

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
December 1, 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 7:45 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. Denzler, Planner
Mr. Hansen, Engineer
Dr. Eisenstein, Telecommunications Consultant

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.

Chair Santo noted that there was additional public in the audience for the cell tower application. He summarized that the application has been before the Board for almost two years now and there has been much factual testimony offered. The Board is a quasi-judicial board that will make a ruling based on the evidence presented both for and against the tower. He noted the concern of the community. He requested that the public have confidence in the process and the responsibilities that the Board bears on behalf of the community.

APPROVAL OF MINUTES

On motion by Mr. Seavey, seconded by Mr. Palestina and carried, the minutes of the special meeting of November 17, 2009 were approved as written.

Chair announced that he would continue in 2010 as a member of the Board until the completion of the Omnipoint case. A new Chair would be elected. He would be recusing from any other cases.

HEARINGS

Fasano, Jean – Extension to previously approved Minor Subdivision and Variances: **Resolution**

Block 2301, Lot 2, 175-179 Cherry Lane

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

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

WHEREAS, **JEAN FASANO** has applied to the Board of Adjustment of the Borough of Mendham for Use Variance Approval, a Minor Subdivision and certain C Variances related to her below described property fronting on Cherry Lane and currently depicted as Lot 2 in Block 2301 on the Tax Map of the Borough of Mendham, all of said Lot being in the 5 Acre Residential 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 duly noticed Public Hearings on June 4, 2008, August 5, 2008, September 3, 2008, October 7, 2008, November 5, 2008 and December 2, 2008 determined that the Use Variance, Minor Subdivision and incidental C Variance relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent or the purposes of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the Reasons stated in the Board's Resolution dated and adopted on the 2nd day of December 2008, subject however, to the **Conditions** stated therein; and,

WHEREAS, the Applicant has advised the Board through counsel that additional time was required in order to perfect the Subdivision through the filing of a Filed Map as requested by this Board; and,

WHEREAS, the Board has reviewed the request for an extension of time to perfect the subdivision with the Borough Engineer and the Board Attorney and determined at its October 6, 2009 regular meeting that there are no factual or legal reasons to deny said request,

NOW THEREFORE, THE BOARD hereby grants a six (6) month extension of time to the Applicant for purposes of perfecting the previously approved minor subdivision. No other Conditions of the December 2, 2008 Resolution are modified by this extension approval.

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

ROLL CALL: The result of the roll call of eligible voters was 5 to 0 as follows:

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

The motion carried. The resolution was approved.

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Skuraton, James & Susan – Hardship Variance: Completeness Review

Block 304, Lot 9, 8 Aster Terrace

Present: Susan Skuraton, Applicant
James Skuraton, Applicant

Mr. Hansen led the Board through the Completeness Review referring to the Ferriero letter dated November 9, 2009. There were several items that were not completed. Mr. Hansen recommended that in order for the Board to make an informed decision they would require at a minimum (1) structures located within 100 ft., (2) Architectural data and external finishes, and (3) a signed and sealed survey with improvements that exist today. Other items could be worked through at the hearing.

Responding to Mr. Seavey on whether they wanted to proceed with the hearing before obtaining a NJDEP permit, the Skuraton's advised that they would go forward.

Mr. MacDonald, Esq. advised that the application is still incomplete and would remain so until the deficiencies are satisfied. The information would need to be provided before the public hearing could take place. Ms. Callahan advised that a formal letter advising the applicant of the requirements and the timing would be forwarded to them.

Mr. Seavey made a motion deeming the application incomplete based on the Ferriero letter dated November 9, 2009. Mr. Santo seconded.

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

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

The motion carried. The application is incomplete, pending the deficient information required.

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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: Steven Tombalakin, Esq. – Attorney for Applicant
Robert Simon, Esq. – Attorney for Mr. Isko
George Ritter – Planner for Mr. Isko

As Mr. Santo had been absent from the November 17, 2009 special meeting, Mr. Seavey summarized status for the hearing. He stated that Mr. Ritter had presented testimony and cross examination had begun. Ms. Kaplan was to continue.

Mr. MacDonald, Esq. advised that Ms. Kaplan had contacted him and indicated that as a result of some ongoing health problems that she did not have adequate time to prepare and asked not to proceed. He is discussing with her the possibility of filing a written memorandum of her questions and opinions so as not to delay the hearing. Chair was adamant that hearing not be delayed and that Ms. Kaplan provide cross in written format. Mr. MacDonald, Esq. would discuss the Board concerns with Ms. Kaplan.

As Mr. Schneider, Esq. was not present, Board agreed to carry his cross-examination of Mr. Ritter to the January 2010 meeting.

Cross commenced with Dr. Eisenstein questioning Mr. Ritter on his November 4 testimony relating to radio frequency issues. Responding to Dr. Eisenstein's line of questioning on whether as a planner it was his understanding that the function of a cellular facility is to serve the Borough in which it is located, Mr. Ritter stated "no". He clarified that he was referring to the Borough Master Plan where there is a comment to the effect that cellular towers were to be designed to primarily serve the Borough. He continued that if they are putting a tower in the town that he would assume it is to serve the area within which it is located. In terms of how people would obtain service if they drive through the town, Mr. Ritter stated that they would turn the phone on and hope there is service. If there is not, there is a gap in service. In terms of his statement related to changing providers to obtain service and how a visitor to Mendham would know which carrier to use, Mr. Ritter stated that the visitor would not know.

Responding to Dr. Eisenstein's question on his testimony relating to Mr. Graiff's testimony on overlapping coverage, Mr. Ritter explained that the coverage edge could vary between data categories. The edge condition might be better or worse than what is being expressed in the model. If it were in one area it might be considered to be substandard, but if it was in the other category it might be considered to be adequate. Responding to Dr. Eisenstein on whether a differential of 50 ft. would make a difference in a gap area of three quarters of a mile, Mr. Ritter stated that it would not be important in terms of proportion.

Addressing Dr. Eisenstein's inquiry on what he remembered about Mr. Graiff's testimony related to different scales for the coverage maps, Mr. Ritter explained that the propagation maps were at different scales and it was difficult to compare the maps and the overlap to get a sense of whether there was a gap in service and its magnitude. He was under the impression that the actual scales of the maps were different.

In testimony Mr. Ritter had stated that he had two or three bars on his phone at the shopping center. Responding to Dr. Eisenstein on his carrier, he indicated that it was Verizon. He did not know if T-Mobile has a gap. He was commenting based on his practical experience.

Chair opened the meeting to questions of Mr. Ritter by the public.

Mr. Dan Pierson, 23 Dean Road questioned Mr. Ritter's testimony on the shopping center as being the worse location for the cell tower from a visibility standpoint. Mr. Ritter clarified that he thought the present location was probably one of the most visible places it could be put. The intent is usually to attempt to make them as discreet as possible with the least visual impact to the public and the neighbors. In terms of Mr. Pierson reference to towers as attractive nuisances, Mr. Ritter stated that the odds of them being attractive nuisances is not an issue in terms of drawing people around them. For the towers that he has worked on, the major concern was to make sure that they were adequately buffered and sited in a way that they had the least impact on the neighbors. They have been by office buildings or cornfields and may have been located toward high traffic areas such as interstates where there is a large volume of people. The people are not living next door to it and dealing with it on a day-to-day basis. One of the primary locating factors in terms of a community is how it fits within the existing community structure in the

neighborhood. It is a balancing act. He expressed his opinion that there are better locations in the general area and within the site.

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

Mr. MacDonald, Esq. and Ms. Kaplan agreed to discuss how to proceed with her questioning before the January meeting.

Mr. Tombalakin, Esq. agreed to an extension of time until the day after the next hearing. Hearing will be continued at the January 5, 2010 meeting of the Board.

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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 8:40 p.m. The next regular meeting of the Board of Adjustment is Tuesday, January 5, 2010 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ. This is the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary