

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
Tuesday, June 11, 2019
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

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

OPENING STATEMENT

Notice of this meeting was published in the *Star Ledger* and the *Daily Record* on in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Chairman Seavey – Present	Mr. Dick – Present
Mr. Palestina - Absent	Mr. Smith - Present
Ms. Cass – Present	Mr. Sisson – Absent
Mr. Ritger – Present	

Alternate: Mr. Egerter, Alternate I- Present
 Alternate II - Vacant

Also present: Mr. Germinario, Esq.
 Mr. Denisiuk, Engineer
 Ms. Caldwell, Planner

#####

MINUTES

Mr. Ritger made a motion to approve the minutes as written and Mr. Smith seconded and unanimously carried by voice vote to adopt the Minutes of May 7, 2019, as presented.

PUBLIC COMMENT

Chairman Seavey opened the meeting to the public for questions and comments on items not included on the agenda.

Mr. McManus from 10 Garabrant St. came to the meeting looking for guidance regarding the water coming from Highfield Circle. He explained about the swale on Highfield Circle and that its purpose was to take the water coming from Highfield Circle and route it under Gunther St. Mr. McManus would like to know who they need to speak with regarding the upkeep of this swale. Chairman Seavey suggested that they consult with the Council and the Borough Attorney.

Chairman Seavey asked if there were any other public comment. There being none, the public session was closed.

HEARING:**BOA#02-19**

Villa Restaurant Group dba Black Horse Pub & Tavern
1 West Main St.
Block 301, Lot 1
(Appeal)

Present: Larry Calli, Esq.
Mike Harkin, project manager
Jim Howard, VP Construction
David Jackson, Designer

Mr. Germinario gave an overview of the reason for the appeal. Mr. Germinario stated that this appeal falls under 70a. in the MLUL which is an appeal of determination of an administrative officer which in this case was the Zoning Officer. The ordinance states that HPC has to make a recommendation and if the recommendation is negative the Zoning Officer has to deny the permit. The Board is to review the underlying decision of the HPC and determine whether the HPC made any errors on the recommendation that was made. It is not the Board's task to determine whether they like or do not like the artificial cedar vs. natural cedar, it is to determine whether the HPC had the authority to do what was done under the ordinances, whether they interpreted the ordinances correctly or if there was anything arbitrary in coming to their recommendation. The ordinance is on page 3 of Jessica Caldwell's report.

§ 215-51 Standards of consideration. Section H, Item 7 *Relationship of materials and texture. The relationship of materials of the facade and roof of a building shall be visually compatible with the predominant materials used on the existing building or similar buildings that are in the Historic District Overlay Zone. Nothing herein shall prevent the use of alternative materials that are different from those on an existing building, including the right to use asphalt shingles to replace a roof which had different materials, provided that the texture of the asphalt roofing or alternative materials is compatible with the existing building or similar buildings in the Historic District Overlay Zone. Based on the September 27, 2018 HPC minutes the material didn't meet this criterion.*

Mr. Germinario also stated that at this meeting the Board is not dealing with a variance. If in fact the HPC did the right thing, the applicant would have to file a separate application for a variance.

Mr. Calli, attorney for the applicant, gave a background on the applicant. He stated that the applicant filed for permits to replace the roof. The applicant was told to file an application with the HPC and attended a meeting. The applicant stated that they would be replacing the roof with a synthetic cedar. The HPC said it will look fake, don't like composite, and there will be no variation over time like real cedar. Jim Howard, VP of Construction showed the HPC what it would look like and the HPC voted no. Mr. Calli feels that this is right for appeal because this is used on other historic buildings around the country and it was an investment that the applicant made to rehabilitate the building. Mr. Calli noted that in the Planner's report that compatibility and hardship were mentioned and he stated the applicant purchased the material and it cannot be used anywhere else and the cost was approximately \$40,000. The applicant is coming in front of the Board because they have the product, the design and they feel it looks good. After hearing from Jim Howard who testified at the HPC and David Jackson the goal is to have the Board consider if there is an alternative decision to that of the HPC.

Jim Howard, VP Construction and David Jackson, Designer were sworn in.

Mr. Howard gave an overview of his credentials and the application. He stated that the new product for the roof was looked at because of the cost and life factor of the product. The life factor he believes is 50 years and also has an A fire rating. The product was purchased because they felt it was like cedar and felt that this wouldn't be a problem for approval. He attended the first HPC meeting on August 20th and the roof was an item that needed further discussion. The HPC wanted more information on the CEDUR shacks. Mr. Howard attended the September 17th meeting to get a decision on the roof and ultimately the roof was denied. Mr. Howard said that the reasoning was it was difficult to determine what the shingles would look like on a grander scale as well as weathering concerns and they didn't want a shiny plastic roof. A sample was placed on the roof prior to the meeting so that the HPC could see what it would look like. Since the roof was still denied the applicant felt that they had to bring this in front of the Board of Adjustment.

Mr. Calli asked Mr. Howard if it was accurate what he had said to the Board about the significant sums of money and Mr. Howard confirmed. Mr. Calli asked Mr. Howard if he could have saved money and used a different product but didn't because you wanted to be compatible with the Historic theme and Mr. Howard confirmed and stated that it was also because of the recommendation of Mr. Jackson.

Mr. Dick asked Mr. Howard why he didn't speak with the town prior to purchasing the materials. Mr. Howard stated the he felt that it was a similar material and was given false information from his general contractor that a permit was not needed for a roof replacement.

Ms. Cass asked Mr. Howard how often he worked on historic buildings and was he aware of the process. He said that he hadn't dealt with it very often and didn't think it was necessary since he felt that it wasn't a change of style.

Mr. Calli noted that it is very rare that HPC have an advanced right of review before building permits are issued for items which lawfully permits can be issued and Mr. Howard couldn't have known that.

Mr. Dick then spoke about the shingles and said that he liked it and has seen the sample on the roof.

Mr. Calli said the focus is to be, did the HPC err in their advisory recommendation and did they act arbitrary. The points were: It looks synthetic, it's shiny, lack of variation, questionable fire rating(which it does not), this would be precedent setting(which legally it is not), it is not installed anywhere else that can be seen and that is what the Board has to consider whether those bases for denial were in error or arbitrary. Owning the product goes to a hardship.

Mr. Ritger asked if there was a set of drawings and was a permit applied for and Mr. Howard said that they went to pull a permit and it was denied because they needed the approval from the HPC.

Michael Harkin, project manager was sworn in.

Mr. Harkin was under the understanding that a permit was not needed for roof replacement and then realized that didn't apply to commercial.

Mr. Ritger asked if there was a restocking fee and Mr. Howard stated that the company wouldn't take it back. Ms. Cass asked if there was another property that it can be used on and Mr. Howard said that they don't have one that it would work with. Mr. Ritger noted that there are several other buildings with true cedar roofs and feels that those that have reviewed the product were spot on because it is one of the most uniform roofing products and does not look like a cedar roof. Mr. Ritger also said that he believes the comments regarding the shininess were wrong but what is up there today is uniform in color and size.

Mr. Smith looked at the sample and said that what is on the roof does vary and replicates a real cedar roof. Mr. Seavey asked if Mr. Howard used synthetic anywhere else. Mr. Howard said that he has used synthetic products in his career and said that the product was created for the historical building. Mr. Seavey said that based on testimony that it is not unfair to say it's a subjective opinion. It is a landmark building and it is part of the history of this town and has significant value and asked how do you call a subjective opinion an error.

Mr. Calli said that the ordinance has created this mechanism where the appeal comes to the BOA to see if the advisory committee erred and acted arbitrary. The applicant sees this as an improvement not change. Mr. Seavey stated that he has used synthetic products and they tend to curl and they change in color. Mr.

Dick feels that there is variation and long lasting and gave examples. He feels it is progressive and superior product. Chairman Seavey said that we are not here to debate if it looks good or bad; we are here to debate if the HPC made an error.

Mr. Jackson pointed out the real cedar that is on the roof is doing the same thing that Chairman Seavey had concern with regarding the synthetic product and the goal of using this product is that it would last longer. The goal was to try to get as close to historic and to look visual correct. They felt this was no different from the other things that were accepted by the HPC, such as aluminum half round gutters as opposed to copper because they didn't have aluminum when the Black Horse was built. Mr. Seavey asked if this was brought to the HPC and Mr. Calli confirmed. Mr. Calli pointed out the role of the BOA is not the subjectivity it is based on the record that the denial was based on looks synthetic, it's shiny, lack of variation, questionable fire rating, it's not installed on any historic building anywhere, and this would be precedent setting. Mr. Calli said that it is not precedent setting, the questionable fire rating is combated by the literature which states that it has a better fire rating than cedar and the balance is design which is where the subjectivity comes in. Mr. Calli asked Mr. Jackson to discuss the product and entered the cut sheet of the product in to evidence to be marked as exhibit A1. Mr. Egerter asked if the reason for using this product and Mr. Jackson said it was one of the reasons. They are trying to have the Pub and Tavern continue and even though the product is not inexpensive the positives outweigh it. It looks historically accurate, will last twice as long, it's fire retardant and provides a little more insulation.

Chairman Seavey asked when the applicant went for the awning change, if they went to the HPC and it was confirmed. Chairman Seavey went on to say the process was known which makes this a self-imposed hardship.

Mr. Germanario said that the case law, statute and ordinances say is that finding of arbitrariness would be if the HPC decision imposed an undue hardship. He went on the say that the Board needs to focus on the what was in the Planners report where the "*HPC denied the use of Cedur based on their finding that the color and texture of the proposed synthetic material was not compatible with the predominance materials used on the existing building or similar buildings in the district.*"

Did the HPC apply this to their decision or was the determination that was made an error. This would be easier to deal with than the subjective decision.

