

**BOROUGH OF MENDHAM
PLANNING BOARD
MINUTES
TUESDAY, NOVEMBER 13, 2018**

CALL TO ORDER

The regular meeting of the Planning Board was called to order by Chairman Kraft at 7:30 p.m in the Garabrant Center located at 4 Wilson Street Mendham, New Jersey.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and *Daily Record* on January 25, 2018 and posted on the Municipal Bulletin Board in accordance with the Open Public Meetings Act. The Chairman read the Open Public Meetings statement in accordance with the law.

ROLL CALL & FLAG SALUTE

Present

Chairman Kraft
Mr. Cascais
Mr. Sprandel
Councilman Sharkey
Ms. Lichtenberger
Mr. Kay
Mr. Bradley
Ms. Masse

Absent

Mayor Henry
Administrator Bushman

Also Present

Peter Henry, Esq., Board Attorney
Richard Schommer, P.E., Acting Board Engineer (H2M Architects&Engineers)
Harold Maltz, Traffic Consultant (Hamal Associates)
Whitney Miller, P.P., Acting Board Planner (J. Caldwell&Associates)
Richard Quamme, P.E.

MINUTES

The Minutes of 10/09/18 were carried for revision.

PUBLIC COMMENT

There was no comment for anything not on the agenda.

APPOINTMENT OF BOARD SECRETARY

It was moved, seconded and unanimously carried to appoint Nancy Probst as acting Board Secretary.

COURTESY REVIEW

PB#5-18 Mendham High School

64 East Main St (Block 1401, Lots 8&9)
New Synthetic Turf Multi-Purpose Field

Engineer, Rob Walsh entered his appearance on behalf of the applicant. He provided an overview of the proposal for a synthetic turf multi-purpose field. Referencing sheets T01&T02 of the submission packet, Mr. Walsh spoke to the dimensions, retention system and retaining wall in particular. Mr. Henry explained the purpose of the review as it relates to the Master Plan. Paul Ferriero's review letter dated 11/05/18 was

discussed. Chairman Kraft offered that most of the comments contained therein were relative to Construction and/or Zoning. Mr. Henry acknowledged Mr. Walsh's request for written confirmation of the Board's findings with respect to the proposal.

The Chairman opened the floor to public comment.

Speaking from the audience, **Jay Delaney** shared his experience with synthetic turf during his tenure as Mayor of Morristown.

Motion by Mr. Cascais, **seconded** by Councilman Sharkey finding the proposal to be consistent with the Master Plan.

Roll Call:

Aye: Chairman Kraft, Mr. Cascais, Mr. Sprandel, Councilman Sharkey, Ms. Lichtenberger, Mr. Kay, Mr. Bradley, Ms. Masse

Nay:

Abstain:

Mr. Quamme left at 7:44.

Chairman Kraft reviewed general meeting protocol/Board rules prior to the start of testimony.

HEARING

PB #2-18 Aryan at Mendham LLC

25 East Main Street (Block 1501 Lot 11)

Preliminary & Final Site Plan/Parking Variance

New Business Structure (Dunkin Donuts) + 2 Apartments

Attorney Anthony Sposaro entered his appearance on behalf of the applicant and advised that the proofs for the case had all been presented.

Attorney Jay Delaney entered his appearance on behalf of the Objector/s. Mr. Delaney distributed an Historic Assessment Report prepared by Cindy Hamilton and marked it as **EX 01**.

Cindy Hamilton of Heritage Consulting was sworn and qualified. She identified herself as an architectural historian employed by a Historic Preservation Consulting Firm and elaborated on the scope of her work/qualifications.

The Chairman polled the Board for questions of the witness. There were none.

Mr. Delaney explained that in assessing the historical significance of the building within the context of the Historic District, Ms. Hamilton found it to be a contributing building. A discussion ensued regarding the criteria/process for this determination.

Ms. Hamilton outlined the previous uses on the site and testified that demolition would not be appropriate given the status of the building, as discussed. A discussion ensued about whether the criteria for demolition were applied. Ms. Hamilton offered that demolition would conflict with the Zoning Ordinance given the seven (7) aspects used for measuring integrity. Mr. Delaney cited the integrity analysis on page 18 of her report.

Calling it "very intact," with a high percentage of contributing buildings, Ms. Hamilton testified that new construction does not follow the architectural rhythm of the district and that demolishing the building would result in a snowball effect in the neighborhood. She reiterated that demolition would be in conflict with the

Zoning Ordinance and Master Plan. Mr. Delaney read the last sentence on page 3 of her report aloud and offered that the Board should reject the application/not allow the building to be demolished.

In response to questions from Mr. Sposaro, Ms. Hamilton advised that she had not attended the HPC meeting regarding the matter and that this was her first time working in Mendham. He advised that the HPC reached a different conclusion from hers, as the project had received their approval on July 20, 2017. He provided Ms. Hamilton with a copy of their report which she reviewed. Mr. Sposaro related that each of the conditions had been addressed in the revised Site Plan. Ms. Hamilton offered that she was surprised that the HPC did not reference the demo criteria in the report. Mr. Sposaro asserted that the use is permitted in the zone.

Referencing a March 22, 2018 report, Mr. Schommer read the conditions into the record. Potential for re-use was discussed as a result of a discussion about why Ms. Hamilton was hired and whether structural integrity was included in her review.

The Chairman polled the Board for questions. Ms. Hamilton responded to a question from Mr. Sprandel about the conditions for demolition and another from Mr. Bradley about the original elevations. Mr. Sposaro asserted that she only reviewed the building for historical integrity; not structural. Further discussion ensued about the method for assessment of contributing status. At the behest of Mr. Sposaro, Ms. Hamilton confirmed that she had not been inside of the building. Further discussion ensued as to the interior condition of the building and the values expressed in the Master Plan and Ordinance with respect to core features/demotion.

The Chairman opened the floor to questions of Ms. Hamilton again.

David Mead of 40 East Main Street asked whether it was Ms. Hamilton's opinion that the HPC failed to successfully assess the historical significance of the building. Ms. Hamilton asserted that she did not see where the demolition criteria had been applied.

There was a discussion between and among Counsel as to whether it would be appropriate for the objector, Mr. Hill to present direct testimony in response to a request from his attorney. Mr. Sposaro offered that he had no objections. Chairman Kraft obliged Mr. Delaney's request.

Brian Hill of 35 E. Main Street was sworn in. He presented his position with respect to the application and spoke to the reasons why he chose Mendham as his home. Mr. Hill offered that the vote was not against Dunkin Donuts but rather, for the preservation of history.

Mr. Sposaro thanked Mr. Hill for suggesting the banked parking and asked him about the extent of his due diligence prior to purchasing his home, including a neighboring vacancy.

The Chairman opened the floor to questions. In response to a question from Mr. Mead, Mr. Hill advised that while he was aware that 51 was vacant, he understood from "Turpin" that it was protected. The Chairman closed the floor to questions at 8:46. Testimony was concluded.

PUBLIC COMMENT PERIOD

The Chairman opened the floor to public comment.

The Board obliged Mr. Sposaro's request to place any and all commenters under oath after a brief discussion about the necessity for doing so.

Don Preziosi of 38 E. Main Street was sworn in. He read a statement into the record which included the reasons why he chose the community and concluded with a plea to preserve the Master Plan and the Historic District.

Leslie Pane of 10 Drake Road was sworn in. She spoke to her reasons for moving to Mendham and expressed concerns about safety. Ms. Pane referenced testimony from the Police Chief regarding a no left turn sign and opined that the towns [sites] that the applicant presented as comparable with respect to the parking variance were not true comps. Ms. Pane offered that Mendham is a unique place and should be kept that way.

David Mead was sworn in. He called into question remarks made earlier by Chairman Kraft with respect to the application not being a "foregone conclusion." He suggested that the proposal was the result of the Town/Mayor not managing finances resulting in the need for revenue. Mr. Mead offered that the HPC was swayed by a rogue member and that they focused on windows and sign size. He concluded in saying that they [the public] were misled.

Marian Mundy of 13 Pembroke Rd. was sworn in. Ms. Mundy advised that it was discovered during an Environmental Commission review that there is a burial ground onsite; the status of which is unknown. She encouraged the Board to delay any decision until there was more time to study the site.

Mike Ackerman of 58 Cold Hill Road was sworn in but refrained from asking his question after Mr. Henry clarified that it was a period for comments only; not questions.

Abby Maguire of 57 E. Main Street was sworn in. Calling it a final plea for historical integrity of town, Ms. Maguire offered that demolition of the house would send the wrong message to the community at large. Making reference to nearby 51 E. Main St. which is currently being refurbished, Ms. Maguire offered that it would not be fair to give up hope.

The Public Comment period was closed and the Chairman polled the Board and the Board professionals for questions/comments. There were no comments from the Board professionals. Mr. Henry deferred to the applicant's architectural testimony in response to a question from Mr. Sprandel about receipt of information regarding the interior/building integrity.

The Chairman closed the public comment portion of the meeting at 9:03.

At 9:04, Mr. Delaney requested a recess prior to beginning summations. The meeting resumed at 9:11.

Calling the Mendham historic district a "jewel," and the situation difficult, Mr. Delaney spoke to the history of the application and commended the applicant for working with the objectors while still questioning the rationale for tearing the building down. Referencing Ms. Hamilton's testimony as to the integrity of the building as well as public comment, he offered that it should be preserved. Citing the variances, traffic and safety, Mr. Delaney implored the Board to "use common sense" and their love of their community in voting the applicant down in order to "save" their historic district.

Asserting that the matter was not a foregone conclusion, Ms. Sposaro offered that the Board had thoroughly considered the testimony and professional recommendations. With respect to the elimination of the drive thru, [as referenced by Mr. Delaney], Mr. Sposaro clarified that the applicant stipulated to a deed restriction in response to the community opposition and that the testimony regarding inconsistency with the Master Plan was wrong given the nature of the use as permitted.

Mr. Sposaro opined that the opposition is relative to not wanting a fast food restaurant on Main Street. Calling Ms. Hamilton a "zealot," and pointing out that she has never been inside of the building, he offered that her

definition/analysis pertains to integrity as she seeks to define it and asserted that, based upon the history of the application and architectural testimony, the building no longer has it.

Mr. Sposaro reiterated that the use is permitted and advised that every "legitimate" issue raised by the HPC, and the Board Professionals had been addressed. With respect to the HPC review, Mr. Sposaro advised that there had been no public outcry when they endorsed contemplation of demolition previously [in 2010 and again in 2012]. He offered that whether the business is "wanted" is a matter for Council, reminding the Board that their obligation is to review the Site Plan and design waivers given that the use is permitted. He further advised that the plan had already received County Planning Board approval.

Speaking to traffic and pedestrian safety, Mr. Sposaro offered that the Board's traffic consultant had no lingering concerns. He reminded everyone about the reduction in impervious coverage, addition of vegetative buffer and banked parking; all of which he related, were done at the urging of the Board professionals.

Ms. Sposaro recapped the testimony of the applicant's Planner, Betsy McKenzie as it related to the proofs for the parking variances and the design waivers. In closing, he asserted that the applicant had sustained their burden of proof. He reiterated that the HPC had done a thorough job and opined that his clients had "earned the right for approval."

BOARD DELIBERATIONS

Mr. Cascais offered that he wanted to see the application move forward for vote tonight with the understanding that it is a permitted use. Ms. Lichtenberger offered that the Board must follow the law in accordance with Borough Ordinances. Calling it a viable business, "no different from Simply Coffee," Mr. Bradley offered that the Board must move forward. Mr. Sprandel echoed Mr. Cascais' sentiments. Mr. Sharkey shared that while he also lives in a historical home, he felt the application must move forward from an investment perspective. Mr. Kay offered that while he could appreciate both sides, it should move forward. Ms. Masse echoed Mr. Kay's sentiments.

Speaking to the fact that the use is permitted, Chairman Kraft cautioned that the Board must be careful in separating the Master Plan from the Ordinances. He polled the Board and the professionals with respect to proposed conditions.

Ms. Masse offered that she would like to reserve the right to re-visit the no left turn sign, if necessary. Mr. Kay concurred.

Mr. Sharkey offered that he would like the opportunity to dim certain poles with respect to lighting. Mr. Schommer confirmed that there would be an opportunity to measure light levels post construction. He noted one other waiver for grading within 5' of property line (for completeness).

Speaking to traffic concerns [in the morning especially], Mr. Sprandel spoke to the necessity of the banked parking and asked that the review procedure for the need for same be spelled out. Mr. Bradley opined that the matter of banked parking/impervious coverage should be left open for review.

Mr. Cascais spoke to lighting, parking, landscaping and replacement guarantees.

Mr. Schommer advised that the plans would be revised and articulated a list of approval conditions.

Details on the COAH unit were discussed in response to a question from Mr. Cascais.

Mr. Maltz made reference to Item 1C of his October 2 review letter regarding performance of a parking survey once the business is operational.

There were no comments from the Planner.

After further discussion about when they would vote, the Board authorized Mr. Henry draft an approval resolution for the Board to consider at the next meeting when the vote would occur.

Mr. Sposaro agreed to extend time to act through January 15, 2019.

Motion by Mr. Cascais, **seconded** by Mr. Kay to authorize Mr. Henry to draft a resolution of approval for future consideration.

Roll Call:

Aye: Chairman Kraft, Mr. Cascais, Mr. Sprandel, Councilman Sharkey, Ms. Masse, Ms. Lichtenberger, Mr. Kay, Mr. Bradley

Nay:

Abstain:

There was no further public comment.

ADJOURNMENT

Motion by Mr. Cascais, **seconded** by Mr. Sharkey to adjourn the meeting at 9:51 p.m.

Respectfully Submitted,

Nancy Probst, Acting Board Secretary

APPROVED 12/10/18