

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
September 14, 2009
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 7:35 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 on January 15, 2009 and the Daily Record on January 16, 2009 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

ATTENDANCE:

Mayor Henry – Present (7:40 p.m.)
Mr. Bradley – Present
Councilman Carr – Present
Mr. Cascais – Absent
Mr. Gertler – Present

Mr. Kraft - Present
Mrs. Kopcsik - Present
Mrs. Lichtenberger - Present
Ms. Sandman - Absent

Alternates:

Ms. Gemberling, Alternate I - Present
Mr. Cavanaugh, Alternate II–Present

Also Present:

Mr. Henry, Attorney
Mr. Price, Zoning Officer

APPROVAL OF MINUTES:

Mrs. Lichtenberger made a motion to approve the minutes of August 10, 2009 as written. Mr. Gertler seconded. All members being in favor, the minutes were approved as written.

PUBLIC COMMENT

Chair Kraft opened the meeting to any public comment or questions on matters that were not on the agenda. There being none, the public comment session was closed.

**PUBLIC HEARING: MASTER PLAN AMENDMENT –
HISTORIC DISTRICT EXPANSION: PHASE I**

Notice of this hearing was published in the Observer Tribune and the Daily Record on August 27, 2009 in accordance with N.J.S.A. 40:55D-13. Notice to the clerks of Mendham Township and Bernardsville was provided via certified mail on August 25, 2009. Notice to the County of Morris with copy of the amendment was provided by certified mail on August 25, 2009.

Chair Kraft summarized for the Board stating that the amendment is to align the Borough's Historic District to the Borough existing National Historic District Registry Listing. Mr. Henry, Esq. added that there are seven additional properties that are now listed as part of the Borough's Historic District for the alignment. The map that is proposed also shows Phase II of the proposed expansion, but that is not being considered at this time. The Council would need to adopt an ordinance to formally add the seven properties to the Historic District.

Chair Kraft opened the hearing to the public. There being none, the public session was closed.

Mayor Henry reported that Mr. Dennis Bertland, Historic Preservation Consultant and Adrian Humbert had attended the last Council meeting to provide an overview of Phase I, the alignment of the Historic District and the National Registry Listing. He would like to have an ordinance presented for consideration at the next Council meeting.

Responding to Ms. Gemberling on what is proposed for Phase II of the expansion, Chair Kraft explained that the concept is to expand from the existing District east to Cold Hill, and add homes on Orchard, a home on Cold Hill that was part of a subdivision agreement, and some homes on Hilltop. Mr. Henry, Esq. advised that which properties can be included are still under discussion with the State as some of the properties may be non-contributing.

Mr. Henry, Esq. presented the following resolution to the Board:

**RESOLUTION OF THE PLANNING BOARD
OF THE BOROUGH OF MENDHAM**

WHEREAS, the Planning Board of the Borough of Mendham (the "Board"), following a public hearing as required by law, adopted a Master Plan in accordance with the provisions of N.J.S.A. 40:55D-1, et seq. in October, 2006, including the August, 2005 Housing Element and Fair Share Plan as described therein; and

WHEREAS, a revised Housing Element and Fair Share Plan was adopted by the Board after a duly noticed public hearing on December 8, 2008; and

WHEREAS, an amendment to the Historic Preservation Element of the 2006 Master Plan has been proposed regarding expansion of the Historic District in two (2) Phases; and

WHEREAS, a public hearing was held by the Board, pursuant to Notice as required by N.J.S.A. 40:55D-13, on September 14, 2009, at which time the proposed amendment to the Master Plan Historic Preservation Element was reviewed and discussed, and members of the public were given an opportunity to be heard with respect to the proposal; and

WHEREAS, the Board, after review of the proposal and hearing all comments and deliberating upon the same, determined that the proposed amendment to the Historic Preservation Element, as embodied in the August 11, 2009 Memorandum of Adrian P. Humbert, AICP/P.P., the Board's planning consultant, together with the revised Historic District map (Exhibit #6), accurately sets forth the Phase 1 modification of the Borough's Historic District, which as implemented by Ordinance will conform the Historic District Overlay Zone boundary to the existing boundary of the Borough's National Historic Registry listing, as well as the proposed Phase 2 expansion of the Historic District Overlay Zone for future consideration;

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Mendham, this 14th day of September, 2009, that the August 11, 2009 Memorandum of Adrian P. Humbert, AICP/P.P., together with the revised Historic District map (Exhibit #6, revised September 2009), setting forth a proposed amendment to the Historic Preservation Element of the Master Plan of this Borough be and hereby is approved and adopted; and

BE IT FURTHER RESOLVED that this determination be reported to the governing body of the Borough of Mendham, and that the Board Secretary comply with the post-adoption notice requirements of the Municipal Land Use Law as applicable to Master Plan amendments.

Mayor Henry made a motion to approve the resolution for the adoption of the Master Plan Amendment. Mrs. Kopcsik seconded.

ROLL CALL: The result of the roll call was 9 to 0 as follows:

In Favor: Henry, Bradley, Carr, Gertler, Kraft, Kopcsik, Lichtenberger, Gemberling, Cavanaugh

Opposed: None

Abstentions: None

The motion carried the resolution was approved. Ms. Callahan will make the appropriate public and Morris County notifications. She will also advise the Council of the amendment and request consideration of the ordinance.

#####

Wastewater Management Update:

Mr. Kraft reported that Morris County met with the Borough in July and provided a set of maps. Subsequent to that, the Planning Board subcommittee met and reviewed the County maps and made adjustments.

Mr. Price provided handouts to the Board that provided a summary of developable and undevelopable lots. The County identified 852 acres, 78 affected lots and a yield of 161 dwelling units. He explained the map and how the lots were divided by sewer and non-sewered areas and HUCs. Every lot was reviewed and criteria identified. The Highlands work was taken

into consideration. After analysis, the Highlands criteria showed 868 acres, with 59 affected lots and a potential of 61 new lots. The County criteria after review yielded 621 acres, 40 affected lots and 69 dwelling units.

Mr. Price continued that one of the assumptions used was that there is no sewer capacity and some subdivisions would not take place. The County questioned the assumption on whether the DEP had indicated there was no capacity, and whether there were ordinances in place. Mr. Price referenced the Borough ordinance that permitted subdivisions for fully conforming lots with an existing lateral. This could yield an additional 12 lots.

Chair Kraft challenged the premise indicating that the Council would not approve the sewer connection as there is no capacity and we have a sewer connection ban. Mr. Price stated that the ordinance did not indicate that. He referred the Board to Section B(3) of the ordinance entitled "Limitations on Connections to the Borough Sanitary Sewer System". Chair Kraft referenced a list of specific properties that could be connected.

Mr. Henry, Esq. referred to the stipulation in the ordinance that the Borough Council could deny applications should capacity not exist. Mr. Kraft added that any subdivision would contain a condition that a sewer connection approval would need to be obtained from the Council.

After further discussion on how a subdivision might or might not be approved with or without variances, Mr. Henry, Esq. advised that the ordinance did not stipulate how the Planning Board was to approve a subdivision. It was setting forth how the Council would view a sewer connection.

Chair Kraft was concerned about assuming capacity when we do not have it. We do not want lots in the Wastewater Management Plan if they cannot be connected. Mr. Henry, Esq. stated that the response is not that 12 lots could be created if there was capacity, but that 12 lots are not creatable in the analysis because there is no capacity. We do not know how many could be created if there was capacity as we do not know "how much capacity". The County "what if" needs to be defined more precisely. In additional discussion, he also advised that a septic cannot be used in the sewer service area. Also under Highlands, even with a resolution of intent to opt in, the DEP would not permit expansion of the laterals in the existing sewer area.

Mr. Price clarified the differences between the analyses and the maps for Ms. Gemberling. In response to Mr. Cavanaugh's question on whether there are any alternatives to sewer capacity and septic, Chair Kraft offered that there is an option for recycled water that could be used for watering fields. Package plants are also an option, but they must be approved. Our problem is that we cannot discharge any more water to the stream.

Chair Kraft requested that there be further discussion with the County to define the issue. He also requested that further research be conducted to determine the history of the sewer ordinance. Mr. Henry, Esq. requested that Mr. Price advise the County that we should not assume, but provide information based on what exists.

#####

Signage:

Mr. Price provided the Board with photos of all the window signs in the Borough. He explained that the signs are multiplying and he would like direction.

Responding to Chair Kraft on what the rules are, Mr. Price explained that the language in the ordinance considers permanent window signs within the 5% of the front façade. There are no temporary sign permits for window signs. Under the current temporary sign ordinance, they could not come in and get a permit for a temporary window sign. The language would need to be changed as the current ordinance addresses tent signs. In terms of the 5%, he cannot determine when a temporary window sign becomes a permanent window sign.

In discussion on the signs at the shopping center, Councilman Carr explained that only one sign is allowed for the lot. The Business Association would like to have a rotation system for the signs. Mr. Henry, Esq. added that one would not want a sign for each business on the front lawn. There could be a rotating number other than one per lot.

Chair Kraft stated that businesses are having a difficult time. We should not make it more difficult for them. Mr. Gertler stated that the shopping center has a steady stream of business that comes in everyday. The businesses in the center of town do not. We need to find a balance

between maintaining the streetscape and support businesses. Councilman Carr recommended that instead of changing ordinances we should show some flexibility and have some dialog.

Chair Kraft brought up the rug store that has been going out of business and will be going out of business until January 2010. That can only be enforced as a window sign until the Borough would consider an ordinance regulating "Going Out of Business". Mr. Bradley noted that the landlord had even asked him to take down the signs.

Board reviewed the signs at the shopping center and some examples within the Historic Business District pointing out duplications and various types of treatment. They struggled with how to help the businesses in tough times and still enforce the ordinances. Mrs. Lichtenberger recommended sending out a letter asking them take down signs.

After discussion it was determined that a letter would be drafted to send to the business owners to ask them to rethink the signs they have and eliminate what they can in order to keep with the character of the town. Mr. Gertler volunteered to draft a letter. Mr. Price stated that he had considered sending a letter, but wanted input from the Planning Board. Chair recommended that the letter would need to be followed up by visits from the Zoning Officer. The draft letter will be circulated to the Mayor, Chair Kraft, Mr. Gertler, and Mr. Price for consensus.

#####

TRC UPDATES

Mrs. Kopcsik provided an update on the TRC applications

#####

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 9:15 p.m. The next regular meeting of the Mendham Borough Planning Board for Tuesday, October 12, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson St. will be cancelled. A special meeting will be explored for Wednesday, October 13, 2009 should agenda items require it.

Respectfully submitted,

Diana Callahan
Recording Secretary

