**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.

Lisa Smith

Board Secretary