

**BERGENFIELD ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
TELECONFERENCE VIA ZOOM  
October 19, 2020**

Chairman Shimmy Stein called the meeting to order at 8:01 P.M.

**OPEN PUBLIC MEETING STATEMENT**

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website. Notice of this meeting via the October 9, 2020 Sunshine Notice has been sent to the Record, Star Ledger, and Cablevision, posted on two municipal bulletin boards and the Borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on this matter.

**PLEDGE OF ALLEGIANCE**

Led by Shimmy Stein.

**INTRODUCTORY STATEMENT**

Welcome to the Zoning Board of Adjustment. Let me briefly explain what we do. We are appointed by the Bergenfield Council to decide when a property owner should get relief from the strict application of the zoning code requirements. Typically, we hear two types of variances. The first is whether an applicant can vary from land restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Act. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria, we must grant the requested variance.

**ROLL CALL**

**Present:** Shimmy Stein, Richard Morf, Sara Berger, John Smith, Charles Steinel, Amnon Wenger, Marc Friedman, and Joel Berkowitz

**Absent:** Joel Nunez

**Also Present:** Ronald Mondello, Esq., Zoning Board Attorney, Frank Rotonda, Zoning Board Engineer, Hilda Tavitian, Board Clerk, Council President Rafael Marte, Council Liaison, and Michael Knowles, Planning Board Liaison

**APPROVE MINUTES OF PREVIOUS MEETING – September 14, 2020**

**Motion By:** Amnon Wenger  
**Second By:** Sara Berger  
**All ayes. None opposed.**

## **CORRESPONDENCE**

Board attorney Mondello stated there was correspondence from Barry Doll that is associated with the Kirschenbaum matter. Mr. Leibman may or may not mention that correspondence. There is no other correspondence.

## **VERBAL COMMUNICATION**

### **Comments by members of audience on matters not on evening's agenda**

No one came forward.

Chairman Stein stated Mr. Ravenda had told him there is a very large site plan report in regards to the application for 145 W. Main Street that he has not seen. There is a site plan report the board does not have and without it he does not see how the board can serve the interest of the town in voting on it. After looking in the packet, Mr. Stein stated he found the report that has 5 recommendations on the last page.

Mr. Smith stated in the packet received, there was an attachment with the site committee's remarks.

Mr. Steinel stated it is a 5 page report.

Mr. Capizzi requested a copy of the site plan committee's report as he did not receive it.

## **OLD BUSINESS**

1. Karen Kirschenbaum, 35 Regent Street, Request extension

Chairman Stein and Mr. Mondello recused themselves.

Mr. Leibman, conflict attorney from Kaufman Semeraro & Leibman, Fort Lee, NJ, summarized the letter received from Barry Doll dated September 11, 2020 regarding the resolution for 35 Regent Street. Mr. Leibman stated the letter speaks for itself and didn't think there should be any concern. The request for an extension was properly made. He listened to the entire recording of the meeting to draft the resolution. Mr. Leibman stated his understanding was that it was listed on the agenda under correspondence and not listed as an application because it was not an application. He doesn't remember seeing the agenda or what it said. Mr. Leibman explained the law permits you to take action on any item, whether on the agenda or not, as long as it is a regularly scheduled meeting that's properly advertised.

Mr. Smith stated that one of Mr. Doll's complaints was that it was not on the agenda. Mr. Smith inquired where Mr. Leibman saw it on the agenda.

Mr. Amnon stated the resolution was previously passed and there was a hearing to determine whether or not proper actions were taken on it by members of city council. They determined there wasn't a need for an extension to be granted in the first place and the Kirschenbaum's could have gone ahead as it is.

**Approve Resolution**

**Motion By:** Amnon Wenger

**Second By:** Sara Berger

**All ayes. None opposed.**

**NEW BUSINESS**

1. Rami Glatt  
132 Highview Avenue  
Converting garage into living space

Mark Madaio, attorney for applicant, stated the only variance the applicant seeks is for the use of the attached garage to become part of the kitchen in the improvement. There is a town ordinance that states garages shall not be converted into living space. Mr. Madaio stated in this case they are asking for the garage to be converted to living space. The applicant received a permit to undertake the work, did undertake the work in accordance with the approved plans and converted the garage into living space. There may have been some confusion with the plans or about what was permitted or not permitted. Rami Glatt lives a block away from the premises, which is being converted for his parents to move closer to him. Mr. Madaio stated the conversion was undertaken so his parents could be closer to him, get out of the city and be more comfortable from a COVID perspective.

Lawrence Quirk, project architect, 15 Union Avenue, Rutherford, NJ, stated he was retained by the family for the design of the home. He submitted plans for the renovation and addition to the home, including the conversion of the garage into living space, to the building department. Mr. Quirk stated the upper left hand corner on page A-1 shows the site plan component of the plans. The rectangular jut out on the top part of the plan, which is the back of the house, is marked as existing one story. Mr. Quirk stated it is the garage with a driveway in front of it to Highview Avenue. A wider driveway was designed since the garage was going to be eliminated and converted to a kitchen. The first floor plan shows the design for the new kitchen, replacing the one story garage. The other changes, all interior work, did not require any variances. The plans were submitted, stamped by the borough on April 14, 2020, and permits were issued for fire, electrical, and plumbing. A permit was received for the interior renovation, including the conversion of the garage to a kitchen. Mr. Quirk stated they were creating two master suites on the first floor combining two bedrooms to become one, renovating the entire basement, and minor work to the existing bedroom on the second floor.

Mr. Stein inquired how many cars can be parked side by side in the driveway when finished. Mr. Stein inquired how many residents will be in the house and what their ages are.

Mr. Quirk stated two cars can be parked in the driveway. Mr. Quirk stated three residents, sometimes four residents, will be in the house. Mr. Quirk stated he doesn't know their exact ages, but there is Rami's parents, grandmother who will be staying there occasionally, and a brother that will be staying in the second floor bedroom

Mr. Mondello stated he noticed Mr. Glatt saying no and suggested holding off and ask Mr. Glatt those questions when he is sworn in.

Board member Friedman stated he was out there today to observe the house and would like to know what exactly has been done to the interior of the section that the owner wants to use as a kitchen instead of a garage.

Mr. Quirk stated all of the framing is up, rough plumbing and rough electrical work in the kitchen is done. Mr. Quirk stated there will definitely be two cars, maybe three. Mr. Quirk's response was yes to the capacity of cars being parked in tandem based on the size of the cars with a total of four cars.

Board member Smith wanted confirmation that there will be 2 cars, possibly 3, for the occupancy there.

Mr. Stein inquired if any cars can park in tandem. There was a similar situation with 114 S. Prospect Avenue where a permit was issued when it shouldn't have. Everything was done 100% by the book according to what he is hearing.

Board member Morf wanted confirmation that the permit was already issued. Mr. Morf inquired how a permit could be issued on something that was a prohibited use of the garage. The permit was issued against the ordinance. They knew about the ordinance against the garage existed, and still the permit was issued by the building department. The building department should know all the ordinances that exist.

Mr. Madaio stated the permit was issued, approval was received for the plans, and the work is more than halfway done. Mr. Madaio stated this appears to be either an honest error or a miscommunication. It may have been an issue that wasn't fully understood from the plans. A permit was issued and no one had any malaise here. The work has been stopped for about a month since the building department requested to have the work stopped.

Board engineer Rotonda stated he asked the building inspector the same question and he didn't realize when he issued the permit that they were removing the garage. The plans do not show the garage was going to be removed. The building department felt frustrated and embarrassed because it wasn't their intention to create a hardship for the applicant. This is a special case because the applicant believing in good faith they were proceeding with the permit was later told they were not in compliance and had to come to the zoning board for relief.

Mr. Berkowitz inquired if he plans to expand the existing driveway as it looks like it is close to the neighbor and if they intend to pave more of the driveway. He didn't see if there already is an existing kitchen in the building.

Mr. Quirk stated there is a very small kitchen, 10x10, that is being combined with a space in front of it to create a dining room. There will be a new pavement from the property line. The width of the driveway is 18 feet.

Mr. Friedman stated it would be helpful if Mr. Madaio entered into record the original A-1 document from March 13, 2020 that discloses the use of the structure as a kitchen.

**Residents Within 200 Feet:**

No one came forward.

**Residents Beyond 200 Feet:**

Mary Sullivan, resident, inquired what was the date the permit was issued.

Mr. Madaio stated the construction permit was issued on July 16, 2020.

Rami Glatt, applicant, 62 Spring Avenue, Bergenfield, NJ, stated the property is owned by his parents, Jay and Vera Glatt. His father is 75 years old and his mother is 72 years old. They purchased the property in January 2020. Mr. Glatt stated the house is also for his 94 year old grandmother. The idea was to have a house with no stairs and for his parents to be close to him and his uncle. His parents currently own two vehicles but will give up one upon moving. No one else will reside in the home. There is no room to build another garage on the property. Mr. Glatt stated there were continuous inspections, including framing, plumbing and electrical. The work was not stopped after the inspections. The work was stopped immediately on September 10<sup>th</sup>, 2020 when Mr. Quirk received a voice mail and Mr. Glatt saw the work stop order the following Monday. There has been no work done since that day. The windows and siding are not up due to a COVID delay. Mr. Glatt stated his parents were able to negotiate a 30 day extension with the people buying their house. Mr. Glatt stated his parents have a place to stay for now. They were scheduled to close on their house in New York in a week and a half. Mr. Glatt stated he is fairly new to the process and he was confused to hear the unexpected news. Mr. Glatt stated his father drives a pathfinder and his mother drives a mini van, that they are not going to keep.

Mr. Stein inquired what kind of cars Mr. Glatt's parents drive.

Mr. Friedman suggested Mr. Madaio enter as evidence into the record copies of the permits and notices.

Mr. Smith inquired if Mr. Glatt is aware of the overnight parking restrictions in town and a garage is required.

Mr. Glatt stated he is aware of the overnight parking but was not aware of the requirement of having a garage.

**Residents Within 200 Feet:**

No one came forward.

**Residents Beyond 200 Feet:**

No one came forward.

**Approve and Allow Applicant to Continue with Approved Drawings and Permits**

**Motion By:** Amnon Wenger

**Second By:** Sara Berger

**5 ayes. 2 nays. Motion carries.**

Mr. Mondello stated regardless of the building department making a mistake or not, the zoning board has to weigh the positives and negatives. If the negatives exceed the positives, the board has to deny the application. The applicant may have a strong case at the superior court level to argue. Mr. Mondello stated the board doesn't have the authority to grant a variance because the building department made a mistake.

2. Leen Mosley  
46 Greenwich Drive  
Construct a sunroom

Leen Mosley, applicant and resident of 46 Greenwich Drive, stated the board had previously received the plans and she has forwarded via email prior engineering work for stormwater and pipes that removes all the water from the property. She also provided the board a presentation of before and after pictures of what it will look like.

Mr. Mondello stated there is a requirement that all documents need to be filed with the borough at least 10 days before. This board has changed that time period to 30 days. Mr. Mondello stated the board may decide to still review your application even though those documents may not have been submitted within the required time.

Ms. Mosley stated her home is located in the circle of Greenwich Drive, with odd shaped properties. She had renovated her home in 2016 from a small ranch into a beautiful home. The kitchen and the dining area are dark, facing north. Also, the house in the back of theirs was built up from a one story ranch to a two story colonial with a full attic, making their backyard in full shade the entire day. The kitchen was bumped out by 5 feet already and the dining room is 11 feet long. Ms. Mosley stated she would like to bump out the dining room by 5 feet to make it equal with the kitchen. The exterior walls of the kitchen and the dining room would be a conservatory with a glass roof, bringing daylight to the house. The expansion is about 58 sq. ft., being 50 ft. above the allowed lot coverage. It would improve the quality of life. Ms. Mosley explained that in 2016, she had requested from the building department to substitute the seepage pit with stormwater pipes that could accommodate all of the liters and the sump pump. Ms. Mosley stated during their expansion in 2016, they added the garage into living space and built a new garage. She presented a drawing depicting the stormwater pipe, a 12 inch solid pipe. she was approved to install the pipe in place of a seepage pit that goes from her neighbor's house, through her property, and to the city inlet at Greenwich Drive. Ms. Mosley stated that all this was part of her original permit in 2016. It was not part of the original plans submitted by Brian Adams. She had assumed the board had access to all files that were submitted in 2016.

Board engineer Rotonda stated what Ms. Mosley is presenting is acceptable. He was unaware of the presence of the pipe. Mr. Rotonda stated they always ask for stormwater to be addressed as a standard practice. Mr. Rotonda stated what she was showing was something the board had not seen in the original package. Mr. Rotonda stated Mr. Ravenda's letter states 9 sq. ft. for the rear yard variance which does not make sense. It is better to give her a 7 ft. variance.

Mr. Stein stated she does not need a variance since the total new coverage is 2,027.6 sq. ft. She is allowed 2,149 sq. ft., according to Mike Ravenda. There still is the setback issue. Mr. Stein stated everyone makes mistakes. Based on the drawing, she does not need that variance. The application dated April 6, 2020 has the same number as Mr. Ravenda's letter.

Mr. Smith stated he does have a problem with the application. Mr. Ravenda might have made a numerical error. Mr. Smith stated the square footage for the rear yard setback is wrong. The other existing is 9 ft. and should be left at 9 ft.

Mr. Mondello stated there is a letter dated February 6, 2020 from Mr. Ravenda indicating the required lot coverage is 2,149 sq. ft. and the applicant is proposing 2,194 sq. ft. However, Mr. Smith and the

board chairman both stated that number is inaccurate and the applicant need not get a lot coverage variance.

Mr. Steinel inquired if the drainpipe, shown in the most recent drawing received, that runs through the property and ends in the storm sewer, is adequate drainage for the property. He inquired if is an easement and if it is private or public.

Mr. Rotonda stated he heard the applicant say they put a garage a few years ago and ended up putting in the storm drainage to deal with that situation. It continues to be adequate for what she is proposing now. Mr. Rotonda stated the storm drain is a much better way. An easement is not required because the storm drain serves the private property. Mr. Rotonda stated the drawing he is looking at of the storm pipe is entirely on private property except for the portion that connects to the inlet. The borough exists for the purposes of providing services to its community. She's entitled to connect to the inlet. He doesn't see it as a borough liability and thinks the design is good. It's a burden on the homeowner to ask for an easement and doesn't feel it is necessary.

Ms. Mosley stated in 2016 her neighbor had recommended the town to replace the storm pipe and to put her liters into that. There was a lot of back and forth with Phil Neville and Michael Ravenda to figure out what was there. There was an 8 inch clay pipe and unsure if it was secure throughout. The city and David Gleassey had agreed to allow her to put her sump pump and liters into the storm pipe. She was required to replace the 8 inch clay pipe with a 12 inch solid wall pipe. All of her liters and sump pump are underground leading to it. Ms. Mosley stated when they bump out the dining room, they will be 5 ft. closer to the pipe. There is 0 concern about carrying the stormwater away. It will be going into the storm drain the city required her to replace. The addition is easily 3-4 feet away from the pipe.

Mr. Steinel inquired if the borough has an easement across the property to access the pipe. If it does, is the addition going to infringe on it. Mr. Steinel stated if someone else is going to have flooding and if there is a collapse in the pipe, no one will have access to it. It also extends onto someone else's property.

Mr. Smith stated a seepage pit could not be put in because the water table is too high.

#### **Residents Within 200 Feet**

No one came forward.

#### **Residents Beyond 200 Feet**

No one came forward.

Mr. Mondello stated the applicant had already come before the board for rear yard variance of 9 ft. Mr. Mondello inquired why is she here now. The applicant could be exacerbating the rear yard setback.

Mr. Rotonda stated she was approved but the new addition doesn't show the setback and we are guessing it is 9 ft. It could be 8 ft. There isn't a survey. Mr. Rotonda stated we're approving the plan that's before the board tonight in whatever amount of relief is necessary. Mr. Rotonda suggested putting in 7 ft.

Ms. Mosley stated the 2 condensers are in the back of the new garage.

Brian Adams, contractor with NJ Sunroom Additions, 1199 Route 22, Mountainside, NJ, stated the rear yard variance being sought is 7 ft. Mr. Adams stated the property is not perpendicular with the property line. It does get smaller as it gets closer to the roadside and decreases by 2 ft.

Mr. Smith stated he scaled it with his ruler and came up with 8 ft. He is not the professional and will believe what Mr. Adams and Mr. Rotonda stated.

**Approve the Application with Variance Relief for A Rear Yard Setback of 7 Ft.**

**Motion By:** John Smith

**Second By:** Amnon Wenger

**All ayes. None Opposed. Motion Carries.**

3. Jessica Xiong  
60 Portland Avenue  
Non-permitted use to open a massage-body work salon

Mr. Mondello stated he had spoken with Mr. Friedman about the zone schedule and it looks like it is in the M zone and inquired if anyone has any additional information as to what zone the property is in.

Mr. Smith stated the M zone is manufacturing.

Mr. Stein stated if Mr. Smith looks at the ordinances and the code, it could be permitting a B-1 providing it conforms with all the B-1 requirements. It can't be 100 feet from a school or church, can't be more than 2,500 sq. ft., and everyone on the premises must be licensed.

Mr. Mondello stated that is now irrelevant because it is in the M zone. It is a straight D-1 use variance, not a conditional use. Mr. Mondello stated the difference between a use variance and a conditional use is that it's a lower standard. All of that is irrelevant.

Mr. Rotonda stated the use itself is not permitted in any zone, with the exception of a conditional use in the B-1 zone. Mr. Rotonda stated the board is hearing a use variance and the use is not permitted in the zone. The positive and negative has to be proved.

Mr. Smith stated the middle school is further away but there is a early childhood development school that is only two blocks away. Mr. Smith wanted confirmation that that shouldn't be taken into consideration.

Mr. Stein stated it is more than 100 feet. The town standard for such a business, as a conditional use if it were in a B-1 zone, if it were beyond 100 feet, it would be permissible. The board's job tonight is to decide if they want to permit it, do they want to apply all the criteria of the conditional use of a B-1 zone to that. The application needs 5 yes votes to pass. Mr. Stein stated they have to review the application on its own rights based on the information given now.

Mr. Wenger confirmed the application was deemed complete. The applicant appears to be Jessica Xiong but she is not the owner of the property. Joy Varghese signed an affidavit of ownership giving authorization but it doesn't appear to have nominated Mr. Xiong as the person to make the application. Mr. Wenger pointed out the part of the application that was left blank. Mr. Wenger inquired if the application could be heard tonight since there wasn't a signature from the owner of the property.



Mr. Smith stated he too has questions about the ownership. Mr. Smith inquired if the purchase of the business by the applicant depended upon receiving approval from the board and whether that was a condition.

Mr. Mondello stated if the application were to be approved, it would be subject to having the form filled in. Mr. Mondello stated that would be something between the applicant and the landlord. Mr. Mondello stated none of the conditions matter because it's not in a B zone. Mr. Mondello explained it is a D1 variance which is not that easy to grant, five votes are needed, and the conditional use needs to be forgotten. If the application were to be approved, proof needs to be provided that the owner gave the applicant authorization to come before the board and have the application heard.

Mr. Rotonda stated they are looking at a use variance and they have not yet taken testimony from the applicant. The board needs to understand the nature of the relief that is being considered tonight. Mr. Rotonda explained the board can only grant the use and the application would bifocated. It would still need site plan approval even if this board were to grant approval. It is not permitted in any zone. But, when it is considered as a conditional use, it must receive site plan approval from the Planning Board and other things. It doesn't matter because it is not permitted and it's a different zone. The board has to follow the municipal land use law precisely.

Curtis LaForge, attorney for applicant, stated the only thing the zoning officer heard was the terrible word massage and based on that, he made his immediate determination. However, if the board looks at the notice to the property owners, the applicant wishes to open a hair and nail salon with the ability to do massages. Mr. LaForge stated that it is a wonderful thing that it is close to the middle school. A mother and daughter walking home from school can get their hair and nails done. Ms. Xiong currently lives in New York City. Mr. LaForge stated the owner knows what she is doing here and is 100% with it. Ms. Xiong has been paying rent for two months already. She wants to move out of New York City and move to Bergenfield. It's not a massage parlor.

Jessica Xiong, applicant, 216-10 77<sup>th</sup> Avenue, Oakland Gardens, NY, stated she was residing in New York when she made the application and then moved. Ms. Xiong stated she wants to have a salon to do nails, hair, and massages. She stated her staff would be doing hair and nails and will comply with all state and town requirements. They all will have licenses. All health codes and requirements by the town and state would be complied with. Ms. Xiong stated there will be 3 tables for nails, 1 table for massage, and 2 chairs for hair. It's not a big place.

Mr. Stein inquired how many nail stations, hair dressing stations, and tables for massage there will be. Mr. Stein stated 1 out of 6 stations, about 16%, will be for massages.

Mr. Mondello inquired if the board was to approve the application, would the client have any objections to putting in a requirement of having only 1 bed for massages in the resolution.

Mr. LaForge stated she wouldn't have any objections.

Mr. Steinel stated there are no parking spots and inquired how many people will be working there. Mr. Steinel also inquired what the parking requirement is. Parking is an issue of the square footage of the business. Mr. Steinel stated 4 parking spaces are not going to be enough.

Ms. Xiong stated only 2 employees will be working there at the same time and might only be herself sometimes. It will be her and 1 other person. She does hair, nail, and massage. She is licensed to do all of it.

Mr. Rotonda stated the letter of denial was referred to the zoning board solely as a use. They are now talking about a different use than was stated in the denial letter. Mr. Rotonda stated they are talking about use for a retail establishment for hair and nails and parking is something you want to think about. Mr. Rotonda stated the availability of off street parking and public parking should be entered into testimony. Mr. Rotonda inquired if the applicant can get 4 more parking spots from the landlord. The requirement is 8 parking spots which the applicant can only provide 4 spots. The board would need to give the applicant relief for the 4 parking spots. Mr. Rotonda stated perhaps there are more spaces available to the applicant.

Mr. Stein stated 8 parking spots are the requirements for this square footage.

Mr. Mondello stated the applicant would need a variance for at least 4 parking spots and that's assuming there are no other tenants. Mr. Mondello presented the drawing, showing board members the parking lot in the back and the parking lot in the front of the building.

Ms. Xiong stated the landlord had told her she can use all of the parking spots. The other tenant uses the spot once a week. She thinks there are 4 parking spots. Ms. Xiong stated there is one house across the street. There is parking behind the Asian market on the other side.

Mr. LaForge stated it looks like there is more space than 4 parking spots.

Mr. Steinel stated they are currently not telling us what's is in the building. The drawing provided shows 4 parking spaces that is hand drawn.

Mr. Smith stated he went to the property with the drawing and did the same thing. The reason they did this is because you can't really park more than 4 cars. A car can't go through if cars are parked in a way other than the way it is shown on the drawing. The car spot in front of the building is really on the sidewalk. Mr. Smith questioned where the other tenant is going to park, even if they are there once a week. There isn't enough parking for 4 vehicles since the fourth vehicle is on the sidewalk. Mr. Smith stated the applicant must have parking for her employees.

Mr. Stein stated a parking variance is needed besides the use variance. Mr. Stein stated the board doesn't usually grant variances based on public parking. Every business must sustain parking for themselves.

Mr. Rotonda stated the matter was referred to the board as a massage parlor and can only fit 1 person at a time in the building. It looks like you can fit more cars but the applicant might have to park behind her employees so that they can't leave until the applicant moves her car.

Ms. Xiong stated it is only one employee and herself working and sometimes it would just be her working. Ms. Xiong stated she can walk to work sometimes and can bring the employee to work with her, using one car. Ms. Xiong stated she is okay if her car was blocked in.

Mr. LaForge asked Ms. Xiong if she drove there and her employee drove there also, would she be okay with having other cars block her in while she is there.

Mr. Friedman stated he is troubled. Mr. Friedman stated under the municipal land use law, the applicant has the burden of proof to show that the requirements of the statute are met. Mr. Friedman stated he has heard nothing from the applicant of what and how the positive and negative criteria are satisfied.

Mr. LaForge stated he disagreed with the zoning officer about this being not permitted. The supreme court has made it clear that no town can simply whitewash any use. Mr. LaForge stated tonight everything has changed. They might not even have to be here and have to go to the Planning Board as they are not making any changes to the building. Mr. LaForge stated the positive criteria is that it is good for the community. People need places to get their hair and nails done. Men and women need a place to get a massage when they are sore. In a typical massage parlor, there are 6-10 rooms specifically designed for a single massage table in each one of those rooms. None of that exists in this application. There isn't room for even a second massage table. Mr. LaForge stated there is no detriment to Bergenfield. The applicant wanted to come to this town, started paying rent, and live in Bergenfield. The positive and negative criteria are easily met. The landlord was desperate to rent it. There is nothing there now and has been vacant for some time. Mr. LaForge stated it would bring people into Bergenfield and support the local businesses in town. Mr. LaForge stated there needs to be, at least, a thick screen to provide the person laying there some privacy.

Mr. Rotonda inquired if it would be fair to say the applicant is removing a vacancy and breathing life into an empty property. Mr. Rotonda inquired if it is possible not to have a door so that no one worries an illegal act is occurring behind the door. Mr. Rotonda stated parking is one of the issues.

Mr. Stein inquired about what will be done about the parking and if tandem parking will be allowed. Mr. Stein stated should the board approve the application, there should only be 1 table and there must be nail and hair stations.

Mr. Steinel stated the issue of parking hasn't been resolved.

Mr. Berkowitz stated there is a dead end side street that people can park there during the day that wouldn't cause any traffic issues. There seems to be plenty of parking.

Mr. Wenger inquired if there is any negative criteria to allowing a use variance for this location.

Mr. LaForge stated the only negative criteria would be that it is a lesser use that is already granted to this area.

Mr. Mondello stated some of the things permitted in this zone are: vocational school, office building for executive engineering, administrative purposes, scientific or research laboratories devoted to research design or experimentation, fabrication of paper products, wood products, motor vehicle sales and service, wholesale business establishments, light industrial uses, warehouse, shop and customer sales area engaged in sales or crafts, fuel dealers, and building contractors.

Mr. Smith inquired if the applicant had any other businesses in New Jersey besides the one in New York City. Mr. Smith inquired how many nail/hair salons are in the vicinity. Mr. Smith stated that Washington Avenue is one block up and there are over 15 hair and nail salons. Mr. Smith inquired what is the

average time it takes to do someone's hair and/or nails. Mr. Smith inquired how long it takes to have all 4 services – manicure, pedicure, hair, and a massage.

Ms. Xiong's response was no. Ms. Xiong stated it could take 30-60 minutes for a manicure, half an hour for a pedicure, 30-60 minutes for a massage. It depends on the service. Ms. Xiong stated that it doesn't happen that often that a person wants all 4 services. The average customer is there 45 minutes.

Mr. LaForge stated the applicant picked that area because she did not see any nail or hair salons in the vicinity. Mr. LaForge stated Washington Avenue is a very busy street and is difficult to find parking. She is offering you services in an area that isn't congested, which is a positive criteria. Mr. LaForge stated the applicant has nail, hair, and massage license.

**Residents within 200 Feet and Beyond:**

Nelson Reynoso, 14 S. Franklin Avenue, inquired if everyone has read the news in New Jersey regarding the problem with the so called massage and nail businesses. They are not really doing what they say and is a serious problem in different New Jersey towns. Mr. Reynoso stated places like these have been shut down and are very sneaky. Mr. Reynoso stated we do not want this in our community and inquired if the applicant has a license to do massages.

Ms. Xiong stated she has a New York cosmetic license enabling her to do hair and nails that she will transfer to New Jersey. She has a New Jersey massage therapist license.

Mr. Rotonda stated she can't open until the Board of Health gives her a permit and she has to comply with the requirements.

Mr. Mike Knowles, 37 Palisade Avenue, stated the former Mayor had increased the parking limit to 4 hours in the parking lot on Legion Drive and Palisade Avenue because the women were complaining they could not have their hair done without having to move their car.

Mary Sullivan, resident, inquired if public parking is permitted in front of the building on Portland Avenue. Ms. Sullivan inquired if the only available parking would be on the side, on Bedford Avenue. Ms. Sullivan stated the board had previously granted a variance for parking for a dentist on Prospect Avenue because people weren't allowed to park on the street in front of his business. Why wouldn't people be allowed to park on Bedford Avenue for this application.

Mr. Berkowitz stated there is a yellow line right in front of the building. Mr. Berkowitz's response was yes or in the lot or across the street. Mr. Berkowitz stated there are legal parking spots up the street.

**Deny Approval of Application**

Motion By: John Smith

Second By: Sara Berger

**5 ayes. 2 nays. Motion to Deny Application Carries.**

4. 145 West Main Street, LLC  
145 West Main Street  
Change of use to a multi-family dwelling R-5 zone to RM zone

Matthew Capizzi, attorney for applicant, stated the application is at 145 West Main Street. The 3 lots was a result of a subdivision by S. Presbyterian Church in 2014. Mr. Capizzi explained that his client acquired the 3 lots and is proposing the development of two floors of apartments with one floor of covered parking below. They are proposing a mixture of one and two bedroom units for a total of 16 units, 12 one bedroom units and 4 one bedroom units. 25 parking spaces will be provided based on the RSIS requirement. The planner will be addressing the affordable housing issues. Multi-family dwellings are not permitted in the R5 zone. A D1 use variance is needed to provide for multi-family housing. They also require a height variance, but it's less than 10%. Mr. Capizzi stated a D6 level variance is not warranted because the use is not allowed in the zone.

Mr. Mondello stated the review of this application will be carried over to the next meeting under old business. Mr. Mondello stated there won't be any further notice. The next meeting is November 2<sup>nd</sup>, 2020 at 8:00pm. The first thing Mr. Capizzi will be asked at the next meeting is to proof that residents within 200 feet were noticed. The board has encountered this situation before and more often than none the applicant is able to produce evidence that the notices were sent.

5. 34 Highgate Terrace, LLC  
34 Highgate Terrace  
Build a new single family home

Mr. Jordan Rosenberg stated 34 Highgate Terrace is a new house. They are asking for a maximum lot coverage variance of 33.9% and total improved lot coverage of 47.9%. They are not asking for side yard setback variances. They are asking for 7.58 ft. on the left and right side. The existing house has a left side setback of 4.3 ft. and a right side setback of 4.7 ft. It is an improvement to the neighborhood by bringing the home in on both sides. The house will have the appearance of being less voluminous than it is today in terms of its width. The house is simple, pretty, clean and new.

Mr. Stein stated that anyone who was present for this application can come back next month, November 2<sup>nd</sup>, 2020 at 8:00pm. No further notice is necessary.

#### **MOTION TO ADJOURN MEETING**

**Motion By:** Amnon Wenger

**Second By:** Charles Steinel

**All ayes. None opposed.**

Meeting was adjourned at 10:55 pm.

Respectfully Submitted,



Hilda Tavitian, Zoning Board Clerk