

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
September 8, 2010  
Garabrant Center, 4 Wilson Street, 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.

**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. Peck, second by Mr. Smith and all members being in favor, the minutes of the August 3, 2010 regular meeting of the Board were approved as written.

**HEARING OF CASES**

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

Present: Antonio Grande, Applicant  
Anthony Sposaro, Esq., Attorney for the Applicant

Mr. MacDonald, Esq. reviewed the notices and advised that the Board has jurisdiction.

Mr. Sposaro, Esq. explained that the application has three parts. The applicant would like to (1) install a decorative fence to match the design, style and color of that which exists at the Black Horse; (2) enclose the vestibule in the rear; and (3) install a stove in the basement. The third item was of concern to the Governing Body if the stove was going to be used for food preparation. That would change the sewer approval. The stove is not to be used to cook food, but to heat food. Customers are requesting that the food be warmed, that warm soup be provided and that warm tomato sauce be provided for sandwiches.

Continuing Mr. Sposaro, Esq. acknowledged the following reports that had been received:

- Waiver of approval from Morris County Planning Board dated October 7, 2009.

- Borough of Mendham Resolution dated 5/17/2010 granting sanitary sewer approval. The resolution contains the condition indicating “no food preparation”.
- Historic Preservation Commission report dated 10/30/1009 recommending approval of the screen door and the fence. The fence needs to be similar to that of the Black Horse Inn and be painted black.
- Health Department memo dated September 3, 2010 indicating that food must remain in the same containers as no washing facilities exist. Mr. Sposaro, Esq. advised the Board that he had had a conversation with Cynthia Lee of the Health Department and a three compartment sink is not required as the food will be prepared at the applicant’s restaurant with the exception of sandwiches.
- Borough Planner report dated 8/31/2010 requesting a parking calculation and square footage as related to the various uses. Mr. Sposaro, Esq. explained that the changes the applicant is requesting will not result in any change to the parking. There are no site improvements other than the fence and closing in the vestibule.
- Ferriero Engineering Report dated June 28, 2010 with a completeness item related to a survey.
- Mendham Borough Board of Adjustment resolution dated January 2, 2007.
- Report of Fire Official dated 8/28/2010 pointed out by Mr. MacDonald, Esq. was acknowledged as received by Mr. Sposaro, Esq.

Mr. Grande testified that he currently sells Panini, dry goods and food prepared at his restaurant. The food from the restaurant comes to La Familia cold. There is a menu of 500 items that are prepared and packaged at the restaurant. He would like to have the stove in order to make the food warm and to provide hot soup that the customers are requesting. Customers may also want hot sauce on their sandwiches.

In terms of the rear entrance, Mr. Grande continued that the door is located under the staircase. They would like to enclose the door area under the staircase and put in a screen door. The purpose is to prevent insects from entering the store. The proposed fence would match the fence at the Black Horse. He appreciates the history of his building and also likes to plant flowers in the front. The fence would add to the building further dressing it up. There are also deer in the middle of the town.

Addressing Mr. MacDonald, Esq. on his request for additional information on the parking, Mr. Grande explained that the parking is working well. There are five uses in the building. The downstairs was vacated by an architect and La Familia now uses the space for storage, and a walk in box. It is about 700 sq. ft. and they also use it as an office. La Familia is located on the first floor as well as a Chiropractor who has moved out. They are trying to rent it to the attorney who is on the second floor. There is an apartment on the third floor. He has not received any complaints on parking, but some people not coming to his store would like to park there. He allows them to use the parking, but requests they do not use it when the businesses in the building are open.

Responding to Mr. Seavey on the completeness item from the Ferriero Report, Mr. Hansen advised that a survey was not provided; however since the site is developed and no site improvements were being made, the survey could be waived.

Mr. Smith made a motion to deem the application complete. Mr. Peralta seconded.

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

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

Mr. Ritger commented that there was a discrepancy in the detail for the location of fence in the email attachment to the application and the site plan. He expressed concern that if the fence wrapped around as shown in the site plan, the “enter” and “exit” signs might be obstructed. Mr. Hansen agreed that moving fence too close to the sidewalk could block the visibility. It needs to be out of the right of way. Mr. Ritger noted that moving the fence back would not be in keeping in line with the Black Horse fence that is located right on the sidewalk.

Mr. Sposaro, Esq. advised that the fence location could be staked and the Board Engineer could determine whether it would be suitable.

Messrs. Palestina and Smith questioned Mr. Grande on whether introducing the stove to heat full sheets of food was a stepping stone to intensifying the business toward a restaurant, and whether

or not there were any alternatives. They also questioned the logistics of running up and down the stairs to heat food. Mr. Grande explained that if it were just soup, it could be heated on a small burner upstairs, but for the full sheets, he needs the stove. He has not deviated from what he agreed to in his original approval and will do what he says this time as well. He would like to increase his business by satisfying the customer.

Addressing follow-on questions from the Board, Mr. Grande stated that there is a gas line to the building, but he would have to have a pipe to the stove installed. He is adding a sink as the existing one is very high. He does not have any intent to establish a seating area as it is not permitted in his approval.

Mr. Hansen briefly explained that the Borough Council approved the sewer flow with conditions and limited the flow to an average 74 gallons/day. The applicant will need to provide reports to the Engineer by the 15<sup>th</sup> of every month.

Vice Chair Seavey expressed his opinion that the building is very well taken care of and that is appreciated. His review of the signs indicated that they are 48 inches and are above the fence so that they would not be blocked. They are also 80% see through. From a site distance perspective, the problem will most likely be the cars on the street, not the fence. The applicant does need to coordinate the location of the fence with the County and he may not like the final placement.

After short deliberations, it appeared that all members were supportive of the application. Mr. MacDonald, Esq. summarized stating that, if the Board approved the application, they would be granting:

- Approval for a site plan waiver, but with a map for recording purposes.
- Approval for the fence and enclosure of the vestibule.
- A D2 use variance for the expansion of a pre-existing non-conforming first floor to include a small section of the basement floor.

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

Mr. Peralta made a motion to approve the D2 variance allowing the limited expansion of the food facility to a portion of the basement per the site plan and to grant the waiver of site plan but with the detail of the fence, vestibule and location of the stove. Mr. Ritger seconded.

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

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the Tuesday, October 5 regular meeting of the Board.

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#### **OTHER BUSINESS**

Mr. MacDonald, Esq. advised the Board that Verizon/T-Mobile filed a complaint to appeal the Board's denial. He will be preparing an answer to the complaint. There are no allegations in the complaint that the ordinance is defective. The complaint has been filed in the customary way with the customary language. Each side will also file a brief and there will be oral arguments. He expects that after he files the answer, Judge Bonzonelis will be scheduling a conference call to set up the schedule for the filing of briefs and the oral arguments.

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**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 8:45 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, October 15, 2010 at 7:30 p.m. The location of the meeting may be changed from the Garabrant Center to the Phoenix House.

Respectfully submitted,

Diana Callahan  
Recording Secretary