

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
TELECONFERENCE VIA ZOOM
JUNE 29, 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 June 14, 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 Stein.

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 Law. 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 requires five affirmative votes.

ROLL CALL

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

Absent:

Also Present: Ron Mondello, Zoning Board Attorney, Sam Agresta, Pennoni Engineering, Michael Knowles, Planning Board Liaison, and Hilda Tavitian, Zoning Board Clerk

CORRESPONDENCE

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 25, 2021 meeting)

Matthew Capizzi, 11 Hillside Avenue, Tenafly, attorney for applicant, stated the application was last before the board on May 25, 2021. At that time, they heard testimony from the traffic expert, Lou Luglio, who was subject to cross examination by Mr. Lieberman, board members, and members of the public. His testimony is complete. David Spatz also gave his testimony. He was cross examined by Mr. Lieberman. Most of the board members asked questions and there may be one or more still. Members of the public still need to ask their questions for Mr. Spatz. On June 18, 2021 revised planning and architectural plans were filed, removing one of the apartments from the proposed building. They are now down to 13 units. It was to reduce some of the massing of the building as Mr. Blake will testify to. They eliminated the parking variance. Mr. Capizzi stated at the last meeting some of the residents had concerns about cars overflowing out onto the street. In response, they eliminated a unit and now have 24 parking spaces onsite where 24 are required. Mr. Blake will give a brief testimony to describe the revisions of his plan set. Mr. Spatz will follow to talk about how the revisions to the architectural plan impact his planning testimony. There was an apartment removed from the second floor.

Chris Blake, architect, shared on the screen the revised architectural plan set dated June 14, 2021. The basement floor is still exactly the way it was. There's the lobby, elevator, elevator mechanical room, trash room, mechanical room, staircases, and the parking. The first floor has the original layout with 6 one bedroom apartments and 1 two bedroom apartment. The change made is on the second floor. The 3 one bedroom apartments are in the rear, 2 one bedroom apartments in the front, and a three bedroom apartment in the front as well. The three bedroom apartment is mainly there for affordable housing. They created a couple of little attics, where they lowered the roof line allowing the top floor to be smaller to match the neighborhood. There are 6 units on the top floor and 7 units on the middle floor with a total of 13 units. The exterior front shows the rooflines created. They consolidated the top to create a residential feel. There are no other changes. The foot print of the building, setbacks and height of the building have not changed.

Sam Agresta, engineer from Pennoni Engineering, stated engineering wise nothing has changed.

Stuart Lieberman reminded the board that he has his own planner, Carlos Rodrigues, and to keep that in mind.

Questions from residents:

Yehuda Borg, resident, stated he noticed the three bedroom apartment is a ADA unit and has to be handicapped accessible. He stated while looking at the door swing, he noticed it infringes upon the turning radius and requested the architect ensure all units are in fact ADA accessible.

Mr. Blake stated all the construction documents will have all the details that will be developed. They will have the information required to code, not just the handicapped accessible information. They will be all ADA accessible.

Mr. Stein inquired if it is a matter of being ADA accessible or adaptable.

Mr. Blake stated it is to be a type A unit, accessible units that are adaptable.

Board member Smith requested confirmation that the only change made was that a couple of the rooms were made wider. He requested to be shown where the reduction is because he could not find it. He stated it's really an optical illusion Mr. Blake created. Mr. Smith inquired if there will be any crawl space between the top floor and the roof.

Mr. Blake stated they have also taken away one apartment. They previously had 14 apartments and now it is 13 apartments. Yes, they did but there was reduction in floor area. The second floor (top floor) did not have attic space. There is approximately 170 sq. ft. reduction. He showed on the plan on the screen all the areas that were reduced. Some of the apartments did get wider. Mr. Blake stated by lowering the rooflines, the front of the building is more picturesque and gives more character. It's not an optical illusion. There is less bulk, less volume, and less floor area. It is the same footprint and same height. Mr. Blake stated there will be an attic over the whole building that may be smaller at the ends.

David Spatz, planner, stated he reviewed the revised 6/14/21 plan set. It just had two main effects in terms of the parking. They now have a conforming number of parking and they meet the RSIS standards of having 24 parking spots by eliminating the one unit on the apartment. Mr. Spatz stated by reducing some of the bulk of the building, it gives the building more of a residential character and helps it fit in with the neighborhood. Mr. Spatz stated the primary effect of the changes was that they eliminated the parking variance and have a conforming amount of parking. Each one bedroom unit will have one parking space allocated for them, with a total of 11 spaces. The two bedroom unit will have 2 parking spaces allocated and the three bedroom unit have three spaces. Mr. Spatz stated that leaves 7 spaces for guest parking which it also meets the RSIS standard. There will be 1 unassigned space for whoever needs it, which is also a requirement.

Mr. Lieberman requested A-5 of the architectural sheet be shared on the screen. He inquired if the roof modification was at the two ends of the structure where they lowered them instead of making them the same dimension as the balance. Mr. Lieberman inquired by changing the ends of the roof, it makes it more residential in character and if that is what Mr. Spatz had testified to. He inquired if there are any structures in the neighborhood that he can compare to with the structure of this building.

Mr. Spatz's response was yes. That was Mr. Blake's testimony. Mr. Spatz stated the changes reduced some of the bulk of the building and the building has been modified to give it a more residential feel. It's a bigger building than the single family homes in the neighborhood. There's nothing else that is like this. There is the school building, a larger church building, and some commercial buildings in the area. Mr. Spatz stated reducing the bulk of the building visually is an improvement.

Mr. Agresta stated he has no comments since there have been no engineering changes.

Board member Friedman inquired what analysis did Mr. Spatz do to reach the conclusion that there is additional housing needed in Bergenfield. Mr. Friedman inquired if it occurred to Mr. Spatz to make a determination of what the availability of apartments actually are in Bergenfield at this time. Mr. Friedman stated he was on the website www.apartments.com yesterday. That website indicated there are 103 vacant apartments available in Bergenfield right now. Mr. Friedman inquired if this is something that ought to be considered. Mr. Friedman stated he looked at Bergenfield, Teaneck, New Milford, Dumont, Hackensack, and River Edge which all within approximately 4 miles of this proposal. Mr. Friedman stated from the research he did, he determined there are 2,291 apartments that are now available for rent. He assumed that they are of varying sizes and he had difficulty understanding why with this availability of housing, which is substantial, that there is a need for this housing at 145 W. Main Street. Mr. Friedman stated the master plan does not provide for apartments in the R5 zone and the zoning ordinance also doesn't. Mr. Spatz had made reference to the periodic reexamination report of the master plan from February 2017 and had quoted from page 6. He looked at that and that specifically stated as being an

objective of the 2005 master plan. Mr. Friedman explained nowhere in that master plan was there a provision for apartment housing like the one proposed in a R5 zone. He doesn't know how this would not be a substantial detriment of the master plan and the zoning ordinance as it would require to ascertain what the intent is. Mr. Friedman inquired if the governing body had wanted to change the zoning to allow an apartment housing like this in an R5 zone, based on the reexamination report or earlier one, could they have done so. Mr. Friedman stated on pages 17-19 of the reexamination report, there are specific recommendations about the rezoning of specific areas of town. Mr. Friedman asked Mr. Spatz if he would agree that nowhere in the specific recommendations is there any recommendation to change in the R5 zone to allow apartment housing. He had trouble with Mr. Spatz's conclusion that this development would not substantially impair the intent and purpose of the master plan and zoning ordinance.

Mr. Spatz stated it's the type of units. These are smaller units than it is typical in a single family home or more of a luxury type of building. They appeal to seniors, younger families starting out, and singles. The smaller unit is something that is needed. The three bedroom affordable housing unit meets the needs of Bergenfield. Affordable housing is a need in all municipalities throughout New Jersey. Mr. Spatz stated he did not do a survey of vacant apartments. He did not do a survey of the sizes of vacant or occupied apartments. He knows from experience that this size unit is atypical and fits a specific need. Mr. Spatz stated his testimony was not on the total number of vacant apartments, it was on the size. He understands what Mr. Friedman stated but didn't necessarily agree with it. They are seeking a use variance because multi-family housing is not permitted in a R5 zone. He has only to go by the language written in the reexamination report. He hasn't spoken with the preparers of that report and doesn't know what their intent is. They are not seeking to put a commercial or industrial use in a residential zone, which would impair the intent of it. They are maintaining the residential character of the neighborhood. Mr. Spatz stated they could have but did not. Mr. Spatz stated that is correct and the reason why they are here seeking a use variance. The fact that they need a use variance does not indicate they substantially impair the zoning ordinance and master plan.

Board member Smith stated Mr. Spatz has said the intent was within the residential fitting. He inquired what commercial building is in the area that is the same height as the proposal. Mr. Smith stated Mr. Spatz had said it fits because of other commercial buildings in the area. Mr. Smith inquired if Mr. Spatz's opinion changed in the number of people living in each apartment since the size of the rooms were increased. Mr. Smith inquired if Mr. Spatz looked at the plans. Mr. Smith inquired if Mr. Spatz looked at future development in the area. Mr. Smith stated they are going to impede on the future development on the other two 50x100 lots. Mr. Smith asked Mr. Spatz how much time he spent having his feet in the ground while looking around the area.

Mr. Spatz stated he was talking about the uses and wasn't talking about the height and size of the building. Mr. Spatz stated he had said that they were not introducing a commercial use in a residential zone. They were introducing a residential use in a residential zone and there are other uses in the area that are the same size as their building. The bedroom mix didn't change. The number of people living in the apartments didn't change. There were no additional rooms or bedrooms added to the units and would not change the number of people living in the units. Mr. Spatz stated he did look at the plans. He would have to rely on Mr. Blake's determination of the exact size. Even if a bedroom got bigger, it wouldn't mean there would be more people in the building. Mr. Spatz stated his testimony relates to this particular project on this site. Other development in the area would not necessarily have an impact and does not change his testimony. Mr. Spatz stated what they are proposing is appropriate and there are a number of positive impacts. Other developments would have to be looked at in their own right. Mr. Spatz stated he did not look at that and does not know how the development of this building would stop other lots in the area from being developed. Mr. Spatz stated on a couple of occasions he walked and drove through the neighborhood. It was a while ago and doesn't recall the exact amount of time he spent walking and driving through the neighborhood.

Questions from residents:

Mary Sullivan, resident, inquired why was this site proposed for noncompliant use, with so many complaint properties available. Ms. Sullivan inquired if the proximity of the houses of worship had anything to do with his decision to choose this site.

Mr. Spatz stated he was not involved in the process of choosing the site.

Mr. Capizzi stated the applicant chose the site for this proposed development.

Ed Roman, resident, inquired which commercial building would compare to the proposed building. Mr. Roman inquired if there ever any consideration of developing a coop or condo type building.

Mr. Spatz stated he did not say that the buildings themselves were comparable to what they are proposing. He indicated the neighborhood was not a fully consistent neighborhood and to the rear of their property was a school and church property. This multi-family building could be considered transitional between those public uses and the lower density in residential.

Mr. Capizzi stated the form of ownership isn't relevant for consideration in a land use application. Mr. Capizzi stated the building will be set up for rental apartments.

Norman Schmelz, resident, inquired if the planner read the entire master plan or just picked out certain segments and quotes that would fit into the project. The master plan had put aside the corridor from north to south on Washington Avenue for any developer that wanted to build apartments and encourage building in the downtown business district as an overlay zone. Mr. Schmelz inquired if Mr. Spatz had reached out to the planner that had written that. Mr. Schmelz inquired why he would not reach out to the authors of the master plan. Mr. Schmelz stated he doesn't understand the math even with the reduced unit. If the developer builds three houses, how many cars would three homes take up. He doesn't know 13 building apartments can have less cars than three houses would. Mr. Schmelz inquired if the planner looked at the possibility of more than two people being in the apartments.

Mr. Spatz stated he reviewed the entire master plan in preparation for his testimony and the quotes he used were taken directly from the report. Mr. Spatz stated he reviewed the documents and it is possible to speak to the planners who wrote the report. He has been writing and reading reexamination reports for 40 years and is familiar with the process. There is a limited amount of development that's taken place on Washington Avenue of multi-family development. He knows of one that's not on Washington Avenue that's been approved.

Mr. Capizzi stated they completed their traffic testimony. They have no testimony about the parking that would be generated.

Mr. Mondello stated the planner addressed the fact that the parking variance was eliminated.

Mr. Spatz stated the Residential Site Improvement Standard has parking requirements based on the different types of use. The multi-family use they are proposing and the bedroom mix is a conforming amount of parking. A single family residence might require less parking, but they are conforming. Mr. Spatz stated he did not look at the impact of the number of people generated by the units. Parking is based on the type of unit and the bedroom count. It doesn't have to do with the number of people in it.

Jennifer O., resident, inquired how long ago was it that Mr. Spatz went through the neighborhood and determined that this particular development would work with the other residences in the neighborhood.

She inquired what was the reason for Mr. Spatz walking around and if that is something he normally does. Ms. O. inquired if Mr. Spatz was referring to the church and school when he mentioned commercial properties. She inquired about what the commercial uses were that Mr. Spatz was referring to.

Mr. Spatz stated he did not design the building or the units. He can't address the question. Mr. Spatz stated this project started a number of months ago. The first time he was there was the end of August 2020. He had been there since then. He always visits the site before he prepares his testimony. He referred to them as public and quasi-public uses. He referred to a couple of smaller commercial uses in the vicinity. The immediate commercial uses in the area are the grocery store and the auto facility. He testified that the neighborhood was not entirely residential and there were commercial uses in close proximity to the site. This is an appropriate use of the site.

Mary Hernandez, resident, requested Mr. Spatz repeat the positive impacts the development has to the community.

Mr. Spatz stated he didn't provide that testimony this evening. The development of three single family homes on the property would provide three driveways. The vehicles would back out onto the driveway. Their building provides a single driveway. Cars are able to turn around in the parking lot and go head out. In addition, there were a number of pedestrian safety facilities that they agreed to provide that would not be there for single family homes. The traffic safety element alone would be a significant public benefit.

The meeting was recessed at 9:13pm and resumed at 9:25pm.

Stuart Lieberman, attorney representing Janet Rosado, stated his only witness is Carlos Rodrigues, a planner.

Carlos Rodrigues, planner from Design Solutions LLC, 201 Moore Street, Princeton, NJ, stated he reviewed the application, the various configurations, the borough's zoning ordinance, the borough's master plan documents, and the minutes of the various meetings. He heard the testimony of the applicant's planner. The application requires a D1 use variance to allow an apartment building in a R5 zone district, where only single family and two family residential is permitted. In addition, the application requires a D5 variance for density, something that testimony has not been heard on and was not part of the notice the applicant provided to the neighbors. The application also requires multiple C bulk variances for minimum front setback, minimum rear setback, a 16% decrease of what is required, and maximum building height. The parking variance is no longer needed but maximum lot coverage and maximum improved lot coverage which is a 70% increase over what is permitted is needed. Mr. Rodrigues stated use variances are not permitted in 1/3 of the states in the United States. The enabling legislation is completely silent in another 1/3 of the states. It's neither allowed or disallowed. There is no criteria to evaluate that. The remaining 1/3 of the states, including New Jersey, does allow use variances and does include very specific criteria. Use variances in this country are treated as highly unusual requests if contemplated for the upmost scrutiny. Mr. Rodrigues read from page 5 in the 2015 master plan reexamination report, revised in 2017, that the number 1 goal was to preserve existing residential neighborhoods. Goal number five on the same page stated was to discourage deviations from established land use patterns that would permit incompatible and/or conflicting land uses from development adjacent from one another. Mr. Rodrigues stated this is precisely what this application would do. The same document, under land use, adds the following goal "encourage residential development in locations and at densities that are compatible with existing development". The proposed apartment building would consist of 13 dwelling units on a lot with 14,469 sq. ft. or a 1/3 of an acre. That is equivalent to a density of 39 dwelling units per acre or 10x the permitted density for single family detached housing. He stated the proposed apartment building clearly violates that goal of the master plan. The land use section of the 2017 master plan reexamination report for the R5 zone district specifically recommended adopting a 40%

maximum impervious lot coverage and reducing the building height from 35 ft. to 30 ft. Both of the recommendations were adopted by the governing body as the R5 district now specifies a maximum lot coverage of 30% for detached single family homes and 40% for two family homes. The governing body went beyond the Planning Board's recommendation with the height and reduced it to 28 ft. Mr. Rodrigues stated granting the use variances would substantially undermine the town's integrity of the planning documents in respect to the R5 district. The Planning Board adopted in late 2020 a housing element fair share plan which identified a number of sites for affordable housing to satisfy the town's obligation. This is not one of them. All of the town's planning documents run counter to what is being proposed tonight. The applicant has not met any of the positive criteria. There was no evidence that property results in an undue hardship for the property owner. There are zoning districts in Bergenfield where multi-family housing is permitted. The R5 district is not one of them. The applicant has not demonstrated that this site is suitable for housing with a high density. It's quite the contrary. Mr. Rodrigues asked since when a transition is required between a school and a single family neighborhood. He stated if the school had an enrollment of 2,500 it might make sense, but the school's enrollment is 250 students. He doesn't see any credible reasons to grant the applicant relief. Mr. Rodrigues stated he hasn't heard any testimony how stormwater will be handled and the impact it will have on neighboring properties. The applicant has not submitted stormwater calculations and the site slopes towards residential homes. In addition, he inquired how will traffic be handled and what are the likely impacts on neighboring properties. He stated he is not a traffic engineer, but the traffic conditions on W. Main Street are less than ideal already. It is complicated by school related and church related traffic. If approved, this application will make traffic conditions worse. The applicant's traffic engineer did not do a study to establish baseline conditions to compare them with. The proposed apartment building is completely out of character within the single family detached neighborhood. He sees no credible planning reason to justify it. In his opinion, the application fails to satisfy the positive and negative criteria and should be denied.

Mr. Lieberman stated Mr. Rodrigues had mentioned that there was a density variance not requested and was not noticed to residents. He asked Mr. Rodriguez to explain the basis for that.

Mr. Rodrigues stated they are proposing a density for this project that's ten times what's permitted under the zoning ordinance. It's a D5 density variance that never came up in the hearings and was not in the notice.

Board engineer Agresta stated Mr, Rodrigues did a great job explaining all the planning aspects. There is nothing engineering related.

Mr. Capizzi inquired if Mr. Rodrigues has ever been to the property. Mr. Capizzi inquired if Mr. Rodrigues' opinion was based on document review provided by the applicant or information he found online. He inquired if Mr. Rodrigues was familiar with the current condition of the property. Mr. Capizzi inquired if Mr. Rodrigues thought it was important to know the current condition of the property when he spoke about the impact of the current scheme versus the proposed scheme. The current condition remaining as such doesn't play at all into Mr. Rodrigues' opinion. Mr. Capizzi asked Mr. Rodrigues if he ever walked through the neighborhood. Mr. Capizzi asked if Mr. Rodrigues was present during the prior hearings. He inquired if Mr. Rodrigues had reviewed all of the plan set. Mr. Capizzi stated the square footage of the lot area is 15,215 sq. ft. He stated that Mr. Rodrigues had mentioned the lot area as being 14,000 sq. ft. and inquired where he got that from. Mr. Capizzi asked him to retrieve the documents he looked at and tell him where he got that number from or to state that Mr. Rodrigues misspoke of the lot area.

Mr. Rodrigues stated he has not been to the property. Mr. Rodrigues stated his opinion was based on photos, maps of the town, the zoning and master plan maps. No, he was not familiar with the current condition of the property. Mr. Rodrigues stated he doesn't think it was important because the property can

be improved according to the zoning. No, it doesn't. Mr. Capizzi suggested the only way to improve the property is to put the apartment building on it. He is suggesting that the property can be improved by developing according to the existing zoning. He stated he had not walked through the neighborhood. Mr. Rodrigues stated he was present at the last hearing. Yes, he believes so. Mr. Rodrigues stated he got that number from the plans.

Mr. Mondello asked Mr. Capizzi how long the property has been vacant. Mr. Rodrigues had made the assumption that it could be developed according to the zone.

Mr. Capizzi stated the pieces were created approximately ten years ago and have been vacant ever since. The one portion of the property is not vacant. It has a single family home that is in disrepair.

Mr. Capizzi asked Mr. Rodrigues to tell him where he came up with a height limitation of 28 ft., also. The ordinance was updated in 2019 to allow a maximum building height of 30 ft. He might have reviewed some outdated documents. Mr. Capizzi asked Mr. Rodrigues if he had read some of the minutes of some of the hearings. Mr. Capizzi asked Mr. Rodrigues if he thought the impact of the project is an important factor on the public. Mr. Capizzi stated the board's interaction with the public and the applicant's interaction with the public is an important facet of the application process. Mr. Capizzi stated one of the concerns they belabored on was traffic and asked Mr. Rodrigues to confirm that he was not a traffic engineer. The traffic engineer gave trip generation tabulations that compared three single family homes that could be developed on the property to the proposed, at that time, 14 apartment unit building. He inquired if Mr. Rodrigues was familiar with that testimony. His testimony was that the trips generated from the 14 units versus three single family homes were equal to one another. If the public is concerned with traffic and they are proposing a use that doesn't propose any additional trips than what the permitted use would be, it would be a betterment or it would not be a negative impact on the neighborhood. The public was also concerned with trash, having barrels lined up along the sidewalk and how it could impact site distances and children walking back and forth to school. He inquired if Mr. Rodrigues was aware that it was proposed trash be picked up by a private carter onsite at the rear of the property so there wouldn't be any barrels along the roadway. Mr. Capizzi stated they don't live on W. Main Street so the planning documents are interesting reads. The neighborhood has told them what their concerns are and if they are addressed in a positive way by the application, he assumes that Mr. Rodrigues would agree from a planning perspective that responding to actual public concerns is a priority. Mr. Capizzi stated he understands density is a component of the use as is trash, traffic, and school children. Mr. Capizzi inquired if Mr. Rodriguez is aware how far away the building is from his client. It's on the plan set. The side yard setback requirement is 5 ft. and what's proposed is 25 ft. Mr. Capizzi stated, from Mr. Rodrigues' perspective, he doesn't see an impact to his client or the neighborhood considering they have addressed all of the public's comments in a positive fashion. He inquired if Mr. Rodrigues is aware the building coverage complies. He inquired if Mr. Rodrigues is aware the board routinely grants variances of that similar quantum with other applications.

Mr. Rodrigues stated it's in schedule B of the zoning. Mr. Rodrigues stated that was what was posted on the borough's website. The height was never an issue. Mr. Rodrigues' response was yes. Yes, it's an important consideration. Mr. Rodrigues stated it's an important facet in any application process, not just this one. Mr. Rodrigues confirmed that he was not a traffic engineer. Mr. Rodrigues stated if it's in the minutes, he read them. Mr. Rodrigues stated he is not a traffic engineer. The applicant's traffic engineer did not do a baseline study of traffic conditions at the site. The comment that the projected increment coming from the building would be negligible was not put into proper context. Mr. Rodrigues stated he is aware of that and knows there was a lot of time spent about the trash pick up. Yes, he was aware of that. He stated he is not sure that is better than having the three single family homes bring out their trash cans because there are less trash cans and will be picked up the same way as any other house in the neighborhood is picked up. The neighborhood has signaled loud and clear that they have a major concern

with the apartment building. The trash and the traffic are relatively trivial compared to the character of the neighborhood. It doesn't matter the trash collection or the trips are comparable. There's an apartment building ten times the density that's permitted. Mr. Rodrigues stated unless the housing market is incredibly distorted in town, he doesn't think the one bedroom apartments are going to be generating a lot of school children. Yes, there would be more school children generated from three single family houses. The height of the building is not a key issue. Mr. Rodrigues stated he has not measured it. Things have happened between that last meeting and this one. Mr. Rodrigues stated on one side you have three single family detached structures. On the other side, you have a apartment building. There is a fundamental difference in character between the two of them. Mr. Rodrigues stated they require a impervious coverage variance that is a substantial increase than what's permitted. Mr. Rodrigues stated he is not sure how that is relevant.

Mr. Mondello asked Mr. Spatz if there is a D5 variance.

Mr. Capizzi stated there isn't. They know it's not allowed and therefore seeking a D1 variance. He stated any density issues, setback issues, height issues are subsumed under the D1 use variance.

Board member Friedman requested an explanation of how the variances required because of the permitted density without using actual numbers. He inquired about the permitted density, the source for that, and how is it is ten times the permitted density. Mr. Friedman stated he understands the formula Mr. Rodrigues gave, but wanted to know the math in a very simplistic way what the density was. Mr. Friedman reiterated that Mr. Rodrigues had testified that "the trash, traffic, and the school children was not a big deal. The big deal is the big picture". Mr. Friedman asked Mr. Rodrigues to explain what the big picture is in his opinion with reference to the positive and negative criteria. He inquired if this proposed structure would impair the intent of the master plan and the zoning ordinance.

Mr. Rodrigues stated the borough code doesn't have a explicit density as a standard. He explained if you take the minimum lot size, you can translate that into a density. If you take the number of units in their building and divide that into the size of the lot, that gives you another density. Mr. Rodrigues stated he did the math and compared the one to the other. Mr. Rodrigues stated the minimum lot size for the one family residential in the R5 district is 5,000 sq. ft. according to schedule B. That would be 8 dwellings per acre. They have proposed 13 dwellings on a parcel that is 14,469 sq. ft. or a 1/3 of an acre. That gives you 39 units an acre, which is the gross density of the project they are proposing. It is dwelling units per acre. On the one hand you have three detached single family houses that are separated. They are smaller buildings with spaces/voids in between the buildings. That's one type of pattern. Mr. Rodrigues explained if the voids were filled in, then you have something akin that similar to what is being proposed. That is not contextual, it's a difference appearance, character, and everything. Yes, it would.

Board member Wenger stated the density is not a natural requirement for the Bergenfield zoning board. He asked Mr. Rodrigues if he's found other boards that do have explicit requirements. Mr. Wenger stated given the fact the board has notice that other towns do explicitly required such a requirement and the planning board has failed to denote such a requirement, why he is imposing this requirement on the applicant when it does not actually exist in the law. He doesn't think you can just back into a requirement that doesn't exist. The lot size is a requirement. Mr. Wenger stated besides the density issue, nothing else rose to the level of a real concern to Mr. Rodrigues. Mr. Wenger asked Mr. Rodrigues what else is an issue for him.

Mr. Rodrigues stated it's not explicit. Yes, it depends from town to town. Some towns have maximum density as an explicit metric. Many towns don't. You back into it by virtue of the lot size. He disagreed with Mr. Wenger. Mr. Rodrigues stated that is not correct. Mr. Rodrigues stated the whole conversation he had with Mr. Friedman about the character what an issue for him.

Mr. Mondello stated in the schedule, the only reference to density appears to be 12 units per acre and it's related to a B1 business zone, B2 business zone, and M industrial and automotive zone. It is irrelevant.

Mr. Rodrigues stated the explicit density in those districts must have something to do with multi-family being a permitted use. Multi-family is not a permitted use in this district. You have to back into it.

Board member Smith requested explanation about the side yard setbacks of the proposed building being further away than three single family homes because of the easement. He inquired if there is an easement. Mr. Smith stated a side yard variance would be needed either for a single family home or for multi-family. Mr. Smith stated at least 12.5 ft. side yard variance would be required for a single family home because of the easement. Mr. Smith stated he thinks they had to get permission from the borough to do the parking lot on the easement and that was why everything was changed. The original plan was changed because the town didn't give permission to go over the easement.

Mr. Rodrigues stated he can not speak about the easement and doesn't have the plans in front of him.

Mr. Capizzi stated he had addressed that comment early on in the hearing process. Mr. Capizzi stated when the subdivision was granted about 10 years ago, there was a truncated left side setback that was allowed as part of the subdivision. The side yard setback in the proposal will be greater than any scenario of development. Mr. Capizzi stated they modified the plan to remove any improvements made over the easement. Mr. Capizzi stated Mr. Smith is correct. There are no improvements over the easement.

Questions from residents:

No one came forward.

Comments from residents:

Julia Nuesch, 138 W. Church Street, thanked the board members for their service to the community. Mrs. Nuesch stated while it is noted and appreciated that the plans were changed for affordable housing from their original configuration through various iterations that seemed to come up as a surprise and came to the configuration of one three bedroom apartment. Mrs. Nuesch stated while this configuration does meet the letter of the law by the inches and feet that are measured, it does not meet the spirit of the law. The purpose of affordable housing in multi-family housing units is to provide opportunity for lower income residents and we do not believe that a single three bedroom unit provides a positive impact. This is a request for a variance that is not allowed by the zoning regulations. The zoning regulations are clear and are in place to preserve the community, allowing for zoning variances such as this one does not.

Pastor Osvaldo Nuesch, 138 W. Church Street, Pastor of S. Presbyterian Church, stated the church owned the property for many years. The church then had a problem with that property, with different people occupying it for many years. Every time it required more and more work. The last ten years it was vacant and many attempts of selling it failed. Pastor Nuesch stated in June 2019 a special congregation meeting was held and they agreed to sell the three lots for \$400,000, with the proceeds to be used for the long term use of the building and grounds. The buyer had planned to build three family houses on the site. The property was sold for those intentions. Pastor Nuesch stated the board is given a code to live by and urged the board to not to deviate from or relax the strict obligations of the requirements as they stand.

Michael Knowles, 37 Palisade Avenue, stated he is a member of the Planning Board who approved the subdivision of the properties. He stated when he said yes to the subdivision of the properties, he had no intention of this type of overdevelopment. This is a neighborhood of single family homes and felt it should stay that way. He recommended the application be denied.

Norman Schmelz, 94 Deerfield Street, stated he grew up in this town and has been here for over 50 years. It's incredible they are entertaining this and understands it is due process. He stated, like Mr. Knowles, he was on the Planning Board and voted to split the property into five lots. He never would have okayed that if they thought they were going to put apartments up. It is incredible that they would even entertain the lot coverage when a resident who tries to go over 40% for a built-in pool has to get a lawyer and go through the whole process. The owner of the lot has really let the property go and inquired how many complaints have been placed to the police department and code enforcement in the last few weeks. The lawn was 12 inches now. Mr. Schmelz stated they don't have an idea of how many people can go into the three bedroom unit, there could be 6-8 people. Mr. Steinel could probably tell how long it takes to pick up garbage for three houses. He stated it takes 15 seconds to pick up a single garbage can in his neighborhood, 45 seconds in total for three garbage cans. He doesn't see the garbage cans of three single family houses to be a issue at all. He doesn't understand why the town and board couldn't hire a planner and had to make a private resident go out and get a lawyer. He felt that this was atrocious. The board could have said early on that this a big enough project to get a planner and needed a second point of view.

Mary Sullivan, resident beyond 200', inquired why this site proposed for noncompliant use when there are so many compliant properties available in the business district. She inquired if proximity of the house of worship and the ability of members of the congregation to walk to services played into the decision of choosing this location. Mr. Capizzi repeatedly stated the board had repeatedly granted coverage variances. Yet, the board had stated that each application must stand on its own and past approvals or denials would not be considered. Mr. Luglio repeatedly changed his testimony since last October. He was repeatedly asked for the data he based his testimony on as far as vehicles, population in town, and the number of people who owned vehicles in town and he was not able to give a census number. The census from 2010 is posted right on the borough website. Every single person in this town is a vehicle owner. There are some people that own two vehicles. Ms. Sullivan stated she had submitted to the board a January 2019 breakdown from DMV, listing every vehicle, make and model, registered in 07621. That number represents a great portion of the town and it has to be taken into consideration all of the leased vehicles are not included into that number. Another 25% needs to be included. People in the town have and need cars. People who take mass transit to work own cars. Thirteen units are going to have a lot more cars than three single family homes. Ms. Sullivan stated there already are small apartments available in the town, in a residential neighborhood, that are not being considered by this application. Therefore, the application should be denied.

Rose Garcia, 27 S. Franklin Avenue, stated she's been opposed to this project since day 1. They moved here 9 years ago with the understanding that this was a community of residential, single family and multi-family homes. She stated to have the building would be an eyesore and is the reason they left New York. They don't have a demand for buildings. They are opposed to this building because it is in close proximity to Cooper's Pond and to schools. It is ignorant to think that a one bedroom apartment will not be having a family and not have multiple cars. You can not assume people are going to follow the guidelines the developer is setting up. She also asked why it is necessary to change the variance of the location when there is an abundance of apartments available. She asked what is so unique about this apartment. They have nothing against the developer if they are going to build three single family homes and they welcome that. She wants to preserve the town and maintain it the way it is. They never found out how much the apartments will be rented for.

Mary Hernandez, 25 Birch Avenue, thanked the board members for the time and attention they have put towards this application. She is impressed by their dedication and support for preserving the community. She stated while listening to the experts that it was not proven why 145 W. Main Street should get relief from the strict application of the zoning requirements. Mrs. Hernandez stated she believes the applicant does not qualify for the change and it would negatively affect the community. The applicant bought the lots for \$400,000 with the knowledge it was meant for three single family homes. That is drastically

below the cost for other lots in the area. It is made clear from the meetings that the developer wants to quickly make a profit and be gone. He is not interested in being a long standing Bergenfield resident. She respectfully requested the zoning board members deny the application.

Jacqueline Romney, 10 E. Church Street, stated she doesn't understand why there was no mention of current traffic statistics especially when the development will add more to it. She read from a police report she had that in an average month there were 46 car crashes. She had completed an OPRA request on June 17, 2021. It stated there were 187 car crashes up to date and 22 hit and runs. She inquired why that hasn't been taken into consideration and why hasn't the zoning board done its own studies to analyze how this will impact the community. This development will add more fatalities and injuries to the existing problem.

Eric Batista, 14 N. Taylor Street, stated other than all the violations and things that were negative with it, the board needs to take into consideration the residents that live here. The owner is not going to live here. They are not interested in the building and not going to resonate well with the people living in the community. He hasn't heard anybody happy about the building and everyone has expressed that. He asked the board to decline the application since there are an abundance of residents not interested in it. There are other places in town where they can invest in developing apartments.

Nelson Reynoso, 14 S. Franklin Ave, thanked the zoning board members for their service. The construction of 145 W. Main Street does not fit into the neighborhood. He always wanted to invest in a quiet town like Bergenfield. The value of his home will go down. If the building is developed, there aren't going to be parking spaces available. The building will affect the current tranquility, the aesthetic and quality of the neighborhood. It's not right the developer is trying to force the building on the community. The building can be built somewhere else that fits in with the zoning and the master plan. Mr. Reynoso stated he recently witnessed a car hit a child right on W. Main Street and there was a traffic guard present. It is a very busy intersection. He strongly encouraged the zoning board members to not grant the variance and to help preserve the historic nature of Bergenfield.

Chairman Stein closed the comments from residents portion.

Mr. Steinel suggested adjourning the meeting for tonight and take the matter up at the next regular meeting. The comment portion is done and it will give the attorneys time to prepare for their final statements. They can act accordingly following that.

Mr. Stein stated there are no more witnesses. It would just be Mr. Capizzi and Mr. Lieberman. Mr. Stein stated there is still time to notice. It will be the first item on the agenda at the next meeting on July 12, 2021. Mr. Stein stated the only option they have then would be to schedule a special meeting.

Mr. Capizzi and Mr. Lieberman both stated their summation would only take a few minutes.

Mr. Lieberman stated he will not be in the United States on July 12, 2021.

Mr. Capizzi stated he is not available for the August 2nd, 2021 meeting.

Mr. Stein stated it will be carried over to the July 12, 2021 meeting with no further notice necessary.

Mr. Mondello stated the matter will be carried to the regular scheduled meeting on July 12, 2021 at 8:00pm. There isn't going to be any additional notice to residents within 200'.

MOTION TO ADJOURN MEETING

Motion By: John Smith
Second By: Sara Berger
All ayes. None opposed.

Meeting was adjourned at 11:13 pm.

Respectfully Submitted,


Hilda Tavitian, Clerk
Zoning Board of Adjustment