

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
September 4, 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 7:40 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 – Absent
Mr. Peralta – Present
Mr. Schumacher – Present
Mr. Seavey – Present

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

Also Present:

Mr. John Vitale, Esq., Attorney
Mr. Chuck McGroarty, Planner

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APPROVAL OF MINUTES

Mr. Seavey made a motion to approve the minutes of the August 6, 2013 regular meeting of the Board as written. Mr. Ritger seconded. All members being in favor, the minutes were approved.

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New Cingular Wireless PCS, LLC (AT&T) – Use Variance and Site Plan
Block 1801, Lot 5 & 5.01, 82 West Main St.

Chair announced to the public that the New Cingular Wireless application had been withdrawn as there is a new State Law to which the application conforms. The applicant has agreed to do repairs at the site even though they are not required to do so under this application.

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PUBLIC COMMENT

Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda.

Mr. George Connolly, 22 Hampshire Drive, commented on the new lighting that has been installed at Piattinos in the Mendham Village Shopping Center. He stated that the lighting is in conflict with the recently passed sign ordinance prohibiting internally lit signage. He requested that consideration be given to bringing it more in line with the ordinance. He encouraged compliance or bringing it as close as possible to the ordinance.

There being no additional comments, the public session was closed.

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Piattino – Amended Site Plan

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

Present: Lawrence Cali, Esq., Attorney for the Applicant
 Jeffrey Rawding, Architect for the Applicant
 Joseph Staigar, Planner/Engineer for the Applicant

Exhibits: A-1: Color Rendering of East Main Street Elevation entered as A-3 3/5/13 and redated 9/4/13
 B-1a,b,c& d: Four pages of photographs of existing facades as renovated taken 8/27/13 by Mr. McGroarty, Board Planner

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

Mr. Cali, Esq. provided background on the application stating that during the prior application in March/April/May timeframe, there was detail on the approved plan that was to be marquis lighting, but it was never part of the discussion with the Board. Following the approval, and during the outfitting of the building, there was discussion with the Building Department as to whether or not it actually appeared on the approved plan. It was, in fact, on the plan, but was not before the Board. It was determined by the applicant, Zoning Officer and Board Attorney that the proper way to handle the situation would be to resubmit an amendment to the Board and provide improved plans and additional shop drawings along with the marquis lighting specifications. The lighting being proposed is decorative lighting and is part of the brand for the success of the restaurant. There is also a practical aspect to it as the restaurant is open in the evening. It is variance free and compatible with the code.

Completeness: Mr. Cali, Esq. stated that there is no new construction and no changes to runoff or utilities. It is just marquis lighting on an existing structure. They are requesting some design waivers. Mr. Seavey noted the Ferriero Engineering report of August 19, 2013 and indicated that based on that report, there do not appear to be any problems, but that the Board reserves the right to ask for additional information during the hearing should it be required. Mr. Cali, Esq. noted that they had previously supplied additional specifications on the proposed lighting to the Board. 10 days ahead of the hearing They will provide testimony on the specifications.

There being no additional discussion on completeness by the Board, Mr. Seavey made a motion to deem the application complete as per the Ferriero Engineering recommendation. Mr. Smith seconded.

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

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

The motion carried. The application was deemed complete.

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Mr. Rawding had been qualified as a witness during the previous application, and the Board again accepted him as an expert witness. He referred to Exhibit A-3 from the previous hearing which was a rendering of the initial proposal brought before the Board. There was a individual lettered Piattino sign in the fencing over the building, circular "P"s, a Neighborhood Bistro marquis over the door, and signage on the door. Based on the feedback from the Board during the hearing, they came back with a less impactful plan. They moved the lettered Piattino sign into the existing sign band. When they did that it obscured the marquis lighting that was over the door which they were not eliminating. They were only eliminating the signage that was associated with it.

In terms of the marquis, Mr. Rawding testified that it sits above the windows and wraps around to the left elevation immediately around the door. It is about 14 ft. long on the Main Street side and 8.5 ft. long over the front door. The lighting consists of individual 8 inch on center architectural profile bulbs that will define the entry of the building on the corner. The door should have special attention. He explained that there is another entrance on the Main Street side, and they want to play down that entrance, and play up the corner entrance.

He continued that the applicant is looking to develop this location as the brand of the Piattino restaurants, and the marquis is an important part of the brand. A nationally renowned designer developed the design. He understands the confusion based on the first approval where the light

band obscured the marquis, but they had no intention of eliminating the marquis lighting. The lighting is not an eyesore, and it is compatible with the other lighting. The bulbs are 75 watt. There is not a glare issue, and they are trying to identify the site at night. This is one of the few spaces in the Shopping Center that is open late at night.

Responding to Mr. Rawding's testimony, Mr. Ritger commented that he did not recall the marquis lighting from the previous plans, and the Board did not address it. Mr. Schumacher questioned whether two sconces could be used instead of 20 x 75 watt bulbs. Their unit would be the only one at the shopping center to have wraparound lighting. He was concerned with the impact on the community. Mr. McCarthy also commented that he had no recollection of the Marquis lighting and questioned what the resolution addressed.

During these Board comments Mr. Rawding noted that the lighting was on the original plan, but overlooked by all. Mr. Cali, Esq. confirmed that they felt the prudent thing to do was to come back to the Board. The marquis lighting has not yet been installed. This is a amended site plan to address just this lighting with the Board. The resolution is mute.

Responding to Mr. McCarthy on how the sign ordinance addresses the lighting, Mr. Cali, Esq. stated that he did not believe it is prohibited. Mr. Ritger responded that that spot lights pointed away from the building are prohibited in the ordinance, and one could couch it under "signage" and be wrong. This proposal is for 20 x 75 watt lights.

Responding to Mr. Palestina on what other design options for entrance identification lighting had been considered, Mr. Rawding stated that he could not say. He thinks this is a good solution, and the door needs to be illuminated in some way. Addressing Mr. Palestina's add on question on what options could be used to downplay the second door on the side, Mr. Rawding responded "thousands". The door could be blocked, but is a functional to allow for service in the corner. They had previously requested outdoor dining, and that would have been the primary access. Addressing Mr. Palestina's comment that the outdoor dining was not longer viable, Mr. Rawding stated that they have already somewhat downplayed the door was making it solid and placing a sign element on the stone. Mr. Palestina responded that if there other ways to attract attention to the front door, he would like to see them.

Mr. McGroarty, Board Planner, referred to the shop drawings and the architectural plans noting that the number of circles depicting the proposed bulbs do not match. There are more lights on the shop drawings than on the architectural renderings. Responding to Mr. McGroarty on which of the plans were accurate, Mr. Rawding stated that the shop drawings were the latest rendering, and the intention is to use those. Mr. McGroarty elaborated indicating that on the shop plan view there are 13 bulbs plus one and then in the drawing below, 12 plus one on the end. There is an inconsistency on the plan drawing and neither match the architectural plans. For the Main Street façade there are 21 that are consistent on the shop drawings, but there are less on the architectural drawings.

Mr. McGroarty also referenced page 10 of the shop drawings and noted that under the canopy there were down directed LED lights. He questioned whether they would not provide enough light at the front entrance area. Mr. Rawding responded that they want to get an "eye draw" and have people notice the feature. Otherwise it is more of the same as the rest of the shopping center. Mr. McGroarty confirmed that the down lights were for safety, and that the marquis was not required for safety, but for identification of the entrance.

Mr. Joseph Staigar presented his credentials to the Board and was accepted as an expert witness. He testified that the marquis lighting will have a branding effect in connection with the name "Piattinos". Having a branding effect will make it uniquely complimentary to the signage, the building and the surrounding area. The lighting being proposed is a 75 watt bulb with plastic spinning called a "frenzel". This provides the effect of a glow as opposed to emitting light. It is similar to what is found in the kitchen area. There are currently lights above the pizza paddles, but they are fluorescent bulbs. The ratio of fluorescent to incandescent is 4-5 to one. The lights that are there are similar to the amount of light that the 75 watt bulbs will produce. It will not create any negative visual impact or glare. The light will be seen, but it will not be overpowering.

Addressing any deviations from the Borough Code, Mr. Staigar stated that he did not believe that any variances were required. The Special Civic Design Code 195.57.5B, references that lighting fixtures shall minimize adverse visual impacts such as glare, light spillage and overhead sky glow, and there will be no overhead sky glow, glare or excessive spillage as the lights are located under the canopy. Continuing, Mr. Staigar stated that under 195.57E building façade lights shall be incorporated into the overall plan design. Also flood lights and wall washers are not permitted. These lights are not flood lights that will throw light beyond the building area. They are also not wall washers. It is a compatible design and complements the signage around the

building. It is for branding purposes, providing recognition as the Piattino bistros expand in New Jersey. Restaurants such as Chilis and Applebees have sign packages with color and lighting schemes.

Mr. Steager clarified the number of lights on both facades for the Board. Referring to old Exhibit A-3, marked later as A-1, he explained that the lighting on the façade facing Main Street is 170 inches. The bulbs will be 8 inches apart, and there are 21 bulbs. There is one additional bulb that is around the corner at 90 degrees. On the west side, the lighting will be 105 inches with bulbs 8 inches apart, and there are 13 bulbs with one additional perpendicular bulb for a total of 14 bulbs. The total is 22 on East Main Street and 14 on the parking lot side. He commented on the discrepancy in the shop drawing stating that the draftsman had misplaced one of the bulbs. The correct depiction on page 8 of the shop drawings is the 13 plus one. On page 9, the depiction is correct. This is also consistent with the architectural drawings. He provided a sample bulb to the Board which was passed around for their inspection.

Responding to Mr. Cali, Esq. on the impact of any cumulative effect of the bulbs, Mr. Staigar stated that the bulb spread does have a cumulative effect, but not as much as if they were close together. This proposed bulb also provides a softer effect with the spinning as opposed to a clear bulb where one would see the filament. It has a glowing effect.

Mr. Smith noted that the end of the bulb does not have the filament, and this is the eyeshot. He was concerned about the amount of light that would be sent into the streetscape, and questioned whether a lower wattage could be used. Mr. Staigar stated that he believed the light was frosted, and one could not see the filament from the end. It would not be like a mirrored reflection.

Board requested a demonstration and the one bulb was placed in a fixture and demonstrated on the east wall of the building with the lights turned off. During the demonstration, Mr. Staigar talked about the distance over which the light would be spread, and stated that the lights would be about 9 ft high up over the door. Mr. Rawding added that there is a matt material behind the bulbs.

Addressing Mr. Smith's question on whether a lower wattage bulb was considered, the use of dimmers was offered. Mr. Cali, Esq. stated that the applicant does not know if they make lower wattage bulbs, and the light now is proposed to be on a dimmer. On the potential use of dimmers, Mr. Smith stated that they would be very difficult to enforce, and that the light should be of lower wattage to begin with.

Mr. Palestina questioned whether they could not cut down the number of lights to 5 or 6, and why the lighting was extending beyond the front door. Mr. Cali, Esq. stated that it helps the person to get to the front door, and it is a decorative element. The branding is the purpose of the marquis. Mr. Palestina stated that 21 bulbs facing Main Street will have a significant impact.

Mr. Ritger expressed that he considered the approximately 6 down lights to be wall washers given their positioning. They are prohibited under the ordinance, and a variance had not yet been identified. They will also amplify the proposed lighting. Mr. Rawding did not consider them wall washers as the effect of the stone was not highlighted, they were in front of the window, and they were lighting the pathway. Mr. Ritger countered that the lighting would be amplified as it would reflect off the window. Mr. Staigar reiterated it would not reflect as it is not at an angle. A wall washer would light up the face of the building.

Mr. Cali, Esq. advised that they checked and could get a 50 watt bulb instead of a 75 watt bulb. The quantity of bulbs would need to remain or the brand is compromised. Mr. Staigar added that a reduction of to the 50 watt bulb would half the amount of light.

Chair Seavey expressed that he was concerned with compatibility with the Historic District. They would need to convince him on how these lights are compatible. Mr. Staigar responded that they are not contemporary, and they are not historic. They are retro similar to an old arcade or movie theater.

Mr. McGroarty clarified the approved plans as showing 7 down lights. When he saw the lights originally, he thought that they were to illuminate the entrance. The down lights have already been approved on the original plans and the lighting plan.

Mr. Cali, Esq. stated that the applicant was willing modify the previous approval to eliminate the down lights and reduce the wattage of the marquis lights to 50 watts. The applicant wants to improve the site. They would like to be harmonious with the surrounding area. It is a design element thought out by a national team. Compatible does not mean identical, but it means harmonious. They are in the business district. The proposal works on many levels.

Mr. Seavey responded that when the Board approves something that is compatible, but is a different standard, it allows the next person to use the new standard to do what they believe is compatible. They move away from the standard in the Historic District. The standards have governed what the Historic District has become. The Board needs to be concerned with making approvals away from the standard as the approval then becomes the new standard.

Mr. Cali, Esq. stated that this is an aesthetically pleasing decorative element that is part of the branding. It can be considered a throwback as it provides a 1920 Hollywood effect. It is not historic, but goes toward the Edison bulb. It could work without compromising the Board's position with another applicant.

Mr. McGroarty explained that he was not critical of the design itself, but pointed out sections of the ordinance pertaining to the Main Street Corridor and other zoning regulations that the Board needed to consider. First he cited Section 195.57.5E pertaining to the Main Street Corridor Special Design Elements. That section of the code references the fact that building façade lights should be incorporated into the overall lighting plan design. In this case there is an individual plan for one store in the shopping center.

He continued with Section 195.57.2B of the Borough Ordinance citing that it is the specific intention of the Special Civic Design Elements for the Main Street Corridor to advance the purpose of the MLUL and the Master Plan with respect to East Main Street. Referring to the purpose of Zoning in the MLUL, there is specific reference in Purpose "i" for the promotion of the visual environment, creative development techniques, and civic design in landuse. One could argue that is what the applicant is trying to do, but countered that by referring the Board to Section 195.57.4 of the Borough Code pertaining to Project Design in the Main Street Corridor. That section states that principal buildings or structures and accessory structures visible from a public way shall be of design evoking local historic or architectural style. It may be a theater marquis, but the question is whether or not it evokes local historical style.

Finally, Mr. McGroarty advised the Board of Section 215.19E relating to the development standards for non-historic buildings that specifically states that all development and proposed buildings and structures should harmonize to their historic surroundings. There is quite a bit of language in that section on the period, character and architectural style. Under E(2) in the same section, reference is made to proposed buildings and structures that should harmonize and relate in scale, building mass, height and design details to surrounding buildings and structures. Incongruity is prohibited. Mr. McGroarty concluded that the task facing the applicant is not to show it is a nice design, but to prove that it is compatible in accordance with the ordinance in the Main Street Corridor.

Responding to the Chair on whether he sees the application as compatible, Mr. McGroarty stated that he does not see anything in the Main Street Corridor or the Borough that reflects that design. There is nothing in the shopping center with that design. The previous additional façade signage was approved, but he does not see any exposed bulbs or a marquis in the Borough.

Mr. Cali, Esq. debated the definition of "compatible" with Mr. McGroarty. Mr. Cali, Esq. stated that compatible is not identical. Indicating his question was related to cross-examination, he asked Mr. McGroarty for his opinion. Mr. McGroarty stated that the design was incompatible.

Mr. Peralta requested a re-clarification of the number of bulbs. Mr. Staigar stated that there are 21 plus 1 wrap around on Main Street for 22 and on the shopping center side 13 plus 1 perpendicular for 14. This is a total of 36. Mr. McGroarty confirmed for the Board that this lighting is not on the approved plan. There were circles on the façade, but they are not shown on the lighting plan.

Mr. McGroarty clarified the number of previously approved down lights for the Board stating that there are 7, 4 on the Main Street side and 3 on the parking lot side. Mr. Cali, Esq. stated that the down lights could be discounted as the applicant would remove them. Mr. Ritger noted that the current plans show the down lights about a foot and a half closer to the building than the plans from the approval. Mr. Seavey added that one is more of a wall washer and the other a soffit light. He requested this be clarified before the end of the hearing.

Mr. Rawding explained that the original version had freestanding "neighborhood bistro" lettering that stood out about 2 ft. from the façade. The element without the signage was then moved back to the wall. Since the 2 ft. was not needed, the lights were moved back.

The applicant had concluded their case, and Mr. Cali, Esq. summarized that the applicant is acting for the betterment of the property. They request the Board's consideration of the intent of the application. They are asking for design waivers. It is a variance free application. They have

agreed to give up the downward facing lighting and to reduce the wattage about 50%. The lighting will be un-offensive and is a throwback light similar to Hollywood or arcade lighting. It might be seen at Fisherman's Wharf. It is compatible, harmonious and fluid. Identical would be boring and not have any aesthetic affect. It provides a decorative element, branding and leads people to the door. It creates an individual identity for the applicant and it works for the property. They need the lighting as they are open later than other tenants. It is a variance free proposal.

In Board deliberations, members expressed their concerns on the application:

- Mr. Palestina stated that branding is the priority, and the design that was developed did not take into consideration Mendham Borough. He questioned whether the designer had ever visited the town. The terms such as Fisherman's Wharf and arcade that had been used to describe the setting do not pertain to Mendham Borough.
- Mr. Peralta differed with the applicant on the characterization of the proposal as being compatible. His opinion was that it is inconsistent with the Shopping Center and the town. Approving the application could create competing applications from others and set a precedent. The Borough has muted lighting. He understands that the marquis is for the brand, but believes it to be detrimental to the character of the town.
- Mr. Smith had reservations about the white light that would be emitting out from the bulb. He was of the opinion that the applicant had previously come to the Board for signage related to branding, and they were now returning once again for branding. The location is not an arcade or a movie theater. There are no McDonalds or Burger Kings in town. His opinion was that the doorway could be highlighted by downward lighting which is less intrusive. It would be eye-catching rather than offensive as one is driving through town.
- While Mr. Schumacher thought the existing renovations were good, he was not in favor of the branding marquis. He was concerned that other buildings would want to do the same thing. It is not in character with the historic look of the town.
- Mr. Ritger stated that a marquis denotes a theater or show, and not a restaurant. He considered it unusual for the entrance to a restaurant. There is a concern that other businesses might want to innovate for the entrances to their businesses. His opinion was that there is a better way to create more compatible entrance lighting.
- Mr. McCarthy agreed with the concerns expressed by the other Board members and added that he was not pleased that the marquis had not been addressed in the first application. The Board had provided flexibility in the first application based on the branding concerns. He is now concerned with the "branding" of Mendham Borough, and since this was the first restaurant for their branding, questioned whether the designer had come to our town.
- Mr. Germinario expressed some reservation on the marquis, but stated that he could not fully relate to the increased lighting impact as he did not attend the first hearing. He did believe that the wattage could be less than 75 watts, more like 50 watts.
- Mr. Seavey stated that he believed it is part of the Board's job to protect the historic nature of the business district. Lighting is critical in the town, and the lighting proposed is of a different look, and it is not compatible. It is not seen up and down Main Street. There is no "in your face" lighting. It does not support the balance of the town. Neither the Master Plan nor the ordinances indicate that it is wanted in town.

Mr. Seavey then addressed the Board on the down lights questioning them on positioning that was shown differently in the original approval and now on the requested proposal. Based on this application, they are not planning on building the lights where they were originally approved. Mr. Ritger stated that in the original proposal the down lights were recessed into the "neighborhood bistro" sign. Mr. McGroarty stated the approved location is on the first approved plans. A change would be needed. He referred the Board to the picture in his report.

Mr. Rawding confirmed that the original plans had a projection to support the lights. The projection came out about 18 inches and the down lights came off the wall about halfway. The applicant would offer staying with the original number of lights, but would install a bulkhead over the door to drop the lights down. The marquis element would be removed. The down lights are about 12 watts.

Mr. Rawding entered Exhibits A-1, the original proposal labeled A-3 from the previous hearing, and B-1a,b,c,& d, photographs of the existing location with existing conditions as presently renovated taken by the Board Planner, Mr. McGroarty.

Continuing, Mr. Rawding stated that the amended proposal is to create the pediment projection above the door in the same location that they were proposing the marquis. It would project 1.5 ft. on both sides with the same length of the down lights shown on the original plan. There would be 7 down lights as in the original plan. The lights would be 15 watt LEDs. The lights would be

recessed and appear as in the original layout. The profile would be 14 inches deep. He confirmed for the Board that the box would be underneath the canopy and there would not be anything on the face of the building or facing up.

Chair Seavey opened the meeting to members of the public for questions and comments.

Mr. Frank Lupo, 17 Dean Road was of the opinion that the lights that currently exist are excessively bright. If the "Ps" were dimmed the other lighting might be more appropriate and fitting with the neighborhood. The "Ps" are pushing the envelope. He also referenced the repair of the fencing and paving that he thought was agreed to in the previous application. Mr. Seavey explained that while they were discussed, the agreement to the repair is from the Shopping Center owner. This applicant is a tenant.

There being no additional questions or comments, the public session was closed.

The Board discussed whether the lights were originally approved. Mr. McGroarty stated that the 7 lights were previously approved and the applicant is now building a structure for them. Mr. Rawding confirmed that on the original plans the lights were shown in a box or soffit. They were not located in the canopy.

Addressing Mr. Peralta's concern on the wattage, Mr. Staigar stated that the lights are equivalent to 75 watts. After a short discussion, the applicant also agreed to having the lights on only during the hours of operation after which they would be turned off.

Mr. McGroarty added that now the downward lights are more in accordance with providing safety, and he believes now that there are only 7, they are downward facing, and they are consistent with the ordinance and the design standards.

Mr. Ritger made a motion to deny the application for the marquis lighting in favor of the previously approved 15 watt downward lights with clarification that they will operate only during hours of operation. Mr. Peralta seconded.

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

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

The motion carried. The marquis was denied and the previously approved down lighting clarified.

A resolution memorializing the decision will be prepared for the October 1, 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 9:35 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, October 1, 2013, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary