

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
October 1, 2013  
Garabrant Center, 4 Wilson St., Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Board of Adjustment was called to order by Vice Chair Peck at 7:40 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 – Absent	Mr. Smith – Present
Mr. Peck – Present	Mr. Ritger - Present
Mr. Peralta – Present (until 8:05 p.m.)	Mr. McCarthy, Alt I - Present
Mr. Schumacher – Absent	Mr. Germinario, Alt II – Absent
Mr. Seavey – Absent	

Also Present: Mr. Thomas Germinario, Esq., Attorney

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**APPROVAL OF MINUTES**

Mr. Ritger made a motion to approve the minutes of the September 4, 2013 regular meeting of the Board as written. Mr. Smith seconded. All members being in favor, the minutes were approved.

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**PUBLIC COMMENT**

Vice Chair Peck opened the meeting to public comment or questions on items that were not on the agenda.

Susan and John Pilshaw, 7 Prospect Street were present to provide comments to the Board on their previous Board of Adjustment application. As Mr. Seavey had previously mentioned that the Board provides comment to the Planning Board and Governing Body at the beginning of the year, they wanted to provide input.

Mrs. Pilshaw thanked the Borough staff with support on the application process, but commented that given the nature of their application they did not believe they needed to come before the Board to begin with, but chose not to appeal the Zoning determination. They did not think that a simple air conditioner should be considered an accessory use. A more simplified process should be considered for applicants with these simple applications. She enumerated the costs that were involved for Board fees, professionals, copies and public notices. In terms of notices, advising people within 200 ft. seemed excessive, and perhaps those within site and sound would be more appropriate. The process is also lengthy.

Mr. Germinario, Esq. appreciated Mrs. Pilshaw's comments, but also advised her that many of the procedures that the Board follows must be adhered to under NJ State statute and law.

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**Piattino** – Amended Site Plan: **Resolution**

Block 801, Lot 20, Mendham Village Shopping Center (Main Street Corridor)

Mr. Germinario, Esq. had provided the Board with a draft copy of the resolution denying the application with their pre-meeting packages. He presented the resolution to the Board. He also noted that while the applicant stated that no variances were required, they were modifying the previous sign variance that had been granted.

There being no additional comments or questions by the Board, Mr. Smith made a motion to approve the resolution. Mr. Peralta seconded.

ROLL CALL: The result of the roll call of eligible voters was 4 to 0 as follows:

In Favor: Peralta, Ritger, Smith, McCarthy  
 Opposed: None  
 Abstentions: None

Following is the approved resolution:

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

**Decided: September 4, 2013**

**Memorialized: October 1, 2013**

**IN THE MATTER OF PIATTINO  
 AMENDED PRELIMINARY AND FINAL SITE PLAN APPLICATION  
 BLOCK 801, LOT 20**

**WHEREAS**, Piattino (hereinafter the “Applicant”) was previously granted, by resolution dated 5/7/13, preliminary and final site plan approval by the Borough of Mendham Board of Adjustment (hereinafter the “Board”) to modify the building façade and the exterior signage of the subject property, with “C” variance relief to exceed the permitted square footage limit for wall signage; and

**WHEREAS**, Piattino applied to the Board for an amended preliminary and final site plan approval to further modify the building façade with wrap-around canopy marquis lighting by application dated 7/25/13; and

**WHEREAS**, the application was deemed complete by the Board, and a public hearing was held on 9/4/13; 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 approval is sought comprise the band of lights which is identified as a “wrap around canopy” to be affixed to the façade directly above the entrance door (facing parking lot) and windows (facing Main Street). The canopy over the entrance door (facing the parking lot) extends 8.75 feet in length, 1.16 feet in height and protrudes six inches out from the façade. The canopy on the façade facing Main Street extends 14.16 feet in length and 1.16 feet in height and protrudes six inches out from the façade. The proposed lighting consists of 36 individual exposed 75 watt light bulbs set 8 inches apart, extending approximately 4-to-6 inches out from the canopy structure.

