

**MINUTES OF THE  
MENDHAM BOROUGH PLANNING BOARD  
April 9, 2012  
Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Mendham Borough Planning Board was called to order by Chair Kraft at 8:00 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**CHAIR'S OPENING STATEMENT**

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 12, 2012 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:**

|                                   |  |
|-----------------------------------|--|
| Mr. Bradley – Present (8:15 p.m.) | Mrs. Lichtenberger - Present                         |
| Mr. Cascais – Absent              | Ms. Sandman, Administrator – Present (til 9:00 p.m.) |
| Mr. Gertler – Present             | Councilman Sharkey - Present                         |
| Mayor Henry – Present             |  |
| Mrs. Kopcsik - Present            |  |
| Mr. Kraft - Present               |  |

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|-------------|--------------------------------------|
| Alternates: | Mr. Cavanaugh, Alternate I – Absent  |
|             | Ms. Isaacson, Alternate II - Present |

|               |                         |
|---------------|-------------------------|
| Also Present: | Mr. Henry, Attorney     |
|               | Mr. Ferriero, Engineer  |
|               | Mr. McGroarty, Planner  |
|               | Ms. Callahan, Secretary |

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**MINUTES**

On motion made by Mayor Henry, seconded by Ms. Sandman and carried, the minutes of the regular meeting of March 12, 2012 were approved with clarification that Dr. Gangi works in “collaboration” with Ms. Fabrizi.

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**PUBLIC COMMENT**

Chair 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**

**#921 – Fabrizi/Gangi – Site Plan Waiver**  
Block 1501, Lot 1, 3 East Main St.

Present: Jay S. Grant, 1 East Main St., LLC

Mr. Henry, Esq. had provided the Board with a draft resolution in their pre-meeting packages. He clarified with the Board that they were in agreement with the taxes/sewers being current as of first quarter. He explained that counsel for the applicant had requested that language be added allowing the applicants to come back at a later date for changes or additions to signage other than the present

proposal. As it is a matter of law that the applicants can return to the Board, he did not add that language.

Responding to Mrs. Lichtenberger on whether there is a requirement for window display approval, Mr. Henry, Esq. advised that there could be an issue as to what is signage and what is display, but if it is display, approval is not required.

Ms. Callahan advised the Board that Mrs. Lichtenberger had listened to the disc of the meeting, certified to same, and was eligible to vote.

Mayor Henry made a motion to approve the application other than the window signage and the proposed resolution to that effect. Councilman Sharkey seconded.

ROLL CALL: The result of the roll call of the eligible voters was 5 to 0 as follows:

In Favor: Henry, Lichtenberger, Sandman, Sharkey, Kraft  
 Opposed: None  
 Abstentions: None

The motion carried. The application other than the window signage and the resolution were approved with edits made by Mr. Henry, Esq. Following is the approved resolution:

**MENDHAM BOROUGH PLANNING BOARD  
 RESOLUTION**

**GRANTING SITE PLAN WAIVER APPROVAL AND OTHER RELIEF  
 FOR DAWN M. GANGI, M.D. AND CARLA FABRIZI  
 BLOCK 1501, LOT 1  
 APPLICATION NO. 921**

WHEREAS, Dawn M. Gangi, M.D. and Carla Fabrizi (“Applicants”) have applied to the Planning Board of the Borough of Mendham (the “Board”) for a Site Plan Waiver and other relief with respect to occupancy of a portion of property located at 3 East Main Street and designated Block 1501, Lot 1 on the Tax Map of the Borough of Mendham (the “Subject Property”); and

WHEREAS, a public hearing was commenced on March 12, 2012, and concluded on April 9, 2012, at which time the Board reviewed the documents and materials filed by Applicants, heard testimony by and on behalf of the Applicants, heard argument from Applicants’ attorney, reviewed comment letters and comments from the Board’s professionals, and gave members of the public an opportunity to comment on the Application; and

WHEREAS, the Board has considered Applicants’ submissions for the requested waiver of site plan and other relief, including testimony presented by and on behalf of Applicants, comments of Applicants’ counsel, comments from the Board’s consultants, and 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. Applicants are potential tenants in portions of the building located on the Subject Property at 3 East Main Street (Tax Map Block 1501, Lot 1) in the Borough of Mendham. The Subject Property is located in the Historic Business District.

2. Applicants’ proposed uses are permitted in the Historic Business District. The physical location of the building on site, as well as proximity of other buildings, results in there being very little on-site parking. Lack of building setbacks, excessive lot coverage, and other non-conformities relative to basic ordinance requirements have long existed. None of their criteria are being affected by Applicants’ proposal.

3. The building on the Subject Property is a contributing historic building to the Historic District. The zoning ordinance provides that contributing historic buildings may have a maximum of two separate business uses, with none above the second floor of such a building. It further provides, however, that the Planning Board may relax this limitation where there has been significant renovation or restoration of the historic building. The maximum number of separate business uses may be increased, provided that the average square footage per business entity is at least 700 square feet and that no single entity occupies less than 250 square feet. There have been four separate business entities occupying the building which is the subject of this Application. The proposed occupancy by the present two Applicants would increase the total to five. The square footage limitations, however, would continue to be satisfied.

4. There have, in recent years, been four occupants of the building which is the subject of this Application. [There are three buildings on the Subject Property. Each of the other two has a single occupant.] Applicant Carla Fabrizi proposes to occupy space which has, until recently, been occupied by a yoga studio. Applicant Dr. Gangi proposes to occupy a portion of the

space presently occupied by Grant Homes. This space for Dr. Gangi's occupancy would be partitioned off from the balance of the space which would continue to be occupied by Grant Homes. The result of the proposed new tenancies, however, would increase the total number of users in the building to five. In addition to the application for Site Plan Waiver, Applicants seek permission from the Board to increase the occupancy of the building to a total of five users.

5. Prior to hearing the Applicants on the merits, the Board granted checklist waivers to Applicants with respect to checklist items 15 (most recently approved site plan) and 27 (zoning district information), since these did not seem necessary to evaluation of the site plan waiver and other relief requested. Applicants had provided a survey depicting the current improvements on the Subject Property and district

regulations are not an issue. The district regulations are readily available, should that be necessary, but the Board concluded they did not need to be set forth on the Applicants' plans.

6. One of the owners of the property, J. S. Grant, testified that he has owned the property for more than eleven years. He further testified that in connection with acquisition of the property major renovation of 9,000 square feet of space was undertaken and completed along with major renovation of the exterior facades and appurtenances of the building. He also testified that additional renovation and upgrading was undertaken approximately two years ago when his company, Grant Homes, moved into a major portion of the building.

7. The owner further testified that there would be only interior wall and door changes in connection with the proposed new occupancy; that no exterior or parking changes would be made; that no structural (load bearing) changes would be made without appropriate permitting; and that following the proposed reallocation of space within the building, each occupancy unit would have in excess of 700 square feet. This would satisfy the Ordinance requirement that no occupant of a business space in the Historic Business District have less than 250 square feet and that all occupants in a building would have an average of at least 700 square feet.

8. In connection with the proposed new occupancies, Applicants proposed certain changes in signage related to their uses and occupancies. Carla Fabrizi proposed an awning over her main entrance doorway, on which her name and lettering relating to her business would appear. This awning, since it contains text identifying her business, constitutes a sign. Applicant Fabrizi further proposes a smaller awning of matching material over a second doorway to the east of her main entrance. This second, smaller awning would not contain any text or graphics. It would serve to tie the two ends of this Applicant's space together, but would not constitute a sign.

9. Dr. Gangi proposes a wooden sign over the doorway to her proposed space (replacing the wooden sign presently located in that doorway), identifying her space as "Étoile" and "Cosmetic Medicine Studio", along with a small graphic design. She further proposes lettering along the bottom of each of her four windows describing the services she can perform within the context of her medical practice. The proposed lettering would be in the same style and at the same size as the lettering presently across the bottoms of the four windows setting forth the various aspects of Mr. Grant's business. Her descriptive language would replace his descriptive language.

10. Each of the Applicants, additionally, proposes large poster size photos and/or graphics in some or all of their windows. These are depicted on the exhibits submitted by Applicants as large white blanks with the word "Photo" on each. Although the specific content of each of these posters was neither depicted nor described, each would, in any event, constitute a sign.

11. The Borough Engineer advised the Board that he had confirmed with both the Zoning Officer and the Borough Attorney that graphic and photographic window-hung posters constitute "signage" and not retail window display. Although their inclusion in the signage proposed for the building on the Subject Property would be within the 5% limitation of the zoning ordinance, it was clear that the Historic Preservation Commission would separately consider the appropriateness of such signage within the Historic District. The Board pointed out that the Historic District is important to the Borough, that a great deal of time has been spent to foster appropriate improvements and development within the Historic District, and that the Historic Preservation Commission has a good record of working well with applicants to achieve appropriate and desired results.

12. Separate and apart from the zoning ordinance limitations on the amount of signage permitted on any building, all signs proposed on buildings in the Historic Business District [a part of the Borough's National and State Historic Register listed Historic District] are subject to review by the Mendham Borough Historic Preservation Commission. In the case of signs proposed in connection with an Application within the jurisdiction of either the Board of Adjustment or the Planning Board of the Borough of Mendham, the review by the Historic Preservation Commission is undertaken for purposes of making a recommendation to the Approving Authority, in this case, this Board.

13. Applicants appeared before the Historic Preservation Commission on February 27, 2012. Although satisfied with the awning sign and unadorned awning proposed by Applicant Fabrizi, and with the wooden sign and the concept of window-bottom lettering proposed by Dr. Gangi, the Historic Preservation Commission concluded that the large, poster-like signs were not appropriate in the Historic Business District and recommended against approval of same.

14. The Board pointed out that the Historic Preservation Commission considered the proposed window-hung signs to overpower the window. To the extent that Dr. Gangi was seeking to provide privacy, given the large windows on the commercial building on the Subject Property, perhaps some other method of providing the desired level of privacy for a waiting room could be achieved. If that proved not to be possible, it might indicate that her particular use was not well suited to a building designed to be at the heart of a retail district with large windows along its façade. Though a permitted use, her particular requirements could be at odds with the purposes to be achieved in design and utilization of space in the Historic Business District. The Board suggested that further exploration of this issue with the Historic Preservation Commission might lead to a workable solution from the point of view of Dr. Gangi's needs, while satisfying the Historic Preservation Commission with its design and appearance concerns within the Historic District.

15. At the hearing, Applicants indicated that their proposed photo/graphic window posters would be of equivalent size to the posters placed in the windows of the building by Grant Homes. A review of the Grant Homes approval, however, indicated that such poster type signs were not submitted to or approved by either this Board or the Historic Preservation Commission in 2010, or at any time thereafter. In fact, the signage approved by the Board at the hearing with respect to Grant Homes, consistent with the then-recommendation of the Historic Preservation Commission, was limited to specific signage to be affixed to the outer walls of the space to be occupied by Grant Homes, as well as specific and identified lettering on tops and bottoms of the windows. None of this involved large photos or other graphic depictions being hung in the windows. Therefore, the fact that Applicants sought to replicate the window-hung signs utilized by Grant Homes, was not relevant, since the Grant Homes signs themselves were not permitted.

16. The limitations on signage for the building were set forth in the June 14, 2010 resolution memorializing approval of occupancy in the building by Grant Homes. The pertinent provisions were set forth in the memorializing resolution as follows:

a. The signs above the entrance doors on the Main Street facade will each be no larger than 8 feet long by 20 inches high with lettering no larger than 16 inches high.

b. The sign area of the wall sign on the Hilltop Road facade will be not more than 6 feet long by 2 feet high. It will be framed in copper and trimmed consistent with the soffit and trim treatments of the windows at either end of the Hilltop Road facade. Rope lighting will be enclosed under the canopy over the sign on the Hilltop Road side.

c. Text and signage content on the three wall/over-door signs will be applied to wood sign material which, in turn, will be attached to the building.

d. White vinyl lettering may be applied to the inside of the six windows which flank the entry doors on Main Street and to the two windows at either end of the Hilltop Road facade. In each case, such lettering will be limited to a single line of text in the transom area and a single line of text in the main window area, composed of lettering not more than 5¼ inches high.

17. Dr. Gangi testified concerning her professional credentials and her present practice of cosmetic medicine. She would occupy approximately 787 square feet of space in the building located on the Subject Property. She testified that she anticipates initially working two and a half to three days per week, typically between 10 a.m. and 6 p.m., although occasionally to 7:30 p.m., and seeing between three and seven patients in a day. Her space would be fitted out to contain two exam rooms, a third exam room/office, a reception area, and a small area for storage, supplies and preparation of materials used in her practice. She proposes to have the large hangings in her windows to provide privacy for patients who are waiting in the reception area. She would anticipate a sheer curtain behind the photos/graphics.

18. Applicant Fabrizi testified that her principle services involve cosmetic makeup, skin care and the sale of products relating to those services. She also includes a small boutique for sale of limited items of clothing, jewelry and accessories. She testified that there is a significant overlap between her clientele and the patients receiving cosmetic medicine services from Dr. Gangi. They do, however, have independent professional and business operations. She anticipates that her activities will generally take place between 10 a.m. and 5 p.m. on Monday through Friday, perhaps extending to 6 p.m. or so on any of those days and on Saturday, with occasional events taking place on Sunday. During a normal business day, she would see up to ten clients in the course of a day. She would occupy approximately 1,458 square feet in the building.

19. Applicant Fabrizi described her present operation across the street (at 6 East Main Street) and her desire to carry on essentially the same operation in the building on the Subject Property. She suggested that the manner in which she has done windows at 6 East Main Street is indicative of her desire for window treatments in the Subject Property. In addition to her awning sign, she seeks to have window-hung poster type signage (photos/graphics) in two of her four windows and to place garments or a garment on a mannequin or other examples of the merchandise available in her small boutique, in the other two windows.

20. The Board, the Applicants, Applicants' counsel, and Mr. Grant discussed the issue of window-hung signs at length. It seemed clear to the Board that the Historic Preservation

Commission did not endorse the use of such signs and, to the contrary, found them inappropriate and damaging to the concept of the Historic Business District. The Board, essentially satisfied with the other aspects of Applicants' proposals and requests for relief, suggested that Applicants return to the Historic Preservation Commission to discuss alternatives which might serve the legitimate purposes of the Applicants, without the negative appearance of the proposed window-hung signs in the Historic Business District.

21. Subsequent to the March 12 hearing, the Board was advised by letter from Applicants' counsel that his clients had elected not to appear before the Historic Preservation Commission to pursue any alternatives to the window signs which had been proposed.

22. The Board concluded that under the circumstances and facts presented in connection with this Application and during the hearing, expansion to a fifth user in the building on the Subject Property is warranted and can be accomplished within the letter and spirit of the requirements and limitations of the zoning ordinance, the awnings proposed by Applicant Fabrizi (both that containing her signage and the separate plain awning as shown in the materials submitted to the Board), as well as the wooden sign proposed by Dr. Gangi and the lettering along the bottoms of Dr. Gangi's windows (as depicted in the materials submitted by Dr. Gangi to the Board) - such lettering to be in the same style and size as that presently located along the bottoms of the same windows - and a site plan waiver permitting Applicants to proceed without any further formal engineering or site plan application could, with appropriate conditions, be granted. To the contrary, under the circumstances and facts presented, Applicants' request for approval of window-hung signs (photos, graphics, or otherwise) was not appropriate for the Historic Business District and would not be approved or granted by the Board.

BE IT FURTHER RESOLVED that, based upon the foregoing, Applicants' request for window-hung signage (whether photo, graphic, or otherwise) is hereby denied, but further Applicants' request for site plan waiver, permission to add a fifth business entity as an occupant of this building on the Subject Property (in accordance with the floor plan revisions submitted to the Board), Applicant Fabrizi's awning sign and separate awning (as shown on materials submitted to the Board), Dr. Gangi's wooden sign, as well as lettering along the bottoms of her windows (as depicted in the materials submitted to the Board), all relating to the building located on the Subject Property at 3 East Main Street, Block 1501, Lot 1 on the Tax Map of the Borough of Mendham), are hereby granted and approved, subject to the following conditions:

1. Applicants shall secure any other approvals or permits which may be required from any board, body or agency, whether municipal, county, state or federal.
2. All taxes and municipal charges related to the Subject Property shall be paid through the 1st quarter, 2012.
3. Any fees or escrow relating to this Application or the work to be done through the completion of the Applicants' project shall be paid as required.
4. Applicants shall be responsible for any Affordable Housing contribution which may result from the proposed project.
5. Applicants, having obtained a sewer connection permit from the governing body of Mendham Borough, shall comply with all conditions imposed in the permit grant. [It should be noted that the resolution adopted by the governing body (#38-12) is dated "February 21, 2011". This should be "February 21, 2012".]
6. Applicants shall each obtain a satisfactory fire inspection report within 90 days of commencing operations in the Subject Property.

This Resolution is adopted by the Planning Board of Mendham this 9<sup>th</sup> day of April, 2012.

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## DISCUSSION

**Solar/Wind Turbine Ordinances:** At the direction of the Board, Mr. McGroarty, Board Planner had prepared a first draft of a wind turbine ordinance. He explained that the draft ordinance is based on a model that was issued one to two years ago. He modified it to fit Mendham Borough.

In terms of the content, the ordinance allows small wind systems as accessory structures only in the five (5) acre zones and only on conforming lots. It would allow for a maximum tower height of 100ft. The proposed setback is 1.5 times the height of the tower.

Responding to Chair Kraft on the implications of noise and how it is tested, Mr. Ferriero advised that he has a sound meter for testing. Mr. McGroarty stated that a manufacturer's certification could be requested. Mr. Henry, Esq. expressed that 55 decibels is about the sound of a hedge clipper. The State law permits the measurement at the property line. Mr. Ferriero added that conversation is 50 decibels. He clarified for Councilman Sharkey that several towers would not result in cumulative decibels with each at 55, but there would be some increase.

Mr. Henry, Esq. and Mr. McGroarty discussed several editorial and language changes that would need to be made.

Responding to Chair Kraft on why 100 ft. had been chosen as the tower height, Mr. McGroarty explained that is what he is seeing from what is actually being designed and implemented. Mr. Ferriero explained that the blades are about 15 ft. high. Mayor Henry questioned whether or not the height should be the same as the permitted telecommunications tower. Mr. Henry, Esq. advised that the proposal is for the residential zone. After some discussion, Mr. Ferriero stated that the height could be 120 ft. for the total system height.

In terms of the size of the lots at five acres, Mr. McGroarty clarified for Mr. Gertler that the lots would need to be in the five acre zone and conforming, not just a five acre lot in any zone, nor an undersized lot in the five acre zone. Chair Kraft added that if it were for a five acre lot in any zone, there could potentially be a subdivision of the lot in the future.

Chair advised that Mr. Henry, Esq. had also prepared a draft letter to the utilities outlining the approval procedure before placing any distribution equipment on poles in the Borough. The letter was shared with the Board and a copy was provided to Mayor Henry for review and approval by the Borough Council.

Board requested that Mr. McGroarty continue work on the next draft of the wind tower ordinance and begin work on a draft solar panel ordinance.

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#### **TRC UPDATES (For information only)**

Mrs. Kopcsik provided an overview of the applications that would come before the Technical Review Committee on April 16.

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#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 9:25 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, May 14, 2012 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan  
Recording Secretary







