

**BOROUGH OF ORADELL
MINUTES OF THE ZONING BOARD OF ADJUSTMENT
REGULAR MEETING NOVEMBER 18TH 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

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

Also Present:

Mr. Regan, Esq.
Mr. Atkinson, Board Engineer
Mrs. Green, Board Engineer
Mrs. Tiberi, Board Engineer
Mr. Depken, Zoning Administrator
Ms. Marcella Sbarbaro, Recording Secretary

Mr. Michelman opens the regular meeting at 7:30 P.M.

APPROVAL OF MINUTES

Approval of the September 16th, 2019 Meeting Minutes.

Mrs. Cobb makes a motion to approve the September 16th 2019 Meeting minutes.

Mr. McHale seconds the motion.

ROLL CALL:

AYES: ALL IN FAVOR

Mr. Atkinson in sworn in as Professional witness.

APPLICATIONS

CAL. #825-17

**The Christian Brothers Institute (Bergen Catholic HS)
1040 ORADELL AVE Block: 501 Lot: 1**

Applicant is requesting a one-year extension per Ordinance Chapter § 240-4.9 (B) for prior site plan and associated variance approvals. Approvals to expire December 22, 2019.

Mr. David M. Repetto, of Harwood, Lloyd LLC., Law Firm representing the applicant, states they are requesting a 1-year extension on approvals. They are still in the permitting and fundraising stage of the project.

Mr. Michelman asks the Board, Professionals and the Public for comment and/or questions. Hearing none, Mr. Michelman makes a motion to approve request for an extension of time. Mr. McHale seconds the motion.

ROLL CALL: AYES Mr. Santaniello, Mr. Barrows, Mr. Degheri, Mrs. McGrinder, Mrs. Cobb, Mr. Michelman.

Application is APPROVED

CAL. #840-19

505 Kinderkamack Road LLC

505-515 KINDERKAMACK ROAD Block 708 Lots 18 & 19

Applicant seeks Use Variances for Mixed Use of commercial on first floor and apartments on second floor, parking, buffer, floor area ratio, front yard setback and parking space size

Mr. Kevin Kelly, of Kelly, Kelly, Marotta, & Tuchman, LLC attorney for the applicant.

Mr. Santaniello recuses himself from application CAL # 840-19.

Mr. Michelman states the applicant has indicated they would prefer to have 7 members for a vote to take place. He confirms that Mr. Kelly approves an extension on the application, as the applicant is asking to be carried until December 16th, 2019 meeting. Mr. Kelly states he would like to reserve his right to decide and speak with his client after deliberations.

Mrs. Tiberi states if approved, Neglia would work with the Engineer to finalize the drainage and implement any conditions or changes to the plan. As well as work with the borough and applicant through construction completion. Mrs. Tiberi states she believes this a difficult application when factoring the length of time, the application has been heard, comments, changes and the difficulty in evaluating a D1 Variance. She credits the applicant in making the revisions through the process, as it has made it easier for the board and public to understand. The board has to decide, whether the applicant has satisfied the proofs of MLUL and positive and negative criteria of D1 variance and 6 Bulk variances with no design waivers.

Mr. Regan concurs with Mrs. Green. The application was improved through the process. Referring to Mrs. Greens letter dated August 6th 2019 marked as Exhibit B-8, applicant has reduced the C variances from 10 to 6.

Mr. Michelman reads out the conditions discussed.

Solid waste pickup testimony summer pickup 3 times a week and 2 times a week for rest of year. Weekdays 7 AM to one half hour after dusk, weekends 8AM to one half hour after dusk. The board has indicated they prefer 3 times a week all year.

Lighting extinguished at 11 PM except what is required for safety.

Engineer approval for Drainage.

Affordable Housing Units must be discussed with the Governing body. If approved the project would require 2 units.

Any use other than general office, will require return to the Zoning Board for approval.

Parking may not be sufficient without knowing who the tenant will be. He suggests when spaces are not sufficient for the tenant, the overflow employees would request a parking permit in public lot from Police Department. This is not a guarantee a permit will be issued. This will be at the discretion of the Police Department.

Mr. Degheri states he stands by his comments made at the September meeting. His concerns in regard to garbage were addressed by the Refuse professional's testimony. He dislikes the expansion of the building, and the reasoning that it is the only way it is economically viable. He states he likes the overall picture, the continuance of residential on the Westside of Kinderkamack Road. The the positives outweigh the negatives of this project. He would vote for approval.

Mr. McHale states it's a big improvement from current conditions. His concerns are parking, although a variance is not needed, it seems evident that once a tenant moves in there will be deficiencies. He states his major concern with this application, is the location. The recent revision of the Master Plan does not designate this location for mixed use. He would vote to deny.

Mrs. McGrinder states the garbage was an issue, but was addressed to her satisfaction, with 3 times a week. She would vote to approve.

Mrs. Cobb states she likes the design and landscaping. Her concern is the parking and overflow parking on Ellen Place and other side streets. She states she would look more positively on application if parking were resolved. Permitting for municipal lots does not satisfy her concerns. Without a parking solution she would vote no.

Mr. Barrows states this application is an improvement. He does not find the positive criteria testimony set forth meets beneficial use or an undue hardship. The location is particularly unsuited being on a dead-end street with no other access. The use is more intensive and would have a negative impact on the area in terms of traffic, garbage pick-up, smells and noises. He states the building is too large for the site, and too many variances are needed. He states it is in contravention of the Master Plan, and cannot pass the test of not impairing the intent and purposes of the Master Plan and zoning ordinance. He would vote to deny.

Mr. Michelman states he believes the building is an improvement. He does not find this project is particularly suited for the location and property. The affordable housing is the positive component of this application, with the mitigation the Master Plan revision and Fair Share Housing Agreement. The Affordable Housing Overlay stops short of this building. He would vote to deny.

Mr. Kelly states they will call for a vote tonight.

Mr. Michelman makes a motion to approve, CAL # 840-19, 505 Kinderkamack Road LLC.

With the following conditions,

Solid waste pickup 3 times a week. Weekdays 7 AM to one half hour after dusk, weekends 8AM to one half hour after dusk.

Lighting extinguished by 11 PM except what is required for safety.

Engineer approval for Drainage.

Affordable Housing Units must be discussed with the Governing body.

Any use other than General Office, will require return to the Zoning Board for approval.

Insufficient employee parking would apply a parking permit in public lot from Police Department.

Mrs. Cobb seconds the motion.

ROLL CALL:

AYES: Mr. Degheri, Mrs. McGrinder,

NAYES: Mr. McHale, Mr. Barrows, Mrs. Cobb, Mr. Michelman

Application is DENIED

Mr. Regan states he may need to January 22, 2020 meeting to complete the Resolution extending past the 45-day appeal period required by the MLUL. Mr. Kelly states he will consult with his clients, and inform the board on their decision to allow the extension.

Mr. Santaniello and Mr. Atkinson have returned.

CAL. # 843-19

896 Oradell Avenue LLC

896 ORADELL AVENUE Block: 502 Lot: 16 Zone: R2

Applicant proposes second floor addition to pre-existing non-conforming structure which exceeds minimum side yard setback (Pre-Existing – 10 ft Required 15ft.) expanding encroachment of 5ft. Total side yard setback (Pre-existing 25.4ft Required 35ft.) expanding encroachment of 9.6ft.

Mr. Regan confirms all legal noticing proofs and requirements for application have been completed and received

Mr. Zare Khorozian of Zare Khorozian Law, LLC representing the applicant. He states the applicant requests to redesign his home by moving the existing driveway to the eastern side of property, expand the second floor to include a bathroom and attic, and reduce the second-floor deck to meet Code. Applicant is requesting relief from existing conditions of side yard Pre-Existing – 10 ft Required 15ft.) expanding encroachment of 5ft. Total side yard setback (Pre-existing 25.4ft Required 35ft.) expanding encroachment of 9.6ft.

