

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
March 5, 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 7:30 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 – Present  
Mr. Peralta – Present  
Mr. Schumacher – Present  
Mr. Seavey – Present

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

Also Present:

Mr. Germinario, Esq., Attorney  
Mr. Hansen, Engineer  
Mr. McGroarty, Planner

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**APPROVAL OF MINUTES**

Mr. Smith made a motion to approve the minutes of the January 8, 2013 regular and reorganization meeting of the Board as written. Mr. Schumacher seconded. All members being in favor, the minutes were approved.

The meeting of February 5, 2013 had been cancelled.

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**PUBLIC COMMENT**

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  
Block 801, Lot 20, Mendham Village Shopping Center

Present: Douglas Henshaw, Esq., Attorney for the Applicant  
Jeff Rawding, Architect/Planner for the Applicant  
Various representatives of the Applicant (Audience only)  
Sal Canderella, Shopping Center Property Management

Exhibits: A-1: Survey of Property: DP Sweeney & Associates – 9/25/05  
A-2: Photos of the Existing Site  
A-3: Color Rendering of East Main Street Elevation  
A-4: Elevation of East Main Street Facade  
A-5: Site Plan dated 8-14-13

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**Completeness:** Mr. Hansen, Board Engineer reviewed the Ferriero letter of February 12, 2013 indicating which items they recommended for waivers for completeness purposes. The Board did not have any further questions or comments.

Mr. Peck made a motion to deem the application complete. Mr. Palestina seconded.

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

In Favor: Palestina, Peralta, Ritger, Schumacher, Smith, Peck, Seavey  
Opposed: None  
Abstentions: None

The motion carried. The application was deemed complete.

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Mr. Germinario, Esq. advised that he had reviewed the public notices and that the Board had jurisdiction to proceed.

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Mr. Henshaw, Esq. began the hearing by explaining that the application was for MacKenzies doing business as Piattino. As they are dealing with a small portion of the shopping center, he appreciated that the waivers for completeness were granted. He wanted to particularly note that in addition to the outdoor seating and the signage, the applicant is requesting one new roof penetration for a new oven in the restaurant. He continued that there were sewer issues. When MacKenzies was first approved, they had a ban on serving lunch. Not too long ago they received approval to go to a luncheon service. They have now filed with the Engineer for outside seating.

Mr. Rawding presented his credentials and was accepted as a witness. He entered Exhibits A-1 through A-3. He also referenced a partial survey that had been provided with the Board's copy of the application. Mr. McGroarty noted a discrepancy in the dates on the plans that had been provided to the Board and the professionals. He explained that the set of plans with hand written revision date of 1-14-13 has a different sign than the plans dated 8-9-12. He reviewed and wrote his report on the most current plans dated 1-14-13. The Board noted that they had received the 8-9-12 plans as provided in their package by the applicant. Chair noted that it would be important to note the dates and the differences in order to assure any final approvals were related to the appropriate set. Chair requested that they proceed, but clearly indicating what is different and what would need to be changed on the plans. Mr. Hansen confirmed that he had also reviewed the 1-14-13 plans.

Mr. Rawding testified that the business is located in the MacKenzies site that is an end cap facing East Main Street and the parking lot. The interior space is remaining largely the same with the exception of a pizza oven that will be added at the left end of the space. The bar will remain in its current location in the front right corner which is to the left as one enters the restaurant. In the rear area, nothing will be changed except for a reorientation of the bathroom door.

Referring to A-201 of Exhibit A-4 which showed both the Main Street and parking lot elevations and included a roof plan, he explained that the new exhaust fan would be located two thirds of the way back on the exterior facing East Main Street. It is a typical stainless steel exhaust fan that is 4.5 ft. high and 2 ft. in diameter. It is similar in height to the fan located in the rear elevation. The line of sight is so far back that one would need to stand across the Shopping Center to see it. Some of it will be seen from East Main given the topography change, but it would not be different than what one sees today. Approval of the fan will permit them to get started on the renovations of the interior space.

In terms of the outdoor seating, Mr. Rawding stated that seating would be located on the existing sidewalk facing East Main Street. There is a parking area in front of that followed by a grassy area before one reaches the road. They are proposing 5 single tables with two seats at each table for 10 seats. There will be planters for aesthetics and to protect the space from the parking field. There is adequate space in the drive isle that fronts East Main. There are 16 spaces located in that area facing East Main. The sidewalk area along their unit measures 8 ft. This may differ from the plans which had indicated 7 ft.

Referring to A-101 of Exhibit A-5, he explained that the existing stone on the façade would remain. They would remove the round raised panels and go to a more traditional raised panel on the lower portion. Those surfaces would be repainted in an historic beige. Six decorative wall sconces will be added to illuminate the dining area.

In terms of signage, they would add a logo on the door and decorative pizza paddles on the sides. A larger sign of approximately 10 sq. ft per letter for a total of 80 sq. ft. would be mounted on the top railing. The letters will be round and backlit with red with blue and beige coloring. Immediately below that sign, in the box light area that currently exists, they would place a sign that returns to the parking lot side. As the restaurant is "Piattino, a neighborhood bistro", "a neighborhood bistro" will be recessed and, similar to a decorative marquee, it would wrap around the right hand window and the entry door. That sign plays visually with the large "Piattino" sign. On the parking lot side, the small circular panels will be removed and raised panel added to the wall. In addition a 13.8 sq. ft. menu board will be placed in one of the raised panels. The pizza paddle will also be placed on the elevation.

In terms of relief, the ordinance states that no more than 5% of the façade can be signage. The courtyard façade signage including the door sign, neighborhood bistro sign, box light sign, paddle and menu board is 44.23 sq. ft or 11.8% of the facade. The signage on the East Main façade would be 136.15 sq. ft or 26% for the façade. There are presently three MacKensies signs, the two lighted signs and the one on the building.

Responding to Mr. Peck's question, Mr. Rawding stated that Piattino would be the only other business aside from Kings with signage in the fencing.

Continuing, Mr. Rawding stated that there would not be any impact to the adjacent uses to the right on Main Street that consist of a restaurant with a large sign in the front, a car dealership and a gas station. The signs are important from a competitive standpoint to identify the business from the street. The signage is proportional given the size of the space. They do not have a presence on the pylon. The outdoor dining should also attract people. The sidewalk for the outdoor dining is out of the way and not walked much. The parking area is an overflow parking area. The hours of operation of the business would be 11:00 a.m. to 11:00 p.m. They will be open for lunch. The peak hours would be 12 to 2 p.m. and 6 to 8 p.m. It does not interfere with the other tenancies.

Mr. Rawding clarified the number of seats at the restaurant. They would have 84 seats including the outdoor dining. There would be 74 inside and 10 outside. They originally had approval for 79 seats inside and would be decreasing that number by 5 to accommodate the pizza oven. There will be 24 seats in the booth area, 16 in table form and 24 on the window side of wall. There are also 12 in the cocktail area and 8 seats at the bar. Mr. Ritger noted that added to 84 interior seats. Mr. Rawding clarified that there would be 54 in the dining area (24, 14, & 16) and 20 in the bar area.

Mr. Henshaw, Esq. noted that the outdoor dining is weather dependent. Mr. Rawding explained that there is a large overhang that runs over the sidewalk. They would not be proposing any type of trellis, and they would only be using their umbrellas. He would anticipate that the outdoor dining would be seasonal running from mid spring to early fall. In terms of the service, the area would be served similar to the interior. There is a door immediately adjacent to the kitchen, and there would be bus service similar to what they have inside. As it is located on the side of the shopping center, it is almost a private dining area, and there is no impedance to people walking.

In terms of the planters adjacent to the outdoor dining area, Mr. Rawding explained that will be low-lying with seasonal plantings. They would be located adjacent to the entry and wrap the corner. They are trying to introduce some landscaping that would create an inviting environment in which to dine and provide visual screening. No landscaping is proposed in any other area.

Addressing lighting, he stated that there will be three low wattage wall mounted circular sconces. These are wall mounted under roof gooseneck fixtures about 8 ft. back to place illumination on the tables. They should not be greater than 60 watt bulbs. There are three fixtures on the front facing the parking lot that are the same. The lantern fixture by the door will be replaced, but has not yet been selected.

In terms of the parking, Mr. Rawding explained that the ordinance requirement for the shopping center is 643, but there are 434 spaces, 9 of which are handicap. The existing condition is short of the requirement and it operates fine. There is only an addition of 5 seats. In accordance with the ordinance this would equate to an additional 2.5 parking stalls. The employee count is 6. The overall required spaces for the restaurant is 45. The present parking is adequate for their use. There is no intensification of their use.

Responding to Mr. Peck, Mr. Rawding stated that to his knowledge there is no proposed take out. Mr. Peralta clarified that they would be adding lunch which is not served now, and they would be adding additional seating. He questioned whether they have witnessed the parking lot on the weekend. Mr. Rawding responded that he personally had not. Mr. Schumacher noted that there

are times on the weekend when one cannot find a parking spot. Mr. Rawding continued that supermarkets generate a lot of traffic in the morning on weekends, but he views this as a symbiotic use where people would be coming after the grocery rush. There is no breakfast being served.

Responding to Mr. Peralta, on the width of the sidewalk, tables and planters, and thus the passage room for guests and servers, Mr. Rawding explained that the width of the planters is 18 inches square, the sidewalk for seating is 8 ft., and the tables would be 24 inches. Passage for guests and services is 4.5 ft. If there were a lot of traffic, one could side step by the planters. There are only 10 patrons, 2 at a table. They do not anticipate a lot of walk through traffic. Diners will be seated by a hostess so that there will be some control. One cannot just walk off the parking lot and sit down. Mr. Peralta was concerned that there would not be enough room for passage by a waiter with trays as well as for two way traffic. He also stated that there is a lot of speedy vehicular traffic that comes off of Route 24. He was concerned for the safety of the employees and also for customers, particularly if they were drinking stepped off the sidewalk area. Mr. Rawding responded that they had considered that concern with the planters, and the idea was the one would walk in and out at either end.

Mr. Peck noted that perhaps the flow of vehicular traffic should be one way in the area. Mr. Peralta also added that people jog on 24 and come in to the shopping center using the sidewalk. They would need to walk on the driveway. Mr. Rawding explained that there is a paver walk that comes off of 24 leading to the main sidewalk. Creation of one-way traffic would require a sign. Mr. McGroarty advised that there would be a need for a site plan for the shopping center, not the restaurant.

Addressing Mr. Palestina on the magnitude of the signage, Mr. Rawding confirmed that the signage on the front would be 11.8% of the façade and the signage on the East Main Street side would be 26% of the façade. Answering the follow-on question on the planters, he stated that the planters were concrete and would impede vehicular access to the sidewalk, but they are not safety rated. In terms of whether it would be a hardship for the client not to obtain the approval as there were only 10 seats being requested, Rawding responded that outdoor dining appears to be a trend, and it is becoming necessary to be competitive. From a visibility standpoint it would help the restaurant business, and it will make the center more lively. It creates a sense of community. Mr. Palestina clarified that the round "Piatino" letters would also be lighted.

Mr. Seavey stated that there are two sides to what they are proposing based on the benefit identified. The first is that outdoor dining does liven up the community, but secondly there is the competitive side. Everyone would like outdoor dining and currently no one has it as a result of how the ordinance is written. It may increase some parking dynamic. If they get 10 seats then the Wicker Basket, Chinese Restaurant and Pizza Restaurant would want seating. He questioned why the Board would not be opening a Pandora's box in the shopping center and in other places in town.

Mr. Rawding responded that this is a uniquely situated tenant in the shopping center. They have an underutilized sidewalk area that is not shared. It is not a shared common walkway. The uniqueness is the location, and it is visible from the street. It will liven up the center. Mr. Henshaw, Esq. added that there is outdoor dining in Morristown, and it creates a community feel. To have outdoor dining at a location, the sidewalks need to be conducive and not be blocked. The Board would need to control the approval. Other towns have associated conditions with outdoor dining. It is a new concept and requires a change in thinking.

