

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
REGULAR MEETING  
Tuesday, September 1, 2020  
Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER/FLAG SALUTE**

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Vice Chairman Palestina, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**OPENING STATEMENT**

Notice of this meeting was published in the *Star Ledger* and the *Daily Record* in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House. The meeting is being conducted electronically, with Notice as required, consistent with the Governor's Emergency Declarations and the guidance issued by the NJ Department of Community Affairs along with limited seating at the Garabrant Center.

**ROLL CALL**

Chairman Seavey – Present	Mr. Paone– Present
Mr. Palestina - Present	Ms. Cass – Absent
Mr. Smith - Present	Mr. Dick – Present
Mr. Ritger – Present	

Alternate:                    Mr. Egerter, Alternate I- Present  
                                      Alternate II - Vacant

Also present: Mr. Germinario, Esq.  
                  Mr. Ferriero, Engineer  
                  Ms. Caldwell, Planner

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**MINUTES**

Vice Chairman Palestina asked for comments on the minutes of the regular meeting of July 14, 2020. There being no corrections, Mr. Ritger made a motion to approve the minutes as written and Mr. Smith seconded.

**ROLL CALL**

In Favor: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Paone, Mr. Dick, Mr. Egerter, and Chairman Seavey

Opposed:

Abstain:

**PUBLIC COMMENT**

Vice Chairman Palestina opened the meeting to the public for questions and comments on items not included on the agenda. There being none, the public session was closed.

**BOA#04-20**

Cumella & Martinez (Interior Modifications- D1 Variance)  
20 Halstead Rd.  
Block 705 Lot 13

Present: Ms. Martinez- Applicant  
Ms. Cumella – Applicant

Mr. Germinario explained that the Zoning officer interpreted the application as an in - law suite which would be a separate living area above the garage and was denied. Mr. Germinario asked for clarification on the application.

Alexandra Martinez and Moira Cumella were sworn in.

Ms. Martinez explained that over the garage area is an office space and a half bath and they would like to add a kitchen area. The area can only be accessed through the shared garage and family room. Both parties occupy the main house and the intent of the additional kitchen is to have extra space to cook holiday meals and traditional foods.

Mr. Germinario asked if there was going to be a separate living area and it was just for food preparation.

Ms. Martinez stated that there would only be an area just for food preparation .

Mr. Ferriero stated that some of the confusion was that on the application it states in - law suite. Ms. Martinez said that Ms. Cumella prepared the application and she was confused with the terminology used did not match the intended usage of the kitchen.

Mr. Germinario stated that since there is no additional living area that the Board could remand the application back to the Zoning Officer.

Mr. Ritger asked that if the application is remanded back to the Zoning officer will there be specifications that there will be nothing additional.

Mr. Ferriero said that he will take the information back to the Zoning Officer that this is not an in-law suite and that it is an application for a secondary kitchen only. As part of the zoning permit there will be stipulations that it is just a secondary kitchen and that there will be no separate living area and no full bath and would not be leased or rented to anyone else.

Chairman Seavey said that the application is not for a mother-daughter and not going to be a separated apartment and everything is allowed and feels as though it doesn't fall under the Board of Adjustments jurisdiction.

**PUBLIC COMMENT**

Vice Chairman Palestina opened the meeting to the public for questions and comments on the Cumella & Martinez application. There being none, the public session was closed.

Mr. Germinario recommended that the motion would be to remand this application back to the Zoning Officer with the instructions that this is not a mother daughter suite or separate living area and that there is only a kitchen area being added. Also, there will be no rental or lease and would be used by the occupants of the main house.

Mr. Ritger made the motion as per Mr. Germinario' s recommendations and Mr. Smith seconded.

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

In favor: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Paone, Mr. Dick, Mr. Egerter, and Chairman Seavey  
Opposed: None  
Abstentions: None

The motion carried.

**INTERPRETATION:**

**BOA# 05-20**

Iconic Wellness Center  
5 Cold Hill Rd. S, Unit 26  
Block 2701 Lot 5

Present: Mr. Selvaggi – Attorney  
Ms. Kolarov - Applicant  
Ms. Pellazgu - Applicant  
Ms. Korogodsky - Applicant

Mr. Selvaggi summarized the application of interpretation.

Ms. Kolarov, Ms. Pellazgu, and Ms. Korogodsky were sworn in.

Ms. Pellozgu explained that they would like to open an office that weight loss consultations, vitamin supplements and anti-aging like Botox and facials. Ms. Pellazgu stated that they are by appointment only and in the afternoons and Saturday morning, closed on Sunday.

Mr. Ritger asked how many cars maximum would be used, and Ms. Pellazgu stated that approximately 5 spaces would be used at any given time.

Mr. Egerter stated that he is familiar with the location and felt that there is plenty of parking. Mr. Ritger asked how many patients would be seen at any given time and Ms. Pellazgu stated approximately two.

Mr. Palestina asked the Board look at the fact whether this is a medical office and then parking would be discussed.

Mr. Ritger stated that a decision would have to be made whether this constitutes a professional office or personal service office.

Mr. Germinario referenced Ms. Caldwell’s report where there wouldn’t be the volume of turn over that a medical office would.

Mr. Ferriero stated that in his experience with the past applications at this location, that the restriction of non-medical office was based on the volume of turn over on the parking.

Mr. Smith’s interpretation of this application is that it is a wellness center.

Mr. Germinario recommended that the motion would be based on the specific characteristics of this wellness center as testified to by the applicant and supported by testimony by the professionals the key characteristics that motivated the Planning Board’s resolution restriction in terms of parking demand is more similar to a personal service office than a professional or medical office. Therefore, the Board’s interpretation is that the application is not in violation with the restriction in the resolution.

**PUBLIC COMMENT**

Vice Chairman Palestina opened the meeting to the public for questions and comments on this application. There being none, the public session was closed

Mr. Ritger made the motion as per Mr. Germinario’s recommendations and Mr. Smith seconded.

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

In favor: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Paone, Mr. Egerter, and Chairman Seavey

The motion carried.

**COMPLETENESS:**

**BOA#03-20**

Justin Zaccone (Shed)  
20 Gunther St  
Block 401 Lot 7

Present: Mr. Zaccone - Applicant

Mr. Ritger recused himself.

Mr. Zaccone was sworn in.

Mr. Ferriero summarized his completeness letter dated June 2, 2020. Mr. Ferriero recommends that the application be waived for completeness and if there is additional in needed it can be brought up in testimony.

Motion by Mr. Smith, seconded by Mr. Egerter and unanimously carried to deem the application complete.

**ROLL CALL:** The result of the roll call was 5 to 0 as follows:

In favor: Mr. Palestina, Mr. Smith, Mr. Paone, Mr. Egerter, and Chairman Seavey

Opposed: None

Abstentions: None

The motion carried.

**HEARING:**

**BOA#03-20**

Justin Zaccone (Shed)  
20 Gunther St  
Block 401 Lot 7

Present: Mr. Zaccone – Applicant

Mr. Zaccone summarized the application and the placement of the shed. Mr. Zaccone stated that the barn was bought prior to knowing the zoning requirements. Mr. Zaccone testified that he spoke with his neighbors and they were fine with the new shed.

Mr. Germinario asked what variances Mr. Zaccone was asking for. Mr. Zaccone stated that he was looking for a variance for side yard setback and Mr. Ferriero stated that he would be also looking for a variance for a shed that was preexisting. Mr. Germinario questioned whether the preexisting shed could be removed.

Mr. Zaccone stated that he would like to keep the preexisting shed and explained that there was an old shed on a concrete slab when the property was purchased, and he has since replaced it.

Mr. Zaccone explained that the shed will be finished for office and fitness space only and is just under 286 square feet and 1.5 stories.

Mr. Palestina asked about the notice and Mr. Germinario stated that adequate notice has been provided for the hearing.

Mr. Germinario pointed out that another variance is necessary based on the shed being 1.5 stories.

Mr. Palestina asked if there is another location for the shed to be placed that would be within the setbacks.

Mr. Zaccone stated that there is but the location that is in now is easily accessible from the house.

Mr. Seavey asked if a structure over a certain amount needs a foundation and Mr. Ferriero stated that anything over 200 sq. ft needs a permit but is uncertain about the foundation. Mr. Zaccone testified that he was told by an employee in the Construction Department of the Borough that 6 inches of gravel was what was needed and there was 12 inches put down.

**PUBLIC COMMENT**

Vice Chairman Palestina opened the meeting to the public for questions and comments on the application. There being none, the public session was closed.

Mr. Smith made a motion to approve the C2 variance with conditions outlined in the resolution and was seconded by Mr. Egerter.

ROLL CALL: The result of the roll call was 4 to 1 as follows:

- In favor: Mr. Palestina, Mr. Smith, Mr. Paone, and Mr. Egerter
- Opposed: Chairman Seavey
- Abstentions: Mr. Ritger

The motion carried.

**RESOLUTION:**

**BOA#03-19**

Six Main St. Mendham, LLC

6 East Main St.

Block 601, Lot 3

**(Preliminary & Final Site Plan with (c) and (d) variances)**

Mr. Germinario summarized the Six Main St. Mendham, LLC second part of the bifurcated application and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. Ritger seconded.

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

- In favor: Mr. Palestina, Mr. Smith, Mr. Ritger, Mr. Paone, Mr. Egerter and Chairman Seavey
- Opposed: None
- Abstentions: None

The motion carried. The resolution follows.

*BOROUGH OF MENDHAM BOARD OF ADJUSTMENT*

*RESOLUTION OF MEMORIALIZATION*

*Decided: July 14, 2020*

*Memorialized: August 4, 2020*

*IN THE MATTER OF SIX MAIN ST. MENDHAM, LLC  
"C" VARIANCE AND SITE PLAN BIFURCATED APPLICATION  
BLOCK 601, LOT 3  
APPLICATION NO. BOA #03-19*

*WHEREAS, Six Main St. Mendham, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final site plan approval with "C" and "D" variances, by application dated 10/13/19; and*

*WHEREAS, the application was bifurcated pursuant to N.J.S.A. 40:55D-76b, and a public hearing was held on 2/4/20 to consider only the "D" variance relief associated with the application. The "D" variances were approved by Resolution memorialized 3/3/20, and public hearings to consider the "C" variances and overall site plan phase of the bifurcated application were held on 3/3/20, 6/2/20 and 7/14/20; and*

*WHEREAS, the Board has determined that the Applicant has complied with all land use procedural requirements of Chapter 124 of the Ordinance of the Borough of Mendham, and has complied with the procedural requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., including without limitation, public notice pursuant to N.J.S.A. 40:55D-12; and*

*WHEREAS, the Board makes the following findings and conclusions, based on the documents, testimony and other evidence comprising the hearing record:*

*1. The property which is the subject of the application consists of 0.48 acres (0.44 acres after right-of-way dedication) located in the Historic Business (HB) Zone. The property is improved with a main building comprising a 2-story frame structure with a loft in front and a 1-story masonry structure with a basement in the rear. Two formerly accessory buildings located behind the main building are a 1-story masonry garage and a 2-story frame barn. Vehicular access to the rear buildings is through a common driveway between this Lot 3 and adjoining Lot 4 to the east. The site has 4 parking stalls behind the garage and easement/license rights to use 10 parking spaces belonging to 2 East Main St. after business hours. The Applicant has obtained authorization from the Borough to use 10 parking spaces in the municipal public parking lot located at Block 601, Lot 16, for overnight use by tenants of residential units.*

*2. The proposed development of the subject property comprises Preliminary and Final Major Site Plan and Variance approval for a mixed-use structure at 6 East Main Street. The proposal is to convert the main building and two (2) accessory structures into a mixed-use development with three (3) principal structures containing two (2) commercial spaces and seven (7) apartments with associated storage areas. The main building is proposed to include two (2) commercial business spaces, one (1) on the first floor and one (1) in the basement, along with two (2) storage spaces in the basement. There are four (4) apartments proposed in the main building, two (2) in the garage structure and one (1) in the barn structure. The property is located in the HB Historic Business Zone where commercial uses are permitted, however, due to the uses proposed, the density and location, several use variances were required. Bulk variances are also required for lot area, side yard setback, lot coverage and parking. A variance for sign height is also required.*

*3. The Applicant has submitted the following documents that depict and/or describe the proposed improvements:*

*Architectural Plans, consisting of 9 sheets, dated 6/22/20, prepared by William P. Byrne, Architect*

