MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
January 14, 2014

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular and reorganization meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Germinario, Board Attorney, at 7:32PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and the *Daily Record* on December 12, 2013 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

OATHS OF OFFICE

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

Mr. Peralta – Regular Member: 12-31-14
Mr. Ritger – Regular Member: 12-31-17

ROLL CALL

Mr. Palestina - Present	Mr. Smith - Present
Mr. Peralta – Present	Mr. Peck – Present
Mr. Ritger - Present	Mr. Seavey - Present
Mr. Schumacher – Absent	
Alternates:	Mr. McCarthy, Alternate I – Present Mr. Germinario, Alternate II - Absent
Also Present:	Mr. Germinario, Attorney Mr. Ferriero for Mr. Hansen, Engineer Mr. McGroarty, Planner Ms. Kaye, Secretary

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2014 REORGANIZATION

Election of Chair: Mr. Peck nominated Mr. Seavey as Chair, which was seconded by Mr. Peralta. There being no additional nominations, the nominations were closed. On a voice vote, all were in favor. Mr. Seavey was elected Chair and assumed leadership of the Board.

Election of Vice-Chair: Mr. Seavey nominated Mr. Peck as Vice Chair, which was seconded by Mr. Ritger. There being no additional nominations, the nominations were closed. On a voice vote, all were in favor. Mr. Peck was elected Vice Chair.

Appointment of Board Secretary: Mr. Seavey made a motion to nominate Ms. Kaye as Board Secretary, which was seconded by Mr. Peck. There being no additional nominations, the nominations were closed.

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

In favor:	Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed:	None
Abstentions:	None

The motion carried and Ms. Kaye was appointed Board Secretary.

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RESOLUTIONS

Board of Adjustment Meeting Dates: Mr. Seavey presented the following resolution that was included in the pre-meeting packet:

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

BOARD OF ADJUSTMENT
RESOLUTION

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 4, 2014
Tuesday, March 4
Tuesday, April 1
Tuesday, May 6
Thursday, June 5
Tuesday, July 1
Tuesday, August 5
Thursday, September 4
Tuesday, October 7
Thursday, November 6
Tuesday, December 2
Tuesday, January 6, 2015

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. Palestina made a motion to approve the resolution, which was seconded by Mr. Seavey. On a voice vote, all were in favor. The motion carried. Ms. Kaye will make the appropriate public notification.

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Official Newspapers: Mr. Seavey presented the following resolution that was included in the pre-meeting packet:

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

BOARD OF ADJUSTMENT
RESOLUTION

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 *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. Smith made a motion to approve the resolution, which was seconded by Mr. Seavey.

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

In favor: Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried. Ms. Kaye will make the appropriate public notification.

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Appointment of Attorney: Mr. Seavey presented the following resolution that was included in the pre-meeting packet:

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY
BOARD OF ADJUSTMENT RESOLUTION
APPOINTMENT OF BOARD ATTORNEY

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 may provide legal services for 2014 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 2014 at a total annual cost not to exceed $11,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2014: 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).

4. This Resolution shall take effect as provided herein.

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

In favor: Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed: None
Abstentions: None

The motion carried and the resolution was approved. Mr. Germinario, Esq. was appointed Board Attorney. Ms. Kaye will make the appropriate public notification.

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

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY
PLANNING BOARD RESOLUTION
APPOINTMENT OF BOARD PLANNER

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 may provide planning services for 2014 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 2014, at a total cost not to exceed required escrows for 2014; 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. Bradley made a motion to approve the resolution which was seconded by Councilman Sharkey.

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

In favor:	Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed:	None
Abstentions:	None

The motion carried and the resolution was approved. Mr. McGroarty was appointed Board Planner. Ms. Kaye will make the appropriate public notification.

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Appointment of Engineer: Mr. Seavey presented the following resolution that had been included in the pre-meeting packet:

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY
PLANNING BOARD RESOLUTION
APPOINTMENT OF BOARD ENGINEER

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 may provide engineering services for 2014 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 2014, 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 2014; and escrows as required for 2014; and

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

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

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

6. This Resolution shall take effect as provided herein.

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

In favor:	Palestina, Peralta, Ritger, Smith, Peck, Seavey
Opposed:	None
Abstentions:	None

The motion carried and the resolution was approved. Mr. Ferriero was appointed Board Engineer. Ms. Kaye will make the appropriate public notification.

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MINUTES

On motion made by Mr. Seavey, seconded by Mr. Peck and carried, the minutes of the regular meeting of December 3, 2013 were approved, as amended, to reflect Mr. Peralta as being marked as absent.

On motion made by Mr. Seavey, seconded by Mr. Peck and carried, the minutes of the executive session of December 3, 2013 were approved, as written.

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PUBLIC COMMENT

Mr. Seavey opened the meeting to the public for questions and comments on items not included on the agenda.

Mr. Frank Lupo of 17 Dean Road, Mendham, informed the Board of a press release related to the T-Mobile litigation. According to T-Mobile Investor Relations, T-Mobile has acquired 700 MHz A-Block licenses from Verizon Wireless making T-Mobil a multi-band provider. Mr. Lupo expressed surprise at the news as he was expecting T-Mobil to purchase 600 MHz in 2015. He further added that the previous 22 hearings are now rendered irrelevant. He went on to state that Verizon was stagnant with the 700 MHz band while AT&T has installed antennas on the Sisters of Charity and Daytop properties, thus leveraging the precedent that once a tower goes up, providers can install antennas indiscriminately.

Mr. Lupo quoted from the press release: "Cell sites overlaid with 700 MHz of frequency will benefit from a significantly larger coverage footprint in suburban and rural areas. In addition, it provides a cost-effective extension outside dense urban areas". Mr. Lupo left copies of the press release for Board distribution and stated that the transaction is scheduled to close during 4th Quarter 2014.

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HEARINGS

#951 **Botti, John** – Hardship Variance
Block 301, Lot 75, 45 West Main Street

Present: Anthony Sposaro, Esq., Attorney for Applicant
John Botti, Applicant

The Completeness Review Letter dated 10-04-2013 was reviewed. Mr. Ferriero confirmed that a new survey had been submitted and satisfied his request for more information regarding lot coverage. Based upon Mr. Ferriero's recommendation that the application be deemed complete, Mr. Seavey made a motion to accept the application as complete, which was seconded by Mr. Peralta. On a voice vote, all were in favor. The application was deemed complete.

Mr. Germinario, Esq. advised that he had reviewed the public notices and confirmed they were sufficient to confer jurisdiction upon the Board.

Mr. Sposaro reviewed the history of the property dating back to 2003 when Applicant was granted variance relief for building coverage and impervious coverage. In 2012, it was determined that the rear structure violated the side yard setback requirement by less than one (1) foot and Applicant went before the Board to request relief. The plans indicated a "future" deck with exterior stairs on the East side of the structure and all parties failed to recognize that the construction of the deck and stairs would further encroach upon the setback by an additional seven (7) inches. Mr. Sposaro stated that since the plans were approved by the Construction Official, Mr. Botti believed that the variance granted in 2012 gave him the right to construct the deck and chairs. The Zoning Officer did not agree and Mr. Botti is before the Board.

Mr. John Paul Botti, II, was sworn. Mr. Botti indicated that the subject property is owned by him and his wife and confirmed that construction of the deck and stairs was completed in September of 2013.

Exhibit A-1 was entered into evidence by Applicant's Attorney. Exhibit consisted of plans dated November 3, 2011 and stamped by the Borough Construction Official on June 28, 2012. Mr. Botti confirmed that it was these plans that were required to be onsite and that the contractor used same for construction.

Mr. Botti further testified the house on the property is to be rented but the garage and storage space above it, despite having a sink and a toilet, are not intended for rental.

Discussion followed regarding variances granted in 2003 for building coverage and impervious coverage. Although there is a discrepancy between the square footage on the 2003 plans and the 2012 plans, current building coverage exceeds allowed amount. Applicant stated that there were no practical means to reduce the coverage and any attempt to do so would create a financial hardship.

There was general consensus among the Board that a number of key oversights were made by the Applicant, builder and Borough Officials. However, a number of Board members were skeptical that the space over the garage would be used just for storage. Mr. Seavey pointed out that Mr. Botti was entitled to finish and use the space as he wished as long as it is permitted in the zone, i.e., not used as a dwelling unit.

Mr. Sposaro confirmed that the variance relief being sought is:

1. 10.46′ encroachment into the 15′ side yard setback requirement (deck);
2. 9.13′ encroachment into the 15′ side yard setback requirement (stairwell); and
3. 88.18 sq ft of building coverage - 2,194 sq ft of building coverage allowed vs. 2,282.18 as indicated on the Final Grading As Built dated January 18, 2013

The following conditions were proposed by the Board and accepted by the Applicant:

1. No rent charged for storage space use/no occupancy as a dwelling unit
2. No storage on deck
3. Space above/below deck not enclosed other than with lattice
4. No kitchen added
5. Impervious coverage not to exceed 3,313.55 sq ft as set forth on the Final Grading As Built dated January 18, 2013

Mr. Seavey made a motion to approve the application subject to conditions, which was seconded by Mr. Palestina. Mr. McCarthy was eligible to vote in Mr. Schumacher's absence.

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

In favor:	McCarthy, Palestina, Peralta, Smith, Peck, Seavey
Opposed:	Ritger
Abstentions:	None

The motion carried and application was approved. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the February 4, 2014 regular meeting of the Board. Ms. Kaye will make the appropriate public notification.

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ANNUAL REPORT

Mr. Seavey indicated that the Annual Report reflected matters discussed at the December meeting and asked Mr. Palestina and Mr. Ritger if they had any comments as they were not present for the discussion. He then reiterated that the Planning Board should take a look at a possible Outdoor Dining ordinance for the Borough. Solar power was also discussed at the December meeting however the Council has already adopted an ordinance. Mr. McGroarty added that he felt it was too restrictive in terms of approved panels but it was pointed out that the restriction is for the Historic District only.

The content of the report was reviewed and it was agreed that second item on page one, 'Generators/Air Conditioners', should be changed to read 'Generators/HVAC Equipment' with same verbiage to be changed on page two under the Pilshaw application. On page three, the word 'column' is to be changed to 'calculation'.

Mr. Seavey made a motion to approve distribution of the Annual Report to the Council, as amended, which was approved by Mr. Peck. On a voice vote, all were in favor.

EXECUTIVE SESSION: Omnipoint/T-Mobil – Litigation

Mr. Germinario, Esq. read a closed session resolution which carried via voice vote. Mr. Seavey made a motion to enter Executive Session at 8:45PM, which was seconded by Mr. Peck. Mr. Peralta recused himself and with no additional items on the agenda, left the meeting for the evening.

Motion carried and the Board entered Executive Session.

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Board returned to open session at 9:00PM.

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ADJOURNMENT

There being no additional business to come before the Board, Mr. Peck made a motion to adjourn which was seconded by Mr. Seavey. On a voice vote, all were in favor.

Chair Seavey adjourned the meeting at 9:03PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, February 4, 2013 at 7:30PM** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Margot G Kaye

Margot G. Kaye
Recording Secretary