

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

**CALL TO ORDER**

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

**OATHS OF OFFICE**

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

Michael Palestina – Regular Member: 12/31/14  
Richard Smith – Regular Member: 12/31/14  
Robert Ritger – Regular Member: 12/31/13  
John McCarthy – Alternate I: 12/31/12

**ROLL CALL**

|                          |                               |
|--------------------------|-------------------------------|
| Mr. Palestina – Present  | Mr. Smith – Present           |
| Mr. Peck – Present       | Mr. Ritger, - Present         |
| Mr. Peralta – Present    | Mr. McCarthy, Alt I – Present |
| Mr. Schumacher – Present |                               |
| Mr. Seavey - Present     |                               |

|               |                         |
|---------------|-------------------------|
| Also Present: | Mr. MacDonald, Attorney |
|               | Mr. Hansen, Engineer    |

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**2011 REORGANIZATION**

**Election of Chair:** Mr. MacDonald, Esq. assumed leadership for the election of the Chair. Mr. Palestina made a motion nominating Mr. Seavey as Chair. Mr. Ritger seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. Mr. Seavey was elected Chair. He assumed leadership of the Board.

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**Election of Vice Chair:** Mr. Seavey made a motion nominating Mr. Peck as Vice Chair. Mr. Palestina seconded. There being no additional nominations, the nominations were closed.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. Mr. Peck was elected Vice Chair.

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**Election of Secretary:** Mr. Seavey made a motion appointing Ms. Callahan as Secretary and Recording Secretary. Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. Ms. Callahan was appointed Secretary.

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**Meeting Dates Approval:** Mr. Seavey presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION  
BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT  
MEETING DATES**

**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 1
- Tuesday, March 1
- Tuesday, April 5
- Tuesday, May 3
- Wednesday, June 8
- Wednesday, July 6
- Tuesday, August 2
- Wednesday, September 7
- Tuesday, October 4
- Tuesday, November 1
- Tuesday, December 6
- Tuesday, January 3, 2012

**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. Seavey made a motion to approve the resolution. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

Ms. Callahan will make appropriate public notice.

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**Designation of Official Newspapers:** Mr. Seavey presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION  
BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT**

**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 Morristown 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 paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

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

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The resolution was approved. Ms. Callahan will make appropriate public notification.

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**Appointment of Board Attorney:** Mr. Seavey advised the Board that Mr. MacDonald, Esq. had decided to remove his name from consideration as attorney for 2011. The resolution would be tabled and the matter discussed later in the meeting.

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**Appointment of Consulting Engineer:** Mr. MacDonald, Esq. presented the following resolution that had been included in the pre-meeting packages:

**RESOLUTION  
BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT**

**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 he will provide engineering services for 2011 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 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 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 the year 2011, at a total cost not to exceed \$1,000, such sum as may be duly appropriated for the purposes in the duly adopted municipal budget for 2011; 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).

5. This Resolution shall take effect as provided herein.

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

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

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

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**Appointment of Board Planner:** Mr. MacDonald, Esq. presented the following resolution that was included in the pre-meeting packages:

**RESOLUTION  
BOROUGH OF MENDHAM  
BOARD OF ADJUSTMENT**

**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**, Adrian P. Humbert, AICP/PP of the firm Adrian P. Humbert Associates has submitted a proposal indicating that he will provide planning services for 2011 in an amount projected to exceed \$17,500 (including escrows); and

**WHEREAS**, the anticipated term of this contract is 1 year; and

**WHEREAS**, Adrian P. Humbert 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 Adrian P. Humbert.; 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 Adrian P. Humbert, AICP/PP of the firm Adrian P. Humbert Associates to serve as Planning Consultant for the year 2011, at a total cost not to exceed required escrows for 2011; 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. Seavey made a motion to approve the resolution. Mr. Schumacher seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Palestina, Peck, Peralta, Ritger, Schumacher, Smith, Seavey

Opposed: None

Abstentions: None

The motion carried. Mr. Humbert was appointed Planner. Ms. Callahan will make the appropriate public notification.

