

**MINUTES OF THE
MENDHAM BOROUGH JOINT LAND USE BOARD
REORGANIZATION/REGULAR MEETING
Monday, January 19, 2021
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

The Reorganization/ Regular meeting of the Mendham Borough Joint Land Use Board was called to order at 7:30 p.m. and the open public meeting statement was read into the record.

*****REORGANIZATION*****

Mayor Glassner made a statement regarding the merging of the Board of Adjustment and the Planning Board.

APPOINTMENTS/OATHS OF OFFICE

The Ms. Sullivan, from the Borough Attorney's office administered Oaths of Office to the following Board members:

- Christine Glassner (Mayor) (Class I) – Term expires 12/31/2021
- Joyce Bushman Administrator (Class II) – Term expires 12/31/2021
- Brennan Reilly (Councilman) (Class III) – Term expires 12/31/2021
- Sam Paone – Class IV Member - Term expires 12/31/2024
- Richard Smith – Class IV Member - Term expires 12/31/2024
- Dave Sprandel – Class IV Member - Term expires 12/31/2023
- Bryan Dick – Class IV Member - Term expires 12/31/2023
- Robert Ritger – Class IV Member - Term expires 12/31/2021
- John Egerter - Class IV Member - expires 12/31/2021
- Keith Kay - Alternate 1A Member - Term expires 12/31/2022
- James Bradley Alternate 2A Member - Term expires 12/31/2022
- Margaret (Peggy) Timoney - Alternate 3A Member - Term expires 12/31/2021
- Fred Corona - Alternate 4A Member - Term expires 12/31/2021
- Neil Sullivan - Alternate 1B Member - Term expires 12/31/2021
- Debbie D'Urso - Alternate 2B Member - Term expires 12/31/2021

ROLL CALL

Mayor Glassner – Present

Ms. Bushman – Present

Councilman Reilly – Present

Mr. Paone – Present

Mr. Smith – Present

Mr. Sprandel – Present

Mr. Dick – Present

Mr. Ritger – Present

Mr. Egerter – Present

Mr. Kay- Alternate 1A- Present

Mr. Bradley – Alternate 2A - Absent

Ms. Timoney – Alternate 3A - Present

Mr. Corona – Alternate 4A – Present

Mr. Sullivan – Aternate1B – Present

Ms. D'Urso – Alternate 2B - Present

Also Present: Mr. Ferriero – Board Engineer

ELECTION OF OFFICERS

CHAIR

Motion by Mr. Reilly, seconded by Mr. Corona to nominate Mr. Ritger as Chair. There being no further nominations, a single ballot was cast, and Mr. Ritger was designated Chairman.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

VICE CHAIR

Motion by Mr. Dick, seconded by Mr. Paone to nominate Mr. Smith as Vice Chair. There being no further nominations, a single ballot was cast, and Mr. Smith was designated Vice Chair.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

SECRETARY

The Board unanimously carried by voice vote to appoint Lisa Smith as Board Secretary.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

APPOINTMENT OF THE JOINT LAND USE BOARD LIASON TO THE ENVIRONMENTAL COMMISSION

Motion by Mayor Glassner, seconded by Councilman Reilly to nominate Mr. Sprandel as Joint Land Use Board Liaison to Environmental Commission. There being no further nominations, a single ballot was cast, and Mr. Sprandel was designated Joint Land Use Board Liaison to the Environmental Commission.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

INTERVIEWS

The Joint Land Use Board interviewed three attorneys for the position for Joint Land Use Board Attorney.

- Mr. Sposaro
- Mr. Calli
- Mr. Germinario

EXECUTIVE SESSION

- RESOLUTION PROVIDING FOR A CLOSED SESSION NOT OPEN TO THE PUBLIC PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETINGS ACT N.J.S.A. 10:4-12b The Joint Land Use Board of the Borough of Mendham will adjourn into closed session to discuss the following subject matter(s) without the presence of the public in accordance with the Open Public Meetings Act exemptions, N.J.S.A. 10:4-12b.
 - a. Matters relating to the employment relationship: Joint Land Use Attorney

Chairman Ritger closed the Public Meeting at 9:07 p.m. to convene into Executive Session.

* * * * *

Chairman Ritger reconvened the Public Meeting at 9:29 p.m.

RESOLUTIONS

Chairman Ritger asked for a motion to appoint a Joint Land Use Board Attorney. Motion by Mr. Corona, seconded by Mr. Egerter to nominate Mr. Germinario as Joint Land Use Board Attorney. There being no further nominations, a single ballot was cast, and Mr. Germinario was designated as Joint Land Use Board Attorney.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain: Mr. Sprandel

RESOLUTION OF THE JOINT LAND USE BOARD OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT WITHOUT COMPETITIVE BIDDING TO THOMAS J. GERMINARIO, JD, PE FOR BOARD ATTORNEY SERVICES

WHEREAS, the Joint Land Use Board of the Borough of Mendham has a need to acquire professional Board Attorney services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

WHEREAS, the Borough Administrator has determined and certified in writing that the value of the services will exceed \$17,500; and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Thomas J. Germinario, JD, PE has submitted a proposal indicating that he will provide Board Attorney services in an amount projected not to exceed \$18,000 (this amount does not include payments made against escrow accounts which are not paid out of taxpayer funds); and

WHEREAS, Thomas J. Germinario, JD, PE has completed and submitted a Business Entity Disclosure Certification which certifies that Thomas J. Germinario, JD, PE. has not made any reportable contributions to a political or candidate committee in the Borough of Mendham in the previous one year, and that the contract will prohibit Thomas J. Germinario, JD, PE. from making any reportable contributions through the term of the contract; and

WHEREAS, the Joint Land Use Board of the Borough of Mendham desires to award the contract to Thomas J. Germinario, JD, PE.; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the Borough of Mendham as follows:

1. *The Joint Land Use Board of the Borough of Mendham hereby authorizes execution of a professional services agreement with Thomas J. Germinario, JD, PE to serve as Board Attorney for the year 2021 in an amount projected not to exceed \$18,000 (this amount does not include payments made against escrow accounts which are not paid out of taxpayer funds).*

- 2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.
- 3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.
- 4. That a notice of this action shall be published once in the official newspapers of the Joint Land Use Board of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).
- 5. This Resolution shall take effect as provided herein.
- 6. A Notice of this action shall be published once in the official newspaper as required by law.

I, Lisa J. Smith, Land Use Coordinator, do hereby certify that the foregoing Resolution was duly adopted at the Reorganization Meeting of the Joint Land Use Board of the Borough of Mendham, held this 19th day of January 2021.

Lisa J. Smith, Land Use Coordinator

ATTEST: _____
Lisa J. Smith
Land Use Coordinator
Chairman, Joint Land Use Board

MEETING DATES

Motion by Mr. Paone, seconded by Mr. Egerter and unanimously carried by voice vote to adopt a resolution (as outlined herein) setting forth the meeting dates for 2021 and the first meeting of 2022.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso
Opposed:
Abstain:

**BOROUGH OF MENDHAM
JOINT LAND USE BOARD**

RESOLUTION (2021 MEETING DATES)

BE IT RESOLVED that that at its Regular and Reorganization Meeting held on January 19, 2021, the Joint Land Use Board of the Borough of Mendham established regularly scheduled meetings for the year 2021 as follows:

- Tuesday, January 19, 2021 (Previously Advertised)
- Tuesday, February 16
- Tuesday, March 16
- Tuesday, April 20
- Tuesday, May 18
- Tuesday, June 15
- Tuesday, July 20
- Tuesday, August 17
- Tuesday, September 21
- Tuesday, October 19
- Tuesday, November 16
- Tuesday, December 21
- Tuesday, January 18, 2022 (Regular and Reorganization)

The regular and reorganization meeting for 2022 will be held on January 18, 2022.

BE IT FURTHER RESOLVED that the meetings will be held at 7:30PM at the Garabrant Center, 4 Wilson St, Mendham, NJ.

BE IT FURTHER RESOLVED During a declared state of emergency when meetings of Joint Land Use Board are held remotely, the public may attend remotely by Zoom. Instructions on how to attend a meeting via Zoom will be posted on the meetings schedule webpage on the Borough's website in advance of the meeting and in accordance with the Open Public Meetings Act.

BE IT FURTHER RESOLVED that notice of any additions to the above schedule or change in the time, date or place of any scheduled meeting will be posted and maintained in the Phoenix House, 2 West Main St., Mendham, NJ for purposes of public inspection, and will be filed in the Office of the Borough Clerk in accordance with the Open Public Meetings Act and delivered to the official newspapers in advance as required by law.

Lisa Smith
Land Use Coordinator

Dated: _____

Chair, Joint Land Use Board

Land Use Coordinator

OFFICIAL NEWSPAPERS

Motion by Ms. Bushman, seconded by Mr. Paone and unanimously carried by voice vote to adopt a resolution (as outlined herein) recognizing the Star Ledger and The Daily Record as the official newspapers of the Board for 2021.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso
Opposed:
Abstain:

**BOROUGH OF MENDHAM
JOINT LAND USE BOARD
RESOLUTION (2021 OFFICIAL NEWSPAPERS)**

BE IT RESOLVED by the Joint Land Use Board of the Borough of Mendham, Morris County, New Jersey as follows:

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known as and hereinafter designated as the "Open Public Meetings Act" aforesaid, the Open Space Advisory Committee of the Borough of Mendham hereby makes the following designations:

- The Star Ledger and the Daily Record are hereby designated as the two newspapers to receive notice of meetings required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings. Notices required by the New Jersey Municipal Land Use Law or the Borough's Land Use Regulations may be placed, as required by law, in either of the designated newspapers.
- Notice of this meeting of the Joint Land Use Board of the Borough of Mendham shall be posted and maintained in the Phoenix House, 2 West Main Street, Mendham, NJ for purposes of public inspection, and will be filed in the Office of the Borough Clerk in accordance with the Open Public Meetings Act
- The sum of \$12.00 per year is hereby fixed as the amount to paid by any person requesting individual notice of meetings as provided in Section 13 of the Open Public Meetings Act.

Dated: January 19, 2021

Chairman, Joint Land Use Board

ATTEST:

Land Use Coordinator

BOARD ENGINEER

Motion by Mr. Smith, seconded by Mr. Corona and unanimously carried by voice vote to adopt a resolution (as outlined herein) authorizing entry into an agreement with Paul Ferriero, PE, PP of Ferriero Engineering for professional engineering services.

Roll Call:

In Favor: Mayor Glassner, Ms. Bushman, Councilman Reilly, Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, Mr. Kay, Ms. Timoney, Mr. Corona, Mr. Sullivan, and Ms. D'Urso

Opposed:

Abstain:

RESOLUTION OF THE JOINT LAND USE BOARD OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE AWARD OF A PROFESSIONAL SERVICES CONTRACT WITHOUT COMPETITIVE BIDDING TO PAUL W. FERRIERO, PE & PP OF THE FIRM FERRIERO ENGINEERING INCORPORATED FOR BOARD ENGINEER SERVICES

WHEREAS, the Joint Land Use Board of the Borough of Mendham has a need to acquire professional Board Engineer services without competitive bidding pursuant to the provisions of N.J.S.A. 19:44A- 20.5; and

WHEREAS, the Borough Administrator has determined and certified in writing that the value of the services will exceed \$17,500; and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has submitted a proposal indicating that he will provide Board Engineer services in an amount projected to not exceed \$5000 (this amount does not include payments made against escrow accounts which are not paid out of taxpayer funds); and

WHEREAS, Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has completed and submitted a Business Entity Disclosure Certification which certifies that Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated has not made any reportable contributions to a political or candidate committee in the Borough of Mendham in the previous one year, and that the contract will prohibit Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated from making any reportable contributions through the term of the contract; and

WHEREAS, the Joint Land Use Board of the Borough of Mendham desires to award the contract to Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the Borough of Mendham as follows:

- 1. The Joint Land Use Board of the Borough of Mendham hereby authorizes execution of a professional services agreement with Paul W. Ferriero, PE & PP of the firm Ferriero Engineering Incorporated, to serve as Board Engineer for the year 2021, in an amount projected not to exceed \$5,000 (this amount does not include payments made against escrow accounts which are not paid out of taxpayer funds).*
- 2. This contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said services are exempt from the provisions of the bidding statutes in that they are services rendered or performed by a person authorized by law to practice a recognized profession and are services which require knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction as distinguished from general academic instruction or apprenticeship and training.*
- 3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution.*
- 4. That a notice of this action shall be published once in the official newspapers of the Joint Land Use Board of the Borough of Mendham, as required by N.J.S.A. 40A:11-5(1)(a).*
- 5. This Resolution shall take effect as provided herein.*
- 6. A Notice of this action shall be published once in the official newspaper as required by law.*

Chairman, Joint Land Use Board

*****REGULAR MEETING*****

APPROVAL OF MINUTES

Motion by Mr. Paone, seconded by Mr. Dick and unanimously carried by voice vote to adopt the Minutes of the December 1, 2020 Board of Adjustment Regular Meeting, as presented.

Roll Call:

In Favor: Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter, and Mr. Sullivan
Opposed:
Abstain:

Motion by Ms. Bushman, seconded by Mr. Kay and unanimously carried by voice vote to adopt the Minutes of the December 14, 2020 Planning Board Regular Meeting, as presented.

Roll Call:

In Favor: Ms. Bushman, Councilman Reilly, Mr. Kay, and Mr. Corona
Opposed:
Abstain:

RESOLUTIONS

BOA#07-20

James & Donna Chambers
425 Cherry Lane
Block 2301 Lot 3.01

Ms. Sullivan summarized the Chambers application and the conditions outlined in the resolution. Mr. Sprandel made a motion to memorialize the resolution and Mr. Dick seconded.

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

In favor: Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter and Mr. Sullivan
Opposed: None
Abstentions: None

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

*Decided: December 1, 2020
Memorialized: January 19, 2021*

*IN THE MATTER OF JAMES R. AND DONNA M. CHAMBERS
"D" VARIANCE APPLICATION
BLOCK 2301, LOT 3.01*

WHEREAS, James R. and Donna M. Chambers (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-70d(1) (hereinafter the "D Variance") by application dated 7/31/20; and

WHEREAS, the application was deemed complete by the Board, and public hearings were held on 11/5/20 and 12/1/20; 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 6.447 acres located at 425 Cherry Lane in the 5-Acre Residence Zone. The property is improved with an existing single-family 2½ story framed dwelling, a detached garage, an inground pool, pool house and patio, and a 1½ story accessory building. The accessory structure is located to the rear of the property and is set back 80.5 feet from the rear property line and 121.4 feet from the side property line. The structure has an existing gravel driveway access to Horseshoe Bend Road. A new septic is proposed for the unit. Existing electric and gas lines from the existing residence are proposed to remain. Water supply is proposed from a connection to the existing well on the property.

2. The improvements to the subject property for which the Variance relief is sought comprise conversion of the second floor of the existing accessory building into a separate 887 sq. ft. living unit for Applicant's physically challenged daughter. A "D1" variance is required under Ordinance §215-13A to permit a second dwelling unit on this lot.

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

- Variance Plans consisting of 4 sheets prepared by Civil Engineering, Inc., signed by James G. Glasson, PE, dated 8/27/20
- Sketch Floor Plan, "425 Cherry Ln - Rear 2nd Floor," undated

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

- Board of Adjustment Application and Checklist, dated 7/21/20, prepared by James and Donna Chambers
- Certificate of Paid Taxes, dated 7/20/20
- Zoning Officer's Denial Letter, dated 7/13/20
- Property Owner's Consent, dated 7/21/20, prepared by James and Donna Chambers
- Area Map
- Site Inspection Form, dated 7/21/20, prepared by James and Donna Chambers
- Certified Property Owners List
- Photograph of Existing Accessory Building
- Property Survey, dated 8/9/13, prepared by Robert H. Jordan, Jr., PLS

5. 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:

Paul Ferriero, PE, dated 9/11/20, 10/1/20
and 10/2/20
Jessica Caldwell, PP, dated 10/1/20

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

John Zaragoza, Fire Inspector, dated 8/22/20

7. In the course of the public hearings, the Applicant was represented by Paul S. Werther, Esq., and the Applicant presented the testimony of the following witnesses, which testimony is part of the hearing record:

James Chambers, Applicant
James Glasson, PE, Applicant's engineer
Christine Cofone, PP, Applicant's planner

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

James Chambers testified that he and his wife have an adult daughter who has medical care needs which require her to be close to her parents. Applicants wish to construct a studio apartment as an independent living unit for their daughter in the accessory building, and they would terminate such use upon either their sale of the property or termination of their daughter's occupancy. There will be no increase to the footprint or floor area of the accessory building. While they originally proposed to pave the existing gravel driveway accessing the accessory building from Horseshoe Bend Road, they now propose to maintain it in its current condition, subject to any requirements for emergency access. The new septic unit to service the accessory building has been approved by the Health Department.

James Glasson, PE, testified that the accessory building exceeds all required setbacks and is 30 ft. lower in elevation than Cherry Lane. The proposed improvements have been approved by the Morris County Soil Conservation District. He opined that the existing gravel driveway is suitable for emergency vehicle access, but agreed to comply with any requirements of the Borough Fire Marshal in that regard.

Christine Cofone, PP, testified regarding the positive and negative criteria for the D1 Variance. Regarding particular suitability, she noted that the lot is oversized (6.447 acres vs. 5 acres required), that the accessory structure and gravel driveway have existed for decades, and neither is to be expanded. Setbacks are all more than double the ordinance minimums. The accessory building is well buffered and has existing access from a private road. Use of the accessory apartment would be limited to Applicants' impaired daughter and would terminate upon sale of the property. She stated that the Master Plan promotes multi-generational housing. She opined that MLUL purposes (a), (c), (e) and (g) would be advanced by this Variance. Regarding the Medici reconciliation, she argued that the small size of the apartment and its restriction to Applicant's daughter placed this use outside the purview of multi-family uses which the governing body intended to exclude.

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

The Board adopts the findings of Applicants' planner with regard to the positive and negative criteria, and finds that the subject property is particularly suitable for the proposed limited use, which will have negligible adverse impacts. 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 application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(1).

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 accessory apartment use shall terminate upon either the sale of the property by the Applicant or the termination of their daughter's occupancy.

2. Applicants shall comply with any requirements of the Borough Fire Marshal regarding emergency access, and such compliance shall be confirmed prior to sign off by the Board Engineer.

3. Applicants, at their own risk, may draw a construction permit and proceed with the proposed improvements prior to the memorialization of this approval.

4. Applicants may provide access to the accessory structure by an all-weather path from the area of the main dwelling. If they do so, this should be shown on the plans submitted for construction.

5. 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.

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

7. 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.

8. 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 12/1/20.

Lisa Smith
Board Secretary

BOA#06-20

Medical Properties Partners, LLC
30 East Main St.
Block 602 Lot 1

Ms. Sullivan summarized the Medical Properties Partners, LLC application and the conditions outlined in the resolution. Mr. Paone made a motion to memorialize the resolution and Mr. Dick seconded.

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

In favor: Mr. Paone, Mr. Smith, Mr. Sprandel, Mr. Dick, Mr. Ritger, Mr. Egerter and Mr. Sullivan
Opposed: None
Abstentions: None

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: December 1, 2020

Memorialized: January 19, 2021

**IN THE MATTER OF MEDICAL PROPERTIES PARTNERS, LLC
"D" AND "C" VARIANCE APPLICATION
BLOCK 602, LOT 1**

WHEREAS, Medical Properties Partners, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the grant of a variances pursuant to N.J.S.A. 40:55D-70d(2) and N.J.S.A. 40:55D-70c (hereinafter the "Variances") by application dated 6/26/20; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 12/1/20; 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 subject property is 0.58 acres and is currently developed with a two-story structure currently occupied by a medical office on the first level and a separate residential apartment on the second level. The existing medical office and residential use was certified by the Zoning Board of Adjustment as a pre-existing non-conforming use by Resolution memorialized on October 5, 2004. The first-floor medical office has attached to it an annex of approximately 500 square feet that is separated from the medical office. The annex is leased to a third-party entity known as NorthPoint Staffing, LLC, which provides candidates for managerial and administrative positions throughout the U.S., via internet or telephone. The non-medical office use in the annex was not approved as part of the pre-existing non-conforming use on the property.

2. The Applicant proposes to retain the business entity, NorthPoint Staffing, LLC in the first-floor annex, where the use was previously a pre-existing nonconforming medical office. The use is not a permitted use in the 1/4-Acre Residence Zone therefore, a d(2) expansion of a non-conforming use variance is required. There are no modifications proposed to the site to accommodate the new use. The existing two-story structure will retain its current general outward appearance. According to Section 215-15, any use specified in Article IV as permitted in the 5-Acre, 3-Acre, 1-Acre and 1/2-Acre Residence Zones excluding the maintenance of livestock is permitted in the 1/4-Acre Residence Zone including one (1) single-family dwelling per lot, playgrounds and parks, agricultural uses and home occupations. The Applicant is requesting relief to permit NorthPoint Staffing, LLC in the first-floor annex where the use is not permitted in the zone. Because the site is the location of a pre-existing non-conforming use and the space was previously a medical office and is now proposed to be converted to an office use, an expansion of a non-conforming use variance is required. A variance pursuant to N.J.S.A. 40:55D-70d(2) is required for the expansion of the pre-existing nonconforming uses on the site. The Applicant is also seeking a variance pursuant to N.J.S.A. 40:55D-70c to continue the pre-existing non-conforming front yard setback of 27 feet from Orchard Street, where minimum 30 feet is required.

3. The Applicant has submitted the following documents that depict and/or describe the Variance relief required:

- Board of Adjustment Application and Checklist, 6/26/20, prepared by Roy E. Kurnos, Esq.
- Application Rider, dated 6/26/20, prepared by Roy E. Kurnos, Esq.

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

- Board of Adjustment Resolution, dated 9/8/04
- Zoning Officer's Notice of Violation, dated 2/5/20
- Property Owner's Consent, dated 6/26/20, prepared by Alan Gellerstein
- Site Inspection Form, dated 6/26/20, prepared by Alan Gellerstein
- Tax Certification, dated 3/5/20
- Zoning Map
- Cover letter and waiver request, dated 10/20/20, prepared by Cheryl L. Ehrgott, Esq.
- Certificate of Paid Taxes, dated 9/24/20
- Certified property owners list
- Tax map excerpt
- Morris County Planning Board waiver, dated 9/3/20
- Site survey
- Floor plan sketches

5. 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:

Jessica Caldwell, PE, dated 11/13/20
Paul Ferriero, PE, dated 10/22/20

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

Debbie Gannon

Dr. Alan Gellerstein

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

As enunciated in a Resolution of Findings and Conclusions of the Board of Adjustment, Borough of Mendham, memorialized on 10/5/04, the Board approved the interpretation by this Applicant that the use of the subject premises for a medical doctor's office on the first floor and a separate residential apartment on the second floor was a valid, preexisting nonconforming use. The first-floor medical office has attached to it an annex of approximately 500 square feet that is separated from the medical office. The main medical office is staffed by a nurse practitioner. At the present time, no medical doctors or other employees work in the main office. Since the Applicant's ownership of the building, repairs have been made, and the annex has been utilized by persons engaged in medical-related activities such as a physical therapist. That annex space is now leased to an entity known as NorthPoint Staffing, LLC, which is owned and managed by Debbie Gannon, a Mendham resident. It is a low impact business owned and run by one person having two part-time employees. The company provides candidates for managerial and administrative positions throughout the United States, primarily through the internet or telephonically. Ms. Gannon is the sole employee of the company and is provided with one parking space in the Applicant's parking lot. Ms. Gannon works with two other independent contractors who, for the most part, work from home. One of her contractors does not own a care and is dropped off at the office and picked up after two to three hours of work. The other contractor visits the office intermittently for a brief period of time, and she parks on the street. NorthPoint has no visitors, and there are no client meetings or candidate screenings that take place in the office. All communication is done either over the internet or telephone. There is little need for UPS, FedEx or similar deliveries, nor is there a need for vehicular delivery of office supplies, etc. NorthPoint is open from Monday through Friday from 9 am to 5 pm. The business is closed on weekends. The use of the premises by the Applicant is less intensive than contemplated in the Resolution adopted 10/5/04. That Resolution contemplated one physician and one employee, a receptionist/secretary.

There are no changes to the site plan to accommodate the new use. The existing two-story structure, which has a general outward appearance of a single-family dwelling, will remain unchanged. There is no application for modification to the existing signage. The use of the 500 s.f. annex, in the nature of a "head-hunter," involves only one full-time employee, the proprietor. The use does not generate visitors, nor an increase in parking requirements. The independent contractors who perform services for the business rarely have a need to utilize the premises, and when they do so, they spend between 2 and 3 hours in the premises at most.

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

The Board finds that the Applicant's proofs establish special reasons to support the d(2) variance for expansion of a non-conforming use, insofar as the proposed use of the 500-foot annex is actually less intensive than the pre-existing medical office use and this minimizes the non-conforming impacts of the site. Moreover, the proposed low-profile use improves the compatibility of the property with the surrounding residential neighborhood. Applicant's proofs also establishes the negligible detriments associated with this d(2) variance.

With respect to the non-conforming front yard setback (27 ft. vs. 30 ft. required), this is a long-standing pre-existing condition which is not being changed. The outward appearance and mass of the building will not be altered, while the non-conforming use will be de-intensified. Therefore, this continued bulk variance is justified under both N.J.S.A. 55D-70C(1) and -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 approve the application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(2), 40:55D-70c(1) and 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 business operated in the annex shall not have more than two employees and shall not have a need for regular outside visitors to the office, unless it reverts to the preexisting medical use.

2. 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.

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

4. 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.

5. 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 12/1/20.

Lisa Smith
Board Secretary

PB# 1-18

Aryan at Mendham -Extension of Approval
25 East Main St.
Block 1501 Lot 11

Ms. Sullivan summarized the Aryan at Mendham application for extension of approvals outlined in the resolution. Mr. Corona made a motion to memorialize the resolution and Councilman Reilly seconded.

ROLL CALL: The result of the roll call was 4 to 0 as follows:

In favor: Ms. Bushman, Councilman Reilly, Mr. Kay, and Mr. Corona
Opposed: None
Abstentions: None

The motion carried. The resolution follows.

MENDHAM BOROUGH PLANNING BOARD

RESOLUTION

*Extension of Variance Approval and Period of Protection for Site Plan Approval
Aryan at Mendham (Dunkin' Donuts)
25 East Main Street
Block 1501, Lot 11, Historic Business (HB) District*

WHEREAS, Aryan at Mendham, LLC ("Applicant") by letter application to the Planning Board of the Borough of Mendham (the "Board") has requested an extension of the variance approval and the period of protection for the site plan approval obtained by it with respect to development of property located at 25 East Main Street and designated Block 1501, Lot 11 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a public hearing was held on December 14, 2020, at which time Applicant's request was reviewed by the Board, discussed with Applicant's attorney, and the Board's consultants and members of the public were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered the letter application requesting extension of the variance approval and the period of protection for the site plan approval previously granted to Applicant in connection with its development proposal for the Subject Property, as well as the comments from Applicant's attorney and the Board's consultants, and there being no comments from members of the public;

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Mendham that, based upon the forgoing, the following findings of fact and conclusions of law are made:

1. *Applicant is the owner of the Subject Property located at 25 East Main Street in the Borough of Mendham, designated Block 1501, Lot 11 on the Mendham Borough Tax Map.*

2. *Applicant obtained Preliminary and Final Site Plan Approval, together with a Parking Variance and certain Design Waivers, for development of a Dunkin' Donuts restaurant on the Subject Property, memorialized by Resolution of the Board adopted December 10, 2018.*

3. *Mendham's Ordinance Section 124-22 provides that any variance granted shall expire one year from the date of entry of the determination of the Board. Applicant applied for, and was granted, an extension of time for this variance by Board action on October 15, 2019, memorialized in a Resolution adopted November 12, 2019, extending the variance to December 10, 2020. Prior to this expiration date, Applicant filed its letter Application for further extension, which Application was heard by the Board at its next available meeting date, December 14, 2020. Applicant now seeks an extension of time for the variance approval to December 10, 2021.*

4. *The Municipal Land Use Law provides a 2-year period of protection from changes in zoning for Final Site Plan Approval and permits the Board to grant up to 3 (three) 1-year extensions N.J.S.A. 40:55D-52(a). Having filed prior to the expiration of the 2-year period of protection, Applicant now seeks its first 1-year extension of the period of protection, to December 10, 2021.*

5. *Since the approval granted by this Board in December 2018, Applicant has actively pursued compliance with the requirements for other permits and approvals, as well as satisfying the conditions of approval required for Board endorsement of the approved site plan and the issuance of construction permits for the work to be undertaken on the Subject Property.*

6. *Applicant's plans for pursuit of this project have, like most things, been hampered by the impacts of the Covid19 pandemic. Nevertheless, Applicant has received its demolition permit for the existing structures and anticipates receipt of the requisite construction permits and the ability to commence work on the Subject Property in or about April of 2021. Applicant points out that there have been no amendments to the Borough's Zoning Ordinance which would affect Applicant's project since the site plan approval and grant of the parking variance and design waivers.*

7. *The Board acknowledges the usual practice, when variance relief is granted in connection with a commercial site plan approval, that the viability and period of protection for the variance takes on the period of protection afforded the site plan approval by the Municipal Land Use Law. Since this practice is not embodied in the Borough's ordinances, Applicant is prudently seeking confirmation that adequate time will be provided for pursuit of the approved development project.*

8. *Given the nature of the extension request, and the general practice of coordinating viability of variances granted in connection with site plan approvals with the period of protection afforded such site plan approvals, the Board concluded that public notice of the request for this extension of time was not necessary.*

9. *The Board also concluded that there were no significant circumstances requiring denial of the request for extension of time for the parking variance or the extension of the site plan period of protection granted to Applicant in the Board's approval on December 10, 2018.*

10. *Given Applicant's submission that it expected to commence work in or about April 2021, the Board concluded once again that some leeway should be accorded to facilitate the project moving forward, with the hope of avoiding the need for any further applications for extensions of time.*

BE IT FURTHER RESOLVED, by the Planning Board of the Borough of Mendham that, for the reasons set forth above, Applicant be and hereby is granted a 1-year extension of time for the parking variance granted in connection with the approval of Applicant's Preliminary and Final Site Plan Application, together with design standard exceptions for certain elements for such site plan, and a 1-year extension of the period of protection for the final site plan approval to and including December 10, 2021.

BE IT FURTHER RESOLVED that notwithstanding this extension of time, no other conditions of the December 10, 2018 Resolution granting site plan approval together with variance relief and design standard exceptions, are modified by this action of the Board.

BE IT FURTHER RESOLVED that this Resolution adopted this 19th day of January 2021, memorializes the action of the Board, set forth above, taken at its meeting of December 14, 2020.

Lisa Smith, Board Secretary

Dated:

The Vote:

In Favor: _____

CERTIFICATION

I hereby certify that the above is a true copy of a Resolution adopted by the Mendham Borough Joint Land Use Board at its regular meeting on January 19, 2021.

Lisa Smith, Board Secretary

OTHER DISCUSSION ITEMS

Mr. Sprandel suggested the Board take Mr. Germinario up on his offer to provide training. Mr. Ferriero clarified that the NJPO puts out a mandatory training and there is also a Stormwater course that needs to be completed.

Mr. Paone asked about the Affordable Housing and requirements and Mr. Ferriero stated that the Borough has an approved Housing Plan which gives the Borough protection until 2025. Mr. Ferriero suggested distributing the Housing Element to the Board.

Councilman Reilly asked Mayor Glassner to summarize the social media policy that the Borough Council passed. Mayor Glassner summarized the Social Media Policy. Ms. Sullivan gave further summary of the new Social Media Policy to explain OPRA and how it can open members up to opening their personal social media accounts if requested. Ms. Sullivan suggested the Board members become familiar with the new policy and to err on the side of caution and not comment on social media about Borough business. Mayor Glassner stated that the Board's purpose is to stay true to statute but keep in mind that the Board is here to serve the business owners and residents of the Borough. There are homes that automatically must

come for a variance in order to do anything to their property and we need to be open minded and realize that the improvements will benefit the town.

PUBLIC COMMENT

Chairman Ritger 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.

ADJOURNMENT

There being no additional business to come before the Board, Motion was made by Mr. Smith, seconded by Mr. Sprandel. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 10:10PM.

The next meeting of the Board will be held on Tuesday, February 16, 2021 at 7:30 PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa J. Smith

Lisa Smith
Land Use Coordinator