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## Planner Report #1

**To:** Mendham Borough Joint Land Use Board

**From:** Jessica C. Caldwell, PP, AICP, LEED-GA  
Joint Land Use Board Planner

**Subject:** Accordia Realty Assets, LLC  
Use Variance & Subdivision Application  
Block 2301, Lot 13  
350 Bernardsville Road  
Borough of Mendham, Morris County, New Jersey

**Application #:** 28-22

**Date:** February 9, 2023

### Introduction

1. The purpose of this report is to provide the Board guidance in its review of the bifurcated "D(1)" Use Variance and Subdivision application, submitted by Accordia Realty Assets LLC ("the Applicant"). The Applicant seeks to subdivide the property into two (2) lots and renovate the former Mother House building and outbuildings that front Hilltop Road for a total of 111-unit multi-family development. The proposed multifamily use is not a permitted principal use in the 5-Acre Residence Zone. This report also highlights associated bulk variances in connection with the proposed subdivision and multifamily proposal. Given that the 5-Acre Residence Zone is a single-family residential zone, the proposal also requires a "D(5)" Density Variance. Additionally, Section 60-3(1) of the Borough's Affordable Housing Ordinance requires that any multifamily development approved via a use or density variance including more than five (5) units requires a 20 percent affordable housing set-aside. Additionally, either a "D(1)" or "D(2)" variance will be required for the cell tower on the property.
2. While the property in question is not listed within the Borough of Mendham Historic Zone District or listed on the National Register of Historic Places, New Jersey Register of Historic Places or listed as a National Historic Landmark, the Joint Land Use Board has the power to refer this application for review by the Historic Preservation Commission according to Chapter 27 Historic Preservation Commission.



## **Documents Reviewed**

- Planning Report entitled, “350 Bernardsville Road Mendham Borough, Morris County Proposed Use Variance and Subdivision,” prepared by Heyer, Gruel & Associates, dated September 23, 2022.
- Three (3) Pages of the Variance Plan entitled, “350 Bernardsville Road Lot 13 Block 2301 Borough of Mendham Morris County New Jersey,” prepared by Gladstone Design, Inc., and dated December 9, 2022.
- One (1) Page of the Conceptual Subdivision Plan entitled, “350 Bernardsville Road Lot 13 Block 2301 Borough of Mendham Morris County New Jersey,” prepared by Gladstone Design, Inc., and dated December 9, 2022.
- Property Report entitled “350 Bernardsville Road” prepared by HLW, and dated December 14, 2022.
- Architectural Elevations and Floorplan entitled, “Sisters of Christian Charity Redevelopment 350 Bernardsville Road, Mendham NJ 07945,” prepared by HLW, and dated December 14, 2022.
- Traffic Impact Assessment prepared by Dolan & Dean Consulting Engineers, LLC, dated October 4, 2022.
- Boundary and Topographic Survey entitled, “350 Bernardsville Road Lot 13 Block 2301 Borough of Mendham Morris County New Jersey,” prepared by Gladstone Design, Inc., and dated April 11, 2022.
- Copy of application, checklist, prior resolutions, encumbrances and additional supporting documents

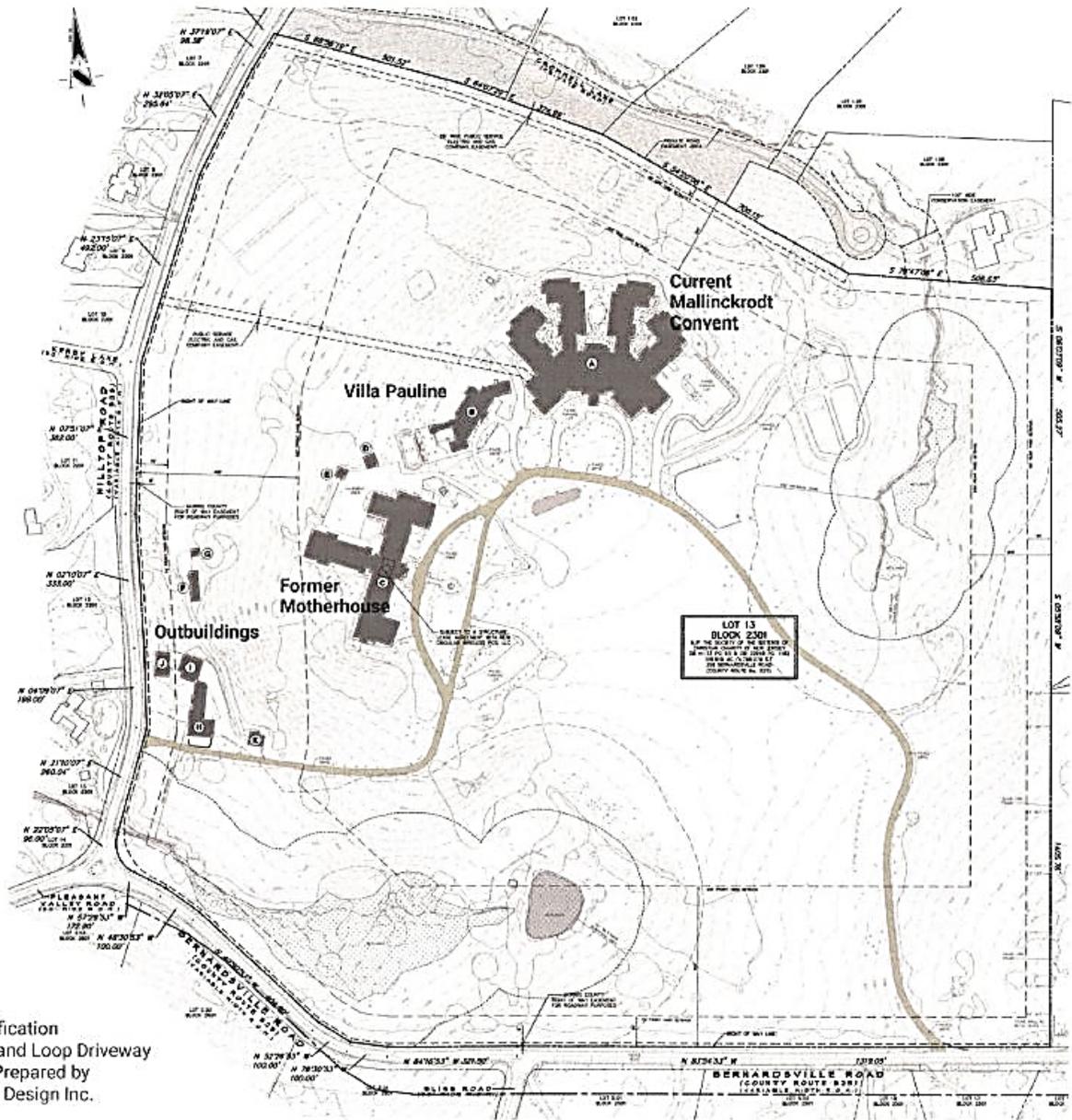
## **Existing Conditions**

### ***The Site***

The following should be considered relative to existing conditions on the site:

3. The subject property has frontage along Bernardsville Road and Hilltop Road thus, making the site a corner lot.
4. The subject property is 109.92 Acres (4,788,115.2 Square Feet)
5. The site is owned and operated by the Sisters of Christian Charity and has been operating in the same manner for almost 100 Years.
6. The site consists of the following buildings:
  - a. The active Mother House (Mallinckrodt Convent);
  - b. Villa Pauline (used primarily as a retreat and office space administrators);
  - c. The vacant former Mother House; and
    - i. There is an existing cell tower on the former Mother House that will now be placed on a smaller lot.
  - d. Several accessory structures near the Hilltop Road entrance.





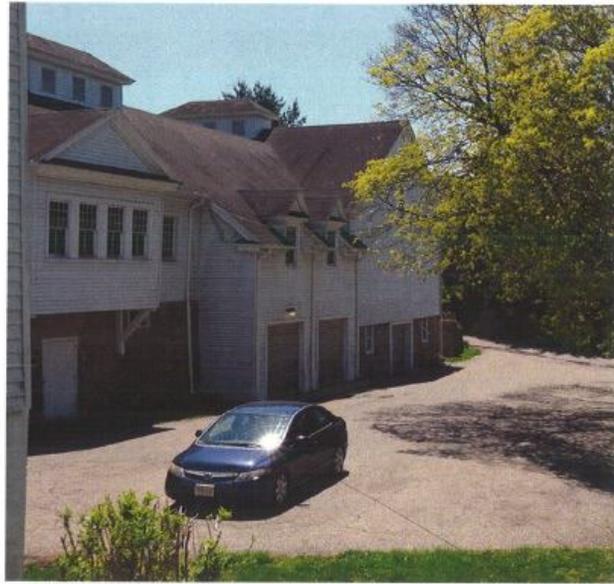
Site Identification  
Buildings and Loop Driveway  
Site Plan Prepared by  
Gladstone Design Inc.



Photographs of the Subject Property from the Application



Motherhouse  
Image taken by HLW



Outbuildings at Hilltop Road Entrance



Villa Pauline



Figure 1: Aerial Map



NJDEP 2020 High Resolution Orthophotography | NJOIT, OGIS

**Legend**



- Block 2301, Lot 13
- Road Centerline
- Parcels
- Municipal Boundary

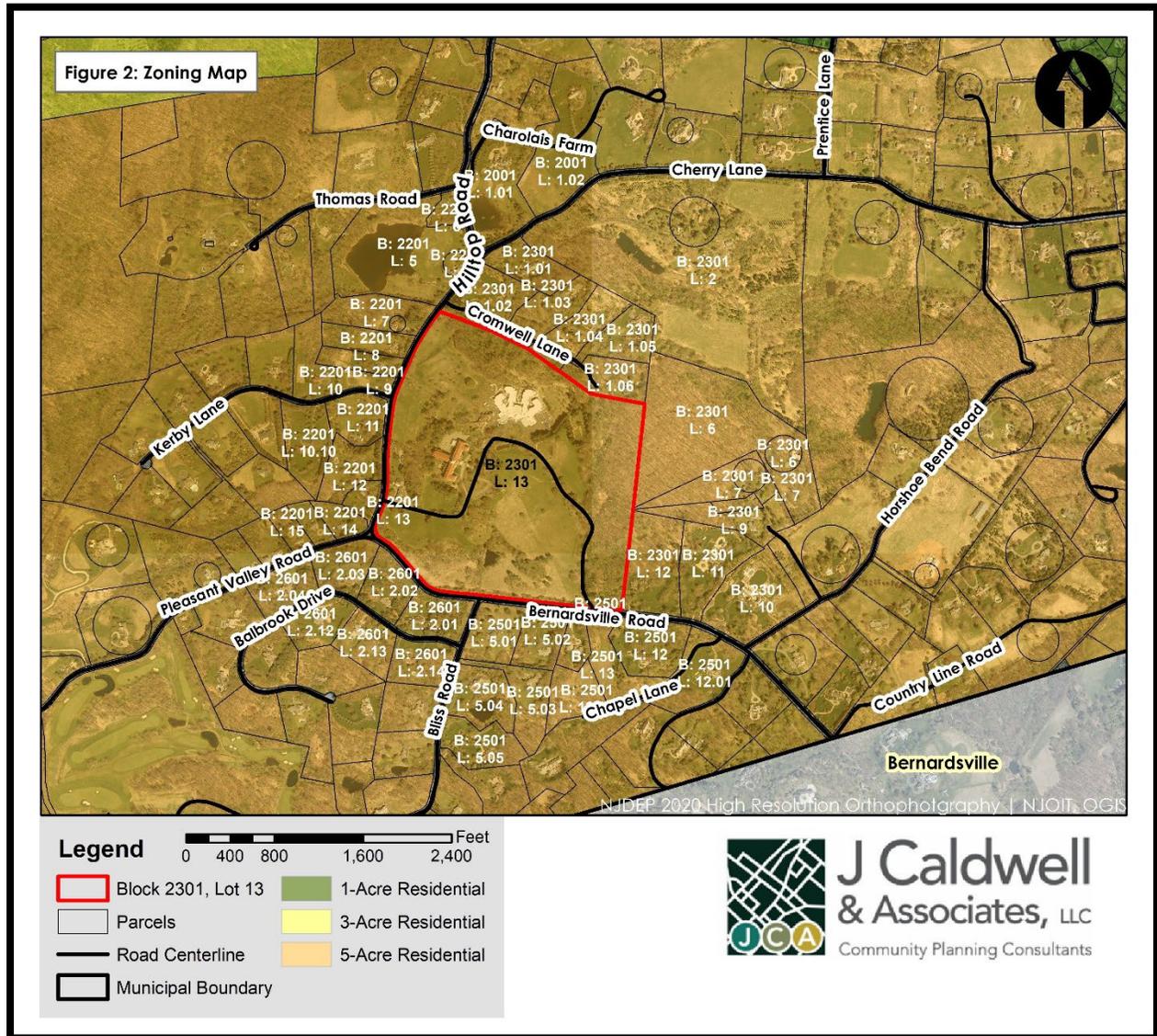


**J Caldwell  
& Associates, LLC**  
 Community Planning Consultants



## Zoning

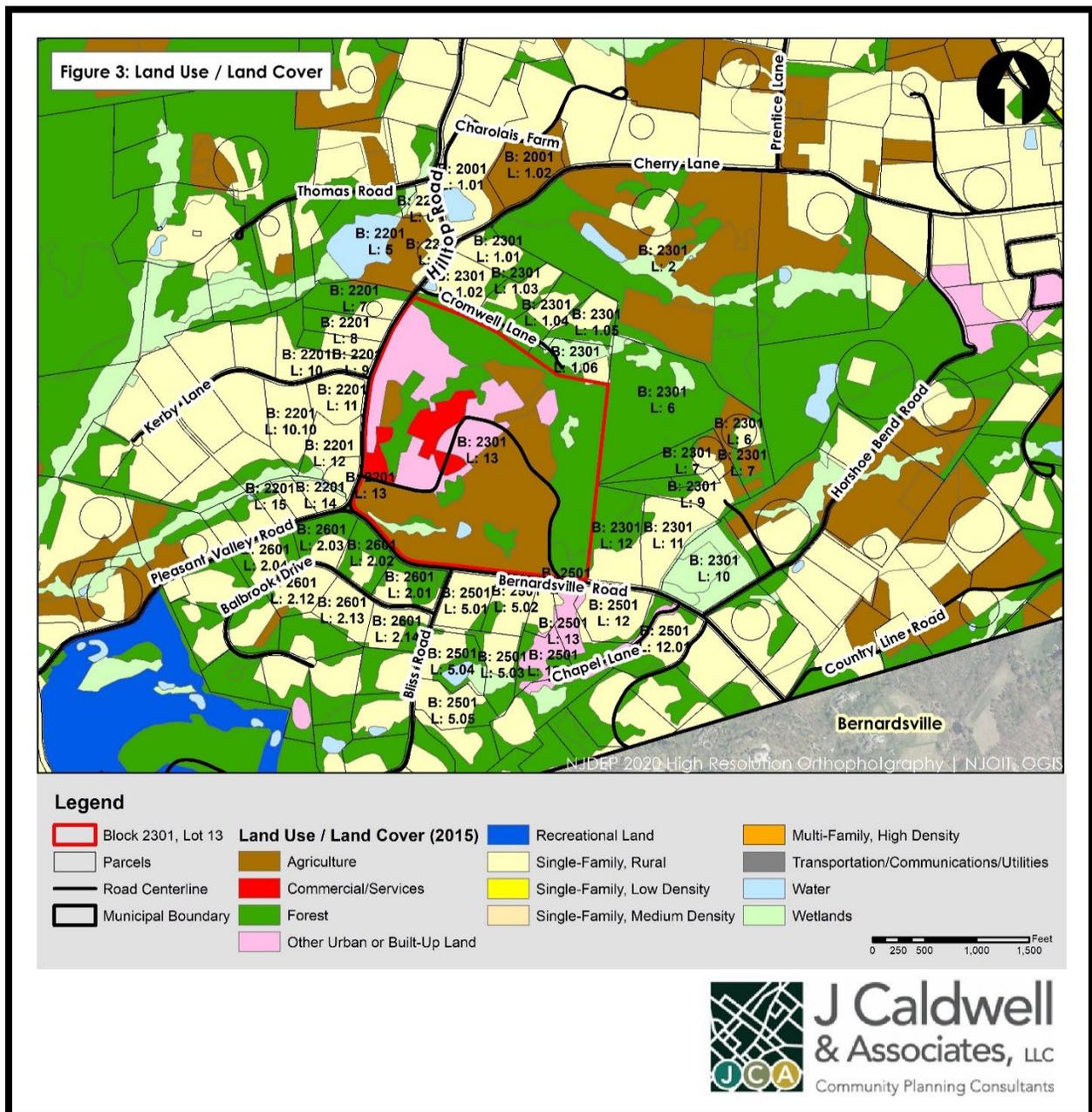
8. Block 71, Lot 21.01 is located within the **5-Acre, Residence Zone**.





### Neighborhood Context

- The subject property is surrounded primarily by rural single-family dwellings, farmland, and forested land. In addition, the Roxiticus Golf Club is located to the southwest of the subject property. Further to the north is the Borough of Mendham Historic District and Main Street corridor, which has a variety of uses including retail/commercial, restaurant establishments, civic buildings, and single- and multi-family residences. Additionally, the Borough of Bernardsville is situated to the south of the property.





## **Proposed Project**

10. The Applicant proposes to subdivide the 109.92-acre property into two (2) lots: one (1) 86.92-acre lot that will retain the current Mallinckrodt Convent, Villa Pauline, and the portion of the loop driveway that extends to Bernardsville Road; and one (1) 23-acre lot that will serve as the development site for the adaptive reuse of the former Mother House and outbuildings that front on Hilltop Road. The intent is for the Sisters of Christian Charity to maintain control of the 86.92-acre lot and to lease out the 23-acre lot for the development of the proposed 111-unit multi-family development, including 17 affordable rental units.

The existing Mother House is proposed to be repurposed to include 94 market-rate apartment units. The Applicant is proposing 9 one-bedroom apartments; 60 2-bedroom apartments; 15 2-bedroom duplex (2-story units); and 10 3-bedroom units. Total building area is 200,000 square feet. Amenities include: lounge/lobby area; mailroom; library; coworking space; chef's table; gym; pool; hot tub; bbq area; outdoor recreation areas; dog run; vegetable garden; rose garden; entry plaza; terraces and patios. An amenity basement is proposed with: additional gym and spa space; wine storage/tasting room; dog care area; game room; kids room; and additional co-working space. The Applicant is proposing 197 parking spaces for these units: 147 garage spaces and 54 surface spaces.

The project also proposes 17 affordable units, which is 15% of the total proposed unit count. The affordable units are proposed to be constructed within an existing barn for twelve (12) affordable units and an additional five (5) existing on-site residential units are also proposed to be deed restricted as affordable units. The proposed affordable units include: three one-bedroom units; ten 2-bedroom units; and four (4) three-bedroom units. The Applicant is proposing 35 parking spaces for these units: four garage spaces and 31 surface spaces.



**Proposed Multi-Family Residential**



**Proposed Affordable Units**



## Use & Bulk Requirements Table

### 5-Acre Residence Zone

Standard	Required 5-Acre Residence Zone	Required Religious Campus Zone	Existing	Proposed Lot 13.01 (5-Acre Residential)	Remaining Lot 13 (Religious Campus)
Use	Single-Family	Principal Uses in the 5-Acre Residence Zone	Religious Campus	<b>Multi-Family Residential (V)</b>	Religious Campus
	Playgrounds & Parks				
	Agriculture	Religious Campus			
	Home Occupations				
Min. Lot Area	5 Acres	80 Acres	109.92 Acres	23 Acres	86.92 Acres
Max. People per Campus <sup>1</sup>	N/A	157	TBD	N/A	TBD
Max. Families per Lot	1	N/A	N/A	<b>&gt; 1 per lot (V)</b>	N/A
Min. Street Frontage	N/A	1,000 FT	± 2,075 FT	N/A	± 2,308 FT
Min. Lot Width <sup>4</sup>	400 FT	N/A	± 2,075 FT	± 1,124 FT	N/A
Max. Building Height	45 FT	45 FT	34.45 FT <sup>2</sup> (Mother House)	<b>± 127 FT (V)</b>	36.45 FT <sup>2</sup>
			<b>± 127 FT (Residential) (E)</b>	<b>± 127 FT (E)</b>	N/A
Max. Lot Coverage	10%	10%	8.15%	<b>19.6% (196,605 SF) (V)</b>	5.85% (221,595 SF)
Max. Building Coverage	4%	5%	3.15%	<b>5.78% (57,903 SF) (V)</b>	2.45% (92,679 SF)
<b>Principal Building (Mother House)</b>					
Min. Front Yard Setback	N/A	400 FT	831 FT <sup>2</sup>	N/A	839.1 FT
Min. Rear Yard Setback	N/A	200 FT	905 FT <sup>2</sup>	N/A	261.8 FT
Min. Side Yard Setback <sup>3</sup>	N/A	200 FT	262 FT <sup>2</sup>	N/A	237.2 FT
<b>Principal Building (Resident/Multi-Family)</b>					
Min. Front Yard Setback	75 FT	N/A	408.3 FT <sup>2</sup>	408.3 FT	N/A
Min. Rear Yard Setback	60 FT	N/A	1,539 FT	153.7 FT	N/A
Min. Side Yard Setback <sup>3</sup>	40 FT	N/A	1,002 FT	47.2 FT	N/A
<b>OutBuildings Along Hilltop Road (Principal Building Setbacks)</b>					
Min. Front Yard Setback <sup>5</sup>	75 FT	400 FT	<b>15.0 FT <sup>2</sup> (E)</b>	<b>15.0 FT (V)</b>	791.2 FT
Min. Rear Yard Setback	60 FT	200 FT	1,340 FT	395.2 FT	1,339.9 FT
Min. Side Yard Setback	40 FT	200 FT	646.3 FT	<b>26.3 FT <sup>6</sup> (V)</b>	<b>62.1 FT <sup>7</sup> (V)</b>
<b>(E) = Existing Non-Conforming</b>		<b>(V) = Variance Required</b>			
<b>N/A = Not Applicable</b>		<b>TBD = To Be Determined</b>			

