

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
SPECIAL MEETING  
September 12, 2012  
Garabrant Center, 4 Wilson St., Mendham, NJ**

**CALL TO ORDER**

The special meeting of the Board of Adjustment was called to order by Chair Seavey at 7:40 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 and the Daily Record on August 23, 2012 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ROLL CALL**

Mr. Palestina – Absent  
Mr. Peck – Present  
Mr. Peralta – Present  
Mr. Schumacher – Present  
Mr. Seavey - Present

Mr. Smith – Present  
Mr. Ritger, - Present  
Mr. McCarthy, Alt I – Present  
Mr. Germinario, Alt II – Absent

Also Present:

Mr. Germinario, Esq., Attorney  
Mr. Hansen, Engineer  
Mr. McGroarty, Planner

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**PUBLIC COMMENT**

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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**HEARING OF CASES**

**Ingersoll, Deborah** – Use/Bulk Variances: **Resolution**  
Block 305, Lot 11, 63 West Main Street

Mr. Germinario, Esq. presented the following resolution to the Board that had been provided to them before the meeting:

**BOROUGH OF MENDHAM BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION**

**Decided: August 7, 2012  
Memorialized: September 12, 2012**

**IN THE MATTER OF DEBORAH INGERSOLL  
“C” VARIANCE APPLICATION  
BLOCK 305, LOT 11**

**WHEREAS**, Deborah Ingersoll (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variance pursuant to N.J.S.A. 40:55D-70c (hereinafter the “Variance”) by application dated 1/27/12; and

**WHEREAS**, the application was deemed complete by the Board, and public hearings were held on 6/6/12, 7/10/12 and 8/7/12; 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 approximately 1.2 acres is developed with a single family residence. The property is located at 63 West Main Street, in the 1 acre residential district. The property received approval by the Board of Adjustment in 2006 for a D variance to allow an in-law suite in the principal structure. Subsequent to the in-law suite, an addition was constructed to the dwelling which did not require approval from the Board of Adjustment. Subsequent to construction of the addition, Applicant installed a gravel parking area in the westerly side of the dwelling comprising 2,018 sq. ft., which required Board of Adjustment approval because it surpassed the allowable lot coverage limit of 9,089 sq. ft., but for which no Board or Borough approvals or permits were obtained.

2. The improvements to the subject property for which the Variance relief is sought comprise demolition of the portion of the existing dwelling that faces West Main Street, with a new 2 story addition proposed in essentially the same location as the portion to be razed. Also included in the project is the construction of detached garage structure and driveway area in the northwest quadrant of the property. Revised plans were submitted in response to the Board's concerns after the first and second public hearings on the matter.

3. The following variance relief was required in connection with the improvements as originally proposed:

- Building coverage limitation-§215-31.1(I), (5,248 SF proposed, 3,636 SF permitted) – C Variance
- Lot coverage limitation-§215-31.1(H), (13,554 SF proposed, 9,089 SF permitted) – C Variance
- Front yard setback-§215, Schedule I, (24.0 feet proposed, 75 feet required) – C Variance
- Proposed Office Use in Accessory Structure-§215.13 – D Variance

The currently revised plans have resulted in a conforming impervious coverage (9,011 SF) and reduced, though still slightly non-conforming, building coverage (3,972 SF), by reducing the size of the garage and moving it closer to Main Street. The D variance has also been eliminated by withdrawing the proposed office use of the garage upper level. As revised, the plan now requires the following C variance relief:

- Building coverage - §215-31.1(I), (3,972 SF proposed, 3,636 SF permitted)
- Frontyard setback of dwelling - §215, Schedule I, (26.5 ft. proposed, 75 ft. required)

4. The Applicant has submitted the following documents that depict and/or describe the improvements for which the Variance relief is required:

- Architectural Plans prepared by the Rosen Group, Summit, NJ, consisting of six (6) sheets; Sheets 1-4 revised through 6/20/12, Sheets 5 and 6 last revised 7/20/12
- Variance Plans, prepared by Yannaccone, Villa & Aldrich, LLC, Chester, NJ, last revised 7/26/12, consisting of three (3) sheets

5. In support of the application, the Applicant has submitted the following documents, which are part of the hearing record:

- Board of Adjustment application form and attachments, dated January 3, 2012
- Application Checklist (undated)
- Certification of Status of Municipal Tax and Sewer Fees, dated January 30, 2012
- Zoning Officer's Review, dated January 27, 2012
- Site Inspection Authorization, dated January 29, 2012
- Narrative of project, prepared by Deb Ingersoll, dated March 12, 2012
- Minutes from Historic Preservation Commission, dated January 23, 2012
- Morris County Planning Board review letter, dated March 5, 2012
- Correspondence from Craig Villa, PE, dated July 26, 2012

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

Chuck McGroarty, PP/AICP, dated 5/31/12 and 7/9/12  
John Hansen, PE, CME, dated 2/15/12, 4/17/12, 7/7/12,  
and 7/31/12

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

Craig Bellamy, Fire Official, dated 5/6/12

Geoffrey Price, Zoning Officer, dated 6/4/12

8. In the course of the public hearings, the following exhibits were marked and are part of the hearing record:

- A-1 Photo Board showing past and current conditions of subject property and adjoining property
- A-2 Colored rendering of 2/8/11 Landscape Plan
- A-3 Existing First Floor Plan 1/28/11
- A-4 Existing Exterior Elevations
- A-5 Existing Side Elevations
- A-6 Colored Proposed First Floor Plan
- A-7 Colored Proposed Second Floor Plan
- A-8 Colored Sheet A-3 Proposed Front Elevation
- A-9 Colored Sheet A-4 Proposed West Elevation
- A-10 Colored Sheet A-5 Garage Floor Plans
- A-11 Rendered Sheet A-6 Barn Elevations
- A-12 Photos of House and Front Yard Area
- A-13 Photos of Adjoining Properties
- A-14 Aerial photos of neighborhood of subject property
- A-15 Photo of barn on Lot 84
- A-16 Photo of existing vegetation along property lines
- A-17 Revised Main St. Elevation
- A-18 Revised West Elevation
- A-19 Revised First Floor Plan
- A-20 Revised Second Floor Plan
- A-21 Revised Barn Elevation
- A-22 Barn Floor Plans
- A-23 Board of Adjustment Resolution Sims Variance 12/7/98
- A-24 Board of Adjustment Resolution Farina Variance 8/3/10
- A-25 Colored rendering of garage architectural elevations
- A-26 Colored rendering of garage floor plans

9. In the course of the public hearings, the Applicant was represented by Thomas Malman, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

Craig Villa, PE, Applicant's Engineer

Kimberley Tone, Applicant's Architect

David Zimmerman, Applicant's Planner

Brent and Deborah Ingersoll, Applicants

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

With respect to the setback variance for the dwelling, the non-conforming front yard setback (27 ft. vs. 75 ft. required) is an existing condition which the proposed reconstruction of the dwelling will not substantially alter. The reconstructed addition will maintain the existing 27-foot front yard setback, while the larger mass of the gable will be set back 5 feet further (32 ft.) from the street right-of-way. On balance, this is a de-intensification of the existing front yard non-conformity.

With respect to the building coverage variance, the exceedence has been reduced to a minimal 336 SF. The proposed improvements will reduce the lot coverage from 11,417 SF existing to 9,011 SF proposed, which will be conforming. Construction of the new garage will reduce unsightly outdoor parking of vehicles, and the barn-like appearance of the garage will be an aesthetic enhancement.

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

By reason of the exceptional situation pertaining to the location of the lawfully existing dwelling structure on the subject property, the strict application of Ordinance Section 215, Schedule I, front yard setback would result in peculiar and exceptional difficulties to, and impose exceptional and undue hardship upon the Applicant. Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(1) so as to relieve such difficulties and hardship.

The building coverage non-conformity is *de minimis* and without significant detriments. The granting of this variance will enable a substantial aesthetic improvement of the property which far outweighs any detriment associated with the minimal deviation from the

required building coverage. Therefore, this variance relief is warranted pursuant to N.J.S.A. 40:55D-70c(2).

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 grant the Variance requested by the Applicant, with respect to front yard setback of the reconstructed dwelling only, pursuant to N.J.S.A. 40:55D-70c(1), and the building coverage, 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 relief.

1. The upper level of the garage is restricted to accessory residential, non-bedroom use.

2. The approved improvements may be constructed in two phases, comprising those associated with the dwelling and those associated with the garage, driveway and relocated shed. Separate building permits may be drawn and separate certificates of occupancy issued for each phase.

3. Prior to issuance of a certificate of occupancy for the dwelling reconstruction, or within one year of this approval, whichever occurs first, the graveled parking area installed without requisite approvals shall be removed, such that the property conforms to the allowable lot coverage.

4. Revised architectural plans for the dwelling shall be reviewed by the Borough's Historic Preservation Commission.

5. Morris County Planning Board and Morris County Soil Conservation District approval of the revised plans shall be obtained.

6. Right-of-way dedication to Morris County shall be completed.

7. A foundation location survey shall be provided to the building department prior to the issuance of a framing permit for the addition and the garage.

8. Prior to issuance of a certificate of occupancy for the dwelling reconstruction, access to the in-law suite shall be re-opened.

9. Prior to the issuance of a certificate of occupancy for one of the phases, all site improvements associated with that phase must be completed as shown on the plan and shown on an as-built drawing prepared by a licensed land surveyor.

10. The Applicant shall submit a resolution compliance package through the Board Secretary, and it shall be approved by the Board Engineer prior to signature of variance plans. Once the Board Engineer has determined that all conditions of this Resolution have been satisfactorily addressed, and the variance plans have been signed, construction permits can be issued.

11. All application, escrow and inspection fees shall be paid in full and current at the time of issuance of zoning permits and construction permits.

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

13. 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.

14. 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.

Mr. Seavey made a motion to approve the resolution. Mr. Peck seconded.

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

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

The motion carried. The resolution was approved.

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**Zenjon Enterprises, LLC** – Amended Preliminary and Final Site Plan and Variances  
Block 1501, Lot 11, 25 East Main St. (Historic District)

Present: Robert Simon, Esq., Attorney for the Applicant  
Jonathan Krasney, Applicant  
Lawrence Appel, Architect for the Applicant  
Peter Steck, Planner for the Applicant  
Elizabeth Dolan, Traffic Consultant for the Applicant

Exhibits: A-3: “Toter” specification sheet (2 pages)  
A-4: Photos & Maps prepared by Peter Steck, PP dated July 10, 2012 (4 pages)

Mr. Simon, Esq. summarized the previous testimony from Mr. Fantina, stating that he had reviewed Mr. Hansen’s review letter, that Phase I is completely unchanged from the previous plan, and that parking and landscaping would be unchanged from the first plan in Phase II. Other than a slight change to the size of the building, there are no other engineering changes. There is a parking variance needed as 51 spaces are required for the mixed uses and only 45 are provided.

Mr. Appel recapped his previous testimony indicating that there were no changes in Building A. In Building B there will be apartments on the upper two floors and the ground floor will change from general office to medical offices. The attic with dormers, which was previously underutilized space, has now been used to create apartments. The medical offices require additional parking.

Addressing the review with the Historic Preservation Commission, Mr. Appel explained that they were rather receptive and liked the residential concept. The plans are consistent with the Historic Business Zone in which apartments are permitted on the third floor. Parking can be exempted for historic buildings.

In terms of the materials, they had originally proposed vinyl for the rear building instead of hardiplank, but at the prior meeting they had agreed to make it match the front building. The Historic Preservation Commission did not require hardiplank on the second building as it was not in the public eye, but recommended it. The HPC was focusing on what could be seen from Main Street. They found the overall details, proportions and materials perfect.

Utilizing Exhibit A-1 from the July 10 meeting, Mr. Appel again showed the changes to the rear building indicating that it was changing from general office to medical. The total number of business uses remains at two. With drawing 3B that had been provided in the Board packages, he described the first floor plan as having two medical units, a common area, a sprinkler room and an elevator to service the second floor. Drawing 4B showed three residential apartments on the second floor. What used to be the attic level was shown as two apartments on Drawing 5B.

Describing the dimensions of the rear building, Mr. Appel stated that the original building was 37 ft. 8 in. by 88 ft. The building had been initially approved at 37 ft. 8 in. by 82 ft. The new design is for 37ft. 8 in. by 89 ft. Creating the apartments requires a sprinkler room, elevator, compliant staircase, and mechanical units for each of the apartments. The height of the building that was initially approved was 34. ft. 6 in. The current design height is 37 ft. 10 in. The roof is higher and the gable is larger.

Referring to Exhibit A-2 from the July 10, 2012 meeting, he compared the previous rear building to the current design indicating that the biggest change is that the roof over the building has been raised a couple of feet. The buildings have similar character and the architecture fits in with the District as well as the surrounding architecture.

Addressing the issues raised in Mr. Hansen’s report, Mr. Appel stated that there is no deck or patio area planned with the units. There is space on the property for a passive patio area, but nothing is shown on the site plan. They are recommending Toters, large “wheelable” trash cans, for the waste material. They are user friendly and have flip tops. He entered Exhibit A-3, a two page specification sheet for Toters. Mr. Seavey stated emphatically that there would be no medical waste storage outside.

In terms of the mailboxes, Mr. Appel testified that they would be located internally or externally. They are hopeful that the Postmaster will permit them to be inside, if not, there is also space for a pod back in the site. It would not be visible from Main St. Addressing the façade area, Mr. Appel stated that the original building was 1,660 sq. ft. and the new building is 2,078 sq. ft, a differential of approximately 400 sq. ft.

Mr. Simon, Esq. reiterated the intent to match the front and back buildings. He asked Mr. Appel to comment on the degree to which they are meeting the standards enumerated in Section 215.19 of the Borough Code. Mr. Appel stated that they are not differentiating and are taking all the recommendations of the Historic Preservation Commission and the Board of Adjustment. This includes such items as aluminum clad SDL windows, true shutters, entry doors with SDL, Hardiplank siding, and Azek window trim. The current building has none of these elements. It is not a moderate increase, it is complete compliance. It fundamentally exceeds what is in the area. The building protects the historic character of the area and enhances it. All buildings on the site comply fully with the standards of Section 215.9 and are architecturally compliant with the zone. The buildings will continue to maintain the historic character of the property.

Addressing the Board's concern that the project be consistent with the character of Mendham, Mr. Appel stated that there are two smaller buildings as opposed to one. Given the site, if the original building were razed, one much larger building could be built. The two buildings are more appropriate. Originally the Historic Preservation Commission wanted to save the cottage, but it is not practical to do so. While the front building is located along Main Street, the building in the rear is somewhat obscured from view, and the Historic Preservation Commission questioned whether they should comment as it was not in the public way.

Mr. Appel responded to a series of Board questions and comments. In terms of Mr. Peralta's question on the height relationship between the front and back buildings, he stated that the new proposed front building is 28 ft. 4 in. and the rear building is 37ft. 10 in. He did not survey whether there are similar buildings in the area, but some are as tall. They are conforming on height. The building will be set back significantly from Main Street. It is an unusual site, double the size of other lots in the area. It has similar depth, but is significantly wider.

Addressing Mr. Peck on why the design character of the front of the rear building had been changed to remove the center arch and the roof on the porch on the first floor, Mr. Appel explained that they had to make accommodations for site changes. They had to add dumpster pads and parking and the elements were removed to help balance the site coverage. Each of the medical units was also given identity while the residential units faded back a little.

There was short discussion by Mr. McGroarty on whether residential was allowed on the third floor of a historic building, but he ultimately advised that it was. It was just a matter of the type and the density. He questioned why Mr. Fantina's site plan showed height as 38 ft. 7 inches versus Mr. Appel's 37 ft. 10 inches. Even though it was conforming, the appropriate number should be shown on the plans. Mr. Appel clarified that he is measuring from the first floor. Mr. Fantina may have measured from grade.

Mr. Seavey stated that the bulk has been increased from the first application, and like Mr. Peck he is concerned about the character. As on a large building, the little things enhance the character, he clarified a series of design details with Mr. Appel. He requested that the shutters, which are to be solid Azek and painted, have brackets holding them. He clarified the location of sills and aprons on the windows, and the rake board and small trim by the roof line. The overhangs and detail should be consistent in all buildings. Mr. Appel stated that they will all be consistent, except for the small dormers which would appear too "chunky" with that trim. Addressing the fireplace chimney, Mr. Appel stated that it is a faux chimney to provide the residential detail. It will be brick veneer and false pots will be used. There will be a cap and stucco top with pot detail. The large 2 ft. x 1 ft. units are the heating and air conditioning system.

Mr. Seavey offered his opinion that he could support a variance for impervious coverage if the front elevation could be broken up more. He would like to see the porch extended on the right side and the center bay. Mr. Appel had no problem doing that, but he would not use the gable ends.

Mr. Ritger questioned why there were shutters placed on the left side elevation of the building as it faces the rear. Mr. Appel responded that at first they thought the building would have its own set of materials different from the front building. The HPC came to the conclusion that the front and the two sides would be most appropriate for the architectural details. It was a compromise, and it faces the school.

Ms. Elizabeth Dolan, Traffic Consultant presented her credentials and was accepted as an expert witness. She testified that the plan eliminates one driveway on the property. The eastern driveway is maintained. There is a two way circulation system. The trip generation is insignificant as it is low with peak traffic at 18 vehicles per hour which is the standard for general/medical and apartment offices. A number of less than 20 is not significant. The characteristics are similar to the prior approval that had been all office space, and it is lower than the trip generation for the bank that had previously been approved. The driveway movements are next to another business

driveway that has a traffic count of 3 per hour. In terms of access and circulation, the plan is consistent with what has previously been approved.

In terms of the parking variance, Ms. Dolan stated that it is required due to the medical use. Fifty-one (51) spaces are now required on the site which includes a 20% factor in the ordinance for non-historic buildings. Parking requirements without the 20% would be 43. There are 45 on the plan. In addition to looking at the parking without the 20% factor, there is mixed use on the site and shared parking which is recognized in the RSIS standards. The apartment needs will be overnight and weekends and the medical office needs will be during the day. Doing a shared parking analysis using data from the Institute of Transportation Engineers and the Urban Land Institute, the non-peak characteristics result in 37-43 spaces needed, and there are 43 spaces proposed on the site plan. The parking generation based on the Institute of Transportation Engineers for the office requirements is lower than the ordinance requires. Using the ITE requirements for the office uses and the residential, 36 parking spaces are appropriate.

Responding to Mr. Simon, Esq. on the 20% factor in the ordinance, Ms. Dolan stated that there is no distinction between a historic and non-historic building for parking needs. It is the use classification that drives parking. In this case the classifications are medical office, general office and apartment. Given the fact that the medical office might be in operation a couple days of the week past five o'clock when people would be getting home from work, Ms. Dolan stated that they reviewed the numbers on an hour by hour basis, and given the size and type of the uses, the amount of parking will accommodate any cross over period at the end of the day or on a Saturday morning.

Ms. Dolan continued that in terms of access to the property, they received a letter from Morris County indicating that no further modifications to the access are needed. They are taking one of the two driveways out of operation and consolidating ingress and egress at one location.

Addressing the size of the parking spaces, Ms. Dolan stated that the ordinance calls for 10ft. x 20 ft. spaces, but 9 ft. x 18 ft. spaces are endorsed by the ITE for office uses and are commonly used in site planning. They are sufficient for this type of parking. Larger spaces should be considered for uses when shopping carts are used. In terms of the isle width, there is a 22 ft. lane proposed and 24 ft. is required. The only location where this occurs is where there is two-way traffic flow. For two way flow 10-11 ft. is sufficient. The traffic flow is appropriately laid out to provide access to both buildings and is safe and efficient.

Responding to Mr. Ritger's question on whether she was satisfied with the requirement to turn around at the end of the back building, she stated that it was a function of the lot being so long and deep. Another spot could be used for turnaround. She provided the breakout of the parking spaces for the rear building at 21 with the 20% factor for the medical uses and 12 for the apartment. This results in 33 spaces for the rear.. The front building requires 18 for general office uses. The overall total is 51 spaces. She did not know if there were plans to assign parking for the residents.

Mr. Peralta questioned how a large garbage truck would be able to navigate the site, pick up the trash at the back building, and back out effectively. Ms. Dolan responded that there is two-way in and out traffic. The truck would pull forward and back into the parking isles. The 22 ft. isle is sufficient for a two way traffic flow. Mr. Appel added that he would recommend Toters for the entire site in which case a smaller truck might be sent to in. The Toters would all be located within the enclosure.

Mr. McGroarty, Board Planner, expressed concern on the number of doctors using each facility. He confirmed with Ms. Dolan that the parking calculations are based on one in each unit. He stated that monitoring the number in the future proves to be very difficult. The Board has also not heard testimony on how many technicians, nurses, etc. would be present. Mr. McGroarty continued that while he is not an expert, he would offer caution to the Board on a condition that allows only two doctors at a time. He noted that if there is not enough parking that could be counterproductive to the applicant as well. Ms. Dolan added that many town ordinances have a higher parking requirement for medical offices than the studies show. The real numbers are 3.2 to 3.4 spaces per 1000 sq. ft.

Mr. Seavey noted that we know we have a parking problem in the Borough particularly when the economy is good, and questioned whether Mendham is unique. Mr. Hansen responded that Mendham is not unique, but in this case there are two buildings. There is also a residential component, and the residents must have spaces. It is not just a commercial location, where someone will leave if they do not have a space. The spaces could be labeled, but then there is an enforcement situation. Mr. McGroarty expressed concern that there could be competing interest for parking with the applicant's offices, the medical offices and the multi-family use. Mr. Ritger suggested that perhaps something could be done in conjunction with the surrounding larger lots.

In terms of the varying uses for the parking, Ms. Dolan stated that the 20% factor increases the total requirement by 8 spaces. If the number is discounted, the parking standards are met. There is a shared situation with the bulk of the parking available for the offices during the day and the apartments for the evening. There is a sufficient parking supply on the property. She understood the concern on the medical offices, but the ordinance requirement is higher than the spaces needed for medical offices of varying sizes throughout New Jersey.

Mr. Simon, Esq. stated that from his experience in various cases, the Boards will listen to the testimony and are comfortable enough with the counts to determine the outcome of the application.

Addressing Mr. Peck's question on whether it would be better to give up a parking spot in the rear to accommodate turnaround and deliveries, Ms. Dolan stated that she did not think it necessary. There is a hatched area that is a help. If someone comes in, they could always back down the isle. For deliveries, a space could be labeled in the rear. Mr. Hansen advised that most delivery trucks do not use a loading area. They just stop, unload and move on. Responding to Mr. Seavey on whether the HPC had reviewed the dumpster location, Mr. Appel stated that they had not.

Mr. Peter Steck, Planner for the applicant, provided his credentials and was accepted as a witness. Mr. Steck testified that he reviewed the rear building for its use as medical offices and apartments, density impact, and for the c variance associated with parking.

Mr. Steck entered Exhibit A-4, a series of photographs and maps of the area. He explained that the first page was five photos showing the characteristics of the existing location. The building has been expanded in ways that do not support the character of the original building. The second page consisted of aerial photos that showed the location of the building in relationship to other buildings. There is a bank building to the right that remains vacant. The building to the east also has a vacancy advertised. The existing building is located close to East Main Street. The forth page is the County aerial that shows the surrounding land uses. They do not abut any residential uses. He pointed out lots 7 and 8 containing the bank and the medical building and indicated that those lots are about the same size as the applicant's lot.

Referring to the purpose of the Historic Business District, Mr. Steck explained that the intent is to preserve the aesthetics and the historic preservation. The front building is not worthy of renovation. Unless someone does something to the property it will continue to remain in neutral. It has been vacant for years. The office market remains in weak mode. They have approval to demolish the building in the front and make it larger with more modern design details, but in accordance with historic standards that fit into the District. They are using residential features. With the office market down, they need a better engine to drive the replacement of the front building, and are requesting residential for the rear which will be that engine.

Mr. Steck cited Section 215.17a & b stating that the zoning regulations as relate to uses are independent of whether it is a historic building or a new building. Moving past that section, the ordinance has restrictions on historic buildings. There can be residential use, but it should be on the third floor. There is also a need to be flexible with historic considerations. These include, in Section 215.18c, parking requirements, impact on adjoining residential zones, and the number of businesses. He stated that the original historic building is being removed, but they are reproducing a new building in historic style with a residential flavor even though offices are included. In terms of multi-family homes, 4 acres would be required, but they have less than one. They are not meeting the conditional use requirement and a D3 variance is required. In terms of density, only 2 residential units are permitted and they are proposing 5. This is a D5 variance. Medical is a permitted use.

In terms of the standard for review, Mr. Steck cited the Coventry Standard. They do not meet the ordinance standards, but the Board needs to evaluate the impact and determine whether or not the property can still accommodate the use. The Board should review the impact of the overage. In this case, there are special reasons. They are preserving the historic aspects of the District and the aesthetics. The front building is driving the setback and the architectural details. It is more expensive to produce. They believe there is a strong market for residential in a downtown setting. The ordinance permits two residential units, but these are not renovated units in an older building; they are new and have modern functions and access. They add a component not present in the business district.

Continuing, Mr. Steck stated that the ordinance as relates to parking penalizes mixed use by adding the 20%. It is the reverse of what functionally happens. RSIS specifies that for mixed use, shared parking should be considered. The rationale is that the different uses peak at different



times, and there is an efficiency. There is a MLUL purpose dealing with the more effective use of land that supports that type of relief.

Addressing the issue of whether the property can accommodate the use given the additional three residential units, Mr. Steck cited that the impact is diminished visually as the building is 200 ft. plus from the property line. There is residential architecture and therefore consistency with the residential use on the upper levels. That did not exist before. There is the benefit of shared parking with the mixed uses. The traffic expert has testified to the lower demand with shared parking, and her opinion is consistent with RSIS and common experience in the field.

In terms of why the application meets the negative criteria, the property is an oversized property, and there are two similar lots in the area, the bank and the medical building. The applicant has satisfied the Historic Preservation Commission on both the front and the rear building, and the location in the rear is not paramount to the streetscape. It is over 200 ft. back and blocked by the front building. There is now only one driveway to the rear. The surrounding land use is a ballfield. Residential is not foreign to the district, and it is the public policy as stated in Section 215.16. In his opinion, given the location of the building in the rear, the nature of the surrounding land uses, the oversized nature of the property, and the effort put into the front building to recreate a historic building, the application meets the Coventry Standard and can accommodate the use. It is not detrimental to the zone plan or the Borough zoning ordinance. Residential uses are permitted with the exception of boarding or rooming houses.

In terms of the additional variances, Mr. Steck explained that they propose a 22 ft. lane instead of 24 ft. required, and 9 x 18ft. parking spaces instead of 10 x 20 ft. stated in the ordinance. There is no separate loading area. They want to preserve the light fixture in the rear for the first phase. In the opinion of the traffic consultant, the site plan can accommodate modern cars. The shoebox lights will go away after a while. If a loading area were provided in the rear, it would not be used. The FedEx and UPS trucks stop in their most convenient location.

Mr. Steck testified that this was a better plan than the first. It is a strong trend in many municipalities that residential can be integrated to a downtown setting. It works architecturally in the Historic District as the flavor of the District is residential. It is not a use of left over space that one might find as a conversion in another building. An elevator and modern amenities have been added. This category of building is not present in downtown. It drives the primary intent of keeping the Historic District sound and integrates residential uses in the downtown. Absent the dollars, it is a better way to get the property developed, and adds to the supply of housing in an attractive way. If the applicant did not exert the effort he has for the front building, he does not believe there would be a basis for approval as they are not saving the front building practically, but are creating a new building that fits into the area. Because of the public purpose, the ordinance permits the Board to be flexible. The advantages outweigh the negatives; all variances can be granted. There is no detriment to the public good or to the zone plan.

Board asked questions of Mr. Steck. Mr. McCarthy questioned whether the rationale for the apartments was strictly financial. Mr. Steck stated that absent money, the residential use is good, and the project promotes the Historic District. It is good planning. The law states that any residential use in the municipality is acceptable in the Historic District. The apartments are the engine that makes the project feasible. Mr. McCarthy expressed his opinion that the Board was being asked to ignore the variances required in order to make the project financially viable. Mr. Steck responded that the test is whether the application meets the statutory criteria.

Mr. McCarthy questioned which of the purposes of the MLUL supports the increase in density. Mr. Steck stated that it was aesthetics, historic preservation and more efficient use of land. It would be NJSA 40:55 D-2A, G, I, & J. Mr. McCarthy challenged that he did not see the aesthetics as the rear building was going to be taller. Mr. Steck reiterated that it would be sympathetic with the historic and residential themes of the District. The building will be viewed by foot and by car. It would not be seen.

Responding to Mr. McCarthy's add-on question related to the size of the property, Mr. Steck stated that it is less than 1 acre. In the ordinance, a multifamily dwelling requires 4 acres. Mr. McCarthy questioned if there was any reason that the applicant could not ask for two residential units. Mr. Steck responded that the rear building was needed to support the historic aspects of the front building. Mr. McCarthy was of the opinion that from the onset, the applicant was placing a large emphasis on the historic as a façade in order to create two buildings to maximize profit. They are asking for a large number of variances.

Addressing Mr. Ritger's question on what would restrict the applicant from re-purposing the first floor to residential uses, Mr. Steck stated that they would need to return to the Board and prove the statutory criteria. That would affect the density.

Mr. Schumacher noted that there were five residential units being requested, and questioned whether any would be low income. Mr. Steck stated that there is not one planned. That would affect the financial engine. He shared Mr. McCarthy's concern of the five versus two units permitted, and was concerned that others might request the same thing. He also saw a need for the mixed use. Mr. Steck responded that each application before the Board stands on its own. Others would need to make their case. This application has many unique factors.

Mr. Peralta clarified that the original application was approved for two offices in the rear. Now there are two offices and five residential uses.

Mr. Seavey questioned Mr. Steck on whether he also advised towns and if so, what would he advise them from a planning perspective relative to low income housing. Mr. Steck stated that under Mount Laurel each situation is unique. This is a small scale project, and one cannot just tag a developer with Mount Laurel. The public purpose they are supporting is a historic preservation one, not a low income housing one, and they probably cannot do both at the same time. Each project stands on its own, and scale is important. Some developers may volunteer low income housing, but 8 residential units are required and then the 10% kicks in. Mr. Seavey noted there were five apartments and four offices on this property.

