

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
December 12, 2011
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 8:05 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 and the Daily Record on January 13, 2011 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
Mr. Cascais – Absent
Mr. Gertler – Absent

Mr. Kraft - Present
Mrs. Kopcsik – Present
Mrs. Lichtenberger - Present
Ms. Sandman – Present
Councilman Sharkey – Absent

Alternates:

Alternate I - Vacant
Mr. Cavanaugh, Alternate II – Present

Also Present:

Mr. Henry, Attorney
Mr. Ferriero, Engineer
Mr. McGroarty, Planner

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MINUTES

On motion made by Mayor Henry and seconded by Mr. Cavanaugh, the minutes of the November 14, 2011 regular meeting of the Planning Board were approved as written.

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PUBLIC COMMENT

Chair Kraft opened the meeting to public comment on anything not on the agenda. There being none, the public comment session was closed.

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APPLICATIONS

#916 – Cerulean Enterprises, LLC – Site Plan Waiver: **Resolution
Block 801, Lot 20, Mendham Village Shopping Center**

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

**MENDHAM BOROUGH PLANNING BOARD
RESOLUTION**

**GRANTING SITE PLAN WAIVER APPROVAL
FOR JACK YAO/CERULEAN ENTERPRISES, LLC
BLOCK 801, LOT 20
APPLICATION NO. 916**

WHEREAS, Jack Yao/Cerulean Enterprises, LLC (“Applicant”) has applied to the Planning Board of the Borough of Mendham (the “Board”) for a Site Plan Waiver with respect to installation of a removable/seasonal entrance enclosure/canopy at the front door entrance to the Aoyama Restaurant located at the Mendham Village Shopping Center, 84 East Main Street, designated Block 801, Lot 20 on the Tax Map of the Borough of Mendham (the “Subject Property”); and

WHEREAS, a hearing was held by the Board on November 14, 2011, at its regular public meeting, at which time the Board reviewed the documents and materials filed by Applicant, heard testimony on behalf of Applicant, reviewed comment letters and comments from the Board’s professionals, heard legal argument from Applicant’s counsel, and gave members of the public 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 on behalf of Applicant, 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 findings of fact and conclusions of law:

1. Applicant operates a restaurant as a tenant at the Mendham Village Shopping Center, located at 84 East Main Street (Tax Map Block 801, Lot 20) in the Borough of Mendham. The Subject Property is located in the East Business District.

2. The Subject Property is owned by V-Fee Realty Investment LLC. The owner has consented to the prosecution of this application.

3. Applicant seeks a waiver of site plan for purposes of permitting the installation of a removable/seasonal entrance canopy, enclosing the front entrance door to the restaurant.

4. Applicant’s representative testified that Applicant has operated the Aoyama Restaurant for approximately 1½ years. Due to their particular location in the shopping center, they are susceptible to wind problems. Particularly through the late fall and winter, cold air blows into the restaurant, even though there is a double set of doors and a vestibule. It appears that the windy condition is unique to the particular corner location of the restaurant and the location and orientation of its doors.

5. Applicant has tried to solve the problem with heaters in the vestibule space, folding screens to block the wind, plants to block the wind, but nothing has worked to prevent disturbing cold winds affecting customers in the restaurant.

6. Applicant proposes to erect an enclosure around the front door entrance. Applicant refers to this enclosure as an entrance canopy. Applicant provided photographs to the Board of the fabric structure erected on a frame.

7. Applicant installed the entrance canopy over the 2010-2011 winter season, prior to understanding the need for Board approval. Upon learning that such approval was necessary, Applicant determined to file the appropriate application as the 2011-2012 winter season approached. Applicant reported, nevertheless, that the canopy structure helped with the wind problem immensely.

8. The proposed structure is approximately 3 feet 9 inches square in footprint. It is proposed to be installed from sometime in November through sometime in March. It is removable and intended to be a seasonal structure.

9. Concerns were expressed by the Borough’s Fire Official regarding door width and clearance, force required to open doors, the fire resistive nature (or not) of the fabric used in the enclosure, and the reduction in sidewalk width due to the encroachment of the entrance canopy structure. In addition to exploring these concerns, the Board inquired into the general question of access, access for handicapped persons, and emergency services access to the premises.

10. Applicant responded to the issues by relating to the Board that during the previous winter when the structure was erected, no pedestrian problems were reported to them, nor did they observe any difficulties on the part of pedestrians maneuvering around the canopy structure. Even when in place, approximately 4 feet of sidewalk area remains, together with a larger stretch of sidewalk which, by happenstance, is located at approximately the same place, due to the corner configuration of the walkways in the area of the restaurant.

11. Applicant further advised the Board that, in addition to the front door entrance (where the canopy will be installed) there is a double door entrance at the side (the restaurant being the end portion of the building) and a rear door providing additional access. During the period of operation of the restaurant, handicap access has been provided to persons, particularly those in

wheelchairs, through the side double doors (6 feet in width). There is a curb cut located immediately adjacent to those double doors, as well as a convenient handicap parking space. Similarly, in connection with two events where the First Aid Squad had to be called, the ambulance was parked in the fire lane immediately in front of the side doors and the double-wide side doors were used for access with no difficulties.

12. Applicant's representative further testified that the door-opening weight could be adjusted to comply with any applicable regulations and that the manufacturer of the canopy fabric can provide fire retardant treatment and certification. In this connection, though Code compliance issues are not specifically within the jurisdiction of the Board, the Board made it clear that any approval would be conditioned on satisfying the Construction Official, the Fire Official and any other Code Officials whose areas were affected.

13. The Board also discussed the significance of the unique facts in this case, particularly with respect to the understanding that waivers and other relief are determined on a case-by-case basis.

14. The Board also explored the question of signage, noting that the canopy contains the name of the restaurant and would constitute a sign under the Ordinance. Applicant's representative pointed out that there is an existing sign on the glass door (measuring 6 inches by 22 inches). The sign on the canopy measures 10 inches by 33 inches and covers the door sign. The signage area is still compliant with Ordinance limitations and, effectively, substitutes for the sign on the door, rather than adding to it.

15. Applicant proposed no changes to the restaurant facility or operations other than the installation of the canopy enclosure.

16. The Board concluded that, especially given the seasonal use of the canopy structure, sufficient pedestrian clearance remained at the door and in the vicinity of the restaurant.

17. The Board further concluded that although it is anticipated to be a perennial installation, without a requirement for Applicant to return annually to the Board, in the event the Borough Engineer determines there are problematic issues with the canopy enclosure, the Borough Engineer can require the Applicant to return to the Board for a re-evaluation of the propriety of site plan approval or waiver of site plan. Applicant agreed with this condition of approval.

18. The Board noted that the Morris County Planning Board had granted a waiver to the site plan application with respect to County jurisdiction.

19. 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 that, based upon the foregoing, the Board concludes that Applicant's request for site plan waiver is appropriate in this instance relative to the installation of the proposed entrance door canopy enclosure at its restaurant space in the Mendham Village Shopping Center, and does hereby approve the waiver of any further formal site plan application, subject to the following conditions:

1. The canopy/enclosure is to be removable and temporary, used seasonally (generally, November through March, until the winter weather breaks).

2. 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 installation of the canopy/enclosure. Particularly, but not by way of limitation, Applicant must satisfy all requirements of the Construction Code Official, the Fire Code Official, and any other Code Official whose subject area is affected.

3. If the Borough Engineer determines that problematic issues have developed in connection with the canopy/enclosure, the Borough Engineer can require Applicant to return to the Board for re-evaluation of any appropriate site plan approval or waiver.

4. All taxes and other municipal charges, together with all fees for application, permits, inspections, or other municipal requirements, shall be paid currently and timely by Applicant.

BE IT FURTHER RESOLVED that this Resolution, adopted this 12th day of December, 2011, memorializes the action of the Board, as set forth above, taken at its meeting of November 14, 2011.

Mayor Henry made a motion to approve the resolution. Mr. Cavanaugh seconded.

ROLL CALL: The result of the roll call of eligible voters was 5 to 0 as follows:

In Favor: Henry, Bradley, Kopcsik, Cavanaugh, Kraft
 Opposed: None
 Absentions: None

The motion carried. The resolution was approved.

