

**MINUTES OF THE  
MENDHAM BOROUGH PLANNING BOARD  
March 12, 2012  
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 8:00 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 12, 2012 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:**

Mr. Bradley – Present	Mrs. Lichtenberger - Absent
Mr. Cascais – Present	Ms. Sandman, Administrator - Present
Mr. Gertler – Absent	Councilman Sharkey - Present
Mayor Henry – Present	
Mrs. Kopcsik - Absent	
Mr. Kraft - Present	

Alternates:	Mr. Cavanaugh, Alternate I – Present
	Vacant, Alternate II

Also Present:	Mr. Henry, Attorney
	Mr. Ferriero, Engineer
	Mr. McGroarty, Planner
	Ms. Callahan, Secretary

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**MINUTES**

On motion made by Mr. Cascais, seconded by Mr. Bradley and carried, the minutes of the regular meeting of February 13, 2012 were approved in accordance with editorial clarifications to the discussion on solar/wind.

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**PUBLIC COMMENT**

Chair opened the meeting to questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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**APPLICATIONS**

**#921 – Fabrizi/Gangi – Site Plan Waiver**  
Block 1501, Lot 1, 3 East Main St.

Present:	Douglas Henshaw, Esq., Attorney for the Applicants
	Jay S. Grant, 1 East Main St., LLC
	Carla Fabrizi, Applicant
	Dawn M. Gangi, MD, Applicant

Mr. Henshaw, Esq. introduced the Site Plan Waiver application stating that the building had undergone renovation not too long ago. The applicants had been to the TRC for completeness, and he received a series of reports from the Board Secretary and Mr. Ferriero. The applicants appeared

before the Historic Preservation Commission for signage. While the signage proposed conforms with the square footage requirements of the ordinance, the Commission was not pleased with the size and the types of signage.

Mr. Henry, Esq. requested that the two waivers for checklist items #15 and #27 addressed in Mr. Ferriero's letter dated March 8, 2012 be reviewed. Mr. Henshaw, Esq. advised that in terms of #15, they did not have a site plan, and that the municipal records did not have one. Item #27 requested zoning districts, and the application states that they are located in the Historic Business District. The building has existed for decades.

In discussion on the Site Plan, Mr. Ferriero stated that there is a plan on file, but it is not legible. It was completed by Carolyn Young, but has been drawn over many times. In response to Mr. Henry, Esq. and his reference to the survey, Mr. Ferriero stated that there are no changes to the site, but if there were a new site plan would be required. Mr. Henry, Esq. advised that he did not think that this application should be the generator of a new site plan, but that without a plan, changes to the site could not be monitored. Mr. Henshaw, Esq. stated that the survey is still an accurate reflection of the location of the structures.

Board was in agreement to provide the waivers as requested for the two items.

Mr. Jay S. Grant testified that he purchased the building around the year 2000. He and his business partner, Margaret Laurano, invested approximately 6 to 7K to renovate the building in accordance with the Laurano resolution and the site plan of the prior owner. He referenced a picture from the Observer Tribune that showed the building before he took title. In terms of the applicants, he stated that Ms. Fabrizi wants to use two rooms of the previous yoga studio, and that Dr. Gangi would occupy one room from his current Grant Homes location. Each will have their own doorway and each will face East Main St. Each space is in excess of 700sq. ft. There are no exterior changes with the exception of signage. There will be interior changes.

Mr. Henry, Esq. clarified how the five demarcations of the spaces (A,B,C,D & E) on the floor plan were aggregated into the three spaces to be utilized. It was determined that two of the five were designations for the bump-outs near the windows (D & E). He also clarified that the 6,436 sq. ft. indicated in the application represents the ground floor in all three buildings. There is 4,590 sq. ft. in the main building and the rest is in the adjacent buildings. The total sq. footage of 10,300 also includes the second floor apartments.

Addressing Mr. Henry, Esq. on the number of parking spaces, Mr. Grant clarified that there are now 7 spaces. Since the initial approval they have been better able to utilize space and blacktopped three spaces to create 5. There are also two spaces near the hair salon between the two buildings that are constructed of pavers.

Chair opened the meeting to questions of the witness. There being none, the public session was closed.

Dawn M. Gangi, MD provided her credentials as related to the type of business she would be conducting. In addition to her medical credentials, she has a certification in cosmetic medicine. She testified that she currently works in collaboration with Carla Fabrizi at 6 East Main St. She works 2.5 to 3 days per week seeing 3 to 7 patients a day. Hours are normally 10 a.m. to 6 or 7:30 p.m. Referring to the floor plan, Dr. Gangi stated that she would be occupying the space labeled "B" that is currently occupied by Grant Homes. The plan is to create two exam rooms and an office. Her appointments usually last a half hour to 60 minutes, but could run another half hour if a consultation is involved.

Dr. Gangi explained that in terms of signage, she is looking to create privacy and discretion. She does not have any signage across the street, but would like to establish herself as a separate entity, but still with collaboration. She will have a sign over the door and an awning. The photos in the window will have an illusion screen or curtains behind them. The photos would be the same square footage as those there today and the words below them would be the same size.

Mr. Bradley asked Dr. Gangi to explain more about her professional background and type of business to help the Board understand her business requirements. Dr. Gangi provided more of her professional credentials and explained that her current business includes such items as botox, hair removal, and chemical peels. Treatment is done on an outpatient basis. In response to additional Board questions, she explained that given the proposed layout, people from the street would not be looking directly into a treatment room, but could view the waiting room and the entryway. Mr. Henry, Esq. noted that is a different level of privacy.

Responding to Ms. Sandman on the makeup of the photos, Dr. Gangi explained that they would be window dressing and they would be aesthetic and artistic in nature. They would change. One could be a profile of a woman or water on the beach. Chair Kraft noted that they would be unrelated to her work. Dr. Gangi continued that putting the direct nature of her business on the window would not be discrete. She is trying to achieve an appropriate and aesthetic window in keeping with the town. There would not be any words on the signs. There would be printing on the sign for the door and under the photos. The words would be the same size as they are today. There would not be any lettering over the photos.

Mayor Henry noted that the Historic Preservation Commission did not have any issue with the signs over the door or the awnings, but wanted to see the lettering on the windows. Dr. Gangi stated that the Commission did want to speak further with Zoning and their Board Attorney. She had not yet heard back.

Mr. Ferriero advised the Board that he had spoken with both the Zoning Officer and Borough Attorney. The photos are signage, not display. They are not the same as having a bunny which may be sold in the store, or a bicycle if that is the business, used as display. As signage, they are within the 5% of the ordinance. Mr. Henry, Esq. noted that even if they are within the 5%, they might not be historically appropriate.

Addressing Mr. Bradley on examples of signs related to her business, Dr. Gangi stated that the treatments are usually done in Medispas or laser centers where doctors are staffed. They have giant signs such as the Medispa at Union Hill in Denville on Route 10, the Rejuvenation Spa in Shrewsbury and a Medispa in Summit.

Mayor Henry stated that the Board has established that the photos are defined as signs, and they are within the 5% permitted within the ordinance, but the HPC has concerns. The question remains what can the applicant do to work with the Historic Preservation Commission. The town has spent a great deal of time working on the Historic District and has just completed an expansion. The Commission has a track record of working well with applicants.

Mr. Bradley stated that the HPC is saying that the signs overpower the windows. He again questioned the purpose of the signs. Dr. Gangi stated that they provide privacy. The building is in a commercial district and there are large windows for the purpose of display. The windows are not finished without them. Mr. Bradley questioned whether the business was being marketed and cited an example of before and afters. Mr. Kraft added that the discussion started as signage for privacy and that has expanded. Mr. Ferriero added that the exact proposed signage is unknown at this time and seems very broad. Ms. Sandman and Mr. Bradley also expressed their surprise at the photos as they had understood from the TRC meeting that there would be a simple graphic displayed on the window.

Mr. Henry, Esq. clarified for the Board that the first issue was whether two users can move into the space and engage in their respective business operations without a site plan. In that context most of the signage has passed the Historic Preservation Commission. There is a large measure of discomfort as to what else if anything could be placed

n the windows. The applicants have a timeframe, and they would like to move across the street. He made a recommendation that the Board could move forward with an approval, without addressing the photos and require that they go back to the Historic Preservation Commission.

Mr. Henshaw, Esq. requested a recess to consult with his clients. Board took a 15 minutes break.

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After the recess, Mr. Henshaw, Esq. requested that Carla Fabrizi provide testimony on her business. Ms. Fabrizi testified that she has a cosmetics, skin care, makeup and boutique business. She and Dr. Gangi met about 2.5 years ago. She does the makeup, lessons and skincare and Dr. Gangi can do botox. The two businesses complement each other. There is signage where she is located now at 6 East Main Street. She hires someone to do her windows, and has a Spring and Winter schedule. There is a backdrop of a curtain and a book of celebrities about 2 ft. x 2 ft. Her awning has her name on it. In terms of the window, she would like to do the same thing across the street, but add garments. She wants it simple as less is more. Ms. Fabrizi further described her business hours as 10 a.m. to 6 p.m. Monday through Saturday. It is by appointment on Sunday. She sees about 10 clients per day.

