

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
SPECIAL MEETING
August 3, 2011
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The special 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 Daily Record on July 14, 2011 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

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

Also Present: Mr. Hansen, Board Engineer
Mr. Germinario, Esq., Board Attorney
Mr. Henry, Esq., Board Attorney
Mr. McGroarty, Borough Planner

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APPROVAL OF MINUTES

Mr. Ritger made a motion to approve the minutes of the July 6, 2011 regular meeting of the Board as written. Mr. Smith seconded. All embers being in favor, the minutes were approved.

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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HEARING OF CASES

New Cingular Wireless PCS, LLC (AT&T) - Conditional Use Variance/Site Plan: Resolution
Block 2301, Lot 13, 350 Bernardsville Road

Present: Michael Lavigne, Esq., Pitney Day, LLC – Attorney for the Applicant

Mr. Germinario, Esq. presented the following resolution to the Board. It had been reviewed by both Messrs. Lavigne, Esq. and Simon, Esq. and any recommended changes had been incorporated.

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

**Decided: July 6, 2011
Memorialized: August 3, 2011**

**IN THE MATTER OF NEW CINGULAR WIRELESS PCS, LLC (AT&T)
CONDITIONAL USE AND PRELIMINARY AND FINAL SITE PLAN APPROVALS
BLOCK 2301, LOT 13**

WHEREAS, New Cingular Wireless PCS, LLC (AT&T) (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a conditional use and site plan approval by application dated 11/17/10; and

WHEREAS, it was determined that jurisdiction for this application lies with the Board of Adjustment under N.J.S.A. 40:55D-76b, pursuant to the holding of Puleio v. Board, 375 N.J. Super. 613 (App. Div. 2005), because this site had been the subject of a use variance granted by the Board's Resolution of 5/2/06; and

WHEREAS, the application was deemed complete by the Board, and public hearings were held on 3/1/11, 4/5/11, 5/3/11, 5/31/11 and 7/6/11; 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 112 acres located in the 5-acre Residence Zone at 350 Bernardsville Road at the northeastern intersection of Bernardsville Road and Hilltop Road. The property is owned by the Society of the Sisters of Christian Charity of New Jersey, a New Jersey non-profit corporation, and the site of the Convent of the Sisters of Christian Charity and Assumption College. The existing site is improved with multiple buildings, which are used for academic, religious and residential purposes, and associated access drives and parking area. The principal structure on the property is a five-story building with a fifth floor attic and a roof-top cupola, known as Villa Pauline. The top of the cupola is at a height of 120 feet, with screened openings at a centerline height of 93 feet. The Villa Pauline building is set back 425.7 feet from Hilltop Road and 783.3 feet from Bernardsville Road.

2. The Applicant is a federally licensed wireless telecommunications carrier with an FCC license to provide wireless telecommunications service in the Borough of Mendham at frequencies of 850 MHz and 1900 MHz. The Applicant proposes to install in the Villa Pauline cupola nine directional panel antennas oriented at three sectors (35°, 125° and 305°) at centerline elevations of 85 feet (6 antennas, 2 per sector) and 93 feet (3 antennas, 1 per sector). An associated 10' x 22' equipment room containing six radio cabinets will be located in the attic below the cupola and connected to the antennas by coaxial cables routed through the cupola interior. The proposed installation will also include two air-conditioning condensers on the rooftop behind the existing parapet. Existing copper mesh screens on the cupola openings will be replaced with RF-transparent panels.

3. The proposed improvements are depicted and described in the Site Plans prepared by Dewberry-Goodkind, Inc., consisting of six sheets, last revised 8/4/10.

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

- Board of Adjustment application form, attachments, dated November 16, 2010
- Application Checklist (undated)
- Checklist for Wireless Telecommunication Facilities (undated)
- Site Inspection Authorization, dated October 18, 2010
- Owner authorization dated June 28, 2010
- Lease Agreement, dated June 16, 2010
- Radio Frequency Report, prepared by Glenn Kreisberg, last revised December 21, 2010
- MPE Report, prepared by Black & Veatch, dated August 5, 2010
- Visual Impact Study, prepared by Heyer, Gruel & Associates, dated October 10, 2010
- Certification of Status of Municipal Tax and Sewer Fees dated August 9, 2010
- Morris County Planning Board letter of no interest dated November 8, 2010
- Zoning Officer Denial Form dated December 16, 2010
- Letter Report of Glenn Pierson to Dr. Bruce Eisenstein, dated 2/15/11, with attached RF propagation plots Exhibits A-H, dated 2/15/11, and Exhibits J & K, dated 5/20/11
- Antenna Site FCC RF Compliance Assessment and Report, by Pinnacle Telecom Group, dated 1/3/11

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

- Adrian Hombert, AICP/P.P., dated 1/7/11
- Paul Ferriero, PE, CME, dated 1/14/10 and 2/1/11

6. Borough officials and/or agencies have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

- Fire Official Craig Bellany, e-mail to Diana Callahan, dated 1/12/11

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

Applicant's Exhibits

- A-1 Existing and Proposed AT&T 1900 MHz Coverage Base Map with 3 Overlays
 Overlay #1 – Existing 1900 MHz Coverage (-85 dBm)
 [identical to Exhibit A of Pierson report of 2/15/11]
 Overlay #2 – Drive Test Existing Network Data
 [identical to Exhibit B of Pierson report of 2/15/11]
 Overlay #3 – Proposed 1900 MHz Coverage (-85 dBm)
 [identical to Exhibit C of Pierson report of 2/15/11]
 The combination of Overlays #1 and #3 yields Existing and Proposed AT&T 1900 MHz Coverage (-85 dBm)[identical to Exhibit D of Pierson report of 2/15/11]
- A-2 Visual Impact Photos 1-5 taken 9/2010 [identical to Photos 1-5 from Visual Impact Study of 10/10/10]
- A-3 Visual Impact Photos 1W-8W taken 3/28/2011
- A-4 Aerial Photo showing locations of photos shown in Exhibits A-2 and A-3

Objectors Bourne/Mauriello Exhibits

- O-1 Propagation Maps A, B and C from Kreisberg report of 8/5/10
- O-2 Comprehensive Radio Frequency Report by Glenn Kreisberg, dated 8/5/10
- O-3 (1) Exhibit J, Existing AT&T 850 MHz Coverage (-75, -85 and >=-95 dBm), prepared by G. Pierson 5/20/11, with Mendham Borough boundaries inserted
 (2) Exhibit K, Existing and Proposed AT&T 850 MHz Coverage (-75, -85 and >=-95 dBm) prepared by G. Pierson 5/20/11, with Mendham Borough boundaries inserted
 (3) Washington Corner Rd propagation map with Mendham Borough boundaries inserted
 (4) Verizon Wireless, Washington Corner Rd, Existing Cellular Coverage, prepared by G. Pierson 4/28/10, with Mendham Borough boundaries inserted
 (5) Verizon Wireless, Washington Corner Rd, Existing Cellular Coverage vs. Baseline Scan Drive Test, prepared by G. Pierson 4/28/10, with Mendham Borough boundaries inserted
 (6) Verizon Wireless, Washington Corner Rd, Proposed Cellular Coverage, prepared by G. Pierson 4/28/10, with Mendham Borough boundaries inserted
 (7) Verizon Wireless, Proposed Cellular Coverage from Mendham 3 (Kings Shopping Center site), prepared by G. Pierson 4/28/10, with Mendham Borough boundaries inserted
 (8) Exhibit E, Existing AT&T 1900 MHz Coverage (-95 dBm), prepared by G. Pierson 2/15/11, with Mendham Borough boundaries inserted
- O-4 Curriculum Vitae of Hank Menkes

Objector Lupu Exhibits

- L-1 (A) Propagation Map for proposed WT tower on Washington Corner Rd
 (B) Existing AT&T 1900 MHz Coverage (-95 dBm) [Exhibit E to Pierson Report of 2/15/11]
 (C) Propagation Map A: AT&T Existing Coverage (-75, -85 and -95 dBm) [Map A from Kreisberg Report of 8/5/10]
 (D) Existing and Proposed AT&T 1900 MHz Coverage (-95 dBm) [Exhibit G to Pierson Report of 2/15/11]
 (E) Propagation Map B: AT&T Composite Coverage (-75, -85 and -95 dBm) [Map B from Kreisberg Report of 8/5/10]
 (F) Detail of Exhibit L-1 (A)
- L-2 (A) Excerpts from Kreisberg Report of 8/5/10
 (B) Verizon Site Parameters (1900 MHz and 850 MHz) for Washington Corner Rd
 (C) AT&T (1900 MHz) Site Parameters [from Pierson Report of 2/15/11] and Antenna Cut Sheet
 (D) Antenna Cut Sheet

L-3 FCC Public Notice regarding proposed acquisition of T-Mobile USA, Inc., by AT&T Inc., released 4/18/11

L-4 Minutes of Mendham Bd of Adjustment meeting of 12/6/05, with statement of Dr. Eisenstein on p. 5 highlighted

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

Glenn Pierson, RF engineer

Dan Collins, electrical engineer

Frank Pazden, P.E., civil engineer

Peter Tolischus, P.P., professional planner

9. In course of the public hearings, the Objectors James and Ann Bourne, of 4 Cromwell Drive, and Joseph and Mary Mauriello, of 6 Cromwell Drive, were represented by Robert Simon, Esq., and these Objectors presented the testimony of the following witnesses, which testimony is part of the hearing record:

Hank Menkes, RF engineer

Peter Steck, P.P., professional planner

10. The Board retained Dr. Bruce Eisenstein, P.E., as an independent expert consultant in the fields of wireless telecommunications systems and siting issues to advise the Board regarding the technical issues of this application.

11. In response to Dr. Eisenstein's request for propagation plots and coverage maps with respect to the proposed wireless telecommunications facility (WTF), the Applicant's RF engineer, Glenn Pierson prepared a letter report dated 2/15/11, which initially included seven propagation/coverage maps labeled Exhibits A-G, and a street map, labeled Exhibit H. These exhibits depict the Applicant's existing 1900 MHz coverage (Exhibit A), drive test data confirming the existing 1900 MHz coverage (Exhibit B), the additional 1900 MHz coverage resulting from the proposed WTF (Exhibit C), and the combined existing and proposed 1900 MHz coverage (Exhibit D). In Exhibits A through D to the Pierson report, the depicted coverages are based on a signal strength of -85 dBm. The report also includes, as Exhibits E through G, propagation maps for existing, proposed and composite 1900 MHz coverage at a signal strength of -95 dBm. Exhibits A through D of the Pierson report indicate substantial gaps within Mendham Borough in Applicant's 1900 MHz coverage at signal strength -85 dBm, most of which would be covered by the proposed WTF. Pierson's Exhibits E through G reflect more isolated gaps in 1900 MHz coverage at signal strength -95 dBm, most of which are also covered by the proposed WTF.

12. At the hearing of 3/1/11, Pierson presented Exhibits A through D from his report in enlarged overlay format and identified the existing coverage gap areas that would be addressed by the proposed WTF. He explained that RF propagation follows the "line of sight," and that the hilly topography of the Borough uniquely enables the Sisters of Charity site to cover the gaps. Pierson testified that the Villa Pauline cupola is located on one of the taller hilltops in the area and the height of the existing structure clears the treeline. He stated that, based on the propagation maps presented in his report, significant gaps would be addressed by the proposed WTF, which could not otherwise be addressed from an existing structure.

13. At the hearing of 3/11/11, Dr. Eisenstein stated that other proposed WTF, sites in the area would not obviate this site. Dr. Eisenstein and Mr. Pierson agreed that a -95 dBm signal strength does not have a sufficient safety margin with regard to signal fading, weather and/or clutter to provide consistently reliable service. They agreed that, for purposes of this application, signal strength of -85 dBm is acceptable as the basis of reliable wireless coverage.

14. During the cross-examination of Glenn Pierson by Mr. Simon at the hearings of 3/1/11 and 4/5/11, he was questioned as to the propagation frequency used in the coverage maps included in the "Comprehensive Radio Frequency Report" of Glenn Kreisberg, which show a much more limited coverage gap than the Pierson maps propagated at 1900 MHz. While Mr. Pierson stated he had no direct knowledge of the Kreisberg propagation frequency, upon the suggestion of Dr. Eisenstein, he agreed to generate supplemental coverage plots at 850 MHz with signal strengths of -75 dBm, -85 dBm and -95 dBm for a subsequent hearing.

15. At the hearing of 5/31/11, Mr. Pierson presented the supplemental coverage plots, propagated at 850 MHz as requested by Dr. Eisenstein, which were labeled as Exhibit J (existing 850 MHz coverage) and Exhibit K (existing and proposed 850 MHz coverage) to Pierson's report. Pierson and Eisenstein agreed that the similarity of Pierson's Exhibit J to Kreisberg's Map A confirmed that Kreisberg had used a 850 MHz propagation frequency in his maps. Mr. Pierson testified that the appropriate design standard for adequate coverage focuses on the more limited propagation range of the 1900 MHz band, since Applicant's FCC license requires them to provide reliable service at both 850 MHz and 1900 MHz, and an increasing portion of wireless traffic uses the higher frequency.

16. During his direct testimony at the hearing of 5/31/11, Glenn Pierson addressed the siting priorities for WT antennas, as set forth in Section B(6) the Borough's Wireless Telecommunication's Ordinance (§215-12.5). With regard to the first priority category, "an existing WT facility building or structure," he testified that only two WT facilities exist in the

area, those being the Conifer Drive site north of Route 24 to the east of the Borough and the St. John's clock tower site south of Route 24 on the western side of the Borough, both of which already host Applicant's antennas and are existing on-air sites within Applicant's coverage network. Because of hilly terrain between these two existing sites, these WT facilities do not, Pierson stated, cover most of the gap areas identified in his report. Regarding the second priority category "municipally-owned facilities not reserved or dedicated for open space or public recreational purposes," Pierson testified that the Borough topography would block signals from municipal sites on Main Street from reaching coverage gaps in the southern portion of the Borough. With respect to the third priority category, "an existing building or structure in the East Business District," Mr. Pierson observed that hilly terrain to the south of the East Business District blocks signal propagation into the existing gaps in the southern section of the Borough. And he further stated that the same hilly terrain blocks southerly propagation from the West Morris High School property, which would be in the fourth priority category "an existing public or private educational institutional building or structure."

17. At the public hearing of 5/3/11, Applicant's electrical engineering expert Dan Collins testified regarding the compliance of the proposed WTF with the Maximum Permissible Exposure (MPE) limit for RF radiation under FCC regulations. Referring to the compliance report prepared by Pinnacle Telecom Group dated 1/31/11, Mr. Collins stated that a conservative calculation of RF exposure from the proposed facility is 1.3% of the FCC limit.

18. At the public hearing of 5/3/11, Applicant's professional planner Peter Tolischus, P.P., testified regarding the visual Impact Study, dated 10/10/10, which he had prepared. The witness presented, as Exhibits A-2 and A-3, two photo boards showing visibility of the proposed WT antenna installation under summer and winter conditions, respectively. Mr. Tolischus testified that the proposed WT antenna installation would not be visible, and that there is no visual detriment from this installation.

19. Mr. Tolischus testified again at the hearing of 5/31/11. His testimony addressed the application's compliance with the conditional use standards established for WT facilities under the Borough's Wireless Telecommunications Ordinance. He observed that, as a private educational institutional site in the 5-Acre Residence Zone, the subject property is a permissible fourth priority site under Section B(1)(a)(iv). He also testified that the proposed installation complies with the lot area and setback requirement of Sections B(7) and B(8) of the Ordinance. Mr. Tolischus opined that the application did not require a height variance under NJSA 40:55D-70d(6), because the proposed antenna installation is not visible from the building exterior and does not increase or intensify the existing building height non-conformity.

20. At the hearing of 7/6/11, Robert Simon, Esq., on behalf of Objectors Bourne and Mauriello, presented the testimony of RF engineer Hank Menkes. Mr. Menkes opined that the proposed WT facility is not needed because the Applicant already has reliable coverage at 850 MHz. He testified that AT&T already meets FCC requirements regarding its 1900 MHz license. He opined that, since no search ring had been provided, and no propagation data regarding higher priority sites had been provided, the Applicant had failed to sustain its burden of demonstrating compliance with the siting priorities set forth in Section B(6) of the WT Ordinance. Mr. Simon also disputed the position of Mr. Pierson and Dr. Eisenstein that -85 dBm is the appropriate signal strength by which to determine reliable coverage. Though he opined that -90 dBm signal strength provides reasonably uninterrupted service, in response to a question from Dr. Eisenstein, he acknowledged that, at -90 dBm, reliability is compromised. Dr. Eisenstein pointed out that, even at -89 dBm, significant coverage gaps would still exist at 1900 MHz, and he opined that the area of the gap is large enough to require coverage.

21. At the public hearing of 7/6/11, Mr. Simon also presented the testimony of Peter Steck, P.P., professional planner. Mr. Steck testified to his opinion that the proposed facility does not satisfy the conditional use standards of the WT Ordinance with respect to either the proof of necessity under Section B(5) or the hierarchy of siting priorities under Section B(6) and therefore requires a "d(3)" variance. He opined that a "d(6)" height variance is required by the installation of the equipment cabinets in the attic space at a height above the zone maximum of 45 feet. He also opined that a "d" variance is required because a new use is being added to the existing institutional use of the property, which is not permitted in the 5-Acre Residence Zone.

22. Based on the evidence in the hearing record, the Board has reached the following findings and conclusions:

A. Based on the report and testimony of Glenn Pierson, the Board finds that the Applicant has met its burden of demonstrating that the proposed WT antennas could not be installed at a higher priority location pursuant to Ordinance Section B(6) without reducing coverage to the extent that large coverage gaps will continue to exist, both at 850 MHz and 1900 MHz, which would be the effect of prohibiting the provision of WT services in those gap areas.

B. Based on the report and testimony of Glenn Pierson, and the concurrence therewith by the Board's expert Dr. Eisenstein, the Board, the Board finds that the Applicant has met its burden of demonstrating, pursuant to Section B(5) of the Ordinance, that the proposed WT facility is necessary to avoid having the effect of prohibiting provision of WT services in the gap areas identified by Mr. Pierson.

C. Based on the reports of Messrs. Humbert and Hansen, as well as its own review of the submitted Site Plans, the Board finds that the proposed installation meets the Ordinance's conditional use requirements with respect to lot area and setbacks (Sections B(7) and B(8)) and generally satisfies all applicable conditional use standards.

D. Based on the foregoing findings, the Board concludes that the granting of a conditional use variance pursuant to NJSA 40:55D-70d(3) is not required for the approval of this application.

E. Based on the evidence of record, including the Site Plans and the report of its planner Mr. Humbert, the Board concludes that the granting of a height variance pursuant to NJSA 40:55D-70d(6) is not required for the approval of this application. The Board finds that the installation of antennas and equipment totally enclosed within the existing cupola of the Villa Pauline building does not alter or intensify the existing height non-conformity of that building. The Board also notes that Ordinance Section D(3) expressly permits non-antenna rooftop installations at a maximum height of twelve feet measured from the top of the roof, so that it would be illogical to require a height variance for an equipment installation totally enclosed within an existing attic below roof level.

F. The Board finds that the addition of this conforming conditional use to the existing uses on the subject property does not require a variance pursuant to NJSA 40:55D-70d(1) or d(2). The existing uses on this site were the subject of a use variance granted by this Board in its resolution of 5/2/06, and the WT Ordinance in Section B(2) expressly permits the installation of WT facilities on lots with one or more other principal uses. Even if the existing uses on this site were considered non-conforming, rather than permitted by previously granted use variance, the addition of the proposed totally conforming WT facility would not intensify or increase the non-conformity, but rather would render the overall site more conforming to the zone plan.

G. Based on the hearing record, the Board finds that the proposed site plan will result in no adverse visual or health impacts, and therefore the site plan can be approved without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the preliminary and final site plan application and grant the conditional use approval requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-76b.

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the signing of the preliminary and final site plans and prior to issuance of building permits.

1. For purposes of the siting priorities hierarchy with respect to potential future WT facility installations, the "existing WT facility site" created by this approval shall include only the interior of the cupola and the attic of the Villa Pauline building, and not other areas of the Sisters of Christian Charity property.

2. In accordance with Section I of the Borough's Wireless Telecommunications Ordinance, the wireless telecommunications facility shall be operated at all times in compliance with FCC and NJDEP radio frequency exposure limits. Each calendar year, the WT facility owner shall submit to the Borough Engineer competent documentary proof of such continuing operation and compliance with all applicable standards and conditions of approval.

3. In accordance with Section L of the Borough's Wireless Telecommunications Ordinance, in the event the WT facility has not been used for the provision of WT services for a period of six (6) consecutive months, it shall be removed at the sole cost and expense of the owner of the facilities. Such removal shall include site and/or building restoration to the conditions which existed prior to the installation of WT facilities as determined by the Borough Engineer.

4. Applicant shall comply Sections J and K of the Borough's Wireless Telecommunications Ordinance, with respect to construction and maintenance of the WT facility.

5. Should the Borough police or fire department request an emergency antenna, Applicant will accommodate if within the cupola installation.

6. The wireless telecommunications facility shall be self-protecting by an automatic fire alarm system monitored by a 24 x 7 central station.

7. If the wireless telecommunications facility interferes with Borough fire department radio communications, the Applicant shall correct the interference immediately upon notification.

8. The utility trench detail shall be revised to provide adequate base thickness for driveway pavement repair. Pavement and base specifications must be provided on the detail.

9. The plans shall be revised to state that no new lighting is proposed.

10. The location of the proposed GPS antenna must be shown on the plans and elevations.

11. The plans shall be revised to provide specifications for the proposed RF transparent panels including the proposed color, which shall match the color of the existing screening.

12. Revised plan shall indicate any screening or color treatment proposed for the new rooftop mounted air conditioning condensers. The elevations shall provide a dimension for how far above the roofline these units will extend.

13. The Applicant shall confirm on the plans that all site disturbance is outside of any regulated areas.

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

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

16. 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.

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

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

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

The motion carried. The resolution was approved.

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Zenjon Enterprises, LLC – Preliminary and Final Site Plan/Variances/Interpretation
 Block 1501, Lot 11, 25 East Main St. (Historic District): **Continuation**

Present: Robert Simon, Esq., Attorney for Applicant
 Peter Steck, Planner for Applicant
 David Fantina, Engineer for Applicant
 Douglass Polyniaks, Dolan & Dolan, Consulting Traffic Engineer for Applicant
 Lawrence Appel, Appel Design Architects, Architect for Applicant

Exhibits: A-2: Roof Line Clarification (Size 11 x 17)
 A-3: Larger version of A-2 (Separate Sheet)
 A-4: Four pages prepared by P. Steck (P1 – P4)
 P1: 5 photos of subject property and Master Plan map w/property
 P2: Bing Maps with property highlighted
 P3: Large Version of Site Plan traced in Aerial Photo
 P4: Aerial Photo from Morris County w/limits of Historic District

Mr. Appel, Architect, reviewed the revised plan utilizing Exhibit A-1 marked at the previous meeting. The proposed size of Building A is 3,750 sq. ft., and Building B, 5,400 sq. ft. for a total square footage of 9,150. If they were to design a single structure, it could be 11,000 sq. ft. and conforming. The uses have been reduced from 3 to 2 in both the front and the rear buildings.

He explained that the applicant had three initial meetings with the Historic Preservation Commission before coming to the Board of Adjustment. They returned to the Historic Preservation Commission as requested by the Board to explore the impact of a photo presented at the June 8, 2011 meeting. They met with the Historic Preservation Commission at their meeting on June 20, 2011, and the photo did not change their findings.

In terms of the design, they have chosen materials that are consistent with and exceed the Historic Business Zone ordinance requirements. There are certain design guidelines and visual compatibility factors that are suggested in the ordinance. They exceed the ordinance as they are using materials such as SDL windows that were recommended by the HPC. They have tried to make the building as maintenance free as possible yet respectful of the architectural requirements and recommendations of the HPC. This includes the use of clapboard siding, solid shutters and Azek trim.

Mr. Appel testified that irrespective of whether the Board considers it a historic or non-historic building, it has been designed in conformance with Sections 215-18 and 215-19 of the Borough Ordinance. In his review memo, Mr. Humbert had recommended that considerations also be given to the Master Plan provisions dealing with Main Street Corridor design elements as the building would be located near the Main Street Corridor. They adhered to architectural elements, but in terms of gable roofs, the existing building did not have a high pitch as it is 3 on 12. They thought the 9 on 12 would not be appropriate. They have met the intent of the ordinance.

Referencing Mr. Hansen's report dated August 2, 2011 and the comment pertaining to the roof line, Mr. Simon, Esq. entered Exhibits A-2 and A-3 for clarification. Utilizing A-2, Mr. Appel explained the alignment of all of the roofs. Responding to Mr. Hansen on the roof dealing with the double dormer above the metal roof, and why it was not shown on the drawing, Mr. Appel explained that it is shown. The difficulty is that the line of the dormer lines up with shed dormer of the cottage.

Mr. Ritger specifically questioned the connection and transition from the metal to the shingle roof. He stated that the roof plan and the elevation were different. After reviewing the drawings, Mr. Appel responded that when the building was reduced in size, it resulted in a one foot gap. There will need to be a roof adjustment or a dormer adjustment. He stated that the dormer needed to be moved forward approximately one foot to permit alignment of the metal roof and the shingle roofs as shown on A1.1, the front elevation.

Mr. Appel concluded that the cottage structure would enhance the historic character of the property. Very simple and vernacular structures placed slightly back have been created so as not to swallow up the cottage. One large building would have swallowed up the cottage. The proposed viewshed is consistent with the zone and the Main Street Corridor. The lot is double wide, and they wanted to maintain the streetscape. Mr. Henry, Esq. confirmed with Mr. Appel that the applicant would comply with the Historic Preservation Commission final recommendation of November 29, 2010.

Addressing the Fire Official's request for sprinklers in the buildings, Mr. Appel stated that they would not be required in a building of this size. There will be a monitored fire alarm system, and they will provide fire access along two sides of each building. Sprinklers are very expensive, and the building codes set the standards. The buildings are not larger than many homes. The front building is open on three sides with access and a fourth with the public way.

Mr. Henry, Esq. advised that it is the concept of code compliance versus a good idea to do it. Mr. Appel explained that the project has gotten smaller in size and more expensive. If the buildings were remote or had unusual occupancy, he would make the recommendation, but the building codes set the standards. He estimated that the building was several thousand feet shy of the requirement. Mr. Henry, Esq., questioned whether the code would be different if there is enhanced risk created with two buildings on a smaller lot with single access when they are closer to other buildings. Mr. Appel stated that the code is sophisticated and takes various elements into consideration.

