

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
February 9, 2009
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 7:35 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 on January 15, 2009 and the Daily Record on January 16, 2009 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
Councilman Carr – Absent
Mr. Cascais – Present
Mr. Gertler – Present

Mr. Kraft - Present
Mrs. Kopcsik - Present
Mrs. Lichtenberger - Present
Ms. Sandman - Present

Alternates:

Ms. Gemberling, Alternate I - Present
Mr. Cavanaugh, Alternate II – Present 7:40 p.m.

Also Present:

Mr. Henry, Attorney
Mr. Bolio, Engineer
Ms. Callahan, Secretary

APPROVAL OF MINUTES:

Ms. Callahan introduced several editorial changes provided by Board members. On motion made by Mr. Gertler, seconded by Mrs. Kopcsik and carried, the minutes of the regular meeting of January 12, 2009 were approved with the changes.

PUBLIC COMMENT

Chair Kraft opened the meeting to any public comment or questions on matters that were not on the agenda. There being none, the public comment session was closed.

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#878 – Drip Coffee Inc. – Site Plan Waiver: Resolution
Block 1902, Lot 21, 5 Hilltop Road

Mr. Henry, Esq. had provided Board members with the following draft resolution in their pre-meeting packages:

**MENDHAM BOROUGH PLANNING BOARD
RESOLUTION
GRANTING SITE PLAN WAIVER APPROVAL
FOR DRIP COFFEE, INC.
BLOCK 1902, LOT 21
APPLICATION NO. 878**

WHEREAS, Drip Coffee, Inc. ("Applicant") has applied to the Planning Board of the Borough of Mendham (the "Board") for a Site Plan Waiver with respect to change of use of a portion of a building on property located at 5 Hilltop Road and designated Block 1902, Lot 21 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a hearing was held by the Board on January 12, 2009, at its regular public meeting, at which time Susan and Rupert Jones, the principals in Drip Coffee, Inc., testified as to

the intent and purpose of their proposed use of that portion of the Subject Property, the Board reviewed the documents and materials filed by Applicant, and members of the public and the Board's professionals were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered Applicant's submissions for the requested waiver of site plan, including testimony presented by Susan Jones and Rupert Jones, comments of Applicant's counsel, and comments from the Board's consultants, 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 finds of fact and conclusions of law:

1. Applicant proposes to lease a portion of a building located at 5 Hilltop Road (Tax Map Block 1902, Lot 21) in the Borough of Mendham. The Subject Property is located in the Historic Business District.

2. The Subject Property is owned by Kazan Realty, LLC. The owner has consented to the prosecution of this Application.

3. Applicant proposes to lease approximately 1,526 square feet of retail space on the first floor of the building located on the Subject Property. In this space, Applicant proposes to operate a community coffee house with various products for sale, principally coffee and baked goods.

4. Applicant's principals live in Mendham. They operate a coffee house in Madison, New Jersey and want to bring a similar business to this Mendham location. They describe the business of Drip Coffee, Inc. as a family-run coffee house. Susan and Rupert Jones and their children will operate the business in this location, as they will continue to do in Madison.

5. Applicant described the community coffee house business as one involving sale of coffees, teas, water, soft drinks, miscellaneous coffee and tea-related dry goods, baked goods, soups, salads, casseroles, ice cream products, smoothies, granola and candy. All of the food products are pre-made for customer selection (no food being "made to order").

6. Applicant described the operation as one which will generally involve two persons, with a maximum of four persons (including the principals) on site at any one time. They will not offer any table service (no wait staff/no orders taken at tables), though customers will be able to sit and consume what they have bought at tables and chairs, or take their purchases out for off-site consumption.

7. Applicant proposes no exterior site changes, nor any changes in lighting on the site. No signage changes are proposed, other than revising the signage to reflect this occupant and business. Applicant advised the Board that it had submitted an application to the Mendham Borough Historic Preservation Commission for approval of the proposed sign and had obtained such approval.

8. Applicant proposes only cosmetic changes inside the leased space. The layout and counter space will remain as at present. Seating capacity for the establishment will be limited to a maximum total of 24 seats, up to 8 of which may be placed seasonally outside on the terrace on the south side of the building.

9. The Board discussed hours of operations with Applicant. Subject to seasonal changes and/or reductions to reflect Applicant's experience with operation of the business at this location, Applicant anticipates the hours of operation to be at a maximum 6:30 A.M. to 6:30 P.M. (Monday through Friday) 8:00 A.M. to 6:00 P.M. (Saturday) and 10:00 A.M. to 4:00 P.M. (Sunday).

10. The Board also reviewed the present parking arrangements on the Subject Property. It was agreed that historically the available parking has been adequate for uses of this type in this building. Applicant agreed that it would maintain at least 15 parking spaces on site.

11. Applicant was also advised by the Board that it would have to obtain a Sewer Connection Permit from the governing body. Further, it would have to conform to any conditions imposed with respect to the issuance of the permit. Applicant confirmed that it understood the significance and importance of compliance with the Sewer Connection Permit and understood that it should anticipate having to make monthly reports of water consumption for the first year of operations and anticipate quarterly reports being made thereafter.

12. The Board discussed with the Applicant the prohibition which has been made a condition of the operation of food service establishments in the Subject Property in the past, namely that there be no residential use of the second floor of the building while an eating establishment is occupying space in that building. Applicant confirmed it was aware of this prohibition and accepted that as a condition. The owner of the Subject Property similarly communicated consent to the condition by letter to the Board prior to the public hearing.

13. Applicant described the need for deliveries as generally involving a UPS or similar van type vehicle and occurring one to two times weekly. The Board concluded that such deliveries, as well as parking for the proposed use could be adequately accommodated on the site or on the public street in the vicinity of the Subject Property.

14. Applicant's principals confirmed to the Board that they understood the history of use of the Subject Property and how this related to the significance and importance of adequate

controls on the scope of the use to which the space is put. They again emphasized the nature of their proposed business operation and that its very design was not a "restaurant" operation.

15. The Board finds that no new variance relief is required and, therefore, it appears that the application satisfies several of the published exceptions to what otherwise would be a requirement for a waiver from the restraints of COAH's Scarce Resource Order, including this being a change from one retail user to another in existing commercial space in an existing building. Should it be determined, by COAH or otherwise, that such a waiver is required, Applicant shall be responsible for obtaining the waiver or ceasing operations.

16. The Board concluded that under the circumstances and facts presented in this application and during the hearing, a site plan waiver permitting Applicant to proceed without any further formal engineering or site plan application could, with appropriate conditions, be granted.

BE IT FURTHER RESOLVED on this 9th day of February, 2009, that based upon the foregoing, the Board concludes that Applicant's request for Site Plan Waiver is appropriate in this instance and does hereby approve the waiver of any further formal site plan application, subject to the following conditions:

1. Applicant must receive the required Sewer Connection Permit and comply with any conditions imposed therein. A copy of the Sewer Connection Permit shall be attached to this Resolution and become a part of the record of the Planning Board.

2. The use of the space to be occupied by Applicant shall be consistent with the testimony offered by and on behalf of Applicant at the hearing on January 12, 2009, the findings and conclusions set forth in this Resolution, and the conditions imposed herein.

3. All taxes, sewer charges and other municipal charges must be current through the first quarter, 2009.

4. Applicant shall obtain all other permits or approvals which may be required from any board, body or agency, whether federal, state, county or municipal, relating to the proposed use of the property or the proposed project. Without limiting the generality of the foregoing, Applicant shall obtain, if not already in hand, approval of the signage by the Mendham Borough Historic Preservation Commission, Board of Health and Health Department approvals, as outlined in the January 8, 2009 memorandum to this Board from the Bernards Township Health Department.

5. Within 90 days of the business opening, Applicant shall obtain a clear fire inspection (including any required Fire Safety Permit) as described in the January 7, 2009 memorandum of the Mendham Borough Fire Official.

6. Applicant's operations shall be limited to sale of those products described in Board finding number 5, above, as well as the seating limitations described in Board finding number 8, above, and the prohibition against table waiting service described in Board finding number 6, above.

7. There shall be no residential occupancy of the second floor as long as there is a food service establishment occupying any portion of the building on the Subject Property.

8. At least 15 parking spaces (as at present) shall be maintained on site.

9. Other than the approved signage, there shall be no exterior display of any products or materials offered by Applicant, nor any marketing or promotional literature or materials.

BE IT FURTHER RESOLVED that this Resolution, adopted this 9th day of February, 2009, memorializes the action of the Board, as set forth above, at its meeting of January 12, 2009.

Mr. Bradley made a motion to approve the resolution. Mr. Gertler seconded.

ROLL CALL: The result of the roll call of eligible voters was 8 to 0 as follows:

In Favor: Henry, Bradley, Cascais, Gertler, Kopcsik, Lichtenberger, Sandman, Kraft
 Opposed: None
 Abstentions: None

The motion carried. The resolution was approved.

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#873 – V-Fee Realty Corp – Site Plan Waiver
 Block 801, Lot 20, Mendham Village Shopping Center

Board had not heard anything further from V-Fee in reference to pursuing the site plan waiver or providing a site plan for the property. After discussion, it was determined that before proceeding back to the Board, the applicant would need to return to the TRC.

Ms. Sandman reported that Mr. Price has followed up on the property maintenance issues.

DISCUSSION

Highlands Grant Update: Board had been provided with the Highlands Grant information in their pre-meeting packages as background. Chair Kraft requested that Ms. Callahan provide an overview of the events of 2008 that have led us to the grant application. The same overview had been provided to the Council.

Ms. Callahan referred to a concept of controlled chaos and used an analogy of people moving through a train station with the ability to adjust to track changes to introduce the planning environment that the Borough faced in 2008 and moving into 2009. She paralleled activities that took place in the environment at the State and County level and at the Borough planning level to prepare for and or respond to changes. The Borough has an end goal to make a decision in 2009 on whether we (1) opt into the Highlands, (2) go for State Endorsement, (3) Do Nothing, or (4) Do Nothing with some planning variations. This has not changed, but events have required that the Borough understand implications and adjust approach in our planning efforts.

Addressing the State planning in 2007, Ms. Callahan explained that the Highlands Master Plan was under development, and the role of the State Office of Smart Growth was being redefined. In addition to understanding the State direction, the driver for the Borough to begin its planning efforts was the expected expiration of the Village Center in early January 2008. In 2007, Mayor Henry formed an Ad Hoc Committee to begin studying the options available to the Borough.

In 2008 the team continued its study, and the Borough hired an outside special consultant to help with the Highlands work. A review was held with the Council in September. Around that time and through the fourth quarter of 2008 the Highlands Master Plan was finalized, new COAH rules were released, the DEP set forth new Wastewater Management regulations, and the County called for a Wastewater Management Plan by April 2009. In addition, the Highlands and COAH signed an MOU on how affordable housing would be managed between the two entities, and COAH issued a scarce resource restraint that affected development applications. All required review and analysis by the Borough to determine the implications.

In terms of Borough actions, the Council passed two resolutions requesting (1) an extension to the filing of a Housing Element and Fair Share Plan until December 8, 2009 and (2) indicating an intent to explore opting into the Highlands. A Highlands Grant of \$15,000 was received for an Initial Assessment Study to help explore feasibility in 2008. In 2009 the Council has also applied for a Plan Conformance Grant to continue study in more depth. The Highlands Plan Conformance Grant is for \$50K with the ability to increase to \$100K with the appropriate justification. There are seven modules to work through.

It is now important to go to a more detailed level to understand the implications and build-out and financial numbers of all options in order to make a decision. The decision will affect our COAH numbers and our Zoning. Other implications will also need to be looked at.

Chair requested that Mrs. Kopcsik and Ms. Callahan provide a status and overview of the build out work associated with Module I. Ms. Callahan explained that consultants have been assigned as leads for each of the seven modules for the grant. In terms of Module I, a team composed of a subcommittee of the Master Plan Subcommittee including Adrian Humbert, Alexa Lewandowski and Penny Kopcsik met with Ferriero Engineering to review lot by lot information and to identify whether lots in the Borough are developable or non-developable based on whether they currently had homes on them. Sub-dividable zoning information and other constraints will be overlaid in the next module to determine the build-out. The activity needs to be completed by end February for submission to the Highlands.

Mrs. Kopcsik added that it was very helpful to have the GIS to see what exists on the lots. It was difficult to understand the parcels that the Highlands picked as developable lots.

Ms. Sandman complemented the team on all their efforts in a short timeframe.

In discussion, Board members raised questions on some of the criteria and how the funnel type approach would work to get to the final numbers. The details of how the model works needs to be understood at this point. The first phase did not account for lots that are sub-dividable. Chair Kraft explained that the approach will help us determine under the Highlands approach the feasibility of the COAH numbers. Mr. Gertler questioned whether any lots grandfathered with sewers as developable by the Borough were included. Mr. Henry, Esq. advised that is dependent on the new rules of the DEP.

Ms. Callahan recommended that it would be necessary to do activities in parallel in order to reach the appropriate decision in the timeframes. The OSG philosophy needs to be understood further.

Mayor Henry stated that he would like to arrange a meeting with OSG. Mr. Henry, Esq. advised that it would be necessary to determine whether the Borough Master Plan is consistent with the State Plan. He recommended that the Borough first determine their philosophy and then review the Master Plan and State Plan.

2009 Issues: Chair Kraft conducted discussion with the Board to determine issues and ideas for ordinances in 2009.

Mr. Bolio reported on the Ferriero review of the potential ordinance list. In terms of multigenerational housing, in the past there have been applications for in-law suites before the Board of Adjustment. A conditional use ordinance in a residential zone would set up standards such as size and number of rooms. He will look into sample ordinances from other towns. After reviewing the recommended circulation changes from the traffic study, it was determined that Mayor Henry would take the list to the Public Safety Committee for review and potential action.

Continuing with comments on on-site septic and sewer connection with utilities, Mr. Bolio stated that Morris County is in the process of updating the Wastewater Management Plans. He stated that if the septic yields require 25 acres than a lot of 49 acres might not be able to be subdivided. We need to wait to hear what the County says. In terms of steep slopes, the existing steep slope ordinance works well. Highlands will come out with their own steep slope ordinance, and the Borough should wait to see what their standards are.

Moving to the tree ordinance, Mr. Bolio reported that the Borough tree ordinance for site plans and subdivisions does not cover privately owned property. Chair noted that some towns have ordinances that require permits to cut down trees. The Board did look at an ordinance for privately owned property several years ago, but decided not to go forward.

Addressing a well head protection ordinance, Mr. Bolio advised that the State does have a model. The ordinance would be for public utility and community wells. The wells are mapped by the State. Mr. Henry, Esq. clarified that these type of ordinances are usually for non-private wells or a case such as a condominium complex that has a well to serve many users. Chair thought that there were only two Borough wells one at Patriot's Path and one on Franklin. Mr. Henry, Esq. advised the Board should still look at the ordinance in case someone might want to do something that should not be done on private property.

In terms of a lighting ordinance, it should address wattage per square foot that goes beyond the draft provided by the Environmental Commission. Mr. Henry, Esq. advised that the draft would need a lot of attention before it would be adopted. It does not consider RSIS and the law on what can be done by a municipality. It addresses residential property and it would be difficult to tell people what they can do. After discussion, Board requested that Mr. Bolio ask the Environmental Commission where they got the draft ordinance and that he provides other sample ordinances. Chair requested that it then be passed back to the Environmental Commission for revision.

Other suggestions from the Board for consideration in 2009 included looking at overcrowding and multigenerational housing. Parents are living with children and children are coming back to live with their parents. There have been about five applications before the Board of Adjustment that include conditions for common space and deed restrictions. Chair requested that we explore ordinances from other towns. The question of teardowns and rebuilds was also raised. Chair advised that the change to the bulk ordinance several years ago was done to address the issue, but if the Board thought it appropriate they could take another look.

TRC UPDATES

Ms. Sandman and Ms. Callahan reported that the sewer application for Dantes was reviewed by the Public Safety Committee and sent to the Council for approval. After approval, the applicant should be able to return to the TRC. Mrs. Kopschik advised that there are no new applications that have been received.

ADJOURNMENT

The next regular meeting of the Mendham Borough Planning Board will be held on Monday, March 9, 2009 at 7:30 p.m. at the Garabant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary

