to the Board of Adjustment. He stated that after visiting the Zoning Officer, they researched the history of the property and the history of PNC in relationship to the property. They presented concepts to the Historic Preservation Commission, shared ideas and obtained feedback. The existing building is 18th century, pre dating 1868. It has been vacant for a while and is in disrepair and taking on water. It is an oddly proportioned cottage of 1.5 stories. The trim has been removed. The HPC supported the plan if the façade would remain. They felt that it is important to the streetscape. The plan is to keep the cottage as intact as possible. The incremental additions should not be kept, and they removing them. They have taken the cottage and, in an act of preserving it, they are removing the elements down to the foundation and reconstructing the cottage back to when the historic district study was done and Gibraltar was in the location. Since it is too small for Mr. Krasney's business, they need to add on to it. The design includes a modest addition. It is his opinion that it is a renovation of the existing building. Tearing it down and building a conforming building would change the streetscape.

Responding to Mr. Hansen, Mr. Appel confirmed that everything is coming down to the existing foundation. Mr. Hansen stated that a better word is “replication” as everything is coming down. It is the old foundation, with a brand new building.

Discussion followed on whether the building was on the State Register. Mr. Humbert stated that there are over 140 buildings that are part of the District. There are some buildings within that number that are contributing to the character of the District. There are a minimal number that are individually on the Register. Responding to the Chair, Mr. Humbert advised that PNC was going to adapt the existing building.

Board questioned whether, since the building was not historic, the applicant needed to deal with any historic issues. Chair and Mr. Hansen noted that dealing with any historic aspects of the building could potentially provide the applicant with some waivers and the overall plan to provide two buildings.

Responding to Mr. Simon, Esq., Mr. Appel stated that if they could demolish the building and rebuild one building based on the ordinance, no building variances would be required. Responding to Mr. Hansen on whether any design waivers would be required, Mr. Appel stated that they looked at various scenarios. The building needs to be where it is located on the property. If the driveway is moved to the other side, it inhibits adding on to the building. The addition would need to be to the rear and would engulf the existing cottage. An element built to the west side would push the building closer to the street. Mr. Appel continued that the existing building is not large enough for Mr. Krasney’s business. That led them to the second building with the parking in between.

Before concluding for the evening, Chair Seavey stated that, based on his opinion alone, there are three options that would pertain not only to this applicant, but to any applicant. In recognizing how Mendham has developed over the years, most of the properties appear to have an older building in the front, either no building in the back or an accessory building. Many are non-conforming. The HPC is set up to help applicants to gain the advantage by preserving historic elements in the town. Option one is that there is a building that is not “saveable” and a replacement could be conforming. Option two is a historic preservation/restoration/replication in which there is possibly a gain such as a front yard setback. That could also mean an additional use, but it might not gain all the parking and access issues unless there are very good reasons. Finally, there are not a lot of buildings in town with two buildings with multiple uses in each. If the Board allowed two buildings on lots, without proper justification, they would open a Pandora’s box. The applicant appears to be looking for six uses. Chair cited the Audi Dealership, the Gateway Building and the Medical Building on TempeWick as successful examples of working with the Boards.

As the Board would not continue the application in June, and it would not be continued until July, Mr. Simon, Esq. requested that the Board consider a special meeting for the application. Chair advised that it would be considered. Board announced the continuation of the hearing to the Wednesday, July 6, 2011 regular meeting of the Board.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 11:00 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, June 8, 2011 at 7:30 p.m. Board will consider a special meeting on Tuesday, May 31, 2011

Respectfully submitted,

Diana Callahan
Recording Secretary