

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
August 6, 2013  
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 7:35 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 17, 2013 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ROLL CALL**

Mr. Palestina – Absent

Mr. Peck – Present

Mr. Peralta – Absent

Mr. Schumacher – Absent

Mr. Seavey – Present

Mr. Smith – Absent

Mr. Ritger - Present

Mr. McCarthy, Alt I - Present

Mr. Germinario, Alt II – Absent

Also Present:

Mr. Germinario, Esq., Attorney

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**APPROVAL OF MINUTES**

Mr. Ritger made a motion to approve the minutes of the July 16, 2013 special meeting of the Board as written. Mr. Peck seconded. All members being in favor, the minutes were approved.

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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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**HEARINGS**

**Pilshaw, John & Susan – Hardship Variance (Resolution)**

Block 1902, Lot 13, 7 Prospect St. (Historic District)

Mr. Germinario, Esq. presented the following resolution that had been provided to the Board in their pre-meeting packages:

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

**Decided: July 16, 2013  
Memorialized: August 6, 2013**

**IN THE MATTER OF JOHN AND SUSAN PILSHAW  
“C” VARIANCE APPLICATION  
BLOCK 1902, LOT 13**

**WHEREAS**, John and Susan Pilshaw (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 5/29/13; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 7/16/13; 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 0.3 acres developed with a single family residence and a detached garage. The property is located at 7 Prospect Street in the ¼ acre historic residential district.

2. The improvements to the subject property for which the Variance relief is sought comprise an air conditioning condenser unit on the eastern side of the dwelling. A “C” variance is required because the unit would be located within the 10-foot side yard setback.

3. 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 5/29/13
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated 5/7/13
- Zoning Officers Denial, dated 5/7/13
- Site Inspection Authorization form, dated 5/7/13
- Transmittal letter, dated 5/29/13 to Land Use Coordinator
- Letter to Board of Adjustment, dated 5/28/13
- Request for Building Permit for Air Conditioning Condenser Unit, dated 5/28/13
- Zoning Officer’s Review, dated 5/14/13 and a note to file about setback measurement
- Copy of Survey and a section of Tax Map Sheet 19
- Cover of Deed
- Letter of Applicants to the Board of Adjustment, dated 7/19/13

4. The Board’s planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

John Hansen, PE, CME, dated 6/13/13

5. 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 5/28/13

6. In the course of the public hearings, the Applicants represented themselves and presented their own testimony.

7. The testimony of the Applicants adduced the following facts:

The air conditioning condenser unit will be installed behind an existing 6-foot stockade fence and will not be visible from either the street or neighboring properties. Because of the lot’s exceptionally narrow width of 50 feet, a portion of the house itself is within the sideyard, rendering it impossible to conform to the sideyard setback. Placement of the condenser unit to the rear of the house would block the basement entrance and/or obstruct the driveway. The Applicants agreed to maintain the stockade fence and to position the condenser unit as close to the house as feasible. By a letter submitted after the hearing (dated 7/19/13), the Applicants agreed to install the unit no closer to the street than 11 feet from the southeast (streetside) edge of the house.

8. 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 exceptional narrowness of the subject property, the strict application of Ordinance Section 215-28 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 air conditioning condenser will be shielded from view by a 6-foot stockade fence to be maintained by the Applicants.

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. The stockade fence shall be maintained to screen the condenser unit as long as it remains within the sideyard.

2. The condenser unit shall be installed as close to the house as permissible by the manufacturer's recommendations, and not closer to the street than the streetside edge of the house.

3. 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.

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

5. 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.

6. 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.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of July 16, 2013.

There were no additional Board comments or questions.

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

ROLL CALL: The result of the roll call of the eligible voters was 4 to 0 as follows:

In Favor: Ritger, Peck, McCarthy, Seavey  
 Opposed: None  
 Abstentions: None

The motion carried. The resolution was approved.

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**New Cingular Wireless PCS, LLC (AT&T)** – Use Variance and Site Plan  
 Block 1801, Lot 5 & 5.01, 82 West Main St.

Chair announced that the application was being carried to the September 4, 2013 regular meeting of the Board with the anticipation that it would be withdrawn at that time given a new State statute that permits them to add their additional antennae when there is no change to height or no new variances required. It would be exempt from the Board oversight and review.

Mr. Germinario, Esq. added that in addition there would also be no contradictions with any previous approvals. At the initial review by the Zoning Officer and him, it was thought that they would need to come to the Board, but upon revisitation of the existing resolutions for the carriers at the site, it was determined that only Omnipoint antennas were limited in number in their resolution when they were added as a fifth carrier. There was no limitation placed overall on the number of antennas. The applicant will now return to the Zoning Officer to apply for a Zoning Permit. When that is granted, the application should be withdrawn.

Mr. Germinario, Esq. also advised that the public notices for the application were in order, and that no further public notification would be given for the September 4 meeting.

Chair confirmed that the applicant would make the minor repairs to the site. Mr. Germinario, Esq. advised that Mr. Hansen was working the issues with the applicant, and they have agreed to the proposed recommendations made in Mr. Hansen's letter.

**ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 7:45 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, September 4, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary