

**MINUTES OF THE ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
BOROUGH OF ORADELL
HELD REMOTELY UTILIZING “ZOOM”
FEBRUARY 23rd, 2022**

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:

Present: Mr. McHale, Ms. Odynski, Mr. Santaniello, Ms. McGrinder, Mr. Michelman, Mr. Degheri

Absent: Ms. Cobb, Mr. Barrows, Mr. Bartlett

Also Present: Mr. Regan, Esq.
Mr. Depken, Zoning Administrator
Mr. Atkinson, PE, PP, CME Board Engineer
Ms. Reiter, P.P., AICP Board Planner

Correspondence

- a. The New Jersey Planner November/December 2021
- b. Architectural drawings sheet SK1, SK5, and SK6 prepared by Virgona & Virgona Architects last dated February 4, 2022 in connection with 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC
- c. Preliminary and Final Site Plan Drawings prepared by Dresdner Robin Environmental Management, Inc. dated February 10, 2022 in connection with 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC
- d. Review letter prepared by David R. Atkinson, P.E., P.P., C.M.E. of Neglia Engineering last dated February 16, 2022 in connection with 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC
- e. Review letter prepared by Caroline Reiter, P.P., AICP of Christopher P. Statile, P.A. dated February 21, 2022 in connection with 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC
- f. Comment response letter prepared by Matthew J. Neuls, P.E., C.M.E., L.E.E.D A.P. of Dresdner Robin Environmental Management, Inc. dated February 22, 2022 in connection with 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC
- g. Robert T. Regan, Esq. Contract of Employment for Professional Legal Services 2022

Approval of Minutes

Approval of the December 20, 2021 and January 19, 2022 meeting minutes

Mr. Michelman motioned to approve the minutes and was seconded by Ms. McGrinder.

ROLL CALL:

AYES: All in Favor

Memorialization of Resolutions

CAL# 850-20

W. Aly & M. Alegre

890 Oradell Avenue – Block: 502, Lot: 15

Mr. Michelman moved to adopt the resolution extending approvals and was seconded by Ms. McGrinder.

ROLL CALL:

AYES: Mr. Michelman, Ms. McGrinder, Mr. McHale, Mr. Santaniello, Ms. Odyanski, Mr. Bartlett

Applications

CAL. # 856-21

Block 113, Lot 5

66 Kinderkamack LLC

66 Kinderkamack Road

Mr. Michelman requested an extension for the application to be carried to the next meeting if there is no vote. Ms. Schepisi noted that two Board members are missing. Mr. Michelman replied that the first alternate is in attendance and will be voting in place of Mr. Barrows who recused himself. Ms. Schepisi stated that she will confer with her client regarding a vote and approved the requested extension. Ms. Schepisi recalled Mr. Virgona, the applicant's architect. Ms. Schepisi asked Mr. Virgona to describe the changes made to the architectural drawings based on comments from the previous meeting. Mr. Virgona stated that the PTAC units have been removed and were replaced with mini splits. Mr. Virgona noted that an additional drawing was added to the architectural sheets representing the roof. Mr. Regan marked the new sheet revised February 4, 2022 as Exhibit A-7. Mr. Virgona used the share screen function to point out the mini split units on the drawings. Mr. Virgona emphasized a note on the sheet which stated that the rooftop equipment will generate no more than 50 decibels of sound level at the property line. Mr. Virgona added that the removal of the PTAC units altered the aesthetics of the building by eliminating the vents. Ms. Schepisi asked Mr. Virgona to briefly speak on the addition of a generator. Mr. Virgona stated that in the spirit of cooperation, a generator has been proposed per the Oradell Fire Department's comments. Mr. Atkinson asked if the smaller rooftop units will be visible from the street. Mr. Virgona stated that the units are small in height and will not be visible from the street. Mr. Atkinson asked for clarification regarding the noise level, Mr. Virgona confirmed the noise level will be no more than 50 decibels at the property line. Ms. Reiter asked Mr. Virgona what the height of the largest rooftop unit will be along with its screening mechanism. Mr. Virgona replied that the screening will be 5 feet high and the unit is 4.5 feet high and 6.5 feet in length. Mr. Virgona added that this larger unit serves to provide fresh air into the corridors along with heating and air conditioning. Mr. Degheri asked for clarification regarding the height of the condensing units for the mini split system. Mr. Virgona confirmed that the condensing units are approximately 3 feet tall and that they would not be visible from the street level. Mr. Degheri asked for clarification regarding a fixture and Mr. Virgona indicated that the fixture is the exposure vent for the trash shoot, which must extend upwards 4 feet per the code. Mr. Degheri asked Mr. Virgona to elaborate on the ventilation for underground parking. Mr. Virgona stated that there will be sufficient ventilation as a duct will be installed for the intake air. Mr. Michelman emphasized his appreciation for the removal of the through wall units as it will be an improvement for the surrounding residents.

Mr. Latsounas of 50 Beverly Road asked Mr. Virgona for clarification on the architectural drawings. Mr. Virgona replied that the rectangles in question should have been removed with the rest of the PTAC units. Mr. Latsounas asked if the large maple tree on Argyle Street can be saved. Ms. Schepisi stated that Mr. Neuls, the project engineer, will testify and speak on the location of the generator and the tree. Ms. Schepisi added that prior testimony indicated robust plantings of juniper and arborvitae along the top of the retaining wall.

Ms. Schepisi called Mr. Neuls of Dresdner Robin Environmental Management, Inc. Engineering who was sworn in by Mr. Regan. Ms. Schepisi asked that Mr. Neuls describe his educational and professional background. Mr. Neuls replied that he has a bachelor's degree in civil and environmental engineering, he has been with Dresdner Robin Environmental Management, Inc. for approximately 7 years, and has testified before land use boards in the past. Ms. Schepisi asked Mr. Neuls to describe the changes that have been made to the site plan in response to comments. Mr. Neuls stated that in response to comments from the Oradell Fire Department a generator has been added to the site plan at the north end of the building to the west of the driveway entry from Argyle Street. Mr. Neuls stated that the sound level emitted by the generator per the manufacturer's specifications would be 57 decibels during weekly testing and 61 decibels during power outages. Mr. Neuls noted that since the lot is a corner lot, the generator is technically in the front yard. Mr. Neuls moved on to discuss site distance which was an issue raised by Mr. Atkinson in his review letter. Mr. Neuls referred to sheet C-321 of the site plan drawing which depicts how the generator will not affect the sight lines for a driver leaving the garage since it is set back far enough from the street. Mr. Neuls moved on to address the ADA accessibility of the sidewalks by displaying updated calculations on sheet C-401 which was marked Exhibit A-9. Ms. Schepisi noted that this updated sheet with additional data will be included with the compliance set. Ms. Schepisi asked Mr. Neuls if there is any viable location on the property to place the generator in order to save the existing maple tree. Mr. Neuls replied that there are a few locations on the site where the generator could be placed to accommodate its size and without disturbing the nearby residents. Ms. Schepisi asked Mr. Neuls if it would be possible to save the maple tree mentioned by Mr. Latsounas. Mr. Neuls replied that he doubts the tree can be saved since it is located where the retaining wall is proposed. Mr. Neuls added that a red oak tree is proposed on the northern corner of the property. Ms. Reiter asked Mr. Neuls to confirm that the height calculations were executed in conformance with the Borough definitions. Mr. Neuls replied that he believes that the calculations were completed based on the Borough definitions but he will confirm same. Mr. Atkinson asked what distance the proposed generator is offset from the building. Mr. Neuls replied that the generator is approximately 5 feet from the face of the building. Mr. Atkinson asked Mr. Neuls if any screening will be surrounding the generator. Mr. Neuls used the share screen function to display the 14 shrubs proposed to surround the north and east side of the generator. Mr. Atkinson asked Mr. Neuls how often the generator operates. Mr. Neuls confirmed that the generator is recommended to be tested weekly. Mr. Atkinson moved on to discuss ADA accessibility and Mr. Neuls confirmed that the site will be compliant. Mr. Atkinson asked if there has been any consideration regarding a bus shelter at the property to which Ms. Schepisi stated that the applicant would be willing to provide an easement for a bus shelter. Mr. Depken asked that Mr. Neuls discuss the retaining wall replacement. Mr. Neuls replied that portions of the retaining wall were intended to remain but the environmental remediation work will make it so that the entire wall on the eastern side of the property must be replaced. Mr. Degheri asked if it would be possible to locate the generator on the roof. Mr. Virgona stated that it has been done in the past but it could create some difficulties structurally as the building is made of wood. Mr. Degheri moved on to ask what type of tree will be at the corner of the property to replace the maple tree. Mr. Neuls replied that a red oak tree is proposed. Mr. Degheri asked if the foliage will have any impact on the sight lines for drivers trying to turn. Mr. Neuls referred to the site distance calculations on the plans and confirmed that the foliage would not affect those making a turn. Mr. Degheri emphasized his concern with the installation of a bus shelter which may be a disruption for drivers. Ms. Schepisi stated that the applicant will work with the Borough on the location of a shelter in front of their property. Mr. Michelman referenced the maple tree and noted that the construction equipment may destroy the

roots of the tree and cause it to die despite trying to salvage it. Mr. Neuls added that the canopy of the tree will be in the way of the new construction.

Mr. Latsounas of 50 Beverly Road asked Mr. Neuls what decibel level can be expected from the proposed transformer. Mr. Neuls stated the noise will likely be a low humming but he does not have a decibel level.

Mr. Field, counsel for the residents of 66 Beverly Road, 70 Beverly Road and 74 Beverly Road, stated that his clients are in a difficult position since their properties are contaminated and in need of remediation. He stated that the remediation will not take place for his clients unless the property sale occurs. Mr. Field noted that he has worked diligently with the counsel for the applicant and the sellers to create a \$350,00-escrow account in order to ensure the three properties are remediated.

Mr. Michelman stated that it is 9:09 P.M. and called for a break in the hearing.
Mr. Michelman reconvened the hearing at 9:19 P.M.

Mr. Scalcione of 102 Beverly Road asked why the frontage of the building can't be altered to allow the generator to conform to the zoning code. Ms. Schepisi replied that the generator can be moved as close as 18 inches to the structure and noted that the applicant is amenable to doing so.

Ms. Pojednic of 32 Beverly Road asked why the owner of the site was not held responsible for the remediation of the property and for her neighbors on Beverly Road. Ms. Schepisi stated that the woman who currently owns the property is a widow who inherited the lot and she has not had the financial means to begin any sort of remediation. Ms. Schepisi added that as part of a condition of her client acquiring the property the subject property and the three properties on Beverly Road will be cleaned.

Ms. Schepisi called the applicant's planner, Mr. Kolling, who was sworn in by Mr. Regan. Ms. Schepisi asked that Mr. Kolling provide history regarding his professional background. Mr. Kolling stated that he graduated from Rutgers university in 1974 with a degree in land management planning, he has been a licensed planner in New Jersey since 1984, he is a member of the American institute of certified planners, and he served as the planning director for the city of Jersey City. Mr. Regan deemed that Mr. Kolling can be considered an expert witness and marked the Planning and Zoning report last revised December 9, 2021 as Exhibit A-10. Ms. Schepisi asked Mr. Kolling to describe why the property is well suited for the proposed development in connection with the use variance being sought. Mr. Kolling stated that the property is well suited for the proposed development due to its size, its location as a corner lot, and its topography allows for the proposed two levels of parking. Mr. Kolling went on to note that the property is located in the B-3 Zone and the use variance is required since that zone only allows for efficiency units. In connection with the Borough's affordable housing goals, Mr. Kolling confirmed that 15% of the units within the proposed development will address the affordable housing requirement. Mr. Kolling addressed the negative criteria and affirmed the use variance will not have any substantial detriment on the zone, zone plan, or public good. Ms. Schepisi asked Mr. Kolling to comment on the statements made by Mr. Field regarding contamination of 66 Beverly Road, 70 Beverly Road and 74 Beverly Road. Mr. Kolling stated that the residents are being negatively impacted by the contamination but the guarantee of remediation with the proposed project can be viewed in a positive light. Ms. Reiter asked Mr. Kolling if the fence height variance being pursued could be considered a safety matter. Mr. Kolling replied that the fence discourages public interference with the equipment on the property. Ms. Reiter asked Mr. Kolling to provide his opinion as a planner regarding the proposed mixed use building and the addition of 33 new units. Mr. Kolling stated that the B-3 Zone allows for a mixed use building but only references efficiency units. Mr. Kolling went on to note that when residents are added to a commercial area, they help to add vitality. Ms. Reiter asked Mr. Kolling to comment on the affordable housing designations. Mr. Kolling stated that when there is

an odd number of units, the additional unit should go toward low-income housing. Ms. Schepisi added that as a condition of approval, the applicant will comply with the requirements of Fair Share Housing and ensure that the Borough receives credit for all 5 units. Mr. Santaniello asked if this type of building with an office on the ground floor would typically be considered mixed use. Mr. Michelman stated that he asked a similar question at a previous meeting and testimony was provided indicating that the office will be a real estate office that will manage properties other than the units within the proposed development. Ms. Schepisi affirmed Mr. Michelman's summary and added that one of the principals of the proposed development has a real estate business.

At this time Mr. Michelman invited members of the public to ask questions of Mr. Kolling.

Mr. Scalcione of 102 Beverly Road asked Mr. Kolling if the need for a floor area ratio variance is triggered by the two levels of parking. Mr. Kolling stated that the parking contributes to the gross floor area ratio. Mr. Scalcione asked Mr. Kolling if the parking requirement is driven by an excessive number of units. Mr. Kolling replied that 33 units being considered excessive is a subjective opinion, but confirmed that less units would allow for a reduced parking requirement. Mr. Scalcione asked how the real-estate office use would be beneficial for the local community. Mr. Kolling replied that in the future the commercial space could allow for another permitted use.

Mr. Latsounas of 50 Beverly Road asked Mr. Kolling if he is aware that using the garage opening on Argyle for pick up would block the 50-foot-wide street as a garbage truck is approximately 27 feet long. Ms. Schepisi noted that there has been previous testimony regarding garbage pickup and no issues were raised at the time.

Mr. Tripsas of 327 Maple Avenue asked Mr. Kolling if 10 apartments and retail on the ground floor would better serve the community. Mr. Kolling stated that he has not analyzed the possibility since that is not what the applicants are proposing. Mr. Tripsas asked Mr. Kolling why the lot is empty. Mr. Kolling stated that he was aware of the former car dealership and the site contamination which ensued. Mr. Tripsas asked if another project could be proposed and eliminate the empty lot. Ms. Schepisi stated that the property has been under contract in the past but deals have fallen through.

At this time Mr. Michelman invited members of the public to provide their closing comments or questions.

Mr. Scalcione of 102 Beverly Road was sworn in by Mr. Regan. Mr. Scalcione stated that he is not averse to the property being developed, but he objects to the number of units being proposed. Mr. Scalcione emphasized his frustration with zoning requirements being ignored by the developer. He went on to predict that similar large developments will come to Oradell if the applicant is approved. Mr. Scalcione concluded by stating that the applicant has not demonstrated a hardship which justifies the proposed density of the building.

Mr. Latsounas of 50 Beverly Road was sworn in by Mr. Regan. Mr. Latsounas began by stating that he concurs with Mr. Scalcione's sentiments and added that the proposed high density will present traffic issues. Mr. Latsounas continued by noting the safety issues which he found troubling in connection with drivers making turns. Mr. Latsounas concluded by stating that the proposed development is too large and he does not believe it will benefit the community.

No additional members of the public opted to speak and Mr. Michelman invited Ms. Schepisi to provide her closing comments.

Ms. Schepisi began by thanking the Board and its professionals for their feedback. She noted that over the course of the past 4 meetings the applicant has amended the application various times. Ms. Schepisi explained that the applicant alleviated concerns about 2-bedroom units, all units

(aside from COA units) were revised to include home work space areas as opposed to den areas, the number of units were reduced from 34 to 33 with the extra space being converted to storage lockers for the residents, and the retail component of the project was reduced from 2,000 square feet to 951 square feet. Ms. Schepisi briefly summarized the reports provided by the applicant's professionals and how their findings support the construction of the proposed project. She concluded by requesting that the Board look favorably on the application, as the approval of the requested variances will not have a negative impact on the surrounding residents.

Mr. Regan marked Ms. Reiter's report dated February 21, 2022 as Exhibit B-2. Ms. Reiter listed the variances being requested which include a D1 use variance, a D4 floor area ratio variance, and C variances for side yard setback, combined side yard setback, building height, building coverage, the location of the generator, and the fence height on Argyle Street. Ms. Reiter briefly summarized her report and confirmed the Board has no role in the enforcement of the affordable housing requirements.

Mr. Regan marked Mr. Atkinson's report last dated February 16, 2022 as Exhibit B-3. Mr. Atkinson stated that the applicant will address the stormwater runoff by providing additional drainage. Mr. Atkinson noted that the applicant has agreed to provide calculations and the necessary studies in connection with the utility systems. Mr. Atkinson added that the applicant adequately addressed ADA accessibility and parking. He confirmed that he concurs with the information provided in the traffic study, specifically the analysis related to site distance. Mr. Atkinson stated that typically the Planning Board would address the soil moving aspect of the project, but in this case the Zoning Board has the authority to grant the soil movement approval.

Mr. Regan stated that when coming to a decision, the Board should focus on the major D variances being requested.

Mr. Michelman asked that the members of the Board share their thoughts on the application prior to the applicant requesting that the Board come to a vote.

Mr. Degheri stated that he sees positive and negative conditions in connection with the proposed development. Mr. Degheri noted that housing is a positive aspect that outweighs the potential high density. He added that he finds the underground parking to be beneficial because it addresses concerns that residents have with commercial developments in the Borough which lack onsite parking. In terms of the architecture, Mr. Degheri praised the fresh look of the project and commended Mr. Virgona. He concluded by affirming that in his opinion, the positive results of the development will outweigh the negative aspects of it.

Mr. McHale began by stating that the vacant lot is an eyesore but he is concerned with the floor area ratio and building coverage variances being requested. He added that there is no open land with the proposed development and questioned if the lot can accommodate the proposed development. Mr. McHale concluded by emphasizing that he does not see how nearby residents will benefit from the proposed development.

Ms. Odynski recognized that the applicant has been very accommodating but she is concerned with the proposed density and size of the project. She stated that she is torn because the remediation of the surrounding residents is an important factor while the overall size of the project seems out of character for the neighborhood.

Mr. Santaniello echoed that the vacant lot is an eyesore but stated that the proposed development is large. He moved on to note that the surrounding residents have no other way to remediate the contamination other than accepting a development that they do not want. Mr. Santaniello concluded by stating that he is torn.

Ms. McGrinder stated that she feels badly for the neighbors. She concluded by expressing her opinion that the proposed building is simply too large for the lot.

Mr. Michelman began by recognizing that Oradell has a unique business district, and every business adjoins a residential property. Mr. Michelman stated that the real estate office in the proposed building could leave and become another permitted use. He moved on to reference how he does not believe traffic will be an issue per testimony from the traffic expert. Mr. Michelman emphasized that if the Board votes against this project they will essentially be saying no to a project that covers a vacant lot and remediates contamination issues for neighbors. Mr. Michelman expressed that he is torn but ultimately believes that the proposed development will be a benefit to the Borough and his vote would be a yes. Mr. Michelman asked counsel for the applicant to decide if they would like the Board to take a vote. Ms. Schepisi briefly conferred with her client and it was decided that the applicant will wait until the next meeting for an official vote.

Mr. Michelman stated the case will be carried to the March 21, 2022 meeting with no further questions or testimony.

Old Business

None

New Business

None

Mr. Michelman opened the meeting to the public for any matters.

Mr. Michelman closed the meeting to the public.

Motion to adjourn was made by Ms. McGrinder and seconded by Mr. Michelman, all in favor.

The meeting was adjourned at 11:27 P.M.

Secretary