

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
October 6, 2009
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Santo at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIRMAN'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune on February 5, 2009 and the Daily Record on January 29, 2009 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ATTENDANCE

Mr. Palestina – Present
Mr. Peck – Present
Mr. Peralta – Present
Mr. Schumacher – Present

Mr. Seavey - Present
Mr. Smith - Present
Mr. Santo – Present

Also Present:

Mr. MacDonald, Attorney
Mr. Humbert, Planner
Mr. Ferriero, Engineer

PUBLIC COMMENT

Chair Santo 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.

APPROVAL OF MINUTES

On motion by Mr. Peralta, seconded by Mr. Seavey and carried, the minutes of the regular meeting of September 1, 2009 were approved as written.

HEARINGS

Fasano, Jean – Extension to previously approved Minor Subdivision

Block 2301, Lot 2, 175-179 Cherry Lane

Present: Mr. Lorenze Fasano

Mr. MacDonald, Esq. reviewed the application for the Board and advised that the applicant was requesting an extension as time had been required to compile all information and other approvals associated with the Minor Subdivision. He recommended an extension of 6 months to which Mr. Fasano and the Board agreed.

Mr. Peralta made a motion to approve the extension. Mr. Smith seconded.

ROLL CALL: The result of the roll call of those members having previously voted on the application was 5 to 0 as follows:

In Favor: Peralta, Schumacher, Smith, Palestina, Santo
Opposed: None
Abstentions: None

The motion carried. The extension was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the Wednesday, November 4, 2009 regular meeting of the Board.

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Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless – Use and Other required variances: **Continuation**

Block 801, Lot 20, Kings Shopping Center

Present: Richard Schneider, Esq., Attorney for the Applicant
Mr. Pierson, RF Engineer for Applicant
Robert Simon, Esq., Attorney for Mr. Isko
Mr. Graiff, RF Engineer for Mr. Isko

Mr. MacDonald, Esq. summarized that the hearing has been proceeding for well over a year. As has been discussed, it is the strong desire of the Board that the interested parties present their remaining testimony in the next two meetings to enable the Board to vote at their December meeting.

Mr. Schneider, Esq. expressed his frustration over some scheduling matters that had transpired in the last 60 days that he believes have unfairly prejudiced the applicant and created unnecessary delays in the completion of the application. He recapped the testimony and expectations of the previous several meetings. In terms of what he expected for this meeting, it was recognized that Dr. Eisenstein would not be present and could review the transcripts if necessary, but he thought that the preferred course was that Mr. Isko's planning testimony would be presented. Between the September and October meeting, he was informed that Mr. Ritter, Mr. Isko's planner would not be available.

Mr. Schneider, Esq. continued that given the Board's desire to keep the hearing moving, if he did not continue with Mr. Pierson this evening, he would lose a whole month. As he also lost September, given Mr. Simon's absence, he would essentially lose two months if he did not continue at this meeting. While he would continue with RF, he did not think it was a good way to proceed without the presence of Dr. Eisenstein. He referred to the lack of availability of the objectors professionals as "zoning by appointment".

Chair Santo responded that he shares the frustration of Mr. Schneider, Esq. While it is tradition of the Board to try to be flexible, he is stepping away at the end of the year and it is important that the testimony be concluded in November such that the Board can vote in December and have a resolution in January. Mr. Schneider, Esq. advised that the Board Secretary had identified a potential special meeting date of November 17 should it be needed.

Mr. Simon, Esq. stated that they are seeking to present an efficient and comprehensive case. Mr. Isko and his professionals have acted in nothing but good faith in attempting to move the matter forward. He took offense to Mr. Schneider's comments.

Mr. Simon, Esq. continued with the cross-examination of Mr. Pierson. Mr. Pierson did not consider negative 90 dbm as substantially better than mediocre as the signal strength would not provide, make, receive and maintain a connection to the network depending on where one is located. The coverage maps do not show 850 megahertz for T-Mobile as they do not have that service. It is not shown for Verizon as 1900 mhz is the limiting case for them in this area. There is not reliable 850 mhz service for Verizon in the gap area. He continued that 700 mhz and 2100 mhz are not active at this time. He could not estimate when they would be available.

Responding to Mr. Simon, Esq. on whether he was aware of any discussions on coverage for the southern portion of Mendham Borough, Mr. Pierson stated that he was not. He did not have a report or study on statistics of dropped calls in the area. Addressing gaps once again, Mr. Pierson stated that he had provided testimony on reliable service. In terms of providers on the Mendham cell towers other than Verizon and Omnipoint, did not have a study on whether they are providing service in the areas where there is a gap, but stated that the service should be relatively equivalent the two basic technologies of CDMA and GSM are being used by all the providers.

On re-direct by Mr. Schneider, Mr. Pierson stated that the 700 frequency auction to Verizon may have been in 2008. They were not able to test or use the frequency until after the digital TV conversion which occurred in June. Carriers that currently serve the area are Sprint/Nextel, AT&T Wireless and Metro PCS. Metro PCS is not on the two existing towers. Coverage of the other carriers, given the same parameters as Verizon/Omnipoint would essentially be similar. The gap is terrain related.

Responding to Board questions on whether Conifer and the Bell Tower, transmitting at 700 megahertz would provide coverage in this area, Mr. Pierson stated that they would not. Seven hundred megahertz will propagate almost identically to 800 megahertz. He does not know of any plans for voice. They do have licenses across the country, but he is not aware of any service that

is launched at this point. In terms of 2100 megahertz, it can carry voice or data. It propagates almost identically to 1900 megahertz.

Board requested that Mr. Pierson provide the dropped call report. Mr. Pierson agreed to request it from Omnipoint. They further requested that they wanted to be able to compare the drive test data and the dropped call percentages over the same time period. After a discussion on seasonality, they requested that several time periods be chosen.

Chair opened the meeting to the public for questions of Mr. Pierson. There being none, the public session was closed.

Mr. Schneider, Esq. questioned Mr. Graiff on his involvement in the application as witness for an interested party. Mr. Graiff agreed that he only takes a limited number of objector cases in New Jersey if there is something interesting or compelling about the case. He explained that he had received a call from Mr. Simon, Esq. the evening before a meeting and reviewed the information at the Borough Offices the day of the meeting. He had read testimony of Mr. Pierson, but could not recall if Mr. Simon, Esq. had faxed it to him. He had also received the Mendham Borough wireless ordinance, had not driven the area of the gap at the time, but he did stop by the site. He has worked with Mr. Pierson at least 10 times and with other people in Mr. Pierson's firm, but did not discuss this case with him in the six months as he did not think it appropriate.

Continuing to respond to questions, Mr. Graiff stated that he has driven the significant gap area, particularly along the highly travelled Route 24. There are many insignificant gaps in the area. In terms of independent tests or assessing the validity of the gap, he only used his cell phone. He did not undertake any propagation chart analysis, scan tests or drive tests, with the exception of a casual cell phone drive test.

Referring to April 2009 testimony, A-2 and Mr. Graiff's reference to the ordinance checklist item #3 where he indicated that actual data had not been provided, Mr. Schneider, Esq. questioned whether he had a difference of opinion after Mr. Pierson's testimony at the July 2009 meeting. He did not. He did not agree that A-2 provided existing signal strength. Continuing with whether he had occasion to accept propagation charts as an independent expert, Mr. Graiff clarified stating that he did only when they are verified by drive tests. In terms of whether he had accepted propagation charts in the Borough of Kinnelon without drive tests, Mr. Graiff stated that he reviewed two or three applications in Kinnelon and for the last application, he did not accept Mr. Pierson's propagation. He then submitted drive tests and they found discrepancies between the drive tests and the propagations. He did not remember about the other applications. Board reserved the right to request that Mr. Graiff check the records and find out.

Responding to Mr. Simon, Esq. on whether the applicant had accounted for coverage from other sites in its network as relates to this application, Mr. Graiff stated that he does not see propagations from other site on the maps. After reference by Mr. Schneider to data that had been submitted as DT-3A with Exhibit A-21, Mr. Graiff stated that he only saw a letter-sized copy. There was no large exhibit submitted for Verizon, only Omnipoint. Upon review of DT-3A, Mr. Graiff stated that it shows the calculated service contours of the Confer Drive site and those of the St. John's site. It shows drive tests. He clarified his statement on lack of coverage data provided to indicate that his testimony was given in April 2009 and the exhibit was provided in June. The data provided still does not show the sites from Bernardsville or Mount Freedom.

Mr. Schneider, Esq. addressed a series of questions on the Borough wireless telecommunications ordinance to Mr. Graiff. In terms of whether the use is permitted, conditionally permitted or prohibited, Mr. Graiff replied that he is radiofrequency consulting engineer. He reviewed the ordinance to determine what the radiofrequency issues were with respect to coverage requirements, siting requirements and priority requirements. He would not know the differences in variances.

Messrs. Schneider Esq. and Graiff reviewed the siting priorities. In terms of existing structures and transmission lines that would permit the applicant to meet its technical objectives, Mr. Graiff stated that there is an existing switchyard almost across the street from the Kings Shopping Center that has transmission lines. He did not know whether the property is available and in what zone it was located. There are some other electric transmission towers up and down Route 24 that with DAS could meet the technical objectives. Mr. Schneider, Esq. advised that he would address DAS later.

Addressing the police station, Mr. Graiff did not understand whether the police station was made available by the Borough of Mendham, but he did understand that the applicant has acknowledged that the site meets its technical objectives. He did not know whether the applicant has the right to enter into a lease with the Borough of Mendham, or whether the Borough has

made the site available. The fire station is also municipally owned and he has read the testimony of Mr. Pierson and Dr. Eisenstein in that regard.

Redirect-examination of Mr. Graiff was conducted by Mr. Simon, Esq. In terms of dropped call information, Mr. Graiff recommended that the Board be very careful what they ask for and how they ask that it be presented. A call can be dropped because it failed on the outbound link, an inbound call or a dropped call. The dropped call is when the phone is working fine, but there is no where to hand off the call and so it drops. One needs to be careful not to get a stack of paper with data that does not provide what is needed. Where the call is dropped from is critical.

Referring to his casual cell phone drive test, Mr. Graiff reviewed that he carried calls through the gaps. He did not get cut off. In response to further questioning he stated that in the presentation of the applications the calculated coverage and the drive test results are on maps that are not the same in detail or in scale as those used in the original presentation to the Board. There are varying scales making it difficult for comparison and a lot of assumptions must be made.

Mr. Graiff continued with his analysis of DT-2A, T-Mobile drive test versus the T-Mobile calculated. He explained his analysis indicating that his opinion is that the model understates the coverage. He continued that when he overlays the proposal (Exhibit A-1), there are still huge gaps. He questioned whether the site as proposed is the right approach and whether it settles all the problems and issues facing the Borough with respect to coverage. He questioned where they talk about the alternative.

Referring to DT-3A, Verizon's baseline existing coverage and baseline data, he expressed that he has the same concerns related to scale and the difficulty with comparisons. Utilizing A-3 he did some comparisons to the drive test. The proposal does not fill in any of Hilltop and there is a half mile gap. He also referred to the fire station and indicated a site there would fill in Hilltop and the gap along route 24. The firehouse propagation is at 97 ft., but the model is not good until more than 97 feet. The shopping center was done at 120 ft. He questioned why the alternatives were not evaluated at the same height.

Referring to his understanding of how the coverage was calculated and measured in DT-2 and DT-3A, Mr. Graiff explained that in DT-3A the pilot power specified in Exhibit A-2 is utilized in the computer program to calculate the propagation maps. The system is drive tested at the alleged pilot powers that are specified in the application. The pilot carrier uses 2.5 watts. Explaining what this meant, Mr. Graiff stated that in the CDMA system talking takes place on a set of CDMA carriers. A pilot signal is transmitted that locks the phone in synchronicity with not only the server site that is being used, but the neighbor sites. In a CDMA system the phone is talking to three different sites at one time. Pilot determines the coverage of the carrier's cell site. The stronger the pilot, the bigger the coverage and the weaker the pilot, the smaller the coverage.

Referring back to Exhibit A-2, he noted the references to the pilot power at 2.5 watts, ERP (effective radiated power), and dbm. For St. John's the CDMA power is indicated at 46.1 dbm, ERP is 40.74 watts, and the pilot power is 2.5 watts. For Conifer it is also 40.74 watts with pilot power of 2.5 watts. In Kings the ERP is 53.7 watts and the pilot power is 2.5 watts. In every application he has reviewed, the pilot power is 15% of the carrier power. This would be St John's at 6.11 watts, Conifer at 6.11 watts and 8.06 watts for Kings. The calculated and the drive tests, because of the lower pilot level, do not reflect what could be there or may be there because of the difference.

Board took a five minute break.

Continuing testimony on the power levels, Mr. Graiff agreed that there could be a 5 db difference with negative 84 dbm being negative 79 dbm. etc. He also referenced that Mr. Pierson's previous testimony indicated that a greater than 2 db difference is significant. In his opinion, the difference is significant. Continuing he stated that Verizon has issued papers indicating where cell sites are overloaded. They decrease the cell size by decreasing the pilot carrier. They may go to 10%, but they never drop it below 5 %. Here the pilot powers are less than 5 percent. If the site is not a capacity cell site, but a coverage cell site, there is no reason to reduce the pilot power. His opinion is that the reduced pilot power utilized in both the existing and the proposed sites as depicted has a significant impact on either or both the calculated coverage presented and the drive test results.

Responding to Mr. Simon, Esq. on his knowledge of the 700 megahertz system and when it may go live, Mr. Graiff stated that the 700 spectrum was formally analog, not digital. With the reallocation of TV and the changing to digital, spectrum in the 700 megahertz range has been made available. It propagates better than 850 megahertz. He had reviewed an application in Blooming Grove two weeks ago in which they are putting 850 and 1950 in one antenna in the top

of a flagless flagpole. Three feet, not 10 ft., beneath it they are putting 700 megahertz antennas. The application should be approved. In response to the Chair's question on the what representations were made on when it would be up and running, Mr. Graiff stated that the representation by the carrier at the hearing was that they would be doing something within a year. It was not stated as to whether it would be voice or broadband.

Mr. Graiff confirmed for Mr. Simon, Esq. that he had read the Conifer Drive transcripts. His review revealed that there were a lot of alternate sites reviewed, close to 20. For this application, he only saw one alternate site propagated at 97 ft. He did not see any type of drive test or alternate analysis of different heights or system modifications for either that site or the existing sites.

In terms of whether there are any FCC rules or other laws that have specified a minimum signal level standard that the carrier must provide to its customers, Mr. Graiff stated there was not. He explained an application that he was reviewing for a Metro PC CDMA system and indicated that they require in-vehicle strength of minus 88 dbm, 4 db weaker than Verizon for the same system. Responding to Mr. Simon's question on whether reliable coverage could conceivably be provided at 90 dbm as to not prohibit or having the effect of prohibiting coverage, Mr. Graiff referenced examples raised during the hearing and strength at the Garabrant Center. He stated that if coverage is reliable time will tell. If there are complaints, then something needs to be done.

Continuing with a response to Mr. Simon, Esq. on reliability at 850 megahertz, Mr. Graiff stated that 850 propagations would show seamless coverage. Based on the Conifer Drive transcripts, it was testified to by the engineer that there would be seamless coverage even with 3G, today's technology.

Responding to Mr. Simon's, Esq. line of questioning Mr. Graiff agreed that the applicant has not demonstrated that the proposed facility is necessary to avoid prohibiting, or having the effect of prohibiting wireless telecommunications services. The applicant has not demonstrated based on his review either a significant gap in coverage or a significant lack of reasonable reliable service for remote users. In his review of other application on behalf of a Board he was provided with information above and beyond that which was provided to this Board for study and analysis in connection with the proposed cell tower application. For the last Verizon application he reviewed, he was provided analysis for four alternate sites. Based on his evaluation he cannot conclude that a new cell tower is needed, and if one was needed, the Kings Shopping Center does not appear to be the number one priority. There has not been credible evidence presented to demonstrate that there is a significant gap in coverage for either Verizon or Omnipoint. He is not convinced that all the gaps in Mendham Borough will be filled. He has not heard any testimony as relates to efforts to investigate alternate technologies and alternate sites. He does not believe that the Board can make a critical analysis of the need for this site to construct a monopole in this location as they do not have sufficient information.

On recross-examination of Mr. Graiff, Mr. Schneider, Esq. clarified with Mr. Graiff that he did not understand why Mr. Pierson did not do a Verizon test in June 2009 similar to that which he conducted for Omnipoint. He did not know if Mr. Pierson conducted the same test for Verizon in March of 2008 as the map reads May 2008.

Responding to technical questions by Mr. Schneider, Esq, Mr. Graiff stated that the transmit power of a 1900 CDMA transmitter could be as much as 400 watts per channel. The actual transmitting power is 46.1 dbm. The power output for the Lucent transmitter power is 33.98.

Board requested that Dr. Eisenstein be consulted on the best way to obtain dropped call data. They requested that Mr. Ferriero request the information. Dr. Eisenstein can then have a conversation with Mr. Pierson as needed. Mr. Schneider, Esq. agreed that they could speak with Dr. Eisenstein, but he may have an opinion on relevancy. Mr. Palestina requested that regardless of the relevancy they would like to see a report.

The Board questioned why the Borough sites were not available and requested an explanation. from the Mayor and the Council. He expressed his opinion that there were other available sites beside Kings if the Board decides a tower is necessary. Mr. MacDonald, Esq. advised that when Mr. Schneider, Esq. clarifies the evidence he has already presented, the Board can review the evidence.

Mr. Schneider, Esq. clarified for the Board that in May 2008 right after the ordinance went into effect, he wrote Ellen Sandman and inquired whether there would be any municipal facilities made available. There was then a series of correspondences. The Borough did request that we look at the fire department property. The applicant looked at the property and it did not meet its immediate technical objectives. That conclusion was agreed to by Dr. Eisenstein. Mr. Semrau's

letter of September 11, 2008 closes out the matter and indicates that the Borough does not have any further suitable sites that could be suggested as an alternate to the application.

Mr. Simon, Esq. stated that there are two issues. The first one is that the correspondence was about a year and a half ago. The second issue is that the applicant, in its correspondence of May 8, 2008 is requesting a location 500 ft to the north-south, south, east and west. It is his opinion that the ordinance does not necessarily specify a 500 ft. limitation. The proposed site in the eastern business district is the seventh priority.

Mr. Schneider, Esq. clarified that the 500 foot was an approximate distance as to the applicants' search area. The Borough would have offered a site if it were a distance further. The correspondence with the Borough continued into the fall of 2008. The case has been pending. A year and a half into the case, the Borough did not make any properties available then and they have not made any available now. The only way the applicant could enter into any agreement with the Borough of Mendham is by public bid pursuant to the local land and buildings law. The applicant addressed the siting priorities of the ordinance. The applicant has no ability to control or compel the Borough of Mendham to make any available properties. If the Board members or the public would like to make inquiry to the Borough on sites, they are free to do so.

Mr. Simon, Esq. stated it might be wise to consider making that re-inquiry. Even if this application is approved for Kings, there may be another for the southern section of town.

Mr. Pierson was recalled by Mr. Schneider, Esq. to address Mr. Graiff's testimony. Mr. Pierson explained that he has been designing sites with Lucent/AT&T equipment for 15 years. He has been doing PCS 1900 megahertz designs since 1999 with the exact equipment that Verizon is using. The transmitter puts out 16 watts from the cabinet: 2.5 watts divided by 16 is .156 – 15%. He did not understand how Mr. Graiff arrived at his numbers. Mr. Graiff later clarified his numbers as having been taken from Exhibit A-2.

Chair opened the meet to public questions of the expert witnesses.

Jennifer Jones, 20 Drake Road clarified with Mr. Graiff that he had expressed that there were not significant gaps in the Borough. She stated that Sprint, Verizon and T-Mobile do not work in her home. Mr. Graiff utilized Exhibit A-3 and stated that the firehouse covers it and the proposal covers it. Mr. Palestina stated that he also lives in that area and he works from home and makes many calls during the day from his cell phone. The maps show he lives in an area with the blackest coverage.

Addressing Ms. Jones question on redirection and or increasing power of existing towers, Mr. Graiff stated that he does not know why they are not doing that. After redirect of the question to Mr. Pierson, he stated that Mr. Graiff is incorrect. There is a balance between how much power a site transmits and the cell phone that needs to talk back to the site. Increasing power on one side does not necessarily help. Two-way communication is needed.

Responding to Ms. Jones as to whether the Board is in agreement that a cell tower is needed, Chair Santo stated that they are not in agreement on anything yet.

Addressing Mr. Palestina's question on whether newer technology improves the return transmission for Verizon, Mr. Pierson responded that in most situations with the technologies that Verizon is using now, there would not be much of a difference because there is traffic on both their systems. If there were a brand new system, it might work better for a while until it gets loaded and then it will return to a norm situation.

Mr. Bruce Jones, 20 Drake Road stated that he has an office at 5 Cold Hill Road in the Jockey Hollow Park. Responding to Mr. Jones on whether the Kings Shopping Center is the only location that would improve the service in the Mendham area, Mr. Pierson replied that the gap is primarily in the downtown, the intersection of Mendham Road and Cold Hill. The terrain is low there with hills on both sides. Jockey Hollow Park would be serviced by a new tower. The search area is 500 feet around the Kings property.

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

Chair announced that planning testimony would begin at the November 4 meeting. Mr. MacDonald, Esq. clarified for the public that the meeting will be Wednesday, November 4. Board requested that Ms. Callahan advertise for a special meeting on Tuesday, November 17 in case it is needed.

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Rice, Michael – Hardship Variance: Resolution

Block 403, Lot 21, 56 Mountain Avenue

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

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

WHEREAS, MICHAEL E. RICE, has applied to the Board of Adjustment of the Borough of Mendham for permission to construct an addition to the existing single family dwelling located at 56 Mountain Avenue also known as Lot 21 in Block 403 on the Tax Map of the Borough of Mendham, which premises are in the 1/4 Acre Residence Zone; 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 September 1, 2009, has made the following factual findings:

1. The applicant purchased the subject property in September 2004 according to the application materials and the copy of his Deed submitted therewith. The lot is located on the westerly side of Mountain Avenue, with 120 feet of frontage on the street and extending to a depth of 100 feet on the southerly side and 100 feet on the northerly side from the edge of the right of way.
2. The property is currently improved with a one (1) story single family dwelling and related accessory structures, including a driveway, an attached one car garage, an attached rear porch and a concrete patio. The applicants presented, and the Board reviewed, a copy of a Survey of the PQ dated 8/20/04 prepared by Benjamin and Wizorek, Inc., Land Surveying.
3. The applicant's existing and proposed improvements were shown on the 4 page Variance/Architectural/Floor Plan dated 6/1/09 prepared by, and described at the Public Hearing by, William P. Byrne, Architect of Byrne Design Associates.
4. The Impervious Coverage of the Existing and Proposed Improvements as defined in Section 215-31.1 H. of the Mendham Code after the proposed additions would appear to exceed the allowable limitation according to the Zoning Officer Denial dated 6/22/09. 3,378 sq. ft. of coverage is permitted and 3,723 sq. ft. of coverage is proposed. Thus, a C-Variance is required and has been requested.
5. The existing and proposed structures also result in the need for a C- Variance related to Section 215-31.1 I of the Mendham Code which sets forth the limitations on the maximum principal and accessory Building Coverage. The applicant's existing and proposed coverage would appear to exceed the permitted maximum according to the Zoning Officer Denial dated 6/22/09. 1,982 sq. ft. of coverage is permitted and 2,613 sq. ft. of coverage is proposed.
6. The Exhibits and the testimony indicate that a significant portion of the concrete patio in the rear of the property will be removed and the total area of the paved driveway will be diminished as well.
7. The Board and the applicant discussed the applicant's current and proposed improvements on the lot and the drainage characteristics of the property. The applicant and Mr. Byrne also explained the specific characteristics of the House, the Lot size and the proximity of the neighboring houses and the lack of any significant visibility or "massing" issues resulting from the proposed house and additions.
8. The Board considered the comments of the Borough Engineer in connection with certain aspects of the drainage and sewer gallowage for the fourth bedroom.
9. The Board received and reviewed the Borough Engineer's Report of July 15, 2009 and in consultation with the Engineer, the Board deemed the application complete and waived certain completeness details based upon the Borough Engineer's comments.
10. The Board and the applicant discussed the Board's continuing concern that the proposed House and the Accessory Structures not be expanded or enlarged in the future due to the impact on the impervious coverage and the necessity to install a drywell to help the property drainage.
11. One member of the public participated in this application hearing and she spoke in favor of the applicant's plans.

WHEREAS, the Board has determined that the C-Variance relief for Total Impervious Coverage and Total Principal and Accessory Building Coverage 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 impact of the placement and configuration of the pre-existing structures on the Lot and that the coverage limitations have been exceeded in an effort to construct a reasonably sized addition. Based upon the evidence presented, the Board is satisfied that the strict enforcement of the current Total Impervious Coverage and Total Building Coverage limitations would result in an unnecessary and undue hardship to the owner and it would unreasonably restrict the use of this parcel by precluding a modestly sized addition.
2. The Board is satisfied from the evidence presented at the Public Hearing that the proposed additions including the Garage will not result in any significant detrimental impact to the surrounding properties, nor to the public good. The Board is satisfied that the proposed building footprints and coverage will not have any adverse storm water management impact and there will be no unusual visual or storm water runoff impact on any of the surrounding residences based upon compliance with the recommendations of the Borough Engineer.
3. The Board is satisfied from the evidence presented at the Public Hearing that the proposed additions, including the Garage will not result in any significant detrimental impact to the Borough Zone Plan for this 1/4 Acre Residence Zone due to the fact that the additional improvements will not cause any additional storm water runoff to the neighbors' properties and the proposed home will be in keeping with the neighborhood characteristics.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 6th day of October, 2009, that the application of MICHAEL E. RICE which was approved on September 1, 2009, be memorialized herein, subject however, to the following conditions:

1. The Home Additions approved herein shall be constructed in conformance with the testimony and in conformance with the Exhibits revised through 6/1/09 that were provided to the Board with the application materials and described during the Public Hearing, including the REMOVAL of a portion of the Driveway and rear Patio.
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; and, submittal of a Footing and Foundation "AS BUILT" Survey prior to issuance of a Framing Permit.
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 specifically conditioned upon there being no enlargement or expansion of the Impervious Coverage/Building Coverage, nor the addition of a Second Floor without additional review and approvals; and, submittal of a Plan describing the proposed Stormwater Management Structures and techniques in a form that is satisfactory to the Borough Engineer.

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

The result of the roll call was 4 to 0 as follows:

In Favor: Palestina, Schumacher, Smith, Seavey
 Opposed: None
 Abstentions: None

The motion carried. The resolution was approved.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Santo adjourned the meeting at 10:40 p.m. The next regular meeting of the Board of Adjustment is Wednesday, November 4, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
 Recording Secretary

