

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
April 1, 2014**

**Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Mr. Peck, Vice Chair, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**OPENING STATEMENT**

Notice of this meeting was published in the *Observer Tribune* on January 23, 2014 and in the *Daily Record* on January 17, 2014 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.

**ROLL CALL**

Mr. Palestina - Absent  
Mr. Peralta - Present  
Mr. Ritger - Present  
Mr. Schumacher - Absent

Mr. Smith - Present  
Mr. Peck - Present  
Mr. Seavey - Absent

Alternates:

Mr. McCarthy, Alternate I - Present

Also Present:

Ms. Kaye, Secretary

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**MINUTES**

Mr. Smith made a motion to approve the minutes of the regular meeting of March 4, 2014, which was seconded by Mr. Ritger. On a voice vote, all eligible voters (McCarty, Ritger, Smith, Peck) were in favor and the minutes were approved, as written. Mr. Peralta abstained.

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**PUBLIC COMMENT**

Mr. Peck opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

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**APPLICATIONS**

**#01-14 - Holly Manor Healthcare - Minor Site Plan: Resolution**  
Block 502, Lot 1, 84 Cold Hill Road

Mr. Peck requested comments on the following draft resolution memorializing the Board's approval to permit the installation of a free-standing emergency backup generator:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
Decided: March 4, 2014  
Memorialized: April 1, 2014**

**IN THE MATTER OF HOLLY MANOR/ALL JERSEY MECHANICAL  
& CONSTRUCTION, INC.  
MINOR SITE PLAN AND "C" AND "D-2" VARIANCE APPLICATION  
BLOCK 502, LOT 1**

**WHEREAS**, Holly Manor/All Jersey Mechanical & Construction, Inc. (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a minor site plan and "c" and "d-2" variances pursuant to N.J.S.A. 40:55D-70 (hereinafter the "Variances") by application dated 1/14/14; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 3/4/14; 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 10.05 acres is developed with an assisted living facility known as Holly Manor. The property is located at 84 Cold Hill Road in the ¼ acre residential district.

2. The improvements to the subject property for which the Variances are sought comprises installation of an emergency generator with fuel storage tank on the eastern side of the principal structure between the principal structure and Cold Hill Road. The existing generator located on the west side of the principal structure is to be removed.

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

- Board of Adjustment application form and attachments, dated 1/14/14
- Application Checklist (undated)
- Minor Site Plan, consisting of 3 sheets, dated 12/11/12 prepared by Bohler Engineering, Inc.

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

- Certification of Status of Municipal Tax and Sewer Fees (unsigned and undated)
- Zoning Officers Denial, dated 10/22/13
- Site Inspection Authorization form (undated)
- Transmittal letter by Craig Gianetti, dated 1/7/14 to Tax Assessor
- Transmittal letter by Craig Gianetti, dated 1/7/14 to Tax Collector
- Transmittal letter to Morris County Planning Board by Derek Jordan, PE, dated 1/9/14
- Copy of Resolution of Approval, dated March of 1968
- Copy of Resolution of Approval, dated December of 1992
- Copy of Amended Resolution of Approval, dated October of 1993
- Copy of Resolution of Approval, dated January of 1995
- Copy of cover letter from Derek M. Jordan, PE, Bohler Engineering, Inc., dated 1/29/14
- Copy of Morris County Planning Board Exemption Letter, dated 1/17/14
- Copy of the certified list of property owners within 200', dated 1/8/14
- Copy of Certification of Status of Municipal Tax and Sewer Fees, dated 1/7/14

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

John Hansen, PE, CME, dated 2/27/14

6. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

A-1 Aerial Photo from Google Earth, 3/20/14

7. In the course of the public hearings, the Applicant was represented by Joshua VandenHengel, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Derek Jordan, PE, Applicant's engineer  
George Pavlonnis, Applicant's contractor

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

Applicant seeks to replace its existing emergency generator because it is not large enough to power and heat the entire facility, being designed only for the facility's life safety systems. In view of the likelihood of extended power outages of the type caused by Hurricane Sandy in 2012, there is a need for a larger generator, proposed to be located on the easterly side of

the facility in the front yard, where it can be connected to the facility's main transformer and electrical panel.

The new generator and associated 1550 gallon diesel tank are proposed to be sited on a 190 sf pad with a 120 sf sound-attenuating enclosure. A row of Arborvitae evergreens, 6'-8' in height, is proposed to screen the generator from Cold Hill Road. Sound levels will comply with State standards. The generator will be operated only during power outages and is tested once per week for approximately 30 minutes on a weekday during midday hours.

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

Because the assisted living use is non-conforming, the installation of the new generator facilities requires a "d-2" variance. The Board finds that the proposed improvements do not tend to expand or intensify the non-conforming use, but simply enable it to operate more safely and securely. The Board further finds that there are no detrimental visual or audible impact to neighboring properties, and that the proposal advances the statutory purpose to secure safety from natural disasters pursuant to N.J.S.A. 40:55D-2b.

Bulk "c" variances are also required with respect to lot coverage, building coverage, and installation in the front yard. The Board finds that the increase in lot coverage and building coverage – 190 sf and 120 sf, respectively – are minimal, and will have no appreciable impact. The Board further finds that the front yard installation is necessary to make the electrical corrections needed to efficiently provide backup power to the entire facility. Therefore, the public health and safety benefits of granting these Variances far outweigh the minimal detriments, thereby justifying the granting of the Variances pursuant to N.J.S.A. 40:55D-70c(2).

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 minor site plan application and grants the Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(2) and 50:55D-70c(2).

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:

1. The color of the generator and housing shall be an earth tone color.
2. There will be no visible lighting on the generator unit. The only lighting will be that which is required while in use during a power outage.
3. The Applicant's engineer shall prepare a landscaping plan to buffer and screen the generator unit from view. The landscaping plan shall include an earth berm and shall be designed to complement the existing landscaping and site features to the extent possible. Native species of plant material shall be used in the design, and the design shall specify all sizes, species and locations. The landscaping design shall be reviewed and approved by the Borough Engineer.
4. The plans will be revised to specify a "spill switch" will be installed for the unit, and that the spill switch will be tested during semi-annual servicing of the unit.
5. The limits of the pavement removal for the utility trench shall be shown on sheet 2 of the plans.
6. The location of all existing underground utilities in the front yard should be shown on sheet 2 of the plans.
7. A concrete generator mounting pad detail shall be included on sheet 3 of the plans.
8. The existing curbing at the site is granite block curb. The plan shows a concrete curb detail for replacement curb. This shall be corrected to match the existing curb.

9. The conduit detail and standard paving detail shall be revised to specify dense graded aggregate or recycled concrete backfill under the pavement section.

10. The curb and side walk detail shall be revised to show proposed granite block curb versus the concrete curb as shown.

11. Seed and straw mulch shall be added to the soil restoration portion of the underground utility conduit detail.

12. Any notes that are not applicable on the plans shall be removed.

13. Any note that states "Issued for Municipal & Agency Review & Approval shall be removed from each sheet prior to the signing of any plan set.

14. A note shall be added to the plans that states that submission of detailed drawings and cut sheets for the unit shall be provided to the Borough Engineer for review prior to issuance of a building permit.

15. The scheduled weekly testing and maintenance of the unit shall be performed during the hours of 10 a.m. to 5 p.m. on weekdays only.

16. Prior to the issuance of any permits or site disturbance, the Applicant shall submit a resolution compliance packet. The packet shall include revised plans and documents, and a transmittal letter that explains how and where each condition of the resolution has been addressed.

17. All site improvements shown on the approved plans shall be installed prior to a certificate of occupancy. Landscaping may be bonded at the discretion of the Borough Engineer if the landscaping cannot be installed at the time the project is completed due to weather conditions.

18. 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.

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

20. 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.

21. 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 March 4, 2014.

There was one minor typographical correction made at the bottom of page three (3).

Mr. Ritger made a motion to approve the resolution, as amended, which was seconded by Mr. Smith.

ROLL CALL: The result of the roll call was 3 to 0 as follows:

In favor: Ritger, Smith, Peck  
Opposed: None  
Abstain: McCarthy, Peralta

The motion carried and the resolution was approved.

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**ADJOURNMENT**

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

Mr. Peck adjourned the meeting at 7:34PM.

The next regular scheduled meeting of the Board will be held on **Tuesday, May 6, 2014 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Margot G. Kaye*

Margot G. Kaye  
Recording Secretary