Mr. Calli asked Mr. Jackson if there was a compatibility issue. Mr. Jackson said that his opinion it looks authentic and other than being new, people passing by wouldn't notice it. The goal from day one was to improve the property and be historically accurate. Mr. Germanario asked if there is a compatibility issue in terms of this product aging differently than the natural cedar. Mr. Jackson stated that this product is designed to fade for the first 30 days, after that becomes stable. Mr. Howard said that you can't compare it to what is on the roof now because what is there now is aged and rotten. Mr. Howard presented exhibit A2 which are pictures of The Black Horse and other similar type structures that have a cedar roof in the historic district. Mr. Germanario asked if he were to walk around and look at the roofs would he see a difference and Mr. Jackson said that you would only see a color difference based on the age. Mr. Ritger felt as though a difference can be seen and that the variation isn't only the color, it is also the size and alignment. Mr. Harkin stated that the material is different sizes and they can be staggered. Mr. Dick had issue with other synthetic material being approved but not allowing the synthetic shingles. He feels it doesn't harm the look of the structure but helps it.

Mr. Calli wanted to make it clear for the record that the applicant may not go with the natural cedar shingles and asked Mr. Howard if the applicant has an alternative in mind if the BOA doesn't overturn the HPC. Mr. Howard said that the fall back would be asphalt because it was approved for the building next door. Ms. Caldwell said that at the HPC meeting asphalt was not approved and that the HPC wanted cedar. They had concerns about the color and texture. Ms. Caldwell asked about page 4 of the hand out (A1) the second picture on the right shows it installed with variations and asked if that is something the applicant would consider. Mr. Jackson said that they wouldn't object to it, they were just matching what was there. Mr. Howard said that they can be open to an inch to an inch and a half variation.

Mr. Smith spoke of the report that the asphalt was approved on the Tavern because it had asphalt on it.

Mr. Calli said that it was vague. Mr. Howard said that asphalt would meet compatibility because you have

cedar shake and asphalt on many historic buildings. Mr. Seavey said that if the applicant were to change the application to use asphalt shingles, they would have to go back to the HPC. Mr. Calli said that the applicant does not intend on using natural cedar shingles. Ms. Cass understands the hardship of making improvements on a historical building because she owns one, but that is the charm of the town and people appreciate the historical presence. She feels that it doesn't hold true to historical integrity of the building. Mr. Dick asked what the next step is if the BOA doesn't approve and Mr. Germinario said they can be appealed at the Superior Court.

Chairman Seavey made a motion that the HPC made the correct decision and was seconded by Ms. Cass

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

Aye: Ms. Cass, Mr. Ritger, Chairman Seavey
Nah: Mr. Smith, Mr. Dick, Mr. Egerter
Abstain: None

The appeal was denied because of the absence of a majority vote and the HPC decision stands.

Chairman Seavey suggested that the applicant bring the application back to the HPC with the staggered shingles and said for no cost it is an option. Mr. Calli asked if the Board would reconsider. Chairman Seavey said he saw no reason to revote and the HPC is the proper conduit to go through. Chairman Seavey said that the HPC is compassionate and they try to settle problems.

The motion carried.

APPLICATIONS:

BOA#01-19

Adam Slutsky
16 Emery Ave
Block 704, Lot 9
(Garage Addition)

Chairman Seavey asked if a completeness needed to be done and Mr. Denisiuk noted a letter that Mr. Ferriero had written on April 17th where Mr. Slutsky requested several completeness waivers and there were no objections to those request and subject to that the application is complete.

Attorney Germinario reviewed the public notice and it is sufficient to provide jurisdiction over the application.

Chairman Seavey made a motion to approve completeness as supported by the Engineer, seconded by Mr. Ritger

Mr. Slutsky was sworn in.

Mr. Slutsky summarized the reason for his application. He lives on the corner of Emery and Dean. The house has a one car garage and would like to put an addition garage next to the existing. He is asking for relief to put the additional one car garage.

Chairman Seavey noted that if Mr. Slutsky was not on the corner, he would not have a problem with the side yard setback.

Mr. Denisiuk stated that in Mr. Ferriero's letter that the variance request was for 38.8' and the recommendation would be to make it 38'.

Mr. Seavey asked where the water from the gutters was going to go and Mr. Slutsky stated that the water goes to the grass.

Mr. Germinario asked if there were any other conditions other than the three conditions set forth in Ferriero Engineering memo. Chairman Seavey asked if Mr. Slutsky was aware of them and he confirmed.

Chairman Seavey made a motion to approve the application with the amendments in Mr. Ferriero's letter.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

In favor: Mr. Smith, Ms. Cass, Mr. Dick, Mr. Ritger, Mr. Egerter, Chairman Seavey
Opposed: None
Abstentions: None

The motion carried.

#####

ADJOURNMENT

There being no additional business to come before the Board, **Motion** was made by Chairman Seavey, seconded by Mr. Smith. On a voice vote, all were in favor. Chairman Seavey adjourned the meeting at 9:25PM.

The next meeting of the Board will be held on **Tuesday, June 11, 2019 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa Smith

Lisa Smith
Land Use Coordinator