

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
May 11, 2009
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 7:30 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 on January 15, 2009 and the Daily Record on January 16, 2009 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 (7:40 p.m.)
Mr. Bradley – Present (8:20 p.m.)
Councilman Carr – Absent
Mr. Cascais – Present
Mr. Gertler – Absent

Mr. Kraft - Present
Mrs. Kopcsik - Present
Mrs. Lichtenberger - Present
Ms. Sandman - Present

Alternates:

Ms. Gemberling, Alternate I - Present
Mr. Cavanaugh, Alternate II – Present

Also Present:

Mr. Henry, Attorney
Mr. Ferriero, Engineer

APPROVAL OF MINUTES:

Board requested one adjustment to the minutes in the TRC Discussion. Paragraph 1 to read:
“They are requesting authority to approve changes to a permitted use in the zone.”

PUBLIC COMMENT

Chair Kraft opened the meeting to any public comment or questions on matters that were not on the agenda. There being none, the public comment session was closed.

APPLICATIONS

#867 – Dante's Restaurant – Site Plan Waiver: **Resolution**
Block 801, Lot 16, 100 East Main St. (Main Street Corridor)

Mr. Henry, Esq. had provided the Board with the following resolution in their pre-meeting packages:

**MENDHAM BOROUGH PLANNING BOARD
RESOLUTION
GRANTING SITE PLAN WAIVER APPROVAL
FOR DANTE'S RESTAURANT, INC.
BLOCK 801, LOT 16
APPLICATION NO. 867**

WHEREAS, Dante's Restaurant, Inc. ("Applicant") has applied to the Planning Board of the Borough of Mendham (the "Board") for a Site Plan Waiver with respect to use of additional seating in the restaurant located at 100 East Main Street and designated Block 801, Lot 16 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a hearing was held by the Board on April 13, 2009, at its regular public meeting, at which time Lisa D'Urso, the principal in Dante's Restaurant, Inc., testified as to the

intent and purpose of the additional seating, the Board reviewed the documents and materials filed by Applicant, and members of the public and the Board's professionals were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered Applicant's submissions for the requested waiver of site plan, including testimony presented by Lisa D'Urso, comments of Applicant's counsel, and comments from the Board's consultants, 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 presently operates a restaurant at 100 East Main Street (Tax Map Block 801, Lot 16) in the Borough of Mendham. The Subject Property is located in the East Business District. There is one small apartment in the building which is occasionally occupied by the property owner.

2. The Subject Property is owned by Bridget Gioglio and Mary Howard. The owners have consented to the prosecution of this Application.

3. Applicant is operating under a prior approval which allowed a total of 48 seats in the main dining room, but no seating or service in the rear area of the building (other than seats for customers waiting for take-out orders). Applicant proposes to increase the seating to 50 in the main dining room and 20 in the rear area, the latter to be used for parties, and to service the take-out area.

4. Applicant described the operation as one which will involve approximately 20 full and part time persons, with a maximum shift of 12 persons (including the principals) on site at any one time. Applicant proposes operations Monday through Thursday from 11 AM to 9 PM, Friday and Saturday from 11 AM to 10 PM, and Sundays from 1 PM to 9 PM, serving luncheon and dinner only.

5. There are 35 parking spaces on site, conforming to the Mendham Borough ordinance requirements. In addition, Applicant has the permission of the owners of the neighboring Ford dealership and service station properties to park employees vehicles on those properties.

6. Applicant also submitted a traffic and parking impact study demonstrating that use of the property as proposed could be accommodated without any substantial impacts.

7. Applicant proposes no interior alterations or construction, no exterior site changes, nor any changes in lighting on the site. No signage changes are proposed.

8. Applicant advised the Board that it had obtained a Sewer Connection Permit from the governing body. Applicant understands that it must conform to the conditions imposed with respect to the issuance of the permit, including retrofitting of fixtures, inspection of same, limitations on business operations, and hours of operation. Applicant confirmed that it understood the significance and importance of compliance with the Sewer Connection Permit. It was noted that the Sewer Connection Permit mentioned 72 seats, but Applicant understands that this Planning Board approval limits total seating to 70. In addition, it was noted that the Sewer Connection Permit limited evening hours of operation to 9:30 PM. Though the Planning Board would permit dinner operations to extend later than 9:30 PM, Applicant will be limited by the Borough's Sewer Connection Permit as presently written, unless it is modified by the governing body.

9. The Board finds that no new variance relief is required and, therefore, it appears that the application satisfies several of the published exceptions to what otherwise might be a requirement for a waiver from the restraints of COAH's Scarce Resource Order, including this being an operational change to an existing restaurant business, in existing commercial space, in an existing building. Should it be determined, by COAH or otherwise, that such a waiver is required, Applicant shall be responsible for obtaining the waiver or ceasing operations.

10. The Board concluded that under the circumstances and facts presented in this application and during the hearing, a site plan waiver permitting Applicant to proceed without any further formal engineering or site plan application could, with appropriate conditions, be granted.

BE IT FURTHER RESOLVED on the 11th day of May, 2009, that based upon the foregoing, the Board concludes that Applicant's request for Site Plan Waiver in connection with the proposed increase in seating to a total of 70 seats is appropriate in this instance and does hereby approve the requested increase in seating and the waiver of any further formal site plan application, subject to the following conditions:

1. Applicant must comply with the conditions of the Borough's Sewer Connection Permit as presently set forth or as may be modified by the governing body. A copy of the Sewer Connection Permit shall be attached to this Resolution and become a part of the record of the Planning Board.

2. The use of the space to be occupied by Applicant shall be consistent with the testimony offered on behalf of Applicant at the hearing on April 13, 2009, the findings and conclusions set forth in this Resolution, and the conditions imposed herein.

3. All taxes, sewer charges and other municipal charges must be current through the second quarter, 2009.

4. Applicant shall obtain all other permits or approvals which may be required from any board, body or agency, whether federal, state, county or municipal, relating to the proposed use of the property or the proposed project. Without limiting the generality of the foregoing, Applicant shall obtain approval of the Board of Health and/or Health Department as outlined in the May 7, 2008 memorandum to this Board from the Bernards Township Health Department regarding evaluation of grease interceptor capacity.

5. The surveys and floor plans submitted by Applicant shall be collated together with signature lines provided on the floor plans for the Board Chairman, the Board Secretary, and the Borough Engineer.

6. The maximum shift, including employees and principals, shall be no more than 12 persons.

7. No changes shall be made to site features or elements, signage, or lighting.

8. Applicant's operations shall be limited to lunch and dinner business, hours of operation as permitted under the Borough's Sewer Connection Permit, as well as the seating limitations described in Board finding number 3 above.

9. At least 35 parking spaces (as at present) shall be maintained on site.

BE IT FURTHER RESOLVED that this Resolution adopted this 11th day of May, 2009, memorializes the action of the Board, as set forth above, at its meeting of April 13, 2009.

Mr. Cascais made a motion to approve the resolution. Mr. Bradley seconded.

ROLL CALL: The result of the roll call of eligible voters was 6 to 0 as follows:

In Favor: Cascais, Kopcsik, Lichtenberger, Sandman, Gemberling, Kraft

Opposed: None

Abstentions: None

The motion carried. The resolution was approved.

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Mayor Henry recused from the Board.

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#884 – Borough of Mendham – Minor Subdivision (Lot Line Adjustment)
Block 602, Lots 3, 3.01, 3.02, 34 East Main St.

Present: Ellen Sandman, Borough Administrator
Paul Ferriero, Borough Engineer

Ms. Sandman explained to the Board that the Borough is pursuing a land acquisition for open space. In conjunction with a \$110K grant, Morris County has requested that a lot line adjustment be approved before the land acquisition closing. When the County viewed the property, they noted that there is a well and trellis on the property that was purchased by the people who purchased the land with the home. The lot line adjustment of 1/100th of an acre allows the well and trellis to be part of the open space acquisition.

Addressing Mr. Kraft's comment that there had been previous approvals for the three-lot subdivision from the Planning Board and BOA, Mr. Ferriero stated that there is a merger that takes one lot away. Under the proposal lots 3 and 3.01 function as a single family residential lot, even though they are two lots. For the open space lot, a severable exception has not been accepted by the County and a subdivision must take place.

Responding to Mr. Kraft on the area that included a pergola and hot tub, Mr. Ferriero advised that they are behind the house and not part of the subdivision. Responding to Mr. Cavanaugh on the fact that some of the walled area was not being included in the open space parcel, Ms. Sandman advised that including all of the wall would not have resulted in a clean divide.

Mr. Kraft recalled the initial three lot subdivision and noted that when the garage was built, the BOA removed the potential to subdivide the two lots with the home and garage. Mr. Ferriero advised that the two lots function as one, and that a merger had possibly taken place. Responding to Mr. Henry, Esq. on whether there would be any objection to filing a merger deed, Mr. Ferriero preferred that language read that restrictions on 3 and 3.01 not change and that there be a recommendation that a merger deed be filed. Mr. Henry, Esq. expressed concern that the map showed that the lot line was to be removed and one lot created.

Ms. Sandman stated that nothing they are requesting would change the previous agreements with the Planning Board and BOA. Mr. Kraft noted that it needed to be a single lot or not a single lot and requested that the wording state the lot cannot be subdivided in the future.

Mr. Henry, Esq. advised that the Board would need to ignore the potential for a merger or request the merger. The Planning Board has the responsibility to address the subdivision and can indicate that there should not be any changes to previous agreements for those two lots. The owners can merge the lots without Planning Board approval.

Mr. Ferriero stated that there is a difference between a deed of merger and a deed restriction against the subdivision. If the owner wanted to remove all the buildings on both lots they could adhere to the zoning regulations for new construction and most likely would not want to give up that option.

Mr. Henry, Esq. advised that since the owner is not present, the merger option cannot be addressed. The Board would need to address the subdivision only for the lot line adjustment. They could reiterate that if lots 3 and 3.01 are subject to restrictions, those restrictions would need to remain.

Responding to Mr. Cavanaugh on the economic benefit to the owners of 3 and 3.01 to have 3.02 open space, Mr. Henry, Esq. stated that the owner of Lot 3 is receiving part of 3.02. Ms. Gemberling added that the owners also benefit from having open space on 3.02.

Ms. Gemberling again addressed that the preservation of lots 3 and 3.01 is the issue of concern, not the swap of the land. Mr. Henry, Esq. advised that if the Board voted they would be asked to approve the swap of 3.02 and 3. The approval would not alter in any way the conditions and restrictions that have previously been imposed on 3 and 3.01. He was not familiar with the language in the previous approvals, and the Board could not request a merger beyond existing restrictions.

Board discussion continued with members expressing concern that the home and the adjacent lot with the garage help to maintain the historic streetscape. Responding to Mr. Cascais on what would happen if the garage is removed from 3.01, Mr. Ferriero stated that to build, the owner of the lot would need to go to the Historic Preservation Commission and obtain a building permit if they were within the zoning requirements.

Addressing Mr. Cavanaugh's question on Borough motivation for the purchase, Mr. Ferriero stated that it is to preserve the historic streetscape by keeping the garden the way it is. In terms of leveraging the preservation of lots 3 and 3.01, Mr. Kraft noted that the people who own the lots with the home and garage are different from the owner of the proposed open space property. Ms. Sandman stated that had the Borough entered the process earlier, there may have been some leverage with the owner of the entire three lots before the transactions took place. There is another side to open space as some people do not want to live near to more people and noise. Mr. Ferriero added that the Borough was going to buy the property without a lot line adjustment, however in surveying the property, it was noted that some of the elements that the Borough wanted to keep were compromised.

Responding to Mr. Henry, Esq. on whether construction is proposed, Mr. Ferriero advised that there may be ancillary improvements that would be part of capital projects. Ms. Sandman stated that there would be fencing to separate the properties. She would be requesting the advice of the Historic Preservation Commission on improvements. The streetscape would be kept, and the park will start beyond the existing fence. The driveway will remain, and an easement will be granted. There will be a meandering pathway to enter the parcel.

Addressing several completeness issues, Mr. Henry, Esq. confirmed that the Borough was requesting waivers for checklist items not provided. He also noted that the Zoning Schedule on the map needed to be revised to reflect appropriate setbacks, heights and impervious coverage.

Working with the draft resolution he had prepared, Mr. Henry, Esq. summarized the application stating that it is for the swap of 0.0122 acres from lot 3.02 for the same amount from lot 3. The merger of lots 3 and 3.01 as shown on the plat may or may not be pursued. The owners have consented to the subdivision that is being requested in conjunction with an open space grant. A wall and gazebo will become part of the open space acquisition as a result of the subdivision. A fence will start at the existing fence and run perpendicular to Main Street to the rear of the property as shown on the graphic provided.

Outlining conditions, he continued that the plat would need to be updated. Deeds for review by the Board Attorney are required. No construction will take place at this time with the exception of the fence. Conditions from previous approvals for Lots 3 and 3.01 would remain.

Ms. Gemberling reiterated that the issue of keeping Lots 3 and 3.01 as one lot is critical to preserving the streetscape. It should be part of why we are obtaining the open space.

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

Mrs. Lichtenberger made a motion to approve the application and adopt the resolution with the amendments as discussed. Mrs. Kopcsik seconded.

ROLL CALL: The result of the roll call was 6 to 0 as follows:

In Favor: Cascais, Kopcsik, Lichtenberger, Gemberling, Cavanaugh, Kraft
Opposed: None
Abstentions: None

The motion carried. The application and the resolution were approved. Following is the revised resolution:

RESOLUTION

GRANTING MINOR SUBDIVISION/LOT LINE ADJUSTMENT APPROVAL TO THE BOROUGH OF MENDHAM BLOCK 602, LOTS 3, 3.01 and 3.02 APPLICATION NUMBER 884

WHEREAS, the Borough of Mendham ("Applicant") has applied to the Planning Board of the Borough of Mendham (the "Board") for minor subdivision approval to permit lot line adjustment between adjoining properties located on East Main Street and designated Block 602, Lots 3 and 3.02 on the Mendham Borough Tax Map; and

WHEREAS, a hearing was held by the Board on May 11, 2009 at its regular public meeting, at which time testimony was offered on behalf of Applicant, the Board reviewed the documents and materials filed by Applicant, and members of the public and the Board's professionals were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered Applicant's submissions for the requested minor subdivision/lot line adjustment, including testimony presented, and the comments of the Board's consultants, and there being no comments from 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 contract purchaser for that parcel designated Block 602, Lot 3.02 on the Borough of Mendham Tax Map. This parcel is a portion of property generally referred to as 34 East Main Street in the Borough of Mendham.

2. The proposed purchase is intended to include a small portion of the parcel presently designated Block 602, Lot 3.

3. A "swap" is proposed, exchanging 0.0122 acre of present Lot 3.02 for 0.0122 acre of present Lot 3, as depicted on a certain map filed with the Board entitled "Lot Line Adjustment Plat, Lots 3, 3.01 & 3.02, Block 602, Mendham Borough, Morris County, New Jersey" (1 sheet), prepared by Ferriero Engineering, Inc., dated April 30, 2009 (the "Plan").

4. In addition to the "swap", the Plan also shows a potential merger of present Lot 3.01 (0.4079 acre) with existing Lot 3 (0.6088 acre) to result in the new Proposed Lot 3 (1.0167 acres). This merger is not part of the present Application.

5. The owners of all parcels (Lots 3, 3.01 and 3.02) have consented to the Application for minor subdivision/lot line adjustment approval.

6. Applicant sought and received approval from the County of Morris for an open space grant for a portion of the cost to acquire the one-half acre parcel designated Lot 3.02, inclusive of a garden area containing a well and a gazebo. The acquisition requires the lot line adjustment and exchange of acreage which is the subject of this Application, in order that the garden area containing the well and gazebo becomes part of the Lot 3.02 acquisition.

7. Applicant proposes no construction at this time on the subject Lot 3.02, other than a fence as shown on a graphic entitled "Proposed Gated Entrance" (Exhibit A-1).

8. Other than the positive benefits of allowing the desired open space "Tranquility Garden" acquisition to be accomplished, the Board sees no impacts on the neighborhood, the zone plan, the Historic District, or the Main Street Corridor.

9. In discussion concerning the process, it was agreed that metes and bounds descriptions would be prepared for each of the 0.0122 acre "swap" pieces and the modified Lot 3

and Lot 3.02 resulting from the exchange. These will be submitted, along with a proposed minor subdivision deed or deeds to the Planning Board attorney and the Borough Engineer for review and approval of the form and content of the Deed and the appropriate descriptions of the properties involved.

10. There were no comments from members of the public.

11. Based upon all of the foregoing, the Board concluded that, with appropriate conditions, it would grant minor subdivision/lot line approval to Applicant, as shown in the Plan prepared by Ferriero Engineering, Inc. (1 sheet) dated April 30, 2009, and as testified to in the course of the public hearing.

BE IT FURTHER RESOLVED by the Mendham Borough Planning Board, this 11th day of May, 2009, that the Application of the Borough of Mendham for minor subdivision/lot line adjustment, to exchange approximately 0.0122 acres of present Lot 3.02 in Block 602 for approximately 0.0122 acres of present Lot 3 in Block 602, as shown on the referenced Ferriero Engineering Plan be, and hereby is approved, subject to the following conditions:

1. The Plan shall be revised to reflect the bases for the "swap" approval granted hereby.

2. Subdivision deeds shall be prepared satisfactory to the Borough Engineer and the Planning Board Attorney as to form and content, reflecting the "swap", describing the portion of present Lot 3 to be severed and added to present Lot 3.02 and the portion of present Lot 3.02 to be severed and added to present Lot 3, and the resulting lot descriptions for the New Lot 3.02 and the New Lot 3. After approval, Applicant shall record the subdivision deeds and furnish copies of same to the Borough Engineer and Borough Tax Collector. After return of the recorded deeds from the Morris County Clerk, the recording data shall be supplied to the Board Secretary.

3. Applicant shall not engage in any construction activity at this time on Lot 3.02, except as described in finding number 7, above.

4. Except as may be exempt by law, or as may be waived or modified by the governing body of the Borough of Mendham, all taxes and municipal charges shall be paid and current, fees and escrows shall be paid and sufficient for completion of the Application and the completion of those steps required to satisfy conditions of the approval and perfect the subdivision.

5. Applicant shall obtain any other permits or approvals required for the Borough from any board, body, or agency, whether federal, state, county or municipal relating to the Lot Line Adjustment and "swap" described herein.

6. Nothing in this approval shall affect any conditions or restrictions presently governing the parcels designated Lots 3 and 3.01 in Block 602.

DISCUSSION

Build Out Status: Mr. Ferriero advised that the discussion should not be held until after the meeting of the Mayor's Ad Hoc Committee.

Ordinance Team Feedback: Mrs. Kopcsik updated the group on the Occupancy Limitation ordinance work. She reported that the Committee had met with Mr. Ricardo Fernandez, Chester Zoning Officer, who offered them good suggestions on proceeding. They wanted to meet with the Mayor on the nature of the ordinance needed and then meet with the Borough Planner to begin the draft.

TRC UPDATES

Mrs. Kopcsik provided an update on the TRC applications.

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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 8:40 p.m. The next regular meeting of the Mendham Borough Planning Board will be held on Monday, June 9, 2009 at 7:30 p.m. at the Garabant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan
Recording Secretary

