

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
June 6, 2012  
Garabrant Center, 4 Wilson St., Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Board of Adjustment was called to order by 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 and the Daily Record on January 12, 2012 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ROLL CALL**

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

Mr. Smith – Present  
Mr. Ritger, - Present  
Mr. McCarthy, Alt I – Present  
Mr. Germinario, Alt II - Absent

Also Present:

Mr. Germinario, Esq., Attorney  
Mr. Hansen, Engineer  
Mr. McGroarty, Planner

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**APPROVAL OF MINUTES**

Mr. Ritger made a motion to approve the minutes of the May 1, 2012 regular meeting of the Board as written. Mr. Smith seconded. All members being in favor, the minutes were approved.

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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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**COMPLETENESS REVIEW**

**Zenjon Enterprises, LLC** – Amended preliminary and final major site plan and variances  
Block 1501, Lot 11, 25 East Main St. (Historic District)

Present: R. Simon, Esq., Attorney for the Applicant  
J. Krasney, Applicant  
L. Appel, Architect for the Applicant

Mr. Simon, Esq. advised the Board that they had submitted to Morris County and that sewer application had been approved.

Mr. Hansen advised the Board that it was his recommendation that the application be deemed complete. There were no further comments from the Board.

Mr. Smith made a motion to deem the application complete. Mr. Schumacher seconded.

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

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

The motion carried. The Board Secretary will confirm the hearing date with the applicant.

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## HEARING OF CASES

**5 Hilltop Holdings, LLC** – Use of third floor for commercial use: **Resolution**  
Block 1902, Lot 21, 5 Hilltop Road (Historic Business District/Historic District)

Present: Richard L. Wade, Esq. -Attorney for the Applicant

Mr. Germinario, Esq. presented a revised resolution that had been presented to the Board at the meeting. As the Historic Preservation Commission had reviewed the plans and requested a change to the side windows, the applicant was requesting the plans with the changes be reviewed by the Board Engineer so that they did not have to return to the full Board. The Board of Adjustment had been provided with a copy of the Commission's report.

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

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

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

The motion carried. Following is the approved resolution:

### **BOROUGH OF MENDHAM BOARD OF ADJUSTMENT RESOLUTION OF MEMORIALIZATION**

**Decided: May 1, 2012**  
**Memorialized: June 6, 2012**

#### **IN THE MATTER OF 5 HILLTOP HOLDINGS, LLC “D” VARIANCE AND SITE PLAN WAIVER APPLICATION BLOCK 1902, LOT 21**

**WHEREAS**, 5 Hilltop Holdings, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70d (hereinafter the "Variance") and a site plan waiver by application dated 5/23/11; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 5/1/12; 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 22,648 sq. ft. (.6 acres) located in the Historic Business District at address 5 Hilltop Road. The property is improved with a 3,830 sq. ft. historic building, of which the ground floor (2,252 sq. ft.) is currently occupied by a retail furniture business, and the second floor (1,578 sq. ft.) is occupied by Nickelfish, a business which provides internet design services. Nickelfish has 25 employees, of which 15 are typically onsite each day. The graveled parking area in the rear of the building has 21 available spaces and is accessed by a driveway on the southerly side of the building.

2. The Applicant proposes to convert the third floor of the building (715 sq. ft.), which is currently vacant attic storage space, into a conference room for the Nickelfish business. Since Ordinance §215-18B provides: "No business entity shall occupy any floor above the second story of a historic building," the proposed use is not permitted and requires a use variance

pursuant to N.J.S.A. 40:55D-70d(1). Alterations to this historic building also require approval of the Borough's Historic Preservation Commission.

3. The Applicant initially submitted site plan and architectural drawings prepared by American Associates, dated 10/31/07, revised through 5/29/08, and architectural elevations and floor plans prepared by Peter Dorne, AIA (undated). In response to input from the Borough Fire Official Craig Bellamy, the plans have been modified, as depicted in Exhibits A-1, A-2 and A-4 presented during the testimony of Peter Gorn. The revised plans provide for a third-floor dormer with a large casement egress window and the designation of the access driveway as a fire lane, with the installation of two "No Parking Fire Lane" signs enforceable by the Borough Police and Fire Official. In response to the Fire Official's input, the Applicant has also agreed to install an automatic early detection fire system monitored 24/7 by a central station.

4. The Borough Engineer Paul Ferriero, PE, CME, submitted a report dated 3/14/2012. Recommendations from the Borough Fire Official Craig Bellamy were received by e-mails dated 3/31/12 and 4/25/12.

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

- A-1 Revised Architectural Front, Rear and Side Elevations, Sheet A1.0
- A-2 Revised Site Survey, Sheet A1.2
- A-3 "No Parking Fire Zone" sign
- A-4 Revised Architectural Floor Plans, Sheet A1.1
- A-5 3 pages of photographs depicting the subject property and neighboring properties

6. In the course of the public hearing, the Applicant was represented by Richard L. Wade, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

- Peter Dorne, Architect
- Justin Marcucci, Applicant's principal
- John McDonough, PP, professional planner

7. Mr. Marcucci testified that his Nickelfish business moved into the subject premises in 2010 and has experienced growth, serving numerous local businesses including Fortune 500 companies. Meetings with clients to plan projects currently are conducted in a small room which doubles as a lunch room. He proposes to divide the third floor space into a large conference room accommodating 10 to 12 people for client meetings and a smaller private meeting space, with the two areas separated by sliding glass doors. A full 36" wide staircase accesses the third floor, which can only be accessed through the second floor office space. Mr. Marcucci affirmed that the Applicant would use the third floor space for conference room meeting purposes only and not for general office use. He also confirmed that the Applicant would diligently enforce the fire lane parking prohibition. He foresaw no increased parking demand associated with the proposed use. In response to a suggestion by Board Vice-Chairman Peck, Mr. Marcucci agreed that the conference room projection panel would be screened so as not to be visible from the building exterior.

8. Mr. McDonough testified that third floor occupancies already exist in neighboring properties and are not contrary to the character of the area. Addressing the positive criteria for a use variance, he testified that the purposes of the Municipal Land Use Law would be advanced insofar as enhancement of a local business enterprise promotes the general welfare, the absence of any change to streetscape view of the property promotes a desirable visual environment, and the adaptive use of this historic building space promotes a more efficient use of land. He noted that the third floor space is particularly suited to the proposed conference room use, and the access stairway is also a feature of particular suitability. As to the negative criteria, Mr. McDonough testified that there is no adverse effect on the neighborhood character and no public safety problems, since the Fire Official's concerns have been addressed. The preservation of the building's historic character is also in keeping with Master Plan objectives for the Historic Business District.

The Board's Planner, Chuck McGroarty, concurred in Mr. McDonough's analysis, and further observed that the proposed limited business use as a conference room is comparable in intensity level to a residential use of the space, which is permitted.

9. Fire Official Craig Bellamy testified that he was satisfied by the plan revisions made by the Applicant in response to his concerns. The expanded dormered access window can be reached by a ladder from the shed roof below, and in an emergency a person can hang from the window and drop down on the roof. By creating a fire lane in the access driveway, the Board will make the parking restriction enforceable by both the Fire Official and the Police Department pursuant to Borough Ordinance Chapter 106. The installation of an automatic fire detection system provides for early warning of a fire when the space is unoccupied and reduces risk to an acceptable level.

10. The Board finds that the positive and negative criteria for the granting of a use variance pursuant to N.J.S.A. 40:55D-70d(1) have been satisfied in this case.

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 site plan waiver application and grant the Use Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(1).

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 requiring Variance relief.

1. The third floor space shall be used only as a conference room associated with the business occupying the second floor of the building, and shall in no event be used for general office purposes.

2. The revised architectural and site plans submitted as Exhibits A-1, A-2 and A-4 shall be implemented in lieu of the plans originally submitted, including without limitation the enlarged dormered access window and fire lane designation of the access driveway. All architectural modifications, including the new access window, shall be approved by the Borough Historic Preservation Commission. In the event that the review of the access window by the Historic Preservation Commission results in minor architectural modifications, such modifications shall be depicted on revised plans and shall be reviewed and approved by the Borough Fire Official and the Board Engineer.

3. The existing southerly access driveway is designated as a Fire Lane, with "No Parking Fire Lane" signs to be installed as designated on the revised site plan. Enforcement of the fire lane parking restrictions shall be enforceable by the Borough Police and Fire Official under Ordinance Chapter 106.

4. An automatic early fire detection system continuously monitored from an offsite central station shall be provided for the entire building.

5. Low level lighting shall be provided in the rear of the building as required by the Borough Engineer. New lighting fixtures shall be approved by the Historic Preservation Commission. Applicant's professionals shall meet with the Borough Engineer and prepare a site lighting plan. This plan shall be reviewed and approved by the Borough Engineer prior to signing the Variance Plans. Prior to issuance of a Certificate of Occupancy, all approved lighting shall be installed and operational.

6. Pavement markings at the driveway apron (arrows and stop bar) shall be re-established in accordance with MUTCD standards prior to issuance of a certificate of occupancy for the third floor.

7. Any projection panel or monitor installed in the third floor conference room shall be screened so as not to be visible from the building exterior.

8. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits.

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

10. 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.

11. 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 May 1, 2012.

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**Ingersoll, Deborah** – Use Variance and Hardship Variances  
Block 305, Lot 11, 63 West Main St. (Historic District)

Present: Deborah Ingersoll, Applicant  
Brent Ingersoll, Applicant  
Thomas Malman, Esq., Attorney for the Applicant  
Craig Villa, Engineer for the Applicant  
Kimberly Tone, Architect for the Applicant  
David Zimmerman, Planner for the Applicant

Exhibits: A-1: Photo Board  
A-2: Color Rendering of Landscape Plan dated 2/8/11  
A-3: Existing Conditions 1-28-11

- A-4: Existing Exterior Elevations
- A-5: Existing Side Elevation
- A-6: First Floor Plan as proposed to be modified
- A-7: Second Floor Plan as proposed to be modified
- A-8: Proposed Street Side
- A-9: Driveway Side Elevation
- A-10: Barn/Garage Floor Plan
- A-11: Elevations of Barn/Garage
- A-12: House and Front Yard Area of subject property
- A-13: Properties to the West and the East
- A-14: Aerial Photograph and 3 studies
- A-15: Barn on Lot 84
- A-16: Photo Board: Visibility East and West

Mr. Malman, Esq. stated that the property is located on Main Street and the applicant is seeking a D1 use variance for a business not permitted in the residential zone. The applicant is also seeking variances for building and lot coverage and front yard setback. They have been to the Historic Preservation Commission and the addition is compatible. Morris County will require a dedication in the deed. The Soil Conservation District has issued a report, and they have seen the reports from the Board Planner and Engineer.

Mr. Germinario, Esq. advised that he had reviewed the public notices and the Board has jurisdiction to proceed.

Mr. Ingersoll testified that they moved to Mendham Borough from Mendham Township in 2004. After moving they started Phase I of their renovations by building an in-law suite for his mother and father after receiving a use variance from the Board of Adjustment. They began that construction in 2006 adding the new section to the old home, and in March 2007 his parents occupied the space. They did a second renovation in 2009/2010 and no variance was required. They are now in the third phase.

Continuing, Mr. Ingersoll explained that they are builders in the Summit/Short Hills area and 75% of their work is for the renovation of old homes. Their home is from the mid to late 1800s, with the front of the structure being the oldest part of the home. The center front is the original home, but it had been renovated about 15 years ago. Mrs. Ingersoll entered Exhibit A-1 with photos of their home when it was purchased in 2002, the existing home, and surrounding homes.

Mr. Ingersoll explained that when they started the process, the original intent was to renovate, but they have dry rot, and if it is taken apart, it will fall apart. The electrical is located in the right single story portion, and the basement fills with 1-2 ft. of water every storm. They want to remove the front oldest portion of the home and replace it with new construction.

Describing the internal layout of the home today, he stated that there is a dining room, his office to the front left, and his wife's office to the front right. There are two rooms above for the "ladies" (this term was later clarified to mean the two bookkeepers for the business). When they renovate, they will convert the upstairs to one bedroom and have a living room and dining room downstairs. They will take five rooms to three rooms, and a better use of space.

Responding to Mr. Malman, Esq., Mr. Ingersoll stated that there is no garage today. The barn was taken down in the second renovation. They had it reviewed and it was determined not worth saving and non-historic. Mrs. Ingersoll explained that it was also within 5 ft. of the side yard and if they were to renovate it, they would have needed a variance.

In terms of the living arrangements and the use of cars, Mr. Ingersoll explained that there are six people living in the home, 4 in his immediate family and his mother and father. All are drivers. They try to park toward the back, but with six cars it is difficult. In days when the cleaning lady is there, there are more cars.

Elaborating on the proposed nature of the business to be conducted in the office, Mr. Ingersoll stated that they are home builders and work mostly in Summit and Short Hills. They have a yard in Morristown for their trucks. In Mendham they have administrative bookkeepers and an estimator. He and his wife leave home between 8 and 9 in the morning and return about 4 to 5 in the afternoon. If they were approved there would be an estimator on site about 70% of the time. There would also be two bookkeepers that work 6 hours per day Wednesday and Thursday. They work at the same time, and one is an assistant to another. They do not have any meetings and there will be no subcontractors present. They do computer work and have a drafting table. There will be no deliveries of construction materials. Their materials go right to the job site. There is UPS delivery. There will not be any signage or advertisements. They work 16 hours/day and it

would be good to have an office to see the children. The primary purpose of the property is to live there.

In terms of the new garage/barn structure, Mr. Ingersoll explained that currently with all the cars, there is a parking lot look. They would like to house cars in the garage. Four of the cars will be there for at 15 years. The scale of the building is appropriate for a barn like look. It is also more practical to have the office over the garage rather than in his home. He does not want employees in his home. It is a 1200 sq. foot garage on the second floor; but they do not need it all for their office. Responding to Mr. Malman, Esq. on whether the home office ordinance requirement of 600 sq. ft. would be acceptable, Mr. Ingersoll stated that it would.

Responding to Mr. Peck on where the employees currently work, Mr. Ingersoll stated that the bookkeepers work in the two rooms upstairs with the dormers. The rooms are about 10 ft. x 10 ft. The estimator works in the dining room. In terms of equipment, most of the equipment belongs to the subcontractors, and for some of his tools, he has a storage shed at the yard in Morristown.

Addressing Mr. Ritger's question on why he needs to have his business at home, Mr. Ingersoll stated that he had had an office on Mr. Kemble Road in Morristown, but he was never there. He was always in the field. They work a very large number of hours. It is convenient, avoids overhead, and he can see his children. Mr. Peralta noted that it is a one acre residential zone, and there would be 6 family cars, an estimator and two bookkeepers. It would increase the flow of traffic to 7 to 9 cars. Mr. Ingersoll stated that the additional cars would be there in the morning and the afternoon. It is not like an office building where they would be there all day.

Chair opened the meeting to public questions of the Ingersolls.

Mr. Tom Fuller, 50 West Main St., questioned what would prevent more people coming to the site as the business expands. The bookkeepers may need to work more days during the week or more people may need to be added. Mr. Ingersoll responded that 90% of the increases in his business is in field personnel. Mr. Malman, Esq. advised that there could be a condition on the number of employees and the number of days they could be present.

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

Mr. Craig Villa, Engineer for the Applicant, presented his credentials and was accepted as a witness. He explained that all the plans had been provided to the Board. Describing the property, he testified that it is located at 63 West Main Street on the north side of West Main Street, Route 24. It is Block 305, Lot 11. It is one block over from West Main St. and Lake Drive. Westfield is just about opposite the property. Mr. Fuller lives directly across the street. The property is 1.25 acres. The deed has the property extending to the center of Route 24. The County has requested a right of way dedication which would eliminate 0.077 acres from the lot area resulting in a net lot area of 1.173 acres which is compliant with the minimum lot acre in the zone. The property is located in the one acre residential zone, and the zone boundary line runs along the eastern property line with Lake Drive is in the quarter acre zone. To the right of the property is an existing permitted attorney office, and to the west is an existing permitted accounting office.

Utilizing Sheet 2 of 3 of the plans, Mr. Villa continued explaining that there have been two renovations to the home, one being a permitted in-law suite. The home is located 27 ft. from the right of way line, but 75 ft. is required. Not many of the homes in the area meet the 75 ft. setback. The home has undergone two renovations. There is a patio and walkways in the front, side and rear. There is a stone wall in the front, and an existing gravel driveway. There are two areas for parking which could handle 4 cars in the front and 5-6 cars in the back area. They need space for 9-10. There is currently no garage, and all cars are parked on the gravel drive and can be seen from the road. There are numerous trees on the property. The shed located in the rear of the property is non-conforming as it does not meet the rear setback requirements. Plans call for relocating the shed.

Responding to Mr. Peck on the footprint of the old barn, Mr. Ingersoll stated that it was 500 sq. ft. Mr. Villa added that it was close to the property line on the west side.

Mr. Villa stated that the 13 acre tract located behind the home belongs to the Mendham Borough Board of Education. As the topography is flat an underground drainage system was installed in the front and on the side of the house. It runs to a drywell in the northwest corner of the property and then discharges directly on to the Board of Education property.

In terms of the improvements planned, the applicant wants to remove existing portions of the home and add a new addition with a front chimney. The front setback is currently 27ft. from the proposed right of way, and it would be 24 ft. with the change. The sidewalk in the front will be

eliminated, and the driveway extended. Six or seven spaces to the rear will be eliminated and the impervious coverage removed. The driveway will be extended. A barn with an upstairs office will be added and located 198.4 ft. back. As Morris County wanted a turn around, they moved the garage entrance to the rear so that the barn, not the garage front is seen. There is a 30 ft. back out area that will allow for a k-turn. Garage doors will not be seen from the street. The County has approved the layout.

Providing the details on the impervious coverage, Mr. Villa stated that the allowable lot coverage is 9,089 sq. ft., the existing is 11,417 sq. ft., and the proposed is 13,554. Mr. Villa questioned whether an accessory building could use the allowance in the ordinance for driveways that allows a credit of 12 sq. ft. for each additional foot of setback. That would give them an addition 1300 sq. ft. credit, but they did not include it in their numbers. Responding to Mr. Ritger on whether the road portion of the property had been removed from the calculations, Mr. Villa confirmed that the County dedication is netted out. The driveway is gravel and is planned to stay gravel. The building coverage permitted is 3,336 sq. ft., the existing is 3,641sq. ft., and the proposed is 5,248 sq. ft. That includes the shed in the rear.

Mr. Schumacher and Mr. Palestina questioned how the second addition was built without a variance if the coverage exceeded the allowable. Board did not agree with Mr. Villa that it was part of the previous approvals. Mr. Ingersoll stated that they redid the driveway. Mr. Hansen advised that they conformed when the phases were approved. He had spoken with the Zoning Officer who advised that that they represented coverage that conformed at that time. Mr. Ingersoll stated that at that time the right of way line was measured differently. Mr. Palestina wanted to understand the history of the calculations. Mr. Hansen stated that he would have the Zoning Officer pull the records.

Responding to Mr. Malman, Esq. on how the drainage would be managed with more coverage, Mr. Villa stated that it is a minor stormwater development under the ordinance. They will provide one drywell to serve the house and the net increase from the roof area, and one for the runoff of the roof area of the barn. All the drywells will tie into the existing drainage system that discharges to the Board of Education property. Given the functioning of the drywells, there would not be any adverse impact to the neighbors.

Responding to Mr. Malman, Esq. on whether the County request had any impact on the increase in the impervious coverage, Mr. Villa stated that the original plan did not have a back out area. It causes additional coverage to provide adequate circulation. Mr. Ritger confirmed that the County did not request the specific location of the turnaround. He noted that it could be placed in front of the barn as the location was not stipulated. Changing the location or moving the barn up could save on coverage.

Addressing Mr. Palestina's question on the number of employees for the businesses on either side of the site, Mr. Villa stated that there are employees only in the attorney's office with some gravel parking and a garage in the back. It is not a residence. He was not sure of the accountant, but believed that it incorporated a dwelling.

Responding to Mr. Peck on the screening of the barn as it had been moved more to the left side of the property, Mrs. Ingersoll stated that a Landscape Plan had been submitted. She entered as Exhibit A-2 a color rendering of the Landscape Plan dated 2/8/11. She testified that they are planning stronger screening along the right hand side. On the left side the neighbor has a barn and a pool. There are existing shared mature trees along both property lines that will stay. Mr. Peck noted that the driveway appeared screened from their home, not the neighbor. Mrs. Ingersoll responded that all the existing bushes are not shown. There is about 10 ft. of vegetation along the line.

Responding to Mr. Peralta on the trees that would need to be removed, she continued that one tree will need to come down by the barn. Mr. Ingersoll added that there is also a dead tree that will be removed near the barn. There is also a large tree in front of the home that needs to come down. They will plant 10-12 ft. trees that will mature to 20ft.

Addressing Mr. McCarthy on whether there are any problems with water other than the basement flooding, Mr. Ingersoll stated that the property is much better. Mr. Peck expressed concern that the water was now draining to the Board of Education property and questioned whether they had permissions. Mr. Villa explained that it is the natural flow. With the drywells that are planned, there will not be any additional negative impact on the property. They will accommodate the increase in volume in accordance with the ordinance.

Board had a short discussion on the interpretation of the 12 ft. credit and whether the barn could be moved up to save on coverage. Mr. Seavey thought the intent of the ordinance was for

primary structures; Mr. Villa said that the ordinance just references structures. He would need to calculate how much the barn would need to be moved up to avoid an increase in impervious coverage. Mr. Peck liked the idea of the doors of the barn not facing the street, but noted that if the doors and the turnaround were placed in the front, coverage might be saved. Mr. Villa explained that the turnaround area would still be required in the front and the only coverage saved would be the portion that leads to the rear.

Chair opened the meeting to questions of Mr. Villa and the Landscaping Plan by the public.

Responding to Mr. Tom Fuller, 50 West Main Street, Mr. Villa stated that he was not the engineer for the first two phases. He may have done a base map, but the actual design had been done by others. He has done the drainage design for this phase. He did not know if there are underground water sources as he has studied only the surface water. Mr. Fuller questioned whether there are any issues that would have impacted the water flow with the construction in 2006. Mr. Villa was not aware of any. Mr. Ingersoll added that when they moved into their home in September 2004, they did not see any water. The rains came and it flooded.

Mr. Jim Vollmuth, 52 West Main St. stated that though his experience with planting trees, he learned that there are farmers drains in the area. The Thompson House at 56 West Main originally owned Westfield and their home and it went across what today is Rt. 24. The bridal path originally went in front of what is today the back of the Thompson House. Today, that home has its back door facing West Main St. and the front door facing the bridal path direction. There was a barn located on 52 West Main. There was an apple orchard that ran from Mr. Fuller's home to the park land. The farmers would dig and use the rocks to create trenches to provide irrigation. Today, if those rocks are removed, the area fills with water. He believes that some trenches crossed the road and water is being diverted. Mr. Ingersoll stated that he did not hit cisterns or drainage either time that he excavated. The only water that comes to the site is rain water. The old basement is cinderblock and is a sieve. Mrs. Ingersoll commented that the neighbors on Lake Drive indicated that the area has always had water.

Given the nature of the problem, and the fact that their homes did not get water before the construction, Mr. Fuller requested suggestions to move the water. Mr. Villa stated that Route 24 forms a ridge and on both sides it runs front to back. Surface water would not come to their lots. If it is an underground water source, each lot would need to be studied and a drainage system would need to be constructed. There are many factors associated with water issues.

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

Ms. Kimberly Tone, Architect, presented her credentials and was accepted as a witness. Utilizing Exhibit A-3, the existing conditions, dated 1-18-11, she described what the rooms in the older portion of the home would have been, their size and height. She pointed out the in-law suite. Even in Phase II they were intending to keep the front building, but as they approached the renovation, it was clear that it had outlived its lifespan. There was not a lot of the original structure left and there were problems with the previous renovations done over the years.

Mr. Seavey noted that the door connecting the in-law suite to the main home that was a condition of the variance approval was not on the plan. He requested that it be added. Mrs. Ingersoll stated that as her mother in law is a smoker, they had sheet rocked over the door on their side, but the doors exist on their parents' side. Mr. Seavey reiterated that it must stay on the plans.

Ms. Tone continued by entering Exhibits A-4 and A-5 and by showing the existing exterior elevations and the side elevations. She explained that the framing in the original structure is out of level, there are problems with the foundation and that the ceilings are very low. For the new renovation they are planning an entrance in the front court yard.

Presenting A-6 she described the first floor plan as it is proposed to be modified. There is a chimney and a fireplace in the front that are causing the 3ft increased setback. The ceilings are planned at 9.3 ft. Twelve feet wide is the minimum width to get a functional dining room, and 15 ft. wide is not overly wide for a living room. The existing front is taller, but not as wide. In describing A-7, the second floor plan as proposed, she showed a living room, master bedroom and closets. In terms of the bedrooms, there will be one less than there is now.

Utilizing Exhibit A-8, the proposed street side, Ms. Tone explained that there would not be street frontage as the entrance orientation is changed, but it is complementary to the home and the neighborhood. It appears as one entrance from the driveway and reads as one house. It is about the same footprint, but there is more space on the second floor. As shown in Exhibit A-9 there is a porch like structure on the driveway side elevation. It maintains the historical character. The same materials as the previous addition will be used.



Entering Exhibit A-10, Ms. Tone explained that the barn/garage would be used as a recreation room and as office space. The second floor is a little less than 1200 sq. ft. and the first floor is 1276 sq. feet. The first floor is 48 ft. x 24 ft. In A-11, the elevations show a barn structure. There is a cupola which is higher than the main house. There are windows upstairs on the side facing the neighbors and some screening. The accessory building complies with the height requirements. There will not be an attic.

Mr. Ingersoll stated that the Historic Preservation Commission saw the plans.

Responding to Mr. Palestina on how the office space could be limited to 600 sq. ft., Mr. Ingersoll stated that it could be divided with a wall. Mr. Palestina questioned whether there would need to be egress considerations as it is a second floor office. Mr. Germinario, Esq. did not see how limiting the space to 600 sq. would limit the intensity of the use as there would be the same number of people. Mr. Schumacher questioned whether they could have a two car garage instead, and limit the office space to 600 sq. ft. Mr. Ingersoll expressed his opinion that as one moves closer to a two car garage, it does not look like a barn. The actual barn was about half the size. Mr. Smith expressed his opinion that having the doors in the front with the turnaround, would make it look more like a barn, less like a residence, and the coverage would be more limited. Mr. Ritger expressed his concern that there was a lot of construction at the expense of impervious coverage, and there is no attempt to limit it. Mr. Peralta confirmed that there would be plumbing in the barn for a new bathroom.

Chair opened the meeting to questions of Ms. Tone by the public.

Mr. Jim Vollmuth, 52 West Main Street, stated that for a one acre lot the impervious coverage is very large. It is his understanding that if one has a non-conforming structure that is removed, if something is built, it conforms. They should meet the 75 ft. setback, but they are moving forward. He is concerned that what happened at the Thompson house could be repeated where a barn and a stone house were connected to obtain a three car garage. It is in disrepair, and no one wants it. In this application, the proposed four car garage is very big for the property. Water is an issue, and they are adding more coverage. The plan calls for it to encroach on the street. He does not want to see the neighborhood get "overgrown" on property. His own home is sideways as he must conform to two 75 ft. setbacks as a corner lot.

Responding to Mr. Ritger on whether there was any consideration of putting the Phase II addition in the rear of the property, Ms. Tone stated that the previous additions were oriented toward the yard. It would have been a significant redesign.

There being no additional questions, Chair closed the public session.

Mr. Smith noted that during the Phase I hearing, the applicants stated that they wanted to save the front portion of the home. He questioned whether they gave consideration for replicating and modernizing while keeping the scale of the original home. He questioned whether they could maintain the aesthetic look. Mr. Ingersoll stated that they reviewed 20 different scenarios, and they come back to the condition and the scale of the original structure. It was built for a family in the mid to late 1800s. Ms. Tone stated that the driver of the project was to get the garage, and do an attractive front renovation. The current design is not balanced. The footprint has been kept similar to what it is now, but once the structure is taken down, it makes sense to design a house of historical character that might have been modified differently. Mr. Smith noted that there have been other approvals that permitted a take down with replications. This design is taller and closer to the road with a massive façade that will even appear closer than today's home.

Mr. David Zimmerman, Planner for the applicant, provided his credentials and was accepted as a witness. He testified that he had visited the site and reviewed the plans. He has reviewed the Borough Master Plan and ordinances. The applicant is requesting four variances: (1) an additional 3 feet for the front yard setback, (2) overage on lot coverage (impervious coverage), (3) overage on the building footprint, and (4) a D1 use variance for a home office use.

Utilizing Exhibit A-12, Mr. Zimmerman showed photos of the house and the front yard area. He explained that the barn and the shed would only be seen if walking or living next door. With Exhibit A-13 he showed photos of the properties to the west and to the east of the subject property. There are two properties to the east and one to the west that are close to the right of way. Exhibit 14 consisting of an aerial photograph and three studies was utilized to provide a setback analysis and footprint analysis of other properties in the area, showing several as non-conforming. This would be a historic home and is in line with the other historic homes in the immediate area.

Mr. Ritger questioned how the figures were determined as there appeared to be no distances marked on the aerial. Mr. Zimmerman responded that they were scaled and approximate. Mr. Smith noted that many of the homes were built before the zoning came into effect. The applicants were building a new structure, and nothing of the original historic home will be left. They have created a new building in three phases. He questioned why the home was not set back further. Mr. Zimmerman stated that the proposed home is historic in that it will satisfy the requirements that it fit into the historic character of what was there and of the neighborhood. The Historic Commission supported the historic nature.

When Mr. Zimmerman showed the barn in the rear of Lot 84 (A-15), Board noted that it is smaller than the one proposed, one story, and probably about 800 sq. ft. Mr. Palestina expressed concern that they were not being presented information as to the positive attributes in support this application as opposed to having this property compared to others. Mr. Zimmerman replied that he wanted to show the lot coverage in the neighborhood, and that what is being proposed is not unique to this property. If it were unique, it would stick out. The building coverage being proposed is 1612 sq. ft. over that which is permitted and the barn accounts for most of it. There is about 400 sq. ft. in the house.

Continuing, Mr. Zimmerman testified that the barn will not be seen by the travelling public. Utilizing Exhibit A-16 he showed photos relating to the visibility east and west. He stated that there is existing vegetation along both property lines. The scale of the structure is comparable to other barns in the Borough, and it is not out of scale with the neighborhood. A significant purpose for coverage in the ordinance is for scale, look and impact on the neighborhood. Given the planning of the site, the location of the barn, and the fact that it is an accessory structure similar to others in the neighborhood, it satisfies the goals and objectives of the ordinance dealing with building footprint. If it were attached to the home, it would be out of scale, but it is separate and hidden in the rear area of the property.

Responding to Mr. Malman, Esq., Mr. Zimmerman agreed that most homes have garages today in Mendham Borough. Parking is being proposed in the back of the barn as opposed to the front today. Those cars will not be seen. Responding to Mr. Peralta on whether a 4 car garage is common in the 1 acre zone, Mr. Zimmerman stated that he did not know. He would need to examine it. Mr. Palestina noted that if the barn is not visible from the road, then whether the doors are to the front or to the rear does not really matter. The cars in the front may not be seen either.

In terms of the use variance, Mr. Zimmerman stated that the applicant wants a home office on the second floor of the garage/barn. He agreed with Mr. Malman, Esq. that the major deviations from the home occupation definition were that employees are coming to the site, and that the office is not going to be in the home, but in the barn. Mr. Malman, Esq. added that the applicant would comply with the 600 sq. ft. limitation if required by the Board. Mr. Zimmerman reviewed the Borough Master Plan and cited the section that referred to home offices. It referenced the change in the nature of home offices given technology and life style which make the definition somewhat obsolete. He also referenced the antiquated types of occupations listed for home offices. He continued with the Master Plan's reference to questions on ordinance considerations for adequate off-street parking, no visitors, i.e. clients, non-resident staff, outdoor lighting, sunset due to change of ownership and no exterior signage. There is no negative impact with this application to neighbors or neighborhood. His opinion was that the use is suited to the location given the size of the property, and that there are offices on both sides, one being standalone, the other being in a residence. It satisfies the criteria for a D1 variance.

Mr. Malman, Esq. stated that he would discuss with the applicants, the reduction of the size of the garage and its location on the property. Responding to Mr. Malman's request for a site visit, Chair encouraged each member of the Board to visit the site individually.

Given the hour, the Chair announced that the application would be carried to the Tuesday, July 10 meeting of the Board at which time planning testimony would continue. Applicant's planning testimony would be summarized and continue. Board and public would address questions, and the Board planner would offer his expertise.

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**Botti, John P. II/Fluortek** – Hardship Variance: **Resolution**  
Block 301, Lot 75, 45 West Main St. (Historic District)

Mr. Germinario, Esq. presented the draft resolution to the Board. Board requested minor editorial changes.

Mr. Smith made a motion to approve the resolution as amended. Mr. Peck seconded.

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

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

The motion carried. Following is the approved resolution:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION**

**Decided: May 2, 2012  
Memorialized: June 6, 2012**

**IN THE MATTER OF JOHN BOTTI  
“C” VARIANCE APPLICATION  
BLOCK 301, LOT 75**

**WHEREAS**, John Botti (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the "Variance") by application dated 3/2/12; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 5/2/12; 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 0.28 acres and is developed with a single family residence and detached garage. The property is located at 45 West Main Street in the 1/2 acre residential district. The additions to the existing home and accessory structure were approved by the Board of Adjustment in 2003 through a C variance application. Variances granted for the project at that time included building coverage, impervious coverage, and side yard setback as follows:

Building coverage- 2,194 SF, where a maximum of 1,982 SF is permitted

Impervious coverage- 3,537 SF, where a maximum of 3,379 SF is permitted

Side yard setback- 1.4 feet (carport), where 15 feet is required

The site is currently under construction. Upon completion of the foundation for the outbuilding in the rear yard, it was determined by the Zoning Officer that the structure was constructed too close to the easterly side yard. The applicant is requesting relief from the side yard setback requirements set forth in section 215 schedule II for this situation.

2. The Applicant has submitted the following documents in connection with the application:

- Board of Adjustment application form and attachments dated March 3, 2012.
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees dated February 24, 2012.
- Zoning Officer's Denial
- Site Inspection Authorization dated March 1, 2012.
- Certified list of property owners dated February 24, 2012.
- Historic preservation Commission Application dated March 20, 2012.
- Survey entitled, "Map Showing Survey of Lot 75 Block 301, 45 West Main Street, Mendham Borough, Morris County, New Jersey," prepared by Wayne F. Holman, PLS, revised through June 17, 1998 (unsealed).
- Correspondence prepared by Peter A. Bogaard, Esq., dated March 21, 2012.
- Plans entitled, "Proposed Addition and Alterations for Botti Residence, 45 West Main Street, Mendham Borough, NJ," prepared by Vincent Matarazzo Jr., AIA, dated 10/29/03, revised through 3/13/12, consisting of 7 sheets.
- Correspondence from Geoff Price, Zoning Officer, dated January 13, 2012.
- Foundation Location Survey, prepared by Morgan Engineering, LLC, Toms River, NJ, dated December 28, 2011.

3. The Board Engineer John Hansen, PE, submitted a report on the application dated 4/10/12, which is part of the hearing record.

4. In the course of the public hearings, the Applicant was represented by Peter Bogaard, Esq., and the Applicant testified on his own behalf, which testimony is part of the hearing record.

5. The testimony of the Applicant witnesses adduced the following facts:

- Applicant provided his contractor with building plans conforming to the required 15-foot sideyard setback.
- The contractor incorrectly marked the property line and improperly constructed the outbuilding such that its northeasterly corner encroaches about 7 ½ inches into the 15-foot sideyard setback.
- Upon becoming aware of the sideyard encroachment, Applicant immediately notified the Borough of the situation.
- Applicant is the owner of the adjoining property to the east, and there is no detriment resulting from this minimal sideyard encroachment.

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

- The sideyard encroachment is minimal and causes no detriment to adjoining properties or the character of the neighborhood.
- Strict compliance would impose an unreasonable and undue hardship on the Application.

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 application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(1).

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 requiring Variance relief.

1. Under the direction of the Borough Engineer, Applicant will excavate test holes at several locations on the property to determine the level of the water table and the feasibility of installing a dry well to capture runoff from the outbuilding. If the Borough Engineer determines that a drywell is feasible, the drywell volume should be sized for 3 inches of runoff over the area of the proposed roof. The volume should include a 40% void ratio for the stone. 2.5" clean stone should be specified and filter fabric should be installed along the sides of the excavation. The drywell location and details shall be shown on the plan.

2. All applicable conditions of the prior resolution shall remain in effect and are incorporated herein by reference.

3. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits.

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

5. 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.

6. 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 May 2, 2012.

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## ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 10.40 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, July 10, 2012, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary

