

Board Chairman Steve Sauchelli called the regular meeting of the Mine Hill Township Planning Board to order at 7:00 pm and led those present in the Pledge of Allegiance.

### OPEN PUBLIC MEETINGS NOTICE

Mr. Sauchelli announced that adequate notice for this meeting had been given as required by law.

**ROLL CALL:** Members Present – Mr. Frank; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman;  
Mr. Heredia; Mayor Morris; Mr. Sauchelli;  
Members Absent – Mr. Gallerano; Mr. Willis  
Alternates Present - Mr. Rautenberg  
Also Present – Mr. Wiener, Board Attorney; Mr. Sterbenz, Board Engineer;  
Ms. Istvan, Planning Board Administrator/Recording Clerk,  
Public Present – 15

### APPROVAL OF MINUTES

*July 6, 2015 Minutes –*

*Mr. Heredia noted the following changes should be made: Page 4, second paragraph from the bottom, it should read “sole principals” instead of “soul principals”; Page 7, fifth paragraph from the bottom, it should read “Mr. Heredia stated **what**” instead of “Mr. Heredia stated **that**”; Page 10, the 12<sup>th</sup> line from the top, it should read “Body in regards to **this** non-permitted use” instead of “Body in regards to **a** non-permitted use.”*

*A motion was made by Mr. Gorman and seconded by Mr. Gonsalves to approve the minutes of July 6, 2015 as amended. The motion was approved by a voice vote.*

### CORRESPONDENCE

None

### CONSIDERATION AND APPROVAL OF VOUCHER

A motion was made by Mr. Heredia and seconded by Mr. Gonsalves to approve the vouchers as presented provided there are sufficient funds in the escrow accounts. Seeing no further discussion, the roll was called and the vouchers were approved by the following vote:

Ayes: Mr. Frank; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia; Mayor Morris;  
Mr. Rautenberg; Mr. Sauchelli  
Nays: none  
Absent: Mr. Gallerano; Mr. Willis  
Abstentions: none

- a. Escrow
  - i. \$10.56 to Daily Record for Public Notice Approval for Kowal Application 7/9/2015 – (PO 179923)
  - ii. \$450.00 to Larry I. Wiener for Pine Tree Nails Review of notes, site visit, review of New Jersey Administrative Code and licensing requirements for applicant, preparation for public hearing – 711292 (PO 18018)

- b. Planning Board
  - i. \$53.92 to Daily Record for Public Hearing Notice of Master Plan Reexamination Report 6/13/2015 (PO 17937)
  - ii. \$200.00 to Larry I. Wiener for Planning Board Meeting 7/4/2015 (PO 18017)

**RESOLUTIONS & MOTIONS**

**Resolution 009-15 – Resolution of Memorialization for Adoption of 2015 Master Plan Reexamination Report**

A motion was made by Mayor Morris and seconded by Ms. Goldstein to approve the resolution. The roll was called, and the resolution was approved by the following vote:

- Ayes: Mr. Frank; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia; Mayor Morris; Mr. Rautenberg; Mr. Sauchelli
- Nays: none
- Absent: Mr. Gallerano; Mr. Willis
- Abstentions: none

**WHEREAS**, the Planning Board of the Township of Mine Hill was created pursuant to the New Jersey Municipal Land Use Law N.J.S.A. 40:55 D-1 et seq.; and

**WHEREAS**, the aforementioned statute requires each municipality in the State of New Jersey to reexamine its Master Plan and development regulations at least every ten years; specifically N.J.S.A. 40:55D-89:

*“The governing body shall, at least every ten years, provide for a general reexamination of its Master Plan and development regulations by the Planning Board, which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the County Planning Board and the municipal clerk of each adjoining municipality.”*

**WHEREAS**, Mine Hill Township adopted its Master Plan on August 11, 1988 and, subsequently, Master Plan Reexamination Reports were adopted by the Mine Hill Township Planning Board on September 13, 1994 and March 13, 2001.

**WHEREAS**, the Planning Board also adopted an Amendment to the Land Use Element of the Master Plan in April 2010, which was related to the creation

of the Economic Development (ED) Zone District; and

**WHEREAS**, N.J.S.A. 40:55D-10 provides the procedural requirements for the public hearing relative to the procedure for the adoption of the reexamination of the Master Plan;

**WHEREAS**, the Board has conducted said public hearing on July 6, 2015;

**WHEREAS**, the Board has received a report dated July 6, 2015 prepared by Paul M. Sterbenz, P.E., P.P. and Daniel N. Bloch, P.P., AICP which report is appended hereto;

**WHEREAS**, the Board finds the recommendations set forth in the 2015 Master Plan Reexamination Report to meet the statutory requirements and to have been a thorough reexamination as set forth pursuant the Municipal Land Use Law and as set forth in detail in said report. The recommendations therein are specifically recommended by the Board. The Board secretary is hereby directed to forward a copy to the Governing Body in accordance with the Municipal Land Use Law. The Board reviewed and approved the memorializing resolution at its meeting on August 3, 2015.

**COMPLETENESS REVIEWS**

None

**PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE**

**a. Application 004-15 Kade Madsen/Madsen Auto Restoration – 153 Route 46 – Block 1207, Lot 8 – C Zone - Applicant seeks Non-Conforming Use Certification NJSA 40:55D-68**

Bernd Hefele, the attorney for Kade Madsen explained that the hearing stemmed from a request for permits to install a paint booth that the Construction Department would not issue. Mr. Hefele provided the following exhibits:

A-1 The Zoning Officer's Denial Letter of August 28, 2014 stating that a building permit requires zoning approval and that was being denied due to – "Adding the paint booth would be considered intensifying the existing use, which would require a variance."

A-2 Mr. Hefele's Letter of September 9, 2014 to Mr. Sean Donlon, the Mine Hill Construction Official, stating that "The operations include automotive repairs, auto body repairs and automotive painting all of which has been transpiring on this site for over 30 years without change. Some months ago Kade Madsen erected internal walls to enclose the existing painting area. This was essentially done to improve health and safety for his workers. The internal construction simply consisted of erecting four walls around the existing spray area and he did not believe he needed permits. After erecting the walls he was advised permits were necessary so he filed for the permits which the town requested i.e. construction, electric and fire permits. These permits are currently pending and we are requesting that they be addressed as my client wishes to install the spray booth fire suppression system to complete the construction but does not want to undertake any further actions without permits. The fire suppression system is also a health and safety issue and we would simply request that the fire permit be issued as expeditiously possible."

A-3 Mr. Donlon's Letter of September 17, 2014 to Mr. Hefele informing him that neither a plan review will be performed nor a permit issued until zoning approval is granted.

A-4 MADSEN REST & MTRSPTS LLC New Jersey Motor Vehicle Commission License as a Full Service Autobody Facility issued on 10/14/2014 with an expiration date of 09/2016. This is current license.

A-6 MADSEN AUTO RESTORATION New Jersey Division of Motor Vehicles License as a Full Service Autobody Facility issued on 05/22/2003 with an expiration date of 09/2004.

Mr. Hefele said the issue is whether the spray booth and painting of cars at this facility are allowed or not. He said their contention was that Madsen Auto has been operating as an Autobody Shop, Repair Shop and painting facility since they established their business in 1993 from the original owner that was there since the 1950s. He stated that the original owner also had a painting facility since day one, prior to the passage of any ordinance. He mentioned he believed the first zoning case was in 1968.

Mr. Sterbenz mentioned that the proof lies in the hands of the applicant. Mr. Wiener stated that eventually Mr. Hefele will need to demonstrate the use is legal and produce the ordinance.

Mr. Wiener swore in Kade Madsen of 153 US Route 46, Mine Hill, NJ 07803.

Mr. Madsen testified that he currently runs the business located at 153 US Route 46. They provide automotive repair, collision repair, classic car bodywork, paint work and repairing fenders. The facility is licensed by the State of New Jersey as a full serviced auto body facility. As part of the operations, they paint cars and they have a specific area that they paint cars in. The State requires a spray area and at times, they come in to inspect. Mr. Madsen stated that he had retrofitted/partially installed a painting booth, but stopped when he was informed he needed permits to do so and has not painted in that location since August 2014. He tried to obtain permits but was denied until zoning approval is granted which is the reason he came to the Board. He was retrofitting it in the same area that they have been painting in for years. He wanted to put walls around the area they have been painting in order to make it healthier and safer. They are trying to move in a positive manner and do what is safest for the people and the environment. Installing the booth will not change the number of cars that are being painted as the same volume of paint will be used which is one gallon per hour. Mr. Madsen's father took over the shop from the prior owner in 1993. Mr. Madsen has continued the same work that his father did.

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Mr. Weiner asked if there are certain shops that have the painting done by another business. Mr. Madsen said that he did not know of any and because in order to have the license he has, the business needs to provide painting as well.

Mr. Frank asked if Mr. Madsen does insurance work to which he answered yes. Mr. Frank mentioned that you need a license from the State in order to do insurance work. It was clarified later on in the meeting that Mr. Madsen does not have a contract with an insurance company, but that he does do insurance work.

Mr. Sterbenz asked Mr. Madsen if he was required to obtain an air quality permit to which he answered not to his knowledge.

Mr. Sauchelli asked for clarification of the difference between a spray area and a spray booth. Mr. Madsen said that a spray area is a room and a spray booth is an enclosed/fabricated area designed to be put into a room.

Mr. Sterbenz mentioned that on the site plan there is a sign referring to auto sales and he asked if there is such a business at the site. It was clarified that the business belongs to Mr. Standridge who is the owner of the property. There are two separate businesses, and they share the same office.

Ms. Goldstein asked what percentage of their work is repair and what percentage is auto body. It was clarified that all repairs are accident related or restoration. Mr. Heredia asked what percentage is auto restoration to which Mr. Madsen said 60%.

Mr. Rautenberg questioned if in the years that Mr. Madsen has been in business if he knew if any inspector from the State ever came in to his facility to which the answer was yes. He then asked if someone from the Town administration office came in to which Mr. Madsen said, no one except for Tom Trapasso. Lastly he asked if a Fire Inspector has ever seen the booth and he answered yes.

Discussion ensued in regards to summons issued from the Construction Department and Mr. Hefele filing with the Construction Board of Appeals. Mr. Hefele explained that he and his client made the decision to come before the Municipality's Board to try and resolve the situation in good faith. Mr. Wiener reminded the Board that this is a Land Use Board and whatever occurred with the Construction Department is a separate issue.

Mr. Sauchelli asked for Mr. Wiener's guidance in so far as when the Board needs to render a decision in light of some of the side issues that have come up during the hearing, how narrow a decision is that Board allowed to make.

Mr. Wiener mentioned that the issue really is whether there was a non-conforming use taking place and to establish that, we really need to know when the Mine Hill Zoning Ordinance went into effect or if there was a prior ordinance in effect when this business was operating. Mr. Wiener used two family housing as an example. It may have been occurring for years, but it may not have been legal. He mentioned that the burden lies on the applicant. The passage of time does not make it legal. However, if the applicant is able to establish it was the way it was always done, it was never abandoned, they may be entitled to some type of relief. Mr. Wiener reiterated that the burden lies on the applicant. He added that everyone agrees the use today is not legal, the applicant needs to prove that at one time that it was legal in addition to the sale of autos that Mr. Sterbenz asked about. He also noted that the date of the ordinance is critical.

Mr. Heredia asked for clarification on Mr. Wiener's comment in regards to asking for a Certificate of Non-Conforming Use. Mr. Wiener explained that for the first year after Council passes an ordinance, someone can

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go to the zoning officer and ask for a Certificate of Non-Conforming Use after that they need to go in front of the Board.

Mr. Heredia also asked Mr. Madsen for clarification that he was painting in the specified area in the building originally and then started to put up the booth in that same area, but stopped because he did not know he needed permits to which Mr. Madsen said yes. Mr. Heredia then asked how long it has been since he has been painting in that facility to which Mr. Madsen replied since last August.

Mayor Morris asked Mr. Madsen if he was painting at a location in Rockaway or Dover on Richard Mine Road to which he replied no. He also asked if there was a site plan to which Mr. Hefele said he is not aware of one as the site has been there for such a long time and nothing has really changed.

Ms. Goldstein questioned why they were going to continue to hear testimony since the ordinance needs to be produced, but Mr. Hefele explained that he has the witnesses tonight and he can present the case in any order he would like. Mr. Hefele also mentioned that they consented to postpone the hearing due to the Board not being able to meet the one evening and then the next meeting the first hearing went longer than expected and there was not that much time left to be heard. Mr. Heredia mentioned that Mr. Hefele did not have all his witnesses at the time either.

Mr. Wiener swore in Jim Standridge of 69 Fifth Avenue in Mine Hill, NJ.

Mr. Standridge has lived in Mine Hill for 50 years and has been the owner of the property in questions since the 1970s and he has been operating out of the facility since 1961. He ran an auto body shop where they did auto body repair work, painting, and selling cars. He mentioned it has been the same building since 1961 and the nature of the business has not changed. The same things have been done as Mr. Madsen is doing.

Mayor Morris asked what the space/lot behind the shops was used for and he said it was used to park cars. Mr. Hefele added that there used to be parked cars there but there are none parked there now to which Mr. Standridge agreed.

Mr. Wiener asked if Mr. Standridge had a license to run the body shop, if he had a license to sell cars and he asked what the status is today. Mr. Standridge said he has a State license to sell cars and he has kept the cars on the lot at times in order to maintain the license. Mayor Morris asked if he has had anything out there for the year 2015 to which he responded no.

Mr. Heredia asked for clarification that there have not been any alterations to the building since 1961 to which Mr. Standridge agreed.

Mr. Hefele mentioned that at next month's meeting he would provide the ordinance in addition to bringing in Dotty Malcolm as a witness.

Mr. Sauchelli asked if the Town had any more testimony and Mayor Morris responded the Town would bring their testimony to the September meeting.

Mr. Wiener reminded Mr. Hefele that the next meeting is not until September 21<sup>st</sup> 7:00PM and that no further Notice needs to be given.

*A 15 minute break took place at this time.*

**OLD & NEW BUSINESS****a. Consistency Hearing Ordinance 22-15 –Ordinance Amending Chapter 310 of the General Ordinances of the Township of Mine Hill and Amending the Regulations pertaining to the Economic Development District (ED)**

Mr. Sterbenz explained to the Board that this is actually not a hearing but that the Governing Body introduced Ordinance 22-15 which is a Land Use Ordinance and per Municipal Land Use Law needs to be referred to the Planning Board. The Board has 35 days to review and the Board's main charge is to deem whether the ordinance is consistent with the Master Plan and report the finding to the Governing Body. He continued that the ordinance proposes to amend the section of the ordinance having to do with the Economic Development District which was created in 2010. It proposes limitations or prohibitions of specific outdoor storage east of Iron Mountain Road and some permitted use in a portion west of Iron Mountain Road. Mr. Sterbenz said the ordinance and the section in the Master Plan Reexamination Report (that we had the Notice of Public Hearing and was adopted at the last meeting) referring to the ED District are identical and his recommendation is that the Board should deem the ordinance consistent with the Master Plan Report.

Mr. Wiener explained that the only question tonight is if the ordinance is consistent with the Master Plan and that the Board is not adopting the ordinance they are just deeming it consistent with the Master Plan. The Governing Body ultimately makes the decision as to whether to adopt the ordinance and it is at the Town Council meeting that people can voice if they are for or against it. This is just a procedural item for the Board.

Mr. Sterbenz mentioned that at some point in the past the Land Use Code of Mine Hill contained something very similar to what is being discussed. Mayor Morris mentioned that they are trying to put back in the items that were inadvertently deleted from the work that Mr. Haggerty did for the Board.

Both Mr. Sauchelli and Mr. Wiener reiterated that this is just a procedural item for the Board and that any concerns need to be brought to the Town Council's attention at their next meeting. Mr. Wiener noted that there seemed to be members of the public present that wanted to speak and he recommended the Board allow them to speak with the understanding that the only issue is a procedural issue. Mr. Sauchelli repeated what Mr. Wiener expressed and then opened the floor to the public.

**THE FLOOR WAS OPEN TO THE PUBLIC**

John Crimi of 41 Beavers Road in Califon NJ, owner of Iron Mountain Park which was created in 1979 stood up and spoke. He voiced his concern that they have been in a six year depression as far as bringing new businesses into Mine Hill and they just got their first tenant in three years in building one which has been 50% empty and that without the outdoor storage it decreases their ability to merchandise. He mentioned it does not make sense to require screening and landscaping on the west side against his own property. They built two sound walls to help with the noise from the businesses. The ED district was created by the Board and Scarlett Doyle in 2010 to attract even more commercial business to Mine Hill. The taxes and dollars that have come into Mine Hill since the creation of Iron Mountain will decrease if the outdoor storage limitations are put in place. He said they realize they had some issues in the past with the roof collapse, a bad tenant with the tires, but they worked together with the Town as a team to correct. He asked the Board to please not approve the ordinance.

Mayor Morris expressed that he agrees with the ordinance, but that he is willing to sit down with Mr. Crimi, and the lawyers to read through and make some adjustments and to ensure a balance. He also requested Mr. Crimi provide the document that reflects where the ED District was created by Scarlett Doyle. He mentioned he knows the various businesses have been working to correct some issues and the Mayor wants to work with them and maintain a balance.

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Mr. Crimi mentioned that the various business owners present wanted to voice their concern with the ordinance.

Ms. Goldstein and Mr. Heredia reminded Mr. Crimi that it is not the Board's responsibility to pass the ordinance, it is only to say whether it is consistent or not with the Master Plan and that it is the Council they need to speak with. Mr. Heredia expressed that he understand where Mr. Crimi is coming from and that Mr. Crimi is the largest tax payer in Mine Hill. Mr. Heredia added that he, himself always thinks about the taxes, but that the Board's only job is to let the Council know whether the ordinance is consistent with the Master Plan. Mr. Crimi expressed that he was hoping to get a note from the Board saying the ordinance is consistent with the Master Plan, but that they do not agree with it to which Mr. Wiener and Mayor Morris stated that is not the Board's call. Mr. Crimi expressed he felt they do have the call.

Mark Alpaugh of 130 Hurd Street, Mine Hill, NJ. Mr. Alpaugh asked if the resolution the Board was voting on or just approved was consistent with the proposed Master Plan because this Master Plan does not exist right now, it has not been voted on by Council.

Mr. Sauchelli clarified that the technical phrase would be this is consistent with the findings in our 2015 Master Plan Reexamination Report.

Mr. Alpaugh brought up his concern about the meaning of the verbiage in regards to outside storage and the length of the east side that the no outside storage refers to.

Mayor Morris explained that he and one of the members of Council along with Mr. Alpaugh etc. can meet and refine the outside storage areas and language in the ordinance.

Mayor Morris then called point of order when another member of the Public got up to speak and the Mayor reminded the Public that the Board cannot do anything to change the ordinance, that is the Council's job and they need to speak in front of the Council at their next meeting on Thursday, the 13th.

A motion was made by Mr. Heredia and seconded by Mayor Morris to end the debate and call the question.

The roll was called and the motion was approved by the following vote:

Ayes: Mr. Frank; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia; Mayor Morris;  
Mr. Rautenberg; Mr. Sauchelli  
Nays: none  
Absent: Mr. Gallerano; Mr. Willis  
Abstentions: none

At the conclusion of the discussion of Ordinance 22-15 –Ordinance Amending Chapter 310 of the General Ordinances of the Township of Mine Hill and Amending the Regulations pertaining to the Economic Development District (ED), a motion was made by Ms. Goldstein and seconded by Mr. Heredia to deem it consistent with the 2015 Master Plan Re-examination Report but Mayor Morris added with the modification that more research is needed.

The roll was called and the motion was approved by the following vote:

Ayes: Mr. Frank; Ms. Goldstein; Mr. Gonsalves; Mr. Gorman; Mr. Heredia; Mayor Morris;  
Mr. Rautenberg; Mr. Sauchelli  
Nays: none

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Absent: Mr. Gallerano; Mr. Willis  
Abstentions: none

**THE FLOOR WAS OPEN TO THE PUBLIC**

Mr. Alpaugh wanted to make a comment in regards to the hearing earlier in the evening that would be coming back in front of the Board at the next meeting, but Mr. Wiener explained to him that he is not able to make a statement on a matter that is pending before the Board.

**CLOSED SESSION**

None

**ADJOURNMENT**

There being no further business, a motion was made by Mr. Frank and seconded by Mr. Gorman to adjourn the meeting at 9:10 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan  
Planning Board Administrator / Recording Clerk

Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Planning Board Chairman