

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
Tuesday, September 3, 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 Vice Chairman Palestina, 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 – Absent	Mr. Dick – Present
Mr. Palestina - Present	Mr. Smith - Present
Ms. Cass – Absent	Mr. Sisson – Present
Mr. Ritger – Present	

Alternate: Mr. Egerter, Alternate I- Absent
 Ms. Roch, Alternate II - Present

Also present: Mr. Germinario, Esq.

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PUBLIC COMMENT

Vice Chairman Palestina opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

RESOLUTIONS

BOA#02-19

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

Mr. Germinario summarized the Villa Restaurant Group application and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. Dick seconded.

ROLL CALL: The result of the roll call was 4 to 2 as follows:

In favor:	Mr. Smith, Mr. Ritger, Mr. Dick, Ms. Roch
Opposed:	None
Abstentions:	Mr. Palestina, Mr. Sisson

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: August 6, 2019

Memorialized: September 3, 2019

**IN THE MATTER OF VILLA RESTAURANT GROUP d/b/A BLACK HORSE PUB & TAVERN
APPEAL OF ZONING PERMIT DENIAL
BLOCK 301, LOT 1**

WHEREAS, Villa Restaurant Group d/b/a Black Horse Pub & Tavern (hereinafter the "Applicant") applied to the Borough of Mendham Zoning Board of Adjustment (hereinafter the "Board") pursuant to N.J.S.A. 40:55D-70a on appeal from the Zoning Officer's denial of Zoning Permit Application ZP-69-81 based on the recommendations of the Historic Preservation Commission (hereinafter the "HPC"); and

WHEREAS, the application was deemed complete by the Board, and public hearings were held on 6/11/19 and 8/6/19; 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.; 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 the Black Horse Inn, located at 1 West Main Street, consisting of the Pub and Tavern buildings. The property is located in the Historic District Overlay Zone and the Historic Building District. Pursuant to Ordinance §215-18, the Black Horse Inn is considered a contributing structure in the Historic District.

2. The Applicant proposes to replace the existing cedar shake roofing on the Pub with a synthetic cedar shingle, for which it filed an application for HPC review dated 8/13/18. At its meeting of 9/17/18, the HPC recommended against approval of the synthetic cedar material. Pursuant to Ordinance §27-11B, the Zoning Officer denied the zoning permit by letter dated 4/3/19.

3. The Applicant has submitted the following documents that bear upon the issues of their appeal and are part of this hearing record:

- Board of Adjustment Application for Hearing, dated 4/15/19
- Zoning Officer ZP-69-81 Denial Letter, dated 4/3/19
- Zoning Permit Application, dated 4/2/19
- HPC Minutes of 9/17/18
- HPC Planner's Report, dated 9/14/18
- HPC Application for Review, dated 8/13/18

4. The Board's planning professional has submitted the following report concerning this appeal which is part of the hearing record:

- Jessica Caldwell, PP, AICP, dated 5/22/19

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

- A-1 CeDUR product cut sheets
- A-2 Four photos of cedar roofs in the Historic District
- A-3 Staggered Sample Display Board
- A-4 Single New Shingle Sample
- A-5 Photo of Pub Before Roof Replacement
- A-6 Rendering of Pub After Roof Replacement
- A-7 CeDUR brochure illustrating staggered installations

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

- Jim Howard, Applicant's Vice-President for Construction
- David Jackson, Applicant's designer
- Michael Harkin, Applicant's project manager

7. The documentary evidence and the testimony of Applicant's witnesses at the public hearing of 6/11/19, adduced the following facts:

Jim Howard testified that the Applicant purchased the synthetic "CeDUR" material at a cost of approximately \$40,000 based on their mistaken belief that the replacement of the existing roofing would not require a municipal permit. He stated that the synthetic cedar shingles were superior to natural cedar shakes in terms of cost, extended life and fire rating.

Applicant's witnesses Howard, Jackson and Harkin all testified that the CeDUR material is visually compatible with and virtually indistinguishable from natural cedar in color and texture. Their testimony contradicted the HPC's findings that synthetic cedar is not compatible with the natural material and looks artificial due to lack of color variation and absence of fading with age.

Based on their own observations of the CeDUR material, Board members Dick and Smith concurred with the Applicant's testimony regarding the compatibility of the artificial material with its natural counterpart and its superior qualities. Board members Ritger and Cass stated that the uniformity of the synthetic cedar in size, texture and color rendered its appearance inauthentic and not suitable for a historic structure.

8. At the conclusion of hearing of 6/11/19, a motion was made and duly seconded to find that the HPC's recommendation against approval of the synthetic cedar shingle was correct. The motion resulted in three-to-three tie vote, so that the Board did not reach a conclusion as to whether the HPC recommendation and the consequential denial of the zoning permit were in error.

9. At the Board's meeting of 8/6/19, the hearing record was reopened to allow the Applicant to present an alternate installation configuration for the synthetic cedar shingles. Jim Howard testified that, in response to the objections of the HPC and some Board members to the uniformity of the synthetic material, as compared to natural cedar shakes, the Applicant was proposing a staggered shingle installation, as illustrated by a sample display board marked as Exhibit A-3. He stated that the staggered configuration uses shingles of varying lengths and widths to produce a non-uniform appearance more closely simulating that of natural cedar shakes. He further testified that the synthetic material develops variable coloring with weathering. Board member Dick referred to the manufacturer's brochure, marked Exhibit A-7, which illustrated several staggered installations of the CeDUR shingles. Mr. Dick referred to the

manufacturer's finding of less than five per-cent color change in the synthetic material after 150 days following installation. A discussion ensued in which several Board members expressed preference for the proposed staggered installation and saw it as overcoming the prior objections regarding unnatural uniformity of the synthetic cedar shingles.

At the conclusion of the hearing of 8/6/19, a motion was made and duly seconded to find that the HPC erred in its recommendation against, insofar as it did not consider the staggered installation alternative as a way to address their objection to the uniformity of the synthetic cedar shingles. By a vote of six-to-one, the motion carried.

NOW, THEREFORE, BE IT RESOLVED, that the Board, on the appeal from the Zoning Officer's permit denial in this matter, finds that the HPC recommendation against the use of the synthetic cedar shingles, upon which the Zoning Officer's permit denial was premised, was in error with respect to the staggered installation proposed by the Applicant. Pursuant to N.J.S.A. 40:55D-70.2, the Board therefore directs the Zoning Officer to issue a zoning permit based upon the proposed staggered installation of the synthetic cedar shingles on the roof of the Pub.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of 8/6/19.

Lisa Smith
Board Secretary

ADJOURNMENT

There being no additional business to come before the Board, **Motion** was made by Vice Chairman Palestina, seconded by Mr. Smith. On a voice vote, all were in favor. Chairman Seavey adjourned the meeting at 7:34PM.

The next meeting of the Board will be held on **Tuesday, October 1, 2019 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa Smith

Lisa Smith
Land Use Coordinator