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**Approval of Annual Report:** Mr. Seavey presented the following 2010 Annual Report that had been included in the pre-meeting packages:

**MENDHAM BOROUGH  
BOARD OF ADJUSTMENT  
ANNUAL REPORT  
2010**

**OMNIPOINT COMMUNICATIONS, INC. and New York SMSA Limited Partnership d/b/a VERIZON WIRELESS**, use and other required variances for 120 ft. +/- monopole (flagpole) at Block 801, Lot 20, Kings Shopping Center:  
**Denied July 7, 2010**

**LEVEY, DONNA & YALE**, request for extension to previously approved variance at Block 1401, Lot 19, 90 Talmage Rd.: **Approved February 2, 2010 w/Conditions**

**SKURATON, JAMES & SUSAN**, application for hardship variance for construction of an addition that violates the lot and building coverage at Block 304, Lot 9, 8 Aster Terrace.: **Approved March 2, 2010 w/conditions**

**THOMAS, EDWARD M. & TAMARA G.**, application for use variance for additions and renovations to existing non-conforming structures at Block 1801, Lot 38, 298 Thomas Road.: **Approved April 14, 2010 w/conditions**

**PEGGNET, LLC**, application for a Use Variance and Site Plan Waiver application at Block 305, Lot 1, 61 West Main Street.: **Withdrawn May 4, 2010**

**MICHAEL C. FARINA**, application for Use Variance for a home office in violation of ordinance 600 sq. ft. restriction, and for use of a non-resident employee: **Approved August 3, 2010 w/conditions**

**106 MENDHAM LLC**, application for D Variance for a barbershop and bulk variances for a sign (barbershop pole) and parking at Block 801, Lot 12, 106 East Main Street (Main Street Corridor). **Approved August 3, 2010 w/conditions**

**LA PERGOLA**, application for site plan waiver/use variance for improvement including a fence, porch enclosure to create a vestibule and a stove in the basement at Block 301, Lot 35, 7 West Main St. (Historic District): **Approved October 5, 2010 w/conditions**

**MT. HERMON HILLS COMPANY, LLC**, application for hardship variance for a residential driveway located in the side yard setback of the 5-acre zone at Block 1801, Lot 36.03, 4 Thomas Road. **Approved December 7, 2010 w/conditions**

**PETER DeNEUFVILLE**, application for use variance to move a historic farmhouse from an adjacent property and attach it as a wing to an existing guest cottage on his property at Block 1801, Lot 37, Thomas Road. **Application Approved December 7, 2010 w/conditions. Resolution 2011.**

**SUMMARY OF CASES  
2010**

In 2010 there were 10 cases placed on the Board of Adjustment calendar. Out of those 10 cases, 9 were decided.

|   |   |    |
|---|---|----|
| APPLICATIONS ON CALENDAR                            |   | 10 |
| APPLICATIONS CARRIED TO 2011                        |   | 0  |
| APPLICATIONS APPROVED                               |   | 8  |
| APPLICATIONS APPROVED W/CONDITIONS OR MODIFICATIONS | 8 |    |
|   |   |    |
| APPLICATIONS DENIED                                 |   | 1  |
| <b>APPLICATIONS WITHDRAWN</b>                       |   | 1  |

In terms of the types of variances, the Board primarily dealt with use variances for a cell tower, pre-existing non-conforming structures and commercial/home office uses. The hardship variances were for an addition and to maintain the location of an existing driveway.

|                                 |   |   |
|---------------------------------|---|---|
| TOTAL APPLICATIONS COMPLETED    |   | 8 |
| “C” VARIANCES                   | 2 |   |
|                                 |   |   |
| “D” VARIANCES                   | 6 |   |
|                                 |   |   |
| EXTENSION TO VARIANCE TIMEFRAME | 1 |   |

**APPLICATION FEES**

In 2010 the Board of Adjustment collected a total of \$34,127 distributed as follows:

|                      |          |          |
|----------------------|----------|----------|
| TOTAL FEES COLLECTED |          | \$34,127 |
|                      |          |          |
| APPLICATION FEES     | \$ 6,000 |          |
| ESCROW               | \$28,103 |          |
| COPIES/TAPES         | \$ 24    |          |
|                      |          |          |
|                      |          |          |

Mr. Seavey made a motion to approve the annual report as written and to send it to the Council with copies to the Planning Board. Mr. Palestina seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The annual report was approved. Ms. Callahan will forward it to the Council and Planning Board.

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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. Palestina seconded by Mr. Smith and all members being in favor, the minutes of the December 7, 2010 regular meeting of the Board were approved as written.

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**HEARING OF CASES**

Mr. Peralta advised the Board that he has a conflict of interest due to employment as relates to the New Cingular Wireless PCS, LLC hearing. He would be recusing from the Board. Mr. MacDonald, Esq. confirmed that the first alternate, Mr. McCarthy would become a voting member for the application.

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**New Cingular Wireless PCS, LLC (AT&T)** – Use Variance: Completeness Only  
Block 2301, Lot 13, 350 Bernardsville Road

Present: Michael Levine, Esq., Day Pitney, LLP – Attorney for the Applicant  
Frank Pazden, Engineer for the Applicant

Mr. Levine, Esq. advised the Board that the applicant was proposing a wireless telecommunications facility within an existing building at the Sisters of Christian Charity located at 350 Bernardsville Road. The property is located in the R5 Zone and is approximately 112 acres in size. Panel antennas would be located within the interior of the cupola. There would be cable to radio cabinets that would be located in the attic space on the fifth floor. There would be two small air conditioners located on the roof.

Mr. MacDonald, Esq. advised the Board on the variance relief required and why the applicant was not before the Planning Board. Based on his discussions, with Mr. Henry, Esq., Planning Board Attorney, and the analysis of case law, they concluded that in on-going circumstances where property is subject to previous use variance relief, the jurisdiction remains with the Board of Adjustment. This has been the case with La Familia and Audi. Even though in this case there is a permitted conditional use, and the applicant may meet all the conditions, the BOA retains jurisdiction for use variance review.

Mr. Levine, Esq. referred to Mr. Ferriero's letter dated January 3, 2011 on the completeness of the application. He asked Mr. Frank Pazden, Engineer to address an issue associated Checklist Item #55 dealing with the potential upgrading of the electrical service. Mr. Pazden presented his credentials and was accepted as a witness. In addressing the electrical service issue, Mr. Pazden referred to sheet Z-03 of the site plan and explained that the service required is a 200 amp service comparable to a residential service. There is an emergency generator with a transformer located near the building. The plan is to increase the size of the transformer given the draw of the building in peak periods. They may need to increase the size of the transformer and upgrade a line, but they would be working the Electric Company to determine that as they move forward. Mr. Hansen advised the Board that it was important to understand the extent of the service changes as any major trenching involved in an area of wetlands and a Category 1 stream, might require permits. He was satisfied with Mr. Pazden's answer, and agreed that item #55 be waived for completeness purposes.

Continuing with his reference to Mr. Ferriero's letter, Mr. Levine, Esq. stated that in accordance with the Wireless Checklist they had submitted a comprehensive RF Report. The Engineer was requesting that the priority citing be explained, but it is included in the RF Report. In terms of the location of other carriers, New Cingular Wireless has no knowledge of other carriers' plans in the area and a waiver is being requested. The carriers do share knowledge when they are looking to co-locate, but general deployment plans are not known.

Mr. Ritger questioned whether or not the applicant needed to run through the justification of the site for both existing structures and land for new towers. Mr. MacDonald, Esq. advised that the Board would need to refresh on the terms of the ordinance and indicated that based on his interpretation, the first preference is to try to locate the facility on an existing structure. It is likely that the ordinance encourages what the applicant is doing as they are placing the facility on an existing building. If they have found a building on which to place the antenna, he is not sure that they need to review the land for new structures. Mr. Ritger still expressed his opinion that

they needed to review all sites regardless of whether or not structures would suffice. They also needed to address the option for municipally owned land. Mr. Levine, Esq. interpreted the ordinance as not requiring the review of municipally owned land if a structure was available.

Addressing Mr. Ritger's question on the Zoning Officer Denial form, Mr. Hansen advised that it had been provided.

Mr. Ritger questioned how the licenses apply to the proposed site and indicated that they carried a date of 2009. He questioned whether they were current and whether they applied. Mr. Levine, Esq. advised that the submission requirement is for the applicant to provide a copy of all its FCC licenses, and they did that. The RF expert can specify which license pertains to the location during testimony.

In terms of Mr. Ritger's question on the potential for other carriers at the location, Mr. MacDonald, Esq. did not believe that it was a matter for completeness. He advised that as the hearing progressed, should the Board require additional information, it can be requested.

After discussion, Mr. Hansen advised the Board that he did not have any concerns about deeming completeness, and recommended that the waivers be granted.

Chair opened the meeting to questions by the public. Mr. Frank Lupo, 17 Dean Road stated that he had reviewed the application and did not see any site parameters such as downtilts listed in the application material provided. That information is needed. Mr. Levine, Esq. advised the Board that they usually share that information with an RF Engineer of the Board's choice. Chair Seavey responded that the Board was still in the process of determining which RF Engineer it would use, but regardless, having the information would be important.

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

Mr. Smith made a motion to deem the application complete and issue waivers for the following checklist item numbers: 11, 25, 28, 29, 31, 32, 33, 34, 37, 38, 41, 50, 55, and from the Wireless Telecommunications Checklist, the map of other providers. Mr. McCarthy seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The application was deemed complete. Applicant was advised that the hearing would commence on Tuesday, February 1, 2011.

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**Peter deNeufville** – Use Variance: Resolution  
 Block 1801, Lot 37, Thomas Road

Mr. MacDonald, Esq. presented the following resolution to the Board:

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

WHEREAS, **PETER de NEUFVILLE**, has applied to the Board of Adjustment of the Borough of Mendham for permission to construct an addition to an existing single family guest cottage on Lot 37 in Block 1801 on the Tax Map of the Borough of Mendham, which premises are in the 5 Acre Residence Zone, and the subject dwelling is also designated as 167 Thomas Road; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and after providing the adjoining property owners and the general public with the opportunity to be heard at a Public Hearing on December 7, 2010 has made the following factual findings:

1. The applicant purchased the subject property in April 1996 from the Margaret – Wade deNeufville 1986 Revocable Trust according to the application forms. The subject property is located in the southerly portion of the Borough and it is accessed by Thomas Road which extends in a westerly direction off of Hilltop Road.



2. As referenced in the application materials, the applicant's property is approximately 39.7 acres of which approximately 33.7 acres are in a "Conservation Area" leaving approximately 6 acres as the "Residence Area".
3. The applicant presented, and the Board reviewed with the assistance of the Borough Engineer, a copy of an "Updated Boundary Survey" of this property dated 10/22/2010 prepared by Pennoni Associates Inc and signed on 10/22/2010 by David H. Smith, NJ Licensed Land Surveyor. Various improvements, driveways structures are depicted on the Survey.
4. The applicant presented, and the Board reviewed with the assistance of the Borough Engineer, a 1 page Plot Plan depicting the proposed expanded Guest Cottage. That Plot plan is dated 10/15/2010, and it is also prepared by Pennoni Associates Inc. The Plot Plan also sets forth details related to the 5 Acre Zone requirements, the existing conditions and structures, the site layout, grading and slope analysis and the footprint of the expanded "Guest Cottage" after "attaching" the proposed addition.
5. The applicant presented, and the Board reviewed with the assistance of the Borough Engineer, a 4 page set of floor plans and architectural elevations prepared by Armand LeGardeur Architect dated 11/22/2009. The 4 pages of the architectural elevations depict the existing cottage on the applicant's property and the floor plans of the "Farm House" from the neighboring property that is proposed to be relocated onto the applicant's property.
6. The applicant and his expert witness, Mark Allen Hewitt, a licensed architect, explained the history of the applicant's property and that of the adjoining parcel which is currently owned by the applicant's cousin. The Board is familiar from prior applications with the various holdings of the Thomas and deNeufville families and their involvement in property preservation and conservation efforts in the Borough.
7. The primary focus of this application relates to the removal, relocation and adaptive reuse of a farmhouse that has been on the neighboring property for a long period of time as described in the presentation of Mr. Hewitt as supplemented by the applicant, the applicant's father, the applicant's uncle and the applicant's cousin.
8. The applicant requires a D (2) variance related to the enlargement of the existing accessory single family dwelling on the lot. This enlargement by way of attaching the relocated farm house is interpreted to be an expansion of a pre existing non conforming use.
9. The applicant also requires a related C variance due to the fact that the Accessory dwelling will be larger than the applicant's existing Primary Dwelling. The land use ordinance limits an accessory dwelling to no more than 50 % of the area of the primary dwelling.
10. The Board and the applicant reviewed the intended use of the accessory residence as a guest cottage or as a residence for an on site property related employee.
11. The Board received and reviewed the November 29, 2010 Review of the Borough Zoning Officer and the October 26, 2010 letter from the Historic Preservation Commission.
12. The Board also reviewed and considered the Technical Review items set forth in the Borough Engineer's November 16, 2010 Report. The data, revisions and requirements set forth in the items set forth therein are incorporated herein as Conditions of Approval. The Board notes that the applicant and his counsel confirmed that the applicant could and would adhere to these items.
13. The Board and the applicant reviewed the characteristics of the applicant's property and the general characteristics of the surrounding properties in this large lot enclave neighborhood. The Board generally concurs that the enlarged Guest cottage will not be particularly visible from surrounding parties.
14. No members of the public participated in this application hearing in favor of or, in objection to, the applicant's plans other than his relatives who were favorably inclined.