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

- Proposed Exterior Improvements, prepared by F.J. Rawding, A.I.A., dated 8/9/12, last revised 5/20/13, consisting of 3 sheets
- Shop Drawings, prepared by MS Signs, Inc., consisting of 12 pages, dated 6/24/13

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

- Resolution of Previous Approval, memorialized 5/7/13

- Application and Attachments, dated 7/25/13
- Certification of Status of Municipal Taxes and Sewer Fees
- Correspondence from Lawrence A. Cali, dated 7/26/13

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, CME, dated 8/19/13

Chuck McGroarty, PP/AICP, dated 8/27/13

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

A-1 Color Rendering of East Main St. building elevation

B-1 Four photos of existing facades as renovated, taken by Chuck McGroarty on 8/27/13

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

Jeffrey Rawding, Architect

Joseph Staiger, Planner/Engineer

8. The documentary evidence and the testimony heard by the Board adduced the following facts:

Since the subject property is located in the Main Street Corridor, it is subject to the Special Civic Design Standards of Article XIA of the Borough Code. Relevant provisions of the Outdoor Lighting Requirements of the Special Civic Design Standards include the following:

- §195-57.5 B – All lighting fixtures shall minimize adverse visual impacts, such as glare, light spillage and overhead sky glow, on adjacent properties and on any public right-of-way
- §195-57.5 E – Building façade lights and yard post lighting shall be incorporated into the overall lighting plan design; all fixtures shall be of compatible design and detail with site lights. Façade floodlights or “wall washer” fixtures are prohibited.

With respect to the requirement of the Design Standards that building façade lights be incorporated into an “overall lighting plan design,” Mr. McGroarty observed in his report and his testimony that no other building within the Mendham Village Shopping Center has façade lighting similar to that proposed in this application. Mr. McGroarty also referred to §195-57.2, which states that, among the purposes of the Main Street Corridor designation, are design features supportive of visual compatibility with the Historic District. He also referred to §215.19E, directing that the design of non-historic buildings in the Main Street Corridor must be harmonious with the historic surroundings. Mr. McGroarty further testified that the proposed marquis lighting is incongruous and incompatible with the façade lighting within the Shopping Center and elsewhere in the Borough.

Mr. Staiger opined that the proposed marquis lighting is compatible with the Main Street Corridor design standards, and testified that it served branding purposes as part of the overall sign package for Piattinos. In his summation, Mr. Cali compared the Applicant's proposal to theater or arcade lighting, which description several Board members found to be incompatible with the character of the Main Street Corridor.

9. Based on the hearing record, the Board has made the following findings and conclusions relative to the application:

The Board finds that the marquis lighting proposed by the Applicant is inconsistent with the design standards applicable to lighting in the Main Street Corridor and is not compatible with the type of lighting found in the Mendham Village Shopping Center or in the Borough as a whole. The Board further finds that the proposed deviation from the design standards would have unacceptable adverse visual impacts and would detract from the historic character of this area of the Borough.

The Board also notes that, although the Applicant has asserted that this is a variance-free application, the proposed lighting is an integral part of an overall façade and signage plan for which the Board previously granted variance relief pursuant to N.J.S.A. 40:55D-70c(2), and that the addition of this marquis lighting would likely have weighed against the granting of such relief had it been considered by the Board as part of the original site plan application.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby deny the amended preliminary and final site plan application with respect to the proposed marquis lighting. The Board does, however, approve the modification in the location of the existing seven downwardly-directed façade lights as depicted on the plans.

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**DISCUSSION: Board of Adjustment By-Laws**

Mr. Germinario, Esq. explained to the Board that the By-Laws being presented had been drafted by Ms. Callahan and reviewed by him. They set forth formally the procedures under which the Board is operating.

Responding to Mr. Ritger on whether any parts of the drafted by-laws appeared in other documents, Ms. Callahan advised that some sections are from the Board of Adjustment ordinance and some from the "Welcome to the Board of Adjustment" procedures that the Board provides at the meetings.

Board determined that they would prefer to wait for a formal vote on the procedures until more members were present. The item will be carried to the November meeting of the Board.

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Mr. Peralta recused from the Board and left the room.

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**EXECUTIVE SESSION: Omnipoint/T-Mobil – Litigation**

Mr. Peck made a motion to enter Executive Session at 8:05 p.m. Mr. Smith seconded.

ROLL CALL: The result of the roll call was 4 to 0 as follows:

In Favor: Ritger, Smith, McCarthy, Peck  
Opposed: None  
Abstentions: None

The motion carried, the Board entered Executive Session.

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Board returned to open session at 8:15 p.m.

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**ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Peck adjourned the meeting at 8:15 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, November 6, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary