

**MINUTES OF THE ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
BOROUGH OF ORADELL
MAY 15th, 2023**

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. Bartlett, Mr. Degheri, Ms. Odynski, Mr. Santaniello, Ms. Cobb, Mr. Michelman

Absent: Mr. Barrows

Also Present: Mr. Regan, Esq.
Mr. Depken, Zoning Administrator
Mr. Atkinson, Borough Engineer
Ms. Reiter, Borough Planner

Correspondence

- a. Transmittal prepared by David E. Mayland, Esq. dated May 5, 2023
- b. Oradell Police Department Incident Reports dated August 7, 2013, December 1, 2013, December 6, 2013, October 3, 2014, October 29, 2014, December 5, 2014, August 29, 2016, October 2, 2016, December 14, 2016, March 4, 2017, October 28, 2017, December 8, 2017, January 12, 2018, July 11, 2018, September 17, 2018, October 5, 2018, May 29, 2019, December 1, 2019, February 12, 2022
- c. Parking Demand Study prepared by Page Consultants Inc. in connection with 302-308 Kinderkamack Road, last dated March 11, 2021
- d. Truck Turning Template prepared by Berge V. Tombalakian, PE, PP, CPWM, CME
- e. Email correspondence from Chief William Wicker dated May 15, 2023
- f. Stipulation extending time to file an answer dated April 21, 2023 regarding 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC litigation
- g. Answer and separate defenses dated May 15, 2023 regarding 66 Kinderkamack Road – Block: 113, Lot: 5 – 66 Kinderkamack LLC litigation

Approval of Minutes

None

Memorialization of Resolutions

None

Applications

CAL. # 864-22
Block 221, Lot 2

RK Holdings, LLC
240 Kinderkamack Road

Mr. Mayland introduced Mr. Tombalakian to continue his testimony regarding the traffic engineering aspect of the proposed project. Mr. Regan marked the exhibits submitted by the objector. The truck turning template submitted by Mr. Tombalakian was marked Objector Exhibit 1, the Oradell Police Department Incident Reports were marked Objector Exhibit 2 and copies were distributed to the Board members. Mr. Depken stated that the Police Chief had no comments regarding the incident reports and the email confirming such was marked as Exhibit B-3. Mr. Regan noted that the parking study in connection with 304 Kinderkamack Road was submitted to the Board during that application in 2021 and was previously marked Exhibit A-17. Mr. Mayland called Mr. Tombalakian and asked him to describe the turning radius diagrams he prepared. Mr. Tombalakian stated that there are three sheets which depict a box truck entering the site from various points. He stated that based on the turning template, the truck would occupy the entire driveway. In connection with the loading space, Mr. Tombalakian affirmed that a single unit truck with the dimensions of 30 feet long and a 20-foot wheel base would not be able to fit in the loading space as depicted on the applicant's site plan. Mr. Tombalakian referred to the garbage truck turning template submitted by the applicant and that it does not show how the loading space will be accessed by the applicant. Mr. Mayland asked how the turning radiuses will impact the bus stops. Mr. Tombalakian explained that north bound vehicles attempting to turn would encounter issues if a bus was parked at the stop and south bound vehicles attempting to turn could have an issue depending upon how the bus was parked. Mr. Barrett asked Mr. Tombalakian to expand upon the scale used for his exhibits. Mr. Tombalakian explained that the scale was matched to be consistent with the exhibits submitted by the applicant's planner, Mr. Page. Mr. Barrett asked Mr. Tombalakian if he has ever witnessed a bus pulling into the bus stop. Mr. Tombalakian stated that he has never seen a bus utilize the stop. Mr. Barrett asked where the bus shelter is located and Mr. Tombalakian replied that the shelter is located further to the south of 240 Kinderkamack Road. Mr. Santaniello asked if other food retailers along Kinderkamack Road have a code compliant loading space. Mr. Tombalakian said he is unaware if the other establishments have such a loading space but he added that the subject property is vacant and it can be designed to meet the standards. Mr. Michelman asked if the loading zone would be functional if the truck had to maneuver to fit. Mr. Tombalakian affirmed that based on the template submitted by the applicant he does not believe the truck can comfortably maneuver into the space. Mr. Degheri asked for turning radiuses for other kinds of vehicles and Mr. Michelman noted that there was previous testimony confirming a box truck may be used for deliveries. Discussion continued regarding the loading zone and the lack of such for other establishments along Kinderkamack Road. Mr. Tombalakian reiterated that the vacant site could be designed to be in compliance while the other establishments on Kinderkamack Road have been in place for many years. Mr. Mayland called his next witness, the principal objector, Mr. Traphagen. Mr. Traphagen was sworn in by Mr. Regan. Mr. Mayland asked Mr. Traphagen to describe his business and personal connections to the Oradell community. Mr. Traphagen stated that he has been a resident of Oradell for 32 years and the Traphagen firm has been part of the community for 52 years. He added that the Historic Thunise Cooper House which houses the firm has been in the community for 263 years. Mr. Traphagen stated that the firm is pro-development as long as the development will benefit the existing businesses. Mr. Mayland asked that Mr. Traphagen explain some of the projects that he and his firm have been involved with in the Oradell community. Mr. Traphagen stated that he has coordinated with the beautification committee regarding the entrance signage, the Marie Rossi memorial, and his brother Robert Traphagen received an award from the mayor for civic contribution. Mr. Traphagen continued to explain that he has assisted various other organizations in Oradell that requested financial support. Mr. Regan stated that the testimony should pertain to the application as the objector has made his civic involvement apparent. Mr. Mayland asked Mr. Traphagen why he is objecting. Mr. Traphagen stated that he purchased the Historic Thunise Cooper House and considered demolishing it but then decided to refurbish it. He stated that the applicant should follow the ordinances that he had to follow when he did the restoration work. Mr. Michelman noted that Mr. Traphagen came before the board in the past in connection with the work and Mr. Traphagen replied that the Borough requested that he appear for a variance to increase the height of the fence since the parking was going to shine light on to Kinderkamack Road. Mr. Traphagen

stated that he feels his property will serve as a parking lot for patrons if the approval is granted for the applicant to have a restaurant. Mr. Mayland emphasized that Mr. Traphagen contributed to the community by providing crossing flags due to the danger for patrons crossing Kinderkamack Road. Mr. Traphagen continued to emphasize the importance of pedestrian safety by recalling incidents in that area. Ms. Reiter asked a question regarding the building being referred to as historical and Mr. Traphagen confirmed that it is listed on the National record under Brookside Avenue.

Mr. Latsounas of 50 Beverly Road asked Mr. Traphagen if 240 Kinderkamack Road has significance to the history of Oradell. Mr. Traphagen confirmed that the lot is empty but the previously burned building could have been considered historic.

Mr. Mayland recalled Mr. Tombalakian to testify regarding pedestrian safety and traffic engineering. Mr. Tombalakian referred to the parking study prepared in connection with the application and noted that the total accumulation of vehicles over a period of time was not calculated. Adding that neither the restaurant coming to 304 Kinderkamack or the Bergen County Players were not accounted for in the report. Mr. Tombalakian affirmed that in his professional opinion the parking study submitted is insufficient. Mr. Mayland asked Mr. Tombalakian if he has other comments regarding the traffic study. In connection with the incident reports obtained from the Oradell Police Department, Mr. Tombalakian stated that roughly half of the accidents took place in the afternoon. He explained how the times of the accidents align with the times that the proposed restaurant would operate. Mr. Michelman asked Mr. Depken if the police had any comments on the various incident reports. Mr. Depken confirmed that the police chief indicated that he had no comments. Ms. Reiter noted that during the application for the proposed restaurant at 304 Kinderkamack Road testimony for the Bergen County Player was given. Ms. Reiter mentioned the times that the Bergen County Players perform and asked Mr. Tombalakian if based on testimony he thinks the restaurant will be busy at the same times. Mr. Tombalakian stated that an 8:00 PM show at the playhouse could interfere with parking but this scenario is not depicted in the study. Mr. Atkinson asked Mr. Tombalakian if it is customary for downtown restaurants to lack parking. Mr. Tombalakian stated that this practice is becoming more common but added that the substantial application should not rely on offsite parking. Mr. Atkinson moved on to ask how many of the incident reports obtained from the Oradell Police took place in the vicinity of the site. Mr. Tombalakian replied that most of the incidents are to the north of the subject property. Mr. Atkinson asked Mr. Tombalakian if he is familiar with the fact that there are already flashing cross walk signs. Mr. Tombalakian replied that he is aware of the flashing signs but they are scattered across the Borough. Mr. Regan asked Mr. Tombalakian why he did not provide his own detailed parking study after claiming that the parking study prepared by the applicant was incomplete. Mr. Tombalakian stated that it was not his obligation or assignment to prepare a separate study. In previous testimony Mr. Tombalakian referred to Kinderkamack Road as a high-speed roadway. Mr. Barrett asked Mr. Tombalakian what the posted speed limit is in the vicinity of the subject property. Mr. Tombalakian confirmed that the speed limit is 25 mph.

Mr. Michelman stated that it is 8:54 P.M. and called for a break in the hearing.
Mr. Michelman reconvened the hearing at 9:04 P.M.

Mr. Mayland called Mr. Burgis of Burgis Associates to testify regarding planning. Mr. Regan swore in Mr. Burgis and he was deemed an expert witness. Mr. Mayland asked Mr. Burgis to provide his thoughts or concerns regarding the reports prepared by the applicant's planner. Mr. Burgis stated one of his main concerns statutory requirements for the D4 Variance not being met by the applicant. Mr. Burgis explained that there are special reasons that a D4 variance should be granted such as the site being particularly suited for the use, or if the use is inherently beneficial. Mr. Burgis cited other cases and noted how the applicant is over the permitted floor area ratio by 41% and it cannot be considered a minor increase. Mr. Burgis stated that he was the Planner for the Borough for over 20 years and noted that the Master Plan recommends that restaurants be

considered a permitted use instead of a conditional use but it has never been implemented by the council through a zone change. He stated that the Master Plan contains some verbiage which leans favorably to the applicant but noted that when you read into the details this is not the case. Mr. Burgis recalled testimony from Mr. Page where he stated that the proposed restaurant would provide an additional cuisine in the Borough but this is not a valid reason per the Municipal Land Use Law. He added that the site is vacant which allows for many possible proposed uses in the B1 Zone which could be more compliant with the code while also reducing pedestrian foot traffic. Although the speed limit along Kinderkamack Road is listed as 25 mph, Mr. Burgis claimed that most drivers go much faster. Mr. Burgis stated that based on testimony provided, the burden of proof was not sufficiently demonstrated for the bulk variances (the lot width, the front yard setback, and the insufficient loading space dimension). Mr. Mayland asked Mr. Burgis if he believes that with the various changes to the reports over the course of several meetings if the applicant has met their burden for the variances being requested. Mr. Burgis replied that he is not convinced that encouraging a higher traffic use promotes the general welfare of the community. He posed the possibility of the Board denying this application but approving a different application in the future that would have less pedestrian movement especially at peak hours. Ms. Reiter asked Mr. Burgis to elaborate on the importance of the Master Plan not being conceptualized for vacant lots. Mr. Burgis replied that a vacant lot can be designed to meet the code since there are no preexisting conditions which prohibit the lot from doing so. Adding that in this particular application it would be difficult to design for all parking to be contained on site but it could have been attempted to minimize pedestrian foot traffic. Ms. Reiter stated that it is her understanding of the testimony that the Master Plan was not contemplated for vacant lots, rather repurposing of existing buildings. Mr. Burgis replied that the main focus at the time was how to encourage vacant buildings to become occupied. Ms. Reiter asked Mr. Burgis if he agrees that having a vibrant and active downtown with various different uses is a goal in terms of planning for a central business district. Mr. Burgis was in agreement and explained the Master Plan recommendation that restaurants be a principal permitted use in the zone and not a conditional use. Ms. Reiter read the recommendations of the Master Plan and asked Mr. Burgis why the proposed restaurant would not encourage the goals of the zone plan when it seems clear that it would. Mr. Burgis replied emphasizing the dichotomy of having a Master Plan which recommends something but the governing body has never implemented it which puts the Zoning Board in a difficult position. Moving on Ms. Reiter asked Mr. Burgis to confirm that he does not believe that the subject application would function properly in light of the floor area ratio request or in light of the conditions which are not being met. Mr. Burgis stated that an increased floor area ratio intensifies the use along with the parking demand. Ms. Reiter referred to previous testimony where Mr. Burgis stated that a different use could come before the Board and generate less foot traffic. Based on this statement Ms. Reiter asked how less foot traffic would serve to benefit the downtown area. Mr. Burgis replied that per the Master Plan, the B1 Zone can accommodate a variety of commercial uses which would be appropriate for the downtown area. Ms. Reiter referred to the Master Plan page 62 on parking which confirms that there are two blocks on the east side of Kinderkamack Road between Oradell Avenue and Ridgewood Road that have the greatest short fall of parking in comparison to the number of spaces within the area. Ms. Reiter stated that the findings indicate that there is a slight shortfall of parking to the north of the subject property. Mr. Burgis replied that it was recommended that the parking standards be adjusted but the governing body has not implemented such change, again emphasizing that this dichotomy puts the Zoning Board in a difficult position. Mr. Regan asked Mr. Burgis if he believes that the character of the Kinderkamack Road corridor is substantially the same as it was in 2017 when the Master Plan was being drafted. Mr. Burgis stated that the conditions are about to change with the recent approval of the new restaurant at 304 Kinderkamack Road. Mr. Regan asked if the character of the Kinderkamack Road corridor is the same today as it was in 2017 why did the Master Plan recommend liberalizing restaurants as a permitted use rather than a permitted conditional use. Mr. Burgis stated that these recommendations were made to revitalize the downtown but explained again that the governing body has not implemented the recommendations. Mr. Regan referenced the various accident reports obtained by the objector and questioned why the Master Plan would

recommend liberalizing this area when there are issues with parking and traffic conditions. Mr. Burgis replied that the Master Plan was drafted with the thought that onsite parking would be provided to serve the uses proposed in the future nor did it contemplate restaurants of the size of the subject application or the recently approved restaurant at 304 Kinderkamack Road. Based on this Ms. Reiter added that the Master Plan does not recommend a specific size that a restaurant downtown should be. Mr. Michelman stated that even if the recommendations have not been adopted the Zoning Board uses the Master Plan as a guide. Mr. Burgis stated that he was in agreement with Mr. Michelman but added that case law should be considered as well. Mr. Barrett asked Mr. Burgis if he recalls the provision within the Master Plan which states that most existing lots in the CBD Zone do not meet the criteria set forth in the ordinance and that provisions should be made for appropriate street lighting. Mr. Burgis affirmed that he is aware of the statements read by Mr. Barrett. Mr. Degheri asked Mr. Burgis what kind of establishment could go on to the subject property and satisfy the parking requirements. Mr. Burgis stated that a café or an art gallery could work well on the property. Mr. Degheri stated that alternative uses will struggle with parking as well and Mr. Burgis agreed but affirmed his opinion that a different use would generate less evening peak hour traffic. Mr. Barrett called Ms. Karnik, the applicant/proposed restaurateur. Mr. Barrett asked Ms. Karnik how food was delivered at her previous restaurant in River Edge. Ms. Karnik indicated that the staff did their own food shopping one to two times per week in a Honda Pilot. Mr. Barrett asked Ms. Karnik to provide her anticipated hours of operation. Ms. Karnik stated that the proposed hours are 12:00-3:00 PM for lunch hours and 5:00-10:00 PM for dinner hours. Mr. Barrett asked Ms. Karnik how many people she anticipates to come at lunch time. Ms. Karnik replied that she anticipates around 30 people to come for lunch but the most patrons will come on Friday, Saturday, and Sunday. Mr. Barrett called the applicant's engineer, Ms. Osterkorn. Mr. Barrett asked Ms. Osterkorn to expand upon drainage after hearing testimony from the objector's engineer. Ms. Osterkorn stated that the drainage currently has a surface run off pattern from the left side of the property to the right side of the property but adding the curbing will allow the water to drain into the underground retention system. Mr. Barrett asked if all of the water drained on the site will be contained on the site to which Ms. Osterkorn replied yes. Mr. Barrett asked Ms. Osterkorn if all of the proposed lighting improvements are going to comply with the Borough ordinances to which she replied yes. Mr. Barrett confirmed with Ms. Osterkorn that despite comments that the building is too large the proposed design will comply with the side yard setbacks, rear yard setbacks, and coverage requirements. Mr. Barrett asked Ms. Osterkorn to elaborate on why the proposed design can't meet the front yard setback requirements. Ms. Osterkorn stated that the building would not be consistent with the streetscape since it would be set back further than the neighboring building and in consistent with the fencing of the other neighboring property. Ms. Reiter asked Ms. Osterkorn to elaborate on flooding based on previous testimony from the objector who is concerned his conference room/basement area will flood. Ms. Osterkorn stated that she believes that the retention system will address these concerns and the mounding analysis will be submitted to the Borough Engineer. Mr. Degheri asked Ms. Osterkorn if there is any existing underground retention system. Ms. Osterkorn replied that she is unaware of any existing drainage features on the site and does not believe there is one in place. Mr. Mayland asked Ms. Osterkorn if the water in the retention system will have any natural way to dissipate such as evaporation. Ms. Osterkorn replied that the water on the surface will naturally evaporate as if it were on the ground. Mr. Barrett called the applicants planner, Mr. Page. He asked Mr. Page to comment on the testimony and the template prepared by the objector's planner. Mr. Page stated that per his testimony at the previous meeting the garbage truck will pull in frontwards or backwards load the refuse and leave the property, as it was never intended to pull into the loading dock. Regarding the truck interfering with the bus stop, Mr. Page mentioned that per the applicant's previous testimony the hauler that she is using will have two individuals and one can direct traffic. In relation to the time, Mr. Page stated that he found the bus schedule and the pick-up times listed are 7:26 AM and 7:36 AM so it would not interfere with garbage pick-up. Mr. Barrett referred to the comments about a box truck and he referred to the applicant's previous testimony where she confirmed all the grocery shopping would be done by her staff in a standard sized vehicle. With regard to the parking study Mr. Page stated that the time period evaluated was from 6-10 PM since

they are peak business hours for the restaurant. Mr. Page went on to briefly mention the available lots and confirmed that the new restaurant coming to 304 Kinderkamack Road and the Bergen County Players will not negatively impact parking for the applicant's establishment. Mr. Santaniello asked how the restaurant at 304 Kinderkamack Road will handle their garbage. Mr. Page stated that there will be a refuse area on the property but the canisters will be wheeled to the sidewalk along Kinderkamack Road for pick up times. Mr. Santaniello posed the question of if a similar situation would be an option for the applicant. Mr. Page discussed the possibility and Mr. Michelman asked how long it would take for the truck to stop traffic then pull in and back out. Mr. Page replied that the process should take about one minute. Mr. Degheri added that traffic only needs to stop in one direction depending on which direction the truck is pulling in or out. Mr. Bartlett asked who will be managing the hauler. Mr. Page confirmed that the applicant is coordinating with the garbage company. Mr. Mayland asked a question regarding a box truck delivery on site and Mr. Page referred to the applicant's previous testimony that the staff will be doing food delivery. Mr. Mayland questioned parking again and Mr. Page affirmed his belief that parking can be accommodated for the various establishments along Kinderkamack Road if they are all operating at the same time. At this point Mr. Michelman invited members of the public to provide their closing statements.

Mr. Schneider of 594 Brookside Avenue was sworn in by Mr. Regan. He stated that is backyard is approximately 80 feet away and he is concerned about the odor generated by the garbage and parking availability.

Old Business

None

New Business

Mr. Michelman stated that the Board needs two new members. He requested that all interested parties notify Mayor Didio.

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. Cobb and seconded by Mr. Santaniello, all in favor.

The meeting was adjourned at 10:38 P.M.