Mr. Seavey noted that the signage would be different than the other businesses in the Shopping Center. He questioned why the Board should grant them a change in signage. Others may want to do the same. Mr. Rawding responded that it is the client's desire to develop a corporate brand. Their business is built around corporate franchises and a brand. If this location is to be the flagship for the brand, it should stand out. The scale of the signage is important. They are not proposing the letters on the parking lot side, but on the Main Street side. Wells Fargo has branding. The signage is important in terms of scale and in promoting the business.

Responding to Mr. Seavey on the implications associated with the liquor license, Mr. Henshaw, Esq. stated that they would need to go through a process with the Borough Council and the State to serve outside.

Mr. Seavey also clarified that the pizza oven would be gas fired and not wood burning which would provide another set of implications. Mr. Rawding explained that is similar style to the kitchen hood exhaust fan and the same height, but it is smaller in diameter. It is about at the top of the rail. Mr. Ritger noted that the exhaust would be located only 15 ft. from the intake, but

there is nothing indicating any implications to neighbors. Mr. Rawding stated that he would need to verify.

Mr. Ritger also clarified that the percent of the façade covered by signage included the letters at the top. He confirmed that there is not a ten seat increase, but a five seat increase. Seats removed for the pizza oven were added at the bar area and at tables. Addressing whether there could be something added to the planters to prohibit anyone from walking through, Mr. Rawding stated that there had been some discussion on the use of bollards, but while they may help with safety, it that takes away from the ambiance. To Mr. Ritger's suggestion of moving the planters off the sidewalk and still have 24 ft. for two way traffic, Mr. Hansen reiterated that it would require an overall shopping center site plan. Mr. Henshaw, Esq. stated that they were not authorized to discuss changes to that aspect, only this application.

Addressing the windows on the plan, Mr. Rawding stated that some windows by the parking lot are being removed. That will be the back wall to the new bar configuration. It will become a raised panel configuration. There will only be glass on the frontage facing East Main and on the front door.

Mr. Seavey noted that in previous shopping center approvals there were conditions for fencing and paving. He requested the status. Mr. Henshaw, Esq. did not know, but he stated that he would consult the representative of the Shopping Center that was present.

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Mr. Henshaw, Esq. requested a break at 8:45 p.m. to converse with his client.  
The hearing resumed at 9:00 p.m.

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Mr. Henshaw, Esq. reported to the Board that he had spoken with the representative of the Shopping Center that was present, and, as soon as the asphalt plants reopen, there will be a complete full mill and overlay to parking at the center. In addition, the fence around the top will be replaced in its entirety once the weather permits.

He then requested that they would like to move forward and hear Board reaction to the signage and the outdoor seating. He stated that they would like to amend the application to provide bollards connected by a chain for protection along the sidewalk for the café seating. The decorative planters would remain. They recognize that the signage plan is a change from the uniformity, but they would like to work toward a balance on the signage.

Mr. Seavey first requested input from the Board's professionals.

Mr. McGroarty advised the Board that the applicant is requesting a use variance for the outdoor dining. The test is that there must be special reasons since outdoor dining is not permitted under ordinance. The site must be particularly suited, and the unit must be suited. There is an enhanced burden of proof as the outdoor dining is specifically prohibited. The use has been considered by the town, but the Governing Body has said that it is not permitted. In terms of the negative criteria for the use variance, the impact to the neighbors and the impact on the Zone Plan and Zoning Ordinance must be considered. There has been some testimony dealing with the neighbors. In terms of the ordinance and zone plan, while outdoor dining might be good, the Governing Body would need to consider the zone change. Zoning should not be done by variance. Additional testimony would be required.

In terms of the sign, Mr. McGroarty stated that his report was based on the revised plans. He did not, therefore, identify a variance for the signage on the street side. In those plans it conformed at 5%. Now, based on the 26%, a sign variance is needed on Main Street. The ordinance does not have a specific standard for signs in the shopping center. It allows for specific commercial signs in the business districts. The ordinance does not permit the signs facing the courtyard or parking lot. The only signs it would permit are those on the façade on the street.

There are signs that have been permitted based on a history of review with the Planning Board. There is a unified sign plan for all the stores approved for the Shopping Center in 2007. The question is can an individual tenant deviate from the sign plan with a variance. The burden of proof is higher. Each façade exceeds the ordinance limit and deviates from the sign plan. In addition, internally lit signs are not permitted. There is proposed deviation from the internally lit signs that have been permitted in the sign plan. This takes it again beyond the sign plan.

Concluding, Mr. McGroarty stated that the C2 test is whether there is benefit to planning beyond the needs and aspirations of the applicant. In this the desire is franchise and brand identification. He is not sure if that addresses the C2 criteria.

Addressing Mr. Peck on his question associated with Wells Fargo, Mr. McGroarty stated that if he had been here at that time, he would have requested an ordinance specific to the shopping center or some variance relief recorded in the resolution. Wells Fargo and MacKenzies have identical signs today with one facing East Main Street and one facing the parking lot. They are the same size and color as the rest of the stores.

Mr. Hansen advised that most of the items identified in the technical review have been addressed in the testimony. If there was any type of approval, he would recommend the need for further conditions placed on the operation of the oven, the colors to be used, the outdoor seating and the wattage of the lighting. Conditions should be included both in the resolution and on the plans so there are no questions for the Zoning Officer in the future. If there are concerns on traffic movement, expert testimony should be requested.

Each Board member then provided their thoughts.

Mr. McCarthy stated that it is an application that would help the shopping center, but he has concerns related to the issues identified by Mr. McGroarty in his report. He would need further testimony on why the use is not inconsistent with the intent and purpose of the ordinance. He stated that the ordinance does not permit outdoor seating in the town, and questioned whether the Board could overrule that. Zoning by variance is a consideration. He personally does not think that the sidewalk is used much, and it is particularly suited, but questioned whether the Board could approve the application.

Mr. Ritger was concerned about the signage. Placing signage on the fencing would be unique. There would be sign envy. Neither the shopping center nor the town would benefit from that approach. He would like the restaurant to be a success with balance. Perhaps the lighting and some outdoor seating might draw the necessary attention. He did not have a problem with the parking. He was okay with using the spot for dining, but was concerned about people walking off the protected area potentially into traffic. The chain and bollard might work. If they are ready to pave, they might want to consider a larger sidewalk.

Mr. Palestina stated that he would need more testimony on safety. His concern is that there is excessive signage and 15-18 light sources coming off the side of the building. It would be out of character with the town and the center.

Mr. Schumacher stated that originally he thought the top sign would attract attention, but it is too much. He suggested that the top sign be removed. He liked the overall design and outdoor seating is positive. The Board did approve outside dining for Mariques.

Board had a short discussion on whether anyone knew the rationale as to why the town did not want outdoor dining. Mr. Seavey speculated that at the time the ordinance was passed, the town did not want to take on the character of Chester at that time. He questioned whether noise and residential impact was part of the issue with outside dining. Mr. McGroarty did not know the particulars on the Borough ordinance, but those are considerations with outdoor dining.

Addressing Mr. McCarthy's question on the authority of the Board as relates to the current ordinance, Mr. Germinario, Esq. advised that Mr. McGroarty has stated the law clearly. There is a line at which the Board must stop so that it does not take over the Governing Body prerogative by changing zoning. The Board would need substantial reasons for outdoor dining at this site which would distinguish it from other sites. There may be other sites in town where the outdoor dining could be out of the way, and a substantial area of sidewalk could be left unused. Even if the Board considers outdoor dining a positive thing, the overall impact could annul the ordinance, and if that is to be done, it should be done by the Governing Body. There needs to be an exception to the rule, not an opening of the flood gates. Ordinances of other towns usually carry conditions dealing with cleanliness and pedestrian access and safety. The difficulty doing this by variance as opposed to ordinance is that conditions would need to be developed, and the Board would, in effect, be creating an ordinance for this particular property.

Mr. Ritger was concerned that the Board needed to know more of the rationale for the ordinance. Mr. Germinario, Esq. advised that there is a point where it becomes out of the Board's authority. Given there is no history available, it is all the more important for cautiousness on the part of the Board. Without guidance from the Governing Body, the Board needs to be careful. Mr. McCarthy reiterated that they need to know the intent and purpose of the original ordinance as

other restaurants in the Shopping Center would want the outdoor dining and would be particularly suited. The Board has then created an ordinance for the shopping center.

Continuing with Board comments, Mr. Smith stated that he likes to think outside the box, and the proposed area for seating is a well suited area, but he has safety concerns with the two way traffic. He would like to see more structured pylons as the ones proposed are semi-decorative. He does not want to see people prohibited from using the sidewalk and forced to walk in the street when coming from the Somerset Bank down the stairs. The signage is too much for the façade. It is too high, should not be in the fencing, and needs to be scaled down and made more consistent with what is there now. He did not have a problem with the low-wattage lighting.

Mr. Peralta stated that he heard that the signage represents an intensification related to brand issues and competitiveness on the part of the applicant. He is weighing it against the Black Horse with one wooden sign and Sammys without any signage. Both have been successful. The unified sign plan to the Shopping Center gives it ambiance. He questions how much the community will gain. He is not a strong advocate of the intensification of the signage. In terms of the outdoor seating, he is not convinced that the site is particularly suited. He is concerned about safety. Dining usually has a wide and suitable space and sidewalks and passageways are not impacted. Here it is located next to two way traffic. He is not comfortable that the Board has thoroughly explored the issue.

Mr. Peck agreed with other members comments on signs, but stated that he would give a bit more latitude with the signage on the corner units. He is, however, not supportive of it on the fencing. He is in favor of outdoor dining, and the town could use it as it would add character to some of the restaurants, but the Board of Adjustment cannot write the ordinance. It needs to be looked at by the Governing Body for Mendham. There are too many questions associated with suitability at this location.

Mr. Seavey hypothesized a site revision with more changes associated with one way traffic, a sidewalk expansion, planters between the dining and the pedestrian sidewalk and other items needed for workability. An outdoor dining area would be created. There are not many places where a dining area could be created like the one at Mariques. He questioned whether that type of proposal would it change any opinions. Mr. McCarthy added that he still has some concerns on suitability, but his main concern remains on whether the Board can override the ordinance. As there are other restaurants in the shopping center, the Board could get three more requests the next month. He would like to see the Borough Council pass an ordinance containing conditions related to number of seats, smoking, alcohol, etc. They may determine that it is acceptable in the Shopping Center, but not in the Historic District

After hearing all the comments, Mr. Henshaw, Esq. stated that the applicant would like to withdraw without prejudice the portion of the application dealing with outdoor seating. They could either approach the landlord of the shopping center and return to the Board or approach the Governing Body. They would like to focus on the roof penetration and a reduced signage plan.

Mr. Rawding returned to Exhibit A-4 citing A 201. He stated that the area of contention is the large sign at the top. It is 80 sq. ft. for visibility when driving past. With the consistency of the signs people may not otherwise know that there is a restaurant. The marquee sign at the entrance to the shopping center does not have the name of the restaurant on it.

They would revise their initial plan and instead of the large sign, propose increasing the existing sign size. Today the sign is approximately 13.5 inches high and 14.34 sq. ft, significantly less than the 80 sq. ft. They would like to see something about 40 sq. ft., half the scale of the larger sign. The fascia piece would be about 80% full. The diameter of the sign would be 18 to 20 inches.

Mr. Peck clarified that if they were to increase the size of the sign, they would be increasing the size of the existing box sign. Mr. Rawding responded that they would hold the bottom location and extend it at the top. Responding to Mr. Palestina on the square footage on the entire façade, Mr. Rawding stated that it would be 96.15 sq. ft. for a total percentage of 18% instead of 26% previously presented. That includes the paddles, logos, details, etc.

Mr. McGroarty advised that they are exceeding the permitted 5% to the parking lot side, but currently there is sign present as part of the standard shopping center sign plan. The standard would also be 5% facing the street. He questioned what the basis for the C2 variance would be for the unit. If they granted the variance based on visibility for the front unit, how would a back unit feel. If there is a benefit here, arguably it should be applied to all units.

Responding to Mr. Seavey on whether MacKenzies exceeds the 5% limit now, Mr. Rawding stated that it does. There are two signs now facing the parking lot, one on the light band and one on the façade. Addressing Mr. Palestina on whether more than one sign per business is permitted, Mr. McGroarty advised that the sign on the parking lot façade would not be permitted today. The sign in the window facing East Main Street does count toward the signage. The 2007 sign plan shows the uniform sign plan with the two sign band signs for MacKenzies.

Mr. Rawding explained that it would appear that the East Main Street side exceeds the 5% standard as well. To comply on that wall at 5% there would be about 25 sq. ft. of signage. There is about 30 sq. ft. on the façade as it stands now. One of the unique items is that there is dual frontage. In terms of exposure, the frontage that they have is far in excess of the standard store on the parking lot façade. A typical front would have about a third or half of this unit. Also, only MacKenzies, Wells Fargo and Kings face East Main Street.

Mr. Henshaw, Esq. stated that, in addition, they are making up for a pylon sign. Only Kings and Wells Fargo have their names on the pylon sign. It is a small sign given the number of stores.

Mr. McGroarty stated that he had analyzed the size of the pylon sign for work with the new sign ordinance, and there would be room for additional store signs. He questioned whether there was an internal decision to not add names. Mr. Sal Candarella, the Shopping Center Property Manager, stated that the pylon sign is owned by Kings and Wells Fargo. The Shopping Center management has nothing to do with it.

Mr. Rawding added that as a restaurant, this restaurant is at a competitive disadvantage with the neighboring restaurants and those up town. If one is looking for customers passing through town, the visibility is needed. Mr. Henshaw, Esq. added that the business is a little different than the other businesses in the shopping center as they have longer hours. Some of the smaller stores will not be open the late night hours.

Mr. Palestina noted that the applicant made a business decision to buy the business with the signage as is. Mr. Henshaw, Esq. stated that the applicant purchased MacKenzies as a package with the Black Horse Inn. Mr. Peralta expressed his concern that with the desire to make the location the flagship of the brand, the applicant might return requesting the same for the Black Horse. Mr. Rawding stated he did not believe that was the client's intent. Mr. Henshaw, Esq. stated they would not make a limitation to this location part of the agreement. He enumerated numerous restaurants throughout the area owned by the applicant, and they stated that they should not be limited.

Responding to Mr. Seavey on the calculation for the current MacKenzie's sign, Mr. Rawding did not have the exact number, but he estimated that the area facing the parking lot including the light box sign and the facade sign was 30 sq. ft. To meet the ordinance it would need to be 18 sq. ft. For the East Main Street side including the light box and the window sign he estimated 30 sq. ft. In accordance with the ordinance it would be 25 sq. ft. Both facades exceed the ordinance.

In terms of what they are proposing, and whether they could get it to comply with the existing signage, he believes they are comparable to existing signage in terms of square footage on the courtyard side. The menu board does put them over. It is considered a sign on the facade. If they just took the signage, they would meet the 5% with the "Piattino" and "the neighborhood bistro". On East Main Street they are proposing 96 sq. ft. which is in excess of the existing signage.

There was a short discussion on whether the paddles on the walls are considered signage. Mr. McGroarty stated that based on his interpretation, they are visual display and considered signage. Mr. Germinario, Esq. added that they are an identification for the business.

Mr. Peralta questioned whether both signs would be lit. Mr. Rawding explained that both signs in the sign band would be lit as well as the decorative sconces. Mr. McGroarty advised the Board that the ordinance does not permit internally illuminated signs, but within the sign plan for the shopping center the lighting had previously been approved. Changing it is not permitted by ordinance.

Mr. Peck asked for clarification on whether they were still requesting relief over the top of the existing sign band. Mr. Rawding stated that they would stay within the existing sign band at the delineated fascia. The sign band would be a little taller. Mr. Peck questioned whether there was a picture of the Wells Fargo signage, but one was not available.

Mr. Peralta questioned setting precedent. He wanted to know the special reasons. Mr. Palestina added that they needed to think even more broadly than the shopping center and consider what would happen up along Main Street.



Addressing Mr. Ritger on whether they were approving the signage for the site or the applicant, Mr. Germinario, Esq. advised that in this case, a new restaurant would most probably not keep the name, however once the Board would approve signage above what is there today, a new applicant for the same location could request new signage to the same degree as was approved. The approval would be hard to back away from.

Mr. Seavey stated that he did not favor increasing the signage beyond what is there for MacKenzies today. He has not heard rationale to convince him otherwise. Everyone will come in for an increase in the size of signs. The Planning Board passed the site plan in 2007 so that the shopping center would be uniform. People who come into the Kings location know what is on that corner. Flagship does not work at this location. He was okay with the roof penetration, but if there was any change to a wood burning oven, they would need to come back to the board as that raised another set of implications.

Mr. Peck stated that while they are talking about the size, they also need to address the type of sign, for example, the unique lettering requested. All the signs are uniform. Mr. McGroarty explained that for the 2007 sign plan there was an example that showed what the sign would look like including the font and design. The signs would be uniform in the shopping center. Mr. Seavey stated he supported the same color and font as the rest of the shopping center. Should the applicant want more signage underneath the top sign, where "MacKenzies" is placed on the façade, he might accept that.

Mr. McCarthy stated that he would consider approving extra square footage for the menu board that is unique to a restaurant. This is especially important to a new restaurant where people are walking by.

Mr. Henshaw, Esq. summarized stating the Board would want the applicant to adhere to the same font, letter size and location as the rest of the shopping center. Mr. Seavey added that, in his opinion, since there is a MacKenzies sign on the fascia on the parking lot side and lettering in the East Main window, they could use different lettering at those locations. They have not heard any compelling evidence to grant the variance.

The Board did not have a problem with the roof penetration.

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The Board took a break at 10:30 and resumed the hearing at 10:40 p.m.

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Mr. Henshaw, Esq. summarized his understanding of how the Board wanted them to proceed. On the façade facing the parking lot, the direction is to have them adhere to the square footage, and the signage would need to be within the band using the same color, font style, etc. On the south façade they would be limited in square footage to what is there now, and they would need to measure to determine the exact square footage. They would need to provide a replacement plan. He questioned whether they were limited to the band, or whether there was additional flexibility.

Mr. Rawding expanded indicating that they would not have any signage in the light band, but in the areas below, they would introduce the "Piattano" logo sign and branding colors provided on the drawing. It would be set back 8 ft. from the overhang. It would be lit. The combination of all sides on the façade would not exceed the square footage of the signage that exists today.

Mr. McGroarty advised that if it is going to be an internally lit sign outside of the sign band, a variance is required.

Mr. Seavey proposed that they return to the next hearing with drawings. Mr. Henshaw, Esq. stated that he hoped the Board would authorize the attorney to prepare a resolution. He was not sure whether the Board, or the professionals, would need to see the revisions. Mr. Seavey stated that while they would all like to make it work, the exact signage today needs to be verified. He wanted to also understand the magnitude of signage on the Wells Fargo side. Mr. Ritger added that he was skeptical to vote on something for which the Board did not have the specifics.

Mr. Germinario Esq. advised that the Board has now given the applicant feedback. It is now incumbent on the applicant to submit an amended application. The Board would then hear that application. He was concerned that if the amended application deletes the outdoor dining, it is no longer Board of Adjustment jurisdiction. It would now be a Planning Board application. The applicant's attorney has cited that there is case law that indicates the hearing would continue with

the Board at which it started, but he is unfamiliar with that and would need to research it. The MLUL delineates the powers of the Board and he is familiar with the Polio case. If the Board receives an amended application, he would need to be convinced that the Board of Adjustment has continued jurisdiction.

Mr. Seavey suggested that they would need to check with the Construction Department, but he did not believe that they needed a variance for the roof penetration.

Chair announced that there was no public present for comment. Only representatives of the applicant and the Shopping Center management were present.

Mr. Henshaw, Esq. made an announcement that the application would be carried to the next meeting of the Board without further notice. Board Secretary confirmed that the meeting would be held Tuesday, April 2, 2013.

#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 11:00 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, April 2, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary