

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
May 1, 2012
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Seavey at 7:40 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 and the Daily Record on January 12, 2012 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

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

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

Also Present:

Mr. Germinario, Esq., Attorney
Mr. Hansen, Engineer
Mr. McGroarty, Planner

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APPROVAL OF MINUTES

Mr. Ritger made a motion to approve the minutes of the regular meeting of February 7, 2012 as written. Mr. Smith seconded. All members being in favor, the minutes were approved.

Mr. Ritger made a motion to approve the minutes of the executive session of February 7, 2012 as written. Mr. Peck seconded. All members being in favor, the minutes were approved.

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PUBLIC COMMENT

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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COMPLETENESS REVIEW

Ingersoll, Deborah – Use Variance and Hardship Variances
Block 305, Lot 11, 63 West Main St. (Historic District)

The above application is for a use variance for an office use in an accessory structure, and hardship variances for building coverage, lot coverage and front yard setback. Mr. Hansen reviewed the Ferriero completeness report dated April 17, 2012.

He stated that items numbered 6 (Sewer Approval), 37, (Soil Types) and 47 (Local Water Lines) could be waived for completeness purposes. Number 13 dealing with the architectural data could be currently waived, but required testimony. Responding to Mr. Seavey's question on whether the Morris County report dated March 5 needed to be addressed at this time, Mr. Hansen advised that nothing was required before the hearing.

Mr. Hansen continued that subsequent to his conversation with the Zoning Officer, the height variance that he identified in his report for the accessory structure was not needed. There are four variances required, not five.

Mr. Ritger expressed concern that development on the property was being phased and questioned whether a master plan would be pertinent under checklist item #47. Mr. Seavey stated that testimony would be required in accordance with the hearing.

Mr. Seavey made a motion to deem the application complete in accordance with the waivers recommended by Mr. Hansen for completeness purposes only. Mr. Smith seconded.

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

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

The motion carried the application was deemed complete. Applicant will be notified of a hearing date.

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HEARING OF CASES

5 Hilltop Holdings, LLC – Use of third floor for commercial use
Block 1902, Lot 21, 5 Hilltop Road (Historic Business District/Historic District)

Present: Richard L. Wade, Esq. -Attorney for the Applicant
Peter Dorne, AIA - Architect for the Applicant
John McDonough, LA, PP, AICP - Planner for the Applicant
Justin Marcucci – Applicant
Craig Bellamy – Mendham Borough Fire Official

Exhibits: A-1: Sheet A-1.0: Front/Rear/Side Elevation
A-2: Sheet A-1.2: Survey of Existing Conditions
A-3: “No Parking Fire Lane” Sign
A-4: Revised Floor Plan A-1.1
A-5: Photos: 3 Pages stapled and labeled A, B & C

Mr. Hansen reviewed the Ferriero report dated March 14, 2012 indicating that he recommended that checklist items #12 and #20 referring to formal site plans and professional signatures be waived as the application is for a site plan waiver, and that #28 be waived as the location of existing structures within 100 ft. can be identified during the hearing. Mr. Ritger noted that there are some issues with parking that will need to be addressed during the hearing.

Mr. Seavey made a motion to deem the application complete with waivers granted for #12 and #20, and #28 waived for completeness purposes only. Mr. Peck seconded.

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

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

The motion carried. The application was deemed complete.

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Mr. Germinario, Esq. advised the Board that he had reviewed the public notices and that the Board has jurisdiction to proceed.

Mr. Wade, Esq. explained to the Board that the applicant is requesting relief from Section 215-18B of the Borough Code that does not permit a business use on the third floor of a building. In this case, the applicant is currently partially using the first floor and completely using the second floor of the building for their business. The third floor has two rooms with a full staircase from the second to the third floor. It is not a public staircase. There would not be any addition of employees or equipment. Only tables and chairs would be added. The applicant currently lacks a place where people can meet.

Mr. Peter Dorne, Planner for the applicant presented his credentials and was accepted as a witness by the Board.

Mr. Dorne entered Exhibit A-1. He explained that after receiving the Fire Official's report, and prior to the previous meeting, he had met with him. Mr. Bellamy had concerns about a second means of egress from the floor. They are proposing a casement window at the driveway end of the building. They also are placing two no parking signs that would be enforceable by the Fire Official and the Police. In terms of the proximity to the other buildings, the room will be sheet rocked, and an early warning detector monitored through a central station is proposed. The applicant is agreeable.

In terms of the design, they created a dormer with windows in the rear. It is not seen from the left, right or front. The Historic Preservation Commission has approved it. It is not seen from the streetscape.