Responding to Mr. Hansen on how they determined that an 11,000 sq. ft. building would be conforming, Mr. Appel stated that they did several studies. It would be conforming, but would require the complete removal of the existing structure. They prepared an internal document. In terms of why his plans differed from the Fantina plans by 500 sq. ft. of impervious coverage, Mr. Appel responded that for the interior space, he was not counting the stairs.

Chair Seavey referenced Schedule I, questioned detailing on the buildings and noted that the materials to be used on the back building are of lower quality. Mr. Appel explained that the front building is a humble building and various trim and materials were explored. The materials are modern materials to replicate the historic look. There will be shutters of solid wood or Azek. Mr. Seavey recommended hinges and brackets on the shutters. Mr. Appel explained that in terms of the back building, the materials are different and there is not the historic detailing. They discussed it with the HPC and negotiated it. They are not exceeding the ordinance on the back building to the extent that they are on the front building. Mr. Henry, Esq. added that there was disappointment, reconciliation and acceptance on the part of the HPC.

Mr. Ritger confirmed that the "brick" was real brick. Responding to Mr. Peralta on the lighting, Mr. Appel stated that there will not be bright lights. In Phase I the lighting remains as it is with the exception of some architectural or accent lighting. There are not any flood lights or anything high. In Phase II, the site lighting fixtures are changed; the old fixtures are removed and replaced. They will meet the ordinance lighting requirements.

Addressing Mr. Seavey on any potential COAH requirements, Mr. Henry, Esq. explained that while COAH itself no longer exists, and there is fluidity as to how the affordable housing requirements will evolve. Affordable housing will likely be keyed to development, and there will be required money to fund it. In the case of 106 East Main St. the developer chose to put in an affordable housing unit instead of paying the money to the fund. In this case, a unit is not part of the application, but the applicant would be subject to any fund requirements. Mr. Simon, Esq. confirmed that a unit is not part of this application. Mr. McGroarty advised that the fee requirement is in place and would apply to the square footage.

Responding to Mr. Ritger on the purpose of the staircase, Mr. Appel clarified that it leads to an attic area that is for mechanicals. Should they want to build in the attic at a future date, they would need to come back to the Board. Addressing Mr. Ritger's follow-on question on whether the size of the second floor windows in both buildings are egress size, Mr. Appel explained that windows would be at or slightly larger than a residential egress type window.

Mr. McGroarty questioned whether there had been any discussion on the color palette particularly as relates to the metal roof and the shutters. Mr. Appel stated that the roof would be a copper color or turned metal and compatible with other buildings in town that have aged gracefully. It would be a neutral, not a bright color. He recommended that there be some coordinated cooperation with the Historic Preservation Commission.

Mr. Fantina, Engineer, addressed the differences in the revised plans and Mr. Hansen's letter dated August 1, 2011. He explained that since both buildings are smaller, the impervious coverage has been slightly reduced, and the rear setback has increased. From an engineering point of view, it did not majorly impact his plans. In Phase I the parking is conforming unless the Board requires the additional 20% requirements. Then they would need a variance for 3 spaces.

Mr. Fantina addressed Mr. Hansen's letter of August 1, 2011. He and Mr. Hansen discussed the applicant's proposal to only seal coat the parking lot in Phase I and then mill and pave in Phase II. Mr. Hansen expressed concern that Phase II might not take place or the timeframe might be extended between Phase I and Phase II. Addressing Mr. Fantina's comment that the timeframe could be set at 24 months, Mr. Hansen wanted to know what the trigger would be as no one would be checking on the status at 23.5 months. Mr. Simon, Esq. advised that it could be tied to a CO for Building I, and the Building Inspector could shut down Building I if the paving was not completed. Mr. Hansen's recommendation was that the milling and paving be done in Phase I. It would be difficult for the building inspector, and there would be practicalities that might not make that enforceable. A bond also has issues as someone needs to monitor the bond and then attempt to pull it.

Mr. Henry, Esq. advised that there could be a conditional certificate of occupancy and a performance security to assure the lot is paved. There have been issues with a Building Inspector being able to "shut down" a building. He recommended a Letter of Credit instead of a Bond. Calling Bonds is a difficult process.

In terms of remaining items, Mr. Fantina explained that they would have an ADA stall; they have completed the stormwater design; and they have agreed to restrict the type of businesses in the buildings. They will also designate all drive isles as fire lanes. They will revise the title sheet to show up to 4 business entities which is a variance. The lights will be turned off at 9 p.m. and be turned on at dusk in both phases. The sign will be on until 11:00 p.m., and the security lights will be on all evening.

Mr. Fantina stated that a Stormwater Management Plan has been submitted and approved by the Engineer. Mr. Hansen stated that language must be developed to indicate that the maintenance of the system is to be done by the owner, but the town will have the right, not obligation, to clean it if necessary. Mr. Henry, Esq. advised that it is usually done via an easement or covenant. Mr. Hansen referred to a deed restriction as it would be difficult to put metes and bounds on the location.

Mr. McGroarty initiated discussion on the proposed location of the sign in the County right of way. Mr. Fantina explained that the signs for the lots on either side are located in the right of way. If they place the sign on the property, it might not be seen. Mr. McGroarty advised the Board that a variance would be required for the right of way location, and they cannot request a variance without County approval. It should be removed from the plans. If approval is granted, they would need to come back to the Board. Applicant agreed.

In terms of tree removal, Mr. McGroarty advised that they would be removing trees in Phase II, and that the Borough Ordinance calls for replacement of specimen trees that are 24 inches or greater. He recommended that the applicant do a survey of the trees. Board agreed.

Addressing the historical plaque, Mr. Appel stated that it would be freestanding in front of the cottage to the left or the right of the portico. It will be low to the ground. Mr. McGroarty confirmed that the detail of the site signage is as depicted on page 8 of the plans.

Mr. Douglass Polyniaks, Consulting Traffic Engineer, presented his credentials and was accepted as a witness by the Board.

Mr. Polyniaks testified that they plan on having 45 parking spaces, 9 ft. x 18 ft., and 24 ft. two-way isles. The engineering standards suggest 4 spaces/1000 sq. ft. and they have 4.9 spaces/1000 sq. ft. planned. The access will remain through the easterly side of the property with the westerly access being closed. He explained that they observed the driveway adjacent to the existing driveway on the easterly side, and that they only observed three vehicles during the peak hours. There should be no conflict between the two driveways. It is a small business office and does generate a lot of trips in peak hours. The County did not have a concern as long as there are sufficient site lines.

He testified that they updated the 2006 Master Plan traffic reports in May 2011, and that there were 100 vehicles less in peak hour traffic along Main Street. The previous report had been conducted in October/November timeframes and theirs was done in May. School was in session both times.

Mr. Polyniaks explained that the westerly curb cut will be closed. In terms of the driveway turning patterns, the site was previously used as a bank and a restaurant. Those uses generate more traffic than general office uses. Referencing the 21 ft. vs. 24 ft. drive isles, he stated that where there is parking, 24 ft. is proposed. It is less than 24 ft. in the two-way access isles into the site. He does not see a problem. The 9 x 18 ft. parking stalls meet engineering standards. The 10 x 20 ft. spaces are recommended when there is more traffic such as with convenience stores and banks where cars are pulling in and out, or where there are shopping carts or children's strollers. The traffic was studied on the adjacent property in conjunction with the less than 20 ft. separation of the driveways. Both sites are confirmed as low trip generators and there should be no issue. A loading area is not needed for general office uses. In terms of supplying three less parking spaces than required under the "non-historic" portion of the ordinance, the 4 spaces/1000 sq. ft. in the standards are sufficient.

Concluding his responses to Mr. Simon, Esq. he stated that parking is well proportioned throughout the site. The ingress and egress is sufficient. There is no danger to public safety.

Responding to Mr. Hansen on whether the adjacent site was fully occupied when he reviewed the traffic flow, Mr. Polyniaks stated that he believed it was. Addressing how the deliveries would be made to the back building for Mr. Ritger, Mr. Polyniaks explained that the trucks would use the existing parking stalls with a little overhang. They would K-turn to exit. He estimated the trucks not to be more than 30 ft. Mr. Ritger thought there would be a difficult time leaving.

Mr. McGroarty noted that in Phase I trucks could access the trash receptacle and turn in the parking lot. He questioned how that would be accomplished in Phase II as it appeared that the truck would need to back up. Mr. Polyniaks stated that front end loader could be used, and it would make a turn down the aisles. Mr. Fantina stated some research had been done with the waste management company and with the amount of waste that would be generated, there would not be a dumpster, just an enclosure. They would come at off-hours for trash and recycling. Mr. Henry, Esq. thought the enforcement of that condition would not be possible. Mr. Simon, Esq. agreed with the off-hour condition and they would do the best they can to enforce it.

Mr. Steck, Planner, presented his credentials to the Board and was accepted as a witness. Mr. Steck entered A-4, four pages of photos and information that he had prepared for the hearing. He testified that the property is fairly substantial in size, slightly less than one acre and is two times the minimum lot size for the zone. It has 122 ft. frontage and a 9.64 ft. existing setback. The property is developed in the front two-thirds, and is a deep property. It is an historic structure with bad additions. While the front façade has a residential appearance the other facades range from a trailer to a hotel theme. The applicant proposes to demolish the existing building and reproduce the historic portion on its foundation and provide additions continuing the same architectural theme. There will be a second building in the rear providing for a smaller building in the front. They are proposing 45 parking spaces.

Utilizing A-4, P4 he explained that the area is largely developed. Today the area is primarily commercial, but it is clear in the early days, most of the buildings were residential in use. They may not be on the same property. In some instances there are buildings behind buildings. It is not unusual for buildings that were residential initially to have outbuildings in the rear. There is less consistency in historic patterns when one is near the property. Across the street is the firehouse driveway and Audi. There is a substantial bank building to the east. He summarized that there are more of a variety of land uses in this area of the Historic District. Further east, the uses are primarily residential.

Mr. Steck referenced the 2006 Master Plan and reviewed the goals. The property is located in the Historic Business Zone. To the rear is a residential zone, but the use directly behind it is a recreational use. In the Historic Business Zone there is a mix of residential and business uses.

There are a wide range of permitted business uses. There are two separate standards, one for historic buildings and one for non-historic buildings. The historic buildings are given more flexibility as putting a business in them may require modification. The proposed building, while historic, has a poor condition, and the Historic Preservation Commission has agreed that it can be removed, but it will be reproduced in the same location. While the new building is not historic, they are reaching back into the standards that apply to historic buildings to make it compatible in the area.

Mr. Steck outlined the variances and waivers that would be required. Only one principal building is permitted per lot requiring a "d"1 variance for the two requested. As there are no more than 2 uses permitted on a lot or in a building, a "c" variance is needed for the four uses as they are permitted uses. A variance is also needed for the 15 parking spaces instead of 18 required in Phase I. In Phase II they will fully comply and have one extra space. There is also a variance needed for the front yard setback. The location of the replicated building was requested by the Historic Preservation Commission. The addition will be setback further. In terms of design waivers, the driveway width is proposed at 21-22 ft. versus the 24 ft required and the parking stalls are proposed at 9 ft. x 18 ft. versus the 10 ft. x 20 ft. required. The 20 ft. setback for the driveway on the east side would also need to be waived. There is no separate loading space, and they would retain the shoebox lights for Phase I. In Phase II, the new lighting fixtures would comply with the requirements.

He concluded that the statutory requirements for granting the variance relief and the design waivers have been met and warrant approval by the Board. The central theme is aesthetics and enhanced aesthetics. They are more important in an Historic District. In terms of the purposes of the MLUL that are advanced, a second building helps to finance the development of a smaller historic building in the front that is reflective of the patterns in the Historic District. Addressing the appropriate use of land, Mr. Steck explained they are not proposing retail or a bank, but are proposing general office use that lends itself to the type of architecture. The windows and the building are residential in style. They are enhancing aesthetics and promoting a Historic District. As a functional historic entity it will add to the Historic District. In terms of the number of units, they actually comply with the code per building with two tenants in each. The back building, while not having all the enhancements of the front building, is residential in nature and is suited to the site. There is a residential zone to the rear even though it is recreational today. The rear building will be the economic engine for the first building. That is not foreign to historic preservation.

Addressing the negative criteria, Mr. Steck stated that it is a fairly unique property with the back building not visible from the public view. It is not unusual in the historic area to have back buildings behind the front buildings. As the building will be extended in the front and a driveway removed, the back building will be less visible to the public. The most important part of the development is what appears to the motorists and pedestrians. The historic building is being reconstructed. The lot could accommodate a larger building of 11,000 sq. ft., but that size of a building would be out of character. There are special reasons to support the use variance and the use is suited to the site. Granting the waivers would support the site plan ordinance. If the Board grants the approval it is without detriment to the public good, and there is no detriment to the Zoning Plan.

Mr. McGroarty advised the Board that he did not have any challenges or questions. With two buildings, the question becomes one of density. If the Board accepts the testimony, they could have one building of 11,000 sq. ft. which is more than the two proposed buildings cumulatively. If the Board is comfortable with the circulation, the rest of the rationale makes sense to him.

Mr. Henry, Esq. stated that in addition to the use variances, the Board would be determining approval for preliminary and final site plan with a phased construction. He advised that the Board might want to consider how the construction would be phased, and whether any site safety precautions should be put in place when getting to Phase II. Mr. Simon, Esq. stated that there would be a pre-construction meeting. Mr. Hansen agreed and added that at that time they would get the details of the sequencing. There would be a pre-construction meeting for both phases, but there will be additional details for Phase II. Board discussed having the site safety for Phase II subject to review by the Borough Engineer.

Given the details they were discussing, Mr. Henry, Esq. advised the board that if/when they got to a point of making a motion for approval, there were two options. They could approve the application with conditions and follow it with the memorializing resolution, or they could authorize the drafting of a resolution for approval. Mr. Henry, Esq. preferred the latter given the details of the application. Mr. Simon, Esq. offered a third whereby they could approve the application and the applicant would be subject to further discussion of conditions. Mr. Henry,

Esq. advised that conditions would be enumerated at the time of approval, and that only some that may have been left out from previous hearings added.

Mr. Seavey questioned Mr. Steck as to whether he knew of any buildings on a new lot where there was a second in the rear or where there were two buildings on the lot with a second use in the rear. In terms of two principal buildings on a new lot, he stated there were no instances he was aware of. He could not answer as to the second use in the rear, but reiterated that there are factors that suggest a unique situation. He also answered that the site could not accommodate three buildings. Mr. Steck commented on the concept of precedent, by stating that there is none in the law. There is a series of factors that would not appear again. Responding to Mr. Seavey on whether approval would signal that given two buildings on a lot, the Board should grant another use for the back building, Mr. Steck again referred to the uniqueness. There is an abused historic building in the front that is the starting point.

Mr. Henry, Esq. added that the law is clear. Each decision stands on its own. If the circumstances are the same, there must be good reason to reach a different decision.

Mr. Schumacher clarified that the uses would be general office uses. Mr. Krasney stated that what he would like are businesses that complement his such as an attorney or an accountant.

Chair Seavey opened the meeting to questions and comments by the public.

Mr. Topping stated that he was disappointed by what he heard. When PNC made its application, there was one building, one use, and they planned to preserve the historic building. They also planned wooden shutters with hinges and brackets. They had a color pallet. Restoration should be tied to the period of interpretation. In this case it would be the 1900s. The challenges to the Historic District will be great as the older buildings are changed. The ordinance allows for two uses per building per property. If the Board allows four uses, it will set a precedent. Anyone who wants to make a profit will request more uses. If we do get this building, he would like to have a plaque remembering the history of the building.

There being no additional comments, the public sessions was closed.

Mr. Simon, Esq. began his summarization by stating that the project would be beneficial to the town. He reviewed the testimony that had been provided by the witnesses. Referring to 215.18 and 215.19, he stated that this is a special type of application, a 215.18.5 ordinance that has not yet been created. Through time, effort and money, a historic building is being replicated. The Board needs to consider each section of the ordinances when reviewing the variances and waivers. The variances can be granted without any detriment to the public. There is no damage to adjacent properties and there is no damage done to the character of the neighborhood. It represents a better zoning alternative for the property. He requested that the application be granted subject to the conditions that the applicant has agreed to.

In Board deliberations, Mr. McCarthy was appreciative of the fact that Mr. Krasney wanted to keep his business in town and reconstruct an historic building, but reviewing the application in the context of the MLUL, he found it lacking. The conglomeration of businesses and buildings is not suitable to the center of Mendham Borough and not for the Historic District. With the building in the rear there would be 4 uses and 2 buildings. It is not suitable for the location. The original cottage is dwarfed. It impairs the intent of zone plan. The Historic Preservation Element of the 2006 Master Plan is not forwarded. He is inclined not to grant the variances.

Mr. Ritger stated that at first the application bothered him, but the financial aspects are being fueled with two different buildings. He felt that there were some lots with two buildings in the center of town, or at least gave that impression. It is not out of character. The location is currently vacant, and it could cave in and be wiped totally off the map. This is a compromise of what he hoped and what he feared. The number of uses and buildings do not concern him. The setback is already encroaching. If parking is a problem, it will not be good for the applicant. There are roof line issues that need to be resolved. The driveway scenario bothered him somewhat, but there is not a lot of traffic in and out. He is moving toward being favorable toward the application.

Mr. Schumacher supported many of the comments made by Mr. Ritger and added that he does not appreciate the decaying structure and its potential collapse. The application is a compromise. To restore the building is costly. It accomplishes the goal of the Master Plan.

Mr. Smith also echoed some of the comments of Mr. Ritger and Mr. Schumacher. His first impression was not too favorable as he did not want to see the demolition of a historic building, but the building is dilapidated. The building is in such poor condition that renovating it is not an

option. He appreciates that the cottage will be reconstructed. The size of the lot can accommodate the proposal. If the existing building collapses, someone could come in and build a large building that would be out of character. He appreciates the idea of creating viable business in the center of town. He is favorable.

Mr. Peralta expressed that he does not treat what happens at the proposed location lightly. He is a 40 year resident of the Borough, and is concerned about the lack of usefulness of the property. It has been vacant for quite some time. The applicant has done a good job trying to keep with the historic nature of the town, and with a proposal to replicate the cottage. It is a large lot. There are also semblances of buildings behind other buildings in other areas even if they might not be on the same property. Given the nature of the uses, he did not see intensification as an issue. He would be favorable of the application with conditions.

Mr. Peck was also favorable. He stated that the building is designed to improve the streetscape and bring back the character. The building has been vacant for a long time. He is somewhat concerned about the number of uses, but the property is unique. The biggest concern he has is the flow of traffic particularly from the driveway. He was concerned on how deliveries such as Fed Ex would maneuver. Given the alternative of what could happen to the property, he appreciated the efforts of the applicant.

Chair Seavey appreciated the testimony of all of the witnesses. He did question the testimony that stated that an 11,000 sq. ft. building would be conforming. He believed that it would need all of the waivers. He would need to see the site plan.

It was also his interpretation that if the applicant would renovate an existing historic structure, they could be granted a third use. Mr. Henry, Esq. clarified that if it is a historic building, they could be granted more than three with some restrictions. There is a list of light variances that should be considered that in essence support that the better the renovation, the more the relaxation of the requirements. Mr. Seavey noted Mr. Steck's reference to recreational areas behind the building and the fact that trees would be removed. He stated that people would be seeing the building from the rear and that the vinyl siding would be noticed. He was of the opinion that the back building should have the same materials as those proposed for the front. Shutters with hinges are important for a historic building in the Historic District.

In terms of the two buildings, he noted that there are almost two lots. There are other lots that do have two buildings, but there are few with two uses. He liked the two building approach from an aesthetic perspective as the bulk of a front building is broken down. Four uses compounds the problem when dealing with a replication. There would need to be conditions.

He would want the historical plaque reviewed by the Historic Preservation Commission along with the color palette. There would need to be engineering review of the phasing and the construction. The landscaping should be of reasonable size to match that of the neighbors. The fire lanes and alarm system must be provided and the comments in the Ferriero letter addressed. He would consider three uses, not four given the zoning impact.

Board discussed the implications and practicality of having three uses versus four. There would need to be two clients in one building, and Mr. Krasney would need to occupy one building for his business. Two uses in each building may attract local business. The second phase could possibly not be built. They could come back for two uses after it is built. Even though there may be some lots with two buildings, businesses with two buildings mostly have garages.

Mr. Krasney explained that he lives in town, and he wants his business in town. The project is larger in scope and scale than anything he has previously undertaken. There are real issues with the economics of the project. His intention is to have an accountant or an attorney in the building. A 6,000 ft. client is very different. If there are three uses, he needs to use the whole front building himself and look for two 3,000 ft. tenants. He has to build the back building to keep the front costs within reason. He wants to create something that is of value to him and the town, has a solid use, and looks well on the street. Even if he used the attic of the first building and had three uses, the economics would not work. Mr. Simon, Esq. added that if the application were for one building, it would be a completely different application.

Mr. Peralta has observed the intensity of the area and was not concerned about the four uses. Mr. Smith noted that if the cost per tenant was too high there could be more turnaround in tenants and that would not be favorable. He felt that the property could sustain the uses.

Board once again raised the issue of the materials for the back building. It would be vinyl sided and that was bothersome. While hardiplank might be expensive, there might be some other materials. Given the fact that the two buildings would not be in concert with one another, the back building would stand out. A different color pallet might work to separate the two. Mr.

Henry, Esq. advised that the applicant cycled through the same discussion with the Historic Preservation Commission two times. While the Commission would have preferred to see both buildings of the same material, they accepted that the economics were an issue. The applicant did make some changes to upgrade the back building. The Historic Preservation Commission recommendation is advisory to the Board of Adjustment who has the final decision.

Mr. Appel explained that that no channel would be seen in the vinyl siding so that the buildings could have a similar pallet even though one is hardiplank and the other vinyl. The difference is perceived by walking by and pedestrians as one approaches as opposed to driving by. It is not aligned with the entry driveway. Board thought that people using the field behind, those visiting the building and those walking by would see it.

Mr. Henry, Esq. and Mr. Simon, Esq. discussed issues associated with requesting a vote given the discussion. Mr. Henry, Esq. advised that he would enumerate as many conditions as they have identified, and those would not be subject to further discussion. He would only consider adding a condition that might have occurred at a previous meeting. If there is discussion on the materials for the back building, that needs to be included as a condition. Unlike the color pallet which was never discussed, the materials for the back building have been discussed twice by the HPC and at the Board of Adjustment. The materials issue has not yet been decided.

Chair advised that the Board cannot make a decision on a short term economic situation for the applicant. The plan is good, but the applicant is asking for a lot. The lot may not be developed now, but the right project will happen. Board discussed the next steps. After some discussion, Mr. Henry, Esq. advised that in order to obtain the similar materials in the rear building, the Board would need the applicant to amend the application. That is not the application before them. Mr. Simon, Esq. noted that the application is also for four users.

Mr. Simon, Esq. discussed the issue with his client. He advised the Board that Mr. Appel explained that there are some materials in the front that do not need to be in the rear. They would commit to return to the HPC to place more historic materials in the back, but they would not commit to 100 percent. There was further discussion on the details of various materials and their viability for the rear building and whether the applicant should return to the HPC. This resulted in a difference in opinion among Board members as to whether they should make the decision on materials or allow the HPC to have the final determination. Mr. Henry, Esq. advised that the Board had already been provided the input of the HPC on materials for the back building. Board again confirmed with the applicant that matching materials for the rear building were not acceptable.

Mr. Peck made a motion to approve the application granting (1) a “d” variance for more than one principal building on the lot, (2) a “c” variance for two uses in each building, (3) “c” variance for less than required parking in Phase I, (4) “c” variance for front yard setback for historic component of front building, and (5) design waivers for width of two way drive isles, parking stall dimensions, width of distance from driveway on abutting property, no loading area, and permitting existing light stantions in Phase I, and (6) with the following conditions subject to further review to assure that all matters discussed would be included in the approving resolution:

- Installation of a bronze plaque close to the ground on a pedestal in front of the cottage. It is subject to HPC approval.
- Two buildings of 3,750 and 5,400 sq. feet respectively with two uses in each building. Measurements are interior usable space.
- Compliance with the Historic Preservation Commission’s recommendations of November 29, 2010.
- Dormer moved forward to permit alignment of the metal and shingle roofs as shown on Plan Sheet 1.1
- Compliance with affordable housing requirements
- Third floor will be used for mechanicals only.
- Metal roof will be a duller color such as turned metal or cooper color and compatible with the Historic District.
- Color pallet for both buildings will be reviewed with the HPC.
- Phase I parking will be seal coated with milling and paving in Phase II. If Phase II not commenced within 24 months, then parking will be paved in Phase I. There will be a temporary occupancy on the first building and some type of performance security or letter of credit in the amount of 120% of the cost of paving will be provided satisfactory to Borough Attorney and Engineer.
- All drive isles will be designated as fire lanes.
- Trash and recycling will be picked up off hours.

- There will be a preconstruction meeting before both Phases I and II, and Phase II will outline traffic, pedestrian and site safety issues.
- Uses will be limited to general office uses.
- Shutters will be on hinges and brackets.
- Landscaping will be appropriate to Historic District and subject to the approval of the Board Engineer and Borough Planner
- There will be compliance with the August 1, 2011 comments of the Board Engineer
- The lighting plan will be redone for Phase II, and the shoebox lights will be removed. Shoebox lights will be renovated in Phase I.
- There will be a limitation on the hours of lighting: Site Lighting off at 9:00 p.m.; Freestanding Sign Off at 11:00 p.m.; Architectural lighting dusk to dawn as security lighting.
- There will be dimensional limits on the signs, and HPC approval will be required.
- There will be a deed restriction or easement as relates to the maintenance of the stormwater management system.
- Approvals of all other entities required.
- Fees and taxes must be paid.
- Monitored fire alarm systems will be installed in both buildings.
- Development will be in accordance with testimony during the course of the hearing.
- Plans will be revised to remove notes on signage and items discussed.
- Applicant's engineer will do a site survey for the specimen trees.
- Design and materials for the rear building will be reviewed with the HPC.
- Any other conditions that were discussed during the course of the hearing that the Board Attorney does not have knowledge of as he was not at all hearings.

Mr. Ritger seconded.

ROLL CALL: The result of the roll call was 4 to 3 as follows:

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

The motion did not carry. The application was denied.

After consultation with his attorney and professionals, applicant requested the Board to consider a similar motion with the amendment to the application to provide matching materials in the front and rear buildings.

Mr. Seavey made a motion to approve the application with the previously identified conditions, but removing the material review by the HPC and substituting that the same materials proposed for the front would also be used in the back building. Mr. Peralta seconded.

ROLL CALL: The result of the roll call was 6 to 1 as follows:

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

The motion carried. The application was approved with the revised conditions. Mr. Henry, Esq. will prepare a resolution memorializing the action for the Wednesday, September 7, 2011 regular meeting of the Board.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 12:20 a.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, September 7, 2011.

Respectfully submitted,

Diana Callahan
 Recording Secretary