Mr. Regan qualifies Mr. Michael Bet Architect, as an expert witness.

Mr. Regan marks architectural drawings as **Exhibit A-1**.

Mr. Bet testifies currently on the property is a single-family two-story residence. Proposing to maintain the footprint of the building, remove the second floor and replace it. Referring to sheet 2, he states they would be using vinyl siding, with asphalt shingles. There is no increase of bedrooms, only opening up to a more open floor plan, second floor will be 3 bedrooms, 2 full bathrooms and one office.

Mr. Michelman opens to the public for comment. Seeing no show of hands, he closes public comment.

Mr. Atkinson refers to sheet G 0.0, and asked Mr. Bet to clarify, there will be no change in lot coverage and in theory no increase in runoff from the property. Mr. Bet explains by moving the driveway to the east, there will be no change in coverage or runoff. Mr. Atkinson states as far as grading, the applicant is removing asphalt and putting new asphalt in a different location, thereby creating a better condition by pulling the driveway away from the neighboring property. Mr. Bet explains the walkway on the east side will also be reduced creating a more traditional walkway along the side of the house. Mr. Atkinson states the area along Oradell Avenue is a County Road, and any curb cut would need to go to the County for approval.

Mr. Regan asks the applicant if they contending the C variance relief be granted under the C2 standard? Mr. Bet's states he is not familiar with the C2 standard. Mr. Regan explains the C2 standard provides for a zoning benefit that would promote purposes of the MLUL. He suggests this application could be considered as promoting zoning benefits in section 2 of the MLUL, in

terms of general welfare and a desirable visual environment. The house is being upgraded and improved into contemporary standards. Would Mr. Bet agree the aforementioned would constitute zoning benefits that could warrant the granting of a deviation? Mr. Bet agrees, and states the applicant is not looking to detract from the neighborhood, but looking to improve it.

Mr. Khorozian closes by stating the only issues here are nonconforming side yards, it meets FAR. They're trying to design the home to 2019 standards and make it a better look for the neighborhood.

Mr. Michelman opens to the public for comment. Seeing no show of hands, he closes public comment.

Mr. Santaniello states he believes it's a nice upgrade to the house. He appreciates it staying within the footprint of the building. In regards to moving of the driveway, he believes it will be beneficial to the neighbors.

Mr. Barrows states the improvements to the existing structure outweigh the negative.

Mrs. Cobb does not have any issue with this application.

Mrs. McGrinder states she has no problem with the application.

Mr. McHale states it's a good application and a big improvement from what is currently there.

Mr. Degheri states is in favor of the application.

Mr. Michelman believes the project is an improvement to the neighborhood and is in keeping with the desires for the town and has no issue.

Mr. McHale makes a motion to approve, CAL. # 843-19; 896 Oradell Avenue LLC

Mrs. McGrinder seconds the motion.

ROLL CALL:

AYES: Mr. McHale, Mr. Santaniello, Mr. Barrows, Mr. Degheri, Mrs. McGrinder, Mrs. Cobb, Mr. Michelman

Application is APPROVED

Mr. Michelman explains the resolution will be memorialized at the December or possibly January meeting. And cautions the applicant any work done before the 45-day appeal period and issuance of permits will be at their own risk.

CAL. # 844-19

Adamek, Stephen & Barbara

219 PROSPECT AVENUE Block: 326 Lot: 15 Zone: R-4

Applicant proposes to install generator in rear yard within (5) five feet of property line where (10) ten feet is required.

Mr. Regan confirms all legal noticing proofs and requirements for application have been completed and received.

Mr. Regan swears in Mr. Stephen George Adamek and Mrs. Barbara Adamek applicants and owners.

Mr. Adamek states this application is a simple request for a problem for which only seems to be one solution, which is placing a standby permanent generator behind our house on the westside. Previous approval was given to operate a portable generator in the same spot. Mrs. Adamek states the allowed location for the generator would have resulted in running a gas line through two basements, through the garage, out the wall in the garage. The second option, running it through the back of the house, past a chimney and around the window well. The location in the application seems to make the most sense as well as being the safest. Mrs. Adamek states in a report from PSE&G, it was pointed out to them the gas load may not be sufficient on that line if it was run in the two recommended aforementioned locations.

Mr. Regan swears in Mr. Lou Alacci, Project Manager from Academy Electric as a fact witness. Mr. Alacci states the biggest concern with the installation is the gas line. The gas line currently enters the house on the east side, the recommended location was on the west side of the house, which would be an extended run with a number of bends. The way Public Service distributes gas is in two different ways. Low pressure and high-pressure, with most of Oradell being low-pressure. They only guarantee 4 inches of pressure at the meter. An extended pipe run would diminish the gas load. With appliances like ovens, water heaters, furnace being all flame based, they would still function without reduced pressure. The pressure to a generator is critical, if it falls below the required minimum the generator will not run.

Mr. Regan clarifies the pressure would be inadequate if located on the westside. Mr. Alacci confirms yes it would. Mr. Reagan asks if this proposed location would be more efficient and effective to alleviate the pressure issue? Mr. Alacci confirms yes it would.

Mr. Degheri states he did not have a chance to visit this site, and looking at the rear of the home, it is proposed 5 feet from the face of the generator to the back of the fence. Mr. Adamek states there is 18 inches of clearance from the back of house and another 26 inches, Mr. Degheri interrupts Mr. Adamek and states 18 inches off the house, 5 feet from property line so on so forth. He asks if they have a neighbor behind. Mr. Adamek states yes. Mr. Degheri asks what he thinks the approximate distances from his fence to the neighbor. Mr. Adamek states 10 to 15 feet. Mr. Degheri states his concern when the generator activates, the decibel level is close to the rear of the neighbor's home. Mr. Adamek states it will be 69 dB. Mr. Degheri states he has a problem with 10 feet to the neighbor's home. Mr. Adamek states his rear neighbor does not have any issues with this application. Mr. Regan asks how far the generator is to the back of the neighbor's home? Mr. Adamek states 20 to 25 feet. Mr. Atkinson clarifies the backyard neighbor fronts on Martin Avenue, therefore the Adamek's backyard backs to the neighbor's side yard. Mr. Atkinson asks if there is a window on that side of the neighbor's property? Mr. Adamek states it is a dining room window. Mr. Degheri states he wishes he had his neighbor here, explaining the neighbor isn't really the consideration as somebody else may move in. Mr. Adamek states the neighbor expressed no desire or concern to be here. Mr. Degheri, he states he has a problem with when the unit fires up, within the distance of his neighbor. He asks if anybody could testify that the 5 ft fence may reduce the decibel level? Mr. Regan suggests possible vegetation planted next to the fence may mitigate the noise level. Mr. Michelman suggests there's a hardship issue in terms of the size of the property, the backyard being only about 6 or 7 feet. Mr. Depken explains the generator would only be used in emergency conditions, which should be taken into account. He believes more of a concern would be when it is tested. The Code stating testing should be done Monday through Friday between 9 AM and 6 PM. Mr. Degheri addresses Mr. Alacci stating he's curious; whether being in a low pressure zone, running an extended gas line, extending out the right side of the house is going to further

decrease the pressure, does that come as a result of the run of the pipe? Mr. Alacci States a longer run decreases and dissipates the pressure. Mr. Degheri states he thought it was constant pressure like as in water. Mr. McHale points out the fencing is a solid fence with no gates towards Martin Avenue and questions whether a gate should be placed there? Mr. Depken states there does not need to be a gate. Mrs. Cobb questions if there will be any vibration associated with the generator. Mr. Alacci states the generator will be placed in a sound attenuated enclosure, which would not allow vibration.

Mr. Michelman opens to the public for comment. Seeing no show of hands, he closes public comment.

Mr. Depken states the output for this generator would be 69 dB, the maximum allowed by Code is 72 dB.

