

**BOROUGH OF MENDHAM
JOINT LAND USE BOARD
REGULAR MEETING AGENDA
Tuesday, August 20, 2024 7:30PM
Mountain View Middle School Cafeteria
100 Dean Road, Mendham, NJ**

I. CALL TO ORDER & FLAG SALUTE

II. CHAIR'S OPENING STATEMENT

Notice of this meeting was published in the Star Ledger and the Daily Record and was posted in the Bowers Building in accordance with the Open Public Meetings Act and furnished to all those who have requested individual notice and have paid the required fee.

III. ROLL CALL

IV. APPROVAL OF MINUTES

July 16, 2024

V. PUBLIC COMMENT

This is an opportunity for the public to comment on any matter or concern that is not on the agenda or any application pending before the Board. To ensure that every citizen has an opportunity to speak, the Chair will recognize the individual and ask them to state their name and address for the record. The speaker does not need to provide their address if they have been verified by the Office of Information Privacy as a covered person in the Borough, under Daniel's Law. Speakers are asked to limit their comments to five minutes.

VI. COURTESY REVIEW

- a. **12-24 Mountain View Middle School
100 Dean Rd
Blk 703 Lot 16**

VII. RESOLUTION

- a. **05-24 Black Horse Tavern & Pub
1 West Main Street
Blk 301 Lot 1**

VIII. COMPLETENESS

During the completeness portion of the meeting, there is no public comment/testimony.

IX. HEARINGS

- a. **07-24 Thomas Veman-BEING CARRIED TO THE OCTOBER 15, 2024 MEETING
465 Cherry Lane
Blk 2401 Lot 28**
- b. **V-Fee Consent Order- Whispering Woods**
- c. **23-22 V-Fee Mendham Apartments
84-86-88 East Main Street
Blk 801 Lot 20**

During the hearing portion of the meeting, the public will have an opportunity to ask questions at the end of each witness' testimony. When called on to step forward to the microphone, please state and spell your name and address clearly for the record. If you are registered as a covered person through the Office of Information Privacy, do not provide your address. Questions are limited to 3 minutes per individual and one question period per person per witness. After the applicant has completed their presentation, the public will have the opportunity to comment on or present evidence, subject to the same rules.

X. ADJOURNMENT

Special Meeting is scheduled for Wednesday August 21, 2024 at 7:30PM in the Mountain View Middle School Cafeteria 100 Dean Road, Mendham, NJ

The next scheduled regular meeting of the Joint Land Use Board is
Tuesday, September 17, 2024
Grace Lutheran Church, 65 E Main St, Mendham, NJ

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REGULAR MEETING
Tuesday, July 16, 2024- 7:30PM
Garabrant Center, 4 Wilson Street, Mendham, NJ.**

CALL TO ORDER/FLAG SALUTE

The regular meeting of the Mendham Borough Joint Land Use Board was called to order at 7:30 p.m. and the open public meeting statement was read into the record.

ROLL CALL

Mayor Glassner – Absent	Mr. Egerter – Present
Ms. Bushman – Present	Ms. Garbacz – Present
Councilman Sullivan – Present	Mr. Molnar –Present
Mr. Smith – Present	Ms. Traut – Alternate 1 -Present
Mr. Sprandel – Present	Mr. Kay- Alternate 2- Present
Mr. D’Urso– Present	Mr. Barker – Alternate 3 - Absent
	Mr. Pace – Alternate 4 – Present

Also Present: Mr. Ferriero – Board Engineer
Mr. Sposaro – Acting Board Attorney

Mr. D’Urso announced that the following items will not be heard at this meeting:

- 1. 07-24 Thomas Veman
465 Cherry Lane
Blk 2401 Lot 28**
- 2. V-Fee Consent Order- Whispering Woods**
- 3. 23-22 V-Fee Mendham Apartments
84-86-88 East Main Street
Blk 801 Lot 20**

APPROVAL OF MINUTES

Motion by Mr. Smith, seconded by Mr. Egerter and unanimously carried by voice vote to adopt the minutes of the June 18, 2024, Joint Land Use Board Regular Meeting, as written.

Roll Call:

In Favor: Ms. Bushman, Mr. Smith, Mr. D’Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay.

Opposed:

Abstain: Councilman Sullivan, Mr. Sprandel and Mr. Pace.

Motion Carried

PUBLIC COMMENT

Chairman D'Urso opened the meeting to the public for questions and comments on items not included on the agenda or any pending applications.

Mr. Ritger, 14 Gunther St.- Asked if documents for applications can be available online. Mr. Sposaro stated that documents are available at the Borough buildings.

Mr. Vacchiano, owner of 5 W. Main St. – Questioned new location of dumpster at the Black Horse. Mr. D'Urso explained that this was part of the application being heard and he would be able to ask the question during the hearing.

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

COMPLETENESS

05-24 Black Horse Tavern & Pub
1 West Main Street
Blk 301 Lot 1

Mr. Ferriero stated that he had written a letter dated June 28, 2024, that noted the application was incomplete because the certificate certifying paid taxes was missing and now has been provided. Mr. Ferriero noted that based on that he recommends deeming the application complete.

Motion by Mr. Molnar, seconded by Mr. Smith and unanimously carried to deem the application complete.

Roll Call:

In Favor: Ms. Bushman, Councilman Sullivan, Mr. Smith, Mr. Sprandel, Mr. D'Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, Mr. Kay and Mr. Pace.

Opposed:

Abstain:

Motion Carried

HEARING

07-24 Thomas Veman
465 Cherry Lane
Blk 2401 Lot 28
Present: Mr. Hefele – Attorney

Mr. Sposaro stated that the attorney for the Veman application has requested the application be carried to the August 20, 2024 meeting with no further notice required.

V-Fee Consent Order- Whispering Woods

Mr. Sposaro explained that due to the absence of Mr. Germinario, the Board will hold the Whispering Woods hearing when he returns at the August 20, 2024 meeting and no further notice is required.

23-22 V-Fee Mendham Apartments
84-86-88 East Main Street
Blk 801 Lot 20

Mr. Sposaro stated that the Attorney for the V-Fee Mendham Apartments has requested the application be carried to the August 20, 2024 meeting with no further notice required.

**05-24 Black Horse Tavern & Pub
1 West Main Street
Blk 301 Lot**

Present: Mr. Calli – Attorney
Mr. Hubschman – Engineer
Mr. Felice – Operations Manager

Mr. Calli explained the site plan for the improvement to install an enclosed stairwell in the rear of the building, replacement of HVAC and refuse area. Mr. Calli noted that the applicant received HPC approval.

Mr. Hubschman was sworn in and qualified as an expert Engineer.

Mr. Hubschman explained that the proposed stairwell is to create access from the kitchen to the basement. Mr. Hubschman noted that the applicant is proposing the relocation of the refuse area and to build an enclosure with a concrete pad. Mr. Calli asked Mr. Hubschman if he reviewed the Boswell report. Mr. Hubschman stated that he had and has removed the 10 sq ft of impervious coverage so that a variance was not needed. Mr. Hubschman also stated that the applicant will comply with the recommendation to make masonry enclosure for garbage. Mr. Hubschman stated that there are no changes proposed on the restaurant. Mr. Hubschman noted that moving the dumpster will gain 2 parking spaces. Mr. Sprandel asked if the parking spaces that are being added are by the dumpster area is. Mr. Hubschman stated that was correct. Mr. Molnar asked for more information on the dumpster enclosure. Mr. Hubschman noted that the enclosure would be a masonry block with stucco. Mr. Ferriero stated that typically the enclosure would be a three-sided block with a gate. Mr. Sprandel asked if the drainage would go to the front and Mr. Hubschman stated that was correct. Mr. D'Urso asked if the dumpster will be moved closer to the property line. Mr. Hubschman stated that was correct but was within the setback. Mr. Felice was sworn in. Mr. Felice noted that refuse pick up would be 4-5 times per week. Mr. Felice noted that the new location of the dumpsters will be farther away from where guests walk and will not be visible from Mountain Ave. Mr. D'Urso asked about the use of the stairway. Mr. Hubschman stated that it will be used to go from the basement to the kitchen. Mr. Felice stated that the stairway is for employee access only. Mr. D'Urso asked why the dumpster is being moved. Mr. Felice stated that moving it will create better access for the public to enter the facility. Mr. Calli noted that the new refuse area is relief free and notes that a green screen will be added to the proposed plan and installed.

Chairman D'Urso opened the meeting to the public for questions and comments. There being none, Chairman D'Urso closed public comment.

Ms. Tufariello, 11 Mountain Ave. – Ms. Tufariello questioned what screening will be used to keep birds and other animals out of dumpsters. Mr. Hubschman noted that the area will be enclosed with a gate and arborvitae. Mr. Ferriero explained that the dumpsters will have lids.

Ms. Fredericks, 4 Mountain Ave. - Ms. Fredericks stated that she likes the proposed location of the garbage. Mr. Vacchiano, owner of 5 W. Main St. – Mr. Vacchiano expressed concerns that the placement of the refuse area. Mr. Calli stated that zoning and the health department would get involved if there was a rodent issue and with regards to the placement, the ownership wants this proposed area that the area is conforming and agrees to the requested enclosure. Mr. Calli noted that there will be no change to the pickup times or frequencies.

Mr. Pace asked how close to the neighbors will the proposed dumpster area be. Mr. Hubschman noted that the area will be approximately 70-80 feet from the neighboring dwelling. Mr. D'Urso asked if the area is significantly behind the building and Mr. Hubschman agreed.

Mr. Ritger, 14 Gunther St.- Mr. Ritger asked what the current stall size is. Mr. Ferriero stated that there are no proposed changes to the stall size. Mr. Ferriero noted that the stall size shown on the plan is 9x18. Mr. Ritger asked if that complies with the local ordinance. Mr. Hubschman stated that is what size is existing.

There being no further questions, Chairman D'Urso closed public comment.

Mr. Molnar made a motion to approve the application with conditions as outlined in the Resolution and was seconded by Mr. Sprandel.

Roll Call:

In Favor: Ms. Bushman, Councilman Sullivan, Mr. Smith, Mr. Sprandel, Mr. D'Urso, Mr. Egerter, Ms. Garbacz, Mr. Molnar, Ms. Traut, and Mr. Kay

Opposed: Mr. Pace

Abstain:

Motion Carried

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Smith, and seconded by Mr. Egerter. On a voice vote, all were in favor. Chairman D'Urso adjourned the meeting at 8:10PM.

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator

**JOINT LAND USE BOARD
BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY**

CASE NO.: 05-24

PREMISES: BLOCK 301, LOT 1

1 WEST MAIN STREET, MENDHAM BOROUGH, NEW JERSEY

**APPLICANTS: BLACK HORSE TAVERN AND PUB, LLC/1 WEST MAIN
STREET, LLC**

WHEREAS, Black Horse Tavern and Pub, LLC/1 West Main Street, LLC have made application to the Joint Land Use Board of the Borough of Mendham for site plan approval for the construction of enclosed stairs and the relocation of the trash enclosure at the Black Horse Inn located at 1 West Main Street, Mendham Borough, New Jersey; and

WHEREAS, the within matter was heard and considered at the regular open public meeting of the Joint Land Use Board of Mendham Borough on Tuesday, July 16, 2024; and

WHEREAS, the applicants submitted a proper and complete Affidavit of Service of notice of the instant proceeding upon all property owners within 200 feet of the subject property; and

WHEREAS, the applicants submitted a proper and complete Affidavit of Publication; and

WHEREAS, the aforesaid open public meeting was noticed, advertised and held in accordance with the Open Public Meetings Act; and

WHEREAS, this matter was opened to the public for both the questioning of witnesses and comments; and

WHEREAS, the Joint Land Use Board considered the following:

1. Land Development Application, dated March 12, 2024, prepared by Lawrence Calli, Esq.
2. Property Owner's Consent, dated March 12, 2024, prepared by Lawrence Calli, Esq.
3. Site Inspection form, dated March 12, 2024, prepared by Lawrence Calli, Esq.
4. Ownership Disclosure Statement, dated March 12, 2024, prepared by Lawrence Calli, Esq.
5. Checklist.
6. Historic Preservation Commission approval, dated April 4, 2023.
7. Site Plans, consisting of three sheets revised through May 20, 2024, prepared by Robert J. Mueller, PLS and Michael J. Hubschman, PE.
8. Architectural Plans, consisting of two sheets revised through January 8, 2024, prepared by George A. Nader, PE.
9. Report from Paul W. Ferriero, P.E., Borough Engineer, dated June 28, 2024.

WHEREAS, the Joint Land Use Board does hereby make the following findings of fact:

1. Based upon the recommendation of the Borough Engineer, the application was deemed complete.
2. The applicant was represented by Lawrence Calli, Esq.. Testimony was offered by Michael J. Hubschman, P.E. and Kevin Felice, an operations manager employed by the applicant.
3. The property in question is depicted on the tax map as Block 301, Lot 1, with a street address of 1 West Main Street. The lot is approximately 1.01 acres in size and is located in the Historic Business Zone.
4. The applicant proposes the construction of an enclosed staircase at the rear of the structure, intended for use by the staff and in conjunction with restaurant operations, the relocation of the refuse enclosure area and HVAC equipment, site lighting and an increase in the total number of off street parking spaces. The application as originally

submitted also sought variance relief pursuant to N.J.S.A 40:55D-70(c) for an increase in improved coverage from 82.93% to 82.95%.

5. The applicant's engineer, Michael J. Hubschman, P.E., testified that the proposed rear stairway will be enclosed and is to be used exclusively by staff in conjunction with restaurant operations. The stairway will have a footprint of 178 square feet. In conjunction with this proposed improvement the applicant will also relocate HVAC equipment. These proposed improvements comply with all bulk standards in the Historic Business Zone.

6. The applicant also seeks approval to relocate the existing trash/recycling dumpsters. Currently the dumpsters used for trash and recycling are not enclosed and sit in the existing parking area to the rear of the restaurant. The applicant proposes relocating these dumpsters to the westerly side of the lot to a trash enclosure. As originally designed the trash enclosure was to consist of chain link fence with slats. Based upon the recommendation of the Borough Engineer the applicant agreed to modify this structure and utilize concrete block that will be finished, which will be aesthetically pleasing and more durable. This design change shall be subject to the review and approval of the Borough Engineer.

7. The restaurant's operations manager, Kevin Felice, testified that the trash dumpster relocation will result in its removal from the patron parking area, which is desirable. This change will also result in the trash dumpster being enclosed and screened from public view. Although closer to the adjoining property owner to the west, the area behind the dumpster will be screened and is a significant distance from the deli and apartment located on the adjoining lot to the west. Mr. Felice also testified that trash pick ups will continue when the restaurant is operating four to five times per week and at the same hours. The frequency of pick ups appears to be more than adequate to address public health and safety concerns associated with odor and animal attraction.

8. As a result of the trash enclosure relocation, two parking stalls will be added to the site, increasing the number from 53 parking stalls to 55 parking stalls. This will also cause an area of pavement to be generally inaccessible south of the trash enclosure and

west of the modified parking stalls. The applicant agreed to remove pavement in this area and install landscaping/turf to reduce impervious/lot coverage. The removal of this pavement will result in no net increase in impervious/lot coverage, thereby eliminating the need for variance relief in this regard. These improvements also shall be subject to the review and approval of the Borough Engineer.

8. The Borough Engineer's report indicates that the architectural plans are inconsistent with the engineering plan and that the engineering plan should govern. The applicant stipulated that the architectural plans will be modified to make them consistent with the engineering plan.

9. Three members of the public testified in conjunction with this application. The first Bob Ritger, expressed concern about the proposed location of the dumpster enclosure and the size of the parking stalls. The applicant's engineer responded by stating the stall size was not being altered, two stalls were being added and that the stall size was adequate for the use.

10. Sheila Fredericks testified that the dumpsters will be in a better location where proposed, but expressed concern about access by animals to the trash enclosure. As designed the enclosure thwarts such access. Enclosing the trash dumpster will only serve to improve existing conditions.

11. Richard Vacchiano, whose family owns the building to the west, expressed concern about relocating the dumpster enclosure closer to the family property. In this regard the Board finds that although the dumpster enclosure will be closer to the Vacchiano property, its location will comply with side yard setback requirements and is distant from the building located on the Vacchiano property. On balance, relocating the trash enclosure not only complies with ordinance requirements, it will be more aesthetically pleasing and from an operations standpoint makes the most sense. It also will result in a net increase in the number of parking stalls, will be adequately screened and finally will result in no net increase in impervious/lot coverage.

12. At the conclusion of the public meeting the Board voted to approve the application with conditions.

NOW THEREFORE BE IT RESOLVED by the Joint Land Use Board of the Borough of Mendham, State of New Jersey, that Application Number 5-24 of the Black Horse Tavern and Pub, LLC/1 West Main Street, LLC be and is hereby approved subject to the following:

1. The applicant shall modify the design of the trash enclosure and utilize finished concrete block. These improvements shall be subject to the review and approval of the Borough Engineer.

2. The applicant shall remove the pavement to the south of the trash enclosure and west of the modified parking stalls and install landscaping/turf to reduce the extent of excessive cover on the lot. These improvements also shall be subject to the review and approval of the Borough Engineer.

3. The applicant shall modify the architectural plans to make them consistent with the engineering plan.

4. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.

5. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

6. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.

CERTIFICATION

I, Lisa Smith, do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Board of Adjustment of the Borough of Mendham at a duly called meeting of the Joint Land Use Board held on July 16, 2024.

Lisa Smith , Land Use Coordinator

INGLESINO TAYLOR

Derek W. Orth, Esq. (NJ Attorney ID No. 001152013)

600 Parsippany Road, Suite 204

Parsippany, New Jersey 07054

Tel: (973) 947-7111

Fax: (973) 887-2700

Attorneys for Plaintiff, V-Fee Mendham Apartments, LLC

**V-FEE MENDHAM APARTMENTS,
LLC,**

Plaintiff,

v.

**JOINT LAND USE BOARD OF THE
BOROUGH OF MENDHAM,** sitting in its
capacity as the Zoning Board of Adjustment,

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

MORRIS COUNTY

DOCKET NO. MRS-L-1319-23

CIVIL ACTION

CONSENT ORDER

This matter having come before the Court on the application of Plaintiff, V-Fee Mendham Apartments, LLC (“V-Fee”), by and through its counsel, Derek W. Orth, Esq. of Inglesino Taylor, against Defendant, the Joint Land Use Board of the Borough of Mendham (the “Board”), by and through its counsel, Thomas J. Germinario, Esq. of Thomas J. Germinario Attorney-at-Law (collectively “Defendants”), and

WHEREAS, V-Fee entered into a settlement agreement with the Borough on December 23, 2019 (the “Agreement”) to provide for the construction of a four-story (over one parking level), 75-unit inclusionary, multifamily residential development with 60 market-rate units and 15 units for low- and moderate-income households, and other potential ancillary uses such as leasing management offices, residential amenities, tenant storage, and a model unit (the “Project”), on certain property located at 84-

88 East Main Street, Mendham, New Jersey 07945, and more formally designated as Block 801, Lot 20 on the Borough's official tax map (the "Property");

WHEREAS, a pre-existing cell tower exists on the Property, which cell tower was approved by Board resolution adopted on or about September 12, 2017;

WHEREAS, V-Fee filed an application with the Board on or about November 4, 2022, seeking preliminary and major final site plan approval and bulk variance relief to permit construction of the Project (the "Application");

WHEREAS, the Board held a completeness hearing on the Application on March 21, 2023, and deemed the Application incomplete due to an alleged need for variance relief under N.J.S.A. 40:55D-70(d)(3) ("d(3) variance") based on the Project's proximity to the pre-existing cell tower;

WHEREAS, on April 13, 2023, V-Fee filed an interpretation application with the Board, pursuant to N.J.S.A. 40:55D-70(b), requesting, in relevant part, an interpretation that no d(3) conditional use variance relief from § 215-12.6(B)(8) of the Borough Municipal Code, titled "Setback Requirements for WT Facilities", was required in connection with the Application (the "Interpretation Request");

WHEREAS, the Board held a hearing on the Interpretation Request on May 16, 2023 and voted in favor of requiring a d(3) variance for the Application;

WHEREAS, V-Fee filed the Complaint on July 28, 2023, alleging that the Board's decision to require a d(3) variance was arbitrary, capricious, and unreasonable, amongst other things (the "Interpretation Litigation");

WHEREAS, the parties discussed this matter and, due to the unique circumstances of the Property's rezoning, desire to resolve the Interpretation Litigation; and

WHEREAS, the parties now seek an Order permitting V-Fee to move forward with the Application without need for d(3) variance relief, such that the parties may continue effectuating and complying with the terms and obligations set forth in the Agreement; and

IT IS THEREFORE DECLARED, ORDERED AND ADJUDGED ON THIS ___ DAY OF _____, 2024, AS FOLLOWS:

1. V-Fee's Application does not require a d(3) variance in connection with the pre-existing cell tower on the Property due to the unique nature of the site's rezoning, as stipulated by the Board.

2. In connection with the Application, V-Fee shall submit competent documentary proof that the pre-existing cell tower's operation is in compliance with applicable FCC and NJDEP radio frequency exposure limits with respect to the future occupants of the proposed residential building. The Board will retain its own consultant to review and opine upon the report to be submitted by V-Fee's consultant.

3. The Borough may, should it so desire in the future, require the cell tower operator to submit the annual reports required in accordance with Borough Ordinance Section 215-12.6, but the parties acknowledge that V-Fee shall not be responsible for procuring the same, other than the report V-Fee will submit in connection with its Application.

4. The Application is hereby deemed complete, *nunc pro tunc* as of the March 21, 2023 completeness review hearing, thereby continuing the site plan approval process for the Application, subject to provisions of this Consent Order, provided, however, that the statutory time period for the Board to render a decision on the Application will not run from the completeness date, but rather from the date of the first hearing on the Application before the Board;

5. The Borough and Board stipulate that the Application, as submitted, is consistent with the Agreement and the concept plan appended to same, which cannot later be argued to the contrary by the Board;

6. The Board agrees to undertake good faith efforts to expedite V-Fee's Application in accordance with applicable law, and shall, subject to availability of its Board members, schedule as many special hearings as necessary at V-Fee's request.

7. The within Consent Order shall be deemed served on all counsel via the Court's filing of the executed Consent Order on eCourts.

Hon. Michael C. Gaus, J.S.C.

INGLESINO TAYLOR
Attorneys for Petitioner,
V-Fee Mendham Apartments, LLC

DEREK W. ORTH, ESQ.

**THE JOINT LAND USE BOARD
OF THE BOROUGH OF MENDHAM**

THOMAS J. GERMINARIO, ESQ.