

**BOROUGH OF MENDHAM**  
MORRIS COUNTY, NEW JERSEY

**ORDINANCE #19-2021**

**ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY,  
AUTHORIZING THE PURCHASE OF VACANT REAL PROPERTY LOCATED ON A PORTION OF BLOCK 601, LOT 5  
(MENDHAM METHODIST CHURCH) IN ACCORDANCE WITH N.J.S.A 40A:12-5**

**WHEREAS**, the Mendham Methodist Church (the "Church") is the owner of the property designated at Block 601, Lot 5 (the "Property") on the official Tax Map of the Borough of Mendham; and

**WHEREAS**, the Borough of Mendham desires to purchase from the Church, and the Church agrees to sell to the Borough a portion of Block 601, Lot 5 which consists of approximately 1.6666 acres of certain vacant land located on the Property a Map of the land that is part of this acquisition is on file with the Borough Clerk; and

**WHEREAS**, the parties negotiated a purchase price of \$300,000 to be funded by \$220,000 from Morris County Open Space Trust Fund and \$80,000 from the Mendham Borough Open Space Trust Fund; and

**WHEREAS**, the Borough and Church agreed to essential terms and conditions of this arrangement and memorialized same in a Contract for Sale of Real Estate authorized by Resolution 2001-141, adopted on October 25, 2021; and

**WHEREAS**, the Borough secured the Morris County Open Space Trust Fund grant in the amount of \$220,000; and

**WHEREAS**, the Borough has conducted the required due diligence and now desires to finalize the purchase; and

**WHEREAS**, N.J.S.A. 40A:12-5 authorizes a municipality by ordinance to acquire any real property.

**THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

1. The purchase of the property described in the Contract of Sale of Real Estate for the amount of \$300,0000 is attached hereto is hereby authorized.
2. The Mayor, Borough Clerk and Borough Attorney are authorized to execute any necessary documents to acquire the real property described herein.
3. If any portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion, and such holding shall not affect the validity of the remaining portions hereof.
4. All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.
5. This ordinance shall take effect immediately upon final passage and publication in the manner according to law.

# # # # #

Attachment: Copy of Contract of Sale of Real Estate

Introduced: November 29, 2021  
Public Hearing: December 8, 2021

Prepared by: Fred Semrau, Esq.

### CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale is made on October 18, 2021, **BETWEEN:**

**The Trustees of the Mendham Methodist Church** whose address is 10 East Main Street, Mendham, New Jersey 07945 referred to as Seller,

And the Borough of **Mendham, a Municipal Corporation of the State of New Jersey** whose address is 2 West Main Street, Mendham, New Jersey 07945 referred to as Buyer.

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

1. **Purchase Agreement.** The Seller agrees to sell, and the Buyer agrees to buy the property described in this contract.

2. **Property.** The property to be sold consists of the land and all the buildings, other improvements, and fixtures on the land. The real property to be sold is a portion of the property commonly known as Block 601, Lot 5 in the Borough of Mendham, County of Morris, and State of New Jersey and contains approximately 1.666 acres. The property is more fully described in the attached Schedule A. As a condition of the sale of this property, the parties agree to the following:

- (a) The parties agree that this Contract is contingent upon the Buyer establishing a walking path from the Church parking lot connecting to the municipal lot behind 6 East Main Street.
- (b) The parties agree that this Contract is contingent upon the Buyer establishing a driveway leading from the Church parking lot exiting to the First Aid Squad/Fire House parking lot prior to closing.
- (c) The Buyer agrees to reimburse the Seller for legal fees for this closing, not to exceed \$1,000.

3. **Purchase Price.** The purchase price is \$300,000.

4. **Payment of Purchase Price.** The Buyer will pay the purchase price as follows:

A. Morris County Open Space Trust Fund \$220,000

B. Borough of Mendham Open Space Trust Fund	<u>80,000</u>
TOTAL	\$300,000

5. **Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make November 1, 2021, the estimated date for the closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will take place at the Mendham Borough Municipal Building, 2 West Main Street, Mendham, New Jersey, or such other place as shall be mutually agreed upon.

6. **Transfer of Ownership.** At the closing, the Seller will transfer ownership of the property to the Buyer. The Seller will give Buyer a properly executed Deed and an adequate Affidavit of Title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale. Seller shall also deliver to Buyer any and all affidavits and other instruments and documents which Buyer or the title company ensuring Buyer's title to the Property shall reasonably request in order to convey good and marketable title to the Property, subject to any permitted encumbrances provided for herein.

7. **Title.** Title to the Property shall be good, marketable, with valid title valid of record, and insurable at regular rates by any title insurance company of Buyer's choice authorized to do business in the State of New Jersey, subject to the following exceptions which shall be deemed "Permitted Exceptions":

- (i) Laws, regulations, or ordinances of federal, state, county or local entities or agencies having jurisdiction over the Property.
- (ii) Such state of facts as would be shown on an accurate survey of the Property, provided such facts do not render title to the Property unmarketable, nor would reveal any easements, covenants, restrictions, encroachments onto the property from adjoining properties or from the property onto adjoining properties.

Sellers represent that there is no lien against the Property including but not limited to a tax lien, mortgage lien or judgment lien. If there is any such lien, same shall either be paid prior to closing or satisfied out of the closing proceeds at the time of closing and/or discharged of record.

8. **Type of Deed.** A Deed is a written document used to transfer ownership of property. In this sale, the Seller agrees to provide, and the Buyer agrees to accept a Deed known as a BARGAIN AND SALE DEED.

9. **Requirements of Seller to Deliver to Buyer.** Within ten (10) days of Seller and Buyer executing this Contract, Seller shall deliver to Buyer, if it possesses such documents:

- (a) Any title examination and/or title search together with any policy of fee owner title insurances which may be within the possession or control of Seller;

(b) The latest survey of the Property, if any, which may presently be in the custody or control of Seller; and

(c) A copy of the Deed to the Property into Seller.

**10. Physical Condition of the Property.** This property is being sold "as is". The Seller does not make any claims or promises about the condition or value of any of the property included in this sale. Seller must provide all environmental documentation and testing and evaluations regarding the Property. The Buyer has inspected the property and relies on this inspection and any rights which may be provided for elsewhere in this contract.

**11. Inspection of the Property.** In accordance with the requirements of the Morris County Open Space Trust Fund, the buyer shall have the right to inspect the property at any reasonable time before closing. The Seller will permit access for all inspections provided for in this contract. It is understood and agreed by the parties hereto that the Buyer may obtain at its sole cost and expense a Phase I Environmental Assessment of the Property, which shall be certified to and subject to the approval of Buyer and which shall comply with all applicable NJDEP and ASTM standards. If Buyer chooses to have such an Assessment, Buyer shall provide said Assessment to the Seller no later than sixty (60) days from the date of execution of this contract by all parties. ("Due Diligence Date") The Buyer shall make every effort to complete the Assessment prior to the Due Diligence Date.

To facilitate inspections within the approval period, the Seller will make available all planning and zoning documents and approvals and all environmental or soil or other construction tests for the Property for the Buyer's examination.

Upon the execution of this contract, the Buyer, or its agents, at its sole cost and expense, shall have unrestricted access to the Property, in accordance with the Temporary License terms set forth at Paragraph 12 hereafter, at any time and from time to time after the date hereof to conduct inspections, tests and surveys of the land including, without limitation, the above-mentioned environmental assessment and additional physical inspections of all areas of the Property. ("Due Diligence Inspection") The Buyer shall complete all inspections and furnish the Seller with the results of any such tests and studies no later than the Due Diligence Date.

Notwithstanding anything to the contrary contained in this contract, in the event the Buyer's Phase I Environmental Assessment and/or Buyer's Due Diligence Inspection may reveal any aspect, condition or circumstances of, or relating to, the Property that is unsatisfactory to the Buyer, of which the Buyer shall be the sole judge, the Buyer shall provide notice thereof to the Seller with request that same be cured by the Seller. If the Seller declines to cure or fails to respond to the Buyer's notice within thirty (30) days of receipt thereof, the Buyer shall have the right to terminate this contract by sending written notice of such termination to the Seller on or before the Due Diligence Date. In addition, the Buyer may, at its sole cost and expense, and within the time period preceding the occurrence of the Due Diligence Date as defined above,

satisfy itself (in its sole discretion) as to the suitability, potential, and feasibility of the Property for use(s) acceptable to the Buyer, having regard to, among other things, but not by way of limitation, the following:

- (i) Drainage and flood control;
- (ii) Soil tests and landfill requirements; and
- (iii) Environmental condition and approvals.

The foregoing is for the sole benefit and advantage of the Buyer. The Buyer may nevertheless waive the same by notice in writing delivered to Seller at any time prior to the date specified above.

On or before the Due Diligence Date specified above, the Buyer shall give written notice to the Seller that the approval provided for herein has been fulfilled or waived or that the Buyer has determined to terminate this contract. In the event the Buyer does not provide the Seller with the notice required by this paragraph on or before the Due Diligence Date, upon receipt of ten (10) business days written notice from the Seller, if Buyer does not cure, Buyer shall be deemed to have waived its right to terminate this contract in accordance with the terms of this paragraph.

In the event that the Buyer shall exercise its termination right as hereinabove provided, this contract shall be deemed terminated and of no further force and effect as of the date the Buyer's notice of termination is given and, from and after such date, neither party shall have any further obligations nor liabilities to the other except as may be specifically provided for hereunder.

(a) **Environmental Reports.** The Seller shall provide any and all independent environmental examination documents and/or studies/report.

**12. Temporary License for Inspection.** Execution of this contract by the parties hereto shall be deemed a request from the Buyer and a grant by the Seller of a temporary license to the Buyer for the purpose of entering upon the Property to perform, within the time period prior to the Due Diligence Date, the inspection of the Property provided for in the preceding section, the Due Diligence Inspection. By accepting the within temporary license, the Buyer hereby agrees to be bound by, and to provide for, the following:

(a) The Buyer, as licensee, hereby releases and will protect, defend, indemnify and save harmless the Seller against all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "Claims") for injury (including death) sustained by the officers, agents and employees of Buyer, and any agent and employee of all other persons whomsoever employed by or retained by the Buyer, and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of or occurring in connection with the entry or presence of the Buyer (licensees), its agents and/or employees on the Sellers



property or incidental or appertaining thereto. As a result of any such Claims, Buyer (licensee) will assume at its own expense, on behalf of said parties the amount of any settlement agreed upon, judgment that may be entered, and any other amounts assessed in connection therewith, plus all costs and expenses involved as aforementioned. To the extent possible, the Buyer shall restore any portion of the Property disturbed by the Buyer's inspections to the condition of the Property prior to the inspections.

(b) Under no circumstances shall this Temporary License be construed as granting the Buyer (licensee) any right, title or interest of any kind or character in or about the land or premises of the Seller.

(c) By executing this contract, the Buyer (licensee) acknowledges and accepts the terms of the above-stated Temporary License for the purpose of performing the Due Diligence inspection as provided within this Contract.

**13. Building and Zoning Laws.** The Seller states, to the best of its knowledge, that the current use of the Property does not violate any applicable zoning ordinance, building code or other law.

**14. Flood Area.** The federal and state governments have designated certain areas as flood areas. This means they are more likely to have floods than other areas. If this Property is in a flood area, the Buyer may cancel this contract within thirty (30) days of the signing of this contract by all parties.

**15. Property Lines.** The Seller states that all buildings, driveways and other improvements on the property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this property.

**16. Ownership.** The Seller agrees to transfer, and the Buyer agrees to accept ownership of the Property free of all claims and rights of others, including any rights of others pursuant to a lease, license, or contract, except for:

(a) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the property next to the street or running to any house or other improvements on the property.

**17. Risk of Loss.** The Seller is responsible for any damage to the Property, except for nominal wear and tear, until the closing. If there is damage, the Buyer can proceed with the closing and either:

(a) require that the Seller repair the damage before the closing; or  
(b) deduct from the purchase price a fair and reasonable estimate of the cost to repair the property.

**18. Possession.** At the closing the Buyer will be given possession of the property free of any rights of tenants.

**19. Complete Agreement.** This contract is the entire and only agreement between the Buyer and the Seller. This contract replaces and cancels any previous agreements between the Buyer and the Seller. This contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the Property to anyone else or has terminated any other contract to sell the Property to anyone else and that party acknowledges such termination by his signature hereto.

**20. Parties Liable.** This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

**21. Notices.** All notices, demands or communications hereunder shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight carrier to the following addresses:

If to Seller: Mendham Methodist Church  
10 East Main Street  
Mendham, NJ

With a copy to Elaine Warren, Chairperson Mendham Methodist Church  
Board of Trustees  
[elainewarren0330@gmail.com](mailto:elainewarren0330@gmail.com)

If to Buyer: Borough of Mendham  
2 West Main Street  
Mendham, NJ

With a copy to Fred Semrau, Esq.  
Dorsey & Semrau  
714 Main Street, PO Box 228  
Boonton, New Jersey 07005

**22. Funding Contingency.** The obligation of Buyers to consummate this Contract is specifically contingent upon Buyers satisfying all obligations relating to grant monies from the County of Morris Open Space and Farmland Preservation Trust Fund. This means that in the event the County of Morris Open Space and Farmland Preservation Trust Fund is not satisfied that the property has met the conditions for closing, such as environmental conditions, then in such event, if the funding is revoked, the Township may elect to cancel the contract. The preliminary funding breakdown (which is subject to change) is as follows:

(1) Morris County Open Space Trust Fund	\$220,000
(2) Borough of Mendham Open Space Trust Fund	<u>\$ 80,000</u>
TOTAL	\$300,000

Sellers are aware that the governing bodies of all the above-named entities will have to approve this transaction and specifically fund each entity's allocable share. If all of the said funds are not received by Buyers from each entity on or before the closing date, they buyer shall have the right to terminate this Contract.

**23. Completion of Acceptable Survey.** The obligation of the Buyer to consummate this contract is specifically contingent upon the completion of an acceptable survey. The Buyer shall have obtained, at their cost and expense, an acceptable survey of the Property, showing (i) all of the Property to consist of the dimensions referenced in Paragraph 2. If the survey should indicate any encroachments by structures, fences or other man-made improvements, which either belong to the Seller and encroach on a neighboring property or belong to a neighboring property and encroach on the Property, the Seller shall at its sole cost and expense attend to removal of any such encroachment prior to closing of title.

**24. Seller's Representations.** The Seller makes the following covenants, representations and warranties, which representations and warranties are true and correct as of the date hereof and will be true and correct as of the closing date, and will survive the closing of title to the Property:

(a) There are no leases or use or occupancy agreements affecting the Property, and no party has any claim or right to possess the Property or any portion thereof with the exception of easements of record and the traveled right of way, and the Seller will convey clear title to the entire Property to the Buyer at closing.

(b) There are no service contracts, labor or union contracts, employment agreements, management contracts or any other agreements affecting the Property or the operation thereof.

(c) There is no litigation pending against the Seller or against or related to all or any part of the Property.

(d) All bids and claims for labor heretofore performed and materials heretofore furnished to or for the benefit of the Property have been or will be paid in full by the Seller on the closing date.

(e) No person, firm, or entity has any rights in, or any rights to acquire all or any part of the Property including, without limitation, any rights of first refusal or options with respect to the same.

(f) Seller represents and warrants to the best of Seller's knowledge that throughout the entire period of Seller's ownership of the Property:

1. The Seller has not received notification from a federal, state or local government regarding any safety or environmental investigation.

2. The Property has never been used as a dump site or storage facility.

3. There have been no oil or gasoline spills on the Property and there are no underground or above ground storage tanks on the Property.

4. The Seller further represents that to the best of its knowledge, information and belief, its property and this transaction are not subject to the New



Jersey Industrial Site Recovery Act. (N.J.S.A. 13:1K *et seq.*) and the regulations promulgated thereunder("ISRA").

**25. Real Estate Brokerage Commission.** The Seller and the Buyer mutually represent and warrant to each other that they have not dealt with any real estate broker or agent in bringing about this transaction. The parties hereto agree to save each other harmless and indemnify each other from any losses, damages, judgments, and costs, including legal fees, which a party may suffer if the other party breaches its obligations hereunder or if the representation of the other party contained herein proves untrue. The obligations of this paragraph shall survive closing of title and delivery of the Deed.

26. There shall be no automatic waivers in the contract without the party in default first being given a notice in writing specifying ten (10) business days to cure.

27. The Borough shall take all necessary steps to effectuate the subdivision or lot lone adjustment. The Seller shall cooperate with such efforts.

28. At closing, the Seller agrees to sign a "Right of First Refusal" giving the Buyer the right to match any offer made to the Seller on the remainder of the property for the next thirty (30) years.

29. The giving of any notice required hereunder may be made via facsimile or electronic mail.

**SIGNED AND AGREED TO BY:**

Witnessed or Attested:

[Redacted Signature]

Robin Kline, Clerk

**BOROUGH OF MENDHAM, Buyer**

[Redacted Signature]

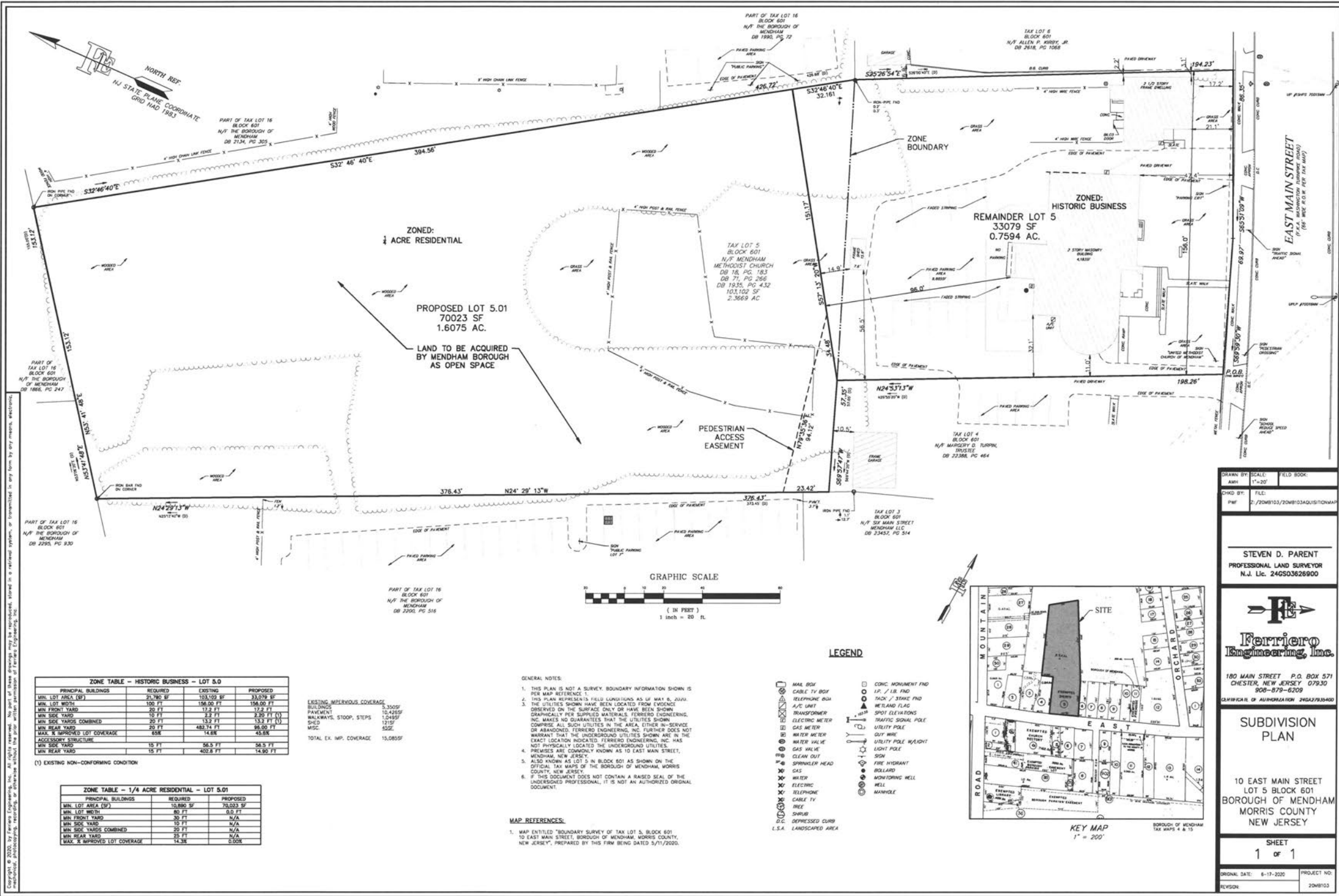
Christine Glassner, Mayor

**MENDHAM METHODIST CHURCH**

[Redacted Signature]

Elaine Warren, Chairperson Mendham Methodist Church Board of Trustees, Seller

As to Seller(s)  
Susan Giordano



**ZONE TABLE - HISTORIC BUSINESS - LOT 5.0**

PRINCIPAL BUILDINGS	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA (SF)	21,780 SF	105,100 SF	33,079 SF
MIN. LOT WIDTH	100 FT	156.00 FT	156.00 FT
MIN. FRONT YARD	20 FT	17.2 FT	17.2 FT
MIN. SIDE YARD	10 FT	2.2 FT	2.20 FT (1)
MIN. SIDE YARDS COMBINED	20 FT	13.2 FT	13.2 FT (1)
MIN. REAR YARD	20 FT	482.74 FT	89.00 FT
MAX. % IMPROVED LOT COVERAGE	65%	14.6%	45.6%
ACCESSORY STRUCTURE	15 FT	56.5 FT	56.5 FT
MIN. SIDE YARD	15 FT	402.8 FT	14.90 FT

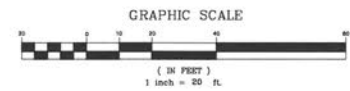
**ZONE TABLE - 1/4 ACRE RESIDENTIAL - LOT 5.01**

PRINCIPAL BUILDINGS	REQUIRED	PROPOSED
MIN. LOT AREA (SF)	10,890 SF	70,023 SF
MIN. LOT WIDTH	80 FT	60 FT
MIN. FRONT YARD	30 FT	N/A
MIN. SIDE YARD	10 FT	N/A
MIN. SIDE YARDS COMBINED	20 FT	N/A
MIN. REAR YARD	25 FT	N/A
MAX. % IMPROVED LOT COVERAGE	14.3%	2.00%

EXISTING IMPROVED COVERAGE  
 BUILDINGS 5.3305%  
 PAVEMENTS 10.4255%  
 WALLWAYS, STOOP, STEPS 1.0455%  
 SHED 1215%  
 MISC. 552%  
 TOTAL EX. IMP. COVERAGE 15.0855%

- GENERAL NOTES:**
- THIS PLAN IS NOT A SURVEY. BOUNDARY INFORMATION SHOWN IS PER MAP REFERENCE 1.
  - THIS PLAN REPRESENTS FIELD CONDITIONS AS OF MAY 8, 2020. THE UTILITIES SHOWN HAVE BEEN LOCATED FROM EVIDENCE OBSERVED ON THE SURFACE ONLY. THEY HAVE NOT BEEN SHOWN GRAPHICALLY PER SUPPLIED MATERIALS. FERRIERO ENGINEERING, INC. MAKES NO GUARANTEES THAT THE UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN-SERVICE OR ABANDONED. FERRIERO ENGINEERING, INC. FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. FERRIERO ENGINEERING, INC. HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.
  - PREMISES ARE COMMONLY KNOWN AS 10 EAST MAIN STREET, MENDHAM, NEW JERSEY.
  - ALSO KNOWN AS LOT 5 IN BLOCK 601 AS SHOWN ON THE OFFICIAL TAX MAPS OF THE BOROUGH OF MENDHAM, MORRIS COUNTY, NEW JERSEY.
  - IF THIS DOCUMENT DOES NOT CONTAIN A RAISED SEAL OF THE UNDERSIGNED PROFESSIONAL, IT IS NOT AN AUTHORIZED ORIGINAL DOCUMENT.

- MAP REFERENCES:**
- MAP ENTITLED "BOUNDARY SURVEY OF TAX LOT 5, BLOCK 601 TO EAST MAIN STREET, BOROUGH OF MENDHAM, MORRIS COUNTY, NEW JERSEY," PREPARED BY THIS FIRM BEING DATED 5/11/2020.



**LEGEND**

- MAIL BOX
- CABLE TV BOX
- TELEPHONE BOX
- A/C UNIT
- TRANSFORMER
- ELECTRIC METER
- GAS METER
- WATER METER
- WATER VALVE
- GAS VALVE
- CLEAN OUT
- SPRINKLER HEAD
- GAS
- WATER
- ELECTRIC
- TELEPHONE
- CABLE TV
- FREE
- SHURR
- D.C. DEPRESSED CURB
- L.S.A. LANDSCAPED AREA
- CONC. MONUMENT FND
- 1/2" I.B. FND
- TACK / STAKE FND
- WETLAND FLAG
- SPOT ELEVATIONS
- TRAFFIC SIGNAL POLE
- UTILITY POLE
- GUY WIRE
- UTILITY POLE W/ANCH
- LIGHT POLE
- SIGN
- FIRE HYDRANT
- BOLLARD
- MONITORING WELL
- WELL
- MANHOLE



DRAWN BY: SCALE: FIELD BOOK:  
 AMH 1"=20'

CHKD BY: FILE  
 PWF Z:/20MB103/20MB103A/SUBDIVISION.PDF

**STEVEN D. PARENT**  
 PROFESSIONAL LAND SURVEYOR  
 N.J. Lic. 246503628900

**Ferriero Engineering, Inc.**  
 180 MAIN STREET P.O. BOX 571  
 CHESTER, NEW JERSEY 07930  
 908-879-6209

**SUBDIVISION PLAN**

10 EAST MAIN STREET  
 LOT 5 BLOCK 601  
 BOROUGH OF MENDHAM  
 MORRIS COUNTY  
 NEW JERSEY

SHEET  
 1 of 1

ORIGINAL DATE: 6-17-2020 PROJECT NO:  
 REVISION: 20MB103