Responding to Mr. Hansen on whether the Historic Preservation Commission had commented on the architecture or the units when they supported the residential nature, Mr. Steck stated that he was not at the meeting, but the Commission did support the historic aspects of the project. Mr. Appel added that there was no discussion specifically on the 5 units. They did discuss the aesthetic and historic benefit of the two buildings.

Mr. McGroarty, Borough Planner, made the observation that he was not sure if the economic engine rationale was enough as it could be argued for other properties. Here there are two new buildings replicating historic structures. He noted that there could be competing public policy issues for the Borough. The Historic Preservation Commission is looking to capture and maintain the historical aspects of the Main Street, but the town has already stipulated the density requirement. Even though COAH was struck down previously, the court ruling noticed the recognized 20% set-aside. As of right the applicant is entitled to 2 units. They want 5. One low income unit out of the five would be reasonable. If the growth share methodology were still in place, there would be no debate that a unit would need to be supplied, or the Borough would need to account for that somewhere else. While we do not know what the ultimate methodology will be, the court has made it clear that there will be a return to something similar in the first two rounds. There ultimately may be a regional allocation, and the more affordable housing that is in place today, the better off the Borough will be.

Mr. McGroarty concluded by stating that while the historic preservation is a good thing, it does not trump other things. Multifamily belongs on four acres and a density of two units per lot makes sense. It is not unreasonable to ask for an affordable housing unit.

Mr. Steck responded that this site is unique as the front building cannot be saved. That has been demonstrated to the Historic Preservation Commission. That may not be the case for other buildings. The ordinance does not kick in the full requirement for a Mount Laurel unit until there are 8 units. In the old days, 20% was a factor. It probably will not be in the future. COAH will accept an argument, and, if the 20% is not financially feasible, they will lower it. He has experience with an application in the Meadowlands where they accepted a 10% contribution as the financing was not there. We do not know what the formula will be in the future.

Responding to Mr. McCarthy on whether the courts have given any indication that they will overrule Mt. Laurel, Mr. Steck stated that there are aspects of Mt. Laurel that have not reversed. The Appellate Division has reversed the growth share methodology. There will be an obligation for each town, but no one knows the magnitude of it. There is case law that indicates that if there is a Mt. Laurel unit, it becomes an inherently beneficial use and it is easier to get a variance. They are not using that argument.

Mr. McGroarty added that as a planner for towns, he is advising them that it is worthwhile to obtain units unless they have an extraordinary abundance of them. Even though the Third Round was challenged, the underlying philosophy remains.

Responding to Mr. Peck on what the differential between a rental unit and an affordable housing unit is, Mr. Steck did not know. He reiterated his experience with the Meadowlands, where the applicant proved to COAH that the 20% was financially unreasonable, and it was accepted at 10%. Mr. McGroarty advised that there are various categories of income that have been established that

he can provide to the Board. The applicant would need to supply the information on the actual rental costs.

Mr. Steck added that no one can give a definitive answer on what is going to happen at this time. There is an added assumption that there is some bonus being given to the developer that makes the project attractive to produce those units.

Mr. Schumacher noted that there is an affordable housing unit in the Coldwell Banker building on the corner of Cold Hill Road and Main St.

Addressing Mr. Smith on whether there was any requirement for COAH dealing with businesses, Mr. Steck explained that when there was growth share, there was a factor applied to square footage of commercial space. There was also a fee that has now been eliminated.

Mr. McGroarty clarified stating that originally there was one affordable unit required for each 8 residential units, but then COAH changed it to one for every four. The Borough ordinance did not reflect the change which probably is related to the lag in the certification of the Third Round. Also, there was one unit required for every 16 jobs. Four market units equal one affordable unit. While that was thrown out in the Appellate Division, there will be some obligation in the future.

Chair Seavey opened the meeting to questions by the public of any of the experts. There being no public present the session was closed. There were no comments by the Board professionals at this time.

At the request of the applicant, Board took 5 minute break.

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Upon returning to the hearing, Mr. Simon, Esq. stated that the applicant would address affordable housing provided they were given some flexibility. They may be willing to convert a one bedroom at the highest income level to a senior citizen. They would like the option to age restrict. Alternatively, they need to review the numbers and the marketability of the unit. If the unit in the building did not work, they would develop a unit with the same restrictions offsite. In other words, they would pay for a unit in a complex in the future.

Mr. McGroarty did not consider the option unreasonable, but stated that he would need to review the Borough Housing Element. He expressed that there is a limitation on the number of senior units that a town can have. There is also a trust fund, and an amount would need to be developed.

Mr. Seavey stated that if we can make it work for the Borough, then it could be considered.

After Mr. Simon, Esq. cited the Borough Ordinance, Mr. McGroarty advised that it is outdated. The Borough will be held to the new rules and regulations. They need to be careful about a payment in lieu. If there is no place to build a unit, the housing plan will not be certified.

Addressing Mr. Simon's comment that the applicant is not legally obligated to provide the unit, but is willing to do so, Mr. McGroarty responded that the Board cannot mandate it, but would need to evaluate whether the application meets the other proofs to justify the variances.

Mr. Seavey stated that the specifics need to be negotiated in order to determine what will work. Mr. McGroarty again requested that he review all information in the housing plan before committing. Mr. McCarthy noted that the Borough has MASH that counts toward the obligation, and there are 60 units there.

Mr. Simon, Esq. summarized the application. He stated that the application is not just driven by the financials. They have met the proofs. There is a delta of six for the parking, but they have introduced mixed use. Residential will make Main Street a better place. The current market is saturated with office space. They have made the building look like historic buildings, and they should receive credit. They are not using historic to gain favor with the Board. The applicant has done everything including creating two buildings and adding design features. This is a better plan. They are trying to achieve vibrancy for the Borough, and they are showing respect for the historic character. The proofs render that the application be granted.

In Board deliberations, Mr. Seavey expressed his opinion that the vacancy at the property or a dilapidated building is not good for the town. The state of the existing building is currently a negative. The bank may not have been the best solution. There are some negatives with this application dealing with parking, lanes and access, but the extent of the historic replication of two buildings will help the streetscape. The details of the application that they applicant expanded on

during the hearing would need to be displayed. In terms of the density, and in the context of the Master Plan and the village concept, residential and office is critical to a vibrant community and is good for the town. People will be able to walk around to the stores and the schools. It brings life to the community. One does not always need to drive in a village.

He continued, that on the negative side, it may be a bit much, but if the town could get a COAH unit it would offset the negative of the density. Parking has been talked about as an issue, but it is a problem everywhere in the Borough. More parking brings more blacktop. There may be a little struggle with the traffic flow. He would expect conditions stating that there would be no storage in the parking lot areas, the Toter areas would be enclosed with a fencing system and gate, and that sprinklers would need to be installed in Building B.

Mr. Peck echoed Mr. Seavey on his comments from a community perspective. Residential is what we need more of. He could overlook the parking and could be in favor, but he would like to see a COAH unit.

Mr. Pearlta stated that he could blank out the financial level of the discussion and view the community aspect. He had no problem with the change from business to residential. There are many areas around this location where there is a combination of business and residential. The architectural changes are well done and a lot of effort was expended. He was concerned about the density and was surprised that the second building was going from two businesses to two businesses and five residences. It is a very dense use of the second building. He questioned whether there might be a way around the COAH unit by considering either 3 business and 2 residential or three residential and two commercial units.

Mr. Smith commented that it was a well thought out application that showed a sensitivity to the duplication of the historic nature of the site. He appreciated two buildings as opposed to one large building. He is in favor of residential in the rear. There are too many vacant office spaces. It is suitable for the community. He would like to see the affordable housing accommodation. He did not think that parking would be a problem given the mixed use. The lot can accommodate the use.

Mr. Schumacher expressed that the town needs residential. There is density, but there will be more in the future. He would like to see people walking the streets and using the retail stores. He was in favor of an affordable housing unit.

Mr. Ritger was in favor of the project. He thought that asking for a COAH unit was going too far. The applicant would fix the site and duplicate a historic structure. The existing building is difficult to occupy in today's world. People could live upstairs and work downstairs. Residents might downsize and live in town and not need to go to the Commons. It helps to sustain the town.

Mr. McCarthy stated that he listened to the testimony and must weigh it against how it meets the requirements of the MLUL. The applicant's planner has stated that it meets the historic requirements, but that is not the job of the BOA. Four acres are needed for multifamily. The site is short of what they need and not by a tiny increment. They want three units over what is permitted. Mr. Topping, Borough Historian, had previously not been in favor of the density. There is some progress in opening a discussion on COAH, but it has been stated on their terms. They have not made a commitment. They want to go from two businesses to two businesses and five apartments. He is not in favor of the application.

Mr. Seavey made a motion to accept the applicant's proposal with the following conditions:

1. The COAH requirement will be met to assist in the Borough's need. Negotiation of the terms will be delegated to the Board Planner, and any agreement will be acceptable to COAH.
2. No medical waste will be stored outside.
3. The architect will extend the porch roofs on the front façade of the rear building. If there is an issue with coverage, a variance will be granted. This would minimize the scale of the bulk and the height.
4. Parking areas will not be used for storage for boats, vehicles, etc.
5. The rear building will be sprinklered
6. The rear building will be limited to two physicians in total in the rear building.
7. The architectural details will be as summarized in the hearing, and hinges and hardware will be used to hold the shutters.
8. There will be lighting at all times for the multifamily housing. Revised plans are needed.
9. The mailboxes will be located inside, and if that is not possible after discussion with the Postmaster, they will be shown on the plan.
10. Approval by the Morris County Planning Board and the Morris County Soil Conservation District is required.
11. All conditions from the previous application apply.

12. Tree removal and tree replacement must be shown on the plans.

Mr. Schumacher seconded.

ROLL CALL: The result of the roll call was 5 to 2 to 0 as follows:

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

The motion carried. Mr. Germinario, Esq. will prepare a resolution memorializing the action for the Tuesday, October 2, 2012 regular meeting of the Board.

#### **ADJOURNMENT**

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 11:30 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, October 2, 2012, at 7:30 p.m. at the Garabrant Center, 4 Wilson St.

Respectfully submitted,

Diana Callahan  
Recording Secretary