

**MINUTES OF THE
REGULAR MEETING
MENDHAM BOROUGH PLANNING BOARD
October 10, 2017**

Garabrant Center, 4 Wilson Street, Mendham, NJ

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Mr. Kraft at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

Notice of this meeting was published in the *Observer Tribune* and in the *Daily Record* on January 12, 2017 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	Mr. Kraft - Present
Mr. Bradley – Present	Mr. Cascais – Present
Mr. Kay – Present	Ms. Landau, Alt II – Present
Ms. Lichtenberger – Present	Ms. Masse, Alt I – Present
Councilman Sharkey – Absent	Mr. Sprandel – Present

Also Present:	Mr. Henry, Esquire
	Mr. Ferreiro, Engineer

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MINUTES

Mr. Kraft asked the Board for any comments on the minutes of the regularly scheduled meeting of September 11, 2017. There being none, the minutes were approved as written by voice vote.

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PUBLIC COMMENT

Mr. Kraft opened the meeting to questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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APPLICATIONS

PB #5-17

Frank's Pizza of Mendham, Inc

84 East Main Street
Block 801 Lot 20
Site Plan Waiver with Variance

Present: Peter Pfaffenroth, Attorney
Carmine Pellegrino, Owner
Sal Candarella, Property Manager
Judith A. Keith, Planner

Mr. Pfaffenroth explained that Frank's Pizza intends to occupy two business units in the Village Shopping Center, previously occupied by the Village Pizza restaurant and the Chocolate Shoppe, a retail store. He mentioned that a variance was necessary for the increased non-conformity of parking in the shopping center. He said it was a family friendly restaurant which would serve pizza and other Italian food specialty dishes as well as sandwiches and desserts. He mentioned that the signs had received HPC approval, with one sign saying Frank's Pizza and the other Italian Restaurant.

Mr. Pellegrino was sworn. He stated that he felt 50% of his business would be dine in, with the other half derived from take-out orders. He mentioned he would be open seven days per week, from 11am to 10pm, and there would be six employees, including himself. When asked about deliveries, he said deliveries would be by box trucks in the back of the building approximately two to three times per week. The new restaurant would have a 64-seat capacity.

Mr. Candarella was sworn. He mentioned that he'd eaten at a few Frank's restaurants and thought it would be a great addition to the shopping center. When questioned about the proposed Kessler expansion, Mr. Candarella stated that Kessler needed more room for equipment and he wasn't anticipating more clientele and increased parking as a result.

Ms. Keith was sworn and qualified. She mentioned that she visited the shopping plaza on seven different occasions to count cars and spaces, and testified that the parking lot was never more than 50% occupied.

Mr. Kraft opened the meeting to public comment. There being none, the public comment session was closed. Mr. Henry reviewed the proposed resolution of Site Plan Waiver and parking variance for the application including specific conditions of approval.

With no comments by the Board, Mr. Cascais made a motion to approve the application and adopt the Resolution with the conditions outlined by Mr. Henry, and Ms. Lichtenberger seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:
In favor: Bradley, Henry, Kay, Lichtenberger, Masse, Sprandel, Cascais, Kraft
Opposed: None
Abstentions: None

The motion carried. The Resolution follows.

MENDHAM BOROUGH PLANNING BOARD

RESOLUTION

GRANTING WAIVER OF SITE PLAN APPROVAL AND VARIANCE

Planning Board
FOR FRANK'S PIZZA OF MENDHAM, INC.
BLOCK 801, LOT 20

WHEREAS, Frank's Pizza of Mendham, Inc. ("Applicant") has applied to the Planning Board of the Borough of Mendham (the "Board") for waiver of site plan approval and variance relief with respect to property located at 84 East Main Street and designated Block 801, Lot 20 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a public hearing was held on October 10, 2017, during which hearing testimony was offered on behalf of Applicant, the Board reviewed the documents and materials filed by Applicant and reports from its professional consultants, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered and deliberated upon the testimony and materials submitted by and on behalf of Applicant, the reports and recommendations of the Board's consultants and professional staff, and there being no comments from members of the public;

NOW THEREFORE BE IT RESOLVED that, based upon the foregoing, the Board makes the following findings of fact and conclusions of law:

1. Applicant is the proposed tenant for rental space at the Subject Property, which property is located at 84 East Main Street and is designated Block 801, Lot 20 on the Mendham Borough Tax Map. The Subject Property is located in the East Business Zone.
2. The Subject Property, commonly known as the Mendham Village Shopping Center, comprises a 13.65 acre tract with multiple buildings housing numerous individual

tenant spaces. Applicant proposes to occupy 2,560 square feet, formerly constituting two separate units, and now being combined into a single unit for Applicant's proposed use.

3. The space to be occupied by Applicant was previously occupied in part by a pizza restaurant and in part by a retail chocolate shop. Applicant proposes to use the combined space as a Pizzeria and broader-menu Italian Restaurant. Applicant's food service business will offer pizza and sandwiches, as well as on-site homemade Italian specialty dishes and desserts for takeout and table service.
4. Applicant proposes to provide 64 seats at tables and in booths within the leased space. No outside seating, dining, or table service is proposed.
5. Applicant proposes that the restaurant will operate 7 days per week between 11:00 a.m. and 10:00 p.m. The maximum number of employees (including principals) at any one time in the leased space will be 6.
6. Applicant seeks a Site Plan Waiver from this Board, together with a variance with respect to the increased non-conformity of the number of parking spaces available onsite resulting from the additional parking requirement created by this proposed use (relative to the prior uses in the leased space). Applicant's proposed use, assuming a maximum of 6 employees onsite at any one time, requires 29 parking spaces.
7. Based on the most recently approved Site Plan for the Mendham Village Shopping Center, there are 417 parking spaces onsite. Other plans have indicated total counts in the range of 400 to 464. Applicant testified that when he has been at the Shopping Center there have always been available parking spaces. Whatever the precise total count, it compares to a total of 643 spaces being required by ordinance for the

Shopping Center. The use and employee count of the proposed pizzeria and restaurant requires more allocated spaces than the prior uses in these leased spaces, thus increasing the relative non-conformity of parking space count.

8. Applicant proposes no change in the size or nature of signage on the leased space, only a change reflecting the identification of the occupant of that space. Signage will continue to be in accordance with the existing approved Shopping Center sign package.
9. No changes in exterior lighting are proposed by Applicant, nor any other exterior site changes.
10. Applicant's planner testified that on approximately 7 occasions she visited the Shopping Center. She determined there are approximately 169 parking spaces in the front sections of the parking lot. Actual occupied spaces on her visits ranged from 8 (7pm on a Saturday) to 105 (Friday afternoon, October 6, 2017). Except for the single occasion on October 6, there were never more than 50% of the 169 spaces occupied.
11. Applicant has received a waiver of county jurisdiction with respect to its Site Plan Waiver Application, the county determining that a waiver was appropriate since there was no change, addition or expansion of any structure or parking lot and no impact on county facilities.
12. Applicant indicated that deliveries would generally be made by box trucks or step vans two or three times per week.
13. Applicant submitted the required Application to the Mendham Borough Historic Preservation Commission with respect to the proposed signage and received the

approval of the Commission, noting that the signs are to be painted and consistent in color and shape with the other store front signs in the Mendham Village Shopping Center. The Commission also noted that no other changes are to be made to the store front without returning to the HPC for approval.

14. Considering all of the foregoing, the Board determined that a waiver of formal site plan requirements, with conditions, was appropriate and should be granted. In addition, based upon the testimony offered regarding actual usage and availability of parking spaces on the Shopping Center property, variance relief for the incremental increase in non-conformity of parking space count can be granted without substantial detriment to the public good and without substantially impairing the Zone Plan and Zoning Ordinance.

BE IT FURTHER RESOLVED that for the reasons set forth above, the Application of Frank's Pizza of Mendham, Inc. for waiver of formal Site Plan review and for variance relief to permit the incremental increase in non-conformity of parking space count be and hereby are granted, subject to the following conditions:

1. All construction and installation, as well as operation of the business shall be in accordance with the materials submitted to the Board, the testimony presented at the public hearing, and the findings and conclusions and conditions of approval set forth in this Resolution.
2. Applicant shall comply with all applicable Codes and shall secure any other approvals or permits which may be required from any board, body or agency, whether municipal, county, state or federal, including but not limited to Board of Health/Health Department.

3. Applicant shall comply with the conditions of approval from the Mendham Borough Historic Preservation Commission.
4. All taxes and municipal charges related to the Subject Property shall be paid through the 3rd Quarter, 2017.
5. All fees or escrows relating to this Application or the work to be done through the completion of Applicant's project shall be current and maintained by Applicant.
6. Applicant shall be responsible for any Affordable Housing contribution which may result from the proposed project being determined to have created additional non-residential space.
7. Applicant shall obtain a sewer connection permit from the governing body of Mendham Borough and shall comply with any conditions imposed in the permit grant.
8. Applicant shall obtain a satisfactory fire inspection report within ninety (90) days of commencing operations in the Subject Property.
9. Applicant shall register with the New Jersey Division of Fire Safety within 30 days of opening.
10. There shall be no outside dining, outside seating, or outside table service provided by Applicant. Maximum inside seating shall be 64 seats.

BE IT FURTHER RESOLVED that this Resolution, is adopted this 10th day of October, 2017.

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PB #1-17 **David and Douglas Ketchum**
7 Horseshoe Bend Road
Block 2301 Lot 4
Major Subdivision

Present: Thomas Malman, Attorney
Craig Villa, Engineer

Mr. Malman briefly described the subdivision of the approximately 40-acre Ketchum property into 3 lots, all conforming to the 5-acre zoning requirement. He mentioned that they have received their approvals from the Board of Health and Mendham County Planning Board. He also stated that although Borough Ordinance requires a private road to be improved to the requirements of a public road when five or more properties front a private road, they are requesting a site design waiver to keep the road as is (private). He added that there is a Homeowner's Association which requires fees from the Horseshoe Bend Road residents for upkeep and maintenance of the road.

Mr. Henry asked about some checklist items discussed at the TRC meeting and Mr. Ferreiro added that he felt the application was complete and waivers were appropriate.

Mr. Villa was sworn and qualified. Mr. Villa explained that the Ketchum property is 41.69 acres and the house will remain on the largest property, 27.37 acres and will be known as lot 4.01. The second property will be 5.03 acres and will be known as lot 4.02, and the third property will be 8.39 acres and known as lot 4.03. He showed the environmental constraints map and explained that the lot was mostly wooded with mild to steep slopes. The map also presented 300-foot Riparian Zone lines which will remain undisturbed by the proposed subdivision and the foreseen building of two new homes. He mentioned that the driveways would be off Horseshoe Bend Road, and that there would be no disturbance to the steep slopes on the property, and the new homes would have public water. He also added that he had no objections to Mr. Ferreiro's engineering report dated July 25, 2017. He submitted exhibits A-1 through A-18, photographs of Horseshoe Bend Road, which is 15 feet wide and of packed gravel texture.

Mr. Malman concluded that they will meet the conditions of the Morris County Planning Board approval and they received Board of Health approval for their septic proposal. Upon questioning by the Board about the Fire Official's report recommending fire sprinklers on each property, the applicant felt that it wasn't an issue as no other properties in the area had fire sprinklers. He also mentioned that the DEP Letter of Intent was pending, but expected shortly, and the applicant still need soil conservation approval.

Chairman Kraft opened the meeting to public comment and several Horseshoe Bend residents spoke. Mr. Toma, of Spring Hill Road, wanted to ensure that the gate to Cherry Lane would remain, and he was assured that it would. Mr. Chambers, of Cherry Lane said he was in favor of a conservation easement on the property. Mr. Anside, of Horseshoe Bend Lane spoke in favor of the subdivision. Mr. Maher, of Cherry Lane, felt that the new homes would be built in direct view of the front of his house. He also felt the traffic increase would be incremental on Horseshoe Bend Road.

Chairman Kraft proposed a conservation easement to the riparian line for the Northeast corner of the lot. The Board felt this was a good idea as the southern section of the property already has a structure on it.

With no more comments by the Board, Ms. Lichtenberger made a motion to approve the application with the conditions outlined by Mr. Henry, and Mr. Sprandel seconded.

ROLL CALL: The result of the roll call was 7 to 0 as follows:
In favor: Bradley, Henry, Kay, Lichtenberger, Masse, Sprandel, Cascais, Kraft
Opposed: None

Abstentions: None

The motion carried.

OTHER RESOLUTIONS

APPOINTMENT OF SCHOMMER ENGINEERING, INC. AS A CONSULTING ENGINEER TO THE PLANNING BOARD

Mr. Henry explained that Ferreiro Engineering has a conflict of interest with the anticipated Aryan at Mendham, LLC (Dunkin Donuts) application, and therefore needs to discuss retaining Schommer Engineering, Inc. in anticipation of the upcoming application. Mr. Cascais made a motion to approve the Resolution and Mayor Henry seconded.

In favor: Bradley, Henry, Kay, Lichtenberger, Masse, Sprandel, Cascais, Kraft
Opposed: None
Abstentions: None

The resolution follows.

RESOLUTION AUTHORIZING THE APPOINTMENT OF SCHOMMER ENGINEERING, INC. AS A CONSULTING ENGINEER TO THE PLANNING BOARD

WHEREAS, a conflict disqualification of the Borough Engineer results in a need for the appointment of a consulting engineer by the Planning Board of the Borough of Mendham (the “Board”) to review an anticipated Site Plan Application of Aryan at Mendham, LLC (Block 1501, Lot 11); and

WHEREAS, assuming the filing of the Application and payment of related fees and escrows, the funds will be available for this purpose from the Applicant’s escrow; and

WHEREAS, Section 40:55D-71 of the Municipal Land Use Law states that the Board may employ, or contract for, and fix the compensation of experts and other staff and services as it may deem necessary; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 *et. seq.*) requires that the resolution authorizing the award of contracts for “Professional Services” without competitive bids and the contract itself must be made available for public inspection; and

WHEREAS, Schommer Engineering, Inc. is qualified to provide the engineering services in question; and

WHEREAS, the Board wishes to retain Schommer Engineering, Inc. as a consulting engineer to review the Site Plan Application of Aryan at Mendham LLC (Block 1501, Lot 11) and to attend meetings and/or hearings regarding said application and advise the Board regarding same.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Mendham this 10th day of October, 2017 as follows:

1. Schommer Engineering, Inc. is retained to serve as a consulting engineer to the Board, to review the anticipated Site Plan Application of Aryan at Mendham, LLC (Block 1501, Lot 11) and to attend meetings and/or hearings regarding said application in accordance with the same terms as those set forth in the letter of Richard B. Schommer, Jr., P.E., P.P., to the Board of Adjustment (for work on a previous version of the development application), dated June 21, 2017, a copy of which is attached hereto.
2. This contract is awarded without competitive bidding as a “Professional Service” under the provisions of the local Public Contracts Law because engineering services are rendered by persons authorized by law to practice a recognized profession.
3. A copy of this resolution shall be published in the official newspaper as designated by the Borough Council as required by law.
4. This resolution shall take effect immediately.

The undersigned does hereby certify the foregoing is a true copy of the Resolution of the Mendham Borough Planning Board adopted by the Board at its regular meeting of October 10, 2017.

APPOINTMENT OF HAMMAL ASSOCIATES, INC. AS A CONSULTING TRAFFIC ENGINEER TO THE PLANNING BOARD

Mr. Henry explained that Hamal Associates, Inc. had been retained previously by the Board of Adjustment to do a traffic study for the recently withdrawn Aryan at Mendham, LLC (Dunkin Donuts) application with the Board of Adjustment. He mentioned that the traffic study has already been performed and will be useful to the Board if and when an Aryan at Mendham, LLC application is received. Mr. Cascais made a motion to approve the Resolution and Mr. Bradley seconded.

In favor: Bradley, Henry, Kay, Lichtenberger, Masse, Sprandel, Cascais, Kraft
Opposed: None
Abstentions: None

The resolution follows.

RESOLUTION AUTHORIZING THE APPOINTMENT OF HAMAL ASSOCIATES, INC. AS A CONSULTING TRAFFIC ENGINEER TO THE PLANNING BOARD

WHEREAS, there exists a need for the appointment of a consulting traffic engineer by the Planning Board of the Borough of Mendham (the “Board”) to review an anticipated Site Plan Application of Aryan at Mendham, LLC (Block 1501, Lot 11); and

WHEREAS, assuming the filing of the Application and payment of related fees and escrows, the funds will be available for this purpose from the Applicant’s escrow; and

WHEREAS, Section 40:55D-71 of the Municipal Land Use Law states that the Board may employ, or contract for, and fix the compensation of experts and other staff and services as it may deem necessary; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 *et. seq.*) requires that the resolution authorizing the award of contracts for “Professional Services” without competitive bids and the contract itself must be made available for public inspection; and

WHEREAS, Hamal Associates, Inc. is qualified to provide the traffic engineering services in question; and

WHEREAS, the Board wishes to retain Hamal Associates, Inc. as a consulting traffic engineer to review the anticipated Site Plan Application of Aryan at Mendham LLC (Block

1501, Lot 11) and to attend meetings and/or hearings regarding said application and advise the Board regarding same.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Mendham this 10th day of October, 2017 as follows:

1. Hamal Associates, Inc. is retained to serve as a consulting traffic engineer to the Board, to review the anticipated Site Plan Application of Aryan at Mendham, LLC (Block 1501, Lot 11) and to attend meetings and/or hearings regarding said application in accordance with the same terms as those set forth in the letter of Harold K. Maltz, P.E., P.P., to the Board of Adjustment (for work on a previous version of the development application), dated January 19, 2017, attached hereto.
2. This contract is awarded without competitive bidding as a “Professional Service” under the provisions of the local Public Contracts Law because traffic engineering services are rendered by persons authorized by law to practice a recognized profession.
3. A copy of this resolution shall be published in the official newspaper as designated by the Borough Council as required by law.
4. This resolution shall take effect immediately.

The undersigned does hereby certify the foregoing is a true copy of the Resolution of the Mendham Borough Planning Board adopted by the Board at its regular meeting of October 10, 2017.

OTHER

Chairman Dick Kraft thanked Chuck McGroarty for his years of service as the Borough Planner and wished him luck with his new endeavours.

TRC

There are two Site Plan Waivers scheduled for the upcoming October 16th TRC meeting. Jimmy Mansur, the new owner of Sorrento’s located at 5 East Main Street, will be heard, as well as a Site Plan Waiver by Kessler Rehabilitation Institute at 85 East Main Street in the Village Shopping Plaza. Kessler plans to expand into the prior Mathnasium location.

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ADJOURNMENT

With no further comment from the Board or Professionals, the meeting was adjourned at 9:35pm on a voice vote. The next regular scheduled meeting of the Planning Board will be held on **Monday, November 13, 2017 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham.

Respectfully submitted,

Carolyn Mazucco

Carolyn Mazucco
Board Secretary