Notes:



1. Maximum density of 1.75 persons per acre for Religious Campus Zone.
2. Taken from plans referenced in Note 2B. Hilltop buildings are located in a principal building front yard.
3. No Parking or driveways shall be within the side yard setbacks.
4. For corner lots, the lesser frontage shall be the lot width.
5. Several of the existing outbuildings received approval in 2016 for preexisting non-conforming setback conditions that were increased due to the road widening easement that Morris County requested for the entire length of Hilltop Road and Bernardsville Road frontages. The required front yard setback is 400 feet for the Religious Campus Zone where the following were existing and approved:
  - The Hermitage is setback 15 feet from Hilltop Road.
  - The garage/barn behind the Hermitage is setback 70 feet from Hilltop Road.
  - The garage structure, which includes a residential development is 245 feet from Hilltop Road.
  - The garage next to the cottage is 123 feet from Hilltop Road.
  - The pump house is 386 feet from Bernardsville Road.
6. Existing Generator Building
7. Villa Pauline

## Review

### **Non-Compliant Items**

- 11. Multifamily Use:** According to § 215-13A, no building or land shall be used and no building or structure shall be erected, constructed, reconstructed, altered or repaired which is arranged, intended or designed for any use or occupancy except for the following: One single-family dwelling per lot which shall include any use of single-family dwellings protected by state statute; playgrounds and parks; agricultural uses; and home occupations involving individual craft or skill, such as dressmaking, millinery, cooking, pottery or a teacher giving lessons to one pupil at a time. **The Applicant is proposing to utilize the former Mother House and outbuildings on proposed Lot 13.01 for a 111-unit multifamily development, which is not a permitted principal use in the 5-Acre Residence Zone. A variance pursuant to N.J.S.A. 40:55D-70d(1) is required.**
- 12. Cell Tower Use:** There is an existing cell tower located on the old Mother House building. A resolution of approval for that use was not provided with the application. **Assuming that cell tower was granted a d(1) use variance; a new d(1) use variance would be required for the intensification of the use.**
- 13. Density (Maximum Families per Lot):** According to Chapter 215 Zoning Attachment 21a Schedule I, only one (1) family per lot is permitted in the 5-Acre Zone. The Applicant is proposing a 111-unit multifamily development, on proposed Lot 13.01 which is 23 acres. **A density variance is required pursuant to N.J.S.A. 40:55D-70d(5).**
- 14. Maximum Building Height:** According to Chapter 215 Zoning Attachment 215a Schedule I, the maximum height permitted in the 5-Acre Residence Zone is 45 feet. There is an existing non-conforming height of  $\pm$  127 feet for the existing Mother House building. **The Applicant should describe proposed building renovations to determine if an additional height variance is required.**



**15. Maximum Lot Coverage:** According to § 215-31.1H(1) & (2), the maximum permitted impervious coverage on a lot within the 1/4-, 1/2-, 1-, 3, and 5-Acre Residence Zones shall be calculated in accordance with the following schedule:

Lot Coverage Schedule	
Range of Lot Sizes (Square Feet)	Method of Calculation
0 to 21,779	$(0 \text{ to } 10,890 \text{ SF} \times .30) + (> 10,890 \text{ SF} \times .10)$ = permitted lot coverage
21,780 to 43,559	$(\text{SF} \times .20)$ = permitted lot coverage
43,560 to 130,679	$(43,560 \text{ SF} \times .20) + (> 43,560 \text{ SF} \times .05)$ = permitted lot coverage
<b>130,680 and over</b>	<b><math>(\text{SF} \times .10)</math></b> <b>= permitted lot coverage</b>

For each additional one foot of front building setback beyond the minimum required front yard setback, 12 square feet of lot coverage may be added to the calculated maximum permitted impervious coverage.

The maximum lot coverage permitted in the 5-Acre Residence Zone for proposed Lot 13.01 is 10%. The Applicant is proposing a lot coverage of 19.6%. **A variance pursuant to N.J.S.A. 40:55D-70c is required.**

**16. Maximum Building Coverage:** According to § 215-31.1i, the maximum permitted total coverage by all principal and accessory building footprints on a lot within the 1/4-, 1/2-, 1-, 3, and 5-Acre Residence Zones shall be calculated in accordance with the following schedule:

Building Footprint Schedule	
Range of Lot Sizes (Square Feet)	Method of Calculation
0 to 21,779	$(0 \text{ to } 10,890 \text{ SF} \times .18) + (> 10,890 \text{ SF} \times .02)$ = permitted building footprint
21,780 to 43,559	$(21,780 \text{ SF} \times .10) + (> 21,780 \text{ SF} \times .06)$ = permitted building footprint
43,560 to 130,679	$(43,560 \text{ SF} \times .08) + (> 43,560 \text{ SF} \times .02)$ = permitted building footprint
<b>130,680 and over</b>	<b><math>(\text{SF} \times .04)</math></b> <b>= permitted building footprint</b>

The maximum building coverage permitted in the 5-Acre Residence Zone for proposed Lot 13.01 is 4%. The Applicant is proposing a building coverage of 5.78%. **A variance pursuant to N.J.S.A. 40:55D-70c is required.**

**17. Outbuilding Setbacks– Minimum Front Yard Setback:** According to Chapter 215 Zoning Attachment 215b Schedule II, the minimum front yard setback for principal buildings in the 5-Acre Residence Zone is 75 feet. Existing Lot 13 has a building front



yard setback of 23.4 feet and the Applicant is proposing the same for proposed Lot 13.01. **A variance pursuant to N.J.S.A. 40:55D-70c is required.**

**18. Outbuilding Setbacks– Minimum Side Yard Setback:**

- a. According to Chapter 215 Zoning Attachment 215b Schedule II, the minimum side yard setback for principal buildings in the 5-Acre Residence Zone is 40 feet. The Applicant is proposing a side yard setback of 26.3 feet (existing generator) for the existing generator building on proposed Lot 13.01. **A variance pursuant to N.J.S.A. 40:55D-70c is required.**
- b. According to § 215-13.1D(7)(b), the minimum side yard setback for buildings in the Religious Campus Zone is 200 feet. The Applicant is proposing a side yard setback of 62.1 feet (Villa Pauline) on remaining Lot 13. **A variance pursuant to N.J.S.A. 40:55D-70c is required.**

**19. Affordable Housing:** According to § 60-1, multifamily residential development of five dwelling units or more shall produce affordable housing at a set-aside of 20%. The Applicant is proposing an affordable rental housing set-aside of 15% of the total number of units (111 units) where 20% is required. **A variance was requested; however, this section is not in the zoning ordinance and variances cannot be granted from this section of the ordinance. The Applicant should revise their application to include a 20% affordable housing set-aside.**

**Applicant Testimony Required**

**20. Cell Tower:** There is an existing cell tower located on the old Mother House building. A resolution of approval for that use was not provided with the application. **Assuming that cell tower was granted a d(1) use variance; a new d(1) use variance would be required for the intensification of the use. Testimony is required regarding the initial approval and continued proposal relative to the existing cell tower.**

**21. Electric Vehicle Charging Stations/Service Equipment:** Effective in all New Jersey municipalities upon DCA publication on September 1, 2021, regardless of whether a municipality has adopted the Model Ordinance. Electric Vehicle Supply Equipment (EVSE) and Make-Ready parking spaces count toward minimum parking mandates, giving a two-for-one credit for EV parking, up to 10% of the total required parking. All calculations for EVSE and Make-Ready spaces are rounded up to the next full parking space. The Applicant is proposing 197 off-street parking spaces wherein 4% of the total number of spaces (eight [8] spaces) must be EVSE or Make-Ready spaces and 5% of these spaces must be ADA accessible. **No EVSE or Make-Ready spaces are proposed. The Applicant should confirm that such spaces will be provided at the time of site plan application.**

**22. Solid Waste/Recycling:** According to § 183-9A, any application to the Mendham Borough Planning Board for subdivision or site plan approval for the construction of multifamily dwellings of three or more units, single-family developments of 50 or more units or any commercial, institutional or industrial development for the



utilization of 1,000 square feet or more of land must include a recycling plan. **A recycling plan was not submitted as part of this application. Testimony should be provided as to the proposal for the development at the time of site plan application.**

- 23. Loading:** According to § 195-46A, in any district in connection with every building or building group or part thereof hereinafter erected which is to be utilized by commercial uses or requires the distribution by vehicles of material or merchandise and for any residential development containing 30 or more dwelling units and for large-scale public and quasi-public uses, there shall be provided and maintained, on the same zone lot with such building, off-street loading spaces in accordance with the requirements of Table 5.

Off-Street Loading Requirements		
Land Use	At Which First Berth is Required	At Which Second Berth is Required
Commercial		
Retail	5,000 SF	20,000 SF
Service Establishments	5,000 SF	40,000 SF
Commercial Recreation	5,000 SF	100,000 SF
Restaurants	5,000 SF	25,000 SF
Office Buildings	5,000 SF	100,000 SF
Funeral Homes	10,000 SF	100,000 SF
Institutional Public		
Schools	10,000 SF	100,000 SF
Hospitals, Nursing Homes	10,000 SF	100,000 SF

**The architectural plans show a loading space; however, a space is not shown on the variance plan. The Applicant should indicate if loading will be provided at time of site plan, particularly a loading space for moving vans.**

- 24. Lighting:** According to § 195-47A, in connection with every site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light and height and intensity in footcandles. The design standards in § 195-47 shall be followed. **The Applicant has not submitted a lighting plan. The application is bifurcated such that a lighting plan can be submitted at time of site plan application.**
- 25. Landscaping:** According to § 195-48A, a landscaping plan shall be submitted with each site plan application. The plan shall identify existing and proposed trees, shrubs, bushes, plant material, ground cover, and natural features, such as boulders and rock outcroppings, and their size. **The Applicant has not submitted a landscaping plan. The application is bifurcated such that a landscaping plan can be submitted at time of site plan application. Some landscaping concepts are provided in the architectural plans. Screening and buffering may be a consideration of the Board as part of any variance approval.**



- 26. Affordable Housing:** According to § 60-3(1), multifamily residential development of five dwelling units or more shall produce affordable housing at a set-aside of 20%. **The Applicant shall revise the plans to include the total number of proposed affordable housing units, building/floorplan location, and the associated unit-types as required by § 60-1 et seq. This would require 23 affordable units: a maximum of five (5) one-bedroom units; 13 two-bedroom units; and a minimum of five (5) three-bedroom units. Parking will also need to be adjusted accordingly.**
- 27. Solid Waste/Recycling:** According to § 183-4, all residential, institutional and commercial inhabitants of Mendham Borough shall source separate designated materials from all other solid waste for recycling. **The Applicant should provide testimony regarding the location of existing and proposed dumpster and recycling enclosure(s)/location(s).**
- 28. Traffic Impact:** The Traffic Impact Assessment prepared by Dolan & Dean provides a review for the redevelopment of proposed Block 2301, Lot 13.01. The following table summarizes the total trip generation projections for each land use for the weekday morning and evening peak hours.

Land Use	Size	Morning Peak			Evening Peak		
		Enter	Exit	Total	Enter	Exit	Total
Mid-Rise	94 Units	8	27	35	23	14	37
Low-Rise	17 Units	7	21	28	18	10	28
<b>Total</b>	<b>111 Units</b>	<b>15</b>	<b>48</b>	<b>63</b>	<b>41</b>	<b>24</b>	<b>65</b>

The proposed multifamily residential development is projected to generate 15 entering trips and 48 exiting trips during the morning peak hour and 41 entering and 24 exiting trips during the evening peak hour. Primary access to the site will consist of an ingress and egress driveway along Hilltop Road. In addition, there is an ingress-only driveway along Bernardsville Road for proposed Block 2301, Lot 13 (Sisters of Christian Charity owned lot), which connects to the Hilltop Road driveway. **Impacts of traffic on adjacent roadways and intersections should be provided in testimony.**



**Planning Review**

**29. Parking:** The Applicant is proposing off-street parking spaces in accordance with R.S.I.S. parking standards under N.J.A.C. 5:21-4.14 as follows:

Required Parking Summary				
Use	Number of Units	Parking Factor	Parking Required	Parking Provided
<i>Main Building (Motherhouse)</i>				
1-BR Apt	9	1.8 Spaces / Unit	16.2 Spaces	<b>197 Spaces</b> (147 Covered / 54 Surface)
2-BR Apt	75	2.0 Spaces / Unit	150 Spaces	
3-BR Apt	10	2.1 Spaces / Unit	21 Spaces	
<b>Subtotal</b>	<b>94</b>		<b>187.2 Spaces</b>	
<i>Outbuildings</i>				
1-BR Apt	3	1.8 Spaces / Unit	5.4 Spaces	<b>35 Spaces</b> (4 Garage / 31 Surface)
2-BR Apt	10	2.0 Spaces / Unit	20 Spaces	
3-BR Apt	4	2.1 Spaces / Unit	8.4 Spaces	
<b>Subtotal</b>	<b>17</b>		<b>33.7 Spaces</b>	
<b>Total Parking Required</b>			<b>221 Spaces</b> <sup>1, 2</sup>	
<b>Total Parking Provided</b>			<b>232 Spaces</b>	

Notes:

1. When the calculation of the required number of parking spaces results in a fractional space for the entire development, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half shall be counted as one parking space.
2. Per R.S.I.S. – Multi-Family/Apartment attached units include provisions for guest parking (0.5 spaces per dwelling unit), parking shall be provided for one-street or in common parking areas (56 spaces required, 85 provided).
  - a. The Applicant is proposing 232 off-street parking spaces where 221 spaces are required.
  - b. According to § 195-45C(1)(a), provisions shall be made for the safe and adequate circulation of pedestrians and vehicles within and adjoining the subject property. The width of all aisles providing direct access to individual parking stalls shall be in accordance with the standards established below:



Minimum Aisle Width (Feet)	
Parking Angle (Degrees)	Minimum Aisle Width (Feet)
0 (Parallel)	12
30	12
45	13
60	18
<b>90 (Perpendicular)</b>	<b>24</b>

The Applicant is proposing two (2) parking areas.

- i. One (1) parking area is proposed to be adjacent to the existing accessory outbuildings. The Applicant is proposing an aisle width of 24 feet for parking spaces with various parking angles including perpendicular parking.
  - ii. The other parking area is proposed to be underground adjacent to the existing Mother House to the West. The Applicant is proposing an aisle width of 24 feet for parking spaces with various parking angles including perpendicular parking.
- c. According to § 195-45C(3)(a), except for attendant parking, all parking spaces shall be designed to be free and clear of all obstruction to individual parking stalls. Such parking spaces shall be located in such a fashion as to permit all vehicles to exit in a safe and orderly manner. Under no condition shall vehicles be permitted to back out of a parking lot driveway or otherwise block the free movement of traffic within the parking area or specific points of safety control, such as fire hydrants, doorways, elevators or other similar locations.



## **Criteria for Granting “D(1)” Use Variances:**

The Applicant is requesting a use variance to utilize the existing principal building and accessory buildings on proposed Block 2301, Lot 13.01 for a 111-unit multifamily development, which is not a permitted principal use in the 5-Acre Residence Zone.

- A. The Zoning Board of Adjustment has the power to grant “d(1)” variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) “in particular cases and for special reasons.” This is the so-called **positive criteria** of a “d(1)” variance. The courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons” *Medici v. BPR Co.*, 107 N.J. 1 (1987).
- B. For non-inherently beneficial uses, the benefit to the general welfare comes from the development of a site in the community that is particularly suited for the proposed use. Providing proofs that the proposed application promotes at least one of the purposes of zoning found in MLUL, Section 40:55D-2, also provides one aspect of the positive criteria for a non-inherently beneficial use application. The Applicant does not have to demonstrate that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013). **For this criterion, the Applicant should identify those aspects of the site that render it particularly suitable to the use. Additionally, any proposed mitigating factors for the use should also be discussed.**
- C. The Applicant must also satisfy the **“negative criteria.”** The negative criteria require a two-part proof: (1) that the proposed use can be granted without any substantial detriment to the public and (2) the proposed use will not substantially impair the intent and the purpose of the master plan and zoning ordinance **(Appendix A)**.
- D. As to the zone plan and zoning ordinance, the *Medici* court held that the applicant must prove an “enhanced quality or proof” that there will be no substantial impairment to the zone plan and ordinance. **The Applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone.**



### Criteria for Granting “D(5)” Use Variances:

In conjunction with the principal use variance noted above, a density variance is also required pursuant to N.J.S.A. 40:55D-70(d)(5) to permit a density greater than that permitted in the zone. The Applicant should provide testimony to the Board describing how the proposed deviation satisfies the “positive” and the “negative” criteria for the granting of a “d” variance.

- A. In terms of positive criteria, the Applicant should testify regarding the special reasons affecting the property. These special reasons can be proven in two ways: (1) when the refusal to allow the project would impose undue hardship and/or (2) when the proposed project carries out a purpose of zoning as defined under the purposes of the MLUL (Municipal Land Use Law). The (d)(5) density variance has a more relaxed standard of prods than a (d)(1) use variance, however the above criteria must be shown along with proofs that the problems associated with the increase in density can be accommodated on the site, *Price v. Himeji, LLC*, 214 N.J. 263, 296-297 (2013).
- B. The negative criteria require a two-part proof: (1) that the proposed use can be granted without any substantial detriment to the public good and (2) the proposed use will not substantially impair the intent and the purpose of the zone plan or zoning ordinance. **(Appendix A)**.

### Criteria for Granting “C” Bulk Variances:

Variances can be granted by the Board, pursuant to N.J.S.A. 40:55D-70c where two provisions exist:

- A. The first provision for granting a “c” variance is under N.J.S.A. 40:55d-70(c)(1) where the Board must find whether there has been a showing of peculiar exception practical difficulties or exception undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures uniquely affecting this specific piece of property or the structures lawfully existing thereon. The two-part negative criteria must also be addressed.
- B. The second provision for granting a “c” variance is under N.J.S.A. 40:55D-70(c)(2) where the Board must find that the application related to a unique situation on a specific piece of property, that the purposes of the MLUL **(Appendix B)** would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and the variance will not substantially impair the zone plan or ordinance. Under (c)(2), **the Applicant should show that the proposal is a**



**better zoning alternative to that which is permitted by the ordinance and provides benefits to the community as a whole, not just the Applicant.** The two-part negative criteria must also be addressed.

Very truly yours,

Jessica C. Caldwell, P.P., A.I.C.P, L.E.E.D. – G.A.

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Mendham Borough Joint Land Use Board Planner

cc: Via-Email Only:

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## **Appendix A**

### **Borough of Mendham Master Plan (2006)**

#### *(Goals and Objectives)*

1. To retain the small-town character of the community by implementing the Village Planning Criteria as adopted for Village Center Clusters to plan for new development within the Village boundary.
2. To preserve the rural quality of the Borough and its historic heritage beyond the Village environs.
3. To protect and preserve the Borough's open space and natural resources of soils, vegetation, air, and water through the wise use of planning techniques and careful control of land development.
4. To maintain a reasonable balance and variety of housing options within an approved housing element.
5. To maintain healthy business districts with a diversity of local businesses to serve the residents of Mendham Borough.
6. To improve traffic flow and provide for the safe movement of people and vehicles through the Borough while minimizing adverse impact on residential streets.
7. To provide adequate local community services and recreational facilities.
8. To recognize and encourage preservation and designation of those historic properties and buildings that contribute to the unique atmosphere that is Mendham, particularly those in the Historic District and which are on the State and National Registers of Historic places.
9. To integrate new development redevelopment into the historic fabric of the Village Center area.
10. To maintain the quality and historic character of existing buildings, including, all structures which contribute to the Borough's history.
11. To continue to participate in area-wide programs for proper watershed management.



## **Appendix B**

### **Purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2)**

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
- e. To promote the establishments of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of New Jersey citizens;
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;
- l. To encourage senior citizen community housing construction;
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- n. To promote utilization of renewable energy resources; and
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and the complement municipal recycling programs.