

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
April 2, 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 7:35 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. Peck – Present
Mr. Peralta – Present
Mr. Schumacher – Present
Mr. Seavey – Present

Mr. Smith – Present
Mr. Ritger - Present
Mr. McCarthy, Alt I - Absent
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. Seavey made a motion to approve the minutes of the March 5, 2013 regular meeting of the Board as written. Mr. Peck seconded. All members being in favor, the minutes were approved.

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

Present: Douglas Henshaw, Esq., Attorney for the Applicant
Jeff Rawding, Architect/Planner for the Applicant
Various representatives of the Applicant (Audience only)

Exhibits: A-6: 2.01B-Enlarged Elevations of the Proposed Restaurant
A-7: copy of new plan Main Street Elevation

Mr. Henshaw, Esq. explained that the applicant re-evaluated the signage plan in light of the Planner's report. They had provided new drawings on March 21, 2013 to the Board for distribution prior to the meeting. There is reduced signage facing the parking lot façade. There is also reduced signage on the Main Street façade which is now 2 sq. ft. greater than what exists, but less than the last proposal. The menu board is not included in the façade signage plans. It is mentioned in a footnote on the plans.

He continued that this is really two applications in one. The signage is a bulk variance requiring the majority vote. The outdoor dining is a use variance requiring five affirmative votes. There would be two separate votes. They did not pursue the outdoor seating further as they would need to work with the Shopping Center owner.

Mr. Rawding entered Exhibit A-6, and testified that the original proposal for the parking lot elevation contemplated 44.23 sq. ft. of signage including a sign above the door, a banner, a menu board and paddles. That represented 11.8 % of that wall surface whereas the ordinance allows for 5%. On the original Main Street elevation, they proposed signage of 135.25 sq. ft. or 26.2% of the wall. Since the last meeting he reviewed the existing conditions on the property. The existing MacKensies sign facing Main Street is 75.9 sq. ft or 14.7% of the wall surface. On the parking lot façade, the existing MacKensies signage is 32 sq. ft. or 8.5% of the wall area.

Continuing with the new proposal and entering Exhibit A-7, a remounted copy of the Main Street elevation, Mr. Rawding stated that they are now planning signage of 75,8 sq. ft. or 14.3% of the wall area. The proposed signage includes the wall sconces with "P"s, the Piattino sign on the right hand side with "Neighborhood Bistro" underneath on the stone façade, and a conforming Shopping Center sign band in the light box. This differs from the original proposal at 26.2% of the façade. They did not count the two pizza paddles that represent about 8.6 sq. ft. On the parking lot facade they are down to 20 sq. ft. whereas previously they had proposed 44.23 sq. ft. The 20 sq. ft. is illustrated on A-6 and includes the compliant light box in the sign band. The paddles are not counted. This now represents 5.43% of the façade and is .43% above the ordinance. Previously they were at 32 sq. ft. and have reduced it by 12 sq. ft.

Mr. McGroarty clarified that there would be 20 sq. ft. of signage on the parking lot side excluding the paddles and 73.58 sq. ft. on the Main St. side excluding the paddles. Mr. Rawding stated that their table does not include the paddles or the menu board, but the drawings do. He questioned whether the paddles constitute a sign.

During Board questions, Mr. Smith noted the difference in the fonts from the other stores. At the previous meeting, they were moving more toward consistency with the other stores. Mr. Rawding stated that there are deviations from the standard fonts within the Shopping Center. This design shows some relationship to the branding and the sign band. The band is the same size as the other shopping center signs, but circular letters are used. There is a school and a pharmacy with different signs. Mr. Smith noted that the pharmacy is the same, but the new math school unit is different.

Addressing Mr. Seavey on the approval that referenced sign continuity in the Shopping Center, Mr. McGroarty stated that there is a typical sign with the site plan approval from 2007. It shows a typical sign and a font along with the sign band. The resolution does not state that the signs must conform. Mr. Henshaw, Esq. stated that the ordinance does not reference it and it is a matter of balance.

Mr. Rawding explained that it would not be aesthetically pleasing to have two types of signs on the end unit if they used a different sign on the parking lot side. Mr. Henshaw, Esq. stated that the end units have slightly different characteristics. The end units have signs also facing Main Street, not just the parking lot. The other stores just have one sign.

Responding to Mr. Peralta on the square footage of the signage for the bank, Mr. Rawding stated that it is slightly lower than the original MacKensies signage. It is about 60 sq. ft. on the Main St. side as opposed to their 75 sq. ft. The bank has more on the parking lot side with their logos and banners.

Mr. Seavey noted the light band sign and stated that the colors deviate from the rest of the Shopping Center. There is a danger that the Board would open a "Pandora's Box" and the continuity would be lost. There is currently a two color scheme. As the town has recently passed a sign ordinance, the sensitivity is elevated. He noted that if the signs conform, he would be okay with the different colors.

Mr. Rawding noted that there is a different sign for the Learning Center. Mr. Henshaw, Esq. stated that there is nothing on the uniformity of the Shopping Center signage in the ordinance.

Responding to Mr. Smith on how the signs are regulated in the Shopping Center as there is a different sign for the Math Learning Center, Mr. Hansen noted that the Zoning Officer reviews the entire history of the property and the signage for consistency. Addressing Mr. Seavey on whether the signage was or was not in the resolution, Mr. McGroarty stated that there is a reference to the site plan as controlling in the resolution. At the time, they had a mockup for the China Gourmet sign as a prototype for the Shopping Center. There was no reference to the font size or color.

Mr. Germinario, Esq. advised that if in the judgment of the Board, the original sign package was part of the site plan approval, then approving this signage would amend that approval. They

would need to determine whether there is a deviation from the aesthetic that would have an adverse affect. On the other hand, the Board could look at this in isolation as an individual application, and not the whole wall. If no variances were required, the Board does not get into the aesthetics as long as it is in the realm of acceptable taste. The threshold question is whether based on the history a unified consistent signage plan is part of the site plan. Then they must determine whether altering it undermines the original principals of the approval.

Mr. Seavey stated that in his opinion, what has been proposed is a tasteful sign and the other signs are not very attractive, but that is not his call. It is a challenge to make someone conform to something that is worse than what they have presented. On the other hand, there could be 100 different signs and that would not look good either. Mr. Smith noted that through the years, Verizon had a logo and now the Learning Center has a different sign. Whoever is approving the signs is not that concerned about keeping the signs consistent. If everything were identically conforming since day one, he would be more inclined to agree that it should continue to be uniform, but from time to time, different signs go up.

Mr. Henshaw, Esq. added that those that deviate have regional or national brands. Here they are attempting to start a brand. It appears the Zoning Officer has recognized this in the past.

Chair Seavey opened the meeting to questions or comments by the public. There being none, the public session was closed.

Mr. Seavey questioned whether the flower boxes were part of the application. He thought that they enhanced the application. Mr. Rawding stated that the applicant would like to have flower boxes.

Responding to Mr. Schumacher on whether the menu board and paddles were included as signage, Mr. McGroarty stated that the menu board was without question. In terms of the paddles, he read the definition of signs which included visual displays.

Responding to Mr. Seavey on whether the paddles increased the square footage over that which exists, Mr. Rawding stated that they are at 14.3% versus 14.7%. If they add the paddles, they are at 90.82 sq. ft. Mr. Schumacher noted this is 20 sq. ft. higher. Mr. Ritger stated that he was having a difficult time accepting that the paddles were signage. He questioned whether the carriage sitting on top of The Pub is signage. Mr. Germinario, Esq. advised that the paddles specifically refer to the type of food they are serving. They can also look at the character of the signage and even though they might classify the paddles as signage, they might want to consider them as having a different visual impact even though they count toward signage.

Mr. Henshaw, Esq. stated that it is a matter of balance. He summarized that this is an end unit and the applicant wants to brand. It would have been better if the Committee working on the signs had addressed the Shopping Center signage. It provides the Board freedom. As national brands become more prevalent, the Board may see this again.

Responding to the Chair, Mr. Rawding confirmed that the menu board is 13.8 sq. ft. Mr. Rawding clarified for the Chair that the letters have a yellow ring with black letters. The green will match the other signs.

Addressing Mr. Peralta on the type of variance requested and the criteria for approval, Mr. Germinario, Esq. advised that it is a flexible C2. The standard is that even though it deviates from the ordinance, it would represent a better planning alternative. In other words, deviating from the ordinance is better planning than adhering to it. Here the Board looks at the purpose of signage to identify the business of which branding is an important element, and the aesthetics. There is a weighing process between the benefit of adhering to the ordinance and the benefits of deviation. If the Board finds that the benefits of deviating exceed the benefits of adhering, then the Board has reached a decision

Chair clarified that they would be voting on the outdoor seating and the signage separately. He opened the meeting to questions and comments by the public. There being none, the public session was closed.

In deliberations, Mr. Ritger stated that placing a sign on the masonry creates good aesthetic improvement to a currently blank wall. He confirmed that there was no intention to increase the size of the column. He expressed his opinion that the paddles blend in with the background and do not stand out like signs. If they were a different color, he might feel differently. He could not imagine a restaurant without a menu out front, and he would accept the menu board as part of the signage. Overall he liked the proposed changes.

Mr. Schumacher was pleased with the overall design and was willing to look past the paddles, but expressed his opinion that they should have been included in the calculation. He was concerned about the other stores who would now want to increase their signage.

Mr. Smith agreed with Mr. Ritger on the nature of the paddles as ornamental, and he could look past that. If the signage had the green background and the lettering in accordance with the new plan, he felt it was okay. The font is different, but he did not think it in bad taste.

Mr. Peralta was concerned about a “free for all”. The intent of the sign policy was for the consistency of look. It could open a “Pandora’s Box” and create logo competition throughout the Shopping Center. On the other hand, the design is in good taste, and he understands the needs of the business to attract business to the shopping center. He is torn, but may favor the plan.

Mr. Peck agreed with his fellow board members, and stated that in his opinion, there is room for branding on the signage. The treatment of the blank wall helps as what is there now is very stark. There is a risk that there could be a slippery slope, but the size limitations will help. It is an end unit that could be viewed differently, and the applicant should have the right to brand.

Mr. Seavey stated that he echoed the comments of the other Board members and continued that granting a variance represented better planning. The Shopping Center has never been very attractive even though each owner has tried to make it better. The flower pots are important. The paddles are part of signage, but he does not weigh them equally. In terms of outdoor seating, he believes that everyone on the Board would like to have it, and what is in the ordinance list is somewhat archaic. Social culture changes. He will write a letter to the Council and the Planning Board at the end of the year in reference to outdoor seating. Also, while he has not done an official poll, people he has spoken to outside of the Board would like it. He will vote it down in this application as there is no clarity in the ordinance on how to regulate outdoor seating. Overall on the signage, there is good planning, a benefit to the public and the plan outweighs the negatives.

During professional comments, Mr. Hansen advised that a sewer approval would be required. Mr. McGroarty confirmed that the color of the paddles would be stained dark brown wood, and they would not be illuminated. The lighting of the sconces would be 60 watts. The lighting in the sign below the sign box will be similar to the sign box.

Mr. Seavey made a motion to accept the amended signage plan dated March 21, 2013 with the conditions of adding the flower planters and obtaining the sewer approval. The paddles would not be considered to have the same visual impact as the other signage. Mr. Ritger seconded.

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

The motion carried. The signage plan was approved and the action will be memorialized in a resolution to be prepared by Mr. Germinario for the May 7 regular meeting.

Mr. Henshaw, Esq. stated that, in terms of the sewer approval, they were actually reducing the seating in the restaurant and he was not sure that they needed the approval. Mr. Hansen advised that since they were changing the seating, it was required.

In terms of the outdoor seating, Mr. Henshaw, Esq. stated that they have several alternatives. They could withdraw or ask the board for a denial without prejudice. They would like to come back to the board if the town changes the ordinances. He would like to preserve that option. Mr. Germinario, Esq. responded that based on the previous meeting, the Board would only entertain the outdoor seating with specific conditions. For financial reasons, the applicant does not want to proceed in that direction. The denial could be phrased in terms of those specifics.

Chair opened the meeting to questions and comments by the public on the outdoor seating. Mr. Frank Lupo, 17 Dean Road stated that he did not object to outdoor seating, but if the seating is increased, the requirement for parking would also increase. Consideration of this is very important as there are applications before the Board that want to decrease the parking. Traffic and parking should be thoroughly explored.

In deliberations on the outdoor seating, Mr. Ritger again expressed his concern on safety and questioned whether a barrier could be created by placing the planters on the asphalt. He would like to see outdoor seating.

Mr. Schumacher stated that he felt the same as he did at the last meeting as safety with the two way traffic was a concern. Even one way traffic could be an issue. The sidewalk would need to be widened. Parking is also a concern as they are now open for lunch and outdoor dining would add more seats and parking requirements.

Mr. Smith added that his concerns were safety and removal of the sidewalk. If there were outdoor seating, the sidewalk would need to be widened and a barrier provided. He is in favor of outdoor seating if it is done properly.

Mr. Seavey made a motion to deny the use variance for the outdoor seating due to the fact that the Board was concerned about the specifics of safety that should accompany outdoor seating. If properly configured at a later date, they would reconsider it. Mr. Peralta seconded.

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

The motion carried. The outdoor seating was denied. Mr. Germinario, Esq. will memorialize the action in a resolution to be prepared for the May 7, 2013 regular meeting of the Board.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 8:45 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, May 7, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary