

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
September 1, 2009
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

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

CHAIRMAN'S ADEQUATE NOTICE STATEMENT

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

ATTENDANCE

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

Mr. Seavey - Present
Mr. Smith - Present
Mr. Santo – Present (8:05 p.m.)

Also Present:

Mr. MacDonald, Attorney
Mr. Hansen, Engineer

PUBLIC COMMENT

Vice 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.

APPROVAL OF MINUTES

On motion by Mr. Palestina, seconded by Mr. Schumacher and carried, the minutes of the regular meeting of August 4, 2009 were approved as written.

HEARINGS

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

Block 801, Lot 20, Kings Shopping Center

Present: Richard Schneider, Esq., Attorney for the Applicant

Mr. MacDonald, Esq. advised the Board that he had had a telephone conversation with Ms. Kaplan, Esq. who was originally to be present at the hearing. She has made a review of the transcripts and the exhibits, appreciates the time that the Board set aside for her presentation, but feels she can adequately present her points after listening to the Ritter testimony and addressing questions. She also believes that other points could be set forth in a legal memorandum to the Board. Ms. Kaplan is an attorney and a licensed planner. Mr. MacDonald, Esq. recommended that the Board proceed in that manner for the purposes of expediting the hearing.

Mr. MacDonald, Esq. continued that Mr. Schneider, Esq. agreed with one caveat. If Ms. Kaplan, Esq. presents any new exhibits or new information, it should be provided with ample time to the applicant for review. Ms. Kaplan, Esq. has agreed.

Mr. Schneider, Esq. stated that he agrees with the stipulation as presented by Mr. MacDonald, Esq. He also stated that there should be a continued commitment to close the case by the end of the year. He and his RF professional are available on October 6. If radio frequency testimony cannot be completed then the hearing should proceed with planning even if it is out of order.

Ms. Callahan confirmed for Mr. Seavey that Dr. Eisenstein is not available on October 6. Mr. MacDonald, Esq. requested that we determine sooner rather than later if we can proceed with the RF testimony in October. If not, we should insist that the planning testimony proceed in October.

The interested party has thus far wanted to present the planning testimony after the RF testimony. The Board to date has been very flexible with regard to the schedule of all parties. It is now not unreasonable that we get the commitment of all parties that planning or RF testimony will continue on October 6. We cannot sacrifice another meeting.

Mr. Schneider, Esq. advised that the order does not matter, but Dr. Eisenstein has requested to give a report in November. He would prefer to proceed with the Planning testimony in October providing Mr. Humbert is available. Mr. Seavey agreed that we should complete the planning testimony in October and the RF testimony in November. Mr. MacDonald, Esq. requested that we get an update on everyone's schedule. Preference is to do planning in October.

Mr. MacDonald, Esq. advised that the goal is to finish testimony and have final deliberations in December, but it may occur in January. Board will also explore dates in October and November for a special meeting should it be needed. He announced that the application would be carried without any further notice to the Tuesday, October 6 regular meeting of the Board.

Mr. Palestina questioned whether given the tightness of the schedule, alternate dates should be identified in case they are needed. Mr. MacDonald, Esq. agreed that it was a good idea. Mr. Schneider, Esq. also agreed requesting that the Board Secretary use the same procedure in identifying dates that had been used previously.

Mr. Seavey requested that the dates for October and November be identified, but that none be set until after the October meeting.

Mr. MacDonald, Esq. announced that the application is formally carried to the October 6, 2009 regular meeting of the Board with no further notice.

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Rice, Michael – Hardship Variance

Block 403, Lot 21, 56 Mountain Avenue

Present: Michael Rice, Applicant
William Bryne, Architect

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction.

Mr. Hansen reviewed the completeness items and recommended waivers with the Board. Responding to Mr. Peralta on whether a drywell would be required, Mr. Hansen advised that there is one indicated in the plan for Board review. The Board had no objections.

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

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

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

The motion carried. The application was deemed complete.

Mr. Bryne presented his credentials to the Board and was accepted as a witness. He testified that the current home is a three-bedroom, single story ranch with a one car garage. The plan calls for adding a new master bedroom suite to the left side of the home. Adding the bedroom to the first floor keeps it adjacent to the children's bedrooms. The master suite is modest being 15 ft. x 16 ft. with a master bath and a single walk in closet. The plan is also to add a second bay to the garage. It is currently narrow and there are bulky set of steps down to the garage. It will be 20 ft. x 21 ft. A modest expansion of 7.5 ft. is also planned for the rear for the kitchen and the family room. It will provide a breakfast nook. Mr. Bryne presented a computer generated depiction of the home showing the left side of the home being setback and the garage moving forward to cover part of the current paved driveway. The additions should blend seamlessly.

Mr. Rice testified that they have four children and would like the addition so that they can eat more comfortably. Given the ages of the children, they would like to keep the bedrooms together.

Mr. Bryne clarified the coverage for Mr. MacDonald, Esq. The non-conforming impervious coverage required is 3,723 sq. ft. The conforming requirement is 3,298 sq. ft. The building coverage is currently 1635 sq. ft., the requirement 1,982 sq. ft and is moving to 2,613 sq. ft, or 631 sq. ft above the requirement.

Board discussed the 72 bonus sq. ft. referenced by Mr. Price in his Zoning Denial Form, but could not identify the specific ordinance that permitted it. Board determined that it was related to the front yard setback that was farther back than the allowable.

Mr. Bryne continued that the building coverage is exceeded to keep the shape and configuration of the home as a single story home. The scale of the home is maintained as the addition is diminimous in height. They have also removed some patio space with coverage taken from 545 sq. ft. to 210 sq. ft. Gutters, leaders and a drywell are planned. Post construction runoff would be reduced from the site.

After Mr. MacDonald, Esq. commented relative to the preservation of visual image as opposed to coverage, Mr. Seavey expressed concern that the visual image is being preserved by not adding a second story. They are requesting a variance and the home should be restricted from adding a second story. Applicant and Mr. Bryne agreed.

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

Mr. Gene Charney, 51 Maple Avenue, stated that he is a neighbor whose property sits downhill from the Rice home. They are supportive of the design, but are concerned about runoff. He complimented the Rice's as the first owners of that home to address the water issue, but they would like assurances that runoff mitigation is part of the plan. He also questioned what his recourse would be if there were different owners in the future.

Mr. Seavey responded that the specifications for the drywell would be developed by the applicant's engineer, and the Board Engineer would approve them. The long term enforcement is through the Zoning Officer and the Borough Engineer. Mr. Hansen added that there is less than 1,000 sq. ft. of disturbance so drywells are not required. He added that if the Board wants the water issue addressed, the drywell should be made a specific condition. The condition could read, "The stormwater management should be designed so that it is acceptable to the Borough Engineer".

Responding to Mr. Palestina, Mr. Bryne advised that the master bedroom square footage would be 642. sq. ft. Moving bedrooms upstairs would still leave one bedroom downstairs and the architectural design appeared very off balance. Addressing Mr. Schumacher on the size of the garage, Mr. Rice stated that he does not have a shed and needs a place for the lawn equipment and the children's toys and bikes. Mr. Bryne advised that the incremental square footage is about 176 sq. ft.

Addressing Mr. Smith on whether a sewer application is required as it is going from a three to four bedroom home, Mr. Hansen advised that it is not needed for residential, but he would verify with Mr. Ferriero.

Mr. Hansen reviewed the Engineering Report and recommended conditions for soil erodin, stormwater and a foundation location survey.

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

Mr. Peralta made a motion to approve the application with the requirement for the Engineer conditions. Mr. Smith seconded.

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

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the October 6 regular meeting of the Board.

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Parmelli, Jean & Charles – Hardship Variance: Continuation

Block 401, Lot 28, 26 Mountain Avenue

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

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

WHEREAS, CHARLES PARMELLI and JEAN PARMELLI, have applied to the Board of Adjustment of the Borough of Mendham for permission to construct an addition to the existing single family dwelling located at 26 Mountain Avenue also known as Lot 28 in Block 401 on the Tax Map of the Borough of Mendham, which premises are in the 1/4 Acre Residence Zone; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and after providing the adjoining property owners and the general public with the opportunity to be heard at a Public Hearings on July 7, 2009 and August 4, 2009, has made the following factual findings:

1. The applicants purchased the subject property in January 1999 according to the application. The lot is located on the westerly side of Mountain Avenue, with 128 feet of frontage on the street and extending to a depth of approximately 152 feet on the southerly side and 118 feet on the northerly side from the edge of the right of way.
2. The property is currently improved with a One (1) story single family dwelling and related accessory structures, including a driveway, an attached one car garage, an attached deck and a swimming pool with a surrounding concrete patio. The applicants presented, and the Board reviewed, a copy of a Survey of the PQ dated 1/25/99 prepared by John P. Miceli, Land Surveying.
3. The applicants' existing and proposed improvements were shown on the 5 page Variance/Architectural/Floor Plan dated 3/2/09 and revised through 7/10/09 prepared by, and described at the Public Hearing by, William P. Byrne, Architect of Byrne Design Associates.
4. The Impervious Coverage of the Existing and Proposed Improvements as defined in Section 215-31.1 H. of the Mendham Code after the proposed additions would appear to exceed the allowable limitation according to the Zoning Officer Denial dated 4/20/09, even after the revisions depicted on the 7/10/09 plans. Thus, a C-Variance is required and has been requested.
5. The existing and proposed structures also result in the need for a C- Variance related to Section 215-31.1 I of the Mendham Code which sets forth the limitations on the maximum principal and accessory Building Coverage. The applicants existing and proposed coverage would appear to exceed the permitted maximum according to the Zoning Officer Denial dated 4/20/09.
6. If the existing Swimming Pool and surrounding patio in the rear of the property were removed, the Variance conditions would be eliminated. The applicants seek permission from the Board to allow the pre-existing swimming pool to remain for the reasons discussed at the hearing.
7. The Board and the applicants discussed the applicants' current and proposed improvements on the lot and the drainage characteristics of the property. The applicants and Mr. Byrne also explained the specific characteristics of the House, the Lot size and the proximity of the neighboring houses and the lack of any significant visibility or "massing" issues of the proposed house.
8. The Board considered the comments of the Borough Planning Consultant in connection with certain aspects of the negative criteria and the neighborhood characteristics.
9. The Board received and reviewed the Borough Engineer's Reports of May 14, 2009 and July 27, 2009 and in consultation with the Engineer, the Board deemed the application complete and waived certain completeness details based upon the Borough Engineer's comments.
10. The Board and the applicants discussed the Board's continuing concern that the proposed House and the Accessory Structures not be expanded or enlarged in the future due to the impact on the impervious coverages and the drainage.
11. No members of the public participated in this application hearing in favor of or in objection to the applicants' plans.

WHEREAS, the Board has determined that the C-Variance relief for Total Impervious Coverage and Total Principal and Accessory Building Coverage requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing

the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Mendham on this 1st day of September, 2009, that the application of CHARLES PARMELLI and JEAN PARMELLI which was approved on August 4, 2009, be memorialized herein, subject however, to the following conditions:

1. The Home Additions approved herein shall be constructed in conformance with the testimony and in conformance with the Exhibits revised through 7/10/09 that were provided to the Board with the application materials and described during the Public Hearing, including the REMOVAL of the frame shed along the northerly sideline.
2. The approvals herein are subject to all relevant Federal, State, County, and Municipal regulations including: compliance with the Outdoor Storage Limitations in Ordinance 155-3; payment of all relevant taxes, application fees, review fees and inspection fees; and, submittal of a Footing and Foundation "AS BUILT" Survey prior to issuance of a Framing Permit.
3. The variance relief granted herein shall expire if not utilized within one year from the date of this Memorializing Resolution.
4. The approvals granted herein are specifically conditioned upon there being no enlargement or expansion of the Impervious Coverage/Building Coverage without additional review and approvals, if granted; and, submittal of a Plan describing the proposed Stormwater Management Structures and techniques in a manner satisfactory to the Borough Engineer.

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

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

The motion carried. The resolution was approved with conditions.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Santo adjourned the meeting at 8:50 p.m. The next regular meeting of the Board of Adjustment is Tuesday, October 6, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
 Recording Secretary

