

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
June 8, 2011
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Vice Chair Peck at 7:30 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 Daily Record on January 13, 2011 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. Seavey – Present (7:45 p.m.)
Mr. Peck – Present	Mr. Smith - Present
Mr. Peralta- Present	Mr. McCarthy, Alt. I - Present
Mr. Ritger - Present	
Mr. Schumacher - Present	

Also Present: Mr. Bolio, Board Engineer
Mr. Henry, Esq., Board Attorney
Mr. Humbert, Borough Planner

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PUBLIC COMMENT

Vice Chair Peck opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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APPROVAL OF MINUTES

Board noted that the name associated with the second on the minutes of April 5, 2011 had been omitted. Ms. Callahan stated that she would check it and insert with the concurrence of the Board. On motion by Mr. Palestina, second by Mr. Ritger and all members being in favor, the minutes of the May 3, 2011 regular meeting of the Board were approved with the insertion of the member who seconded the April 5, 2011 minutes.

HEARING OF CASES

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Mr. McCarthy recused from the Sansone application.

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Sansone, Ronald & Laura – Hardship Variance
Block 404, Lot 14, 6 Mansfield Court

Present: Ronald Sansone, Applicant
John Booth, Architect for the Applicant

Exhibits: A-1: Enlarged view of site with highlighted areas

Mr. Henry, Esq. had reviewed the public notices prior to the meeting and advised they were in order.

Completeness: Mr. Bolio reviewed the Ferriero letter dated April 8, 2011 dealing with the completeness items. He advised that they had no objection to the waivers that were requested; however a signed and sealed survey and approval lines would be needed with final plans should the Board approve the application. Testimony would also be required dealing with the soil removal. Mr. Henry, Esq. advised that the Board could request additional information if they found it necessary during the hearing. Mr. Booth stated that the requirements would be addressed. There were no Board questions.

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

ROLL CALL: The result of the roll call was 6 to 0 as follows:

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

The motion carried. The application was deemed complete and the hearing could commence. Chair Seavey took leadership of the Board.

Hearing: Mr. Sansone testified that the project is to accommodate his growing family and their need for space. They like the neighborhood and their lot that is private and wooded. The addition will provide them with a larger kitchen and more storage.

Mr. Booth explained that the home is located in the half acre zone. It is currently conforming except for lot coverage. The permitted maximum coverage is 20% and they are currently at 26%. They are looking for 27.24%. They will be adding 408 sq. ft. to the first floor for additional living space and expansion to the kitchen and 90 sq. ft. to the second floor for a small expansion of the master bedroom, bath and closet. The total square footage will be going from 2138 sq. ft. to 2636 sq. ft. The net addition is 311 ft. That is still within a reasonable range and commensurate with other properties in the area. The addition is entirely to the rear and not visible to the public. It is on a cul-du-sac. The home has a pool. A variance for lot coverage is needed.

The Board expressed concern about potential water run-off and questioned whether the applicant had explored any ways to mitigate coverage and/or limit run-off.

Mr. Booth stated that there is not a lot of excess coverage being requested, and the new addition is basically the same footprint as the existing home as it will be replacing the existing wooden deck. Mr. Sansone added that there is a swale from the street to an easement in the rear and another swale along the driveway. The water flow is designed to run to the rear and into the creek. There is a 15 ft. drainage easement in the rear on his property. The cul-du-sac is designed well. To his knowledge none of his neighbors have problems. In terms of managing the flow of water from the gutters, Mr. Sansone explained that the downspouts run underground to the swale. The same thing will be done for the addition. There is dirt under the existing deck today, and there will be dirt under the proposed deck.

Mr. Bolio advised that it is appropriate to replicate the system. He determined that the pool and the shed were in existence before the stormwater ordinance, and the applicant has not met the thresholds of the ordinance.

In discussion on potential mitigation of the coverage, Board noted the large rocks in the rear that were considered part of the coverage and questioned whether they could be covered with grass. Mr. Sansone explained that the rocks form a retaining wall that is not cemented. There is drainage between the boulders. The wall retains the back for the pool and the rocks are aesthetically pleasing. Dirt over them will wash away.

Board also noted the slate walk and pavers. Mr. Sansone stated that there is a slate walk in the front of the home leading to the door. That remains. They are also proposing 2x2ft. stones separated with grass leading to the pool. Board explored removing the path to the pool, but it was determined to be not feasible.

Chair opened the meeting to questions and comments by the public.

Mr. Robert Stoltz, 44 Maple Avenue spoke in favor of the applicant. He noted that the rock wall is very good looking and that he is in favor of the application.

There being no additional comments or questions by the public, Chair Seavey closed the public session.

In deliberations Mr. Ritger noted the swimming pool and questioned why as a receptacle for water, it was considered impervious coverage. Chair explained that while it captures the water, it does not provide for the recharge of aquifers. Mr. Palestina also questioned why the rocks were considered part of the coverage. Neither saw an issue with the drainage. Mr. Smith added that he did not see a problem with drainage as the rocks would not drain any better with dirt over them. Mr. Schumacher did not see any detriment to the neighborhood.

Mr. Peralta expressed that the size of the proposed addition was reasonable, but that he did not see any undo hardship. He was concerned that the Board was hearing applications for that section of town where people are expanding homes and increasing coverage. He expressed his opinion that people should be exhibiting flexibility to find ways not to increase coverage. He is looking for consistency. If there was no net increase, he would be favorable, but there is an increase.

Mr. Peck stated that he understood the position, but considering the pool, rock wall and location of the drainage easement in the rear as well as the fact that there is no problem in the neighborhood, he was supportive. Mr. Seavey also expressed that the coverage here was not as problematic. The rock wall was not a 2 ft. walkway or a solid stone wall.

Expressing his professional opinion, Mr. Humbert stated that he did not hear anything that caused concern. He did not have any concern with the negative criteria, nor did he see any problem with the zoning plan. There are two types of C variances the Board could consider. A C1 variance carries the strict hardship standard. A C2 variance is one in which the benefits out way any detriments. He did not see any significant impact as a precedent. He favored adding the pathway with spaces between the blocks.

Continuing with his professional opinion, Mr. Bolio stated that the slate stepping stone with spaces between them would be diminimous, and the addition of a drywell would be diminimous. He stated that required changes to the plans would need to be made.

Board discussed the best way to address the maximum coverage to be allowed in the resolution given the addition of the slate walkway. It was determined that without the walkway the net increase was 311 sq. ft. Allowing an additional 60 sq. ft. for the walkway, the maximum impervious coverage increase would be expressed as not to exceed 371 sq. ft.

Mr. Palestina made a motion to approve the application as a C2 variance. All technical requirements as expressed by the engineer and included in the Ferriero letter of 4/8/11, and general requirements as expressed by Mr. Henry, Esq. would be met. A walkway of stepping stones with grass between them would be permitted not exceed 60 q. ft. The total impervious coverage increase would not exceed 371 sq. ft. Mr. Ritger seconded.

ROLL CALL: The result of the roll was was 6 to 1 to 0 as follows:

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

The motion carried. Mr. Henry, Esq. will prepare a resolution memorializing the action for the July 6 meeting of the Board.

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Mr. McCarthy rejoined the Board.

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Zenjon Enterprises, LLC – Preliminary and Final Site Plan/Variiances/Interpretation
 Block 1501, Lot 11, 25 East Main St. (Historic District): **Continuation**

Present: Robert Simon, Esq., Attorney for Applicant
 David Fantina, Engineer for the Applicant
 Lawrence Appel, Appel Design Architects, Architect for the Applicant
 Jonathan Krasney, Zenjon Enterprises, LLC

Exhibits: A-1: Architectural Drawings – Set of 12 Sheets
 B-1: Photograph of Shoemaker Shop and Cottage

Mr. Henry, Esq. had reviewed the public notices prior to the meeting, and advised they were in order. He advised the Board that the applicant had submitted a letter explaining contextually some changes that they are proposing to the application. They would be presenting a graphic exhibit of the changes, but formal changes to the plan would need to be provided for the Board's review.

Mr. Simon, Esq. explained that the proposal is still for a two phase project. Phase I is to reconstruct the cottage on an existing foundation. Phase II is to add a separate freestanding building in the rear. The front building has been reduced to 3750 sq. feet of office space and the rear building to 5400 sq. ft. of office space for a total of 9150 sq. ft. They would meet the parking requirement of 15 spaces in Phase I. Phase II parking required using the 20% factor is 44, and 45 are provided. They are also proposing to reduce the number of uses from 3 to 2 in the front building and from 3 to 2 in the rear building.

Utilizing Exhibit A-1, Mr. Appel explained that the buildings look the same as they previously did, but they have reduced the size. For the front building they need to honor the existing foundation and will rebuild over the existing footprint. The addition will be built to the west. The front building has been reduced to 3750 sq. ft. and the rear to 5400. The business uses in the front and rear buildings have been modified from 3 to 2. With the reduced size in the front building they are concerned that it might not accommodate business uses well.

Mr. Seavey referred to the previous meeting where it was determined that it was not "restoration", but "replication". They are replicating the building that currently exists and are attempting to enhance it to create a more modern building. Mr. Appel added that they were before the HPC that sent a recommendation to the BOA for two buildings rather than one. Mr. Seavey questioned whether they were looking for some type of relief for going through the process to enhance the Borough streetscape. Mr. Simon, Esq. stated that they were replicating the building, and questioned whether it was enough to constitute a renovation and a restoration under the historic section of the ordinance. The intent of the applicant is to restore and preserve the historic nature of the building.

Mr. Henry, Esq. advised that an interpretation of the ordinance language is necessary. The Board needs to decide if the building is "historic" under Section 215.18. His interpretation is that "historic" does not mean "historic looking". If the building is not historic they cannot rely on special provisions. The Board then needs to consider the requests as other relief issues. He did not see it as an issue, however, as what the applicant is seeking does not rely on the special provisions for a historic building. Mr. Seavey agreed with Mr. Henry, Esq. It is not a historic building when it is taken down. There is some value to replication, but it is not restoration.

Mr. Simon, Esq. stated that the Board needs to make an interpretation. They will provide planning testimony.

Mr. Humbert stated that the Board would need to hear the testimony of the witnesses and then make the determination. He also advised that if they thought there was a gap in the ordinance, they should provide a recommendation to the Council in their annual report. He added that in the cases of non-conforming uses, the use is gone if the building is demolished. The term "replication" is not in the ordinance. Mr. Henry, Esq. continued that the current building that is listed as a contributing historic building will disappear. Addressing Mr. Appel on the value to the District and streetscape, Mr. Henry, Esq. did not disagree, but the replacement is not a "historic" building.

Responding to Mr. Palestina on what the difference between this building and Audi would be, Mr. Henry, Esq. advised that on the surface level, perhaps nothing. Both buildings would have been removed and new buildings constructed. What is important is that in addition to having a Historic Business District Zone, there is a Historic District Overlay. Keeping the compatibility with the District satisfies the Overlay, but the building does not qualify for relief under the Historic Business ordinance dealing with historic buildings. Mr. Seavey added that the Board will need to make the determination. The applicant may be asking for the same relief, but it might not be granted under the Historic Business District section.

Mr. Simon, Esq. advised that much of what the applicant is now asking for is not covered under the Historic Business section. There is no relief being requested for parking or the square footage. He referenced the architectural criteria for non-historic buildings in the Historic Zone. Mr. Appel would address it.

Addressing Mr. Seavey's question on what relief the applicant would now be requesting, Mr. Simon, Esq. stated that they would need relief for (1) more than one principal structure on the lot; (2) If the front building is non-historic they would need to increase the Phase I parking by 20%

and need 18, not 15 spaces, and (3) the front yard setback. They would also need waivers including the isle width and size of the parking stalls.

Mr. Palestina agreed that the application was “replication” and questioned whether they were using the same foundation. Mr. Appel stated that the front portion of the building foundation is rubble. It needs to be reinforced. The other portion is concrete block. There is no reason to knock down the concrete block. The HPC requested that they push the addition close to the street, but they wanted to keep it a certain distance back.

Mr. Henry, Esq. advised that there could be consideration for a C2 variance for a front yard setback with the appropriate case. Mr. Seavey added that would be inherent to what the HPC is requesting.

Chair requested to hear Mr. Topping’s opinion.

Mr. Topping, 13 Aberdeen Drive, member of the public and Borough Historian stated that Janet Foster, currently Dean of Historic Preservation at Columbia University, had completed a survey for the Borough before the Historic District was formed. She identified buildings as “contributing” and “non-contributing”. The building at 25 East Main Street is contributing and is the path of the American Dream.

Mr. Topping explained that the property was purchased by an Italian immigrant, Mr. Sicone, who came to Mendham. Handing out a photo to the Board he explained that there were two structures on the property. One was originally a shoemaker shop and then became a beauty parlor. That two story structure also had a portion that was a dormitory where workers brought to Mendham to work on mansions in the Borough by Mr. Hoffman were housed. One of the immigrants was Pietro Clemente who came to Mendham in 1919, married Florence Taylor, and named the property he owned Florie Farms after his wife. The shoemaker’s daughter married and decedents Pete, Jim, Marie Cillo eventually became members of our community. The structure was in better condition, and PNC wanted to put up a quality structure and renovate part of it. In the interim years, the building has had its difficulties.

Mr. Topping continued that a building is deemed historical for reasons of style, antiquity, who built it, events, owners or visitors, i.e. George Washington slept there. There can be very strict criteria for reconstruction such as the reconstruction of Williamsburg. There is always an intent to repair rather than replace. The Borough Ordinance has the intent of saving Mendham. There is usually a period of interpretation for the restoration and things that have been added subsequently are removed. The shoe shop appears to have been built in the 1900’s. Janet Foster would make the recommendation to save the building, but if it is in difficulty, it may be prudent to build something new that would be in concert with what is currently there.

Mr. Topping referred to the history of the ordinance through which historical buildings can be saved by providing additional uses. He referenced the work that the Board of Adjustment had done with Dr. Shialino and the award given by the State. He continued that he had been concerned that the Board was being asked to grant extra uses for tearing down a building, but the uses have been reduced.

Board questioned the year of the photo. Mr. Appel noted that he has Sanborne maps that show the dormitory building, but not the cape next door. In 1915 the dormitory building was there. He continued that he had had a conversation with Mr. Topping a year ago. When they went to the HPC, they were looking to go back in time and include the shutters. To replicate the dormitory structure could interfere with the property lines. The building was not referenced in the Historic District study. They are taking away as much of the old as possible and make the building suitable for a modern user. They have done a lot of work to try to keep the one and a half story appearance. If it were taken down, an 11,000 sq. ft. structure could be built. If there were elements for which it made sense to repair rather than take down, they would. The building has been neglected and wholesale alterations have been made over the years. The windows and the siding have already been changed. Without an addition to the building, it would be difficult for most current uses to utilize the building. They have done their best to replicate what needs to be replicated.

Mr. Seavey stated that the Board has previously worked with applicants to have very good site development under the leadership of the past Chair. Audi and Dr. Shialino’s building are two. He stated that, in his opinion, it would be beneficial to the Borough to have a replication of what was closer to what was there, beyond what we see now. The shoe shop would be beneficial to Mendham and probably would gather more credit for relief than what currently is proposed.

Mr. Appel stated that he did not think the shoe shop could be built on that property given the driveway. He continued that the first presentation to the HPC included a front facing gable and they did not accept it. Mr. Ritger noted that the shop could be placed to the right. Mr. McCarthy clarified with Mr. Topping and Mr. Appel that the shoe shop was a separate structure.

Mr. Simon, Esq. stated that if the Board decides that Section 18 does not apply and they then refer to Section 19, the intent of Section 19 is not for anyone to have the task to replicate something that was located on the property 100 years prior. To refer to old photographs and have them be the intent of Section 19 is not appropriate.

Mr. Appel acknowledged Ms. Foster's expertise. If this were direction, it should have been addressed months ago. It is not appropriate to go back in time and arbitrarily state that the building needs to be placed as streetscape. When the shop was there, everything to the east did not exist. The focus is elements and character of the streetscape. If they take the shop and add new elements it would replicate an urban streetscape. Mr. Seavey noted that is what they are doing now.

Mr. Appel stated that if they place another structure on the lot, it will be within 20 ft. of the property line. There would need to be a way to connect the two structures. There would be density with the cottage, shop and Mr. Paragano's building. There might be a site distance issue from the Paragano driveway. Mr. Seavey stated that a site meeting would be needed at which the pluses and minuses of the designs would be noted. Mr. Smith noted that most driveways are to the west. These two driveways are together and could cause confusion.

Mr. Appel questioned whether the HPC would be involved in the process. The HPC thought it not appropriate to have a front facing gable building next to the cottage. Mr. Simon, Esq. advised that the Master Plan puts its faith in the HPC. Also under the current plan they have eliminated that need to seek relief under a historic building. He was concerned about the economic issues for his client. If the Board wants a site visit, they need to do it now. He questioned the functionality and the ability of the two older buildings to interact.

Responding to Mr. Seavey on his request for input, Mr. Humbert stated that there are lessons learned from the Audi dealership. It is not easy to combine modern usage with antiquity. When the Audi Dealership first came in there was concern, but the dealership needed to service modern cars. There were height and width issues and initial elevations appeared industrial from Orchard. There needs to be a functional test and then the form will follow. The uses need to be defined and then the shape and form configured. The Board will need to grant D Variance relief and 5 Board members will need to agree. The uses need to be defined so that the Board accepts the functionality of the building.

Mr. Seavey polled the Board on whether they would like the photo to be considered in the design. Board discussed whether or not the HPC had seen the most recent photo and questioned whether if they did, they would in any way change their opinion. There would not be a downside in getting their opinion and a synergy with the HPC would be maintained. There is an issue with the two driveways together and moving the building to other side might alleviate the issue. The gabled building to the right might also soften the impact of the large back building.

Mr. Appel stated that they placed the driveway to alleviate a long alley way look to the building in the back. Also, the traffic consultant advised that there will be less traffic than from the bank. Given that, they focused on the historical nature as opposed to the driveway.

Mr. Krasney questioned whether the buildings were two separate structures. He then stated that he is very committed to this project, but he cannot think about going through a redesign. He has gone through this project in good faith step by step. He questioned whether another photograph would bring another redesign. Mr. Simon, Esq. referred to the HPC report. He did not want the applicant to have to start from scratch, and requested that, if anything, there only be modifications.

Board stated that they needed to react to the photo. Not considering it would be an error on the part of the Board. They would like the opinion of the HPC and whether it changes their opinion in any way. A series of options for obtaining the input of the HPC were discussed among the Board and the applicant. It was determined that the applicant would send a letter along with the new photo to the HPC requesting their input at their Monday, May 20 regular meeting. No more than three members of the Board of Adjustment would attend the meeting in their role as public.

Mr. Humbert stated that the applicant has been in a process that the Land Use Law has tried to avoid by giving the BOA final approval. The HPC should come and give testimony. Mr. Henry,

Esq. advised that the HPC has sent their advice, the Board does have approval, but the Board is trying to get the opinion of the HPC given the photo.

Board decided that they would probably request a site visit, but not until they had heard the testimony related to the other site items such as traffic and parking.

Referring to a front facing gable, Mr. Topping referenced the Pastime Club as having been designed by Aaron Hudson. He thought the shoemaker shop could possibly have the same designer.

The application hearing would be continued at the Wednesday, July 6 regular meeting of the Board.

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 Wednesday, July 6, 2011 at 7:30 p.m.

Respectfully submitted,

Diana Callahan
Recording Secretary