

**MINUTES OF THE ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
BOROUGH OF ORADELL
HELD IN THE TOWN HALL
SEPTEMBER 16th, 2019**

Chairman Michelman called the Zoning Board of Adjustment meeting to order at 7:30 p.m. Notice of this meeting was published in the official newspapers, prominently posted in the Borough Hall, and filed with the clerk in accordance with the requirements of the Open Public Meetings Act.

ROLL CALL:

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|-----------------|---------|
| Mr. Michelman | Present |
| Mrs. McGrinder | Present |
| Mrs. Cobb | Present |
| Mrs. McHale | Present |
| Mr. Beslow | Absent |
| Mr. Barrows | Present |
| Mr. Degheri, | Present |
| Mr. Santaniello | Absent |

Also Present:

Mr. Regan, Esq., Board Attorney
Ms. Tiberi, Substitute Board Engineer
Ms. Green, Substitute Board Planner
Mr. Depken, Zoning Administrator
Ms. Marcella Sbarbaro, Recording Secretary

Approval of Minutes: NONE

Correspondence: NONE

Mr. Michelman stated the application before the board is a "D" variance which requires five (5) affirmative votes to pass. Presently the board consists of 6 members present. Only if the applicant requests a vote tonight will they go ahead.

Professionals present were sworn in at previous hearings and remain under oath. Mr. Michelman states his belief an attorney will be representing opponents of application 505 Kinderkamack LLC.

Mr. Regan interjects and suggests the board consider the vote on resolution on docket CAL # 840-19 Ballerini, 319 Grove Street., and any other items on agenda in anticipation of Mr. Beslow attending.

Mr. Kelly attorney for applicant 505 Kinderkamack LLC questions why he has not been informed of opposing attorney being present. Mr. Depken states a resident requested information through his office for their attorney. Mr. Richard Abrahamsen Esq. states he has been retained by the Smiths who abut property at 650 Lotus Avenue, to represent them in these hearings.

RESOLUTIONS:

CAL. #839-19 **LISA BALLERINI**

319 Grove St. Block 1206, Lot 9

Mr. Michelman asks board if there are any questions, seeing no one, he makes a motion to approve.

Mr. Michelman made a motion to approve the resolution, and Mr. Barrows seconded the motion.

ROLL CALL:

Ayes: Michelman, Cobb, Barrows

Mr. Depken, Ms. Tiberi and Ms. Green were previously sworn in by Mr. Regan.

APPLICATIONS

CAL. #840-19 **505 KINDERKAMACK LLC** **CONTINUED**

505-515 Kinderkamack Rd. Block 708, Lots 18 & 19

The attorney for the applicant, Mr. Kelly stated he is ready to proceed with two (2) witnesses and would like to recall Mr. Hal Simoff, Traffic Engineer of Simoff Engineering Associates, for project. Mr. Kelly states he was previously sworn in and qualified. Mr. Kelly states the County of Bergen made recommendations to Mr. Simoff in regards to site plan changes. The county suggests rather than a contribution to improvements in regard to Kinderkamack Road and Oradell Avenue intersection, the monies be applied to the intersection south of the project. The county is in process of developing plans to improve that intersection. Mr. Simoff states the applicant will be required to contribute to that project in the amount of \$45,000. Reading from the June 12, 2019 Joint Report of the County Planning Board states in item # 3, a check made payable to the County of Bergen in the amount of \$45,000 as a cash contribution for upgrades to the signal equipment at the intersection of Kinderkamack Road and Oradell Avenue. Mr. Kelly states this report was provided by the county to Boswell and the board. Mrs. Cobb states she does not remember receiving report. Mr. Kelly assures board they will receive said copy. Mr. Kelly submits copy of report and identifies it as **Exhibit A-18**.

Mr. Kelly closes his line of questioning and asks if the board or public have additional questions for Mr. Simoff. Ms. Tiberi questions if applicant will still perform ADA and sidewalk improvements, Mr. Simoff answers in the affirmative. Mr. Barrows asks what other improvements has the county explored. Mr. Kelly states the county explored bus stops and slow down lanes. He indicted the applicant would not be favorable to this and the county re-examined its position in regard to scope and requirements. Mr. Michelman opened questioning to the public on this testimony. Mr. Mark Alleman of 665 Ellen Place asks if the slow down lane presented would take away from property or remain in existing road footprint and how much money was saved by excluding from project. Mr. Kelly advises it is not a part of the application and therefore not relevant to discussion before the board. Mr. Michelman reiterates the board can only consider request for variance and this is not part of the variance and that applicant is only stating they are making improvements in excess of what was required. Mr. Michelman, closes the public portion.

Mr. Kelly calls Mr. Vincent Greenan, Principal Partner of project as next witness. Mr. Regan swears him in. Mr. Kelly asks who the principal partners are. Mr. Greenan states, Thomas Didio, Vincent Albanese and himself. He states he has been a resident of the borough excess of 32 years and collectively all 3 principals have been residents of Oradell in excess of 65 years. Mr. Kelly asked why he has submitted a proposal for this site. Mr. Greenan states there was opportunity as well as liking location, making improvements to existing site. He states it is a tired looking building and the project he feels will fit in the downtown aesthetic. He cites a building in Emerson north of project that is similar and compliments the corridor. He feels the visual improvements too and around property, COAH unit requirement, improvements to the signal, and drainage are beneficial to the area and use to the town. He states beneficial use as an opportunity for millennials or baby boomers to reside in town, by renting opposed to ownership, foot traffic for local merchants in downtown area. Mr. Kelly states Mr. Greenan and his partners saw a need in the community and has done similar projects, as well as managed mixed-use building. Including managing and operating a mixed-use building in the borough of Oradell. And in hearing concerns from the public in regard to garbage pickup, the partners have agreed to a more frequent pick up than required by the borough being three (3) times during the summer months. The garbage company contracted by the principals in other buildings being Pinto have had a good track record and had no issues with odor or lack of pickup. He agrees odor is a concern but as this is will be primarily residential, he foresees no major issues with increased pickup. Mr. Greenan testifies Pinto will testify to their compliance of town ordinances in regards to pick up times and noise. Landscaping, will also comply with relevant town ordinances. Snow removal is currently done "in house" at other properties, but a decision has not been made regarding means of snow removal on this project. He states he or his contracted company will comply relevant town ordinances. Mr. Michelman asks what the definition of summer will be for the three (3) times a week garbage pickup with, Mr. Kelly suggests Memorial Day to Labor Day be a guide with pickup on warmer weather outside of that being decided on case to case basis. But assures the board there will not be an issue no matter the time of year. Mr. Michelman suggest Memorial Day through September 30th, and it being a part of conditions set forth upon potential approval, with Mr. Kelly in agreement. Mr. Michelman opened questioning of this witness to the public, with deference to attorney's present. Mr. Abrahmsen attorney representing "the Smiths" asked and stated what year this property was purchased in, November 2018 and if one of his partners Thomas Didio, is related to the current mayor of Oradell. Mr. Greenan states he does not see the relevance in the question but answers in the affirmative. Mr. Abrahmsen asks if upon the decision to purchase this property, was he aware the Oradell Planning Board were proposing to create a zone for residential apartments above commercial property. And by amending the 2018 Master Plan and adoption of ordinance to resolve litigation pertaining to unmet COAH requirements. Mr. Kelly objected to form and relevance of questioning and reiterated what was before the board is an application for use variance pursuant to the current code and any planning by the governing body is irrelevant to this application. Mr. Regan agrees with Mr. Kelly's objection. Mr. Abrahmsen states the fact the planning board designated an area to allow mixed use in their 2018 Master Plan in a different area than this application is relevant to the board's decision. Mr. Michelman states COAH has no relevance in this argument and to limit his questioning to the mixed-use portion of the application. Mr. Abrahmsen argues the application is inconsistent with the recent re-examination of the Master Plan. The Planning board already deciding this area was not appropriate for this type of use. Mr. Michelman states the board does not look to the Master Plan to grant variances, but looks at the application, facts and evidence. Mr. Regan states part of the negative criteria the board considers when granting a variance is whether or not the application would substantially impair the intent and purposes of the Master Plan. He cited Oradell's Fair Share Housing Center settlement agreement

dated June 18, 2019. Which states Oradell has an unmet need of 390 affordable units. This project has two (2) onsite units proposed. Mr. Michelman stated in that agreement the borough included the overlay zone on any and all new construction or rehabilitation, so one can argue in that agreement the borough anticipated residential, mixed use outside of designated zones. Mrs. Shevelue of 654 Ellen Place, was sworn in previously, questioned the boundaries of the central business district extending from Sawmill Lane which is two blocks south of Ellen Place. Mr. Michelman explains the applicant is before the board to ask for a variance from the requirements of the zone. Mr. Michelman closes the public portion. Mr. Kelly calls Brigitte Bogart of Brigitte Bogart Planning & Design Professionals LLC, planner for applicant. Mr. Reagan swears her in and qualifies her before the board as a professional planner. Mr. Kelly submits Mrs. Bogart's report dated May 10, 2019 as **Exhibit A-19**. Ms. Bogart testifies as to why the application meets the requirements for use variance relief. She states the project will remove many existing non-conforming conditions by removing garage, loading dock, rear buffer encroachments, parking in side yard. Adding new landscaping, trees, retaining wall, fence. She addressed the Fair Share Housing agreement, in which the agreement states the units can be placed anywhere with development of multi-family housing of 6 units or more per acre. This application is providing two units which she feels not only is consistent with but furthers the Mater Plan. As well as being in close proximity to other mixed-use development, Central Business District and mass transit makes a perfect site for mixed-use development. Bulk (C) variances addressed are buffer requirements, parking in front of building, zig zag pattern landscaping and lighting. Parking spaces are sufficient for this project, with no massive traffic impact to surrounding area. Mr. Regan asks for clarification on the amount and nature of the C variances. Mrs. Green, Mrs. Bogart Mr. Regan and Mr. Kelly agreeing 6 C Variances will be required. Mrs. Green asks Mrs. Bogart to speak to the beneficial use and to clarify why this use is suited to this site. Mrs. Bogart cites many mixed-use sites in close proximity and in keeping to the surrounding land use pattern. She spoke to the residents' concerns and the impacts the project will have. Resident concerns of traffic and parking she stated the project will be appropriately parked, reduced many lighting variances proposed, improving the existing parking lot, landscaping improvements, residential buffer. Installation of state-of-the-art LED lighting with a condition that adjustments be done after installation if needed. Mr. Barrows speaks to the positive criteria testimony being that the location is suited to use and not due to hardship or beneficial use. He questions the use suitability with a scenario of eleven (11) units on corner lot making a left southbound out onto Kinderkamack Road. Mrs. Bogart states she agrees with the traffic engineer and as a planning expert it has to be a substantial detriment to public good not just one street. Mr. Barrows questions if public good includes surrounding properties. Mr. Kelly reiterates the allowed use is office buildings, and with this use cars would be exiting in the same manner and pattern as a residential use. Having the same impact on the area regardless of mixed use or office use. Mr. Barrows states the current use is more compatible with the area. Area residents are exiting Ellen Place when office workers are entering. With mixed use they will be entering and leaving at basically the same times during the day. Mr. Barrows asks if an area that was mid-block would be better suited to this use. Mrs. Bogart states traffic is only one issue to consider when weighing applications positive and negative criteria. Mr. McHale questions the parking variance when applicant does not know how many employees the tenant will have requiring parking spaces. Will tenant need to go for a new variance depending on tenant. Mr. Kelly explains applicant hardship in securing a tenant without approval for the project. Mr. Michelman states his past suggestion that once a commercial tenant is known, and parking spaces for that tenant is known, any surplus of tenants to parking spaces will apply to the borough for parking permit, with no assurances of approval. To avoid applicant from having to apply for a parking variance for each change of occupancy that exceeds the parking permitted. Mr. Michelman opens to the public. Mr. Abrahmsen asks if

