

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
October 5, 2010
Phoenix House, 2 West Main St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Vice Chair Seavey at 7:30 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 on January 14, 2010 and the Daily Record on January 11, 2010 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House. Notice of the location change was published in the Observer Tribune on September 23, 2010 and the Daily Record on September 17, 2010.

ATTENDANCE

Mr. Palestina – Present
Mr. Peck – Present
Mr. Peralta – Present
Mr. Schumacher – Present
Mr. Seavey - Present

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

Also Present:

Mr. MacDonald, Attorney
Mr. Hansen, Engineer

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PUBLIC COMMENT

Vice Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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APPROVAL OF MINUTES

On motion by Mr. Peralta, second by Mr. Ritger and all members being in favor, the minutes of the September 8, 2010 regular meeting of the Board were approved as written.

HEARING OF CASES

La Pergola – Use Variance/Site Plan Waiver: **Resolution**
Block 301, Lot 35, 7 West Main St.

Mr. MacDonald, Esq. presented the following resolution confirming action taken at the September 8, 2010 regular meeting to the Board:

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
BOROUGH OF MENDHAM**

WHEREAS, **La PERGOLA, INC.**, has applied to the Board of Adjustment of the Borough of Mendham for Use Variance approval and partial Site Plan waiver related to certain modifications to an existing multi use building at 7 West Main Street which property is also now known as Lot 35 in Block 301 on the Tax Map of the Borough of Mendham, which premises are in the Historic Business Zone; and

WHEREAS, the Board, after carefully considering the Evidence presented by the applicant and after the adjoining property owners and the general public were given the opportunity to be heard at a duly noticed Public Hearing on September 8, 2010 has made the following factual findings:

1. The applicant is the owner since January 1995 of the above described property which is located just westerly of the Black Horse Inn and the Colonial Pantry on West Main Street.

2. The building and the uses on the property have been the subject of extensive prior review including by the Borough Planning Board in 1989 and by this Board in 1999 and again in 2006/2007.

3. The prior Resolutions by this Board have allowed four (4) carefully examined commercial uses and one (1) residential apartment in the Building. As set forth in the Board's earlier Resolutions, the size and configuration of the building including the entrance at grade in the rear and the availability of a reasonably sized parking lot in the rear have justified variance relief to permit up to four (4) commercial uses subject to the Conditions in the prior Resolutions and the relatively modest intensity of the previously permitted business enterprises.

4. The owner / applicant now requests Variance and (minor) Site Plan approval to make some additional changes to the property, the building and the allocation of the use of the interior of the building. The number of uses is not proposed to be changed and no additional impervious coverage is proposed.

5. Approval is requested at this time for three additional modifications: A] Erection of certain wrought iron fencing in front of the building; B] Enclosure of the current rear entrance area to the main level (first floor) business of the applicant; and, C] Installation of a 36" cooking range in what is called a "prep and storage area" in the Basement Level of the building to be used for "warming and heating" soup, sauces, etc to be sold to customers upstairs in the applicant's store, BUT not consumed on site.

6. The Board has received, reviewed and considered copies of prior resolutions and prior exhibits related to the subject property. In connection with this current application the Board has received, reviewed and considered: the October 7, 2009 Site Plan Report of the Morris County Planning Board; the October 30, 2009 Memo from the Historic Preservation Commission; Resolution #89-10 from the Governing Body in connection with sewer connection; the June 28, 2010 Review Letter from the Borough Engineer; the August 28, 2010 Review Memo from the Borough Fire Official; the August 31, 2010 Memorandum from the Borough Planning Consultant; and, the September 3, 2010 report from the Borough Health Department Consultant.

7. The Board received, reviewed and considered three separate one page Site Plan drawings from the applicant which were prepared by Dynamic Engineering. One plan is dated 12/19/06 and revised through 3/30/07, the second is dated 6/1/10 and the third is dated 8/13/10. The latest plan depicts the location of the rear vestibule that is proposed to be enclosed and the proposed decorative fence in the front of the building.

8. The Board also received, reviewed and considered a one sheet Basement Floor Plan last revised on 2/24/09 and a one sheet First Floor Plan with an Elevation of the proposed Rear Vestibule last revised on 2/24/09. Both of the foregoing one sheet plans were prepared by Mendham Design Architects.

9. The Board also received, reviewed and considered two pages of specifications and details from Clifton Ornamental Ironworks depicting the proposed front fencing. The Board received a picture of the Black Horse Inn fencing which the applicant intends to mimic for aesthetic consistency.

10. The Board reviewed the updated status of the use of the various floors of the building and the functionality of the parking lot with the applicant. The Board again discussed the particulars of the applicant's Italian food specialty business with Antonio Grande and how the proposed stove on the lower level would be used as part of the ongoing business. The Board relies upon the continued adherence by the applicant to the business methodologies described in the record.

11. The Board notes for the record that no interested parties elected to participate at the Public Hearing.

WHEREAS, the Board has determined that the Use Variance related to modification of the areas of interior use of the Building by the applicant's retail food business and Limited (minor) Site Plan approval requested by the applicant can be granted without substantial detriment to the public good or without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. The Board has previously determined that this Building and this Site can reasonably accommodate up to four (4) business uses of limited size and intensity along with the one (1) residential apartment. The use of the new stove in the Basement Level to warm and heat soup and sauces, etc., BUT not to prepare food and entrées (which is done off site at the applicant's restaurant) will not exceed the modest level of intensity of use that this Board continues to monitor and maintain.
2. The continuation of previously imposed conditions and those newly imposed herein will avoid any significant detrimental impact to the surrounding properties or the public good.
3. The Borough Zone Plan for the Historic Business District will not be negatively impacted by the further modifications to the Building and the Site proposed and approved herein.
4. The underlying protections of the public health and safety intended by the Borough's Land Development Ordinances are duly satisfied and addressed by the updated minor site plan drawings presented as part of this application.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Mendham on this 5th day of October, 2010, that the application of **La PERGOLA, INC.**, which was approved September 8, 2010, be memorialized herein subject however, to the following conditions:

1. All construction shall be in accordance with the testimony and the Engineering and Architectural Exhibits described and identified above and as represented to and relied upon by the Historic Preservation Commission.
2. All representations of Antonio Grande concerning his ongoing business and the operation of same are relied upon by this Board and incorporated herein as conditions of approval, especially those related to the actual use of the new basement stove and the continued preclusion of food preparation and consumption on site.
3. All requirements of the Borough Fire Official as set forth in his August 28, 2010 Report are included as conditions of this approval, specifically the necessity to procure an Annual Fire Safety Permit.
4. Sewer Allocation and Usage Approval is specifically conditioned upon the terms and conditions set forth in Borough Resolution #89-10 which precludes food preparation and customer consumption of food on site and requires plumbing fixture retro fits and inspection of same by the Plumbing Sub code Official. The limitations and pre operation inspection referred to in the September 3, 2010 Report of Cynthia Lee of the Bernards Township Health Department are incorporated herein as additional Conditions of Approval.
5. The approvals granted herein are also specifically conditioned upon the approval of the Borough Engineer as to the lack of interference of the proposed fencing with roadway sight lines. This Board is without authority to permit or approve structures within the ROW and defers any decisions regarding same to Morris County.
6. The approvals granted herein are subject to all other relevant Federal, State, County and Municipal Regulations including payment of all taxes, fees and escrows.

Mr. Ritger made a motion to approve the resolution. Mr. Schumacher seconded.

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

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

The motion carried. The resolution was approved.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Seavey adjourned the meeting at 7:40 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, November 3, 2010 at 7:30 p.m.

Respectfully submitted,

Diana Callahan
Recording Secretary