

**MINUTES OF THE
REGULAR MEETING
MENDHAM BOROUGH PLANNING BOARD
FEBRUARY 12, 2018**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Mr. Kraft at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on January 11, 2018 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

Mr. Bradley – Present	Administrator Bushman - Present
Mr. Cascais – Present	Mayor Henry – Present
Mr. Kay – Present	Ms. Lichtenberger – Present
Councilman Sharkey – Absent	Mr. Sprandel – Present
Chairman Kraft – Present	
Alternates:	Ms. Masse, Alternate I – Absent
Also Present:	Mr. Henry, Esquire

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**2018 REORGANIZATION
Election of Vice-Chair**

Mr. Kraft explained that the vice-chair nomination was postponed at last month's reorganizational meeting. A nomination was made for Mr. Cascais as Vice Chair by Mr. Bradley. There being no additional nominations, on motion made and seconded by Mr. Sprandel, a single ballot was cast for Mr. Cascais as Vice-Chair.

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MINUTES

Mayor Henry made a motion to approve the minutes of the regular meeting of January 8, 2018 and Mr. Kay seconded. On a voice vote the minutes were approved.

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PUBLIC COMMENT

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

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RESOLUTION

PB #943 **Barber, 78** Mountainside Road
Block 501, Lot 24, Minor Subdivision Approved December 14, 2015
(Extension until December 31, 2018)

Mr. Henry commented that he found a typographical error on page 4. With no other comments from the Board, Mr. Bradley made a motion to memorialize the resolution of extension of time to perfect minor subdivision and extension of period of protection, and Mr. Kay seconded.

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

In favor: Bradley, Bushman, Henry, Kay, Lichtenberger, Kraft, Sprandel
Opposed: None
Abstentions: None

The memorialized resolution follows.

MENDHAM BOROUGH PLANNING BOARD

RESOLUTION

**EXTENSION OF TIME TO PERFECT MINOR SUBDIVISION
AND EXTENSION OF PERIOD OF PROTECTION
FOR RONALD BARBER
BLOCK 501, LOT 24
APPLICATION PB#943**

WHEREAS, Ronald Barber (“Applicant”) has applied to the Planning Board of the Borough of Mendham (the “Board”) for a further extension of time to perfect a minor subdivision and an extension of the period of protection for that subdivision, which subdivision approval was previously granted to Applicant with respect to property located at 78 Mountainside Road and designated Block 501, Lot 24 on the Tax Map of the Borough of Mendham (the “Subject Property”); and

WHEREAS, a letter application was made to the Board by Applicant’s attorney John M. Mills, III, Esq. with respect to pertinent facts; and

WHEREAS, the Board asked to hear testimony on the matter at its January 8, 2018 meeting; and

WHEREAS, the Board heard testimony from Applicant's engineer at its regular public meeting on January 8, 2018; and

WHEREAS, the Board made the following findings and conclusions with respect to the application:

1. Applicant is the owner of the Subject Property located at 78 Mountainside Road, designated Block 501, Lot 24 on the Tax Map of the Borough of Mendham.
2. Applicant received minor subdivision approval from the Board at a meeting held on November 13, 2015, which approval was memorialized in a Resolution adopted by the Board at its meeting on December 14, 2015.
3. The minor subdivision approval granted in 2015 was to permit Applicant to divide the Subject Property into two separate lots, the said approval being subject to a number of conditions set forth at length in the memorializing Resolution.
4. Among other things, Applicant was to obtain Borough and NJDEP approval with respect to an adjustment of the Sewer Service Area, obtain a recertification as to the revised plan from the Morris County Soil Conservation District and the Morris County Planning Board, pay a required sewer reservation fee, make certain plan revisions and add plan notes and other document revisions in accordance with the Borough Engineer's November 5, 2015 comment letter, prepare and file a minor subdivision deed after obtaining approval of same as to form and content from the Planning Board Attorney and the Borough Engineer, address the need for a Conservation Easement to the Borough (and

if required prepare and record a document in this regard), and satisfy other conditions set forth in the said December 14, 2015 memorializing Resolution.

5. Among those conditions to be satisfied by Applicant was the requirement for the preparation and recording of a minor subdivision deed. Under the applicable provisions of the Municipal Land Use Law, the recording of the minor subdivision deed and the filing of copies of same with certain identified officials is to be accomplished within 190 days of the adoption of the Resolution memorializing municipal approval of a minor subdivision. This process is generally referred to as “perfecting” the minor subdivision approval.

6. The Municipal Land Use Law also sets forth provisions pursuant to which an Applicant may seek to extend the time period for recording the required minor subdivision deed. Applicant seeks this extension of time to perfect the minor subdivision.

7. Applicant also seeks extension of the period of protection relative to any changes in the zoning regulations applicable to the Subject Property.

8. Generally speaking, an Applicant can receive an extension of time to perfect a minor subdivision, and for extension of the period of protection, if it can be shown that, notwithstanding prompt and diligent application and prosecution of applications for permits or approvals from other boards, bodies or agencies, such approvals could not be obtained within the time necessary to permit the timely recording of the subdivision deed and pursuit of the benefits of the subdivision; and that the delay(s) resulted from the bureaucratic process or processes involved and were not within the control of the Applicant.

9. Applicant's engineer testified regarding the Applicant's efforts in moving matters forward, particularly those with respect to amendment of the Sewer Service Area map and, thus, the Waste Water Management Plan. In this regard, he stated that there was a long period of delay at the NJDEP due to an absence of rules governing the amendment process under the Water Quality Management Plan, which hiatus did not come to an end until November of 2016. Subsequently the process could be restarted and Applicant could pursue the required NJDEP approval. Nevertheless, Applicant encountered further delay when NJDEP was unresponsive to Applicant's submissions and was unable to bring the matter to a conclusion. Only recently, with the appointment of a new Case Manager, has the NJDEP begun to wind up the process. Applicants' submissions have been substantively worked to a point where Preliminary Notice is being set up for publication in the State Register. This will lead to a comment period and, it is hoped, Final Notice of Approval.

10. Applicant's engineer further testified that, although he is reluctant to estimate times for NJDEP actions to be completed, he anticipates that the Notice – comment – Notice process will take at least several months from Preliminary Notice. Given that extension of the period of protection is also involved, the request from Applicant is an extension for perfecting and for the period of protection through December 2018.

11. In addition to the NJDEP delay, Applicant's plans require certain revisions and modifications which have been outlined in compliance review letters from the Borough Engineer. The Board was informed by the Borough Engineer that if an extension of time were granted to Applicant sufficient to permit the anticipated conclusion of the process with the NJDEP, the Borough Engineer felt that Applicant and his engineer should

be able to complete the other outstanding items and conclude compliance with the conditions of approval required pre-Board endorsement of the subdivision deed. He suggested that an internal deadline for submission of these compliance materials be set for 30 days from the date of publication by the NJDEP of Preliminary Notice in this matter.

12. Under these circumstances, the Board concluded that Applicant had made a sufficient showing of proper statutory cause for extension of the time within which to record a perfecting minor subdivision deed and an extension of the statutory period of protection, as provided in N.J.S.A. 40:55D – 47 (e) (f) and (g). The extension would be until December 31, 2018, with internal deadlines for submission of compliance materials and for an updating report to the Board.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Mendham that, based upon the forgoing, Applicant be and is hereby granted an extension until December 31, 2018 for completion of compliance with the conditions of approval of the minor subdivision as set forth in this Board's December 14, 2015 Resolution, including the time within which Applicant must record a minor subdivision deed and file copies of same with the Borough Engineer and Borough Tax Assessor, as required by N.J.S.A. 40:55 D-47 (d), during which time, the period of protection for this minor subdivision approval shall continue and any other time limitation imposed under the Municipal Land Use Law and/or the Ordinances of the Borough of Mendham are similarly extended until December 31, 2018, all of the foregoing being subject to the following additional conditions:

1. Except as previously and satisfactorily submitted, all compliance materials stipulated with respect to the 2015 minor subdivision approval, including those identified

in the Borough Engineer's compliance review letters, shall be submitted within 30 days of the publication by NJDEP of its Preliminary Notice regarding this matter in the State Register.

2. Within 30 days of submission of the compliance materials, but not later than 60 days following the publication by NJDEP of the referenced Preliminary Notice, Applicant shall update the Board in writing with respect to the status of NJDEP approval, compliance actions and submissions, conditions satisfied, and any remaining open items.

BE IT FURTHER RESOLVED that this Resolution, adopted this 12th day of February 2018, memorializes the action of the Board, as set forth above, taken at its regular meeting of January 8, 2018.

OTHER DISCUSSION ITEMS

Chairman Kraft stated that next week's TRC meeting was cancelled.

Mr. Kraft asked for any comments on the Board of Adjustment's Annual Report to the Borough Council that was copied to the Planning Board. Mayor Henry mentioned that with the decreased number of applications to both the Planning Board and Board of Adjustment that it might be time to consider combining the two Boards. Board members expressed concerns about a resurgence in applications and the reversal of the combining process if this occurred. Mr. Henry pointed out that the Planning Board reviews the Master Plan, and affordable housing concerns should be taken into consideration as he suspects the courts will make a determination shortly.

Mr. Kraft addressed the Board of Adjustments clarification of a "fast food" definition in the Borough's ordinance. The current ordinance requires 20% more parking for a fast food establishment. Conversations continued about the difference of drive-in and drive-thru. The Borough's ordinance prohibits drive-ins, but does not mention drive-thrus. The Board also discussed the suggestion to reclassify the required number of parking stalls to zoning, prompting a C variance if the required number of parking stalls exceeds the number proposed.

PUBLIC COMMENT

Mr. Kraft once again opened the meeting to the public, noting that a Mendham resident, Alice Boushie of 20 West Main Street had arrived. Ms. Boushie was concerned about the number of Dunkin Donut signs on East Main Street, and although she feels the Borough needs new business, she is concerned about the preservation of the historic building.

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ADJOURNMENT

There being no additional business to come before the Board, Chairman Kraft adjourned the meeting at 8:05pm. The next regular scheduled meeting of the Planning Board will be held on **Monday, March 12, 2018 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham.

Respectfully submitted,

Carolyn Mazucco

Carolyn Mazucco
Board Secretary