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TRC UPDATES (For information only)

Mrs. Kopcsik provided an update on the applications to appear before the TRC at its December 19 meeting.

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DISCUSSION: State Plan Draft

Mr. McGroarty provided the Board with an overview of the new draft State Plan indicating that it is a "Strategic Plan" versus the current State Development and Redevelopment Plan. It is much shorter and has four goals versus the current 8 State goals with sub policies and objectives. The draft is out for discussion and has not been adopted. There will be 6 public hearings and when they are completed, the State Planning Commission will adopt some form of the plan.

In terms of the content, the plan eliminates (1) Planning Areas, (2) the Center Designation Process, and (3) the Plan Endorsement Process as identified with the current State Plan. Instead, it introduces priority growth and investment areas, and areas that are to be preserved from growth. The plan identifies regional innovation clusters which are key industries around which growth should occur. They include Transportation, Life Science, Finance, Distribution Centers, Advanced Manufacturing, Technology and Health Care. This creates core development synergy. These are identified to date through broad generalized mapping.

The plan emphasizes that the State needs to better coordinate its own agencies that are particularly funding infrastructure improvement and preservation. There are Garden State Values that will guide efforts for the growth areas. His opinion is that this plan is an outline for a new plan. Steering Committees are to be formed at the State level to detail the various areas. He has contacted the County and they are still digesting the plan.

In terms of how it will affect Mendham Borough, the draft plan refers to the current center designation process as pointless and recognizes the existing and expired centers. They currently do not know what process they will use. Mendham Borough will need to determine if it wants to have center designation.

In discussion, Chair Kraft noted that the Borough was concerned about continuing with the designation as it might be classified for development. We do not know the definition of a "village center" anymore. Mr. Henry, Esq. added that when adopted, the village center concept was that it would have a higher density development, but there was also a defense for the larger zoning on the outskirts of the center.

Mr. McGroarty explained that in the old State Plan the Borough is a PA5 and no growth is allowed. Some towns created centers to meet their COAH obligations. There were also categories of centers ranging from Hamlet to Urban Centers. In the new plan there is no hierarchy. It is based on investment development centers that have appropriate water, sewers and transportation. The Borough will need to ask how the new concept relates to it, and why it wants to be a center unless it really wants to support growth.

Chair Kraft stated that the Borough initially did not want to expand the sewer area beyond the center. Responding to the Chair's question on the Plan's relationship to the Highlands, Mr. McGroarty stated that the new plan talks about regional planning. Mr. Henry, Esq. noted it is an economic development plan which most likely would concentrate on the major areas.

Mr. Ferriero commented that it appeared that, as a strategic plan, it was supporting top down planning with freedom of thought as opposed to what has happened in the past with the Wastewater Management and Highlands plans. Mendham Borough has a vision that it has developed in its Master Plan, and it should determine how it best fits into the new plan. The Borough should not be a target for growth; it is an economic core, not a center. The plan can be used as a tool.

Addressing Mayor Henry's question on whether there are still two options for the Borough (1) State Plan and Smart Growth or (2) Highlands, Mr. McGroarty responded that the Borough is not faced with the two choices at this time. The Plan Endorsement Process no longer exists, and there will be another way of looking at how the local plan will meld with that of the State. There is no reason to feel compelled to opt into the Highlands at this time. The Borough is located in the Planning Area.

Mr. Henry, Esq. noted that the other concern on the part of the Borough had been the affordable housing element. Mr. McGroarty advised that when the dust settles on the legislative actions and

the affordable housing issues, the Borough can then decide what it would like to do. We have filed the third round plan and are protected from any builder's lawsuit at this time. In terms of the Village Center we need to understand the pros and cons, the process for getting it, and whether the village cluster concept is consistent with the plan. Mr. Ferriero added that we should also understand the State Scorecard and tune up the Master Plan as needed. We are also consistent with the County Wastewater Management Plan.

Mr. McGroarty concluded that we need to watch for the hearings. It is the intention of the State to have something in place within two years which would be when the existing map expires. and the existing State Plan would need to be revisited.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 8:50 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, January 9, 2012 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham. This will be the regular and reorganization meeting of the Board.

Respectfully submitted,

Diana Callahan
Recording Secretary