Mr. Henry, Esq. clarified with the applicants that the number of employees that would be at the location at one time would be no more than 4. Ms. Fabrizi noted that at times she would need to

have a hairdresser present on a Saturday or Sunday when she does weddings. Ms. Fabrizi also confirmed that she would have an awning the same as the one across the street, and that there would be a small awning with no wording that would match over the other door.

Chair opened the meeting to questions of the witness by the public. There being none, the public session was closed.

Mr. Bradley complemented the applicants for providing an organized application to the Board based on discussion at the TRC meeting. He recognized that their businesses were to help improve people’s images and that discretion was needed. They were different than other stores.

Mr. Henshaw, Esq. summarized stating that his clients are troubled as they still want signage which is a problem. They will need to make a substantial commitment without knowing where they are going with the signage. They believe that their competitors are not subject to the same scrutiny. There is no policing of the activity. He questioned whether that was fair.

Mr. Henry, Esq. repeated his suggestion that the Board consider the tenancy, awnings and door signs, and that the applicants return to the HPC in reference to a solution on the window signage and work on a solution.

Mr. Grant referenced the Historic Preservation Commission meeting and expressed concern on how the nature of the window photos had been referenced. He is a building owner that has invested significant amounts of money and this is not acceptable. The Board is talking about sign content. He wants an approval and has complied with the requirements. His goal is to work with the town and the signs conform to the ordinance. There is no law in Mendham that can dictate the content of a sign.

Mr. Henry, Esq. explained that the pictures that are currently in the windows should not be there. They were never approved, and they are window signs. The existing signs have caused part of the problem. The tenants want to take them down and put up what was not approved before. There is not a content issue, but an issue of what is going in the window.

Mr. Henshaw, Esq. referenced freedom of speech under the first amendment and the fact that others have pictures in the windows. There needs to be uniform enforcement.

Ms. Fabrizi stated that she has had window displays for three years and questioned whether she can bring them across the street. She explained how proud she was of her business and what she has accomplished. She would like to remain in Mendham.

Chair opened the meeting to comment by members of the public. Dr. Larry Antenucci, 80 Tempewick Road, Mendham Township commented that, as an observer, he has heard what both sides of the table are saying. There are two people who want to remain in town with their businesses, and the Board is supportive of that. The issue of the window signage with the Historic Preservation Commission needs to be worked out. He thought it would be possible for both sides to work together.

Chair Kraft recommended that they move forward. Mr. Cascais made a motion authorizing the attorney to draft a resolution approving the additional tenancy in the building, the awnings and signage over the doors, and the Site Plan Waiver. Mr. Cavanaugh seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:

In Favor: Henry, Bradley, Cascais, Sandman, Sharkey, Cavanaugh, Kraft  
Opposed: None  
Abstentions: None

The motion carried. Mr. Henry, Esq. will prepare a resolution for the regular meeting of April 9, 2012. The applicant will consider returning to the Historic Preservation Commission.

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Board took a 10 minute break

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## DISCUSSION

**Solar/Wind Turbine Ordinances:** Mr. McGroarty, Borough Planner, had provided the Board with a memo updating the legislative restrictions/requirements for what could and could not be regulated within a municipal ordinance.

Mr. McGroarty explained that there is a definition for wind and solar systems from the NJ Land Use Law. He referenced the characteristics that apply should the town want to consider an ordinance. If there is not an ordinance, the applicant would appear before the Board of Adjustment for an inherently beneficial use. While solar panels are permitted in industrial districts, the Borough does not have any.

Chair Kraft raised the issue of the JCP&L panels that have been placed on utility poles in various areas. He continued that the attorney has advised that the existing poles are for distribution, and the utilities do not have authorization for their use for power generation. The attorney thinks we could write a letter to JCP&L preemptively saying that we do not approve of them and require that they come to the Planning Board should they consider them.

In terms of solar panels, Mr. Ferriero explained that when they are located on buildings they are an accessory use to the building. Mr. Henry, Esq. advised that one needs to look at the ordinance to determine if they are defined as accessory uses or whether they are permitted as customarily associated with the principal use. Ten years ago they were not customary, but today they are becoming more so. The Board may want to provide clarity.

Responding to the Chair on the implications to the Historic District, Mr. McGroarty stated that he would need to research it further as there might need to be changes to the language for the Historic District. If they are placed in the Historic District, they would most likely be placed on the roofs, and the roofs could be covered. Elaborating on Mr. Ferriero's comment on the solar panels as inherently beneficial uses, Mr. Henry, Esq. advised that an applicant would still need to meet the negative criteria as not having any substantial negative impact on the zone plan, zoning ordinance or the public good. There could be a contest in the Historic District. Mr. McGroarty cautioned that there would be strong reference to the fact that they are in the public good.

Mr. McGroarty related that in West Milford they developed an ordinance and permitted the panels only in non-residential zones. If an ordinance is developed, the Board could permit them in certain districts and restrict from others. If one wanted to install them in a non-permitted area, a variance for the inherently beneficial use would be required from the Board of Adjustment.

In terms of the potential parameters that could be included in an ordinance, Mr. McGroarty explained that regulations do not restrict the Board from setting minimum lot sizes. They will be primarily accessory to buildings. Board noted that there are some large parcels that could accommodate solar farms. Messrs. Henry, Esq. and Ferriero also advised that they have seen ground mounted panels for homes.

Mr. McGroarty continued that setback limitations are allowed, but they cannot be greater than 150% of the height of the structure. Those are targeted for the towers. Unlike a tower, ground panels will not make noise.

In discussion on next steps, Mr. Henry, Esq. advised that the Board might consider prohibiting any visible wind or solar equipment in the Historic District. Chair noted that the ordinance has focused on that which is visible, but Mr. Cavanaugh questioned how that would work given the different heights of the buildings. Mr. McGroarty advised that they should not be allowed in the District as they would need to be placed appropriately to work, and they might have to be treated as a "C2" variance. He suggested that they be allowed in business or residential areas of certain acreage.

Mr. McGroarty and Mr. Ferriero also suggested that the Board consider putting a limitation on the amount of lot that could be covered by panels similar to what is done for pools in some towns. Mr. Ferriero stated that lot coverage is a planning issue that can be addressed. Imperious coverage is a drainage issue and would not have to be addressed.

Mr. Ferriero stated that the height standards are quite high in the Borough. The Board might want to consider a restriction on how high the panels can extend from the roof.

Responding to Mr. Cascais on what he determined relative to the panels on the telephone poles, Mr. Henry, Esq. advised that he had discovered a document indicating that the Freeholders of Morris County had obtained ownership of the Morristown to Hackettstown Road in 1894. Obviously there

was not mention of telephones, cable, and power at that time. He could do exhaustive research, but did not recommend it. He instead recommended that a letter be sent to JCP&L advising them that the solar panels not be permitted under their rights on the poles. They would need site plan approval and would need to come to the town first.

Board discussed wind towers and noted that they are over 100 ft. tall. Mr. Ferriero advised that the current ordinance for height is 35-40 ft., and if they are accessory structures, it is 15 to 20 ft. A height variance would be required. Mr. Henry, Esq. advised that there are four towers located at the Far Hills Country Day School that are only 30-40 ft. In terms of Open Space and Farmland Preservation, the terms of the agreements may or may not allow the farms. Mr. Cavanaugh noted that someone could remove a ridge line of trees and put up wind towers.

Board decided that Mr. McGroarty would begin to draft an ordinance on solar, and wind would be placed on hold temporarily. Mr. Henry, Esq. will also draft a letter to JCP&L and consider whether it should come from the Planning Board or the Borough Council.

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**Update on Draft State Plan:** Mr. McGroarty, Borough Planner, had provided the Board with a memo updating the status of the State Plan and with feedback from the February 27 public meeting in their pre-meeting packages.

Mr. McGroarty reported that six public hearings have been held. They have 60 days from the last hearing to vote. Public comment will be held open until April 2. In terms of problems he sees, the Cross Acceptance process continued for years and people knew what to expect. This plan will be closed to comment on April 2 and the final plan will be adopted. The good and the bad is that the plan does not have a lot of detail. There is ambiguity and he believes that the detail will be included in the rules.

Mr. McGroarty continued that the existing map will be going away, but they need to replace it with something. Now they have a lot of new criteria that must be applied, but how the lines will be drawn is still not known. The plan also seems to default back to regional planning agencies. The Highlands is the regional plan in this area, and he questions whether that would set the direction. The State could not clarify that for him.

In terms of centers, he questioned the State on what would happen if a town had a center that had expired, but was not be interested in renewing it. If one reads the plan, it appears that even expired centers will become priority growth areas. The State did not have an answer at this time. Mr. McGroarty is developing a list of questions based on input from several towns and will submit it. For example, is the only implication of being a priority growth area, the ability to obtain funding.

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#### **OTHER BUSINESS**

Mayor Henry advised the Board that he had identified a replacement for the Planning Board Alternate II position. The appointment should be on the Council agenda for March 19.

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#### **TRC UPDATES (For information only)**

Mr. Henry, Esq. updated the Board on the TRC meeting for 3-19-12.

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#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 10:55 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, April 9, 2012 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan  
Recording Secretary











