

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

**RESOLUTION #104-2020**

**RESOLUTION OF THE BOROUGH OF MENDHAM, IN COUNTY OF MORRIS AND  
STATE OF NEW JERSEY, APPROVING AND AUTHORIZING A DEVELOPER'S AGREEMENT WITH ARYAN  
AT MENDHAM FOR THE PROPERTY LOCATED AT 25 EAST MAIN STREET (BLOCK 1501, LOT 11)**

**WHEREAS**, Aryan at Mendham ("Developer") obtained preliminary and final site plan approval with parking variance and design waivers for the property located at 25 East Main Street, designated as Block 1501, Lot 11 on the Official Tax Map of the Borough of Mendham, as memorialized by a resolution of the Mendham Borough Planning Board adopted on December 10, 2018; and

**WHEREAS**, the Developer is proceeding with such approvals in accordance with the applicable ordinances and rules and regulations of the Borough of Mendham and its agencies; and

**WHEREAS**, the Borough of Mendham and the Developer have negotiated an acceptable Developer's Agreement, attached hereto as Exhibit A.

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

1. The Mayor and Borough Clerk are hereby authorized and directed to execute the Developer's Agreement attached hereto as Exhibit A subject to:
  - a. The posting of a safety and stabilization bond in the amount of \$5,000; and
  - b. Submission of a Certificate of Insurance disclosing public liability insurance of \$3,000,000.00 per person and \$300,000.00 for property damage.
2. A copy of this Resolution shall be provided to the Borough Planning Department and the Developer, for their information and guidance.
3. A copy of the Developer's Agreement shall remain on file in the Borough Clerk's office and available for public inspection.

This Resolution shall take effect immediately.

Dated: July 15, 2020

**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-19<sup>th</sup> 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-19<sup>th</sup> century through the early to mid-20<sup>th</sup> 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-19<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> 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.

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Nancy Probst, Interim Board Secretary