the applicant is starting from a clean slate after demolition, why the applicant cannot conform to the ten (10) ft buffer requirements and tree design requirements to protect the adjacent residents. Mrs. Bogart disagrees that the applicant disregarded ordinance requirements in regards to the adjacent residents and cites the landscaping and aesthetic improvements. Parking on side of building that currently exists will continue. Mr. Abrahmsen questions why the residents do not get the screening and why the footprint of the building will be expanded. Mrs. Bogart explains the site would not be economically viable with the smaller footprint. Mr. Abrahmsen asks why the building wasn't made smaller and the ten (10) ft buffering was not provided to make the application more favorable too and for the residents. Mrs. Shevelue of 654 Ellen Place asks if improvements of property would be required if a building falling under B-2 zone were to be constructed. Mrs. Bogart answers that no improvements would be required with compliance of B-2 use. Mr. Alleman of 665 Ellen Place asks if the mixed-use buildings in area if they were originally residential or original mixed-use properties at time of construction. Mrs. Bogart states there is a combination. Mr. Allenman asks if esthetics, landscaping, lighting, fencing, buffering, retaining wall and stormwater management could be improved without granting of use variance. Mrs. Bogart replies that is not required and not cost beneficial. He questioned the timing of the lights whether they will be on 24 hours a day. She states that for safety, lighting will be on 24 hours a day in some capacity. Mr. Michelman closes the public portion. Mr. Regan enters **Exhibit B-10** Fair Share Housing Agreement into record. Mr. Michelman opens to the public. Mr. Allenman of 665 Ellen Place disagrees with the timing of the application submittal and the 2018 Master Plan Re-Examination. He believes the benefits do not outweigh the negatives and believes constructing a conforming use building within the zoning ordinance requirements will be the most beneficial use without overdevelopment of the area. He feels there is not enough parking for the project. He feels the application does not take into account customers, delivery trucks, snow pile up, and visitors. He cites Chapter 240 6.6 of the Oradell Zoning Ordinance in support of his position. He believes there will be on street parking on Ellen Place, traffic checking onto Kinderkamack Road during rush hours, lack of enjoyment of their property by way of 24 hour security lighting pollution, lack of view of reservoir, decreased privacy due to height of building, and peering into windows of neighbors, increased garbage and placement, increased demand on utilities, insufficient buffering between neighbors and decreased home value. He asks the board to not approve this application. Mrs. Shevelue 654 Ellen Place reads Section 2, Goals and objectives, page 11 from the Master Plan. She's speaks to the density and nature of Ellen Place. She worries the precedent this application will set for Oradell. States the mayor and her husband were well aware of the Master Plan prior to this application being considered. She does not believe the two (2) Affordable units will render this whole development a beneficial use for this application to be approved. Mr. Abrahmsen attorney for the Smiths again questions the suitability of this application when the Master Plan was completed so recently. He cites Funeral Home Management vs. Basrallian, he feels is similar as well as Walgreens vs. the Mayor of Oradell. He feels this is an attempt by applicant to re-zone the site and creating gaps in the zone. He states that if the board saw fit to grant the use variance, there is no reason to grant the C variances. The applicant can comply with buffers, and issues the residents see as detriments. Economic viability of project is no compelling reason to dispense with these protections. Applicant should come back to board with a compliant plan that meets the boroughs goals. Mr. Michelman closes the meeting to the public. Mr. Kelly surmises the board has listened to this application since April. The application will take a unkept dilapidated aged building with almost 100% coverage, old lightening, overgrown landscaping and existing variances and they will improve it. Applicants are longtime residents looking to invest in Oradell and serve the people of Oradell. He reiterates testimony from the planner Mrs. Bogart, shows they have met the negative and positive criteria for the granting of the use variance. Testimony

states positive criteria being the project serves the goal of master plan, fills a requirement for affordable housing, improves the area aesthetically with a substantial investment in landscaping. Suitability of the area being transitional, with residential, office and mixed-use north and south. There are minimal if no negative impacts. Concerns that were raised by the board, applicant's planner, engineer and attorney have complied with all the requests. He feels working with the board and residents requests made it a better application than when they first submitted. The applicant is sensitive the complaints of the neighbors in regard to lighting, garbage removal and placement. He reiterated the agreements made during hearing for landscaping, snow plowing and garbage pickups. He addressed the parking requirement and explained other uses would have higher requirements. Traffic expert testified they are in compliance and there will be no adverse impact of development. Bulk variance requested majority are pre-existing and have done their best to limit the variances needed. He thanked the board and experts for their time and input. Mrs. Tiberi states drainage is an outstanding issue that has not been incorporated into the plans and installs stormwater management that does not currently exist at this site. She discusses the parking would comply with requirements as is with an additional 3 spaces for employees, without knowing how many employees there will be. Mrs. Green wants clarification on site plan last revised on 7/25/19 by Mr. Richard Eichenlaub, from R.L Engineering Inc. Engineer, in regards to the impervious coverage existing on site is 54% and they are proposing 60% which is an increase of impervious coverage according to plans submitted to board. The Fair Share Housing Center settlement agreement plan was dated June 2018 and executed in June 2018, and the 2018 Land Use Plan was adopted in December 2018. She questions why the Land Use plan did not speak to the borough wide set a side that was incorporated into Affordable Housing settlement agreement. Mr. Regan reviews the criteria for a D1 Use variance being granted in regards to this case. He cites COX Section 3: 32-4. He feels there are arguments to made that site suitability can be considered.

Mr. Barrows states he would not be inclined to vote in favor of this application. He states he does not feel they have proved positive criteria and the site is not particularly suited. There are other sites in zone that are better suited. Negative factors, traffic, garbage, noise and smell. Mrs. Cobb states she likes the design, but is not convinced on suitability of site. Mrs. McGrinder states morning traffic does not factor for her, garbage may be an issue. She states she thinks it will look nice as opposed to what is there and if a conforming office building is constructed the improvements would not need to be made. She is inclined to approve application. Mr. McHale states it's a beautiful building with improvements to drainage and landscaping. He likes that Oradell residents are making investment in town. He has concerns over the parking and available spaces with change in use. Mr. Degheri states he is excited about the proposed building, although the rest of Kinderkamack Road is mostly residential in appearance. Traffic concerns seem to be focused on all the cars making left onto Kinderkamack Road. But it is all hypothetical. We can't know the true traffic patterns out onto Ellen Place. He values the improvement to the site with what is currently there. Mr. Michelman states the hardships of application in a business zone, as most about a residential area. He is aware of the impact of residents on Ellen Place and questions whether their concerns will come to pass. He observes a business being there currently. He states we need to deal with the application as it is not how we would like to have it. His concern is if the project was denied what would a new commercial conforming use look like. Would it be better than what is being proposed in this application? Would we wind up with more people or a less ecstatically pleasing building. He leaves it at he is torn. He allows the applicant to decide whether to take a vote tonight. Mr. Kelly states they will not ask for a vote tonight and will need to carry the application to November 18, 2019. Mr. Alleman 665

Ellen Place asks if the November 18th 2019 meeting will be opened to the public. Mr. Michelman says it will not be opened back up to the public.

Old Business

Mr. Michelman states the board is still in need of an alternate, to which Mrs. McGrinder asks if she can place a notice through Facebook. Mr. Michelman answers she may.

New Business

Mr. Depken states he would like to introduce the new secretary Marcella Sbarbaro to the board.

Mr. Michelman opened the meeting to the public for any matters, not seeing a show of hands, closed the meeting to the public. The meeting was adjourned at 10:15 p.m.

_____ Secretary

Exhibit A-18 - Letter dated June 12, 2019 from the Joint report of the County Planning Board

Exhibit A-19 - Report from Brigette Bogart, Planner report dated May 10, 2019

Exhibit B-10 Fair Share Housing Agreement