

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
REGULAR MEETING
Tuesday, October 6, 2020
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER/FLAG SALUTE

The regular meeting of the Mendham Borough Board of Adjustment was called to order by Land Use Coordinator, Lisa Smith, at 7:30PM at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

OPENING STATEMENT

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

ROLL CALL

Mr. Smith - Present Ms. Cass – Present
Mr. Ritger – Present Mr. Dick – Present
Mr. Paone– Present

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

Also present: Mr. Germinario, Esq.
 Mr. Ferriero, Engineer

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ELECTION OF OFFICERS

CHAIR

Motion by Mr. Smith, seconded by Ms. Cass and unanimously carried by voice vote to nominate Robert Ritger as Chairman. There being no further nominations, a single ballot was cast, and Robert Ritger was designated Chairman.

ROLL CALL

In Favor: Mr. Smith, Mr. Paone, Ms. Cass, Mr. Dick and Mr. Egerter
Opposed:
Abstain: Mr. Ritger

VICE CHAIR

Motion by Mr. Ritger, seconded by Mr. Paone and unanimously carried by voice vote to nominate Richard Smith as Vice Chairman. There being no further nominations, a single ballot was cast, and Richard Smith was designated Vice Chairman.

ROLL CALL

In Favor: Mr. Ritger, Mr. Paone, Ms. Cass, Mr. Dick and Mr. Egerter
Opposed:
Abstain: Mr. Smith

MINUTES

Chairman Ritger asked for comments on the minutes of the regular meeting of September 1, 2020. Mr. Dick made a comment that the questions he raised regarding parking for the Iconic Wellness application were not included in the minutes. Ms. Smith informed the Mr. Dick that he had a bad connection and couldn't be heard. There being no corrections, Mr. Smith made a motion to approve the minutes as written and Mr. Paone seconded.

ROLL CALL

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

Opposed:

Abstain:

PUBLIC COMMENT

Chairman Ritger opened the meeting to the public for questions and comments on items not included on the agenda. Chairman Ritger asked Mr. Germinario the reasoning for Mr. Seavey's resignation. Mr. Germinario stated that the Borough Attorney informed him that a concern from the Zoning Officer was raised that made him disqualified. Mr. Dick asked who made the decision and Mr. Germinario said he was informed that the determination was made by the Land Use committee. There being no other comment, the public session was closed.

Mr. Germinario stated that he has a conflict with the November 4th meeting and asked if the meeting could be moved to November 5th. The Board felt that there was no conflict and the meeting will be held virtually on November 5th.

COMPLETENESS:

BOA#07-20

James & Donna Chambers
425 Cherry Lane
Block 2301 Lot 3.01

Mr. Germinario stated that the applicant would like to carry the application to the November 5, 2020 meeting with no further notice needed.

RESOLUTION

BOA#03-20

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

Mr. Germinario summarized the Zaccone application and the conditions outlined in the resolution. Mr. Smith made a motion to memorialize the resolution and Mr. Paone seconded.

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

In favor: Mr. Smith, Mr. Paone and Mr. Egerter

Opposed: None

Abstentions: Mr. Ritger

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

*Decided: September 1, 2020
Memorialized: October 6, 2020*

*IN THE MATTER OF JUSTIN ZACCONE
"C" VARIANCE APPLICATION
BLOCK 401, LOT 7*

WHEREAS, Justin Zaccone (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 4/30/20; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 8/4/20; and

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

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

1. The property which is the subject of the application consists of 0.84 acre located in the ½-Acre Residence Zone and fronting on Gunther Street. The property is improved with a 2-story frame dwelling and 2 accessory sheds.

2. The improvements to the subject property for which the Variance relief is sought comprise a new 1½-story accessory frame barn located 2.7 ft. from the southerly side property line and within 10 ft. of the easterly dwelling wall. Pursuant to Ordinance §215.28, accessory buildings are required to have a minimum 15 ft. sideyard setback. Pursuant to §215-29A, accessory buildings between 5 and 12 ft. of a lot line shall not be over 1 story high, and no accessory building shall be located within 10 feet of a wall of a main building unless attached thereto.

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

- Property Survey, dated 3/21/19, prepared by Richard S. Hudson, PLS

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, 4/30/20, prepared by Justin Zaccone
- Zoning Officer's Denial Letter, dated 3/9/20
- Property Owner's Consent, dated 4/13/20, prepared by Justin Zaccone
- Site Inspection Form, dated 4/14/20, prepared by Justin Zaccone
- Tax Certification, dated 4/13/20
- Sewer Connection Application (waiver request)
- Certified Property Owners List
- Property Photographs and Neighbor Proximity
- Architectural Plans, consisting of 11 sheets, dated 4/9/20, prepared by Elvin Engel, architect*

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, CME, dated 6/2/20

6. In the course of the public hearings, no exhibits were marked and as part of the hearing record.

7. In the course of the public hearings, the Applicant represented himself, and testified on his own behalf.

8. The documentary evidence and the testimony of the Applicant adduced the following facts:

The Applicant testified that the barn structure was delivered to his property in February. Its purpose is to provide space for his wife's office and fitness equipment because of limited room in the main dwelling.

Applicant was unaware of the zoning requirements cited by the Zoning Office. He agreed that an existing smaller shed in northeast corner of the lot, which encroaches on the rear and side yard setbacks, would be relocated out of the setbacks and that the concrete pad supporting it would be removed. He testified that the barn was buffered from the neighboring property by surrounding vegetation. He agreed that, if a foundation were required for the barn, the barn would not be relocated closer to the side yard setback or the main dwelling.

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 finds that the benefits associated with the elimination of the existing non-confirming shed and the reduction in lot coverage associated with removal of its concrete pad outweigh the minor detriments associated with the deviations related to the new barn. Moreover, the barn is a better planning alternative for adding needed living space than would be an addition to the main dwelling.

Therefore, the grant of the Variance is warranted pursuant to N.J.S.A. 40:55D-70c(2), because the benefits of the deviation will substantially outweigh the detriments.

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

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby approve the application and grant the Variance requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70c(2).

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

1. The existing shed in the northeast corner of the property shall be relocated outside the side and rear yard setbacks, and the supporting concrete pad shall be removed.
2. If the barn is relocated in order to provide a foundation for it, it shall not be located closer to either the southerly property line or the main dwelling.
3. The tax and utility payment certification shall be updated.
4. The barn exceeds 200 square feet and therefore a construction permit is required. An application must be made to the Construction Department.
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 9/1/20.

BOA# 05-20

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

Mr. Germinario summarized the Iconic Wellness Center application and the conditions outlined in the resolution. Mr. Paone made a motion to memorialize the resolution and Mr. Egerter seconded.

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

In favor: Mr. Smith, Mr. Ritger, Mr. Paone and Mr. Egerter
 Opposed: Mr. Dick
 Abstentions:

The motion carried. The resolution follows.

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: September 1, 2020
 Memorialized: October 6, 2020

**IN THE MATTER OF ICONIC MEDICAL AND WELLNESS CENTERS, LLC
 ORDINANCE INTERPRETATION
 BLOCK 2701, LOT 5**

WHEREAS, Iconic Medical and Wellness Centers, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for the interpretation of the Zoning Ordinance pursuant to N.J.S.A. 40:55D-70b by application dated 4/14/20; and

WHEREAS, the application was deemed complete by the Board, and a public hearing was held on 8/4/20; 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 Applicant Iconic Medical and Wellness Centers, LLC has submitted an application for an interpretation of whether the Applicant's business is a medical office and therefore not permitted on the subject property. A maximum number of medical offices were permitted on the subject property pursuant to the resolution of approval of the Mendham Planning Board for Final Site Plan for the Application No. 392-1, decided on November 14, 1983. The Applicant is proposing to utilize the commercial space at the above-referenced property as an upscale wellness spa. The business proposes to provide weight loss and nutrition consultation to individuals, offer facial and cosmetic skin treatments including Botox injections and provide IV vitamin therapy. The therapy can be administered at home or at the wellness center. The property is located in a professional business park consisting of several building units with the Applicant occupying one (1) unit (unit 26). Off-street parking is available on the subject property.

2. The Applicant has submitted the following documents in connection with its request for Ordinance interpretation, which documents are part of the hearing record:

- *Application for Hearing, dated 4/14/20, with supporting documentation*
- *11/14/83 Final Site Plan Resolution of the Mendham Planning Board*

3. 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, P.P., A.I.C.P., Board Planner,
 dated 6/16/20*

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

Neil Schetelik, Zoning Officer, dated 5/27/20

5. In the course of the public hearings, no exhibits were marked as part of the hearing record.

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

- Elini Pellazgu, co-owner
- Maria Korogodsky, co-owner
- Sanja Kolarov, co-owner

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

Board Planner Jessica Caldwell's report of 6/16/20 presented the following Ordinance interpretation:

The subject site is located in the LB Limited Business Zone, wherein the following principal uses such as business office buildings and professional and administrative office buildings; banks savings and loan associations and other financial institutions; civic and public buildings; houses of worship; outdoor essential services, including electric substations, transformers, switches and similar equipment; accessory uses and structures incidental to permitted uses, including off-street parking and solar panel systems as well as the storage of all goods and materials; and one accessory apartment per permitted commercial building are permitted.

The limitation to the number of medical office spaces was imposed as a condition of approval of the development presumably due to parking demand on the site and the fact that medical offices typically have a higher parking demand and turnover than typical offices. The interpretation then can be two-fold: does the use as proposed constitute a medical office as was conceived of by the resolution of the Planning Board and does the use as proposed constitute a violation of the deed and resolution? The Board could consider that the use is a medical use and therefore not permitted or that the use is another type of use, either a personal service use, or some other type of use not conceived of at the time of the resolution and although there are medical aspects to the use, the use itself doesn't present the types of issues the Board was hoping to overcome by limiting medical offices. If so, then the interpretation would allow the use to occupy the space. In the alternative, if the Board found the use was a medical use, the Applicant could apply to the Planning Board to amend the resolution of approval and remove the restriction.

Further, per Borough Code Section 215-1 Word usage and definitions:

A Professional Office is defined as the office of an accountant, architect, attorney, dentist, engineer, physician, planner, realtor or such similar use as interpreted by the Zoning Board of Adjustment.

A Personal Service is defined as a type of business enterprise, a service performed on or closely related to the physical person, such as barbering, custom tailoring, manicuring, shoe shining and the like.

A medical office is not defined; however, it would appear to fall under the definition of Professional Office.

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

The Board finds that the 1983 Planning Board Resolution condition was intended to preclude the high parking demand associated with conventional medical practice. The Board further finds that the parking demand generated by the Applicant's wellness practice corresponds to that of a personal service business rather than a professional or medical office. Therefore, the Board concludes that the Applicant's proposed use does not violate the conditions of the 1983 Resolution or the deed restriction filed pursuant thereto.

NOW, THEREFORE, BE IT RESOLVED, that the Board finds, pursuant to N.J.S.A. 40:55D-70b, that the Applicant's use does not constitute a medical office, and therefore does not violate the Planning Board's 1983 Resolution.

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 9/1/20.

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ADJOURNMENT

There being no additional business to come before the Board, **Motion** was made by Mr. Smith, seconded by Mr. Paone. On a voice vote, all were in favor. Chairman Ritger adjourned the meeting at 8:05PM.

The next meeting of the Board will be held on **Thursday, November 5, 2020 at 7:30PM** at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Lisa Smith

Lisa Smith
Land Use Coordinator