*Preliminary and Final Major Site Plans, consisting of 14 sheets, revised through 6/23/20, prepared by John Hansen, PE, EL&P Associates, Inc.*

*Traffic and Parking Assessment Report, dated 6/22/20, prepared by Matthew J. Seckler, PE and John R. Corak, PE*

*4. In support of the current phase of the application, the Applicant has submitted the following documents, which are part of the hearing record:*

*Borough of Mendham Resolution #095-2020 Resolution Authorizing the Issuance of Ten (10) Overnight Parking Permits to Six Main Street Mendham, LLC for the Mendham Borough Municipal Lot and the Construction of Seven (7) Residential Dwelling Units on Site, dated 6/10/20  
Historic Preservation Committee letter, dated 7/8/20, with attachments*

5. *The Board's planning and engineering professionals and/or consultants have submitted the following reports concerning their reviews of the current phases of the application, which are part of the hearing record:*

*Paul Ferriero, PE, dated 7/13/20  
Jessica Caldwell, PP, dated 7/13/20*

6. *Borough officials and/or agencies have submitted the following reports concerning their reviews of the current phase of the application, which are part of the hearing record:*

*Historic Preservation Committee letter, dated 7/8/20*

7. *In the course of the public hearings on this phase of the application, the following exhibits were marked and are part of the hearing record:*

*A-1 Revised Sheet 7 of architectural elevations  
A-2 Rear Garage architectural elevations  
A-3 Revised Sheet 8 Barn elevations  
A-4 Architectural Sheet 10 with signage notations  
A-5 Fig. A1 of Stonefield Traffic and Parking Report  
A-6 Composite site photos and map*

8. *In the course of the public hearings, the Applicant was represented by Mark Blount, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:*

*Jay Grant, Applicant's principal owner  
William Byrne, AIA, Applicant's architect  
John Hansen, PE, Applicant's engineer  
Phil Abramson, PP, Applicant's planner  
Matthew Seckler, PE, Applicant's traffic engineer*

9. *The documentary evidence and the testimony of the Applicant and/or Applicant's witnesses adduced the following facts:*

*Architect William Byrne testified that the revised architectural plans had eliminated one of the three commercial spaces originally proposed and that the revised plans had been endorsed by the Historic Preservation Committee. The main building is now proposed to have two apartment units and one commercial space on the first floor and two apartments on the second floor/loft. Responding to comments in the Board Planner's report, he referred to Exhibit A-4 and testified that the overall area of wall/awning signs is 4.2% of the area of the main building face, which complies with the maximum of 5% under Ordinance §215-8d(2).*

*Engineer John Hansen testified that the required parking per the Ordinance under the revised site plans is 39 spaces, of which 4 exist on the site and 10 overnight spaces are permitted in the Borough's public parking lot on Lot 16. The front patio has been expanded and is ADA compliant, and an additional light has been added in the parking area per the recommendation of the Board's Engineer. A two-foot retaining wall was added around the front patio. The changes do not affect to lot coverage variance. Mr. Hansen stated that the Applicant will comply with the outstanding recommendations in the report of the Board's Engineer. More detail will be provided in the landscape plant list, and boxwoods will be added between the front patio and fence.*

*Traffic engineer Matthew Seckler testified, with referenced to Exhibit A-5, that the revised plan reduces overall parking demand by 22 spaces as compared to existing demand of 61 spaces, due to the shift from commercial uses to mixed use residential/commercial. He opined that the existing parking, supplemented by permitted use of the public parking on Lot 16, will accommodate the new parking demand.*

*Planner Phil Abramson referred to Exhibit A-6 and reviewed the requested "C" variance relief associated with the revised site plan. The lot area variance (.48 acres vs. .5 required) is due to the County road dedication and has no impact on the functioning of the site. The side yard setback variance (2.51 ft. existing vs. .77 ft. proposed) has minimal impact and improves site functioning. The lot coverage variance (76.7% existing, 84.7% proposed, 65% maximum required) is needed for safety purposes to expand pedestrian walkways accessing parking in the rear of the property and to provide needed stormwater management facilities. Regarding the parking variance (39 required, 14 proposed), Mr. Abramson cited the reduction from 61 spaces previously required by the site's commercial uses, as well as the Borough's permit for 10 overnight parking spaces to*

accommodate the proposed 7 residential apartment units. Regarding the variance for freestanding sign height (12 ft. proposed vs. 10 ft. allowed), he noted that this was triggered by the relocation of the existing freestanding sign to a more visible location, thereby improving traffic safety. A design waiver is also requested for exceedance of the .1 fc maximum at the property line. He testified that overnight use of the municipal parking for tenants makes this higher light level necessary for safety. Mr. Abramson opined that the overall benefits associated with the foregoing relief exceed the detriments, which are minimal.

10. Based on the hearing record, the Board has made the following findings and conclusions relative to the Variance and Design Waiver relief sought by the Applicant:

The Board adopts the findings to which the Applicant's planner testified, and with which the Board's planner concurred. Accordingly, the Board finds that the grant of the "C" Variance and Design Waiver relief is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviations will substantially outweigh the detriments.

The Board further finds that this relief can be granted without substantial detriment to the public good and that the granting of this relief will not substantially impair the intent and purpose of the zone plan and/or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the Preliminary and Final Site Plan Application and grants the "C" Variances and Design Waiver requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(2).

This approval is subject to the following conditions, which shall, unless otherwise stated, be satisfied prior to the issuance of a zoning permit for the improvements requiring Variance and Design Waiver relief.

1. The existing lighting levels shall be field checked to ensure adequacy for the proposed use.
2. All landscaping shall be replaced in kind if it cannot be replanted following construction.
3. The Applicant has agreed to deed restrict the proposed one-bedroom apartment in the garage building as an affordable unit. The Applicant shall submit the deed restriction for review by the Board Attorney and Planner and file the deed with the County prior to a final certificate of occupancy for any building on the site.
4. An additional light fixture shall be provided in the parking area as required by the Board Engineer.
5. A more detailed list of landscape plantings shall be provided.
6. Boxwoods shall be added in the area between the front patio and fence, and an ungated access opening in the fence shall be provided.
7. In accordance with the HPC approval, the front patio will be reserved for use by tenants of the building and guests, not to exceed two guests per tenant at any one time. Food preparation and consumption of alcoholic beverages in the patio area are prohibited.
8. The owner's certification of the site plans must be signed.
9. Based on the note over the title block, the plans shall not be signed by the Board until they are marked "Issued for Construction."
10. The note in the Demolition Plans on the driveway replacement states that it will be "milled and repaved in accordance with existing easement agreements." A similar note is on the concrete driveway apron. Applicant shall identify under the easement agreements who will be responsible for these improvements. The work must be done as part of the improvements related to this project regardless of the language in any easement.
11. The Soil Erosion and Sediment Control Plan and Details will need to be certified by the Morris County Soil Conservation District.
12. On Sheets 13 and 14 - Construction Details, the water service details need to be approved by the water company.
13. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits. Engineering inspection fees will be paid out of the Applicant's escrow account, and the Applicant will replenish said account to the extent required to pay for said inspection fees.



14. This approval is subject to all other approvals required by any governmental agency having jurisdiction over the subject property.

15. This approval is subject to the payment in full of all taxes and assessments due and owing to the Borough of Mendham and/or any agency thereof.

16. Pursuant to Ordinance Section 124-22, the Variance relief granted herein shall expire within one year of the memorialization of this Resolution unless the construction or alteration of the improvements requiring Variance relief has actually been commenced during that time period, provided that the running of the one-year time period shall be tolled during the pending of any appeal of the Board's decision to the Borough Council or to a court of competent jurisdiction.

The undersigned does hereby certify that the foregoing is a true copy of the Resolution adopted by the Borough of Mendham Board of Adjustment memorializing the action taken by the Board at its meeting of 7/14/20.

Lisa Smith  
Board Secretary

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**ADJOURNMENT**

There being no additional business to come before the Board, **Motion** was made by Mr. Smith, seconded by Mr. Egerter. On a voice vote, all were in favor. Vice Chairman Palestina adjourned the meeting at 9:40PM.

The next meeting of the Board will be held on **Tuesday, October 6, 2020 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

*Lisa Smith*

Lisa Smith  
Land Use Coordinator