Responding to Mr. Seavey, Mr. Dorne stated that the new window proposed had not been approved by the Historic Preservation Commission. The window is larger than the others, but it is required as a life safety matter. He did not want to use a catwalk in the rear. The side has good access for the Fire Department.

Utilizing Exhibit A-2, the Survey of Existing Conditions, Mr. Dorne identified the area in which the parking signs are located today, and the area in which the new ones would be located. There would not be any other changes to the plans. He entered Exhibit A-3, the "No Parking Fire Lane" sign and showed it to the Board. He also provided Exhibit A-4, the revised floor plan with the only change from what the Board had as the egress window.

Addressing Mr. Peck's question on the condition of the attic now, Mr. Dorne explained that it had originally been a bedroom, but was not sheet rocked. The third floor space is 715 sq. ft. Mr. Peck expressed his concern that the space remain a conference room, and not become office space in the future. Mr. Wade, Esq. stated that they did not have any objection to that restriction.

Mr. McCarthy confirmed the nature of the applicant's business. Mr. Ritger noted that the stairs and the window form the two means of egress, but there are sliding doors. Mr. Wade, Esq. advised that they are open. Board wanted the Historic Preservation Commission review of the window as part of the conditions.

Chair Seavey opened the meeting to questions of Mr. Dorne by the Public. There being none, the public session was closed.

Mr. Justin Marcucci testified that he owns the interactive design and development business. They develop websites for I Phones and I Pads. He purchased the building in March 2010 to move his growing business to a fixed location. He had previously been located in Chester and Somerville. He would like to use the third floor to meet with clients and to do designs with them. He currently has 25 employees, 15 of whom come to the site every day. The meetings are to plan the interactive programs. They use computers to do the coding and the artwork. The applications are cloud based and large systems are not required on premise. They now have open rooms with two offices for the executives. There is a kitchen and a bath and the bath now doubles as meeting space.

Mr. Marcucci continued that he would like to refinish one large conference room that could hold 10-12 people. He would like an area in which he can also discuss project finances with clients. A smaller "spill off" space will be used for smaller conversations or phone calls.

Addressing Mr. Wade on the access from the second floor, Mr. Marcucci stated that there is a staircase from the second to the third floor. They will clean up the entrance and put in a banister. It will be restricted for use from his second floor office. There is no intention to use it as general office space. They just need a conference room.

Mr. Marcucci confirmed that he is agreeable to the "No Parking" signs and the window. The drawings presented are accurate of his plans. The building was constructed in 1815, and at one time the third floor was finished, but the plaster and lathe had already been destroyed when they purchased the building. It is now large, glorified storage.

Responding to Chair Seavey on the hours of operation of the business, Mr. Marcucci stated that about 98% of the people work 9 a.m. to 5 p.m. with the outside hours being 8:00 a.m. to 6:00 p.m. Someone occasionally might work 8:00 a.m. to 9:00 p.m. The digital nature of the work makes it possible for employees to work from home.

Addressing the current parking in the fire lane, Mr. Marcucci stated that it is not his staff. The Grand Bazaar that utilizes part of the downstairs space and uses the area for loading and unloading. The existing parking lot has enough room for customers. While they have 25 employees, the daily average on site is 13 to 16. When they purchased the building in 2010, they had 10 employees.

In response to Mr. Peck's comment that the business could continue to grow, and the 16 could become 25, Mr. Marcucci explained that they will be looking for additional office space, and would consider using the retail space in the building.

Mr. Palestina confirmed that there would not be any need to increase electrical service to the building. Mr. Marcucci advised that when renovations were previously made, sufficient electrical service and networking changes were made to the building. Mr. Peck expressed concern that with the window in the rear, the sight line to St. Joseph's Church could reflect a projection from a screen placed on the wall. Mr. Marcucci stated that he would be willing to use curtains or some type of screening.

Mr. John McDonough, Planner for the applicant presented his credentials and was accepted as a witness by the Board.

Mr. McDonough explained that his role was to tie together how the application fits with the neighborhood and the Borough Master Plan. He has reviewed the application, visited the building, and drawn his planning conclusions. He entered Exhibit A-5, a series of photographs of the area which were labeled A, B & C.

Describing A-5A, Mr. McDonough stated that it is a birds eye view of the area showing the pattern and character of what is located on the site. There are many third floor occupancies in the area. The applicant's lot is rectangular and 26,000 sq. ft. The building is 4,500 sq. ft in total, the first floor being 2,300, the second 1,500 and the third 715 sq. ft. There are 19 gravel parking spaces and 2 handicap spaces for a total of 21 spaces. The Grand Bazaar is located on the first floor, and there is no connectivity proposed. The applicant is a local owner with a business that has global reach. He needs space and wants to convert the third floor for a limited business use.

Referring to A-5B, the planner stated that there would not be any change to the streetscape. There is no expansion of clients or employees. The parking demand is not being increased. Third floor occupancy is not an anomaly in the area. It is mimicking the surrounding area. There is no intensification. The conference room will not be shared with the retail user on the first floor. In terms of the Zoning and the Master Plan, Mr. McDonough continued that in the Historic Business Zone only residences are permitted on the third floor. This is not business, but a limited business use. The ordinance in the Borough does allow for home offices, and this could be a residence with a home office. The access to the third floor already exists.

In terms of the positive criteria for the use variance as required by the MLUL, the application promotes the general welfare as a local business with a global reach. A desirable visual environment is maintained by keeping the streetscape along Hilltop Road. There is a free flow of traffic as additional traffic is not created, and there is an efficient use of the land as adaptive reuse. In terms of the negative criteria, there is no harm to the surrounding neighborhood, no cooking, no plumbing, no traffic, no water or sewer demand, and nothing unhealthy. There are normal business hours and no noise, odors or glare. There is no weekend use, and there is no additional signage. In terms of the zone plan, there is an improvement to the site. The charm is maintained, but it is progressive. The positive and negative criteria are met.

Mr. McGroarty, Borough Planner agreed with Mr. McDonough's assessment. He did review the property. The variance is more like a D3 variance relating to a conditional use. The applicant has addressed it as a D1 variance which is some circumstances is permitted. It could be difficult to monitor the limitation on the conference room; however the applicant has made good faith testimony. The neighbors will not see any change.

Responding to Mr. Palestina on whether an additional fire escape would be necessary, Mr. Dorne explained that it would not. There is really no location for it and with the current plan, the fire trucks can get in. Addressing Mr. Seavey on why they did not create additional windows in the rear, Mr. Dorne responded that he and Mr. Bellamy discussed it, but given the pitch of the rear roof a fireman could climb and then misjudge the roof line.

Mr. Peck expressed concern that the dormer could be overwhelming compared to the neighbors. Mr. Dorne stated that it would not be. The plate height is low and does not extend over the existing ridge. The massing looks small and does not go over the ridge. It will look attractive from the rear. Mr. Marcucci stated that they just need light.

Mr. Hansen stated that they have addressed most items in his report. He noted that for Item #5, the lighting standards are not met and that for item #6, the pavement markings are faded. The applicant agreed to comply by using low light ballards. They currently have photo sensors on the deck. Mr. Hansen requested that they work with the Board Engineer on the site lighting in the rear.

Chair Seavey opened the meeting to questions by the public. There being none, the public session was closed.

Mr. Craig Bellamy, Fire Official, presented his credentials and testified at the request of the Board. He stated that when he received the application, he reviewed the drawings and looked at the structure. The Commercial Codes differ from the Residential Codes. For a residence, one means of egress is required. For commercial buildings, anything above ground floor requires two methods of egress. Escape windows are usually only used for residential, but as this is an historic building, and it was built as a residence, there is some flexibility.

Describing the current situation, Mr. Bellamy stated that he had several concerns. There is a peak on the back roof and an exhaust fan. The parking lane is narrow to begin with. The code requires a 20 ft. width and even if you take half the cars away, a 12 ft. wide fire struck would have difficulty entering. In terms of the exposure of the building, any building within 50 ft. is a risk as radiant heat can transfer to another and cause combustibility. In this case there is 3 ft. with a resident on the second floor. Overall there would be increased risk.

Continuing, Mr. Bellamy stated that he met with the architect and they determined that a window at the gable end over the shed, with the driveway kept open would provide easier access. It would be easier access than the back. The parking issues have been identified in the "No Parking" zone and dealt with, but with a half day zoning enforcement in the Borough, designating Fire Lanes under Chapter 106 of the Borough Code allows the Fire Official or the Police to enforce. It needs to be adopted on the site plan and signs need to be posted.

In terms of mitigating the risk to 3 Hilltop, Mr. Bellamy stated that 5 Hilltop is occupied 12 hours per day. Most fires start when people are not there. In order to reduce the risk, under the NFPA and fire protection for historic structures, an automatic fire detection or fire suppression system can be used. A fire suppression system is very costly. The automatic fire detection gives very good early warning if it is hooked up to a central station. It brings the risk to an acceptable level.

Responding to Mr. Smith on whether the stairway from the second to the third floor is wide enough, Mr. Bellamy stated that it is an older building, and he did not have any problem climbing. Mr. Dorne advised that the staircase is three feet wide with the railing bringing it in slightly. It is acceptable fire code for up to 50 people. Mr. Marcucci added that they have a full fire and security package from ADT.

Mr. Ritger questioned how one would get down from the proposed window without a fire escape. Mr. Dorne stated that it is over the gable. A person of average height could hand and drop 5 feet. Mr. Bellamy added that the location is not conducive to a fire escape.

Chair Seavey opened the meeting to questions by the public. There being none, the public session was closed.

Mr. Germinario, Esq. confirmed with Mr. Bellamy that the "No Parking Fire Lane" could be enforced under Chapter 106 of the Borough Code if required by the BOA as opposed to Title 37.

Mr. Wade, Esq. summarized that the applicant is agreeable to low lighting, they have worked with the Fire Official, they are agreeable to restrict the floor to meeting room only, and the conference room would be used by the second floor occupant only.

In deliberations, the Board expressed that it a good business to keep in town. There is a benefit to having someone who lives and works in town as relates to the business, the structure and neighbors concerns. There are minimal changes to the building, and the fire issues have been resolved. Concern was expressed over the ceiling height of 6 ft., but that is a Construction Code issue. The Historic Preservation Commission would still need to approve the window. Board was very glad to see that the applicant and the Fire Official were able to work as a team. Concern was expressed about the potentially bright light from St. Joes sight line, but that would be no different than the Black Horse. They were not architecturally happy with gable window, but it is needed for safety.

Mr. Seavey made a motion to approve the application subject to (1) installation of an early detection warning system monitored through a central station, (2) Fire lane signs as prescribed with enforceability by the Fire Official and the Police through Chapter 106 of the Borough Code, (3) applicant working with the Borough Engineer and the HPC on approved lighting, (4) the parking being re-lined, (4) the conference room being used by Nicholfish only and not being used for office space, (5) the HPC approving the window and the light stantion modifications, (6) only the occupant of the second floor using the conference room, and (7) screening on the conference room windows in the evening. Mr. Peck seconded.

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

In Favor: Palestina, Peck Ritger, Schumacher, Smith, McCarthy, Seavey
 Opposed: None
 Absentions: None

The motion carried. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the June 6, 2012 regular meeting of the Board.

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Botti, John P. II/Fluortek – Hardship Variance
 Block 301, Lot 75, 45 West Main St. (Historic District)

Present: John Paul Botti II, Applicant
 Roger Bogaard, Esq., Attorney for Applicant

Mr. Hansen reviewed the Ferriero letter dated April 10, 2012. He advised that an approval had been given to Mr. Botti five to six years ago, and when a foundation location survey was completed on the structure in the rear, it was determined that it did not meet the setback. The waivers requested by the applicant are justified.

Mr. Seavey made a motion to deem the application complete with the requested waivers. Mr. Palestina seconded.

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

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

The motion carried. The application was deemed complete.

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Mr. Germinario, Esq. advised that he had reviewed the public notices and that the Board has jurisdiction to proceed.

Mr. Bogaard, Esq. explained that Mr. Botti had hired a licensed contractor in good faith to do his previously approved renovations. There were issues. One corner of the accessory building was constructed 7 inches into the setback so the setback is now 14 ft. 5 inches. Mr. Botti owns the property adjacent to 45 West Main St. He has since hired a new contractor.

Mr. Botti testified that he owns 45 West Main St. and began renovations last year. They had obtained a variance in 2003 for a side yard setback for a carport and lot and building coverage. He hired a licensed contractor and provided him with the plans that showed a 15 ft. setback for the accessory building. He later terminated the services of the contractor. He did not authorize him to deviate from the plans.

The new contractor determined through the foundation location survey that the footings and the foundations of the right hand corner of the structure encroached 7 inches into the setback. The lots along Main Street are narrow and deep. The renovations that have been done are consistent with Main St. There is no detrimental impact to the encroachment. He did a cost analysis before coming to the Board of Adjustment, but it is too costly to move the foundation.

In terms of the Ferriero Engineering letter, the shape and orientation of the structure will be as per the original plan. There is a discussion on a drywell which he can put in, but he does not think it should be as there are 6 or 7 basements along Main Street with different water levels. If anything is done in the ground, the flow might be changed.

Mr. Seavey questioned whether the overflow could run to the street. Mr. Hansen stated that if there is a machine on site, a test hole to determine water level could be dug, and if the design is over the water level, it is okay, if not, he agrees that it would not work.

Chair Seavey opened the meeting to questions and comments by the public. There being none, the public session was closed.

Mr. Ritger made a motion to approve the application with the conditions relating to the four items in the Ferriero letter dated April 10, 2012. Mr. Seavey seconded.

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

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

The motion carried. The application was approved. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the June 6, 2012 regular meeting of the Board.

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ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 10.00 p.m. The next regular meeting of the Board of Adjustment will be held on Wednesday, June 6, 2012 at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary