

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

RESOLUTION #102-2020

**A RESOLUTION OF THE BOROUGH OF MENDHAM, IN THE COUNTY OF MORRIS AND
STATE OF NEW JERSEY, ENDORSING THE AMENDED HOUSING ELEMENT AND FAIR SHARE
PLAN ADOPTED BY THE BOROUGH PLANNING BOARD ON MAY 11, 2020.**

WHEREAS, the New Jersey Supreme Court issued a decision on March 10, 2015 in the case captioned In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. (2015), which transferred primary jurisdiction over affordable housing matters from the Council on Affordable Housing (“COAH”) to the trial courts; and

WHEREAS, on July 2, 2015, the Borough of Mendham (“Borough”) filed a Complaint for Declaratory Judgment in the New Jersey Superior Court, Law Division, captioned In the Matter of the Application of the Borough of Mendham, Docket No. MRS-L-1637-15, seeking Declaratory Judgment and Substantive Certification for its fair share housing obligation; and

WHEREAS, the Borough simultaneously sought and secured a protective order providing the Borough with immunity from builder’s remedy lawsuits, which immunity continues today; and

WHEREAS, the Planning Board of the Borough of Mendham (“Planning Board”) conducted a properly noticed public hearing and adopted an updated Housing Element and Fair Share Plan (“HEFSP”) on March 14, 2016; and

WHEREAS, the Borough Council endorsed the HEFSP pursuant to Resolution #52-16, which was adopted on March 21, 2016; and

WHEREAS, the Borough engaged in good-faith negotiations with Fair Share Housing Center (“FSHC”) and V-Fee Realty Investments, LLC (“V-Fee Realty”), which resulted in settlement agreements dated December 26, 2019 and December 23, 2019 (collectively, “Settlement Agreements”), respectively, to resolve the Borough’s affordable housing litigation; and

WHEREAS, the Settlement Agreements were authorized by Resolution #173-2019 and Resolution #174-2019, adopted by the Borough Council on November 25, 2019; and

WHEREAS, a Fairness and Preliminary Compliance hearing was held in the New Jersey Superior Court, Law Division, on January 24, 2020, at which time the Settlement Agreements were approved, as memorialized by an Order on Fairness and Preliminary Compliance entered by the Court on February 3, 2020; and

WHEREAS, as per the terms of the Settlement Agreements, on May 11, 2020 the Planning Board held a duly noticed public hearing on the revised HEFSP dated April 13, 2020, attached hereto as Exhibit A, and adopted said HEFSP that same day; and

WHEREAS, a true copy of the Resolution of the Planning Board adopting the updated HEFSP is attached hereto as Exhibit B; and

WHEREAS, the Mayor and Borough Council wish to endorse the updated HEFSP and seek approval of the HEFSP from the Court.

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

1. The HEFSP attached hereto as Exhibit A, as adopted by the Planning Board on May 11, 2020, which Resolution is attached hereto as Exhibit B, is hereby endorsed.
2. The Borough professionals are hereby authorized and directed to file with the Court the HEFSP, the resolutions of the Planning Board and Mayor and Borough Council adopting and endorsing, respectively, the HEFSP, and any additional documents the professionals deem necessary or desirable.
3. The Borough professionals are hereby authorized and directed to seek Court approval of the HEFSP at a Final Compliance Hearing.
4. The Borough reserves the right to amend the HEFSP, should that be necessary.

This Resolution shall take effect immediately.

Dated: July 15, 2020

**RESOLUTION OF THE
MENDHAM BOROUGH PLANNING BOARD
MORRIS COUNTY, NEW JERSEY**

REEXAMINATION OF THE BOROUGH OF MENDHAM MASTER PLAN PURSUANT TO
N.J.S.A. 40:55D-89 SPECIFICALLY WITH RESPECT TO THIRD ROUND AFFORDABLE
HOUSING REGULATIONS

WHEREAS, the Planning Board of the Borough of Mendham, Morris County, State of New Jersey (“Planning Board”) adopted the current Borough of Mendham Master Plan pursuant to Article 3 of the MLUL (N.J.S.A. 40:55D-28) in August 2006; and

WHEREAS, N.J.S.A. 40:55D-89 provides that each municipality within the State of New Jersey periodically re-examine its Master Plan policies and assumptions, zoning restrictions, and site plan and subdivision regulations, and prepare and adopt by resolution a report on the findings of such reexamination; and

WHEREAS, the Planning Board has conducted such periodic reexaminations of the Master Plan since the initial date of its adoption and adopted reports setting forth its findings of each such reexamination, in accordance with the provisions of N.J.S.A. 40:55D-89; and

WHEREAS, the Borough of Mendham adopted its most recent Housing Element and Fair Share Plan on March 4, 2016 as it seeks to provide its constitutional fair share of the regional present and prospective need for affordable housing; and

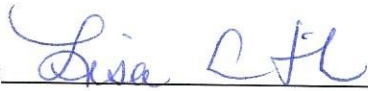
WHEREAS, the New Jersey Supreme Court in N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing instructed municipalities to revise and submit their Housing Element and Fair Share Plan and implementing ordinances to the Courts in order to be deemed constitutionally compliant; and

WHEREAS, the Planning Board has determined after reexamination of the Master Plan, receipt of public comment, and public deliberation regarding same, that the Borough of Mendham Master Plan and ordinances must be amended to incorporate the proposed changes pursuant to the requirements of the New Jersey Courts; and

WHEREAS, the Planning Board has determined that the adoption and implementation of the updates to the Borough of Mendham Master Plan and ordinances are in the public interest and protects public health and safety and promotes the general welfare.

NOW, THEREFORE BE IT RESOLVED, that the Planning Board hereby makes and adopts the findings of fact and all recommendations as set forth in the 2020 Mendham Borough Master Plan Reexamination Report,” dated April 13, 2020, prepared by Jessica C. Caldwell, P.P., A.I.C.P., a reexamination of the Borough of Mendham Master Plan and development regulations conducted specifically to address the task of providing for the regional present and prospective fair share of affordable housing.

Signed: 
Richard G. Kraft, Planning Board Chair

Attest: 
Lisa Smith, Planning Board Administrator

Dated: 4/16/20

**RESOLUTION OF THE
MENDHAM BOROUGH PLANNING BOARD
MORRIS COUNTY, NEW JERSEY**

A RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF MENDHAM
ADOPTING A HOUSING ELEMENT AND FAIR SHARE PLAN OF THE MASTER PLAN
PURSUANT TO N.J.S.A. 40:55D-28

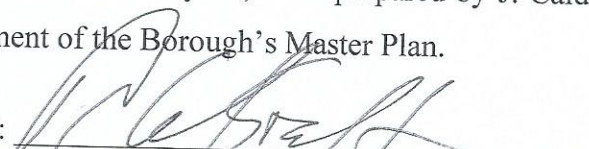
WHEREAS, the Planning Board of the Borough of Mendham (the “Board”) reviewed and adopted a Master Plan Reexamination Report dated April 13, 2020 at a duly noticed public hearing; and

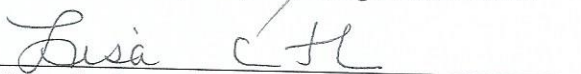
WHEREAS, the Master Plan Reexamination Report recommended adoption of a revised Housing Element and Fair Share Plan; and

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Borough Planning Board held a public hearing on the Housing Element and the Fair Share Plan on May 11, 2020; and

WHEREAS, upon the conclusion of the public hearing the Board determined that the proposed Plan will guide the use of lands and affordable housing in the Borough in a manner which protects public health and safety and promotes the general welfare and affordable housing in accordance with N.J.S.A. 40:55D-28, considers the lands that are most appropriate for construction of very low, low and moderate income housing in accordance with N.J.S.A. 52:27D-310, and is designed to achieve access to affordable housing to meet the Borough's Mount Laurel constitutional affordable housing obligations; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Mendham, in the County of Morris and State of New Jersey, that the Housing Element and Fair Share Plan dated May 11, 2020 prepared by J. Caldwell & Associates, LLC shall be adopted as an element of the Borough's Master Plan.

Signed: 
Richard G. Kraft, Planning Board Chair

Attest: 
Lisa Smith, Planning Board Administrator

Dated: 5/12/20

Housing Element and Fair Share Plan

MENDHAM BOROUGH
MORRIS COUNTY, NEW JERSEY

May 11, 2020

Prepared by:



J Caldwell
& Associates, LLC
Community Planning Consultants

Housing Element and Fair Share Plan

Mendham Borough
Morris County, New Jersey

May 11, 2020

Prepared by:



Jessica C. Caldwell, P.P., A.L.C.P., Land Use Board Planner

License No. 5944

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HOUSING ELEMENT

INTRODUCTION

Community Overview

The Borough of Mendham is located in south-central Morris County and has a land area of 6.0 square miles. Mendham had a population of 4,992 residents and 1,849 total housing units according to 2017 American Community Survey estimates.

Mendham Borough is surrounded by Mendham Township to the north, east and west in Morris County and the Township of Bernardsville in Somerset County to the south. The Borough is known for its historic downtown where some of the oldest structures date back to the 18th Century. The downtown is also designated as a national, state and local historic district.

No Interstate, U.S., or state highways pass through the Borough, instead, County Route 510 and County Route 525 are the main thoroughfares. County Route 510 crosses the Borough from east to west while, County Route 525 crosses the Borough from north to south; both roadways intersect in the historic downtown. Land use in the Borough is predominantly residential with commercial uses located in the historic downtown and along County Route 510. Recreational and open space uses are located throughout the Borough along with agricultural land uses primarily along the fringes of the Borough.

Mendham Borough is located entirely within the Planning Area of the Highlands Region, where local conformance to the Highlands Regional Master Plan is entirely voluntary. The municipality completed a Highlands Initial Assessment Report in 2009; however, did not go forward with Highlands Plan Conformance.

According to the State Development and Redevelopment Plan, the Borough of Mendham was designated as a “Village Center” within Planning Area 5, Environmentally Sensitive Planning Area in 1995. Relevant State Plan goals for this area include protecting the character of existing stable communities, protecting natural resources, and revitalizing cities and towns. The majority of new development opportunities in the municipality will be through small-scale redevelopment or rehabilitation of existing sites in the Historic Business District since much of the Borough is developed and the Borough’s Master Plan seeks to maintain the scale and historic character of the Borough.

Background

The New Jersey Supreme Court, in Mount Laurel I (1975) and Mount Laurel II (1983) required all New Jersey municipalities to take affirmative actions toward providing their “fair share” of the region’s need for affordable housing for low- and moderate-income people. In response to the Mount Laurel II decision, the New Jersey Legislature adopted the Fair Housing Act (FHA) in 1985. This Act created the Council on Affordable Housing (COAH) to assess the statewide need for affordable housing, allocate that need on a municipal fair share basis, and review and approve municipal housing plans aimed at implementing the local fair share obligation.

This Housing Element and Fair Share Plan has been prepared in accordance with the Municipal Land Use Law, specifically N.J.S.A. 40:55D-28b(3), to address Mendham Borough’s cumulative housing obligation for the period commencing in 1987 and extending to June 30, 2025. This Plan has also been prepared pursuant to the New Jersey Fair Housing Act (N.J.S.A. 52:27D-310 et seq.) which outlines the mandatory requirements for a Housing Element and Fair Share Plan, including an inventory and projection of the municipal housing stock; an analysis of the demographic characteristics of the Borough’s residents and a discussion of municipal employment characteristics. As required by the New Jersey Fair Housing Act, municipalities that choose to enact and enforce a zoning ordinance are obligated to prepare a Housing Element as part of the community’s Master Plan.

The Borough of Mendham secured Substantive Certification of its First Round Housing Element and Fair Share Plan from the Council on Affordable Housing (COAH) on May 20, 1987. The Borough petitioned COAH for Second Round Substantive Certification, with its petition for a Second Round Housing Element and Fair Share Plan, on March 3, 1995 to meet a 31-unit obligation. COAH granted Substantive Certification on June 5, 1996. This Second Round plan included 28 prior cycle credits for Mendham Area Senior Housing (MASH) units completed in 1980, 8 MASH units completed in 1989, and 3 units which had previously been rehabilitated pursuant to COAH’s rules for a total of 39 credits.

As such, the Borough had an 8-unit credit to carry forward to the Third Round. Mendham adopted a development fee ordinance on July 3, 1995 and subsequently had a Spending Plan approved by COAH on April 5, 2000, which authorized the use of the funds collected via the development fee ordinance.

As part of its efforts to provide opportunities to create affordable housing, Mendham Borough received a “Village Center” designation from the New Jersey State Planning Commission on February 24, 1995. In December of that year the Borough adopted an ordinance designating certain tracts as “Village Center Clusters” providing density bonuses linked to the inclusion of affordable units.

On May 11, 2005 COAH granted Mendham Borough extended Substantive Certification through December 20, 2005. The Borough has since prepared Third Round plans, first in August 2005 then in December 2008 and again on March 14, 2016 in response to the evolving nature of the Third Round rules.

COAH adopted the Third Round rules in 2004 (N.J.A.C. 5:94 Procedural and N.J.A.C. 5:95 Substantive) which subsequently were invalidated by an Appellate Division decision on January 25, 2007. COAH then adopted modified rules in June 2008 (N.J.A.C. 5:96 Procedural and N.J.A.C. 5:97 Substantive) which, in turn, were followed by additional legal challenges. Following adoption by the

Mendham Borough Planning Board of a Housing Element and Fair Share Plan on December 9, 2008 based upon the revised “growth share” methodology established by COAH, a petition for substantive certification was submitted to COAH and deemed complete by that agency on July 16, 2009.

In a decision issued on October 8, 2010 the Appellate Division invalidated a number of provisions in N.J.A.C. 5:97 including its central component, the “growth share” methodology; a decision later upheld by the New Jersey Supreme Court on September 26, 2013. COAH again drafted revised third round rules (N.J.A.C. 5:98 Procedural and N.J.A.C. 5:99 Substantive) which were to apply to a period commencing on November 17, 2014, however; COAH deadlocked on a vote to officially adopt the current version of the rules at its October 20, 2014 meeting, which resulted in the March 15, 2015 decision by the N.J. Supreme Court [In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing to remove COAH from the process and placing jurisdiction back with the courts.

Mendham Borough filed a Declaratory Judgment Action with Superior Court on July 2, 2015. As part of the process, the Borough adopted its most recent Housing Element and Fair Share Plan (HEFSP) on March 14, 2016. Fair Share Housing Center and V-Fee Realty Investments, LLC, the owners of Kings Shopping Center, were both intervenors in the Borough’s court case. The Borough settled with V-Fee Realty Investments, LLC on December 23, 2019. The Borough also settled with FSHC on December 26, 2019.

Following the settlement agreement, the court ordered a Fairness Hearing on the terms of the settlement, which was held on January 24, 2020. The Honorable Michael C. Gaus held the hearing on January 24, 2020 and found the terms of the agreements to be fair and adequately protecting the interests of low- and moderate-income households in the region. Several compliance items were ordered at that hearing, including a requirement for the Borough to adopt a revised HEFSP that includes the terms of the settlement agreements. Additionally, all implementing ordinances required to implement the terms of the HEFSP and the settlement agreements must also be adopted by the Borough. The Borough has a compliance hearing scheduled on June 19, 2020, where compliance with this order will be reviewed by the court. This HEFSP incorporates the terms of both settlement agreements.

Concept of Plan

Municipal Land Use Law and the Fair Housing Act require that the Housing Element and Fair Share Plan include the following:

- An inventory of the municipality’s housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- A projection of the municipality’s housing stock, including the future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- An analysis of the municipality’s demographic characteristics, including but not necessarily limited to, household size, income level and age;

- A determination of the municipality’s present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing; and
- A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.

Purpose and Goals

The purpose of this Housing Element and Fair Share Plan is to provide a realistic opportunity to address the housing needs of Mendham Borough’s residents across all income levels. This plan proposes multiple opportunities to develop a variety of housing types to meet these needs, which can be integrated into the existing land use pattern and character of the Borough.

The Housing Element and Fair Share Plan supports the goals of the Borough’s 2006 Master Plan, specifically the following:

1. To retain the small-town character of the community by implementing the Village Planning Criteria as adopted for Village Center Clusters to plan for a new development within the Village boundary.
2. To maintain a reasonable balance and variety of housing options within an approved housing element.
3. To recognize and encourage preservation and designation of those historic properties and buildings that contribute to the unique atmosphere that is Mendham, particularly those in the Historic District and which are on the State and National Registers of Historic Places.
4. To integrate new development and redevelopment into the historic fabric of the Village Center area.
5. To maintain the quality and historic character of existing buildings, including all structures which contribute to the Borough’s history.

This Housing Element and Fair Share Plan supports the goals of the 2008 Highlands Regional Master Plan (RMP), specifically the Housing and Community Facilities Goal 60: “Market rate and affordable housing sufficient to meet the needs of the Highlands Region within the context of economic, social, and environmental considerations and constraints.”

This Plan has been prepared to meet the requirements of the Municipal Land Use Law (MLUL), Fair Housing Act (FHA), the New Jersey State Development and Redevelopment Plan (SRDP), and the recent Court rulings regarding the substantive rules of the Council on Affordable Housing (COAH).

DEMOGRAPHIC ANALYSIS

Population

The Borough of Mendham has a total area of 6 square miles, including 5.950 square miles of land and 0.50 square miles of water. The Borough is surrounded by Mendham Township to the north, east, and west in Morris County and the Township of Bernardsville in Somerset County to the south. According to the 2017 American Community Survey data, the Borough has a population of 4,992 people, which translates to a population density of about 837 people per square mile.

The Borough of Mendham's population increased between 1990 and 2000 by 207 residents. In 2010, the Borough's population began to decline from 5,022 residents to 5,016 in 2015 and 4,992 residents in 2017. This is likely due to the lack of residential growth in the Borough and decreasing household sizes.

Recent population trends experienced in the Borough of Mendham, Morris County, and the State of New Jersey are shown in the tables below using information from the Decennial Census, and the 2017 American Community Survey Five-Year Estimates. The table shows the population of the Borough declining slightly and both the County and State growing.

Population Change, 1990-2017

Population Change	1990	2000	2010	2015	2017 (est.)
Mendham	4,890	5,097	5,022	5,016	4,992
Morris County	421,803	470,212	492,276	498,192	498,847
New Jersey	7,763,000	8,414,350	8,791,894	8,904,413	8,960,161

Source: U.S. Census, American Community Survey 5 – Year Estimates

Age and Sex

The median age of Mendham Borough residents is 48.2 years, according to the 2013-2017 American Community Survey, Five-Year Estimates. This is higher than the median age of both Morris County and the State of New Jersey. The largest group of residents is those in age group 45 to 49 years (9.8 percent) and those in age groups 10 to 14 years and 15 to 19 years (both 9.3 percent).

The female population (53.3 percent) is 7 percent higher than the male population (46.5 percent) in Mendham Borough. This pattern is noted throughout all age groups in the Borough.

Information on age and sex characteristics for the Borough of Mendham is based on data from the 2013-2017 American Community Five-Year Estimates in the table below.

Age and Sex	Total	(%)	Male	(%)	Female	(%)
Total Population	4,992	100.0%	2,321	46.5%	2,671	53.5%
Age						
Under 5 years	231	4.6%	165	7.1%	66	2.5%
5 to 9 years	277	5.5%	92	4.0%	185	6.9%
10 to 14 years	463	9.3%	248	10.7%	215	8.0%
15 to 19 years	465	9.3%	234	10.1%	231	8.6%
20 to 24 years	106	2.1%	67	2.9%	39	1.5%
25 to 29 years	102	2.0%	50	2.2%	52	1.9%
30 to 34 years	173	3.5%	89	3.8%	84	3.1%
35 to 39 years	147	2.9%	60	2.6%	87	3.3%
40 to 44 years	223	4.5%	74	3.2%	149	5.6%
45 to 49 years	489	9.8%	234	10.1%	255	9.5%
50 to 54 years	390	7.8%	150	6.5%	240	9.0%
55 to 59 years	373	7.5%	186	8.0%	187	7.0%
60 to 64 years	453	9.1%	251	10.8%	202	7.6%
65 to 69 years	245	4.9%	110	4.7%	135	5.1%
70 to 74 years	262	5.2%	112	4.8%	150	5.6%
75 to 79 years	207	4.1%	92	4.0%	115	4.3%
80 to 84 years	135	2.7%	31	1.3%	104	3.9%
85 years and over	251	5.0%	76	3.3%	175	6.6%
Selected Age Group						
Residents 18 years and over	3,690	73.9%	1,678	72.3%	2,012	75.3%
Residents 65 years and over	1,100	22.0%	421	18.1%	679	25.4%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, SD0101

Household Size

The 2017 American Community Survey estimated that there were 1,785 households in the Borough of Mendham, of which 1,407 or 78.8 percent were “Family” households and 21.2 percent are “Non-family” households.

The average household size in Mendham Borough was estimated at 2.8 persons, according to the 2017 American Community Survey. This figure is higher than the average household size for Morris County which was estimated at 2.68 persons per household and that of the State of New Jersey, which was estimated at 2.6 persons per household.

Household Size and Type	Estimate	Percent
Total Households	1,785	100.0%
Family Households:	1,407	78.8%
2-person household	680	48.3%
3-person household	287	20.4%
4-person household	298	21.2%
5-person household	136	9.7%
6-person household	21	1.5%
7 or more person household	5	0.4%
Non-Family Household	378	21.2%
1-person household	362	95.8%
2-person household	16	4.2%
3-person household	0	
4-person household	0	
5-person household	0	
6-person household	0	
7 or more person household	0	
Average household size	2.8	

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, B11016

Income

The median household income in the Borough of Mendham is \$171,576, and the per-capita income is \$71,965, according to the 2017 American Community Survey Five Year-Estimates. This is greater than the Statewide median household income of \$94,337 and the Morris County median household income of \$107,034.

For “Family” households, the median income is \$145,284, while for “Non-family” households, median household income declines to \$39,250. The U.S. Census Bureau defines a family or family household as “a householder and one or more other people related to the householder by birth, marriage, or adoption.”

The table below shows median income and per capita income for Mendham Borough based on information from the 2013-2017 American Community Survey, Five Year Estimates.

Income (in 2017 inflation-adjusted dollars)		
	Estimate	Percent
Total households	1,785	100.0%
Less than \$10,000	49	2.7%
\$10,000 to \$14,999	43	2.4%
\$15,000 to \$24,999	40	2.2%
\$25,000 to \$34,999	105	5.9%
\$35,000 to \$49,999	62	3.5%
\$50,000 to \$74,999	200	11.2%
\$75,000 to \$99,999	126	7.1%
\$100,000 to \$149,999	287	16.1%
\$150,000 to \$199,999	282	15.8%
\$200,000 or more	591	33.1%
Median household income (dollars)	145,284	
Median family income (dollars)	171,576	
Median nonfamily income (dollars)	39,250	
Per capita income (dollars)	71,965	(X)

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

EMPLOYMENT ANALYSIS

In order to determine Mendham Borough’s current and future housing needs, it is important to evaluate the Borough’s employment characteristics, including employment status of residents, information on local industries and major employers, and commuting characteristics.

Workforce Characteristics

The Borough of Mendham has a working age population of 3,904 people, according to the 2013-2017 American Community Survey, Five-Year Estimates. Within the working age population, 2,289 residents, approximately 58.6 percent, are in the labor force. Within the Borough’s labor force, 2,227 residents are employed and 46 are unemployed as of the time of the 2013-2017 ACS Estimates. This results in an unemployment rate in the Borough of 2.0 percent. The unemployment rate for the Borough is lower than the State of New Jersey’s unemployment rate of 7.0 percent and Morris County’s unemployment rate of 5.2 percent.

The data table below illustrates employment characteristics for the Borough of Mendham’s residents for the most recent year of data available (2017) as measured by the 2013-2017 American Community Survey, Five-Year Estimates.

Employment Status	Estimate	Percent
Population 16 years and over	3,904	
In labor force	2,289	58.6%
Civilian labor force	2,274	58.2%
Employed	2,228	57.1%
Unemployed	46	1.2%
Armed Forces	15	0.4%
Not in labor force	1,615	41.4%
Civilian labor force	2,274	
Percent Unemployed		2.0%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Industry Data

The largest percentage of Mendham Borough's employed population works in educational services, health care, and social assistance (24.4 percent), followed by professional, scientific, management, administrative, and waste management services (20.2 percent), and manufacturing (11.5 percent). Information from the 2013-2017 American Community Survey, Five-Year Estimates on employment by industrial sector are provided in the table below.

Employment by Industry	Estimate	Percent
Civilian employed population 16 years and over	2,228	100.0%
Agriculture, forestry, fishing and hunting, and mining	9	0.4%
Construction	118	5.3%
Manufacturing	256	11.5%
Wholesale trade	72	3.2%
Retail trade	180	8.1%
Transportation and warehousing, and utilities	43	1.9%
Information	125	5.6%
Finance and insurance, and real estate and rental and leasing	247	11.1%
Professional, scientific, and management, and administrative and waste management services	451	20.2%
Educational services, and health care and social assistance	544	24.4%
Arts, entertainment, and recreation, and accommodation and food services	56	2.5%
Other services, except public administration	73	3.3%
Public administration	54	2.4%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Commuting Patterns

The majority of Mendham Borough commuters, about 21 percent, have a commute time of 30 to 34 minutes to work. Approximately 63.7 percent of workers work in Morris County, while 29.7 percent commute to jobs outside the County and 6.6 percent commute to jobs outside the State. Approximately 1,735 Mendham Borough residents drive alone to work and 85 residents carpool via car, truck, or van. Around 62 residents walk to work and 248 residents work from home in the Borough.

Almost 85.8 percent of worker households have more than two vehicles, while 14.2 percent have one vehicle. The table below shows information from the 2013-2017 American Community Survey, Five-Year Estimates regarding commuting patterns for Mendham Borough residents.

Commuting to Work	Estimate
Workers 16 years and over	2,212
MEANS OF TRANSPORTATION TO WORK	
Car, truck, or van	1,820
Drove alone	1,735
Carpooled	85
Public transportation (excluding taxicab)	73
Walked	62
Taxicab, motorcycle, bicycle, or other means	9
Worked at home	248
PLACE OF WORK	
Worked in state of residence	93.4%
Worked in county of residence	63.7%
Worked outside county of residence	29.7%
Worked outside state of residence	6.6%
TRAVEL TIME TO WORK	
Less than 10 minutes	11.1%
10 to 14 minutes	9.5%
15 to 19 minutes	10.8%
20 to 24 minutes	12.4%
25 to 29 minutes	6.7%
30 to 34 minutes	21.0%
35 to 44 minutes	10.3%
45 to 59 minutes	5.3%
60 or more minutes	12.9%
Mean travel time to work (minutes)	N
VEHICLES AVAILABLE	
Workers 16 years and over in households	2,186
No vehicle available	0.0%
1 vehicle available	14.2%
2 vehicles available	56.2%
3 or more vehicles available	29.6%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates
N=Not Available

INVENTORY OF EXISTING HOUSING STOCK

History

The Borough of Mendham is located in suburban Morris County, New Jersey, 40 miles west of midtown Manhattan. Mendham was incorporated as a Borough by an Act of the New Jersey Legislature on May 15, 1906. The Borough is a suburban and semi-rural residential community, which has no Interstate, U.S., or State highways that pass through the municipality. The most significant roadways directly serving the Borough are County Route 510 and County Route 525. The Borough is known for its historic charm and quaintness as well as historic landmarks such as the Black Horse Inn and the Phoenix House, which serves as the Borough's Municipal Building.

With only a few remaining large lots available for development, Mendham Borough can best be described as a nearly built-out community. While there has been some new construction during the past decade in areas toward the Borough's outer edges, the heart of Mendham Borough is its Village Center, which experiences more renovation, restoration, and rehabilitation than it does new construction. During the next decade and beyond, Mendham Borough is likely to see redevelopment in its existing neighborhoods, occasional property divisions, and expansion of existing homes rather than large scale new development.

Housing Occupancy and Tenure

According to the 2013-2017 American Community Survey Five-Year Estimates, there were 1,849 housing units in Mendham Borough, of which 1,785 or 96.5 percent were occupied.

The data provides additional information on the status of unoccupied homes and whether they are currently being marketed for sale or for rent. The data estimated that there were 64 housing units that were vacant but otherwise for sale or for rent or being used as seasonal residences. This indicates that the owners that are not occupying the homes, whether individuals or a bank, are not trying to market the homes for occupancy. This could indicate that second homes in the Borough are not typically rented when the owner is not using them.

Housing Occupancy and Tenure

Subject	Estimate	Percent
OCCUPANCY STATUS		
Total housing units	1,849	100.0%
Occupied housing units	1,785	96.5%
Vacant housing units	64	3.5%
TENURE		
Occupied housing units	1,785	100.0%
Owner occupied	1,552	86.9%
Owned with a mortgage or loan	1,060	68.3%
Owned free and clear	492	31.7%
Renter occupied	233	13.1%
VACANCY STATUS		
Vacant housing units	64	100.0%
For rent	0	0.0%
Rented, not occupied	0	0.0%
For sale only	0	0.0%
Sold, not occupied	0	0.0%
For seasonal, recreational, or occasional use	0	0.0%
For migrant workers	0	0.0%
Other vacant	64	100.0%

Source: U.S. Census Bureau, 2013-2014 American Community Survey 5-Year Estimates

Structural Characteristics

Mendham Borough has a variety of housing types, but is primarily made up of single family, detached homes, making up about 73.7 percent of the housing stock. Single-family attached homes, or townhomes, comprise another 18.8 percent of the housing stock. Multi-family structures with 20 or more units comprise about 0.5 percent of the housing stock, while multi-family structures with 2-19 units make up the remaining 7 percent of units. No residents surveyed lived in a mobile home, boat, RV, or van. This information is shown in the table below.

Housing Units and Type

Units in Structure	Number of Units	Percent of Total Units
Total Housing Units	1,849	100.0%
1-unit, detached	1,362	73.7%
1-unit, attached	348	18.8%
2 units	61	3.3%
3 or 4 units	34	1.8%
5 to 9 units	24	1.3%
10 to 19 units	11	0.6%
20 or more units	9	0.5%
Mobile home	0	0
Boat, RV, van, etc.	0	0

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Housing in Need of Rehabilitation

All housing units in Mendham Borough have complete kitchen and plumbing facilities, according to the 2017 American Community Survey Estimates. Additionally, all housing units had an occupancy rate of 1.0 or less person per room. Information on complete plumbing and kitchen facilities, as well as, overcrowding, is significant because these metrics are utilized in order to calculate a municipality’s “present need” or rehabilitation share.

Housing in Need of Rehabilitation

Selected Characteristics	Estimate	Percent
Occupied Housing Units	1,785	100.0%
Lacking complete plumbing facilities	0	0.0%
Lacking complete kitchen facilities	0	0.0%
Occupants Per Room		
1.00 or less occupants per room	1,785	100.0%
1.01 to 1.50 occupants per room	0	0.0%
1.51 or more occupants per room	0	0.0%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Age of Housing Stock

The chart below details the age of the Mendham Borough’s housing stock using the American Community Survey Five-Year Estimates from 2013-2017. The Borough’s housing stock is generally older with over half of all housing units built before 1980, a major period of residential development for the Borough. Around a quarter of all housing units were constructed between 1960 and 1980, and the remaining 30 percent were built before 1960.

The age of housing inventory reflects the Borough’s long-established pattern of an existing Village with a mature housing stock. Given the anticipated slowed rate of construction for housing projected in 2014 and later, the average age of the Borough’s housing inventory is likely to continue to increase.

At the time of the 2017 American Community Survey estimates, 13 residential units were recorded as being built from the period 2013-2017. In 2016, the Borough approved building permits for new construction for a mixed-use structure and a residence in 2017, which are not necessarily reflected in the Census estimates shown below. This information is reflected in building permit data from the New Jersey Department of Community Affairs (DCA).

Year Structure Built

Year Structure Built	Estimate	Percent
Total Housing Units	1,849	100.0%
Built 2014 or later	13	0.7%
Built 2010-2013	10	0.5%
Built 2000-2009	83	4.5%
Built 1990-1999	150	8.1%
Built 1980-1989	231	12.5%
Built 1970-1979	567	30.7%
Built 1960-1969	244	13.2%
Built 1950-1959	153	8.3%
Built 1940-1949	108	5.8%
Built 1939 or earlier	290	15.7%

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Value of Housing Stock

Owner-Occupied Units

The median value of an owner-occupied dwelling in the Borough of Mendham was estimated at \$640,100 in 2017. This is significantly higher than the Morris County median home value of \$438,100. Neighboring municipalities such as, Mendham Township and Bernardsville have higher median housing values of \$902,700 and \$704,200, respectively.

Another indicator of affordability is “selected monthly owner costs” or SMOC. This is defined as the sum payments for mortgages, real estate taxes, various insurances, utilities, fuel, mobile home costs, and condominium fees. The median SMOC for owner-occupied homes with a mortgage was \$3,382 in 2017. Owner-occupied homes without a mortgage paid \$1,410 per month in housing costs, which was significantly lower than those with a mortgage. Detailed information from the 2017 Community Survey, Five Year Estimates displaying the value of the Borough of Mendham’s housing stock are shown in the data below.

Cost of Owner-Occupied Units

Subject	Estimate	Percent
HOUSING VALUE		
Owner-occupied units	1,552	100.0%
Less than \$50,000	8	0.5%
\$50,000 to \$99,999	8	0.5%
\$100,000 to \$149,999	11	0.7%
\$150,000 to \$199,999	0	0.0%
\$200,000 to \$299,999	32	2.1%
\$300,000 to \$499,999	383	24.7%
\$500,000 to \$999,999	844	54.4%
\$1,000,000 or more	286	17.1
Median (dollars)	640,100	
SELECTED MONTHLY OWNER COSTS		
Housing units with a mortgage	1,060	100.0%
Less than \$500	0	0.0%
\$500 to \$999	0	0.0%
\$1,000 to \$1,499	41	3.9%
\$1,500 to \$1,999	64	6.0%
\$2,000 to \$2,499	108	10.2%
\$2,500 to \$2,999	116	10.9%
\$3,000 or more	731	69.0%
Median (dollars)	3,382	
Housing units without a mortgage	492	100.0%
Less than \$250	0	0.0%
\$250 to \$399	8	1.6%
\$400 to \$599	8	1.6%
\$600 to \$799	0	0.0%
\$800 to \$999	50	10.2%
\$1,000 or more	426	86.6%
Median (dollars)	1,410	

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

Renter-Occupied Units

Monthly costs of ownership for owner-occupied housing units can be compared to the gross rent for renter-occupied housing units. According to the 2017 American Community Survey, Five-Year Estimates, the median cost for rental units in the Borough of Mendham was \$1,942 per month, which is more than both the State median of \$1,249 and the County median of \$1,420. Over 40 percent of the renter-occupied units had gross rents of \$2,000 or more, with 40.3 percent of all renters paying between \$2,000 and \$2,499 per month and 8.2 percent of all renters paying more than \$2,500 per month.

Cost of Renter-Occupied Units

Subject	Estimate	Percent
GROSS RENT		
Occupied units paying rent	233	100.0%
Less than \$500	11	4.7%
\$500 to \$999	54	23.2%
\$1,000 to \$1,499	25	10.7%
\$1,500 to \$1,999	30	12.9%
\$2,000 to \$2,499	94	40.3%
\$2,500 to \$2,999	19	8.2%
\$3,000 or more	0	0.0%
Median (dollars)	1,942	(X)
No rent paid	0	(X)

Source: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates

PROJECTION OF FUTURE HOUSING STOCK

As identified in the Housing Inventory above, Mendham Borough experienced a significant increase in new construction in the 1970s with the addition of over 500 new housing units. However, the rate of new housing construction decreased just 34 residential units in 13 years between 2005 and 2018. The certificates of occupancy issued in 2018, has significantly decreased to one (1) housing structure constructed during that year.

Certificates of Occupancy Issued

Certificates of Occupancy Issued				
Year	1-2 Family	Multi-family	Mixed use	Total
2005	12	0	1	13
2006	5	0	1	6
2007	1	0	0	1
2008	3	0	0	3
2009	2	0	0	2
2010	3	0	0	3
2011	0	0	0	0
2012	0	0	0	0
2013	1	0	0	1
2014	2	0	0	2
2015	1	0	0	1
2016	0	0	0	0
2017	1	0	0	1
2018	0	0	1	1
Total	31	0	3	34

Source: State of New Jersey Department of Community Affairs

LANDS AVAILABLE FOR NEW CONSTRUCTION AND REDEVELOPMENT

The potential for large-scale new development in Mendham Borough is restricted by environmental regulations, lack of sewage capacity, and limited roadway expansion opportunities. The Borough's main road serves as a major thoroughfare for traffic traveling from western Morris County to Morristown and points in Essex County and beyond. The safety of its residents and the flow of traffic represent an ongoing challenge for the Borough. Any new development on one of the Borough's few large, undeveloped land parcels would need to provide for a private wastewater treatment system.

The municipality should continue to support the rehabilitation of the existing housing stock for affordable housing opportunities by continuing its participation in the Morris County Housing Rehabilitation Program.

Looking at historic trends combined with the limited availability of land and sewage connections in the Borough, it is unlikely that there will be any large increases in the number of new housing units within Mendham Borough. The majority of new housing units will be created through the development and redevelopment of existing sites.

Residential Zones

Single-family residential development in the Borough consists primarily of an area designated for ¼-acre, ½-Acre, 1-Acre, 3-Acre, and 5-Acre residential neighborhoods. 5-acre residential development occupies the most southern half of the Borough's land area at a density of one (1) dwelling unit per 5-acres or more of land. Areas planned for one (1) dwelling unit per 3-acres of land occupy the northwest corner of the Borough, a smaller area on the east side of the Borough, adjacent to Mendham Township along Lowery Lane, and the Community of Saint John the Baptist and deNeufville properties in the west-central portion of Borough. Areas designated for one (1) dwelling unit per ¼-acre or ½ -acre of land surround the Village Core area along with areas planned for ½ -acre home sites within the Village Center area proper. The general pattern of development follows a lower density as one moves away from the Borough Center.

Permitted Uses

The following uses are permitted in the ¼-acre, ½ -Acre, 1-Acre, 3-Acre, and 5-Acre Residence Zones; one single-family dwelling per lot; playgrounds and parks; agricultural uses; home occupations; public, semi-public, and private libraries excluding private property proprietary use; the 5-Acre Residence and Religious Center Zone; and the Village Cluster Option.

Redevelopment: ¼ Acre and ½ -Acre Zones

There is no land available for new construction or redevelopment in the ¼-Acre and ½ -Acre Residence Zones. Both zones are within the wastewater service area except for the West Morris Mendham High School athletic fields and the Hilltop Cemetery where residential and commercial structures do not exist.

Redevelopment: 1-Acre Residence Zone

Several areas within the 1-Acre Residence Zone lack access to sewer service. The lots along Windymere Lane and Talmage Road do not have access to sewer service. The parcels on the outer corner of Talmage Road and Cherry Lane as well as residences on Townsend Road near the Historic Zone Overlay lack sewer connections. Other areas of Mendham Borough that are not within the sewer service area includes the parcels between Ironia Road (closest to West Main Street) and west of Deerfield Road as well as the Cosma Tract and adjacent lots between North Linden Lane and Maple Avenue. Parcels between Valley Way and Mountainside Road also lack wastewater service in the Borough.

Redevelopment: 3-Acre Residence Zone

Sewer service for the 3-Acre Residence Zone is partially accounted for except for properties adjacent to the deNeufville Tract such as the Daytop School and other lots south of West Main Street that are within the Zone. Other areas of the Zone that are in the sewer service area are properties south of Mountainside Road and West of Mountain Avenue including Dogwood Farms and adjacent properties as well as several properties east of Ironia Road.

The deNeufville Tract Block 1801, Lot 16 located off Thomas Road is somewhat irregular in shape and contains 91.5 acres. It is bisected by a brook and has a pond in its northwest quadrant. To the west, the property adjoins the Saint John the Baptist property, and to the north and east there are residences along Linden Lane, Main Street, and the soccer field known as West Field. To the east, there are residential developments along Townsend Road, Muirfield Lane, and Heather Hill Way, where the Borough owns approximately 5 acres of parkland.

Redevelopment: 5-Acre Residence Zone

The 5-Acre Residence Zone is the largest Zone in Mendham Borough in terms of acreage and has the most potential for redevelopment. However, the entire zone is not within the Borough's sewer service area, which would affect development as a wastewater connection is required.

Block 2301, Lot 2.01 is located off Cherry Lane in the 5-Acre Residence Zone. The property incorporates 67.418 acres where it is bisected by McVickers Brook and has a pond in its northwest quadrant. To the north, south, and east there are residences along Cherry Lane, Horseshoe Bend Land, and Horseshoe Bend Road respectively. To the west is the Sisters of Christian Charity campus.

Block 2601, Lot 7 is located off Pleasant Valley Road and is of somewhat rectangular in shape. The property has 34 acres. To the west of the property is Middle Valley Farms located in Mendham Township and to the east is one (1) residence as well as the Roxiticus Golf Club. To the north is Schiff's Natural Lands Trust/Schiff Nature Preserve along with several residences along Brookrace Drive in Mendham Township. To the South is Bernardsville Borough where there are forested areas and the remainder of the Roxiticus Golf Club. Natural obstacles do not pose a challenge to redevelopment. Since the property is on the outskirts of the borough, low density structures are recommended.

Block 2401, Lot 31.06 consists of 30.39 acres and is located off of Hardscrabble Road in the south eastern corner of Mendham Borough. Indian Grave Brook runs along the southern lot border, which allows for more available land to be developed throughout the site. To the north and west are residences along Spring Hill Road and Horse Bend Road. To the east is Mendham Township with more residential properties along Beverly Drive, and to the south is Bernardsville with residences situated along Carriage House Road. The Brook is the only natural obstacle on the property, but it does not impede on future development. Low density structures are recommended for this property as well.

Redevelopment: 5- Acre Residence and Religious Campus Zone

The 5 – Acre Residence and Religious Campus Zone provides living quarters for a religious order in accordance with the standards of Section 215-13.1B(2) and D. This Zone is not within the sewer service area.

The 5 – Acre Residence and Religious Campus Zone in Mendham Borough consists of Block 2301, Lot 3 occupied by the Sisters of Christian Charity and Block 2301, Lot 13 which is owned by the organization as well.

¼ -Acre Residence Zone

The ¼ -Acre Residence Zone provides for higher density housing within the Borough's Village Center. This includes the Mendham Area Senior Housing (MASH) complex and the Mendham Commons. The ¼ -acre residence areas also include two-family dwellings on lots of no less than ½ -acre in size. Multi-family and senior housing complexes are also allowed, subject to various setback requirements. Areas that have developed in this manner include portions of Mountain Avenue, East Main Street, and Hilltop Road, extending north, east, and south of the Historic District respectively.

Permitted Use

The permitted uses in the ¼ -Acre Residence Zone includes all uses specified in the ½ -, 1-, 3-, and 5-Acre Residence Zones excluding the maintenance of livestock. When granted a conditional use permit by the Planning Board and subject to site plan approval, multi-family dwelling complexes, including townhouses, senior citizen housing complexes and apartment complexes, including solar systems as an accessory use are permitted subject to the standards set forth in Section 215-31.1. All land within the ¼ -Acre Residence Zone has access to sewer services.

East Business Zone

The East Business Zone adjoins the Limited Business Zone to the north and east of the Borough. The major commercial land uses within the East Business Zone are the Mendham Village Shopping Center also known as the King's Shopping Center, Mendham Ford, and the Moro automotive service complex. The purpose of the East Business Zone is to provide for retail sales and services to accommodate the general public, to promote compatible land uses of attractive buildings, to ensure the compatibility of the development within the zone with adjacent residential areas, and to improve and provide for the efficient and safe flow of traffic.

Permitted Use

Within the East Business Zone, no building or land may be used in whole or in part for any use other any use permitted in any residential and Historic Business Zone, and retail and service uses.

Sewer service currently covers the entire East Business Zone; however, development of the area would require the Borough to expand its existing sewage coverage to accommodate redevelopment growth.

In the East Business Zone, the Kings Shopping Center, Block 81, Lot 20 has an area available for redevelopment over the former racquet club. The Borough of Mendham is proposing to provide zoning for a portion of the Kings Shopping Center to provide for inclusionary development.

Historic Business Zone

The Borough of Mendham's Historic Business Zone is centered on the intersection of Main Street and Hilltop Road/Mountain Avenue. The area extends generally from Orchard Street on the east to New street on the west.

The purpose of the Historic Zone is to provide for a mix of residential uses and retail sales and service uses while recognizing, preserving and enhancing the unique and historic character of the area. Due to the density of the existing development and limited parking and access, the permitted retail sales

and service uses are those required to meet the needs of the residents of the Borough and immediate area and not those attracting and generating large volumes of traffic.

Permitted Use

Within the Historic Business Zone, no building or land may be used in whole or in part for any use other than any use permitted within the residential zone and other retail services identified in Section 215-17. All land within the Historic Business Zone has complete sewer service. Apartments over commercial uses are permitted in the zone and some affordable apartments have been approved in this area during the Third Round period.

Limited Business Zone

The Limited Business Zone is located to the north and south of the intersection of Cold Hill Road and East Main Street. It is generally bounded on the south by the properties on the north side of Tempe Wick Road, on the north by East Main Street, and on the east by Cold Hill Road. Four (4) properties to the north of East Main Street on the west side of Cold Hill Road are also included within the Limited Business Zone. Most of the land in the Zone is occupied by the Jockey Hollow Professional Park.

The purpose of the Limited Business Zone is to provide for the development of a mix of office, banking, and public uses requiring direct access to major roadways, to promote compatible land uses of attractive buildings, to ensure the compatibility of the development within the zone with adjacent residential area and to improve and provide for the efficient and safe flow of traffic.

Permitted Use

Within the Limited Business Zone, the permitted uses include business office buildings and professional as well as administrative office buildings; banks, savings, loan associations, and other institutions; public library, fire station and post office; playgrounds, parks, and open space as well as other public buildings; churches and other places of worship, including parish houses, Sunday school buildings and similarly related uses; and outdoor essential services including substations, transformers, switches and similar equipment. The Limited Business Zone is in the sewer service area but largely built out.

Main Street Corridor

The Main Street Corridor is in the eastern end of East Main Street between Cold Hill Road and the existing Historic District. It encompasses properties on the north and south sides of Main Street and extends southward to incorporate the triangle of land formed by East Main Street, Cold Hill Road, and Tempe Wick Road. Also included are 3 residential properties on the south side of Tempe Wick Road between Dayton Road and East Main Street.

The Main Street Corridor designation has several goals it wishes to achieve. The acknowledgement of the importance of gateways to the Borough of Mendham, one of which is at Cold Hill Road and East Main Street. To provide an appropriate land use transition between Cold Hill Road on the east and the Historic Business Zone on the west; and to form the basis for village streetscape design features which would support and coordinate with the Historic Business Zone standards.

There are adequate sewage connections for the Main Street Corridor, which includes the East Business and Limited Business Zones as well as the ¼ - and ½ -Acre Zones. Kings Shopping Center is along the Main Street Corridor.

Historic District Overlay Zone

The Historic District Overlay Zone consists of two areas within Mendham Borough. The first area is along Main Street extending to the western boundary of the Borough. The expansion incorporates the north and south side of West Main Street, including the full depth of the Community of Saint John the Baptist property. This property has received recognition as both state and national landmark. The second expansion of the District is north along Orchard Street between Adams Place and the existing historic properties along East Main Street.

The Historic Overlay Zone consists of the Main Street Corridor and the 1/4 – Acre, 1 – Acre, and 3 – Acre Residential Zones. Sewer connectivity for this overlay zone covers the entire zone except for the frontage area of the Daytop School and the parcel to the west of it as well as several properties directly across West Main Street from the Daytop School. The Daytop School is being considered as an area where inclusionary development as redevelopment may occur in the future if sewer service is provided.

FAIR SHARE PLAN

INTRODUCTION

This plan uses the methodology for determining a municipality’s affordable housing obligation identified in the Second Round and Third Round Rules as determined by the Supreme Court and relies on the most recent housing and socioeconomic data available.

PLAN PURPOSE AND GOALS

This Fair Share Plan will describe specific projects, programs, strategies and funding sources to meet the Borough’s affordable housing obligation, while also complying with COAH’s Second Round Rules for substantive certification and the Fair Housing Act. The overriding goal of this Fair Share Plan is to provide a framework for the Borough to take affirmative steps towards providing a realistic opportunity to achieve its fair share of the present and prospective regional need for low- and moderate-income housing.

DETERMINATION OF HOUSING NEED

The Borough of Mendham proposed a municipal share obligation of 186 units. The affordable housing obligations by category for the Borough are as follows:

Prior Round (1987-1999)	25 units
Third Round (1999-2025) Obligation	152 units
Rehabilitation Share	9 units
Initial Summary Obligation	186 units

The source of the obligations is from the report prepared by David N. Kinsey, PhD, PP, FAICP, “New Jersey Low- and Moderate-Income Housing Obligations for 1999-2025 Calculated using COAH Prior Round (1987-1999) Methodology, May 2016. The obligation has been adjusted to be consistent with the application of the methodology resulting from Judge Jacobsen’s decision in Mercer County, as outlined by Richard B. Reading in a report dated July 2018.

LANDS AVAILABLE FOR NEW CONSTRUCTION AND REDEVELOPMENT

The Municipal Land Use Law requires that a Housing Element include consideration of the lands that are most appropriate for construction of low- and moderate-income housing.

New Construction

The development of future housing stock is influenced by a multitude of factors, including availability of necessary infrastructure, such as sewer and water, zoning regulations, and environmental resource restraints.

The entire Borough of Mendham is located in the Planning Area of the Highlands Region. The Borough has not chosen to conform to the Highlands Regional Master Plan.

The New Jersey State Development and Redevelopment Plan identifies the Borough in the PA-5 Environmentally Sensitive Planning area. Since the municipality is located in an environmentally sensitive zone, there is limited availability for new development unless additional sewer capacity

becomes available. The NJDEP does not permit sewer expansion in PA-5 areas unless the area is within a designated center. The Borough has a Village Center designation, however that designation is set to expire in June 2020.

DISTRIBUTION OF OBLIGATION

The Second Round Rules contained within N.J.A.C. 5:93 contain regulations regarding how proposed affordable units should be distributed. Per the rules, a maximum of 25 percent may be senior or age-restricted units and a minimum of 50 percent of the units must be family housing. At least 25 percent of the affordable units created in Mendham Borough must be rental units, and, of those, at least 50 percent must be family housing. In terms of affordability, at least 50 percent of the total number of affordable units must be low income (50 percent or less of the median) and at least 13 percent must be for very low income (30 percent or less of median income). The remaining units may be for moderate income (80 percent or less of the median). The table below illustrates generally these requirements for the prospective need obligation.

Fair Share Obligation by Unit Type for Senior, Family & Rental, Mendham Borough

Type of Housing	Requirement ¹	Number of Units (Based on 152 Unit Obligation)
Senior Units	Max. 25%	Max. 38
Family Housing	Min. 50%	Min. 76
Rental; Family Rental	Min. 25%; Min. 50%	Min. 38; Min. 19
Low Income	Min. 50%	Min. 76
Very Low Income	Min. 13%	Min. 20
<i>Source N.J.A.C. 5:93 Second Round Rules</i>		

BONUS CREDITS

The Courts have approved the allowance of bonus credits towards the satisfaction of a municipality's affordable housing obligations. In *Re Adoption of N.J.A.C. 5:94 & 5:95*, the Appellate Division affirmed the awarding of bonus credit for the construction of new rental units (one and one-third credits per senior rental unit; two credits per family rental unit), for the extension of expiring controls and for each unit that is affordable to a very low income household earning less than 30 percent of median income. In *Re Adoption of N.J.A.C. 5:96 & 5:97*, the Appellate Division approved Smart Growth and Redevelopment bonuses of 1.33 per unit credit for each affordable housing unit that was included in Transit Oriented Development in a Planning Area 1,2 or a designated Center or in a designated redevelopment area pursuant to the Local Redevelopment and Housing Law (N.J.A.C. 5:97-3.18-19). Additionally, in upholding the Round 2 Rules, the Courts have acknowledged the validity of those rules which permitted a rental bonus of one unit for every rental created. Those bonuses are presumed to apply as well. The Borough is entitled to up to 38 rental bonus credits depending on how many and what type of units are constructed.

PROPOSED MECHANISMS

This Fair Share Plan will describe specific projects, programs, strategies and funding sources to meet the Borough's affordable housing obligation, while also complying with COAH's Second Round Rules for substantive certification and the Fair Housing Act. The overriding goal of this Fair Share Plan is to provide a framework for the Borough to take affirmative steps towards providing a realistic opportunity to achieve its fair share of the present and prospective regional need for low- and moderate-income housing.

Determination of Housing Need

The Borough of Mendham agreed to a municipal Housing Element and Fair Share Plan that utilizes the affordable housing obligation as follows:

Prior Round (1987-1999)	25 units
Third Round (1999-2025) Obligation	152 units
Rehabilitation Share	9 units

Prior Round

The Borough of Mendham secured certification of its First Round Fair Share Plan from the Council on Affordable Housing (COAH) on May 20, 1987. The Borough petitioned COAH for the Second Round Substantive Certification, including with its petition a Second Round Housing Element and Fair Share Plan, on March 3, 1995 to meet a 31-unit obligation.

The Borough secured Substantive Certification from COAH for its Second Round Housing Element & Fair Share Plan on June 5, 1996. COAH certified a total of 39 credits which consisted of 35 Mendham Area Senior Housing Units (MASH, of which 28 were prior cycle credits) and 3 rehabilitation credits. The Borough will address its Prior Round Obligation with 25 units which is met through its development at the MASH site including, 22 rental units and 3 rental bonus credits.

Project Name: MASH

Mechanism: 100 Percent Affordable Developments

Location: 1 Heritage Manor Drive

The Borough of Mendham provided 35 affordable housing rental units through the Mendham Area Senior Housing complex to individuals of low- and moderate-incomes. These units are age-restricted and provide approximately 600 square feet of living space with a combined living room and dining room, a small kitchen, bathroom with a shower, and a bedroom with a walk-in closet; the second-floor units include a deck off the bedroom. The Mendham Area Senior Housing complex meets all other requirements for a 100 Percent Affordable Development as provided for in N.J.A.C. 5:97-3.14. A total of 22 units applied to Prior Round and 13 units apply to the Third Round.

Third Round

The Third Round Obligation includes the Gap Period present need for new construction to address the affordable housing needs of households from 1999-2015, which is recognized by the Supreme Court in In re Declaratory Judgement Actions Filed By Various Municipalities, 227 N.J. 508 (2017). The Prospective Need is a measure of the affordable housing need expected to be generated between July 1, 2015 and June 30, 2025.

Project Name: Mendham Area Senior Housing (MASH)

Mechanism: Rehabilitation

Location: 1 Heritage Manor Drive (Block 801, Lot 25)

The Borough constructed 35 Prior Cycle age-restricted rental units on the site in 1985. The Borough applied 22 of these units toward its Prior Round obligation and will apply the remaining 13 units toward its Third Round obligation. It proposes to fund any necessary rehabilitation work through development fees which it is authorized to collect and other mechanisms as contained in its ordinances. It may also use Morris County Community Development funds during the projected implementation period.

Project Name: MASH Complex

Mechanism: Extension of Expiring Controls

Location: 1 Heritage Manor Drive (Block 801, Lot 25)

The MASH Complex's 35 age-restricted affordable housing units had affordability controls which expired on February 1, 2000. While the units have been maintained as affordable, the Borough is assuring the affordability controls continue by extending the affordability controls on these units. As a result, Mendham Borough has extended the affordability controls on these units and is entitled to utilize nine (9) of these extensions toward its Third Round obligation. The Borough reserves the right to apply the remaining 26 credits that have resulted from the extension of affordability controls towards the Borough's Fourth Round affordable housing obligations in accordance with then-applicable law.

Project Name: 106 E Main Street, LLC

Mechanism: Low Income Apartment

Location: 106 East Main Street (Block 801, Lot 12)

The developer constructed a one-bedroom affordable rental unit in a mixed-use commercial building located at 106 East Main Street, approved by the Planning Board in 2008 and constructed by 2010.

Project Name: Aryan at Mendham, LLC

Mechanism: Low Income Apartment

Location: 25 E. Main Street (Block 1501, Lot 11)

The Borough of Mendham has approved a mixed-use structure including a Dunkin Donuts on the ground floor and two apartments over the commercial use. One of the two apartments was designated for low-income residents. The project was approved by resolution of the Planning Board on December 10, 2018.

Project Name: Six Main Street, LLC
Mechanism: Low Income Apartment
Location: 6 Main Street (Block 601, Lot 3) BOA-03-19

The developer agreed to construct a one-bedroom affordable rental unit as part of a mixed-use project located at 6 Main Street, approved by the Zoning Board of Adjustment on February 4, 2020.

Project Name: Kings Shopping Center
Mechanism: Inclusionary Zone
Location: 86 East Main Street (Block 81, Lot 20)

This parcel located on 86 E Main Street contains an existing shopping mall with a variety of retail and service businesses as well as a Kings Super Market. The Borough has entered into a settlement agreement with the owner of the Kings Shopping Center to construct 75 units at the site with a 20 percent set-aside, yielding 15 rental units. Per the Borough's agreement with the owner of the Kings Shopping Center, the site shall require 2 very-low income units. The inclusionary zone for the site will apply to the northwestern corner of the site over the existing location of the Mendham Racquet Club. The underlying zoning and the zoning on the remainder of the site is proposed to remain the same.

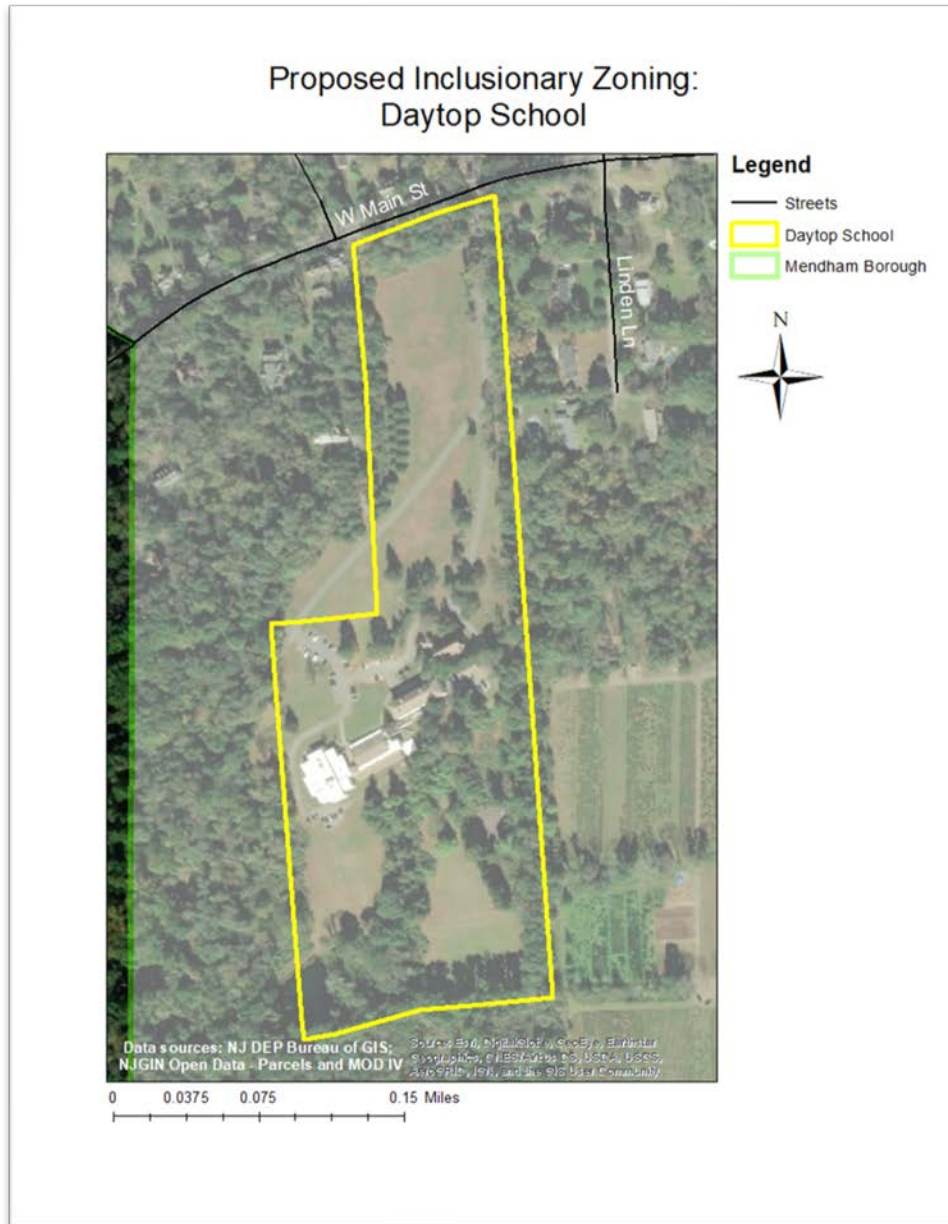
Proposed Inclusionary Zoning: King's Shopping Center

Mendham Borough, Morris County, New Jersey



Project Name: Daytop School/Saint John the Baptist School
Mechanism: Inclusionary Zone
Location: 80 West Main Street (Block 18.01, Lot 5)

The Borough will adopt overlay zoning for this 26.5-acre site permitting 17.5 dwelling units per acre and requiring a 20 percent set-aside for affordable housing units, the overlay zone would yield 93 affordable units. This site has been selected because of its proximity to West Main Street (County Route 510), its status as being included within an existing sewer service area, and its size as being large enough to potentially support on-site wastewater treatment. The overlay zone will apply if sewer capacity is created for the proposed development.



The Borough of Mendham will address the remainder of its Third Round prospective need obligation through a durational adjustment. The Borough does not have sufficient sewer capacity to support inclusionary developments after the Kings Shopping Center project is developed and therefore is entitled to a durational adjustment pursuant to N.J.A.C. 5:93-4.3. The remainder of the Borough's sewer service capacity is being reserved to support the development at the Kings Shopping Center site.

The Borough of Mendham agrees to comply with N.J.A.C. 5:93-4.3. The Borough was granted approval for a durational adjustment of 99 units of the 152-unit obligation subject to the requirements of N.J.A.C. 5:93-4.3. In accordance with N.J.A.C. 5:93-4.3(C), the requirement to address the remaining Third Round prospective need obligation of 99 units shall be deferred until adequate water and/or sewer become available. The Borough shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low- and moderate-income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide water and/or sewer capacity to areas identified in the Plan. Mendham Borough proposes to rezone the Daytop School/St. John the Baptist School (Block 18.01, Lot 5) for inclusionary housing to meet the durationally adjusted obligation.

If and when the Daytop School site becomes realistic and is developed, thus addressing the Borough's deferred portion of the obligation, the municipality may claim additional bonus credits that it would otherwise be eligible for from the non-deferred mechanisms, i.e. one (1) additional bonus from the Kings Shopping Center, one (1) additional bonus credit from Aryan at Mendham, LLC, and five (5) additional bonus credits for MASH. These bonuses are eligible based on the Borough's commitments, or existing built units, but for the cap of bonuses at 25 percent of the non-deferred Round 3 obligation. At all points the total bonuses claimed shall not exceed 25 percent of the non-deferred Round 3 obligation, and under no circumstances shall the number of bonuses exceed 25 percent of the 152-unit Round 3 obligation.

Rehabilitation Share

The Borough of Mendham proposes to address its 9-unit rehabilitation obligation through continued participation in the Morris County Community Development Rehabilitation Program and through a supplemental municipally operated rehabilitation program that will be available to rental units, particularly the existing MASH units in the Borough. The percentage of existing rental housing in Mendham Borough is less than 8 percent of the Borough's housing stock according to the 2017 U.S. American Community Survey data. The Borough proposes Morris County Funds for homeowner rehabilitations unless it is not available. As funds become available, rental rehabilitations will be funded from the Borough's Affordable Housing Trust Fund.

Other Ordinances

The Borough of Mendham is proposing to amend the existing affordable housing ordinance. This new affordable housing ordinance will be in compliance with current State rules and regulations and will be used to regulate future affordable housing developments in the Borough.

Mendham Borough is proposing two (2) inclusionary overlay zones – one (1) for the Kings Shopping Center and one (1) for the Daytop School property. The inclusionary overlay zone for the Kings

Shopping Center will allow for 75 multi-family residential units on the northeastern corner of the lot, which is in the East Business Zone, where residential and commercial uses are permitted. The inclusionary zone for the Daytop School property will allow for multi-family and townhouse residential zoning on the site which is currently in the 3-Acre Residential Zone where residential and agricultural uses are permitted.

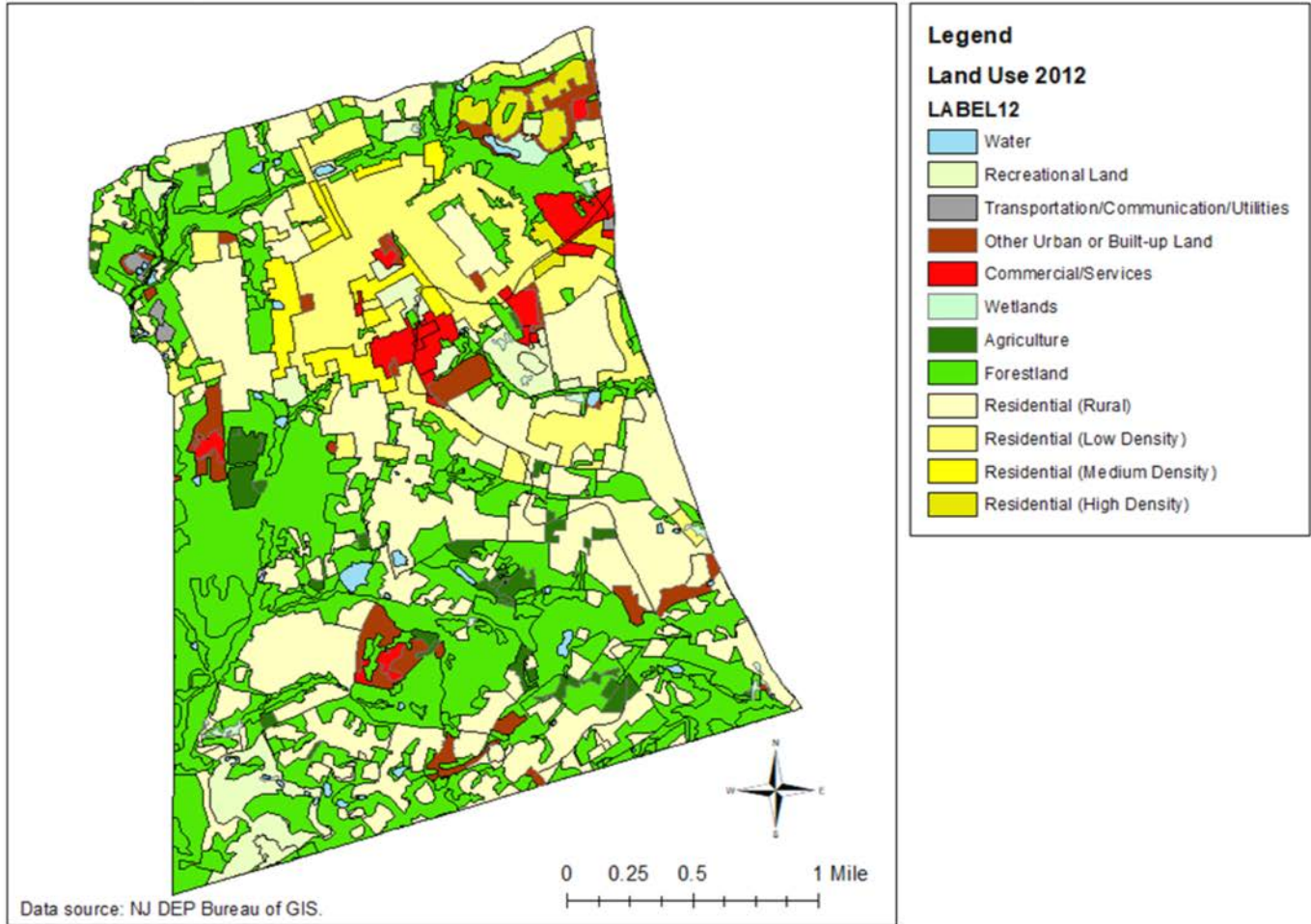
SUMMARY OF THIRD ROUND FAIR SHARE PLAN

The Borough of Mendham has addressed its Prior Round obligation and is proposing to meet its present need through the Morris County Community Development Rehabilitation Program. Third Round Prospective needs are met through prior developed units, an inclusionary development, a durational adjustment, and a proposed inclusionary overlay zone. Therefore, the Borough is providing its fair share of affordable housing in compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015).

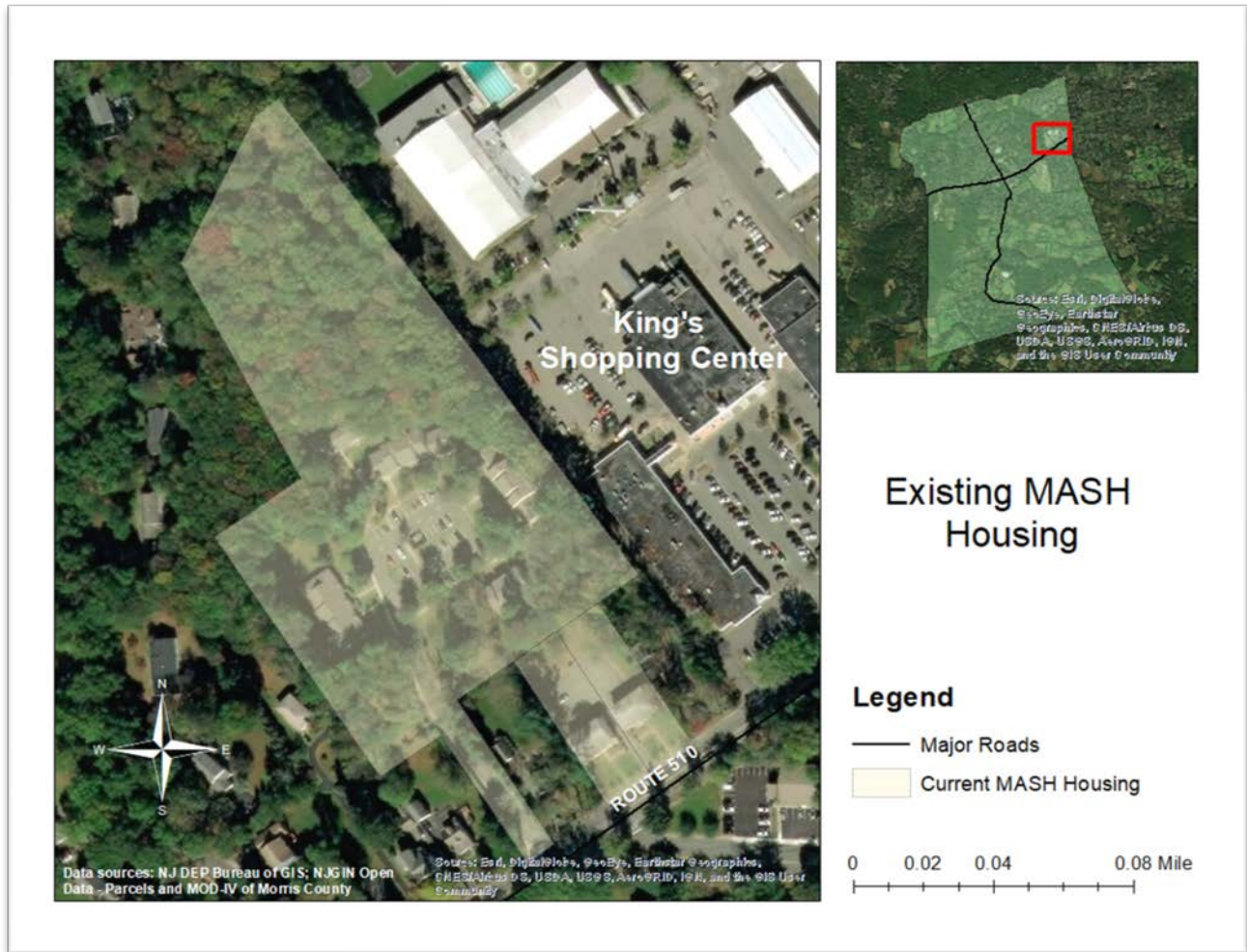
Borough of Mendham Morris County	Est. Oblig.	Completed Units	Propos ed Units	Low	Mod	Very Low	Total Units
Prior Round Obligation	25						
<i>100 Percent Affordable</i>	35	35	22			22	22
<i>Rental Bonus</i>	3		3				3
Total Prior Round Credits	25						25
Excess Credit	13						13
Present Need Obligation	9						
<i>Rehabilitation Program</i>	9						
Total Present Need Credits	9						9
Third Round Obligation	152						
<i>Extended Affordability Controls</i>	9		9				9
<i>Inclusionary Zoning - Kings</i>	15		15	6	7	2	15
<i>MASH Units</i>	13		13			13	13
<i>Low Income Apartments</i>	3		3	3			3
Total Third Round Credits	40						40
Rental Bonus Credits	14						14
Total	54						54
Durationally Adjusted Obligation	99						99
Overlay Zone – St John the Baptist	93						93
Rental Bonus	*						*
Total	147						147
*Up to 24 credits available							

APPENDIX A: EXISTING LAND USE MAP

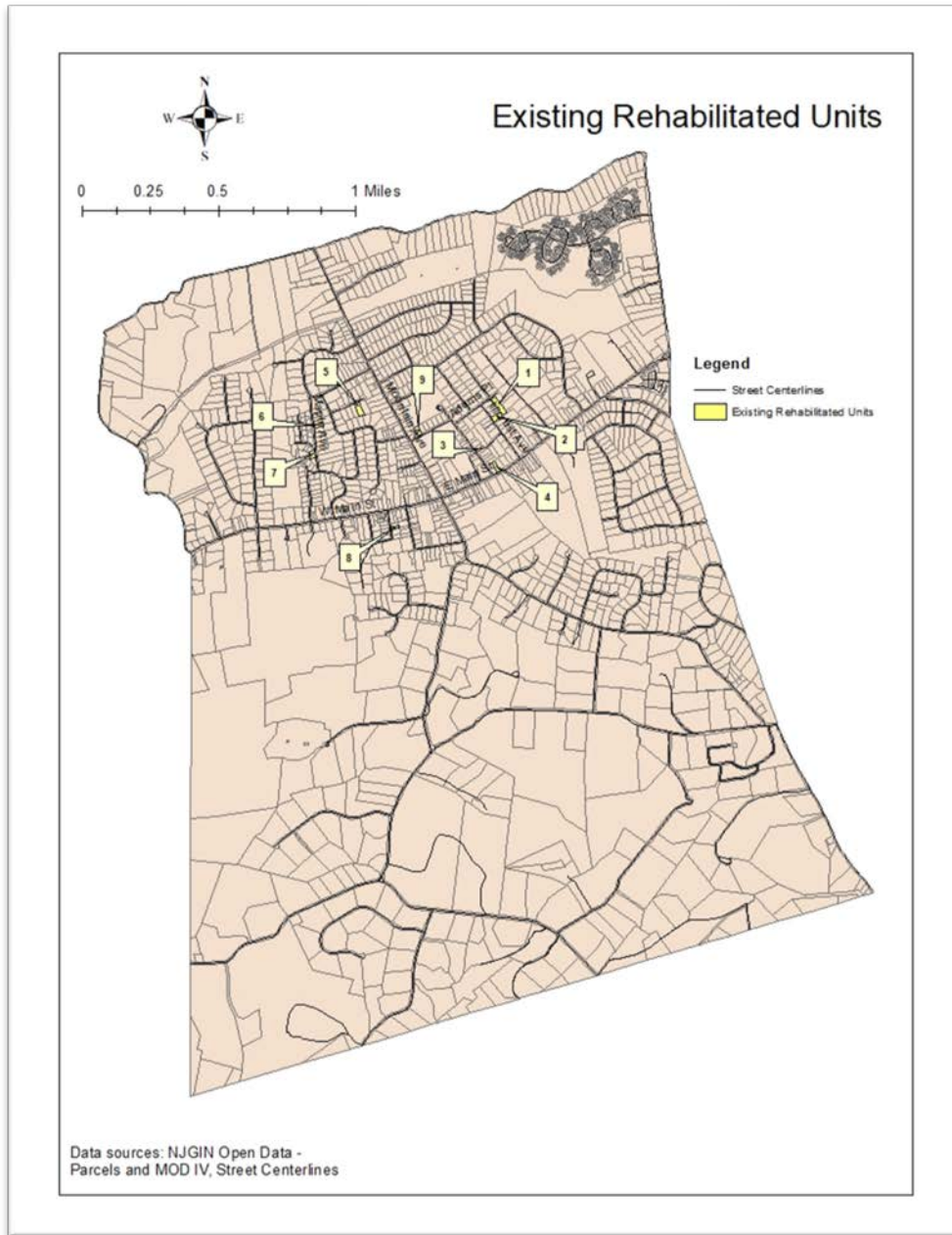
Land Use in Mendham Borough (2012)



APPENDIX B: MASH UNITS



APPENDIX C: REHABILITATION UNITS



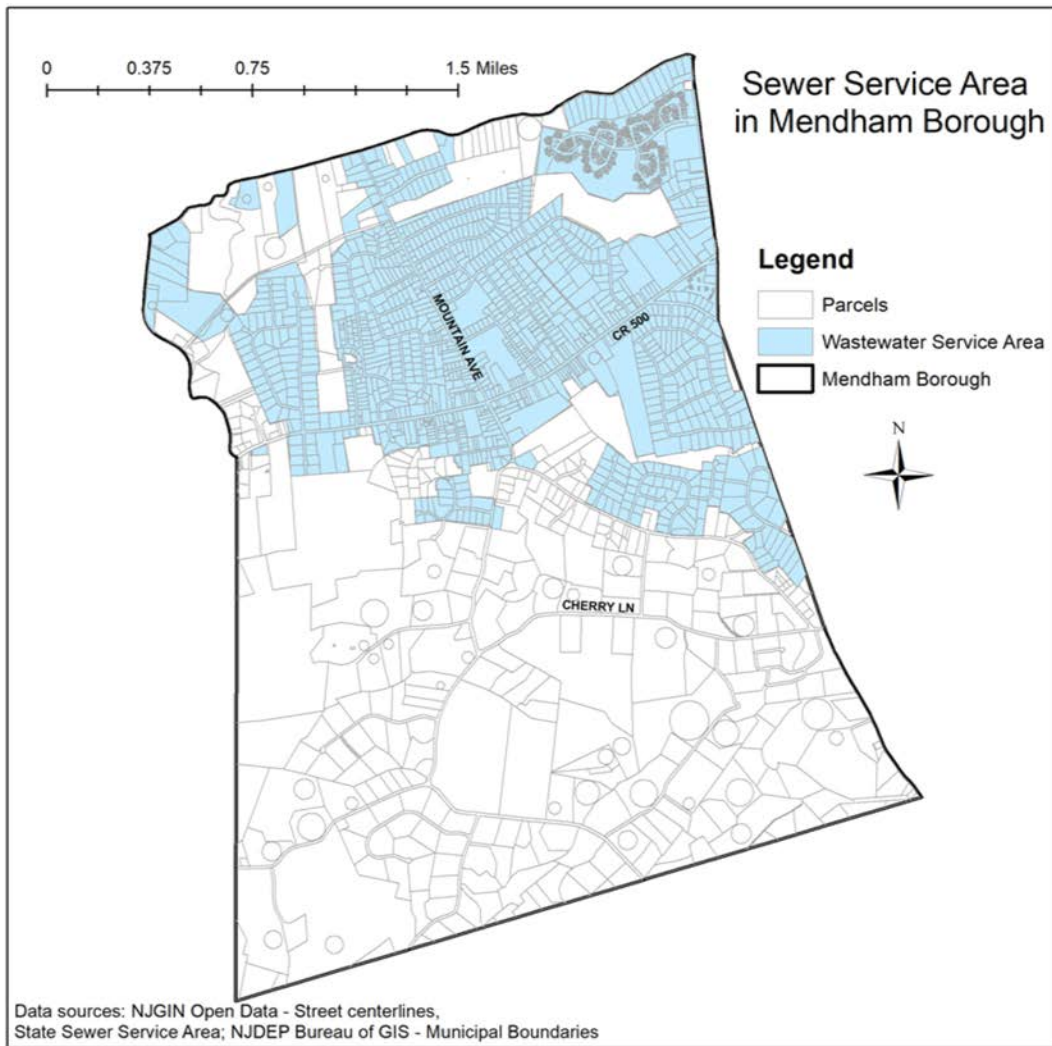
Legend:

Number	Address
1	7 Adams Place
2	13 Hillcrest Avenue
3	11 Orchard Street
4	323 East Main Street
5	7 Highfield Circle
6	17 Maple Avenue
7	2 Aster Terrance
8	4 Hampton Road
9	2 Park Avenue

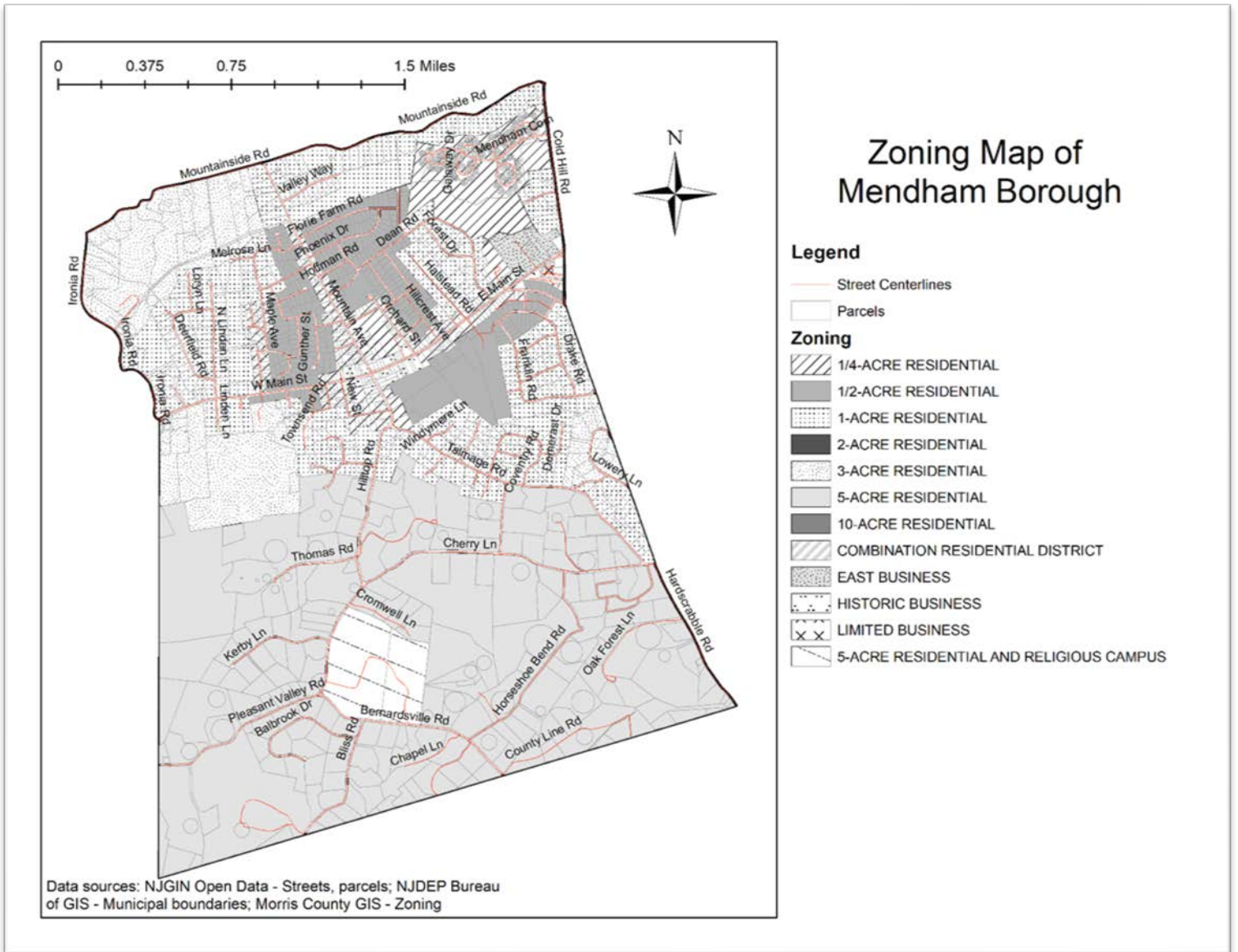
The following addresses were unable to be identified:

- 3 Old Orchard Terrace
- 12 Cold Hill Road
- 20 Lake Road

APPENDIX D: SEWER SERVICE AREA MAP



APPENDIX E: ZONING MAP



APPENDIX F: SPENDING PLAN

AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

May 2020

Prepared by: Jessica C. Caldwell, P.P., A.I.C.P.
NJPP License #5944

SPENDING PLAN

INTRODUCTION

A development fee ordinance creating a dedicated revenue source for affordable housing following state guidelines was approved by COAH on April 12, 1995 and adopted by Mendham on July 3, 1995.

The ordinance established a fee of 1.5% of equalized assessed value for new residential construction and 2.5% for new commercial construction.

The ordinance established the Borough of Mendham Affordable Housing Trust Fund. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by affordable housing fees are deposited in a separate-interest-bearing affordable housing trust fund account for the purposes of affordable housing.

Mendham Borough has prepared this Spending Plan (2019) to guide the allocation of funds within the Borough of Mendham Housing Trust Fund. As of December 31, 2019, the Borough of Mendham has \$424,577 in its Affordable Housing Trust Fund. The account will continue to collect funds as they are created through new development. The funds shall be spent in accordance N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

Source of Funds	Up to 12/31/19	2020	2021	2022	2023	2024	2025	Total
(a) Development Fees								
1. Approved Residential and Nonresidential Development Projects	424,577							\$424,577
2. Projected Residential Development Projects Only		\$114,682	\$114,682	\$114,682	\$114,682	\$114,682	\$114,683	\$688,093
3. Projected Non-Residential Development Projects (New construction only)		\$3,493	\$3,493	\$3,493	\$3,493	\$3,493	\$3,493	\$20,958
(b) Payments in lieu of Construction	N/A							
(c) Other Funds (specify source)	N/A							
Subtotal								
(d) Interest	N/A	\$1,699	\$1,699	\$1,699	\$1,699	\$1,700	\$1,700	\$10,196
Total Revenue from Development Fees								\$1,143,824

Mendham Borough projects a total of \$1,143,824 to be collected between January 1, 2020 and December 31, 2025 including interest. All interest earned on the account shall accrue to the account for use for affordable housing purposes only. Projections are based on projected development as it relates to permits issued within the Borough over the last five years. The Borough projects approximately \$688,093 in residential development fees per year and a projected \$3,493 per year in non-residential fees.

REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the period of Third Round substantive certification, Mendham Borough the following:

- (a) Development fees:
 - 1. Nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
 - 2. All nonresidential projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
 - 3. Future development that is likely to occur based on historical rates of development.
- (b) Payments in Lieu (PIL): Payments in Lieu of development into the Borough's Housing Trust are permitted as pursuant to Section 215-57 of the Mendham Borough Code.
- (c) Other funding sources: The Borough reserves the option to pursue various public funding options to support its municipal rehabilitation program.
- (d) Projected interest: Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate is 1%.

ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

Mendham Borough will follow the process for the collection and distribution of development fee revenues detailed below.

- (a) Collection of development fee revenues: Mendham Borough will collect development fee revenues in a manner that is consistent with the Borough's development fee ordinance for both residential and nonresidential development and in accordance with COAH's rules.
- (b) Distribution of development fee revenues: Mendham Borough will distribute funds with the oversight of the Borough Council. The Council will work with the Borough Administrator and the Municipal Housing Liaison to manage the projects outlined in this spending plan.

DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

Mendham proposes to use the monies in its Affordable Housing Trust Fund for the following purposes:

- (a) **Affordability Assistance** (N.J.A.C. 5:97-8.8) Mendham Borough will dedicate 30 percent of its income from the affordable housing trust fund to render units more affordable, including at least one-third of that to render units created in the Borough more affordable to households earning 30 percent or less of median income by region. This will include rental assistance for existing affordable rental units. To date the Borough has spent \$87,899 on a new HVAC system for the MASH units to continue to keep the units affordable as well as provided \$4,087 in rent subsidies to tenants.

Actual development fees through 12/31/2019		\$421,735
Actual interest earned through 12/31/2019	+	\$2,842
Development fees projected 2020-2025	+	\$1,133,628
Interest projected 2020-2025	+	\$10,196
Less housing activity expenditures through 1/1/2020	-	\$0
Payments in lieu of Construction	+	\$0
Subtotal	=	\$1,568,401
30 percent requirement	X 0.30 =	\$470,520
Less affordability assistance expenditures through 12/31/2019	-	\$91,986
Projected minimum Affordability Assistance Requirement 1/1/2020 through 12/31/2025	=	\$378,534
Projected minimum Very Low-Income Affordable Assistance Requirement 1/1/2020 through 12/31/2025	/3 =	\$126,178

(b) Rehabilitation Projects (N.J.A.C. 5:97-6.2): Mendham Borough will dedicate the following funds to Rehabilitation projects in order to meet its fair share affordable unit obligation:

Borough Rehabilitation Program: The Borough’s efforts to meet its present need include a municipally sponsored local rehabilitation program and participation in the County’s rehabilitation program. This is sufficient to satisfy the Borough’s present need obligation of 9 units. Additionally, the Borough will provide rehabilitation funds for rehabilitation of the Borough’s MASH units as necessary. Rehabilitation of additional units will be pursued if there are more funds than projected available in the trust fund.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9) Mendham Borough will dedicate no more than 20 percent of revenue from the affordable housing trust fund to be used for administrative purposes. The current budget for administrative expenses is \$228,765 subject to the 20 percent cap are as follows:

- Administration of affordable housing programs;
- Legal fees associated with affordable housing administration;
- Planning fees for any necessary updates and/or revision to the Housing Element and Fair Share Plan; and
- Other expenses associated with the development and implementation of the Housing and Fair Share Plan and the monitoring of current and future affordable housing programs within Mendham Borough.
- Funds may not be used for legal or other fees to oppose affordable housing projects.

Project/ Programs	Units	Funds earmarked as of 12/31/2019	2020	2021	2022	2023	2024	2025	Total
Affordability Assistance			\$63,089	\$63,089	\$63,089	\$63,089	\$63,089	\$63,089	\$378,534
Rehabilitation Program	9+		\$89,425	\$89,420	\$89,420	\$89,420	\$89,420	\$89,420	\$536,525
Administration			\$38,130	\$38,127	\$38,127	\$38,127	\$38,127	\$38,127	\$228,765
Total									\$1,143,824

SUMMARY

Mendham Borough intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the affordable housing programs outlined in the Mendham Borough Housing Element and Fair Share Plan. Additional funds will be used to rehabilitate additional units and/or provide additional rental assistance.

**Spending Plan Summary
Mendham Borough Affordable Housing Trust Fund**

Trust fund balance as of 12/31/2019	\$424,577
Projected Revenue (2020-2025)	
Development fees	+ \$1,133,628
Payments in lieu of construction	+ \$0
Other funds	+ \$0
Interest	+ \$10,196
Total Revenue (Rounded)	= \$1,143,824
Expenditures	
Rehabilitation Program	- \$536,525
Administration	- \$228,765
Affordability Assistance	- \$378,534
Total Projected Expenditures	= \$1,143,824

APPENDIX G: CREDITING DOCUMENTATION

AUG 1 1980

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RECEIVED

FEB 15 1 34 PM '80

CORPORATE REAL ESTATE MORTGAGE FOR NEW JERSEY

THIS MORTGAGE is made this day, Feb. 1, 1980, by Mendham Area Senior Housing Corporation, a corporation organized and existing under the laws of the State of New Jersey, whose mailing address is 6 West Main Street, Mendham, New Jersey 07945 (the Borrower).

The United States of America (the Government), acting through the Farmers Home Administration, United States Department of Agriculture, having an office or place of business at One Vahlsing Center, Robbinsville, New Jersey 08691, has loaned the Borrower money as evidenced by one or more promissory note(s) or assumption agreement(s) (the Note) (if more than one note is described below, the word "Note" as used herein shall be construed as referring to each note singly or all notes collectively, as the context may require). The Note has been executed by the Borrower, is payable to the order of the Government in installments as specified therein, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by the Borrower, and is further described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
Feb. 1, 1980	\$1,477,000	9%	Feb. 1, 2030

The Government may assign the Note at any time. The Government may also insure the payment of the Note pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949, or any other statute administered by the Farmers Home Administration.

This instrument shall secure payment of the Note whenever the Note is held either by the Government or by an uninsured holder. Whenever the Note is held by an insured holder, however, this instrument shall not secure payment of the Note or attach to the underlying debt. In that event, this instrument shall constitute an indemnity mortgage to secure any payments to an insured holder of the Note or other advances which the Government may be required to make upon default by the Borrower. The insured holder shall have no right, title or interest in or to the lien of this instrument or its benefits. This instrument also secures the Borrower's obligations and covenants under other instruments delivered in connection with the loan evidenced by the Note, including

See Modification AGR. Rec'd 5125183 In Bk 4702 Page 704
See Modification AGR. Rec'd 276874 in Bk 5660 Page 57

RECORDED
2/24/80
15.00

RECORDED IN MORTGAGE

NO. 1718 PAGE 342
NO. 1745 PAGE 126

AUG 1 1990

the Borrower's Loan Resolution hereby incorporated by reference. The Note, Loan Resolution, Security Agreement, and this instrument together with any supplements, attachments, modifications and additions are collectively referred to as the "Loan Instruments".

NOW THEREFORE, in consideration of the loan(s) the Borrower hereby mortgages, (as construed in §46:9-1, N.J.S.A.), assigns, grants and conveys to the Government, the following property in Morris County(ies), New Jersey:

TRACT I - Situate in the Borough of Mendham:

Borrower's leasehold interest under a certain ground lease with the Borough of Mendham is:

BEGINNING at a point in the center line of East Main Street, said point of beginning being distant 100 feet along said center line on a course of North 65° 03' East from the southeast corner of land conveyed by William L. McNeill and wife to Jeremiah S. Emmons, and wife, by deed dated May 18, 1927 and recorded in the Morris County Clerk's Office in Book X-30, page 101, and running thence

- (1) along the easterly line of lands of William L. Kelly, Jr. and Erica D. Kelly, his wife, North 24° 57' West, 270.00 feet to an iron pipe; thence
- (2) along the northerly line of said lands South 65° 03' West, 100.00 feet to a point; thence
- (3) passing over an iron pipe 30 feet from the beginning of this course, North 24° 59' 35" West, 439.24 feet, to an iron pipe found for a corner; thence
- (4) along the southerly line of lands of R. and F. Darian, North 64° 50' 15" East, 150.00 feet to an iron pipe found for a corner; thence
- (5) along the westerly line of lands of Jacob T. Lewis, South 24° 59' 40" East 409.80 feet to an iron found for a corner; thence
- (6) still along lands of Jacob T. Lewis, South 24° 57' East 300.00 feet to a point in the center line of East Main Street; thence
- (7) along said center line, South 65° 03' West, 50.00 feet to the place of BEGINNING.

EXCEPTING AND RESERVING THEREFROM the rights of the public in East Main Street, which is also known as Route 24.

TRACT II - Situate in the Borough of Mendham:

BEGINNING at an iron pipe found for the most northwesterly corner of a lot conveyed to Jacob T. Lewis by deed recorded in the Morris County Clerk's Office in Book Y-39, page 200, said point of beginning being distant the following two courses from the Southeast corner of a lot conveyed by William L. McNeill and wife to Jeremiah S. Emmons and wife by deed dated May 18, 1927, and recorded in the Morris County Clerk's Office in Book X-30, page 101; (a) along the center line of East Main Street, North 65° 03' East, 150.00 feet to a point; (b) along the westerly line of land remaining to Jacob T. Lewis (Y-39, page 200), North 24° 57' West 300.00 feet to the beginning corner of the herein described premises, and running thence (1) along the easterly line of lands conveyed by William S. Palle and Eleanor C. Palle, his wife, to the Village Racquet Club Land Acquisition Corporation, North 24° 59' 40" West 409.80 feet to an iron found for a corner; (Note: this course is recited North 24° 57' West 410.15 feet in previous deeds); thence (2) along the easterly line of lands of R. and F. Darien, B. & M. O'Brien and S. and J. Clapp, North 20° 20' 45" West, 375.45 feet to a point (Note: The bearing of this course is recited as North 20° 18' West in previous deeds); thence (3) along the southeasterly line of lands of P. and G. Lonergan and lands of D. Long North 42° 35' 42" East, 282.83 feet to an iron pipe found for a corner; thence (4) along lands of Mendham Investment Corp., South 27° 47' 32" East 893.16 feet to an iron pipe found for a corner; (Note: This course is recited in previous deeds as South 27° 45' East 893.50 feet); thence (5) along the northerly line of lands of N. and R. Romano, D. and A. Cillo and E. Cillo, and lands remaining to Jacob T. Lewis, South 65° 03' West 335.48 feet to the place of BEGINNING.

The above premises (TRACT I and TRACT II, together) are designated as Lot 27 in Block 3 on the official tax map of the Borough of Mendham and is the same property described in a lease from the Borough of Mendham to the Borrower dated September 28, 1979, and intended to be recorded simultaneously herewith. It is understood and agreed that only the Borrower's interest under said lease is the subject of this mortgage.

TOGETHER with all the improvements, tenements and appurtenances now or hereafter erected on the property and all easements, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, all leasehold rights of any kind, and all fixtures now or hereafter attached to or used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity,

AGE 1 1964

natural gas, water, air and light; and including, but not limited to, all plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, washers, dryers, awnings, screens, blinds, shades, storm windows, storm doors, antennas, attached floor coverings, trees and plants; all of which including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this instrument; and all payments at any time owing to the Borrower by virtue of any sale, lease, transfer, conveyance or condemnation of any part thereof or interest therein -- all of which are herein collectively referred to as the "Property".

THIS MORTGAGE is also intended as a Financing Statement covering fixtures which are affixed or which may become affixed to the above-described property. The types of collateral covered hereby are described in the preceding paragraph.

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

The Borrower covenants that Borrower is lawfully seized of the leasehold estate hereby conveyed and has the right to mortgage, grant, and convey the Property, and that the Borrower will warrant and defend generally its title to the Property against all claims and demands, subject to easements and restrictions of record.

THIS MORTGAGE SHALL SECURE (a) payment of the Note in accordance with its terms, including any extensions or renewals thereof, whenever the Note is held by either the Government or by an uninsured holder; (b) repayment, with interest, of any payments, advances and expenditures made by the Government pursuant to the terms of this or any other Loan Instrument; and (c) performance of every covenant and agreement of the Borrowers contained in this or any other Loan Instrument.

The Borrower, for itself, its successors and assigns, WARRANTS its title to Property (as construed in 146:9-2, N.J.S.A.) to the Government against the lawful claims of all persons whose claims are not based upon liens, encumbrances, easements or reservation specified above.

AUG 1 1980

The Borrower, for itself, its successors and assigns,
COVENANTS AND AGREES as follows:

- (1) Borrower will promptly pay any indebtedness secured by this instrument when due.
- (2) Borrower will indemnify the Government against any loss which the Government may incur as a result of making payments to an insured holder of the Note after the Borrower's default.
- (3) Borrower will pay the Government any fees or other charges required under regulations of the Farmers Home Administration.
- (4) Borrower will pay when due all taxes, liens, judgments, encumbrances and assessments lawfully attaching to or assessed against the Property, and, without demand, will also provide the Government with proof of those payments.
- (5) Borrower will pay the Government for any expenses necessary or incidental to (a) the protection of the lien or priority of any Loan Instrument and to (b) the enforcement of or compliance with the provisions of any Loan Instrument. "Expenses" includes (without limitation) costs of evidence of title, surveys, recording fees, attorneys' fees and trustees' fees, as well as court costs and expenses of advertising, selling and conveying the Property or any portion of it.
- (6) Borrower will use the loan evidenced by the Note solely for the purposes authorized by the Government.
- (7) Borrower will keep the Property insured as required by the Government and will deliver the originals of all insurance policies to the Government for safekeeping.
- (8) Borrower will comply with all laws, ordinances and regulations affecting the Property and the conduct of Borrower's business operations.
- (9) Borrower will maintain the Property in good repair and make any repairs the Government may require.
- (10) Borrower will operate the Property in a good and efficient manner and will comply with management plans and practices which the Government may prescribe from time to time.

AUG 1 1960

(11) Borrower will not abandon the Property; effect waste, leasing or impairment of the Property; or cut, remove or lease any timber, gravel, oil, gas, coal or other minerals.

(12) Borrower will not (except in the ordinary course of business) lease, assign, sell, transfer or encumber the Property or any nonexpendable part thereof, voluntarily or otherwise, either in whole or in part, without the prior written consent of the Government.

(13) The property described herein was obtained or improved through Federal Financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

(14) If at any time it shall appear to the Government that the Borrower may be able to obtain a loan from a production credit association, a federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, the Borrower will, upon the Government's request, apply for and accept a loan in sufficient amount to pay the Note and any other indebtedness secured by this instrument and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such a loan.

(15) The Government may require the Borrower to make additional monthly payments equal to one-twelfth of the estimated taxes, assessments, insurance premiums and other charges upon the Property.

(16) The Government and its agents may inspect the Property at reasonable times to ascertain whether the Borrower is fulfilling its obligations under this or any other Loan Instrument.

(17) The Government may at any time pay as advances for the Borrower's account any amounts which the Borrower is obligated to pay under any Loan Instrument. The Government may exercise this right regardless of whether the Note is insured and regardless of whether advances exceed the face amount of the Note.

(18) All advances by the Government pursuant to the terms of this or any other Loan Instrument shall bear interest

116 1 1980

at the rate borne by the Note which bears the highest interest rate. Advances, together with interest accruing on them, shall be immediately due and payable by the Borrower at the place designated in the latest Note. Advances by the Government shall neither relieve the Borrower of its obligation to pay nor cure any default under any Loan Instrument.

(19) Except to the extent specified by the Government in writing, the Government in its sole discretion may grant an extension of the time for payment or modification of amortization of the indebtedness secured by any Loan Instrument, release any party from liability to the Government, release portions of the Property from the lien of any Loan Instrument, and waive any other Government right under any Loan Instrument without affecting the lien or priority of any Loan Instrument, or the liability of the Borrower or any other party for payment of the indebtedness secured by any Loan Instrument.

(20) The Government will not be bound by any present or future state laws (a) providing for valuation, appraisal, homestead or exemption of the Property; (b) prohibiting or restricting an action for deficiency judgment or limiting the judgment amount which may be awarded; (c) prescribing any statute of limitations; (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions the Government may impose by regulation as a condition of approving a transfer of the Property to a new borrower. THE BORROWER WAIVES THE BENEFIT OF ANY SUCH STATE LAWS.

(21) Should the Borrower DEFAULT on any of its obligations under any Loan Instrument, merge, dissolve, be declared bankrupt or insolvent, or make an assignment for the benefit of creditors, without Notice the Government may (a) accelerate the entire indebtedness secured by this instrument by declaring it immediately due and payable; (b) charge the Borrower's account for any reasonable expenses which the Government may pay or incur to maintain and repair the Property; (c) process, operate and rent the Property; (d) have a receiver appointed for the Property who may exercise the usual powers of receivers in similar cases; (e) foreclose this and any other Loan Instrument and sell the Property; (f) enforce any and all other rights and remedies provided in the Loan Instruments or by future or present laws.

ALB 100

(22) Upon default by Borrower as aforesaid, the Government may foreclose this instrument as authorized or permitted by the laws then existing of the jurisdiction where the property is situated and of the United States of America, on terms and conditions satisfactory to the Government, including but not limited to foreclosure by (a) statutory power of sale, or (b) advertisement and sale of the property at public auction to the highest bidder in one or more parcels at the Government's option and at the time and place and in the manner and after such notice and on terms required by statute or determined by the Government if not contrary to statute, or (c) written agreement hereafter made between Borrower and the Government.

(23) Proceeds of a foreclosure sale pursuant to any Loan Instrument shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions of any Loan Instrument; (b) any prior liens required by law or a competent court to be paid; (c) all indebtedness to the Government secured by this instrument; (d) inferior liens of record required by law or a competent court to be paid; (e) at the Government's option, any other indebtedness of the Borrower owing to or insured by the Government, and (f) any balance to Borrower. At foreclosure or other sale of all or any part of the Property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(24) If the Government is the successful bidder at a foreclosure sale under any Loan Instrument, any portion of the purchase price not owed to a third party may be paid by crediting that amount on any debts of the Borrower which are owed to or insured by the Government.

(25) The rights and remedies provided in this instrument are cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, by statute or by regulation.

(26) A waiver, amendment, release or modification of this instrument may be effected only by a writing which has been duly executed by the Government and shall not be established by conduct, custom or course of dealing.

AUG 1 198

(27) This instrument shall be governed by federal law, and shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions of this instrument.

(28) Default under this instrument shall constitute a default under any other security instruments of the Borrower held or insured by the Government and default under any other security instrument constitutes default under this instrument.

(29) The invalidity or unenforceability of any portion of this instrument shall not effect the validity or enforceability of the remaining portion of this instrument.

(30) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

(31) Notices to the Borrower shall be sent to its address as shown on the first page of this instrument. Notices to the Government shall be addressed to the Farmers Home Administration, United States Department of Agriculture, One Vahlsing Center, Robbinsville, New Jersey 08691. Notices shall be sent by certified mail (postage prepaid) unless otherwise required by law. The Government and the Borrower may designate any further or different addresses to which subsequent notices shall be sent.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its President and its corporate seal to be affixed and attested by its Secretary, all as of the date first written above.

TRUE COPY RECEIVED BY MORTGAGOR

MENDHAM AREA SENIOR HOUSING CORPORATION

(CORPORATE SEAL)

ATTEST:

Marie M. Mulcahy
Secretary

By:

Frederick D. Smith
President

SEE ANNEXED AMENDATORY RIDER ANNEXED HERETO

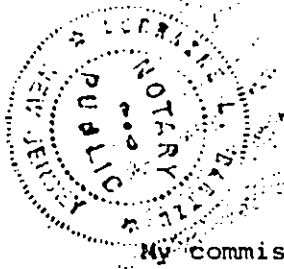
1001718 359
1001748 134

AUG 1 1980

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
COUNTY OF MORRIS) SS:
Somerset

On this 1st day of February, 1980, before me, appeared Frederick D. Smith, to me personally known, who being by me duly sworn, did say that he is the President of the Mendham Area Senior Housing Corporation and that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that this instrument was signed and sealed on behalf of the corporation by authority of its governing board, and Frederick S. Smith acknowledged the instrument to be the free act and deed of the corporation.



(NOTARIAL SEAL)

Lorraine L. Martin
Notary Public

LORRAINE L. MARTIN
A Notary Public of New Jersey
My Commission expires Sept. 12, 1984

My commission expires: _____

The form of this instrument was prepared by the Office of the General Counsel of the United States Department of Agriculture, and the material in the blank spaces in the form was inserted by or under the direction of

PETER E. HENRY
NAME

Mortgagor's Attorney
TITLE

Prepared By: Peter E. Henry, Esq.

This is not a legal copy

Record & Return to
Crummy, Del Deso, Dolan & Purcell
122 Morristown Road
Bernardsville, N. J. 07924

AMENDATORY RIDER

BORROWER agrees that the foregoing mortgage shall be amended, effective from the original date of execution, to include the following additional provisions:

The borrower and any successors in interest agree as required by section 502 (c) (2) of the title of the Housing Act of 1949, as amended, then extant, to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949, as amended and FmHA regulations then extant during this 20 year period beginning Feb. 1, 1980. The borrower understands that should an unsubsidized project be converted to a subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the government determines that:

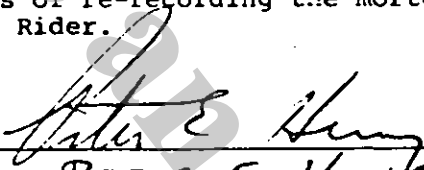
- (1) Affordable, decent, safe, and sanitary alternative housing is available to the tenants who are likely to be displaced due to a change in the use of such housing and related facilities, or to an increase in rental or other charges likely to occur as a result of prepayment.
- (2) And, in the case of housing or related facilities containing more than 10 dwelling units, that the changes likely to occur as a result of such prepayment will not have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low- and moderate-income and elderly or handicapped persons in the area in which such housing and related facilities are located. A tenant may seek enforcement of this provision as well as the government.

ACKNOWLEDGMENT FOR RE-RECORDING

STATE OF NEW JERSEY) SS.:
COUNTY OF SOMERSET)

On this 17th day of September, 1980, before me appeared Frederick D. Smith, to me personally known, who being by me duly sworn, did say that he is the President of the Mendham Area Senior Housing Corporation and that the foregoing instrument was duly

amended by the foregoing Amendatory Rider, and that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Trustees, and with the contents set forth in the foregoing Amendatory Rider is acknowledged to be the voluntary act and deed of the corporation. This Acknowledgment is for purposes of re-recording the mortgage as amended by this Amendatory Rider.



PETER E. HENRY
Attorney at Law of New Jersey

RECEIVED
OCT 29 12 36 PM '80

Edward Healy
MORRIS COUNTY CLERK

MENDHAM AREA SENIOR HOUSING CORPORATION,

and

THE UNITED STATES OF AMERICA acting through
the Farmers Home Administration, United
States Department of Agriculture.

MORTGAGE

Re-record for purposes of amendment and
return to:

CRUMMY, DEL DEO, DOLAN & PURCELL
122 Morristown Road,
Bernardsville, New Jersey 07924

Prepared By:

Peter E. Henry
PETER E. HENRY

LEASE

85153

THIS AGREEMENT made this 17 day of July 1989,

Between: The BOROUGH OF MENDHAM, a municipal corporation of the State of New Jersey, hereinafter referred to a Landlord,

And: MENDHAM AREA SENIOR HOUSING CORPORATION, a corporation not-for-profit of the State of New Jersey, hereinafter referred to as Tenant:

WITNESSETH, that Landlord has agreed to lease and does hereby lease to Tenant, and Tenant has agreed to lease and does hereby lease from Landlord all that certain land and premises situate in the Borough of Mendham, County of Morris, and State of New Jersey, known and designated as Lot 27, Block 3 on the Tax Map of the Borough of Mendham, New Jersey (hereinafter referred to as the "demised premises") for a term of fifty (50) years, commencing July 1, 1988, and ending June 30, 2038, upon the following conditions and covenants:

1. Tenant shall pay the sum of \$ 9,240.00 as annual rental, which shall be payable in four, equal, quarterly payments on March 31, June 30, September 30 and December 31, respectively, of each calendar year during the term of this Lease. This rent payment shall be in lieu of any real estate taxes which might otherwise be due or have been due from Tenant in connection with the land or any buildings or improvements thereon. Rent may be adjusted upward at the discretion of Landlord each year as of January 1 in the same proportional amount as any increase of the municipal real estate tax rate in effect on that date, except that the maximum increase in any one year shall be five percent (5%). In any year in which there is a general revaluation of the real property in Mendham Borough for real estate tax assessment purposes, the first new rate set after determination of the new

Record & Return To:

BLAKE & HENRY

ATTORNEYS AT LAW

135 SOUTH FINLEY AVENUE

P. O. BOX 409

BASKING RIDGE, NEW JERSEY 07920-0409

PLH
27.00

BOOK 3200 PAGE 0300

INSTRUMENT REC'D IN DEED

assessed values shall be treated as if there were "no change" in the municipal real estate tax rate and shall be used as the new base rate to calculate increases or decreases.

2. Rent shall first become due hereunder upon the issuance of the first Certificate of Occupancy for the first completed unit and shall be prorated in accordance with that portion of the calendar quarter remaining from the date of issuance of the said Certificate of Occupancy.

3. Tenant shall use the demised premises for the construction and operation of senior-citizen housing and for related purposes. In the event Tenant shall cease using the demised premises for such purposes, Landlord shall have the right to terminate this Lease. Landlord shall not, however, terminate this Lease, regardless of possible liquidation of the enterprise (by way of foreclosure or conveyance in lieu of foreclosure), as long as the use of the property for senior-citizen housing continues. Landlord shall permit the continued use of the property in accordance with the terms of this Lease, unless the property ceases to be used for senior-citizen housing, whether by this Tenant, by a mortgagee in possession, by a successor or assign or purchaser in foreclosure.

4. Landlord agrees to extend the term of the within Lease an additional sixteen (16) years on the same terms and conditions as herein set forth, if and when Tenant shall so elect.

5. Tenant agrees that it will not discriminate on the basis of race, color, religion, sex, or national origin in connection with the use of the demised premises by Tenant and, in particular, in connection with the rental of the senior-citizen housing units to be erected thereon.

6. Landlord agrees that it will subordinate its fee interest in the demised premises to the liens of the construction and permanent mortgage loans received by Tenant in connection with the construction of the senior-citizen housing and other improvements upon the demised premises.

7. Landlord agrees that it will grant such easements and rights of way as may be necessary to supply telephone service, electricity, gas, water, and other utilities to the improvements to be constructed on the demised premises.

8. Landlord shall maintain and keep in good repair during the term of this Lease the roadways, curbing, sanitary and storm drains, waterlines, and other public improvements to be constructed on the demised premises. Landlord shall maintain, plow, salt or sand, and otherwise care for the roadways and parking areas as it would for any other public street or parking area in the Borough. Tenant shall maintain and keep in good repair all other improvements to be constructed on the demised premises; except that the Landlord reserves the right to enter upon the premises to provide landscaping or other improvements which it feels are in keeping with the use of the property, and in this case will retain responsibility for such improvements provided. Should additional regular services, such as lawn maintenance, be requested of the Landlord by the Tenant and agreed to by the parties, such will be provided as a separate annual agreement based upon the estimated additional cost to the Landlord of performing such services.

9. Tenant agrees that the provisions of Title 39, New Jersey Statutes, regarding motor vehicle laws and any local ordinances concerning the same may be fully enforced by the Borough of Mendham on the premises leased hereunder. Tenant

shall provide any written requests or authorization for such enforcement as may be required by law from time to time.

10. Landlord shall have the right at any time and at its own expense to change or augment the landscaping around the perimeter of the demised premises as Landlord may, in its sole discretion, deem necessary to maintain adequate buffering between the demised premises and the adjoining properties.

11. Tenant shall procure and maintain in full force during the term of this Lease and any extension thereof adequate public liability insurance and hazard insurance for injuries or property damage occurring upon or to the demised premises. Tenant shall take all reasonable steps either to obtain a waiver of subrogation with respect to Landlord's liability for any such injuries or property damage or to name Landlord as an insured party on such public liability insurance policy or policies.

12. This Lease is contingent upon approval by the Farmers Home Administration and commitment to the necessary funding for construction and permanent financing of senior-citizen housing facilities and related improvements upon the demised premises. In the absence of such commitment for funding this Lease shall be deemed null and void. In the event that the funding commitment is terminated or withdrawn after it has been made and the term of this Lease has commenced, then this Lease may be terminated by Tenant. Tenant reserves the right to waive all of the foregoing contingencies and to proceed with this Lease if alternate funding sources can be found, which sources approve this Lease.

13. This Lease supersedes the Lease made between the parties on September 28, 1979, which is of no further effect.

BOROUGH OF MENDHAM

By Michael A. Ackerman
Michael A. Ackerman, Mayor



By Hannah J. Eaton
Hannah J. Eaton, Borough Clerk

MENDHAM AREA SENIOR HOUSING CORPORATION

ATTEST:

By Elinor C. Lewis
ELINOR C. LEWIS, ASST. SECY.

By Thomas E. McCarr
THOMAS E. MCCARR, SECRETARY

By Elizabeth H. Smith
ELIZABETH H. SMITH, PRESIDENT

This is not an official copy

DEMISED PREMISES

All that certain tract of land lying and being in the Borough of Mendham, County of Morris, State of New Jersey.

BEGINNING at an iron in the Northwesterly line of East Main Street (Route 24) in the Easterly line of lands of W. & E. Kelly, thence

- (1) Along Kelly's land North 24 degrees 57 minutes West 237.00 feet to an iron; thence
- (2) Along the Northerly line of Kelly's land South 65 degrees 03 minutes West 100.00 feet; thence
- (3) Partly along the Easterly line of lands of C. & G. Dudrow and the Easterly line of lands of A. & L. Glaza North 24 degrees 57 minutes West 439.24 feet to an iron; thence
- (4) Along the Southerly line of lands of R. & F. Darian North 64 degrees 50 minutes 15 seconds East 150.00 feet to an iron; thence
- (5) Along the Easterly line of lands of R. & F. Darian, B. & M. O'Brien and S. & J. Clapp North 20 degrees 20 seconds 45 minutes West 375.45 feet; thence
- (6) Along the Easterly line of lands of Richard and Barbara Jordan North 42 degrees 35 minutes 42 seconds East 282.83 feet to an iron; thence
- (7) Along the Westerly line of lands of the Mendham Investment Co. Shopping Center South 27 degrees 47 minutes 32 seconds East 893.16 feet to an iron; thence
- (8) Along the Northerly line of lands of Nicholas & Rita Romano, Daniel & Anna Cillo, Anthony & Elizabeth Cillo and Jacob T. Lewis South 65 degrees 03 minutes West 335.48 feet to an iron; thence
- (9) Along the Westerly line of lands of Jacob T. Lewis South 24 degrees 57 minutes East 267.00 feet to the Northwesterly line of East Main Street (Route 24); thence
- (10) Along same South 65 degrees 03 minutes West 50.00 feet to the point and place of BEGINNING.

Being Lot 27 Block 3 on the Borough of Mendham Tax Map.

Described in accordance with a survey made by Robert C. Edwards Assoc., Inc. dated June 15, 1974 continued to June 6, 1978.

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DEPT. OF TREASURY
CLERK

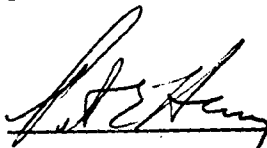
A C K N O W L E D G E M E N T

STATE OF NEW JERSEY

ss.:

County of Morris

Be it Remembered, that on this 10th day of October, 1989, before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Michael A. Ackerman, Mayor; Hannah J. Eaton, Borough Clerk; Elizabeth H. Smith, President; Thomas E. McCabe, Secretary; Elinor C. Lewis, Assistant Secretary who, I am satisfied, are the persons named in and who executed the within Instrument, and thereupon they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed, on behalf of the Borough of Mendham and of Mendham Area Senior Housing Corporation, respectively.



PETER E. HENRY

Attorney at Law of
New Jersey

RECEIVED
Feb 15 1 32 PM '90

137903

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THIS AGREEMENT made this 28th day of September,
1979.

Between: The BOROUGH OF MENDHAM, a municipal corporation of
the State of New Jersey, hereinafter referred to as
Landlord,

And: MENDHAM AREA SENIOR HOUSING CORPORATION, a corpora-
tion not-for-profit of the State of New Jersey,
hereinafter referred to as Tenant:

WITNESSETH, that Landlord has agreed to lease and
does hereby lease to Tenant, and Tenant has agreed to lease and
does hereby lease from Landlord all that certain land and
premises situate in the Borough of Mendham, County of Morris,
and State of New Jersey, known and designated as Lot 27, Block
3 on the Tax Map of the Borough of Mendham, New Jersey (herein-
after referred to as the "demised premises") for a term of
fifty (50) years, commencing July 1, 1979, and ending June 30,
2029, upon the following conditions and covenants:

1. Tenant shall pay the sum of \$8,000.00 as annual
rental, which shall be payable in four, equal, quarterly payments
on March 31, June 30, September 30 and December 31, respectively,
of each calendar year during the term of this Lease. This rent
payment shall be in lieu of any real estate taxes which might
otherwise be due or have been due from Tenant in connection with
the land or any buildings or improvements thereon. Rent may be
adjusted upward at the discretion of Landlord each year as of
January 1 in the same proportional amount as any increase of the
municipal real estate tax rate in effect on that date, except
that the maximum increase in any one year shall be five percent
(5%). In any year in which there is a general revaluation of the
real property in Mendham Borough for real estate tax assessment
purposes, the first new rate set after determination of the new

assessed values shall be treated as if there were "no change" in the municipal real estate tax rate and shall be used as the new base rate to calculate increases or decreases.

2. Rent shall first become due hereunder upon the issuance of the first Certificate of Occupancy for the first completed unit and shall be prorated in accordance with that portion of the calendar quarter remaining from the date of issuance of the said Certificate of Occupancy.

3. Tenant shall use the demised premises for the construction and operation of senior-citizen housing and for related purposes. In the event Tenant shall cease using the demised premises for such purposes, Landlord shall have the right to terminate this Lease. Landlord shall not, however, terminate this Lease, regardless of possible liquidation of the enterprise (by way of foreclosure or conveyance in lieu of foreclosure), as long as the use of the property for senior-citizen housing continues. Landlord shall permit the continued use of the property in accordance with the terms of this Lease, unless the property ceases to be used for senior-citizen housing, whether by this Tenant, by a mortgagee in possession, by a successor or assign or purchaser in foreclosure.

4. Landlord agrees to extend the term of the within Lease an additional twenty-five (25) years on the same terms and conditions as herein set forth, if and when Tenant shall so elect.

5. Tenant agrees that it will not discriminate on the basis of race, color, religion, sex, or national origin in connection with the use of the demised premises by Tenant and, in particular, in connection with the rental of the senior-citizen housing units to be erected thereon.

6. Landlord agrees that it will subordinate its fee interest in the demised premises to the liens of the construction and permanent mortgage loans received by Tenant in connection with the construction of the senior-citizen housing and other improvements upon the demised premises.

7. Landlord agrees that it will grant such easements and rights of way as may be necessary to supply telephone service, electricity, gas, water, and other utilities to the improvements to be constructed on the demised premises.

8. Landlord shall maintain and keep in good repair during the term of this Lease the roadways, curbing, sanitary and storm drains, waterlines, and other public improvements to be constructed on the demised premises. Landlord shall maintain, plow, salt or sand, and otherwise care for the roadways and parking areas as it would for any other public street or parking area in the Borough. Tenant shall maintain and keep in good repair all other improvements to be constructed on the demised premises; except that the Landlord reserves the right to enter upon the premises to provide landscaping or other improvements which it feels are in keeping with the use of the property, and in this case will retain responsibility for such improvements provided. Should additional regular services, such as lawn maintenance, be requested of the Landlord by the Tenant and agreed to by the parties, such will be provided as a separate annual agreement based upon the estimated additional cost to the Landlord of performing such services.



9. Tenant agrees that the provisions of Title 39, New Jersey Statutes, regarding motor vehicle laws and any local ordinances concerning the same may be fully enforced by the Borough of Mendham on the premises leased hereunder. Tenant

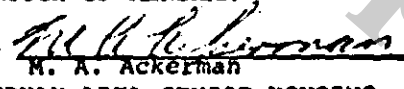

shall provide any written requests or authorization for such enforcement as may be required by law from time to time.

10. Landlord shall have the right at any time and at its own expense to change or augment the landscaping around the perimeter of the demised premises as Landlord may, in its sole discretion, deem necessary to maintain adequate buffering between the demised premises and the adjoining properties.

11. Tenant shall procure and maintain in full force during the term of this Lease and any extension thereof adequate public liability insurance and hazard insurance for injuries or property damage occurring upon or to the demised premises. Tenant shall take all reasonable steps either to obtain a waiver of subrogation with respect to Landlord's liability for any such injuries or property damage or to name Landlord as an insured party on such public liability insurance policy or policies.

12. This Lease is contingent upon approval by the Farmers Home Administration and commitment to the necessary funding for construction and permanent financing of senior-citizen housing facilities and related improvements upon the demised premises. In the absence of such commitment for funding, this Lease shall be deemed null and void. In the event that the funding commitment is terminated or withdrawn after it has been made and the term of this Lease has commenced, then this Lease may be terminated by Tenant. Tenant reserves the right to waive all of the foregoing contingencies and to proceed with this Lease if alternate funding sources can be found, which sources approve this Lease.


Attest:

Marie L. Priester

BOROUGH OF MENDHAM
By: 
M. A. ACKERMAN
MENDHAM AREA SENIOR HOUSING CORPORATION
By: 
F. D. SMITH

Page 4

DEMISED PREMISES

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BEGINNING at an iron in the Northwesterly line of East Main Street (Route 24)

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- (1) Along Kelly's land North 24 degrees 57 minutes West 237.00 feet to an iron; thence
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- (4) Along the Southerly line of lands of R. & F. Darian North 64 degrees 50 minutes 15 seconds East 150.00 feet to an iron; thence
- (5) Along the Easterly line of lands of R. & F. Darian, B. & M. O'Brien and S. & J. Clapp North 20 degrees 20 seconds 45 minutes West 375.45 feet; thence
- (6) Along the Easterly line of lands of Richard and Barbara Jordan North 42 degrees 35 minutes 42 seconds East 282.83 feet to an iron; thence
- (7) Along the Westerly line of lands of the Mendham Investment Co. Shopping Center South 27 degrees 47 minutes 32 seconds East 893.16 feet to an iron; thence
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Being Lot 27 Block J on the Borough of Mendham Tax Map.

Described in accordance with a survey made by Robert C. Edwards Assoc., Inc. dated June 15, 1974 continued to June 6, 1978.

STATE OF NEW JERSEY)
COUNTY OF *Morris*)SS:

BE IT REMEMBERED, that on this *1st* day of *February* 1980, before me, the subscriber, a ~~Notary Public~~ of the State of New Jersey, personally appeared MARIE L. PFIEFER, who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Clerk of the Borough of Mendham, the Municipal Corporation named in the within Instrument; that MICHAEL A. ACKERMAN is the Mayor of said Borough of Mendham; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Borough Council of the said Borough of Mendham; that deponent well knows the corporate seal of said Borough of Mendham; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said Mayor as and for the voluntary act and deed of said Borough of Mendham, in presence of deponent, who thereupon subscribed her name thereto as attesting witness.

Sworn to and subscribed before me,
the date aforesaid.

Peter E. Henry
Peter E. Henry
Attorney at Law of New Jersey

Marie L. Pfeifer
Marie L. Pfeifer

STATE OF NEW JERSEY)
COUNTY OF)SS:

BE IT REMEMBERED, that on this *1st* day of *February* 1980, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared MARIE M. MULCAHY who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Secretary of Mendham Area Senior Housing Corporation, the Corporation named in the within Instrument; that FREDERICK D. SMITH is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Trustees of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in presence of deponent, who thereupon subscribed her name thereto as attesting witness.

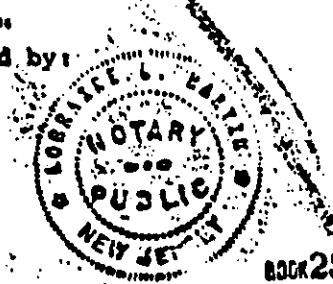
Sworn to and subscribed before me,
the date aforesaid.

Lorraine L. Martin

LORRAIN E. MARTIN
A Notary Public of New Jersey
My Commission expires Sept. 12 1986

This Document Prepared by:
Peter E. Henry, Esq.
Gateway I
Newark, New Jersey

Marie M. Mulcahy
Marie M. Mulcahy



BOOK 2540 PAGE 411

This is not an official copy

Record and Return to
Cummy, Del Deo, Dolan & Purcell
122 Morristown Road
Bernardsville, N.J. 07924

BOROUGH OF MENDHAM

ORDINANCE NO. 2020 -

AN ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, AND STATE OF NEW JERSEY TO PROMOTE THE ADEQUATE SUPPLY OF AFFORDABLE HOUSING IN THE BOROUGH BY MAKING UNIFORM AND EXTENDING THE HOUSING AFFORDABILITY CONTROLS FOR THE MENDHAM AREA SENIOR HOUSING DEVELOPMENT.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c. 222) (N.J.S.A. § 52:27D-301 et, seq.) (the “Act”) to provide for their fair share of housing that is affordable to households of low- or moderate-income in accordance with the provisions of the Act; and

WHEREAS, pursuant to N.J.S.A. § 52:27D-321 of the Act, in 1985 the Legislature delegated administrative authority and responsibility to the New Jersey Housing and Mortgage Finance Agency (“HMFA”) to establish programs to assist municipalities in providing low and moderate income housing (“affordable housing”), and to establish requirements and controls to ensure that such housing continues to remain affordable and occupied by low-and moderate-income households as defined under the Act; and

WHEREAS, pursuant to this delegated authority, the HMFA has adopted a set of rules for the establishment and administration of uniform housing affordability controls on all affordable housing and affordable developments in this State, the most recent version of which is set forth at Title 5, Chapter 80, subchapter 26 of the New Jersey Administrative Code (N.J.A.C. §§ 5:80-26.1 thru -26.26), known as the Uniform Housing Affordability Control (“UHAC”) regulations; and

WHEREAS, the UHAC regulations establishes uniform restrictions for the control, use, sale and rental of affordable housing units related to: (i) the minimum applicable period(s) of time in which the ownership, sale, use and rental of such affordable housing is to remain restricted to low and moderate income households, otherwise known as “Affordability Control Period(s)” or “Control Period(s)”; (ii) the rental amounts for such affordable units; and (iii) the method and manner in which a municipality is permitted to exercise its right establish uniform restrictions and/or to release or extend the Control Period(s) on affordable housing in this State; and

WHEREAS, the UHAC regulations apply to all rental affordable units in the Borough of Mendham (“Borough”) regardless of the date on which the affordable units were created; and

WHEREAS, the UHAC regulations define an “affordable development” as a housing development, all or a portion of which consists of restricted units, and defines “restricted unit” as a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of the UHAC; and

WHEREAS, N.J.A.C. §§ 5:80-26.11 and -26.12 of the UHAC, governs the Affordability Control Period(s) for affordable rental units constructed subsequent to the Act, and in relevant part establishes that the “Affordability Control Period(s)” for restricted rental units shall commence on the first date that a certified affordable household occupies the respective unit and shall remain subject to the affordability controls and restrictions for a period of at least 30 years; and

WHEREAS, N.J.A.C. § 5:80-26.11 of the UHAC further provides that the “Affordability Control Period(s)” do not automatically expire upon conclusion of the 30-year period, and each restricted rental unit shall remain subject to the requirements of [the UHAC] until the municipality in which the unit is located elects to release the unit from such requirements by adoption of an ordinance; and

WHEREAS, the HMFA has clarified that under N.J.A.C. § 5:80-26.11 of the UHAC, the “[a]ffordability controls on restricted rental units may be extended past the 30–year control period by the municipality pursuant to a municipal ordinance authorizing such elections with respect to units located either in areas specifically identified in the Housing Element of the municipal Master Plan or throughout the entire municipality” see 36 N.J.R. 5713(a); and

WHEREAS, the Borough is the owner of a certain tract of land located at 1 Heritage Manor Drive, Borough of Mendham, County of Morris, known as Block 801, Lot 25 on the Borough’s Tax Map (“Subject Property”); and

WHEREAS, the Mendham Area Senior Housing Corporation (hereinafter “MASH”) currently leases the Subject Property from the Borough pursuant to a Lease Agreement dated July 17, 1989, which is on file in the Office of the Morris County Clerk at Deed Book 3200, Pages 0300-0306; and

WHEREAS, the Subject Property is currently improved with forty (40) rental garden apartments and a community building (hereinafter referred to as the “MASH Development”); and

WHEREAS, each rental garden apartment situated within the MASH Development at the Subject Property is restricted by lease agreement between the Borough and MASH, such that it must be rented to senior citizens age sixty-two (62) and over, a couple in which one person is sixty-two (62) years of age or older; or a certified disabled person regardless of age; and

WHEREAS, each of the rental garden apartments situated in the MASH Development at the Subject Property is comprised of approximately 600 square feet of living space with a combined living/dining room, full bathroom, and bedroom; and

WHEREAS, of the forty (40) rental garden apartments situated within the MASH Development at the Subject Property, currently thirty-five (35) units are limited to persons and/or couples having a minimum income of \$14,124 dollars, and each of the thirty-five (35) units provide affordable rental housing for very low income, low income, and/or moderate-income families such that the MASH Development constitutes an “affordable development” as defined under the Act and the UHAC; and

WHEREAS, each of the thirty-five (35) units within the MASH Development are (1) bedroom rental units (hereinafter collectively the “Affordable Unit(s)”); and

WHEREAS, each and every Affordable Unit currently existing within the MASH Development was created and constructed after the effective date of the Act, and first occupied by qualifying household(s) after the effective date of the Act; and

WHEREAS, deed restrictions and covenants for the lease between the Borough and MASH for the MASH Development are subject to renewal by the Borough; and

WHEREAS, the Mayor and Council of the Borough of Mendham are authorized to determine that most desirable means to promote an adequate supply of low-and moderate income housing in the Borough is for the Borough to exercise its right and option to establish the uniform affordability controls and extend such Affordability Controls in accordance with the UHAC, as necessary and proper to maintain the covenants, conditions and deed restriction(s) on all of the Affordable Units situated within the MASH Development for a longer period of time than the initial period of time the Affordability Control Period(s).

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Mendham, in the County of Morris and State of New Jersey, that:

1. It is the public policy of the State of New Jersey and the Borough to ensure that affordable units remain affordable and occupied by very low, low-and moderate-income households for an appropriate period of time.
2. Consistent with the well-established public policy of this State, N.J.A.C. § 5:80-26.11 of the UHAC and recent New Jersey court decisions, it is hereby determined that the most desirable means of promoting the adequate supply of affordable housing in the Borough is to extend the Affordability Controls and to maintain the covenants, conditions and deed restriction(s) on all of the Affordable Units situated within the MASH Development for a longer period of time than the initial thirty (30) year Affordability Control Period.
3. The initial thirty (30) year Control Period governing the Affordability Controls,

covenants, conditions and deed restrictions on each of the thirty-five (35) Affordable Units within the MASH Development are hereby extended for at least an additional thirty (30) year term ("Period of Extended Controls").

4. The Period of Extended Controls shall commence upon the date in which the initial Control Period(s) specific to each of the Affordable Unit(s) within the MASH Development was originally set to end, and shall continue to run with the land thereafter for a minimum of at least an additional thirty (30) year term.
5. During the Period of Extended Controls, sale, rental, use and occupancy of the Affordable Units within the MASH Development shall be governed by N.J.A.C. §§ 5:80-26.1 thru -26.26 of the UHAC, as may be supplemented and amended from time-to-time hereafter.
6. During the Period of Extended Controls, the thirty-five (35) Affordable Units within the MASH Development shall be used solely for the purpose of providing rental dwelling units for very-low, low, or moderate-income households as defined under the New Jersey Fair Housing Act, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period and/or Period of Extended Controls, sale of the Subject Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Borough's Affordable Housing Administrative Agent.
7. During the Period of Extended Controls, no improvements may be made to the Affordable Units within the MASH Development that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Subject Property must be approved in advance and in writing by the Administrative Agent.
8. During the Period of Extended Controls, the owner of the MASH Development shall notify the Borough's Affordable Housing Administrative Agent and the State of any foreclosure actions filed with respect to the MASH Development within five (5) business days of service upon the owner.
9. During the Period of Extended Controls, the owner of the MASH Development shall notify the Borough's Administrative Agent and the State within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.
10. At the conclusion of the thirty (30) year Period of Extended Controls, the Borough reserves the right to again exercise the option to extend the

Affordability Controls, covenants, conditions and deed restriction(s) on each of the Affordable Units within the MASH Development for an additional period of time, or exercise any other option(s) available to the Borough to preserve the Affordability Controls as set forth in UHAC or any other applicable statute, regulation or law that may be in effect at that time.

11. At the conclusion of the thirty (30) year Period of Extended Controls, the Affordability Controls, covenants, conditions and deed restriction(s) on each of the Affordable Units within the MASH Development shall continue to run with the land until the Borough expressly elects to release the specific Affordable Unit(s) from such Affordability Controls and restrictions by formal adoption of an ordinance.
12. The Municipal Clerk is directed to print and publish this Ordinance in full in the official newspaper of the Borough of Mendham and to notify the Borough's Affordable Housing Administrative Agent of the Borough's action.
13. The Borough's Affordable Housing Administrative Agent shall ensure that the deed restriction(s) applicable to all of the Affordable Units situated within the MASH Development reflect the Period of Extended Controls set forth in this Ordinance by filing with the Office of the Morris County Clerk, this Ordinance along with the attached Declaration(s) of Restrictive Covenant, which is hereby incorporated by reference and simultaneously adopted and approved.
14. This Ordinance shall evidence that the Control Period(s) on each of the Affordable Units situated within the MASH Development have been extended in accordance with the UHAC, and the Borough is entitled to at least thirty-five (35) credits in addressing its affordable housing obligation imposed on the Borough pursuant to the Fair Housing Act through the conversion and extension of affordability controls on those Affordable Units.
15. All ordinances of the Borough of Mendham, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.
16. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.
17. This Ordinance may be renumbered for purposes of codification and shall be included as part of the Borough of Mendham's code applicable to affordable housing in the Borough.
18. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

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

ATTEST:

Robin R. Kline, Borough Clerk

Christine Serrano Glassner, Mayor

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance adopted by the Mayor and Council of the Borough of Mendham at a regular meeting held on _____, 2020

TO BE FILED WITH THE COUNTY

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS SUBJECT TO
RESTRICTIVE COVENANTS REQUIRED BY N.J.A.C. 5:80-26.11

Deed Restriction

**EXTENSION DECLARATION OF RESTRICTIVE COVENANTS
DEED-RESTRICTED AFFORDABLE HOUSING RENTAL PROPERTY WITH
RESTRICTIONS ON RENTALS, CONVEYANCES AND IMPROVEMENTS; AND
REQUIRING NOTICE OF FORECLOSURE AND BANKRUPTCY**

To Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DECLARATION IS INTENDED TO MAKE CLEAR
IN THE CHAIN OF TITLE THAT THE DEED
RESTRICTIONS, COVENANTS, CONDITIONS AND
AFFORDABILITY CONTROLS ON ALL OF THOSE
AFFORDABLE RENTAL UNITS SITUATED IN THE
MENDHAM AREA SENIOR HOUSING DEVELOPMENT
HAVE BEEN EXTENDED AND ARE SUBJECT TO
EXTENDED AFFORDABILITY CONTROLS LIMITING
THE SALE, RENTAL, USE AND OCCUPANCY OF
THESE AFFORDABLE UNITS FOR AN ADDITIONAL
THIRTY-YEAR TERM.

THIS DECLARATION RESTRICTION, entered into as of this the ___ day of _____, 2020, by and between the Borough of Mendham (Borough or “Municipality”), with offices at The Phoenix House, 2 West Main Street, Borough of Mendham, New Jersey 07945, and Mendham Area Senior Housing Corporation, a New Jersey Corporation having offices at One Heritage Manor Drive, Borough of Mendham, New Jersey 07945 the developer and operator (hereinafter “Operator”) of a residential low- or moderate-income rental project (the “Project”):

WITNESSETH:

WHEREAS, the Borough is the owner of a certain tract of land located at 1 Heritage Manor Drive, Borough of Mendham, County of Morris, known as Block 801, Lot 25 on the Borough’s Tax Map (“Subject Property”); and

WHEREAS, the Mendham Area Senior Housing Corporation (hereinafter “MASH” or

“Operator”) currently leases the Subject Property from the Borough pursuant to a Lease Agreement dated July 17, 1989 on file in the Office of the Morris County Clerk at Deed Book 3200, Pages 0300-0306; and

WHEREAS, the Subject Property is improved with forty (40) rental garden apartments and a community building (hereinafter the “MASH Development”); and

WHEREAS, each rental apartment situated within the MASH Development at the Subject Property is restricted by lease agreement between the Borough and MASH, such that it must be rented to senior citizens age sixty-two (62) and over; a couple in which one person is sixty-two (62) years of age or older; or a certified disabled person regardless of age; and

WHEREAS, each of the rental garden apartments situated in the MASH Development at the Subject Property is comprised of approximately 600 square feet of living space with a combined living/dining room, full bathroom, and one bedroom; and

WHEREAS, of the forty (40) rental garden apartments situated within the MASH Development at the Subject Property, currently thirty-five (35) units are limited to persons and/or couples having a minimum income of \$14,124 dollars, and each of the thirty-five (35) units provide affordable rental housing for very low income, low income, and/or moderate-income families such that the MASH Development constitutes an “affordable development” as defined under the New Jersey Fair Housing Act and the Uniform Housing Affordability Control regulations set forth within the New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, et seq., the “UHAC”); and

WHEREAS, each of the thirty-five (35) units within the MASH Development are (1) bedroom rental units (collectively the “Affordable Unit(s)”); and

WHEREAS, each and every Affordable Unit currently existing within the MASH Development was created and constructed after the effective date of the Act, and first occupied by qualifying household(s) after the effective date of the Act; and

WHEREAS, deed restrictions and covenants for the lease between the Borough and MASH for the MASH Development are subject to renewal by the Borough; and

WHEREAS, pursuant to Ordinance No. 2020-_____ the Mayor and Borough Council of the Borough of Mendham has extended the initial Control Period governing the Affordability Controls, covenants, conditions and deed restrictions on each of the Affordable Units within the Mendham Area Senior Housing Development (“MASH Development”) for at least an additional thirty (30) year term commencing on the original date the Control Period(s) on each of the respective Affordable Units was set to expire, and continuing to run with the land thereafter for an additional thirty (30) year term (“Period of Extended Controls”) in accordance with N.J.A.C. §5:80-26.11 of the UHAC; and

WHEREAS, the purpose of this Declaration is to insure that the above-described Affordable Units(s) remain affordable to low- and moderate-income eligible households for at

least the additional minimum period of time described in Article 3, Sections I thru -J of this Declaration (the “Period of Extended Controls”); and

WHEREAS, the Borough desires, and is required pursuant to the UHAC to make clear of record that the Control Period(s) for the Affordable Unit(s) situated within the MASH Development have been extended, and this Declaration is intended to make clear in the chain of title that each of the Affordable Units within the MASH Development are all subject to extended covenants, conditions, deed restrictions and Affordability Controls limiting the sale, rental use, occupancy and re-sale of the Affordable Unit(s); and

WHEREAS, it is the intent of this Declaration to insure that the Affordability Controls are recorded in the chain of title for the Affordable Unit(s) within the MASH Development so as to continue to bind the Operator of the MASH Development and/or occupants of the Affordable Unit(s) of the covenants, conditions and restrictions which they shall continue to be required to comply with, and to notify all future successors in title or interest that the Affordable Unit(s) continue(s) to be encumbered with Affordability Controls and Covenants for the Period of Extended Controls set forth hereinafter.

NOW THEREFORE, the Borough of Mendham declares that the Lease Agreement between the Operator and the Borough dated July 17, 1989, recorded in the Morris County Clerk’s Office at Deed Book 3200, Pages 0300-0306 is hereby modified and amended such that each of the all of above-listed Affordable Units shall be held, transferred, conveyed, leased, occupied, and used subject to the following restrictions and conditions for the Period of Extended Controls defined herein:

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Operator from the Municipality regarding this rental Project, the Operator hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of the Borough of Mendham, County of Morris, State of New Jersey, and described more specifically as Block No. 801 Lot No. 25, and known by the following street address:

One Heritage Manor Drive
Borough of Mendham, New Jersey 07945

More specifically designated as:

Thirty-five one (1) bedroom units, 600 square feet in size, beginning at Unit No.: A-1 and intermingled throughout the Property, ending at Unit No.: D-8.

Article 3. Affordable Housing Covenants

Consistent with N.J.A.C. §5:80-26.1 thru -26.26 of the UHAC, the following Affordability Controls, covenants and restrictions (the “Affordability Controls”) shall run with the land for each respective Affordable Unit within the MASH Development for the period of time (the “Control Period”) determined separately for each respective Affordable Unit, commencing upon the earlier of the date hereof or the date on which the first certified affordable household occupies the respective dwelling unit, and shall continue until the Borough elects to release the respective specific dwelling unit(s) and terminating upon the date the Borough elects to release the respective Affordable Unit(s) from these Affordability Controls, Covenants and restrictions by ordinance following the “Period of Extended Controls” as provided for in the UHAC and more specifically described below. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this Declaration for the additional thirty (30) year Period of Extended Controls, as determined from the date of first occupancy under the UHAC.

A. Pursuant to N.J.A.C. §5:80-26.11 of the “UHAC”, the initial Affordability Control Period(s) on each of the Affordable Unit(s) within the MASH Development have been extended for at least an additional thirty (30) year term (the “Period of Extended Controls”).

B. The Period of Extended Controls shall commence upon the date in which the initial thirty (30) year Control Period(s) for the above-listed Affordable Unit(s) was originally set to end, as separately determined for each Affordable Unit based upon the initial date a certified low or moderate household first occupied the respective unit, and shall continue to run with the land thereafter for a minimum of at least an additional thirty (30) year term.

C. During the original control period, and the Period of Extended Controls, sale, rental occupancy and use of all Affordable Unit(s) shall be governed by the UHAC, as may be amended from time-to-time hereafter, the Lease Agreement as modified herein, and these Deed Restrictions.

D. During the original control period and the Period of Extended Controls, all Affordable Unit(s) shall be used solely for the purpose of providing rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property and any dwelling unit must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.

E. During the original control period and the Period of Extended Controls, no improvements may be made to the interior of any of the dwelling unit(s) that would affect the bedroom configuration of any of the dwelling units, and any improvements to any of the dwelling unit(s) must be approved in advance and in writing by the Administrative Agent.

F. During the original control period and the Period of Extended Controls, the Operator shall notify the Administrative Agent and the Borough of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Operator.

G. During the original control period and the Period of Extended Controls, the Operator shall notify the Administrative Agent and the Borough within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Operator.

H. During the original control period and the Period of Extended Controls, these Affordability Controls and Covenants affordable housing covenants, declarations and restrictions implemented and/or extended by this Declaration and by incorporation, the UHAC, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit(s) or

I. At the conclusion of the thirty (30) year Period of Extended Controls, the Borough reserves the right to again exercise the option to extend the Affordability Controls, covenants, conditions and deed restriction(s) on each of the Affordable Units within the MASH Development for an additional period of time, or exercise any other option(s) available to the Borough to preserve the Affordability Controls as set forth in UHAC or any other applicable statute, regulation or law that may be in effect at that time.

J. At the conclusion of the thirty (30) year Period of Extended Controls, the Affordability Controls, covenants, conditions and deed restriction(s) on each of the Affordable Units within the MASH Development shall continue to run with the land until the Borough expressly elects to release the specific Affordable Unit(s) from such Affordability Controls and restrictions by formal adoption of an ordinance.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Borough and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, et seq., and the obligation for the provision of low and moderate-income housing.

A. In the event of a threatened breach of any of the Covenants by the Operator, the occupant(s) of the respective unit(s), any subsequent grantee, any subsequent tenant, or any other successor in interest or other operator/possessor of the Property/unit(s), the Administrative Agent and the Borough shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Operator, the occupant(s) of the respective unit(s), a subsequent grantee, any subsequent tenant, or any other successor in interest or other operator/possessor of the Property, the Administrative Agent and the Borough shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any

funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those remedies provided under the UHAC, and specific performance.

Article 5. Full Force and Effect

If any portion of this Declaration is deemed in contravention with or to be invalid under the laws of the State of New Jersey, such contravention or invalidity will not invalidate the entirety of this Declaration, and this Declaration shall be construed as if not containing the particular provision(s) held to be invalid, and the rights and obligations of the Operator(s), tenants, transferors, transferees, and their respective successors-in-interest shall continue to be construed and enforced accordingly.

IN WITNESS WHEREOF, the Administrative Agent for the Borough of Mendham and the Operator of the Property have executed this Deed Restriction in triplicate as of the date first above written.

BOROUGH OF MENDHAM

BY: _____
[INSERT NAME]
Affordable Housing Administrative Agent

APPROVED BY:

By: _____
Christine Serrano Glassner, Mayor
Borough of Mendham

MENDHAM AREA SENIOR HOUSING, CORP.

BY: _____
[INSERT NAME]
Authorized Agent for
Mendham Area Senior Housing, Corp.

ACKNOWLEDGEMENTS

On this the _____ day of _____, 2020 before me came _____, to me known and known to me to be the Administrative Agent for _____ [Municipality], who states that (s)he has signed said Agreement on behalf of said Municipality for the purposes stated therein.

NOTARY PUBLIC

On this the _____ day of _____, 2020 before me came _____, to me known and known to me to be _____, the Operator of the Property, who states that (s)he has signed said Agreement for the purposes stated therein.

NOTARY PUBLIC

On this the _____ day of _____, 2020 before me came _____ known and known to me to be _____ of _____, the Municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

NOTARY PUBLIC

MENDHAM BOROUGH PLANNING BOARD

RESOLUTION

**Preliminary & Final Site Plan Approval, Parking Variance & Design Waivers
Aryan at Mendham (Dunkin' Donuts)
25 East Main Street
Block 1501, Lot 11, Historic Business (HB) District**

WHEREAS, Aryan at Mendham, LLC (“Applicant”) has applied to the Planning Board of the Borough of Mendham (the “Board”) for preliminary and final site plan approval, together with variances and design waivers, with respect to 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 commenced on May 14, 2018, continued on July 9, August 13, October 9, and concluded on November 13, 2018, during which hearing testimony was offered on behalf of Applicant by Applicant’s principal, Applicant’s project architect, project engineer, environmental professional, traffic engineer, landscape architect, and professional planner; the Board reviewed the documents and materials filed by Applicant and reports from its professional consultants; heard argument from counsel for the Applicant; received a Report and heard testimony from a historic preservation consultant and heard argument from counsel for objecting neighbors; and members of the public were given an opportunity to comment on the Application; and at the conclusion of which, the public hearing was closed and the Board’s attorney was directed to draft a Resolution of approval for consideration by the Board at its next meeting; and

WHEREAS, the Board has considered and deliberated upon the testimony and materials submitted by and on behalf of Applicant, the reports and recommendations of the Board's consultants and professional staff, the report and testimony presented by the objecting neighbors' historic preservation consultant, the testimony and comments of the objecting neighbors and of other members of the public, and the arguments of counsel for the Applicant and counsel for the objecting neighbors;

NOW THEREFORE BE IT RESOLVED that, based upon the forgoing, the Board makes the following findings of fact and conclusions of law:

1. Applicant is the owner of the Subject Property located at 25 East Main Street (Tax Map Block 1501, Lot 11) in the Borough of Mendham. The Subject Property is a 0.97 acre parcel, fronting on East Main Street, in the Historic Business Zone, within the Borough's Historic District.

2. At the beginning of the May 14 hearing, the Board addressed a number of requested Checklist waivers and granted them for "completeness" purposes, noting that any remaining open at the conclusion of the hearing would be conditions of any approval which might be granted. As a result, the Board determined that the Application should be deemed "complete" and the hearing could proceed.

3. Applicant proposes to remove the remains of the existing non-conforming structure on the Subject Property and to replace it with a new two-story building in a conforming location. The ground floor would house a Dunkin' Donuts restaurant; the second floor would consist of two (2) apartments, one of which is proposed to be an Affordable Housing unit.

4. The proposed building and its uses are permitted in the HB Historic Business District. Applicant is not able, however, to comply with the parking requirements of the zoning ordinance, nor with certain site plan design standards. Therefore, in addition to preliminary and final site plan approval, Applicant needs “c” variance relief for less-than-required parking and several exceptions from generally applicable design standards, as follows:

- (a) 9’ x 18’ parking stall size (relative to 10’ x 20’ standard)
- (b) 5’ driveway separation (relative to 20’ standard)
- (c) Lack of designated 12’ x 35’ loading area
- (d) Grading along the property line

5. Applicant proposes to construct the new building in accordance with architectural plans, design, materials and finishes which were approved by the Mendham Borough Historic Preservation Commission.

6. Based on the uncontroverted testimony of Applicant’s architect, the building presently on the Subject Property was originally built in the mid-19th century as a small residential structure. Its more recent history commenced in the 1980’s when it was purchased, renovated and enlarged, and opened as a restaurant. Over the years there were additions to the building of varying design. The restaurant closed in 2005 and the building has been vacant and unmaintained since then. For five or six years after the restaurant closed, the building fell into serious disrepair. From that point to the present, the structure has continued to deteriorate physically. The stone foundation has become unsound, the interior has lost much of its structural integrity and the building is mold-ridden. The only remaining historical element is the central portion of the front façade.

7. Moving to the current time frame, Applicant initially proposed a Dunkin' Donuts restaurant with a Drive-Thru element. Though the fast food restaurant use itself is a permitted use in the HB Zone, a drive-thru is not permitted. As a result, the Applicant submitted an application to the Board of Adjustment for "d" variance relief to permit the drive-thru. This application did not proceed to hearings, however, and was withdrawn in the face of significant apparent objection, particularly from residents in the vicinity of the Subject Property. Applicant thereafter revised its plan by removing the drive-thru element and proceeded with the present application to the Planning Board for development of the site for a restaurant with apartments above.

8. Although conforming now as to "use" criteria of the zoning Ordinance, Applicant must still obtain "c" variance relief with regard to the number of parking spaces to be provided. A fast food restaurant is generally required to provide a minimum of forty (40) spaces; if it is proposed in a non-historic building in the HB Zone, an additional 20% (8) must be provided; and, in this particular case, two (2) additional spaces for each of the two (2) apartments adds four (4) more spaces. The result is a total per Ordinance of 52 spaces. Initially, before this Board, Applicant proposed a total of 44 parking spaces on site. This number was at or close to the maximum which could be accommodated on the site without the need for some other variance relief with respect to impervious surface, setbacks, and/or other affected bulk standards. Applicant proposed to seek relief for the reduced number of parking spaces, allowing all other bulk zoning district regulations to be satisfied, submitting to the Board that the actual parking need would be far fewer than 44 spaces.

9. In discussion of the parking issue, it was suggested that the Applicant should consider reducing the size of the restaurant. Applicant pointed out, however, that aside from the

apartments, if the parking requirements were governed by the generally applicable standard of seating capacity and employee count, only 16 spaces would be required for the restaurant. The restaurant's ordinance requirement for 48 spaces resulted from the "minimum of 40" and the 20% add-on", rather than the size of the building, seat count, or employee numbers.

10. Applicant's testimony established that its principals and related family members were experienced, long time franchisees of Dunkin' Donuts, had operated Dunkin' Donuts restaurants for almost 30 years, and were presently involved with 55 locations in New Jersey and 30 in Florida. Applicant's representative testified that he is presently in charge of 20 locations in Morris County. Based on the breadth of experience, including a number of locations sharing market areas and road frontage and usage characteristics similar to the proposed Mendham site, Applicant suggested that it be permitted by variance to provide a maximum of 41 spaces. In addition, after several discussions about actual need and some alternative numbers, Applicant suggested that reducing the actual built-out parking to 28 spaces, with 13 spaces being "banked," would be wholly adequate for the operation of the restaurant and for apartment residents' parking, while reducing impervious surface and preserving additional undeveloped space. Should it appear that additional parking is needed, the banked spaces could be built out. Applicant agreed that a procedure to identify and address such a need would be a condition of any approval allowing banked parking.

11. Applicant's traffic expert and the Board's traffic consultant both agreed that the proposed initial build-out of 28 spaces and banking of an additional 13 spaces appeared to result in adequate on-site parking and provision for additional spaces if it became necessary. They suggested approaches to identify any such need and agreed - - as did Applicant - - that should any additional spaces be needed, all 13 would be built out. To this end, the Board was asked to

approve both a 28/13 space banked plan and a 41 space full build-out plan allowing impervious, design details, landscaping, drainage and other site features to be fully developed for each alternative.

12. Applicant's architect described the proposed building from a number of perspectives. He opined that its size and scale were in keeping with the surrounding commercial area in the HB zone, the Audi dealer across E. Main Street being approximately twice as large, the former bank on a proximate lot being larger than Applicant's proposed building, and other structures (mostly converted residences) being somewhat smaller. He described the design of the building, its high quality proposed materials and finishes, its positioning at a conforming front setback (curing the present building's non-conformity and relating better to nearby buildings). The interior will devote a ground floor of approximately 2500 sq. ft. to the Dunkin' Donuts restaurant; the second floor will accommodate two (2) apartments at approximately 1400 sq. ft. each and having entrances entirely separate from the restaurant; and the basement will be used only for Dunkin' storage and mechanicals, being accessible only from the interior of the restaurant. The building will be fully sprinklered (including the apartments) and conforming as to all setback and height requirements. Approximately 1200 sq. ft. of bluestone installed in a random pattern is proposed for "porch/patio" areas which will surround the building (front, rear and sides), with two (2) benches located on each of the two (2) sides of the building. A ground level grate will be installed along the westerly side of the building to provide outside air to the HVAC system, if that is determined to be required. If the grate is used, it will be visually shielded by landscaping.

13. The Applicant's architect presented certain plans entitled "Mixed Use Building, 25 East Main Street, Mendham, New Jersey" (2 sheets) dated 2/1/18, which plans were revised

in the course of the hearing, with the latest revision being 5/29/18, which last revised are referred to herein as the “Architectural Plans”.

14. The Architectural Plans also depicted proposed signage, which after Applicant’s agreement to delete window signs were conforming as to location, type and area. A 19.5 sq. ft. (5’5” x 3’7”) free standing sign (25 sq. ft. permitted) is proposed for the front yard, lighted with ground mounted lamps. A 15 sq. ft. (2’5” x 6’3”) wall sign is proposed over the front door, lighted by two (2) down-facing gooseneck lamps; and a 15 sq. ft. (2’5” x 6’3”) wall sign is proposed for the easterly side wall of the building, lighted by soffit lights over that portion of the easterly side porch/patio. A total of 38 sq. ft. of wall signage is permitted.

15. Applicant’s principal offered additional testimony concerning proposed signage. It was clarified that the proposed free standing sign would have a sign plaque 3’7” high x 5’5” wide. It would be erected on posts which would elevate the sign plaque 12 inches above ground level, resulting in an overall sign height of 4 feet 7 inches above grade. Each of the building’s two wall signs was confirmed to be 2’5” high x 6’3” long. Applicant testified that these were the same sign dimensions as had been presented and accepted by the Mendham Borough Historic Preservation Commission. The only difference between the signs which are now being proposed from those presented to the HPC is that the identification on the sign (as the result of corporate changes being made) will be “Dunkin’” instead of “Dunkin’ Donuts”.

16. Applicant’s architect also testified that Applicant would create and place a plaque at the front of the building to briefly explain the history of the building which is proposed to be replaced. Its design, materials, finishes and content should be coordinated with the Mendham Borough Historic Preservation Commission. Applicant also proposes to include “history of Mendham” display elements in its interior finishing of the restaurant.

17. Applicant's architect confirmed that the proposed exterior benches were merely to accommodate informal seating areas in the nature of street furniture. Though Applicant would provide receptacles to minimize litter on-site, there would be no order-taking, food delivery, tables, or service provided (it not being intended to constitute an "outdoor dining area").

18. Finally, as the examination of Applicant's architect was concluding, a question was raised by a resident as to any future plan for adding a Drive-Thru element. In this regard, Applicant stipulated that no Drive-Thru element would be sought at a later date and that Applicant agreed to memorialize this with a recorded Deed Restriction running with the land.

19. Applicant's principal addressed a number of operational issues. He testified that the hours of operation are proposed to be 5am to 10pm, 7 days per week. Daily deliveries of baked goods would be made by a small box truck between 2am and 4am via the rear door (there will be a light at the door). These deliveries take about 10 - 15 minutes. Once-weekly deliveries occur between 10am and 4pm (a time they can control) for all other supplies. This will be by a box truck, and take about 1 hour, for which they'll block off sufficient parking spaces during off-peak hours for the delivery. There will be a total of about 10 employees, with a maximum on site of 6 at any one time. Local teens often walk; other employees often car pool. Lighting hours are expected to be 4:30am "on" until full daylight and dusk to 10:15pm "off", except for security lighting to be designated on the revised Plans. He further testified that a number of his locations operate with 15 parking spaces, finding that more than sufficient. For this location, he believes 15-18 spaces would be sufficient, in addition to the 4 reserved for the apartments, totaling 19-22 spaces. Ultimately, the plan for 28 spaces, plus 13 banked for possible future installation, was supported by Applicant's traffic engineer, the Board's traffic consultant and agreed by Applicant, with several benefits being realized for site development.

20. Applicant's environmental consultant testified that he had evaluated the previous (2006) LOI which was extended in 2011 to 2016. He explained that under NJDEP rules it could not be further extended, but that it was his opinion that neither a new LOI nor an EIS should be required for this Application. His examination of the Subject Property indicated that there were no wetlands or transition areas impacted by the proposed development and that the present environmental status of the Subject Property would satisfy NJDEP criteria, as had its status in 2006, neither the status nor the applicable criteria having changed. Based on his credible and uncontroverted testimony, and the concurrence of the Board's Engineer, the Board concluded that the requirements for submission of a current LOI and/or EIS would be waived.

21. Applicant's project engineer testified regarding the variance relief requested for parking space count. The initial plan for 44 spaces was modified over the course of the public hearing to the plan for 41 spaces (28 to be initially built and 13 to be banked). He also addressed the design standards exceptions required with regard to parking stall size, driveway proximity to a driveway on adjoining property, and the lack of a designated 12' x 35' loading area. At a later point in the hearing, he also acknowledged that an exception would be required for certain grading along the property sideline. The site plan layout and development details were depicted in a set of plans, which in their latest revisions were as follows:

- (a) Cover sheet, Preliminary and Final Site Plan, 25 East Main Street, Lot 11 in Block 1501, Borough of Mendham, Morris County, New Jersey, dated 3/17/17, last revised 9/12/18 (sheet 1 of 8);
- (b) Existing Conditions Plan, dated 3/17/17, last revised 9/12/18 (sheet 2 of 8);
- (c) Site Plan, dated 9/18/17, last revised 9/12/18 (sheet 3 of 8);

- (d) Grading & Soil Erosion Control Plan [without banked parking], dated 3/17/17, last revised 9/12/18 (sheet 4 of 8);
- (e) Grading & Soil Erosion Control Plan [with banked parking], dated 3/17/17, last revised 9/12/18 (sheet 4A of 8);
- (f) Utility Plan, dated 3/17/17, last revised 9/12/18 (sheet 5 of 8);
- (g) Lighting Plan [without banked parking], dated 3/17/17, last revised 9/12/18 (sheet 6 of 8);
- (h) Lighting Plan [with banked parking], dated 3/17/17, last revised 9/12/18 (sheet 6A of 8);
- (i) Construction and Soil Erosion Control Details, dated 3/17/17, last revised 9/12/18 (sheet 7 of 8); and
- (j) Drainage Profiles and Construction Details, dated 3/17/17, last revised 9/12/18 (sheet 8 of 8).

This 10 sheet package, prepared by David E. Fantina, P.E., is referred to herein as the “Engineering Plans.”

22. In discussion between the Board, the Board’s traffic consultant, and Applicant’s engineer, it was agreed that a number of revisions would be made to the Site Plan reflecting designation of parking spaces to be reserved on a 24/7 basis for the residents of the apartments, the need to remove the “Employee Parking” label on one of the earlier plan sheets, confirmation and clarification of large vehicle (including fire apparatus) turning abilities on site, signage for one way and two way aisles, directional arrows, and other plan details. Applicant agreed that the changes would be made and that the apartment residents’ parking spaces would, indeed, be reserved on a 24 hour 7 day per week basis. The Board’s traffic consultant also expressed his opinion that the proposed 9’ x 18’ parking spaces were both in conformity with the RSIS

requirements for the residential uses and were appropriate for this sort of commercial use. Additionally, he agreed that the concept of banking parking spaces was a good and useful suggestion for development of this site for this use. In later conversations, he suggested, and Applicant's traffic engineer agreed, that a review process following completion of the restaurant and full operation should be put in place to determine whether there appeared to be a need for installation of the banked spaces. This would be separate from the ability of the Applicant to make such a determination from an operational point of view and proceed with the build-out, as well as separate from the ability of the Borough to require the additional spaces to be built-out at any time, in the event that the Borough engineer (or the Board's Consulting Engineer, in the event of a conflict of interest) were to conclude that additional parking was needed on the site.

23. Applicant's engineer also reviewed the June 8, 2018 letter from the Board's consulting engineer and agreed to comply with the Engineer's comments and recommendations.

24. Applicant's traffic engineer testified concerning the Traffic Impact Study which had been prepared by his office in February of 2018 and updated in April of 2018. Vehicle counts and pedestrian counts were both taken in the vicinity of the driveways proposed for the Applicant's restaurant. He noted that approximately 50% of the site traffic would be made up of "pass-by" traffic (traffic already on the road in any event). Based on ITE studies and his own evaluation of this site, Applicant's traffic engineer opined that 25 to 28 spaces on site should be totally sufficient. He also noted that the proposal to bank an additional 13 spaces provided for the possibility that this particular site produced a higher parking need than would have been anticipated based on prior experience and industry studies. His opinion was that the site would operate safely and efficiently and that no health or safety problems were anticipated with respect to pedestrians. He observed that the Subject Property and its proximate area are essentially flat,

on a relatively straight section of road, and possessed of good sight lines. He also noted that the county had approved the Application, finding no detrimental impact on the county road. He agreed with the recommendations and proposals made by the Board's traffic consultant. He confirmed that the proposal for 28 spaces initially being constructed and 13 spaces being banked provided significant benefits with respect to operations, the environment, flexibility of site design, better buffer maintenance in the rear of the property, less impervious surface, and a solution if it were determined that additional parking spaces were needed or desirable. He also confirmed that the storm water collection, retention, etc. would be designed and built in the first instance to accommodate the full build-out of 41 spaces. He also confirmed that should there be some additional spaces be required, the full 13 banked spaces would be built. Finally, he agreed that after the business was in operation and the apartments occupied, it would be appropriate to have a review of parking need. This might be done at 3 months, 6 months, and/or 1 year after the business is in full operation. At that point, it would be appropriate to have the Applicant's traffic engineer do counts and report on the adequacy of parking (peak traffic hours and peak business hours). He indicated that Applicant agreed to such a provision. Notwithstanding such a programmed approach, it would remain the option of the Applicant and/or the province of the Borough to decide or require the build-out of the banked spaces at any time operational or safety concerns indicated this need.

25. As a result of the discussions concerning parking and other traffic-related subjects, it was agreed that new plans would be prepared revising the site design to address conditions with banked parking and without banked parking. Lighting plans and landscaping plans would be prepared to cover each of these conditions, as well as a turning template for fire apparatus in each build-out condition. These plans (referenced in Finding #21, above) were

reviewed by the Board at the October 9, 2018 meeting, confirming the effects of the banked parking plan, the potential for build-out of the additional parking spaces, and the basis for approving both layouts (facilitating the build-out of the additional spaces if they became required). The banked parking plan did result in far less site disturbance, less impervious surface, and a deeper wooded buffer at the rear of the property, and additional landscaping opportunities. In addition, the Board and Applicant reviewed the October 8 report of the Board's engineer, particularly noting that an additional design standard exception had to be addressed for any slopes along the sideline of the property in excess of a 2:1 ratio, or a change of grade in excess of 1 foot within 5 feet of a property line. This would include the possibility of requiring retaining wall(s), depending on the actual slope and grade ultimately determined. He recommended that the waiver be granted given the narrowness of the lot, the topography as it presently exists, and the fact that it is not a physical change raising the Subject Property's level relative to its neighbor, but lowering its respective level, therefore, not affecting the neighboring property.

26. The Board also reviewed the revised Lighting plan and, with the assistance of the Board's engineer concluded that the plan which utilized fixtures with adjustable intensity could be executed with appropriate shields or other safeguards to prevent offsite glare or light intrusion. Applicant agreed to a condition that a post construction evaluation be made of the lighting on site by the Borough engineer and adjustments made as necessary to minimize off-site lighting impacts.

27. Applicant's engineer clarified that the trees depicted on the Engineering Plans which straddle the property line of the Subject Property are to remain. Only those fully on the Subject Property would be removed.

28. Applicant's engineer also confirmed that not only would the restriction against a future drive-thru facility be embodied in a condition of approval and a recorded restriction running with the land, but that recorded document would also memorialize a restriction against any curb-side delivery, or other delivery by the restaurant operator to a vehicle, of product from the restaurant.

29. Applicant's Landscape Architect presented plans entitled "Dunkin' Donuts, Mendham, New Jersey" (3sheets), prepared by Bosenberg Landscape Architecture, as follows:

- (a) Planting Plan with Optional Banked Parking, dated July 3, 2018, last revised September 13, 2018;
- (b) Planting Plan with Additional Parking [full build-out], dated July 3, 2018, last revised September 13, 2018; and
- (c) Planting Details, dated July 3, 2018.

This 3-sheet package is referred to herein as the "Landscape Plans".

30. Applicant's Landscape Architect testified that the banked parking plan resulted in more open space and landscape area available. He explained that aside from the landscape planting, the rear wooded area should be lightly cleaned up, but generally left in its natural condition. This results in better habitat preservation. He also confirmed that the cherry tree in front of the building would be replaced with a like kind in the event it did not satisfactorily survive. He further confirmed that the landscaping on site would be guaranteed for 2 years (as noted on the Architectural Plans) and would be maintained with an ongoing maintenance protocol.

31. Applicant's principal, responding to an issue raised by the Board's Engineer in his October 8, 2018 comment letter, testified that the trash pickup (2 – 3 times per week) and the

cardboard and recycling pick-up (once a week) can be arranged for slack periods of time during operating hours and can be scheduled to take place between 10am and 4pm.

32. Applicant's Professional Planner testified regarding the planning criteria supporting the proposed development of the Subject Property and satisfying the applicable criteria for grant of the required variance relief and design standard exceptions. She reviewed the prior approvals which had been granted for re-development of the Subject Property, including the approval for the office building and multi-family housing which was never implemented. She observed that the area was dominated by residential structures, most of which have been converted to commercial or mixed use. She confirmed her understanding that a new building proposed for the Historic Business District should not be designed in a manner which undermines the historic structures in the area. In this regard, it was observed that the overall design, the architectural elements and details, the materials and finishes of the proposed building had been approved by the Mendham Borough Historic Preservation Commission. Applicant's Planner also pointed out that the proposed development offered a benefit to the Borough by including an affordable housing unit (one of the two apartments). Further, the positioning of the proposed building will correct the existing non-conforming condition regarding front setback. The building is designed to address the scale and visual compatibility to other historic buildings in the vicinity.

33. Applicant's Planner addressed the design standard exceptions sought by Applicant. These include the 5 foot separation of driveways between the Exit drive on the Subject Property and the driveway on the adjoining property to the east. Though still non-conforming to the ordinance design standard of 20 feet, this presents a significant improvement over the present separation of 4 feet. In addition, the reduction in parking space dimensions, the

use of controllably idle parking spaces for the weekly product supply delivery (in lieu of the normally-required loading area), and the grading changes along the property sideline all are a reflection of the geometry and layout of the Subject Property which produce impracticable difficulties in compliance, unless efforts to minimize impervious surface and maximize open space are ignored. Similarly, the “c” variance for the number of parking spaces reflects a desire to minimize impervious surface, maximize open space and landscaping opportunities, and to build no more than the necessary parking, while at the same time, provide adequate parking for the use during peak periods, as well as off hours. She opined that the variance permitting these goals to be achieved could be justified as a c(2) variance promoting purposes of the municipal land use law, including better planning and a more fitting development of the property consistent with the Borough and the Historic District. She opined that the benefits substantially outweighed any detriments and that for purposes of this development, the relief could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. She also observed that the apparent scope of the variance resulted primarily from the imposition of the “20% surcharge” on new buildings in the historic district. She did not know what the premise or intention was in requiring that additional parking, but pointed out that absent the surcharge, Applicant would have been able to provide the 44 spaces otherwise required by ordinance – and even this producing more parking than the evidence indicated would be required.

34. Applicant’s Planner suggested that the 20% surcharge appeared to be imposed as a disincentive to replacing historic structures with non-historic structures. This would incentivize preservation and adaptive re-use. The difficulty in applying that to the present proposal, however, is that the testimony indicates the existing structure is not practically

preservable, repairable, salvageable and usable. The proposed building satisfied the criteria for the Historic Preservation Commission review to lead to approval of the structure from a design, scale, materials, and related points of view. Given the size of the building and its anticipated number of employees, the ordinary parking requirement, even including four spaces for the proposed apartments, would have totaled only 20 spaces. This was more than doubled by the application of the requirement for a minimum of 40 spaces for a fast food restaurant (regardless of floor area, number of seats or number of employees), and then the application of the 20% surcharge to the commercial space requirement. The upshot in her opinion, was an ordinance requirement for parking far in excess of any actual need this proposed use would generate.

35. Applicant's planner confirmed that the Applicant would deed restrict one of the apartments as a low income affordable housing unit for a period of 30 years. She further confirmed that the benches proposed for the porch/patio areas were intended principally to be decorative ("street furniture") and a place for people to sit briefly while on the Subject Property. There would be no tables or chairs; no orders would be taken; no food would be delivered to people on the benches; there would be no "curbside delivery" of food to people in vehicles on or off the site; there would be no sound system; Applicant would furnish trash receptacles to assist in keeping the area clean; and would agree to a purposeful cleaning of the porch/patio areas at least once daily.

36. Finally, Applicant's planner opined that the proposed parking arrangement is right and more than adequate for the proposed use; "banking" of possible additional parking spaces provides a fail-safe should it become necessary. She acknowledged that all development has impacts, but that the building design, scale, siting of the building with parking to the rear, modest

signage, and the proposed site improvements, landscaping, etc. minimized any negative impacts of the proposed development and use of the property.

37. After conclusion of the Applicant's affirmative case presentation, the objecting neighbors presented a Historic Assessment Report prepared by Heritage Consulting Group, dated November 5, 2018, and testimony from Cindy Hamilton, an architectural historian and author of the Report. She recounted the results of her research into Mendham's Historic District and the Borough's desire, as evidenced by its Master Plan and ordinances, to honor its history. She described the area where the Subject Property is located within the Historic District as representative of a residential vernacular collection of buildings principally from the early to mid-19th century through the early to mid-20th century. She testified that her conclusion from an Integrity Analysis evaluation of the existing building was a belief that demolition of that building was not appropriate. She reviewed the seven points of the National Park Service integrity criteria – Location intact; Design intact; Setting intact; Materials intact; Workmanship evident; Feeling intact; and Association intact. She explained each of these criteria to the Board and how, in her opinion, the existing building on the Subject Property substantially satisfied each of the criteria (indicating certain modifications or exceptions, which she considered minor). Her overall, opinion, however, was that there was sufficient compliance with the Integrity criteria to justify preservation of the present building.

38. In further examination of Ms. Hamilton, following conclusion of her direct testimony, she acknowledged that she had not attended any Mendham Borough Historic Preservation Commission meetings and did not know whether or how many times the Commission had considered the question of demolition of the existing building on the Subject Property. She further acknowledged that she was not aware of Historic Preservation

Commission reviews of previous proposed projects. She did agree that the Historic Preservation Commission had reached a different conclusion regarding demolition than the conclusion she had reached. She acknowledged that although the initial portion of the building was constructed in the mid-19th century, there had been later additions and modifications to the overall building. Finally, she acknowledged that she had not been inside the existing building, had no knowledge concerning its structural integrity, nor was aware of any third party studies with respect to the physical/structural condition of the building and/or its practical susceptibility to repair and re-use. In this regard, she indicated that the “contributing” nature of the building to the Historic District and her Integrity Analysis related only to a visual review of the exterior façade of the building; its structural integrity not being pertinent to this analysis and evaluation.

39. The Board in reviewing the Report and testimony of Ms. Hamilton, as well as the testimony of Applicant’s architect regarding the physical condition and structural integrity of the existing building, itself, concluded that both witnesses were qualified and credible, and further that their respective testimony was not actually at odds. Ms. Hamilton had more than sufficient education, expertise, and experience to permit a thorough and credible evaluation of the desirability of preserving the building based on the Integrity Analysis (reflecting the exterior condition of the front façade). Similarly, Applicant’s architect had more than sufficient education, experience and expertise to provide informed and entirely credible testimony regarding the physical deterioration of the building, its failed structural integrity, and the lack of a practical outlook for either preservation, reclamation, or use of the building. He has been a resident of Mendham Borough for over 20 years, has practiced his profession, emphasizing historical architecture, and served for a number of years on the Mendham Borough Historic Preservation Commission. In addition to the testimony of Applicant’s architect, Applicant’s

counsel pointed out the Mendham Borough Historic Preservation Commission has, on several occasions in connection with other prior development proposals, concluded that demolition of some or all of the existing building was appropriate and necessary; culminating in a determination which was memorialized by the Mendham Borough Board of Adjustment, in connection with a prior (2011) proposed development project on the Subject Property, that the existing building was “beyond practical reclamation”.

40. The Board concluded that the testimony of all of Applicant’s witnesses, each of whom qualified as an expert in his or her respective fields, was entirely credible and supported by both objective facts and the expertise of the individual witnesses. Further, the testimony offered on behalf of Applicant was not the subject of criticism or challenge by any of the Board’s consultants in their respective related fields of expertise. Indeed, Applicant was agreeable to suggestions and modifications to the proposed plan of development in response to comments made by the Board’s consultants in pursuit of improvement of the plan. Similarly, as indicated above, the testimony of the expert witness presented by the objecting neighbors was entirely credible with regard to the specifics of her analysis. In the broader picture, however, her testimony did not controvert the testimony of Applicant’s architect or other evidence in the record regarding the critically deteriorated physical and structural condition of the building. Ultimately, the testimony of Applicant’s principal, as well as that of all of Applicant’s expert witnesses, was essentially uncontroverted and was accepted by the Board. Questions and testimony from members of the public raised issues which were addressed by Applicant, offered opinions which the Board took into consideration, but did not constitute qualified, relevant testimony controverting that of Applicant’s experts.

41. Based upon all of the foregoing, the Board concluded that Applicant was proposing development of the Subject Property for a permitted use; that notwithstanding the Borough's and this Board's desire to honor Mendham's history, efforts must be made to permit commercially viable businesses in the Borough, including in the Historic Business District, encouraging a thriving town (maintaining a historic feel while looking to the future). The Board further concluded that the existing building on the Subject Property lacks sufficient structural and physical integrity to permit a practical rehabilitation. Further, the Board concluded that the requested exceptions from design standards represented a rational balancing of the physical needs for efficient and safe site operation, while recognizing the site limitations and constraints. Additionally, the requested exceptions as well as the requested variance relief for the number of parking spaces and the plan for banking 13 of the proposed 41 spaces all serve the positive purpose of a well-designed site which will operate in a safe and efficient manner, while minimizing the overall impervious surface and maximizing the preservation of open space and areas for landscaping opportunities.

42. In discussion regarding the desirability of a restriction against left hand turns exiting the Subject Property, the Board ultimately concluded that it did not wish to impose that restriction on exiting traffic at this point in time. The arguments against such a restriction seemed to outweigh the apparent benefit to the left turn prohibition. The Board recognizes that there may come a time in the future where this question will have to be revisited with the county (which has jurisdiction over the road), but is persuaded that such a restrictive condition should not be placed upon this approval at this time.

43. The Board does conclude that the ability to monitor lighting intensities with a post-construction evaluation and the ability to review parking need, so as to determine whether

the banked spaces should be built, are important post-approval conditions to regulate matters which can best be evaluated in real time after the site improvements are completed and the Applicant's business is in operation.

44. As a result of all of the forgoing, the Board concluded that with appropriate plan revisions reflecting those matters discussed and agreed between the Board and the Applicant in the course of the hearing, the requested exceptions from design standards can be granted, the resulting Site Plan can be approved, and the variance for the number of parking spaces to be constructed (including the "banking" of 13 of the overall 41 spaces proposed), can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance provided certain conditions of approval are imposed.

BE IT FURTHER RESOLVED, on this 10th day of December, 2018, that for the reasons set forth above, the Application of Aryan at Mendham, LLC for Preliminary and Final Site Plan Approval for the proposed Dunkin' Donuts restaurant and two apartments, for both the banked parking layout and the full parking build-out, together with variance relief to permit an initial construction of 28 parking spaces and a potential total of 41 parking spaces, as well as design standard exceptions for 9' x 18' parking stalls, absence of a separate designated 12' x 35' loading area, driveway separation of 5 feet on the easterly side of the Subject Property, and non-conforming grading along portions of the property lines, all on property located at 25 East Main Street (Block 1501, Lot 11), be and hereby is granted and approved, subject to the following conditions of approval:

1. Applicant shall comply with all applicable regulations and obtain all licenses, permits and other approvals which may be required, whether from any municipal, county, state or federal board, body or agency having jurisdiction over the Subject Property or the project.

2. All open taxes as well as municipal charges, Application and escrow fees, and funding of sufficient escrow to cover unbilled work to the completion of the project, shall be paid by Applicant.

3. Applicant shall comply with the June 8, 2018 comment letter from the Board's Consulting Engineer as to Plan and other comments and recommendations, Plan Revisions, and proposed conditions of approval.

4. Except as may have been made in the course of the hearing, Applicant shall make the Plan Revisions called for in the pertinent reports of the Board's Consulting Engineer, Professional Planner, and Traffic Engineering Consultant.

5. The "Planting Plans" (Exhibits A8 and A9) should be made a part of the Plans (the Plan set) submitted for signature and endorsement of the Site Plan approval. The document identified as Exhibit A9 shall support the issuance of permits for site work and construction of the approved plan with banked parking. If the banked parking stalls are ultimately to be built-out, the document identified as Exhibit A8 will support the issuance of permits for the construction of the 13 banked spaces.

6. Applicant shall comply with the comments, and make Plan revisions as necessary to comply with the comments, from the Bernards Township Health Department (the Borough Contractual Health Agency) April 2, 2018 memo, the Mendham Borough Historic Preservation

Commission March 22, 2018 approval letter, the October 8, 2018 comment letter from the Board's Consulting Engineer, the October 2, 2018 comment letter from the Board's Consulting Traffic Engineer, the October 8, 2018 comment letter from the Board's Professional Planner, the March 8, 2018 email memo from the Borough's Fire Official and conditions of approval imposed by the Morris County Planning Board and/or the Morris County Soil Conservation District.

7. The parking spaces reserved for the residents of the apartments shall be relocated to the rear side of the first parking island (that is, in the second traffic aisle).

8. Plan Revisions shall be made in accordance with the discussions in the course of the public hearing, the findings and conclusions set forth in this Resolution, and these conditions of approval.

9. The Grading & Soil Erosion Control Plan and the Lighting Plan sheets 4 and 4A of the Plans and sheets 6 and 6A of the Plans, respectively, shall be retitled to represent the condition "Without Banked Parking" (sheets 4 and 6) and "With Banked Parking" (sheets 4A and 6A).

10. All site work, construction, and operations on the Subject Property are to be in accordance with the testimony and Exhibits presented at the public hearing and the Board's findings and conclusions and conditions of approval set forth in this Resolution.

11. Applicant shall furnish "Will Serve" letters from the utilities which serve the Subject Property.

12. Applicant shall install a plaque on the new building describing the history of the uses of the old (existing) building. Design, materials, finishes and content shall be coordinated with the Mendham Borough Historic Preservation Commission.

13. There is no approval for “outdoor dining”. The proposed benches may be installed, but there shall be no tables, no orders shall be taken outside, nor shall there be any service or delivery of product outside the building to the patio areas, curbside, or otherwise.

14. No Drive-Thru facility is to be installed now or in the future. Applicant shall record a deed restriction against a drive-thru, curbside or other delivery to vehicles, such deed restriction to run with the land, in form and content satisfactory to the Board Attorney.

15. Hours of operation shall be limited to 5am through 10pm, 7 days per week.

16. Truck engines are to be shut down during deliveries. Refrigeration units on trucks making deliveries may remain in operation, provided they are compliant with all applicable state and/or borough noise limitations.

17. The parking spaces (4) for the residents of the apartments shall be specifically designated, identified on the site by pavement markings and signage, and kept available for use by the residents every day, year round, 24 hours per day/7 days per week.

18. Trash and recycling pickups for both the restaurant and the apartments shall be by a private hauler under contract to Applicant. Refuse shall be picked up two or three times per week and recycling shall be picked up at least once per week. Times for all such pickups shall be scheduled by Applicant during operating hours, but only between 10 am and 4pm, and scheduled so as to avoid peak traffic hours on the road and peak parking needs on the site.

19. Applicant shall make reasonable efforts to revitalize the cherry tree in the front of the Subject Property. In the event this effort is not sufficiently successful, Applicant shall replace the cherry tree with a like kind tree.

20. The trees shown on Applicant's Plans which straddle the property line are to remain. Only those shown to be removed which are entirely on the Subject Property will be removed.

21. All new plant material will have a full two year guarantee and shall be cared for in accordance with the Landscape Architect's maintenance protocol.

22. At least one of the two apartments shall be Deed Restricted for at least 30 years as a qualifying Low Income Affordable Housing Unit. Qualification of the unit(s), mechanisms for ongoing management, Deed Restriction and other documents, and other steps which must be taken to qualify the Unit(s) shall be implemented in a manner satisfactory to the Borough Attorney.

23. There shall be no outdoor sound system. Trash receptacles shall be furnished on patio areas (and kept routinely serviced to accept trash). The patio areas and grounds of the Subject Property shall be maintained in a clean condition.

24. Trees remaining on site and those being installed shall be shown on the Plans.

25. Applicant shall install pedestrian crossing flashing LED signs (W11-2) at the nearby East Main Street and Orchard Street intersection.

26. Applicant shall arrange for parking counts to be made by Applicant's Traffic Engineer during the peak morning and afternoon/evening peak restaurant operating hours on ordinary weekdays when school is in session, after the restaurant has been in operation for three months, six months and one year (such timing to be adjusted, if necessary, to satisfy the referenced conditions under which the counts are to be taken). The results shall be reported to the Board's Consulting Engineer and Consulting Traffic Engineer. These counts shall be one of the bases upon which a determination can be made regarding whether additional parking spaces are required. Separately from an evaluation of these parking counts, Applicant may make a determination from an operational standpoint that additional spaces are required and, at any time, may build out the additional banked spaces in accordance with the Plan showing development "Without Banked Parking". Alternatively, at any time in the future, should the Borough Engineer (or the Board's Consulting Engineer in the event of a conflict of interest) conclude that it is in the best interest of the Borough as to onsite vehicular and pedestrian safety, the Borough may direct that the banked parking spaces be built out by Applicant in accordance with the Plan.

27. The storm water collection and management system shall include oil separation elements and shall be designed and built in the first instance to accommodate the potential full build out of all 41 parking spaces.

28. Post-construction lighting intensities and protections against off-site glare, as well as appropriate and safe lighting of signage shall be undertaken by the Borough Engineer (or the Board's Consulting Engineer, in the event of a conflict of interest) and Applicant shall make such adjustments as may be required to achieve results satisfactory to this Engineer.

29. The apartments are to have their own separate entrance from the outside and separate individual interior entrances, not utilizing any entrances in common with the restaurant.

30. The entire building (restaurant and apartments) shall be sprinklered.

31. On-site noise, including from any delivery truck engine or refrigeration equipment, shall comply with the state and local noise regulations.

32. There shall be no window signs.

33. Retaining walls shall be installed where necessary to accommodate slope issues along the property line, satisfactory to the Board's Consulting Engineer.

34. Applicant shall obtain a satisfactory and adequate sewer permit or permits (for the restaurant and the apartments) from the Borough Council and shall abide by any conditions imposed in that permitting process.

35. Applicant shall furnish a currently accurate signed and sealed survey of the Subject Property to become part of the Board's permanent record of the Application.

36. In addition to any fire inspection(s) required for issuance for a Certificate of Occupancy, Applicant shall arrange for, and satisfactorily complete a fire inspection of the restaurant premises within ninety (90) days of commencement of operations. In addition, simultaneously or separately, as may be required, Applicant shall arrange for and satisfactorily complete fire inspection(s) for the two (2) apartments (including the standard smoke detector, Carbon Monoxide & Fire Extinguisher requirements).

37. Applicant shall enter into a Developers Agreement with the Borough to the extent necessary to address performance, completion and/or site restoration. Performance and/or maintenance and/or restoration security, as permitted by the Municipal Land Use Law, shall be provided by Applicant in form(s) and amount(s) satisfactory to the Borough Engineer (or the Board's Consulting Engineer in the event of a conflict of interest) and the Borough Attorney.

38. Conditions Nos. 1 (as to other approvals), 2, 3, 4, 5, 6, 7 (as to Plans), 8, 9, 11, 14 (as to form of Deed), 22, (as to documentation, Deed Restriction form and content), 24, 27 (as to Plans), 34 (as to permit), 35 and 37 (as to documentation), shall be satisfied prior to the signing of the Site Plan by the Board.

Adopted this 10th day of December, 2018.

MENDHAM BOROUGH
PLANNING BOARD

Richard Kraft, Chairman

Nancy Probst, Interim Board Secretary

Dated: December 10, 2018

The Vote:

In Favor: 9

Against: 0

Abstaining: 0

CERTIFICATION

I hereby certify that this is a true copy of a Resolution adopted by the Mendham Borough Planning Board at its regular meeting on December 10, 2018.

Nancy Probst, Interim Board Secretary

BOROUGH OF MENDHAM BOARD OF ADJUSTMENT

RESOLUTION OF MEMORIALIZATION

Decided: February 4, 2020
Memorialized: March 3, 2020

IN THE MATTER OF SIX MAIN ST. MENDHAM, LLC
"D" VARIANCE BIFURCATED APPLICATION
BLOCK 601, LOT 3
APPLICATION NO. BOA #03-19

WHEREAS, Six Main St. Mendham, LLC (hereinafter the "Applicant") applied to the Borough of Mendham Board of Adjustment (hereinafter the "Board") for preliminary and final site plan approval with "C" and "D" variances, by application dated 10/13/19; and

WHEREAS, the application was bifurcated pursuant to N.J.S.A. 40:55D-76b, and a public hearing was held on 2/4/20 to consider only the "D" variance relief associated with the application; 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 0.48 acres (0.44 acres after right-of-way dedication) located in the Historic Business (HB) Zone. The property is improved with a main building comprising a 2-story frame structure with a loft in front and a 1-story masonry structure with a basement in the rear. Two formerly accessory buildings located behind the main building are a 1-story masonry garage and a 2-story frame barn. Vehicular access to the rear buildings is through a common driveway

between this Lot 3 and adjoining Lot 4 to the east. The site has 4 parking stalls behind the garage and easement/license rights to use 10 parking spaces belonging to 2 East Main St. after business hours. The Applicant is attempting to obtain approval from the Borough to use some of the Borough's 56 parking spaces behind the site.

2. The development of the subject property for which the "D" Variance relief is sought comprise Preliminary and Final Major Site Plan and Variance approval for a mixed-use structure at 6 East Main Street. The proposal is to convert the main building and two (2) accessory structures into a mixed-use development with three (3) principal structures containing four (4) business spaces and seven (7) apartments with associated storage areas. The main building is proposed to include four (4) commercial business spaces, three (3) on the first floor and one (1) in the basement, along with two (2) storage spaces in the basement. There are four (4) apartments proposed in the main building, two (2) in the garage structure and one (1) in the barn structure. The property is located in the HB Historic Business Zone where commercial uses are permitted, however, due to the uses proposed, the density and location, several use variances are required. Bulk variances are also required for lot area, side yard setback, lot coverage and parking. A variance for sign height is also required.

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

- Architectural Plans, consisting of eight sheets, dated 9/12/19, prepared by William P. Byrne, Architect
- Preliminary and Final Major Site Plans, consisting of fourteen sheets, dated 9/9/19, prepared by John Hansen, PE, EL&P Associates, Inc.
- Parking and Easement Summary Report, prepared by Grant Homes Companies, dated 4/17/19 (10 pages)

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

- Board of Adjustment Application, Attachments and

Checklist, dated 10/3/19, prepared by Jay Grant

- Existing Conditions Plan, sheet 3 of 14, dated 9/9/19, prepared by Wayne J. Ingram, PLS, EL&P Associates, Inc.

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, PP, dated 11/27/19

Paul Ferriero, PE, dated 11/25/19

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

Craig Bellamy, Fire Official, dated 11/11/19

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

- A-1 Front photo of existing main building
- A-2 Rear photo of main building and access
- A-3 Area overview photo
- A-4 Aerial photo with overlay details
- A-5 Summary of building renovations
- A-6 Existing barn building
- A-7 Existing garage building
- A-8 Proposed barn architectural
- A-9 Proposed garage architectural
- A-10 Access easement exhibit
- A-11 Base map with highlighted easements
- A-12 Parking easement from 2 E. Main to 1 E. Main
- A-13 Proposed garage floor plan
- A-14 Proposed barn floor plan
- A-15 Aerial photo with proposed improvements overlay
- A-16 Aerial photo with land use overlay

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

Jay Grant, Applicant's principal owner
William Byrne, AIA, Applicant's architect
John Hansen, PE, Applicant's engineer
Phil Abramson, PP, Applicant's planner

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

Jay Grant testified to the existing and proposed uses on the subject property. Previous uses were all commercial, while proposed is mixed use comprising 4 businesses and 7 residential apartments. With respect to the 10 parking spaces owned by the owner of 2 East Main St., he stated that an easement to him as owner of 1 East Main St. enabled him to license these spaces to 6 East Main St. for use after business hours. He agreed, as a condition of the "D" variance approvals, to file documents granting such a license to 6 East Main St. in perpetuity, to run with title to the property. He also agreed to include a provision in all tenant leases prohibiting parking in these 10 spaces during business hours and to install parking signage to the same effect. Mr. Grant also agreed to dedicate the proposed 1-bedroom apartment in the former garage as an affordable unit.

Architect William Byrne testified regarding the proposed floor plans and architectural treatments of the three buildings, and stated that the Historic Preservation Commission had endorsed them.

Engineer John Hansen testified regarding proposed upgrades to the site which would improve traffic flow, pedestrian safety, lighting, recycling/trash disposal, ADA compliance, and drainage. Regarding the conditional use D(3) variance, he noted that the deviations were all existing conditions of the site.

Planner Phil Abramson testified that the proposed development involved 3 "D" variances:

- D(1) use variance for multiple principal structures on the same lot, since the 2 formerly accessory rear structures (garage and barn) would be converted to principal structures;
- D(3) conditional use variance required for the

proposed 2 apartments in the garage buildings, since multi-family dwellings are a conditional use in the HB Zone, and the existing/proposed configuration of the site does not meet the conditions set forth in Ordinance Section 215-15C; and

- D(5) density variance, since the maximum permitted residential density in the HB Zone is 2 families per lot, while 7 apartments are proposed.

Regarding the D(1) variance, Mr. Abramson cited for positive criteria the improved aesthetics and historical restoration associated with the proposed improvements, and safer vehicular and pedestrian access. Mixed use, he stated, allows easier tenant access to jobs and shopping, particularly suited to this commercial village area. He also cited the Applicant's proposal to provide an affordable apartment in the former garage. Master Plan goals encourage diverse housing options and historic preservation, both advanced by this project. Consistent MLUL goals are health and safety, improved traffic flow, desirable visual environment, and historic preservation. Regarding negative criteria, he noted the established neighborhood pattern of out-buildings and shared parking, which would not be adversely affected by this variance.

Regarding the D(3) variance, Mr. Abramson applied the Coventry Square standard, in terms of the suitability of the site notwithstanding non-compliance with conditions. He noted the established neighborhood pattern of non-conforming multi-family uses. He opined that the site will function well in terms of improved parking, pedestrian access and traffic flow.

Regarding the D(5) variance, Mr. Abramson opined that the factors discussed for the other two variances support a finding that the variance serves the purposes of the zone plan and the MLUL.

After the completion of Applicant's testimony, Applicant's counsel agreed that the Applicant will exert best efforts to reach an agreement with the Borough for the use of some of the 56 municipal parking spaces to the rear of the subject property.

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

Based on the hearing record, the Board finds that the Applicant's proofs satisfy the positive and negative criteria for the D(1) variance, as well as the Medici "enhanced quality of proof." For the D(3) variance, Applicant's proofs demonstrate that the site remains suitable for the limited multi-family use proposed, despite not meeting the ordinance conditions. Regarding the D(5) variance, the Board finds that the site can accommodate the problems associated with increased residential density, since there is a trade-off between residential and permitted commercial uses, and the mixture of the two types of uses enables land use efficiencies in the village type setting of this area of the Borough.

In granting this "D" variance relief, the Board also finds that the adequacy of parking for these uses would be much improved were the Applicant to make arrangements with the Borough for use of 51 of the Borough's public parking spaces, as that would satisfy the Ordinance's parking requirements for these uses.

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 "D" Variances requested by the Applicant, as described hereinabove, pursuant to N.J.S.A. 40:55D-70d(1), 40:55D-70d(3) and 40:55D-70d(5).

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 "D" Variance relief.

1. Applicant will exert best efforts to reach an agreement with the Borough to use 51 spaces in the public parking area behind the subject property.

2. Should Applicant utilize some or all of the 10 parking spaces belonging to the owner of Lot 2, pursuant to licensing of the easement in favor of Lot 1, then Jay Grant, as owner of Lot 1, will file a perpetual license to run with the title to Lot 6, and Applicant will include provisions in all tenant leases prohibiting parking in these spaces during business hours and post proximate signage to that effect.

3. Applicant will dedicate the 1-bedroom apartment in the garage as an affordable unit consistent with the Borough's affordable housing plan.

4. Pursuant to 40:55D-76b, this bifurcated "D" variance approval is conditioned upon the grant of all required subsequent site plan approvals by this Board, and no such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and the zoning ordinance.

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 2/4/20.

Lisa Smith
Board Secretary

RESOLUTION OF FINDINGS AND CONCLUSIONS

BOARD OF ADJUSTMENT BOROUGH OF MENDHAM

WHEREAS, **106 MENDHAM, LLC** has applied to the Board of Adjustment of the Borough of Mendham for Use Variance approval and Site Plan referral to use approximately 1,136 square feet of an existing recently constructed building at 106 East Main Street as a “Barber Shop”. The subject property is also now known as Lot 12 in Block 801 on the Tax Map of the Borough of Mendham, which premises are in the Limited Business Zone and the Main Street Corridor Overlay District; and

WHEREAS, the Board, after carefully considering the Evidence presented by the applicant and the adjoining property owners and the general public having been given the opportunity to be heard at a duly noticed Public Hearing on July 7, 2010 has made the following factual findings:

1. The applicant is the owner of the above described property which is located at the northwesterly corner of East Main Street and Cold Hill Road.

2. There is a newly constructed building on the property that was the subject of extensive review and planning efforts before the Borough Planning Board in 2008. This Board is advised that as a result of the combined attentions of the Owner, the Borough Planning Board and the Borough Historic Preservation Commission the previously approved and recently constructed building and site improvements have received planning award recognition.

3. The Building was originally designed to contain one COAH residential unit, a residential real estate brokerage firm (Coldwell Banker) and an as yet unnamed retail bank.

4. The applicant advised the Board that the real estate firm has determined that it does not require the entire 5,000 square feet that was originally allocated for its use. Thus, it is now proposed that 1,136 square feet of the space previously allocated to Coldwell Banker located on the first floor be made available to a third business user within the confines and footprint of the previously approved and constructed building.

5. It is now proposed that the above described 1,136 square feet be approved for use by Robert Romeo as a “barbershop” for men and boys. Mr. Romeo currently plans to call his barbershop “Men of Mendham”.

6. The Mendham Borough Zoning Ordinance includes “barbering” under the use classification of “Personal Service Establishments”. Personal service establishments are currently permitted in the Historic Business Zone, however, they are not currently included as Permitted Uses within the Limited Business Zone as set forth at Section 215-21. For that reason the applicant has come before this Board to seek a Use Variance.

7. At the Public Hearing on July 7, 2010, the Board received and considered testimony from: Robert Berlant, a Member of the owning entity; Joseph Jaworski, P.E., engineer for the applicant; and, Robert Romeo, the proposed owner/operator of the barber shop. The Board also received and reviewed: the May 26, 2010 Review Report from the Historic Preservation Commission; the June 21, 2010 Review and Report from the Borough Engineer; the June 29, 2010 Review and Report from the Borough Fire Official; a file copy of the April 28, 2008 Exemption Notice from the Morris County Planning Board; and, a proposed Floor Plan of the Barber Shop dated July 6, 2010 prepared by Janet Lynn Ford Architect, LLC.

8. The Board takes note of and relies upon the testimony of Mr. Romeo wherein he described the details of the business operation that he is prosing to conduct in the above described 1,136 square feet of this building. The Board relies upon Mr. Romeo's 34 years of barbering experience and his explanation of how he expects to conduct business and how he expects his business to evolve and operate. The Board relies upon the testimony that there will be a maximum of four (4) barber chairs in the shop and the expected hours of operation will be 9 AM to 7 PM Monday through Wednesday, 9 AM to 8 PM on Thursday and Friday, 8 AM to 5 PM on Saturday and 10 AM to 4 PM on Sunday. The Board also takes into account the distinction explained by Mr. Romeo between his proposed barber shop and what he referred to as a full service beauty parlor.

9. The Board and the various witnesses reviewed the expected peak hours for the barber shop, parking availability and requirements, the interior design and utilization of the 1,136 square feet, anticipated appointments versus walk in business and a possible reconfiguration of the Floor Plan and the front entrance to this space.

10. The Board takes note of the testimony that there was a long standing beauty parlor on a portion of the property now aggregated to make up this premises. The Board takes note of the testimony that in years past there were at least two traditional men's barber shops in Mendham and now there are none.

11. The Board acknowledges for this Record that there are signage issues related to this new use and the signage and parking issues related to the overall package of uses now on the site. The Board concurs with its professionals (and the applicant's counsel) that it is appropriate that the applicant return to the Planning Board to finalize those loose ends so that all parties can benefit from the granular design familiarity that they have developed in regard to this project.

12. The Board notes for the record that no interested parties elected to participate at the Public Hearing.

WHEREAS, the Board has determined that the Use Variance and Site Plan referral relief requested by the applicant can be granted without substantial detriment to the

public good or without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. The location and recent redevelopment of the subject property render it particularly suitable for the modestly sized personal service establishment that is being proposed herein. The location of this use will have the benefit of off street parking and will avoid the unnecessary utilization of same that might occur if this personal service use is restricted only to the Historic Business Zone.
2. The conditions imposed herein will avoid any significant detrimental impact to the surrounding properties or the public good.
3. Neither the Borough Zone Plan, nor the recognized design elements of this site will be detrimentally impacted by the addition of this third business use.
4. The referral for any additional necessary Site Plan review and compliance with the terms and conditions of the Borough's Land Development Ordinances and the underlying protections of the public health and safety intended therein will be accommodated by the applicant's request and agreement to appear before the Planning Board to complete the Site Plan amendment process.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Mendham on this 3rd day of August, 2010, that the application of **106 Mendham LLC**, which was approved July 7, 2010, be memorialized herein subject however, to the following conditions:

1. All construction shall be in accordance with the testimony and the submitted Architectural Exhibit. As agreed at the Public Hearing and referenced in the Borough Engineer's June 21, 2010 letter at Technical Review, item 4, the Final Architectural Plan will be submitted to this Board for inclusion in the Variance File; and, as noted in item 3 a one sheet Variance Plan related to the barber shop with a signature block will be provided for this Board's file.
2. All representations of Robert Romeo concerning his intended business and the operation of same are relied upon by this Board and incorporated herein as conditions of approval.
3. All requirements of the Borough Fire Official as set forth in his June 29, 2010 Report are included as conditions of this approval, specifically the necessity to procure a "Clear Fire Inspection Report" within 90 days of commencing business.
4. Sewer Allocation and Usage Approval, if required, must be obtained from the Borough Council as stipulated at the Public Hearing.

5. The approvals granted herein are specifically conditioned upon the additional Site Plan, Signage and Parking adequacy reviews by the Borough Planning Board that were discussed at the inception and conclusion of this Use Variance process.
6. The approvals granted herein are subject to all other relevant Federal, State, County and Municipal Regulations including payment of all fees and escrows.

Board of Adjustment
106 East Main St.

I hereby certify that the above is a true copy of a resolution adopted by the Mendham Borough Board of Adjustment at its regular meeting of August 3, 2010. This resolution memorializes action taken by the Board of Adjustment at its regular meeting of July 7, 2010.

The vote on July 7, 2010 was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, McCarthy, Seavey

Opposed: None


Abstentions: None

The resolution vote of eligible voters on August 3, 2010 was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, McCarthy, Seavey

Opposed: None

Abstentions: None


Diana Callahan
Board Secretary

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
July 7, 2010
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Santo at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune on January 14, 2010 and the Daily Record on January 11, 2010 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ATTENDANCE

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

Mr. Smith – Present
Mr. Santo – Present (Omnipoint)
Mr. Ritger, Alt. I - Present
Mr. McCarthy, Alt II – Present

Also Present:

Mr. MacDonald, Attorney
Mr. Hansen, Engineer

#####

PUBLIC COMMENT

Chair Santo opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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APPROVAL OF MINUTES

On motion by Mr. Seavey, second by Mr. Smith and all members being in favor, the minutes of the June 2, 2010 regular meeting of the Board were approved as written.

HEARING OF CASES

Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless – Use and Other required variances: **Resolution**
Block 801, Lot 20, Kings Shopping Center

Mr. MacDonald, Esq. presented the following draft resolution to the Board:

**RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
BOROUGH OF MENDHAM**

WHEREAS, OMNIPOINT COMMUNICATONS, INC. and NEW YORK SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS have applied to the Board of Adjustment of the Borough of Mendham for a Use Variance and Site Plan Approval to permit the construction and installation of a Wireless Telecommunications Facility at the King's Shopping Center located on East Main Street which property is also known as Lot 20 in Block 801 on the Tax Map of the Borough of Mendham and, which premises are in the East Business Zone; and

WHEREAS, the Board, after carefully considering the testimony, reports, exhibits, questions, opinions and legal arguments presented by the Applicants, the Board Consultants and various Interested Parties at a series of Public Hearings held on June 4, 2008, July 1, 2008, September 3, 2008, October 7, 2008, December 2, 2008, February 3, 2009, March 3, 2009, April

7, 2009, May 13, 2009, June 3, 2009, July 7, 2009, August 4, 2009, September 1, 2009, October 6, 2009, November 4, 2009, November 17, 2009, December 1, 2009, January 5, 2010, February 2, 2010, March 2, 2010, April 6, 2010 (Attorney Summations) and June 2, 2010 (Board Deliberations and Vote) has made the following factual findings:

1. According to the public record and the application materials the subject property is currently owned by V-Fee Realty Investment, LLC (Thomas Maoli, Managing Member). The Record indicates that the current owner purchased the property from Mendham Investment Company, LP on or about December 20, 2005.

2. The prior owner(s) have processed several applications before the Borough Boards over the years and the Borough files contain a "Sealed Survey" prepared by Gary V. Marmo (NJ License # 37599) as an employee of D.P. Sweeney & Associates. This Survey is originally dated September 26, 2005 and it has been revised through May 25, 2007.

3. Based upon the D.P. Sweeney Survey (hereafter "the Survey") and the various Exhibits in this Record, the Board is able to deduce that the property (which is most commonly referred to as "the King's Shopping Center") is 13.65 acres and it is located on the northerly side of the primary east/west roadway running through the Borough of Mendham which is known as East Main Street, Route 24, County Road #510, etc.

4. The Survey indicates that the shopping center has 508 feet of frontage on East Main Street and extends northerly to a depth of approximately 1,198 feet. The first 750 feet of the property contain the "King's Shopping Center" which generally includes three (3) separate primary buildings along with the parking areas and access driveways associated with the supermarket (which occupies all of one 27,504 square foot building). The other two buildings shown on the Survey contain several retail and service businesses including: the Bank; the Apothecary; four (4) eat in restaurants; a deli; a liquor store; a dry cleaner; a book store; a jeweler; and, other similar uses.

The rear 450 feet of the property contains separate additional improvements and parking areas commonly known as the "Mendham Health and Racquet Club". These additional improvements include a 53,914 square foot building, an outdoor swimming pool with related patios and play areas, a 677 square foot trailer (that appears to be used as a babysitting facility) and a small to moderate sized physical therapy facility in the left rear (northwest corner of the principal building).

5. The applicants, Omnipoint and Verizon Wireless, with the consent of the Owner, have requested municipal zoning permits and approvals as necessary conditions precedent to obtaining construction permits to install and erect a Wireless Telecommunications Facility at the King's Shopping Center site.

6. In late 2007, when the Borough of Mendham became aware of the applicants' intention to file this joint request for Variance and Site Plan approvals, it advised counsel for the applicants that the Borough Governing Body and the Borough Planning Board were in the final stages of developing and adopting a "Wireless Telecommunications Ordinance" in furtherance of the 2006 review and update of the Public Utilities Plan Element of the Borough of Mendham Master Plan. The final version of the Borough's first Wireless Telecommunications Ordinance (Ordinance #4-08) was adopted by the Borough Council after second reading on May 5, 2008. As noted above, the first of several Public Hearings on this matter was conducted one month later on June 4, 2008.

7. The applicants presented expert testimony and approximately 29 Exhibits to the Board in connection with radio frequency and system design issues related to the desired location and height of their proposed monopole/stealth flag pole, the related equipment compound, the site design and engineering issues related to placement of the facilities, the criteria and methodology related to site selection for this facility, photographs of the proposed site from various perspectives and related photographs depicting possible views of a simulated version of the stealth flag pole tower.

8. The Board spent considerable time reviewing what became a six (6) page set of drawings that were signed and sealed by Robert J. Foley, Prof Engineering License #GE-038356 on behalf of the CMX engineering firm. The Drawings were originally dated April 12, 2007 and were eventually revised through November 19, 2008. Mr. Foley's Site Plan materials refer back to the above mentioned D.P. Sweeney Survey as a data source. Sheet 2 of 6 of the CMX plans labeled Z-1 "Site Plan & General Notes" sets forth the Bulk/Setback requirements of the East Business Zone and the additional setback related Conditions associated with a Wireless Telecommunications Facility which are now codified at Section 215-12.6B (7) & (8) of the Mendham Code.

9. The applicants initially proposed, and the CMX plans depicted, a 120 foot flagpole style monopole to be located at the northerly end of Building "C", where the "Apothecary" business is located. That initial monopole was proposed at 59.9 feet from the side property line, as opposed to 135 feet, as required by the Conditions of the Wireless Telecommunications Ordinance. That initial location also failed to comply with Section 215-12.6B (9) which states: WT towers shall only be located within the rear yard of developed lots or within the rear half of the building envelope for undeveloped lots. {The Board interprets this property to be a developed lot.}

10. In an effort to avoid interference with the use of parking lot aisles, parking spaces and with customer foot traffic, the Board requested that the applicants amend their plans to locate the monopole and equipment shelter to an area further north and away from Building "C". The alternate location was adjacent to the semi landscaped parking median to the rear of Building "B" (King's) and in front of Building "D" (the Health & Racquet Club). This alternate location still required a variance from Section 215-12.6B (9) as not being in the Rear Yard of the property, as that term is defined in Section 215-1 of the Mendham Code.

11. In an effort to minimize the total number of wireless telecommunications towers within the Borough, the Board requested that the applicants investigate the possibility of increasing the height of the monopole to 130 feet even though Section 215-12.6C (2) sets forth the Condition that:

No WT tower shall exceed a height of 120 feet.

12. The applicants amended their plans to reflect the alternate location for the Equipment Compound and the monopole and they added the additional 10 feet of height to the monopole. The applicants technically amended their application to request a deviation from the Height Condition and deleted the need for a deviation from the side setback Condition. As noted above, relief from the Rear Yard Condition was still necessary.

13. In addition to the input and reports customarily received from the Borough Engineer and the Borough Planner, the Board enlisted the services of Bruce A. Eisenstein, Ph.D., P.E. of The Consulting Group. Dr. Eisenstein is a Professor of Electrical and Computer Engineering at Drexel University in Philadelphia, PA. The Board has relied upon Dr. Eisenstein's advice and expertise in interpreting the testimony, exhibits and arguments related to radio frequency propagation, telecommunications and cellular telephony.

14. In support of their burden to prove that the property remains suitable to be used by each of them as a Wireless Communications Facility despite an inability to comply with one or more Conditions of the Mendham Wireless Telecommunications Ordinance, the applicants presented Testimony and 29 Exhibits from: Glenn Pierson, General Manager of PierCon Solutions LLC; Robert A. Foley, P.E. from CMX engineering in connection with the above described Site Plans; Timothy M. Kronk, a NJ licensed Professional Planner who provided a May 21, 2008 Planning Report and an April 25, 2008 Visual Analysis; and, an RF Compliance Assessment and Report by Daniel F. Collins of Pinnacle telecom Group, LLC.

15. Mr. Irving Isko, who is a long time resident of Mendham Borough and a former member and Chairman of the Board of Adjustment, participated as an Interested Party during the hearings and deliberations on this application. Mr. Isko was represented by counsel who participated by cross examining the applicants' radio frequency expert, presented a separate radio frequency expert in rebuttal, cross examined Dr. Eisenstein, presented a separate planning expert in rebuttal and set forth several legal arguments generally in opposition to the application. Mr. Isko presented approximately 26 Exhibits into the Record including various resolutions, transcripts and pleadings from other wireless applications in the Borough and other municipalities.

16. In addition to the foregoing, Mr. Isko and his former counsel, David Schechner, Esquire, presented Testimony and presented several of the above described pleadings and transcripts in support of an argument that one or more of the applicants before the Board had made a binding and enforceable agreement or settlement that included a stipulation that they, or it, would not construct any additional Wireless Telecommunications Facilities in the Borough of Mendham. Due to the paucity of any clear and precise documentation related this technical legal argument, the Board is unable to arrive at an informed finding and conclusion. The Board also notes its reservation as to whether it has jurisdiction to make such a determination. The Board has not factored this issue into its final decision herein.

17. Several other members of the public attended many of the Public Hearings. As the Transcripts indicate, the members of the public raised various questions and made several statements related to their concerns and preferences related to the application.

18. Mr. Frank Lupo who resides on Dean Road in Mendham Borough, elected to vigorously participate in the proceedings. Mr. Lupo was not represented by counsel, although he was given considerable leeway to question witnesses, present Exhibits (approximately 29), make statements and champion the cause of Alternative Telecommunications Systems, particularly what are known as Distributed Antenna Systems (DAS). Mr. Lupo was particularly vigilant with regard to reviewing the antenna design specifications.

19. The Board reviewed the relevance of Alternative Telecommunications Systems with its expert and it is in favor of continued follow up of that concept by the Governing Body. The Board does not find that the current applicants have an obligation to install such technology.

20. The Board has considered the conflicting testimony regarding the quality of service in around the proposed site and whether a "gap" exists. The Board has considered the opposing views on how testing and modeling should occur in connection with determining the need for an additional tower. The Board is cognizant that these technical conclusions should not be determined by anecdotal evidence. The Board takes into account the conclusion by Dr. Eisenstein that a gap in appropriate design coverage exists and the proposed facility is located to address that deficiency.

21. The Board has considered the fact that the applicants are both FCC licensed carriers.

22. The Board has considered that the Borough has declined to make the Police Station property available to the applicants for installation of a wireless telecommunications facility.

23. The Board is aware that numerous parties have objection to the visibility of a monopole at this location. The Board has attempted to balance that objection with the imputed knowledge that the Planning Board and the Governing Body would have understood that at least a portion of any permitted 120 foot monopole in the East Business District would be visible from the Main Street Corridor and various historically relevant locations in the Borough

24. The Board does, however, find that the combined uses of the King's Shopping Center and the Mendham Health & Racquet Club on this one property do render it the busiest public use property in the Borough. The only property that might compare in size and intensity of public use would be the High School on a busy school/activity day.

25. The Board interprets the Rear Yard Condition to address a dual zoning and planning purpose: A) assistance with the goal of visual screening by having a WT facility behind a building; and, B) removal of a WT facility from the busiest pedestrian use areas of a property by having it in the rear yard.

WHEREAS, the Board has determined that the Use Variance and related Site Plan Approval requested by the Applicants, OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, **cannot** be granted without substantial detriment to the public good or without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board finds that the inability to comply with the Rear Yard Condition due to the unique and expansive development of the King's Health Club property renders it unsuitable for this Conditional Use.
2. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board concludes that there are no available conditions or alternatives that it might suggest or impose to ameliorate the degree and impact of the deviation from the Rear Yard Condition.
3. The Board interprets the recent amendments to the Borough Zone Plan to indicate the legislative intent that Wireless Telecommunications Facilities are now permitted Conditional Uses in the East Business District. The Board however, finds that the unique facts of this property render it inappropriate to accommodate this additional use.
4. The Board acknowledges that it requested consideration of the 130 foot monopole height and confirms that is not a basis for this negative decision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Mendham on this 7th day of July 2010, that the Decision made by this Board on June 2, 2010 to DENY, for the reasons set forth herein, the Use Variance applications (the related Site Plan application having become moot) of OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, be MEMORIALIZED herein in accordance with the requirements of *N.J.S.A. 40:55D-10g*.

Responding to Mr. Ritger's question as to why he had chosen to indicate that location in the rear yard was "impossible", Mr. MacDonald, Esq. clarified that there is no suitable location. He referenced a previously submitted informal analysis that indicated the presence of wetlands and buffers. It could not be placed in the side yard, actual rear yard or wetlands/transition areas, unless there might be some previously paved areas. There are many problems given the development of the site.

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

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

In Favor: Schumacher, Smith, Ritger, Seavey, Santo
 Opposed: None
 Abstentions: None

The motion carried. The resolution was approved.

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Chair Santo announced that as he had previously advised the Board, with the completion of the Omnipoint application, he was resigning after 17 years of service. A letter of resignation has been provided to the Mayor. He turned the gavel over to Vice Chair Seavey who assumed leadership.

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Michael C. Farina – Use Variance
Block 203, Lot 84, 65 West Main St.

Present: Michael C. Farina, Applicant
Mary Anne Farina, Applicant

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction to proceed.

Mr. Hansen reviewed the Ferriero completeness review letter of June 16, 2010 with the Board. He recommended the requested waivers. There being no comments or questions by members of the Board, a vote on completeness was taken.

Mr. Smith made a motion to deem the application complete. Mr. Ritger seconded.

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

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

The motion carried. The application was deemed complete. The hearing would commence.

Mr. Farina testified that he currently lives in Randolph and has three children. He is a self-employed CPA with a tax practice. He has had an office in Jockey Hollow for 14 years. The location is owned by his uncle who is now selling it. The Travis home, 65 West Main St., would be perfect as a family home and an office.

He continued that there is a 1,248 sq. ft. office that was used for a dental practice for 30 years. His accounting business is less intensive than the dental business. As he was Mr. Travis' accountant he knows that he had 15 to 20 patients. Most of the accounting business is conducted by mail and his traveling to Florida. He has a smaller client base. During the peak season of February 15 and April 15, he would expect to have 2-3 clients visit per day on average. The other 10 months there would be 2 to 3 per week. There will be fewer cars and traffic.

Addressing the number of employees, Mr. Farina stated that Mr. Travis had 2 to 3. He would need two, a full time secretary and a part time bookkeeper. There are no associates or partners. He did clarify that his father owns 2% of the business, but it has been transferred to him with his father spending October through May in Florida, coming back to visit.

In terms of the site itself, Mr. Farina explained that he has no plans to change the outside of the property. There are currently 8 parking spots and a garage. He would need two parking spots. He would not affect the floor plan as he would move in with minimal minor changes. There is a sign post located at the end of the driveway with a lamp on the top of the post. The size of the sign, 2 sq. ft., is within the existing sign ordinance. He would propose only the wording "65 East Main, CPA Accountant". There would not be a name. He distributed a picture of the sign to the Board.

In deliberations, Board was favorable to the application stating it was a de-intensification of the existing use.

Vice Chair Seavey opened the meeting to questions by the public. There being none, the public session was closed.

Responding to Mr. Seavey on the hours of operation, Mr. Farina stated that his business is mainly conducted during the day. In the busy season he may have 3 appointments after 5 p.m.

Mr. Ritger made a motion to approve the application subject to a limitation on sign size based on 215.E. Limitation will be 2 full time employees. Mr. Smith seconded.

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

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the Tuesday, August 3, 2010 regular meeting of the Board.

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106 Mendham LLC – Use Variance
Block 801, Lot 12, 106 East Main St.

Present: Anthony Sposaro, Esq., Attorney for the Applicant
Robert Berlant, Property Owner
Joseph Jaworski, Engineer for the Applicant
Robert Romeo, Barbershop Owner

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction.

Mr. Hansen reviewed the completeness items as identified in the Ferriero Engineering letter dated June 21, 2010. Board had no questions or comments.

Mr. McCarthy made a motion to deem the application complete. Mr. Ritger seconded.

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

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

The motion carried. The application was deemed complete. The hearing would commence.

Mr. Sposaro, Esq. provided a history of the property for the Board stating that the Planning Board approved the site plan in 2008. The new building has replaced two older buildings. The plans were for a bank to occupy 8,250 sq. ft., Coldwell Banker, 5,000 sq. ft. and creation of a one bedroom COAH apartment. Coldwell Banker has rethought their use of space and is not using 1,136 sq. ft. of the space. The proposal is for a barbershop to occupy that space.

Continuing, Mr. Sposaro, Esq. stated that a use variance is required for the barbershop use. It is not a permitted use in the Limited Business Zone. In addition to the variance for the use, a variance is needed for a barber pole and for parking. The applicant will be going to the Planning Board for review of a larger freestanding sign or the addition of a third freestanding sign. The pending bank occupant is requiring a larger sign. The proposed storage shed is to store the Coldwell Banker signs. He also noted that based on a letter from Morris County, the site plan was exempted from County approval on April 7, 2008. He assumes that this plan will also not require approval as there are no changes to the site.

After a short discussion among Mr. Sposaro, Esq., Mr. MacDonald, Esq. and Mr. Seavey on whether the parking and barber pole associated with the barbershop should be considered by the BOA or the Planning Board. After discussion, Vice Chair Seavey recommended that since the Planning Board reviewed the original site and knows the past testimony on signage and traffic patterns, they should decide the parking and the signage, i.e. the barber pole. Messrs. Sposaro, Esq. and Mr. MacDonald, Esq. agreed.

Mr. Romeo testified that he has been a barber for 34 years. He has had a shop in Chester for three years and before that was located in Morristown with two shops. "Men of Mendham" will only be for men and boys. It will provide the services of hair cutting and neck and side burn shaves. There will not be any hair dyeing or other like services that are done in a full service beauty parlor. He plans on having four chairs.

Utilizing A-1, the Floor Plan, Mr. Romeo described the set up of the space. He pointed out the four chairs, reception area, waiting area, quiet waiting area, office, shampoo station with one sink, bathroom and utility closet. Men rarely ask to have their hair washed. The hours of operation will be Monday – Wednesday 9-7; Thursday/Friday 9-8; Saturday 8-5 and Sunday 10-4. The peak hours are 11-2 and after 5 on weekdays with a steady stream of people on the weekend. He prefers appointments, but will take walk-ins. The average hair cut takes 20 minutes. He will start with himself and possibly one other barber. The maximum would be four barbers. The shop will be upscale conducive to the area.

Commenting on the floor plan, Mr. Ritger suggested that the back door facing the parking lot would have made a better entrance.

In discussion on the parking, Mr. Sposaro, Esq. stated that worse case he would require 21 parking spaces including barbers, receptionist and patrons. Mr. Jaworski explained that from an ordinance standpoint the 1136 sq. ft. for a retail unit would require 7 spaces. There is no specific requirement for a barbershop. Currently as an office use 4-5 spaces are required representing a difference of two. There are 33 spaces on site and a drive-through for the bank. They do expect different peak times for the businesses.

Responding to Mr. Seavey on his request for further clarification on people waiting, Mr. Romeo stated that from his experience they may leave or call for an appointment. He is planning on getting a camera for internet transmission so that people can see if there are others waiting. Addressing Mr. Ritger on whether parking would be assigned, Mr. Sposaro, Esq. stated that it would not. Mr. Berlant added that there would not be any assigned spots, but the person renting the COAH unit has a stipulation in their lease to park as far from the door as they can to keep open commercial spots. He explained that the barbershop offered another professional use in the building and would have off peak hours compared to the other businesses.

Mr. Sposaro, Esq. requested that they maintain flexibility with the location of the door either on the side or in the rear. That would flip the location of the waiting area. Mr. Hansen advised that he had no issue with that, but that there would need to be a formal plan filed.

Mr. Hansen reviewed the Ferriero technical report. In response to his question on the Historic Preservation review, it was noted that there was a review and a report was generated.

Vice Chair Seavey opened the meeting to the public. There being no public comments or questions, the public portion was closed.

In deliberations, Board members were in favor of the use, but some did have a concern with the parking. Mr. Ritger stated that when Coldwell Banker has a meeting, the lot is filled. Mr. Schumacher noted that there is no on-street parking. Mr. Seavey noted that when economic times change Coldwell Banker will be selling more homes.

In terms of the use, Mr. Seavey noted that there had previously been a beauty parlor in one of the old buildings on the site. Mr. Berlant confirmed the beauty shop use and added that there had also been an apartment above it. They now have the COAH unit in the new building. Board noted that there had previously been two barbers in Mendham and now there were none. There was a barber pole. There is a need in the Borough.

Mr. Schumacher made a motion to approve the application subject to submission of the variance plan and parking and signage approval by the Planning Board. Mr. Smith seconded.

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

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

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the August 3, 2010 regular meeting of the Board.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Seavey adjourned the meeting at 9:20 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, August 3, 2010 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
Recording Secretary

