

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
October 15, 2013
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Chair Kraft at 8:05 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S OPENING STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 17, 2013 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

ATTENDANCE:

Mayor Henry – Present
Mr. Bradley – Present
Mr. Cascais - Absent
Mr. Gertler – Present

Mr. Kraft - Present
Mrs. Kopsik – Absent
Mrs. Lichtenberger - Absent
Ms. Sandman – Present
Councilman Sharkey - Present

Alternates:

Mr. Cavanaugh, Alternate I – Present
Ms. Isaacson, Alternate II – Absent

Also Present:

Mr. Henry, Attorney
Ms. Callahan, Secretary

MINUTES

On motion made by Councilman Sharkey, second by Mr. Bradley and carried, the minutes of the regular meeting of September 9, 2013, were approved as written.

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PUBLIC COMMENT

Chair opened the meeting to the public for questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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Chair Kraft recused from the Board.

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HEARING

#942 – Seven Hilltop Holdings, LLC & Five Hilltop Holdings, LLC – Prelim & Final Site Plan

Block 1902, Lots 20 & 21, 5 & 7 Hilltop Road (Historic District) – **RESOLUTION**

Mr. Henry, Esq. had provided the Board with a draft copy of the resolution in their pre-meeting packages. He made two minor editorial changes. He then elaborated on the condition pertaining to change in ownership as relates to the easement. He advised that unless someone wants to change the easement in the future, it would remain in effect. It could be changed by returning to the Board should a new owner want to do so. Any new business going into the buildings would just require TRC approval or TRC review and Board approval if other issues require this.

Councilman Sharkey made a motion to approve the resolution with the minor editorial changes. Mr. Bradley seconded.

ROLL CALL: The result of the roll call of eligible voters was 4 to 0 as follows:

In Favor: Henry, Bradley, Gertler, Sharkey
Opposed: None
Abstentions: None

The motion carried. The resolution was approved. Following is the approved resolution:

**MENDHAM BOROUGH PLANNING BOARD
RESOLUTION
GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
FOR SEVEN HILLTOP HOLDINGS LLC AND FIVE HILLTOP HOLDINGS LLC
BLOCK 1902, LOTS 20 AND 21
APPLICATION NUMBER 942**

WHEREAS, Seven Hilltop Holdings LLC (as to Lot 20) and Five Hilltop Holdings LLC (as to Lot 21), together being "Applicants", have applied to the Planning Board of the Borough of Mendham (the "Board") for preliminary and final site plan approval with technical variances for existing non-conforming conditions, to create, construct and install a cross-access driveway between the lots, together with related site improvements, as well as enhanced landscape and hardscape, on properties located at 7 Hilltop Road and 5 Hilltop Road, designated Lots 20 and 21, respectively, in Block 1902 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a public hearing was held on September 9, 2013, at which time testimony and exhibits were offered on behalf of Applicants, the Board reviewed the documents and materials filed by Applicants, the Board heard legal argument from Applicants' attorney, the Board reviewed reports and comments from its professional consultants, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered and deliberated upon the testimony and materials submitted by and on behalf of Applicants, the reports and recommendations of the Board's consultants and professional staff, and there being no comments from members of the public;

NOW THEREFORE BE IT RESOLVED that, based upon the foregoing, the Board makes the following findings of fact and conclusions of law:

1. Applicants, Seven Hilltop Holdings LLC and Five Hilltop Holdings LLC are the owners of property located at 7 Hilltop Road and 5 Hilltop Road, respectively (together the "Subject Property"), which properties are designated Lots 20 and 21, respectively, in Block 1902 on the Mendham Borough Tax Map. The Subject Property is located in the Historic Business District.
2. The two limited liability companies which own the respective properties are, themselves, in common ownership. In addition, both properties are occupied by Nickelfish Design & Marketing, which operates its business from the buildings located on both properties.
3. Applicants propose to physically connect the two properties by way of an added drive aisle connecting the parking lots which exist on each of the two properties. The proposed project will include an expansion of a patio area, installation of curbing, installation of additional and enhanced landscape and hardscape materials, and other related ancillary site improvements. The present driveway serving 5 Hilltop Road will be designated a one-way entrance driveway; and present driveway serving 7 Hilltop Road will be designated a one-way exit driveway. Although the two properties will function together for purposes of on-site traffic movements (both pedestrian and vehicular), Applicants do not intend to legally consolidate the properties into a single Tax Lot.
4. There are presently several non-conforming conditions affecting each of the existing properties, as follows:
 - (a) inadequate lot widths -- both Lots;
 - (b) lot coverage -- Lot 21;
 - (c) front yard setback -- Lot 21; and
 - (d) side yard setbacks -- both Lots.Applicants' surveyor/planner testified that none of the existing non-conforming conditions would be increased or exacerbated by the proposed site changes; nor would the proposed site changes, themselves, create any new or additional non-conforming conditions. As a result, though technical variance relief may be required for the existing non-conforming conditions, no other variance relief is required or sought by Applicants in connection with this proposed development.
5. In addition to landscape plans prepared by Landscape Techniques, Inc., dated January 12, 2013 (2 sheets) entitled "Nickelfish HQ Project Plant Plan", "Drawing #1" and "Drawing #2", Applicants submitted two individual site plans bearing identical titles, production dates and revision dates. Both were prepared by Richard F. Smith, Jr., PLS/PP. Each was entitled "Survey and Site Plan of Lands...", was dated June 26, 2013 and revised August 20, 2013. One showed "existing" conditions and the other "proposed" conditions. In order to avoid

confusion, the plan showing proposed conditions was marked "Exhibit A-1" and the plan showing existing conditions was marked "Exhibit A-2". It was noted that the Borough Engineer in his comment letter of September 5, 2013 requested that the plans be retitled in a manner which distinguishes one from the other and that they, together with the two sheets of landscaping plans be collated into a four-drawing set.

6. The Board and Applicants further discussed the Borough Engineer's September 5, 2013 comment letter. Applicants' surveyor/planner agreed that all of the comments could be satisfied and Applicants agreed that they would comply with and satisfy the Borough Engineer on all of these items. As a result, satisfactory revisions to the submitted plans shall include the following:

- (a) re-titling and assembling plans into plan sets, as described in finding number 5 above;
 - (b) signing of the landscape plans by the professional who prepared them;
 - (c) providing construction details with respect to curbs, walks, driveways, pavement, etc. [in this connection, Applicants' landscape designer also discussed the change from slate to bluestone for the driveway, walk and patio areas. He described the sub base, bluestone thickness, and dry set construction techniques, especially with regard to the driveway areas which are designed to be roadway. These construction details shall be set forth in plan revisions.];
 - (d) the plans should indicate flush curb at all locations where walkways cross driveways;
 - (e) accessible parking stalls and appropriate signage must be added by way of plan revision and installed on the site;
 - (f) the plan should be clarified if it is intended to show that the trash area on Lot 21 is to be removed, and, if this is the case, an easement for the benefit of Lot 21 to use the trash enclosure on Lot 20 will be required;
 - (g) dimensions need to be shown for the trash enclosure. [Given the width of the gate doors, the Borough Engineer recommends that the gates be constructed with steel posts and frames, with the board-on-board fence mounted to the frame.];
 - (h) dry well(s) must be depicted on the plans and installed to accommodate the stormwater run off (there being additional impervious surface added to the site). The dry well(s) needs to be designed, detailed and shown on the plans. A drainage easement or cross easement, as applicable, should be provided;
 - (i) the purpose for the large sign indicated adjacent to the parking lot at the rear of Lot 20 should be set forth on the plan;
 - (j) the landscape plan should be updated to show the present (new) sign and lighting on Lot 20;
 - (k) traffic control signs should be depicted and identified with respect to the entrance/exit, and one-way restrictions for the driveways on the respective properties;
 - (l) an existing light pole shown in the new driveway between the sites must be relocated (shown in its new location on the Plan, and physically relocated on the site);
 - (m) those portions of the existing curbing on site which are to be removed must be indicated on the plan;
 - (n) at least one new shade tree should be provided behind the new curb in the grass area on Lot 20. This must be shown in a plan revision and installed in accordance with the final approved plan;
 - (o) a striping plan must be shown for the new paved parking area on Lot 21;
 - (p) proposed grades and curb radii need to be shown on the new curb line along the new connecting driveway;
 - (q) the width of all walkways needs to be dimensioned on the plan.
7. The Board and the Applicants discussed the need for various easements or cross-easements to permit the separate properties to function in the manner proposed by Applicants. Particularly, cross easements for vehicular and pedestrian traffic must be prepared and recorded, together with an easement to allow the occupants/users of Lot 21 to utilize the trash enclosure on Lot 20, an easement or cross-easement, as necessary, for drainage and storm water management with regard to drainage crossing the common lot boundary line, and easements, as necessary, for curbing and landscaping crossing the common lot boundary line. It was agreed that Applicants' attorney would submit proposed easement documents to the Board Attorney for review and approval of form and content. The easement document or documents shall also provide that, in the event that occupancy and/or title to both properties ceases to be under common ownership or control, the site plan sought to be approved, the traffic pattern which it creates, and the easement or cross-easement rights, shall, nevertheless, remain and continue unless and until the owner of either or both properties desires to terminate some or all of the operating conditions or easement rights, and then only upon application to the Planning Board for an amended site plan approval, as to which the Planning Board determines that both properties can function efficiently and safely. All proposed easement documents shall be subject to review and approval as to form and content by the Board Attorney and Borough Engineer, including all legal descriptions of easement areas and closure calculations.

8. With respect to the proposed change of ingress and egress driveways -- namely, the creation of a one-way entrance drive on Lot 21 and a one-way exit drive on Lot 20, Applicants' surveyor/planner testified that the proposed change would produce more efficient and safer operation on the properties for both vehicular traffic and pedestrian movements. It was also noted that in the review by the Morris County Planning Board and the County Engineering Office, that the one-way entrance and one-way exit traffic pattern was suggested as an improvement for site operation, even though it was not mandated as a County requirement.

9. As to the use of bluestone, rather than slate, Applicants' landscape designer testified that this would provide for continuity with the bluestone currently in use on 5 Hilltop Road, and would be consistent with a more period-appropriate material. This evaluation of materials was also expressed in the report to the Planning Board from the Historic Preservation Commission.

10. Applicants' landscape designer further indicated that the plant species proposed for use in the current development of the properties were, for the most part, species presently on site and with which there has been essential success. He agreed, however, to review the various plant species to be utilized, particularly from the perspective of deer resistance.

11. There were no comments from members of the public.

12. Based on all of the foregoing, the Board determined that Applicants had satisfied all of the requirements for approval of the proposed preliminary and final site plan with respect to the Subject Property (Lots 21 and 20 in Block 1902), and that the technical variances with respect to the existing site conditions described in finding number 4, above, which have existed for a period in excess of 100 years for the principal structures located on these properties and/or have been the subject of prior site plan approvals, can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan or zoning ordinance. As a result, the Board concludes that site plan approval and the technical variances can, with appropriate conditions, be approved and granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Mendham that, based upon the foregoing, Applicants' proposed preliminary and final site plan to create common driveway and parking access, a new cross drive aisle connection, enlarged patio area, new walkways, enhanced landscape and hardscape, with details as shown on the Plans submitted to the Board, as those Plans are to be revised in accordance with the findings and conditions of approval, for property located at 5 Hilltop Road and 7 Hilltop Road (designated Lots 21 and 20, respectively, in Block 1902 on the Mendham Borough Tax Map) together with the technical variances for existing site conditions as detailed in finding number 4, above, be and hereby are approved and granted subject to the following conditions:

1. Applicants shall comply with the comments of the Borough Engineer set forth in his September 5, 2013 letter, and as detailed in finding number 6, above, and shall satisfy the Borough Engineer with respect to same.
2. All necessary plan revisions shall be made and shall be subject to approval by the Borough Engineer.
3. Installation, construction and use of the improvements shall be in accordance with the Applicants' plans, as revised, testimony at the September 9, 2013 hearing, the findings and conclusions of the Board detailed in this Resolution and the conditions of approval set forth herein.
4. Applicants shall submit proposed Grants of Easements with respect to cross access for both vehicular and pedestrian traffic, use of trash removal facilities on Lot 20, drainage and storm water management between the two Lots, and curbing and landscaping features which cross the common lot boundary. The easement document or documents shall contain provisions which address the possible division of ownership and/or occupancies on the properties, such that they are not subject to common ownership or control, as generally described in finding number 7, above. Following review and approval by the Board Attorney and the Borough Engineer, Applicants shall record the documents in the Office of the Morris County Clerk and shall provide copies of same with recording data to the Secretary of the Planning Board.
5. Applicants shall obtain all other permits and approvals which may be required from any board, body, office or agency, whether federal, state, county or municipal, relating to completion of this Application or the construction, installation or operation of the proposed improvements on the Subject Property.
6. All taxes and other municipal charges shall be paid and current through the third quarter 2013. Applicants shall also pay all application and escrow fees, as well as inspection fees or any other fees required in connection with completion of this Application or this project.
7. Conditions 1, 2, 4 (as to approval of documents), 5 & 6 (to current) must be satisfied prior to the Board's signing of the Site Plan.
BE IT FURTHER RESOLVED that this Resolution, adopted this 15th day of October, 2013, memorializes the action of the Board, as set forth above, taken at its meeting on September 9, 2013.

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Chair Kraft returned to the Board.

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TRC UPDATES (Information Only)

Mr. Bradley reviewed the approved and pending applications with the Board. Ms. Sandman and Mr. Kraft will attend the meeting in place of Mrs. Kopsik and Mrs. Lichtenberger.

OTHER BUSINESS

Mr. Henry, Esq. advised the Board that the COAH case has been decided. COAH now has 5 months to establish rules and regulations that are consistent with the old methodology. The court held that the new methodology that had been proposed did not include a regional element and was not consistent with the Fair Housing Act.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 8:20 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Tuesday, November 12, 2013 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan/mgt

Diana Callahan
Recording Secretary