WHEREAS, the Board has determined that the D(2)-Variance and the associated C variance relief related to the proposed renovation, enlargement and enhancement of the accessory guest cottage on this 39.685 acre lot requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. The Board is satisfied from the Evidence presented at the Public Hearing that the applicant has demonstrated that there is an unusual circumstance related to the multi generational existence of two dwelling structures on the Lot and the layout of the numerous additional accessory structures. Based upon the Evidence presented, the Board is satisfied that the strict enforcement of the Ordinance to limit a reasonable expansion and upgrade of the accessory dwelling would result in an unnecessary and undue hardship to the owner and it would unreasonably restrict the use of this oversized parcel by precluding an appropriately sized addition to the Guest Cottage for which this unique property is found to be particularly suitable.

2. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed additions will not result in any significant detrimental impact to the surrounding properties, nor to the public good. The Board is satisfied that the proposed Guest Cottage enlargement and coverage will not have any adverse storm water management impacts and there will be no unusual impacts on any of the surrounding residences upon compliance with the agreed upon recommendations of the Borough Engineer.
3. The Board is satisfied from the Evidence presented at the Public Hearing that the proposed Guest Cottage additions will not result in any significant detrimental impact to the Borough Zone Plan for this 5 Acre Residence Zone due to the fact that the proposed accessory residence and the related improvements will be in keeping with the neighborhood characteristics and the characteristics of the larger residences in the Borough's 5 Acre Zones.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 4th day of January, 2011, that the application of PETER deNEUVILLE which was approved on December 7, 2010, be memorialized herein, subject however, to the following conditions:

1. The Additions to the accessory guest cottage structure approved herein shall be constructed in conformance with the testimony and in conformance with the Exhibits that were provided to the Board with the application materials and described during the Public Hearing, subject to the amendments and revisions requested by the Borough Engineer.
2. The approvals herein are subject to all relevant Federal, State, County, and Municipal regulations including payment of all: relevant taxes, application fees, review fees and inspection fees; all Plan corrections and/or revisions required by the seven items in the Technical Review section of page 3 of the Borough Engineer's November 16, 2010 Report, except that the customarily required submittal of a Footing and Foundation "AS BUILT" Survey prior to the issuance of a Framing Permit per item 7 is WAIVED due to the significant size of this property and the setbacks from the boundary lines.
3. The Variance relief granted herein shall expire if not utilized within one year from the date of this Memorializing Resolution.
4. The approvals granted herein are also specifically conditioned upon there being no change to the use of either of the two (2) existing dwellings. The board relies upon and conditions these approvals upon the uses of the two residences being: one principal residence and once accessory guest cottage for friends and relatives or for an on site property related employee.

Mr. Ritger made a motion to approve the resolution. Mr. Smith seconded.

ROLL CALL: The result of the roll call of eligible voters was 7 to 0 as follows:

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

The motion carried. The resolution was approved.

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#### **EXECUTIVE SESSION**

Mr. Seavey made a motion to enter executive session for discussion of personnel matters at 8:40 pm. Mr. Peck seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

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

The motion carried. The Board entered executive session.

The Board returned to regular session at 9:20 p.m.

**ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 9:20 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, February 1, 2011 at 7:30 p.m.

Respectfully submitted,

Diana Callahan  
Recording Secretary