Mrs. Cobb asks if the neighbor's home is in line with the generator? Her thinking if the generator is not in-line with the home they would have less noise then if they were in line with the home. Mrs. Adamek states the window is further back and their door is not in line with the proposed generator. Mr. Alacci states the noise projecting from the generator would aim towards Martin Street, with the exhaust blowing to the east. Mrs. Cobb States the generator is a tight fit on a corner property, the main concern would be noise to whoever owns the property behind you. It does sound better to her than the portable generator, as her experience has been they are louder. Although not a great situation it's mitigated by its placement being designed to project the noise onto Martin Street. She does not believe she has a problem approving the application.

Mr. Barrows states from his experience the portables are very loud having a neighbor with one at least 50 feet from his home. It being an emergency generator it will not be on all the time he does not see a problem.

Mr. Santaniello states living on that side of town he knows it loses power often. He believes having a generator is a must-have. His neighbor has a permanent generator and he never hears it. He does not perceive any problem.

Mrs. McGrinder states a portable generator are too loud and believes this will be fine.

Mr. McHale states he understands it's tight in the backyard. But, does understand the hardship. He states he would like a condition attached to approval if the generator is replaced, that it be required to be a sound attenuated enclosure as well.

Mr. Degheri states he's concerned about the distance however, the testimony about the pressure is important there being a hardship to place it on the right side of the home. He's concerned about the home to the rear, nonetheless given the testimony the generator will not be on 24/7, I do not have a problem with that.

Mr. Michelman states he does not have a problem with the application. Frankly, this is where it has to be, if you were to run the pipe and try to get the pressure up to what you need, the noise would be closer to your neighbor's dining room window than it is now. He states you could be in Code and be more of a nuisance. The size of the backyard being so undersized is a hardship.

Mr. Regan asks how often the generator will be tested. Mr. Allaci states it is programmable and normally done on a weekly basis but can be extended to two weeks or month. But no more than once a week. The test runs 20 minutes maximum and does not run at full load.

Mr. Michelman asks for a motion to approve with the condition that if this generator was to be replaced, it would be required to have a sound attenuated enclosure.

Mr. Degheri makes a motion to approve.

Mrs. Cobb seconds the motion.

ROLL CALL:

AYES: Mr. McHale, Mr. Santaniello, Mr. Barrows, Mr. Degheri, Mrs. McGrinder, Mrs. Cobb, Mr. Michelman

Application is APPROVED with CONDITIONS.

Mr. Michelman explains the resolution will be memorialized at the December or possibly January meeting. And cautions the applicant any work done before the 45-day appeal period and issuance of permits will be at their own risk.

CAL. # 845-19

Jereshvili, Nugzari

235 LINCOLN AVENUE Block: 109 Lot: 8 Zone: R-4

Applicant proposes to construct a new second story addition to existing 1 ½ story single family dwelling Property has pre-existing non-conforming Lot area, Lot Width, Side Yards, Lot Coverage. Proposed project encroaches into front yard setback- by 4.4 ft (Proposed 20.6 ft. Allowed- 25ft.) Side Yard setback by 4ft. (Proposed 6 ft. Allowed- 10ft.) Total Side Yard- 9.2 ft. (Proposed 15.8 ft. Allowed- 25 ft.) Lot Coverage- Over by 317.1 sq. ft. Existing 2,275.5 ft. (49.4%) Proposed - 2,1157.1 sq. ft. (46.8%) Allowed 1,840 sq. ft. (40%) Floor area Ratio- Existing 1,085 sq. ft. (23.5%) Proposed- - 1,643.3 sq. ft. (35.7%) Allowed- 1,610 sq. ft. (35%) and any other variances that may be required.

Mr. Regan swears in, applicant and owner Mr. Nugzari Jereshvili and Mr. Brian Callahan, Architect. Mr. Callahan is qualified and accepted as an expert witness.

Mr. Regan confirms all legal noticing proofs and requirements for application have been completed and received.

Mr. Callahan states they are proposing a second story addition to an existing 1 1/2 story single family dwelling at 235 Lincoln Avenue. Currently there is a one and half story wood-frame dwelling with a one car detached garage. The home is in the R4 zone with several pre-existing nonconforming conditions that are specific to this property. They are Lot Width existing 40 feet were 75 feet is required. Existing Lot Area is 4600 ft.², 7500 ft.² is a minimum required. Existing Side Yard Setback is 7.7 feet, 10 feet minimum required. Combined Side Yards are 17.5 feet, 25 feet minimum required. In addition, the existing Lot Coverage is 49.4% where 40% is maximum allowed. The improvements are aiming to reduce that, with removing of the walkway and reconfiguring the front walk. Plan submitted with the application are marked **Exhibit A1**. The plans consist of a set of plans marked A1 through A5. The site plan depicted on sheet A1 showing the setbacks, similar to two applications ago we are not proposing any addition to the structure, just constructing a second floor above the first-floor footprint, with the exception of 2

feet at the rear. Sheet A3 depicts the floor plans at a quarter inch scale. We are looking to have an open floor plan on the first floor creating a small office. Second floor would be three bedrooms with two baths including a master suite. All the variances the applicant is seeking are existing conditions, while proposing to lower the lot coverage to 48.6% by getting rid of the existing walkway. In his professional opinion the benefits outweigh the detriments, we are taking a home that's very difficult in terms of layout, the way the stairs currently arranged you need to duck to walk up to the second floor.

Mr. Atkinson states by reducing the lot coverage you will be reducing runoff. He questions the new variance related to the front yard setback with a proposal of the covered front porch. Mr. Callahan agrees they are now requesting the front yard variance and explains currently there are narrow steps and the stoop, and the porch would remedy that. Mr. Atkinson states with the additional porch, the distance for the porch is similar to the existing steps. He questions how it compares to neighboring properties in regards to the setback. Mr. Callahan states he believes they're all within the 25-foot setback, he does not recall if there's any property with a larger encroachment.

Mr. Michelman opens to the public for comment. Seeing no show of hands, he closes public comment.

Mr. Degheri states the application was well presented and plans were well drawn. He believes this to be an improvement. As an architect he appreciates the 3D.

Mr. Regan marks rendering of proposed improvement to home as Exhibit A2.

Mr. Michelman notes on his inspection he counted six Town News on the driveway and for mailbox, he requests it be cleaned up and maintained.

Mr. Michelman makes a motion to approve CAL. # 845-19, 235 Lincoln Avenue.

Mrs. McGrinder seconds the motion.

ROLL CALL:

AYES: Mr. McHale, Mr. Santaniello, Mr. Barrows, Mr. Degheri, Mrs. McGrinder, Mrs. Cobb, Mr. Michelman.

Application is APPROVED.

Mr. Michelman explains the resolution will be memorialized at the December or possibly January meeting. And cautions the applicant any work done before the 45-day appeal period and issuance of permits will be at their own risk.

Old Business

Mr. Michelman states the board is still in need of a second alternate. The board should have received proposed meeting dates for 2020. January and February will take place on the Wednesday after the holidays, the rest of the calendar will follow every third Monday of the month.

2019 Annual Report

Mr. Michelman discusses the parking ordinance for mixed-use, where the ordinance requires a certain amount of parking spaces without knowing who the tenant would be or their parking needs. The ordinance calculates parking by employee and not square footage. In the annual

report he recommends, the governing body reconsider the ordinance to perhaps calculate parking on a square footage basis. Mr. Regan states the annual report will be done in January.

Mr. Michelman requests Mr. Depken notify the borough administrator, members with terms expiring Mr. Santaniello and Mr. Degheri would welcome reappointment to the board.

Mr. Michelman opens to the public for comment. Seeing no show of hands, he closes public comment.

Mr. Michelman makes a motion to adjourn the meeting.

Mrs. McGrinder seconds the motion.

ROLL CALL:

AYES: ALL IN FAVOR

Meeting is adjourned at 9:55 PM.

Signature

Date