

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
TELECONFERENCE VIA ZOOM
May 25, 2021**

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

Chairman Stein stated the only item on the agenda tonight will be Old Business, 145 West Main Street.

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 May 4, 2021 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.

Members of the public calling in to the meeting who would like to ask a question or make a comment at the proper time can press * 9 to raise their hand and *6 to unmute themselves.

PLEDGE OF ALLEGIANCE

Led by Board member Smith.

INTRODUCTORY STATEMENT

Read by Board member Friedman

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 regulations set forth in the Bergenfield zoning ordinance. 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. The approval of a use variance, if the statutory requirements are satisfied requires five affirmative votes.

ROLL CALL

Present: Shimmy Stein, Richard Morf, Sara Berger, Joel Nunez (joined at 8:30pm), John Smith, Charles Steinel, Amnon Wenger, Marc Friedman, and Jose Morel

Absent:

Also Present: Ron Mondello, Zoning Board Attorney, Frank Rotonda, Zoning Board Engineer, Councilman Marte, Council Liaison, Michael Knowles, Planning Board Liaison, and Hilda Tavitian, Zoning Board Clerk

CORRESPONDENCE

Mr. Mondello stated there was correspondence from Mr. Capizzi and Mr. Lieberman. Mr. Mondello stated he will discuss what was written in the letters at some other point in the proceeding.

OLD BUSINESS

Application: 145 West Main Street, LLC
145 West Main Street
Change of use to a multi-family dwelling R-5 zone to RM zone
(Carried over from May 3, 2021 meeting)

Matthew Capizzi, 11 Hillside Avenue, Tenafly, attorney for applicant, stated this matter was last before the board on March 17, 2021. At that time, they heard testimony from the architect regarding some revisions to the architectural plans, with further details to the trash room, inclusion of a door to front of the building, and showing a three bedroom apartment on the second floor complying with COAH obligations. Mr. Luglio, traffic engineer, had testified regarding supplemental traffic information he had provided. Both of the witnesses were questioned by members of the board and the public. There were about ten members of the public unable to ask their questions for Mr. Luglio at the time. If those members of the public are online this evening, they can ask Mr. Luglio their questions relative to the testimony he provided at the March 17th, 2021 meeting. David Spatz, the planner, will also give his testimony tonight.

Mr. Mondello stated there were 14 residents who were not able to ask their questions.

Mary Sullivan, resident, inquired if it would be possible to put a speed bump at the exit/entrance to the garage. It would help slow traffic down coming in and out and would help pedestrians inside the garage who may not see a car coming. It would be a low cost solution. Ms. Sullivan stated it would be underneath the building going in and out of the garage. She was looking to have both, but it's up to the board to decide what would be best. It was stated at a previous meeting that 8% of the population does not own a vehicle and up to 15% of residents rely on mass transit.

Mr. Luglio, traffic engineer, asked Ms. Sullivan if the speed bump would be in the sidewalk area or going into the garage underneath the building. Mr. Luglio stated it would still be out of the right of way. Mr. Luglio asked if Ms. Sullivan was suggesting the speed bump be in addition to the pedestrian signal or it would replace the pedestrian signal.

Mr. Stein asked Ms. Sullivan if she was not requesting a speed bump be on public property.

Mr. Capizzi asked Mr. Luglio if both would be needed or would just a speed bump be sufficient.

Mr. Luglio stated they could do one or the other, both would be excessive. If a speed bump were installed, it would be somewhere between where the garage, facing the building and the garage starts and where the sidewalk is. The vehicle coming out would have to go over and stop in advance of the speed bump so it would be before the sidewalk. On the way in, it would be in the same position, but closer to the garage. One is more expensive and from an aesthetics standpoint, the traffic signal would stick out more than a speed bump. A speed bump could be installed and if it is not effective, then they would look into having the signal installed. Yes, that was the original study. On page 2 of the traffic/parking assessment, it shows that 8% didn't own a vehicle and 15% utilized public transportation or used other means to get to work. Ms. Sullivan inquired what was the Bergenfield census number that was used. She inquired what was the 2018 census number. In the 2010 census, the Bergenfield population was 26,764. She asked Mr. Luglio if

he had a different number for the population. Ms. Sullivan stated if there is a 10% growth, then the current population might be 30,000 people in Bergenfield and inquired if that sounds reasonable. Ms. Sullivan stated Mr. Luglio had previously testified that it was 8% of the population and now he is stating 8% of people old enough to work. Ms. Sullivan stated she knows a lot of people in town who own a vehicle but rely on mass transit to get to work. They still would need a vehicle to get to the doctor or the grocery store. Ms. Sullivan inquired about the number of cars registered in Bergenfield. Ms. Sullivan inquired why it's not relevant.

Mr. Luglio stated the census track used was from the last update in 2018. The percentage is based on what the actual population was during 2018. He doesn't know what that number is. Mr. Luglio stated he doesn't know what the population is right now and would have to look it up. The number they have is based on percentages of the population. He would have to go back and look at what the population figure was in the report. It was 8% of people that were old enough to go to work. It's true, someone could own a vehicle but not use it Monday-Friday. Therefore, the number of vehicle trips coming in and out of the site during the am and pm peak hours would be a lot less. Mr. Luglio stated the number of vehicles registered is not relevant to this application. There is no reason to know that.

Mr. Capizzi stated Mr. Luglio can't answer that question. Mr. Luglio would be speculating.

Mr. Mondello inquired if Mr. Luglio knew the number of registered vehicles in Bergenfield.

Mr. Luglio's response was no.

Marion Delarche, 85 Levitt Ave, inquired if the traffic signal was a regular signal with a green light or was with some other type of warning system. She inquired if it could be a speed bump with a warning system like the ones they have in Manhattan. Mr. Delarche stated it doesn't have to be loud, but just a ding like a bell so pedestrians are aware someone is about to come out. Ms. Delarche inquired if there is any way to take into account the school isn't just part of rush hour traffic. It is the focus of traffic. It's concentrated as people's destination. Ms. Delarche stated the morning rush hour would be more of a problem. Ms. Delarche inquired if it was measured in conjunction with the drop off zone from the school which is directly across the street. Ms. Delarche inquired if anyone has gone out and stood on that corner and checked lines of site from the intersection. She inquired what the definition of a good enough line of site is. Ms. Delarche stated she did contribute.

Mr. Luglio stated they had proposed a regular traffic signal that would be pointed to the garage entrance for cars coming out of the garage. Across the driveway, at the sidewalk, there would be pedestrian signal heads for people walking across so they would either see a walk sign or a don't walk sign. Mr. Luglio stated having some audible system would be activated all the time when a vehicle is coming out. It may go off at any time and would conflict with the noise ordinance and is something the board may consider. Mr. Luglio stated he doesn't think it is necessary here because of the signal. It would be up to the board to decide. If they go with the speed bump, there's something that they could utilize. They can incorporate that into the speed bump or just before a vehicle goes over it. Mr. Luglio stated the traffic study itself only looked at the actual proposed driveway. The amount of traffic generated by the proposed project does not warrant a study of the intersection itself. The most traffic generated at the intersection could be attributed to the school. The school traffic would be from 2:20-3:30pm. The residents from the building wouldn't be back until 5:30-6:30pm. The peak hours don't overlap. There was a total of 7 vehicle trips coming in and out during the peak in the morning. Mr. Luglio explained 7 over the course of the entire hour is not a significant number to consider any adverse activity at the intersection and is not measurable.

Mr. Mondello stated those numbers are inconsequential. Mr. Luglio's answer this evening and at prior meetings has been that those numbers are insignificant and would not impact his study.

Mr. Capizzi stated in the practice of traffic and engineering, Mr. Luglio's testimony has been that the standard in the industry doesn't require or demand that form of study be undertaken. Mr. Capizzi stated they have done that.

Mr. Luglio stated line of site was what was proposed was good enough in both directions. It was part of the earlier reports.

Mr. Mondello inquired if Ms. Delarche contributed to the GoFundMe, electronic fund in the hiring and retaining of Mr. Lieberman. It is important for the board to know. Mr. Capizzi has the right to know.

Mr. Capizzi stated they should hold discussing the GoFundMe because the board had decided to discuss the letters submitted by him and Mr. Lieberman at a later time. It is out of place to do it now. Mr. Capizzi asked Mr. Lieberman if he is representing Ms. Delarche.

Mr. Lieberman stated it is not out of place. He would like to say something if Mr. Mondello is going to keep on asking a question about it which he shouldn't be.

Mr. Mondello requested both attorneys to stop arguing and to address him instead of arguing with each other. He apologized as he felt it was important to understand whether or not the residents speaking contributed to that fund.

Mr. Lieberman stated he wasn't speaking to Mr. Capizzi. He was going to address the board. The issue is a first amendment right. Anyone has a right to contribute to any organization. He has one client in the case and that is the person whom he has entered an appearance for, Mrs. Rosado. Mr. Lieberman stated he doesn't represent anybody else. He doesn't know who is paying for it. Mr. Lieberman stated there is case law that states that the board has the right to ask and used the Village Supermarket case as an example. He wasn't aware of the GoFundMe page and has not met any of the contributors.

Mr. Capizzi stated he thinks the case law does support Mr. Mondello in asking the question. The Village Supermarket case was cited by him for the board's ability to inquire into it. A court did say where there is a fund created in opposition, there is nothing impermissible about it. He had said that in his letter. Mr. Capizzi stated whoever is contributing to pay for Mr. Lieberman's legal fees or for other experts is important information the board needs to be made aware of. However, Mr. Capizzi stated he can't answer for the board. The Village Supermarket case says it is an area the board is free to explore. In his opinion, the group has formed a collective neighborhood opposition to this application and is using Mr. Lieberman for that purpose. There is nothing wrong with that. They have a neighborhood group, have allowed themselves to act independent of each other, but also to use Mr. Lieberman's services which is not appropriate. If they have elected Mr. Lieberman to be their designate and if he's their spokesman, that's fine. They can't have constant questions from Mr. Lieberman and others who have signed under his retainer on the same issue. There needs to be some element of efficiency in the process. There can't be ten questions on the same issue from ten different people. The process needs to be streamlined.

Mr. Mondello inquired why it is important for the board to know. He inquired why should the board care if Ms. Delarche spent \$10 to assist in objecting to this.

Mr. Lieberman stated he respectfully believes it would be reversible if they did that and they don't want to do that. There is not one case in the state of New Jersey that stands for that opposition. He has one client. There is not one case in New Jersey that excludes a citizen from asking a question just because they helped aid his client in paying his bill.

Mr. Mondello stated he agrees. Mr. Mondello stated he doesn't think it is relevant to ask if an individual has contributed and those individuals are entitled due process to ask questions.

Chairman Stein stated they all know there is a GoFundMe page. It is public information. They need to move the process along.

Mr. Luglio stated the site distance is 280 ft. looking to the right of the intersection and 240 ft. looking to the left of the intersection.

Mr. Stuart Lieberman asked Mr. Luglio if he would characterize Bergenfield as a transit rich community. Mr. Lieberman inquired if Mr. Luglio is aware the applicant is seeking a two car variance. Mr. Lieberman requested confirmation from Mr. Luglio that he had testified that even though a person might use mass transit they would still need a car to go shopping and would need a parking spot.

Mr. Luglio stated no public transportation is not dominant in Bergenfield. Mr. Luglio stated yes. Mr. Luglio stated that was based on ownership level and the other was how they were assigning parking spaces to the units. Mr. Luglio's response was yes.

Abraham Matute, 144 W. Main Street, inquired about where the pictures of vehicles backing out and staying in the travel lane Mr. Luglio had mentioned were. He didn't present that information.

Mr. Capizzi stated they are not presenting any new information relative to traffic. They don't have any pictures.

Mr. Mondello asked of Mr. Luglio to share the pictures on the screen, if there were any.

Mary Hernandez, resident, inquired if Mr. Luglio can give a percentage increase of the 7 vehicles leaving during peak hours. Ms. Hernandez stated there isn't anything preventing a renter a year or two from now from going to the council to complain about the parking rules. They can complain about the rules on the street as there is no overnight parking right now. Ms. Hernandez asked Mr. Luglio to explain how 7 vehicles can come in and out if there is only one way to go in and out. Ms. Hernandez stated the information the principal of Franklin School provided was presented as a expert witness and requested clarification regarding that. The principal didn't realize that his information was being presented as a witness. Her understanding from a Board of Education meeting was that the principal had wanted to submit something into the record which wasn't allowed. He could come to the meeting and talk about it, but he wasn't allowed to submit the letter. Ms. Hernandez stated that the principal didn't realize the information he provided Mr. Luglio was going to entered as fact. She inquired if the principal knew Mr. Luglio was going to use that information in this meeting. She inquired how residents can submit their own traffic study and wanted to know what she needed to do. She inquired if it needed to be submitted prior to a meeting.

Mr. Luglio stated at the 1/27/21 meeting, there were four figures put into the record. The last figure had pedestrian counts they conducted on 12/15/20. The total was 3.6% traveling westbound in front of the site. The percentage would be smaller for both directions. Mr. Luglio stated 7 vehicles is a small number of vehicles to be generated by the site. It was proposed to have one access site because of the school pick up and drop off on Franklin Avenue. A two way driveway is as safe and efficient as a one way driveway.

Mr. Capizzi stated the town council wouldn't have a say as this is private property. Anything is possible. People can petition the town council for anything.

Mr. Mondello stated he has no recollection of ever admitting a principal or anybody from the school district as an expert in traffic or any other expertise.

Mr. Luglio had called the principal of Franklin school to inquire about what mode of operations they had during the times of the pandemic, were they open virtually or in-person. Mr. Capizzi stated he also inquired as to the number of children that walked to the site. Mr. Luglio incorporated that as part as his testimony. He doesn't classify that as expert testimony. Mr. Capizzi stated they called the principal to find out the nature of the operations of the school and relayed that information back to the board.

Mr. Luglio stated he had reached out to the principal on 12/20/20 and his main focus was to understand what the time period of drop off in the morning during peak hour was. He said anywhere between 8:10am and 8:30am, and if they were in school or hybrid. He inquired what percentage of children were in school. The principal had confirmed the time of pick up and drop off and that they didn't have all the children in school. That was it. Mr. Luglio stated he made the principal aware of his name and his connection with this application and was trying to focus on when the children were going to school, what time period they arrived in school, and if a majority walked to school.

Mr. Mondello stated they are not able to cross examine a letter. Mr. Mondello stated Ms. Hernandez is relying on a conversation with the principal and was unaware that his information was going to be used. Mr. Mondello inquired how would Mr. Luglio know what's going on in the principal's head. Mr. Mondello stated during the comment period someone can present it, the board will entertain and weight it. The board can handle it at the end during the comment period. If Mr. Capizzi and Mr. Lieberman want to review it beforehand, Ms. Hernandez would have to submit it in some type of drop box via email. Ms. Hernandez can submit it to Hilda, the clerk, and they will take it from there.

Mr. Capizzi stated they have to review it at the time of the submission. Mr. Capizzi stated he would appreciate it if it was submitted in advance.

Jacqueline Romney, 10 E. Church Street, inquired if Mr. Luglio looked at the public traffic safety data. There were six accidents at W. Main Street and Prospect Avenue. There was a total of nine accidents from 2019 to now, maybe more.

Mr. Luglio stated they requested three years of accident information in the area. It was part of the 12/30/20 report. There was a total of five crashes. One involved a pet, one was a rear end, one was at the intersection, and one was in the neighbor's driveway. That's far away from the property.

Board member Friedman inquired what was the date of the first report Mr. Luglio had submitted. Mr. Friedman asked if Mr. Luglio recalls when he first gave testimony. At that time, they were already deep into the pandemic and there was some discussion about the decrease in traffic in that area due to the pandemic. Mr. Friedman had asked Mr. Luglio at that time if he had preferred to have information concerning the traffic flow in the area pre-pandemic. Mr. Friedman stated the traffic has returned to its pre-pandemic state and asked Mr. Luglio if it would be preferable do his analysis now based on normal traffic flow rather than rely on the traffic observations made of the traffic flow in October 2020.

Mr. Luglio stated the first report was 10/15/20 and the revision date was 10/16/20. The original was sent out and a day later there was a correction made based on the number of parking spaces they were providing at the time. It was 12/7/20 when he gave his first testimony. Mr. Luglio stated, at no point, did they do an analysis or traffic count along W. Main Street or Franklin Ave. The reason is this project develops or contributes such little traffic to the road way that it doesn't meet any threshold to do an analysis of the intersection or even of the driveway itself. If he were to do an analysis of the intersection,

whether it be traffic volume they collect in December or now, the incremental difference of the existing condition and adding seven vehicles is not going to be distinguishable, a measurable difference.

Mr. Friedman inquired if there is ten times the amount of traffic now than there was in that area, it would not impact his conclusions.

Mr. Luglio stated that is correct.

Board member Smith inquired what happens if those seven vehicles become 10-14 vehicles for those residents that have doctor's appointments during the day time, Monday-Friday. People could want to go shopping during the week. Mr. Smith inquired if there can be more than seven vehicles entering or leaving Monday through Friday.

Mr. Luglio stated what they discussed was what was expected on an average weekday. That is based on thousands of studies done and that gives the methodology they have to follow. Some days may be less and some days it may be more.

Mr. Smith stated he can't cross examine the traffic studies Mr. Luglio is getting his information from. He doesn't know who the experts are. Mr. Smith requested clarification that 8% of the number of households/people living in the area don't own vehicles. Mr. Smith inquired if Mr. Luglio looked at the houses in the area for the number of cars in the vicinity of the project. He is trying to find out how many vehicles are in the one block area of the vicinity of the project. At the first meeting he had asked Mr. Luglio to talk about N.J.A.C. 521-3.1 paragraph G and he hasn't gotten any input. It has to do with the traffic flow and would like an answer from the traffic engineer. Mr. Smith stated there are four parts that he needs an explanation on.

Mr. Luglio stated in the census traffic data 8% did not own a vehicle. It didn't say anything about registered vehicles. They assume all of Bergenfield as one census track. The 8% is census information and the seven vehicles generated during peak hour is from the Institute of Traffic Engineers. They are two separate things. That's not how a study is done. They don't count the number of parked cars on the street or driveways. Mr. Luglio stated it's not related to traffic. He read into the record N.J.A.C 521-3.1 paragraph G. They are seeking a two parking space variance which in his opinion is de minimis. Mr. Luglio stated it's a development site, residential in nature, and a de minimis exception of two parking spaces falls within the site improvement act. Yes, it is only two parking spaces and in general on an average day only generating seven vehicles. It doesn't aggravate or impact public health and safety. They have taken into account existing infrastructure and have not formed an analysis of the future condition. It is based on the standards they follow and this project has not developed enough traffic to conduct or perform an intersection or driveway analysis.

Mr. Capizzi stated it is the de minimis exception criteria from the RSIS. It's in the opening recital of the RSIS.

Meeting was recessed at 9:29pm and resumed at 9:40pm.

Stuart Liberman, from Lieberman, Blecher & Sinkevich P.C., stated he represents Janet Rosado-Class.

David Spatz, 60 Friend Terrace, Harrington Park, NJ, planner, stated he attended all of the other meetings and has been present this entire meeting. He is aware of where they started and where they are today in terms of the revisions to the plans. Mr. Spatz stated he visited the site on a number of occasions and is familiar with it. In addition to reviewing the plans and listening to testimony, he reviewed the zoning ordinance and master plan, and prepared for this evening. Mr. Spatz stated he was requested to provide

planning testimony, review the plans and reports, visit the property, and provide planning testimony for this evening. Mr. Spatz stated this site consists of three separate lots and is part of a larger site of the S. Presbyterian Church that was subdivided into five lots. There are two remaining lots that are not proposed. The five lot subdivision was approved in 2014 by the board but no development has taken place. The neighborhood surrounding the property contains a variety of land uses. Mr. Spatz stated adjacent lots to W. Main Street and across the street from the property contain residential uses. North of the site is the S. Presbyterian Church. Franklin Elementary School is located on the western side of N. Franklin Ave and is directly opposite the proposed property. The south western side of W. Main Street and Franklin Ave contains an auto repair facility. Cooper's Pond park is located further north of the site. The proposed property contains an older, unoccupied building that will be removed. They are located in the R5 zone, which does not permit multi-family developments. They are seeking a use variance. There are a couple of other C variances that are assumed within the use variance. The C variances they are seeking are front yard setback, which has been modified since the original proposal. They are at 23.14 feet on W. Main Street, where 25 feet is required. They have a rear yard of 21 feet, where 25 feet is required. That has been slightly improved since the original proposal. The lot coverage is 66.36% of the site, where 40% is permitted. It has also been improved since the original plan. They also need maximum building height variance. They have three stories at 32.16 feet in height, where the zone permits two stories at 30 feet. Originally, they were at 32.99 feet and have slightly reduced it. The height falls within the threshold of the municipal land use law for height variances. They have a C variance versus a D variance for building height. Lastly, they need a de minimis exception for parking. Mr. Spatz stated 26 spaces are required by RSIS and they are providing 24 parking spaces. The revisions to the plans made have eliminated the building coverage variance by reducing the size of the building and shifted its location.

The property is well suited for the proposed multi-family use. It is in a neighborhood that is primarily developed with residences, an elementary school, a large church property, and there are lower density uses. The multi-family building provides a good transition from the quasi public uses between that and the lower density residential. The site itself is 10,215 sq. ft., larger than the minimum lot size required in the zone. It allows for a larger development. The site has frontage on two streets. The building has been designed to relocate the driveway from N. Franklin Ave to W. Main Street. The original subdivision had two lots that fronted on W. Main Street and one on Franklin Ave. Instead of three separate driveways, they are proposing only one driveway on W. Main Street. This will reduce traffic impacted on the Franklin elementary school property. This is an appropriate property for a larger scale development than what would be permitted in the zone. The courts have held that a way of determining the special reasons have been met by a use variance and by stating how they follow the purposes of zoning as stated in the municipal land use law as well as municipal ordinances. They are consistent with supporting a number of those purposes. The site is being cleaned up. They meet purpose E. The proposed development is consistent with the neighborhood. It provides needed housing and provides smaller units. They also meet purpose F. All drainage will be contained on the site. The positive criteria are met for the C variances. The proposed multi-family development is consistent with the 2017 reexamination report.

Mr. Capizzi inquired if Mr. Spatz believes there is any negative impact on the zoning ordinance.

Mr. Spatz stated special reasons exist for the use variance. Mr. Spatz stated they meet the goals and objectives of the master plan reexamination report. The building was modified from its original submission to remove the building and parking from an easement that was located there and served to further move the building away from an adjacent property. Mr. Blake, the architect, had testified that there would be no significant affect on light and open space on that adjacent property. The building would be about the same size as three single family dwellings. The most significant affect by combining the lots and developing the proposed building is that the original subdivision had a driveway directly opposite the school and two other driveways on W. Main Street. They eliminated that by combining that into one

driveway on W. Main Street as far away from the intersection as possible. That has a significant public benefit. They are only 2.16 feet in height over than what is permitted within the zone. It is at the central portion of the building and it won't affect the other properties. Mr. Blake had testified that a peaked roof would be aesthetically better and would fit in with the residential character of the neighborhood. Smaller units will generate less trips and traffic than single family homes would. Mr. Spatz stated he supports Mr. Luglio's testimony that it would be more beneficial to the neighborhood. The design of vehicles coming out of the driveway of the building head first provides more safety than three single family homes would. Mr. Spatz stated trash receptacles would be kept within the building and would be taken out when the private carting service was there to load it onto a smaller truck. There will be no trash cans in the street and a smaller vehicle would be able to pull into the property rather than park on the street for a certain period of time. The trash operations are going to take place in the rear of the building, out of sight of the roadway. The north and south property lines are going to be heavily landscaped and there will be a six foot fence behind the landscaping. The front yard within the setback area will be landscaped with street trees, evergreens, and other plantings. The proposal will provide one affordable housing unit. The plans were modified to provide one three bedroom unit to satisfy the requirement. All four criteria of the site improvements act have been met and the de minimis exception could be granted.

Board member Steinel inquired if the application is granted, three out of the five lots would have this structure on it. He stated he doesn't know a lot of people who would want to buy a 50x100 lot to build a single family home next door to an apartment building. His problem is that two years down the road, the owner of those lots, because of what was allowed next door, say they have useless lots and are put in a position to be compelled to grant a D variance to allow for a smaller apartment building, which would be a drastic change to the neighborhood.

Mr. Spatz stated he disagrees with Mr. Steinel. He stated just because a variance was granted for this property, they are not required to grant the same variance at an adjacent property. All properties are looked at individually and there are certain conditions on this site that might not be present on that site. The development of this property would not affect the development of that property.

Board member Smith stated it was the Planning Board that approved the subdivision. Mr. Smith stated that the traffic engineer had not looked at future development. He inquired if Mr. Spatz took future development into consideration and if he did not why he didn't as he is the planner. Mr. Smith inquired where it is written in the master plan that there should be apartment buildings in the borough of Bergenfield. Mr. Smith stated the Planning Board had made an amendment to the master plan, in the last year, approving development in certain areas where they would like to see apartment complexes go. He inquired if Mr. Spatz was aware of that and where those areas were. The 35 feet is not in the R5 zone where they are trying to build. The town does not want these complexes built in a residential area. Mr. Smith stated Mr. Spatz had testified that it would take a longer period of time to pick up the garage from three residential homes than the time it would take to pick up the garbage from the complex. Mr. Smith stated it takes less than four minutes for a garbage truck to pick up the trash from three houses on either side of the street. There is no impact on the residential garbage pick up on his street as cars go around the garbage truck. Three residential homes in that area are not going to impact garbage pickup.

Mr. Spatz stated he meant to say the Planning Board had approved it. Mr. Spatz stated there isn't anything in the immediate vicinity that would mitigate against permitting a de minimis exception for two parking spaces. It's only two parking spaces and meets the standard for residential improvement. They are not seeking a variance for a large number of spaces. The number of parking spaces they are shy, is such a small amount that it would not have an impact or be impacted by a future development in the area. Mr. Spatz stated he had quoted twice from the 2017 master plan reexamination report the goals and objectives. He read into the record what was written in the 2017 reexamination report. There are other multi-family developments within Bergenfield and stated this is an appropriate development type. This

property lends itself to a midrise multi-family development and is consistent with the master plan. This property was not one of those properties and that is why they are seeking a use variance, which they can support. In terms of height, they are below the maximum 35 feet height requirement for a multi-family development, which is another positive. Mr. Spatz stated he didn't say it would take a longer period of time. He had stated he doesn't believe they would pick up the cans at each home and move ten feet further on. They will probably park in front of the residences and go house to house to pick up the cans which would have the truck in the street either stationary for a longer period or time or stopping and going for a longer period of time. It was testified earlier that our trash removal will take place on the property which would eliminate any impact of any vehicle parking in the street and there would be no cans in the street. There will be containers that will be moved within the building and the impact will be significantly less. Mr. Spatz stated it was the public that raised the issue of the garbage trucks and the impact of vehicles passing. Even if it is there five minutes, that's five minutes more than a garbage truck would be there than the impact it would have from their trash removal not being in the street. If five minutes is minimal and doesn't have an impact, it's still greater than what would be generated by the building. They were responding to residents' concerns about garbage pick up in the street.

Mr. Lieberman stated he has a planner, Carlos Rodriguez, as well and inquired when the board wants him to give his testimony.

Mr. Stein stated he would like to have Mr. Lieberman ask his questions he has for Mr. Spatz right now. The audience can then ask their questions and then Mr. Lieberman can have his planner give his testimony.

Mr. Lieberman inquired if a R5 zone, is generally characterized predominately as residential area. Mr. Lieberman inquired if the residences are single family homes. He inquired if the existing residential neighborhood consisted of single family duplexes. Mr. Lieberman inquired if the 2017 reexamination report represents the intentions of the zone plan as evidenced by the planning board. Mr. Lieberman inquired if the first goal is to preserve the existing residential neighborhoods. Mr. Spatz had indicated that the existing neighborhood consisted of single family residences and duplexes. Mr. Lieberman inquired how many apartment buildings of the same size are there in the R5 zone. Mr. Lieberman inquired if goal number five of the same document Mr. Spatz relied on provides that the goal is to discourage deviations from established land use patterns that would permit incompatible land use uses from adjacent use from one another. Mr. Lieberman inquired if Mr. Spatz would agree there are not established land use patterns of multi-family residences in the R5 zone. Mr. Lieberman stated the goal was to encourage development at densities that were compatible with existing development. He inquired if Mr. Spatz has an understanding that the density that's proposed of this project equates to 42 dwellings per acre and that is a density that is ten times greater than permitted for single family residences in this zone. Mr. Lieberman inquired if it was consistent with the municipal zoning plan. Mr. Lieberman requested confirmation they are requesting a D variance. Mr. Lieberman requested Mr. Spatz explain what expenditure of public funds in section F and lack thereof means. He inquired what is the impervious coverage variance they are requesting. Mr. Lieberman inquired if they know whether people who have more than one vehicle will be excluded from renting or buying those units. He asked if they have any idea what would happen if people buy or rent the units have vehicles that exceed the number of parking spaces.

Mr. Spatz stated the area is a R5 zone, which is residential. The area has a mixture of uses. The dominant use is residential, but there is also the school, the church property, an auto repair shop, and a grocery store. Mr. Spatz responded yes. The residences in the area are one and two family homes. The 2017 reexamination report is the most recent Planning Board's comments on the goals and objectives as it relates to the master plan. He did state residences in the neighborhood were primarily one family but it is an area of mixed development. There is the school across the street and the church property behind them. They are proposing a residence so it fits in and doesn't believe it's inconsistent. The multi-family building

with 14 units fits in the neighborhood given the size of the property. Mr. Spatz stated he did not look at that and doesn't know how many there are within the R5 zone. He does know there have been other multi-family developments done within Bergenfield. He did not count them. Mr. Spatz stated what they are proposing is suitable and compatible. He did not look if there were other multi-family residences in the R5 zone. The use variance process itself is to provide uses that are not permitted within the zone. All of the previous witnesses have provided testimony to support the development on this property. Mr. Spatz stated if they were proposing a grocery store or a heavier commercial use, that would be incompatible. The building is residential in nature. The overall density is appropriate. Mr. Spatz stated he knows they are at a higher density than what was permitted but because it is a larger property, he thinks it is appropriate. The property can support the density they are proposing through the testimony of seven public hearings. Mr. Spatz stated he is aware they are seeking a variance and all the witnesses have provided testimony to support those variances. The recent ordinance amendment apparently feels that 35 feet is appropriate for a multi-family development. He recognizes they are seeking a height variance for a R5 standard. There was testimony from the project architect that increased height was minimal in where it was located in the entire building. It demonstrated that there would be minimal impact on the property and adjacent properties. They have to provide the special reasons for a D variance. The affordable housing unit makes the project beneficial. They are not seeking a hardship variance. Mr. Spatz stated Mr. Lieberman is only reading a portion of it. He stated what they are proposing are improvements in the vicinity that will provide a public benefit. It's an appropriate expenditure of funds. Public funds are not being expended by making improvements, including drainage improvements in the area, removing a building in poor condition, and wetlands. Public funds are not being expended, but improvements are being done privately that would not have to be done as public expenditures. The impervious coverage is 66.36% of the site, where 40% is permitted in the R5 zone. It's the engineer's expertise and he provided testimony that all drainage will be handled on the property, there is no drainage currently on the site, and that it would be an improvement. Mr. Spatz stated he didn't indicate that. Mr. Luglio provided testimony that the 24 parking spaces was more than sufficient for the proposed number of units.

Mr. Mondello stated Mr. Lieberman is trying to figure out section F, where it refers to public funds. There are no public funds involved. There is an affordable housing component which are not public funds.

Mr. Stein stated as a courtesy they will have another special meeting for this application.

Special meeting to hear application for 145 W. Main Street will be on June 29, 2021 at 8:00pm.
All members voting in favor, none opposed.

Mr. Mondello stated Mr. Capizzi doesn't need to give further notice. Tonight is the notice.

Mr. Capizzi stated the applicant extends all the applicable time periods to July 15, 2021.

Mr. Stein stated at the next meeting, June 7, 2021, they will discuss holding the meetings back in-person and the June 29, 2021 meeting might be in-person.

MOTION TO ADJOURN MEETING

Motion By: Charles Steinel

Second By: Sara Berger

All ayes. None opposed.

Meeting was adjourned at 11:10 pm.

Respectfully Submitted,

Hilda Tavitian

Hilda Tavitian, Clerk
Zoning Board of Adjustment