

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
May 7, 2013
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Seavey at 7:35 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 17, 2013 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

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

Mr. Smith – Present
Mr. Ritger - Present
Mr. McCarthy, Alt I - Present
Mr. Germinario, Alt II – Present

Also Present:

Mr. Germinario, Esq., Attorney

APPROVAL OF MINUTES

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Mr. Ritger made a motion to approve the minutes of the April 2, 2013 regular meeting of the Board as written. Mr. Smith seconded. All members being in favor, the minutes were approved.

PUBLIC COMMENT

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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.

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HEARINGS

Piattino – Use and Bulk Variances; Preliminary & Final Site Plan: **Resolution** Block 801, Lot 20, Mendham Village Shopping Center (Main Street Corridor)

Mr. Germinario, Esq. presented the following resolution that had been provided to the Board with their pre-meeting packages:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION**

Decided: April 2, 2013

Memorialized: May 7, 2013

**IN THE MATTER OF PIATTINO
“C” AND “D” VARIANCE, PRELIMINARY AND FINAL SITE PLAN APPLICATION
BLOCK 801, LOT 20**

WHEREAS, Piattino (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final site plan approval, including the grant of variances pursuant to N.J.S.A. 40:55D-70c and 70d by application dated 12/3/12; and

WHEREAS, the application was deemed complete by the Board, and a public hearings were held on 3/5/13 and 4/2/13; 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., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; 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 is known as the Mendham Village Shopping Center and is located on Lot 20 in Block 801. It is in the East Business Zone District and is likewise included within the Main Street Corridor overlay district. Among permitted principal uses are those permitted in the Historic Business Zone which includes: *Eating establishments (no outdoor seating or drive-in facilities)*.

2. The improvements to the subject property for which the Variance relief is sought comprises approval to provide outdoor dining and to modify the exterior signage for the restaurant currently known as Mackenzie's, which occupies the southerly end of the row of retail shops set along the easterly edge of the Mendham Village Shopping Center. A use variance is required to permit outdoor dining, thus placing this application under the Zoning Board of Adjustment's jurisdiction. Applicant also seeks variance relief to exceed the permitted square footage limit for wall signage.

3. The Applicant has submitted the following documents that depict and/or describe the improvements for which approval is sought:

- Site Survey entitled, "Partial Site Plan" prepared by Donald P. Sweeney & Associates, dated January 17, 2013, consisting of one (1) sheet
- Proposed Exterior Improvements, prepared by F.J. Rawding, A.I.A., dated August 9, 2012, last revised January 18, 2013, consisting of five (5) sheets

4. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:

- Zoning Permit Applicant and Zoning Officer's Review attached with a correspondence prepared by Porzio, Bromberg & Newman P.C., dated December 18, 2012
- Morris County Planning Board Site Plan Report, dated January 14, 2013
- Certification of Status of Municipal Tax and Sewer Fees, dated December 12, 2012
- Correspondence from Lawrence A. Cali, dated January 29, 2013

5. The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the application, which are part of the hearing record:

John Hansen, PE, dated 2/12/13 and 4/1/13
 Chuck McGroarty, PP, dated 3/22/13

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

- A-1 Survey by DP Sweeney Assoc. 9/26/05
- A-2 6 Photos of the Site
- A-3 Colored rendering of E. Main St. Elevation
- A-4 Architectural Sheet A-201
- A-5 Architectural Sheet A101
- A-6 Drawing ID 2.0.1B
- A-7 Rendering of Main St. Elevation

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

F. Jeff Rawding, PP, Architect

8. The documentary evidence and the testimony of the Applicant and/or Applicant's witnesses adduced the following facts:

Applicant's proposal, as amended after the first hearing, calls for a decrease in signage area on the parking lot façade from 32 sf (existing) to 20 sf (exclusive of a 13.8 sf menu board and a 8.62 sf pizza paddle) and for an increase in signage area of the Main St. façade from 71.88 sf (existing) to 73.58 sf (exclusive of two 8.62 sf pizza paddles). While the Applicant will utilize their own coloring and detail for the lettering of the branded name itself, the branded name

will appear within the same green sign band background as that which exists elsewhere in the shopping center.

With regard to the proposed outdoor seating, the Applicant is unable to address the Board's concerns regarding traffic safety at this time, but wishes to reserve the right to renew this aspect of the application in the future.

9. Based on the hearing record, the Board finds that the Applicant has not addressed the Board's safety concerns relating to the proximity of the proposed outdoor seating to the adjoining two-way traffic aisle, and therefore denies the requested "D" variance relief for outdoor seating. The Board notes, however, that this denial is not categorical, and that the Board would be willing to consider a future application for outdoor seating involving additional safety features not proposed at this time.

10. Based on the hearing record, the Board has made the following findings and conclusions relative to the "C" Variance relief sought by the Applicant:

The Board finds that the increase from the existing sign area is minimal and is justified because of the restaurant's location at the end of the shopping center and the need for brand recognition for the new restaurant. The proposed signage package is aesthetically pleasing and provides a better planning alternative to the Ordinance standards, pursuant to N.J.S.A. 40:55D-70c(2).

The detriments associated with the deviation are considered minimal because of the restaurant's location at the end of the shopping center and the harmonious aesthetics of the proposed architectural features.

Therefore, the grant of the "c" variance is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviation will substantially outweigh the detriments.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby deny the variance for outdoor seating under N.J.S.A. 40:55D-70d, but otherwise approves the application and grants the bulk variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 50:55D-70c(2).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a zoning permit for the improvements.

1. Sewer approval is required based on total interior seating.
2. Concrete planters, as depicted in the architectural renderings, shall be provided, and additional details shall be submitted, including dimensions and colors.
3. Pizza paddles on the façade shall be the color of natural or stained wood and shall not be illuminated.
4. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.
5. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.
6. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.
7. Pursuant to Ordinance Section 124-22, the Variance relief granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of the improvements requiring Variance relief has actually been commenced during that time period, provided that the running of the one-year time period shall be tolled during the pending of any appeal of the Board's decision to the Borough Council or to a court of competent jurisdiction.

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 April 2, 2013.

Mr. Smith made a motion to approve the resolution as written. Mr. Seavey seconded.

ROLL CALL: The result of the roll call of eligible voters was 3 to 0 as follows:

In Favor:	Riger, Smith, Seavey
Opposed:	None
Abstentions:	None

The motion carried. The resolution was approved.

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OTHER BUSINESS

Mr. Ritger noted that, while they carefully reviewed the signage for this application, there is an amazing extravagance of signage throughout town. He questioned whether signage was being enforced.

Mr. Seavey questioned the Board as to whether anyone had any objection to outdoor seating. They did not. He plans on sending a letter to the Council in support of it at the end of the year.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 7:50 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, June 5, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,



Diana Callahan
Recording Secretary