

Board of Adjustment

Virtual Meeting

January 19, 2022

Meeting called to order at 7:09pm.

Statement of compliance read by Brian Schwartz.

Dan Battista, Michelle Brown, and Bryan Carley sworn in as members by Mayor Lawrence La Ronde.

Roll Call

Present:

Absent:

Dr. Harry Allen

Basil D'Armiento

Maria Paola Castro

Herminio Estrella (Joined 7:37pm)

Daniel Battista

Gary Lewis (Joined 7:41pm)

Michelle Brown

Bryan Carley

Chairman Joel Kenderdine

Also present was Board Attorney Brian Schwartz and Engineering Consultant Dave Testa.

Reorganization:

Dan Battista nominated for Joel Kenderdine for Chairman. Seconded by Ms. Castro.

All in favor. None opposed.

Ms. Castro nominated Dr. Allen for Vice Chairman. Seconded by Mr. Carley.

Dr. Allen nominated Dan Battista for Vice Chairman. Seconded by Mr. Carley.

Roll call vote:

Dr. Allen – Dan Battista

Ms. Castro – Dr. Allen

Mr. Battista – Dan Battista

Ms. Brown – Dr. Allen

Mr. Carley – Dan Battista

Chairman Kenderdine – Mr. Battista

Mr. Battista wins the vote for Vice Chairman.

Mr. Battista nominated Brian Schwartz for Board Attorney. Mr. Carley seconded.

All in favor. None opposed.

Ms. Castro nominated Dawn Gaebel for Board Secretary. Seconded by Mr. Battista.

All in favor. None opposed.

Bryan Carley nominated Jen Bartholomew for Recording Secretary. Seconded by Ms. Castro.

All in favor. None opposed.

Approval of Minutes:

November 17, 2021 minutes were approved as submitted with no additions or corrections.

Reorganization closed and public meeting opened at 7:23pm.

Resolutions:

Resolution memorializing the hiring of Brian Schwartz as Board Attorney for 2022. Motion to approve the resolution made by Mr. Battista. Seconded by Ms. Castro.

All in favor. None opposed.

Resolution to hire Brian Schwartz is approved.

Resolution to hire Paul Grygiel from Phillips, Preiss, Grygiel, LLC for CRV Investments, LLC, 15 Jackson Avenue application. Motion to approve the resolution made by Mr. Carley. Seconded by Ms. Castro.

All in favor. None opposed.

Resolution to hire Paul Grygiel approved.

Old Business:

None

New Business:

CRV Investments, LLC – 15 Jackson Avenue. Application to develop the property with a new 3 story building containing 13 residential units with associated parking.

Joseph Paparo from law firm of Porzio, Bromberg, & Newman is representing the applicant for this use variance. He congratulated all the Board members on their appointments. He pointed out that there were only six Board members in attendance.

Brian Schwartz gave the applicant the option of moving forward with the application and voting, moving forward with the application and reserving the vote to another date when a possible seventh Board member could listen to the hearing and then vote, or adjourning the hearing to another date where the Board would hopefully have seven members in attendance.

Mr. Paparo will present the application and if the hearing concludes, he would like to reserve the vote so a possible seventh member can listen to the hearing and vote at another meeting.

The application is a bifurcated use variance for 15 Jackson Avenue is block 80, lot 23. With a bifurcated use variance, the municipal land use law allows the applicant to proceed solely for the use variance. If the use variance is granted by the Board, the applicant would be obligated to return to the Board on notice at a public hearing for full site plan approval and related variances. They are solely seeking approval for the use variance. The property is located in a B business zone. The proposed multifamily use is not permitted. According to the Municipal Land Use Law, they are seeking a D1 use variance. If the use variance is granted, they will be returning to the Board on an application for site plan approval with all required details, engineering materials, storm water, drainage, lighting, landscaping, and all of the usual materials seen on full site plan applications. Their intent is to describe the proposed multifamily building and provide the planning justifications for allowing a multifamily use in this zone. The Board will then be asked to vote as to whether they feel this use is appropriate. They will not be presenting a fully engineered site plan, lighting, landscaping, or storm water details.

Chairman Kenderdine asked if they are strictly addressing the question of whether or not you can put a residential multifamily unit in the B business zone.

Mr. Schwartz stated in his opinion they are also looking at the density because density is also a variance that is part of the use variance. As far as the bulk variances, typically when you are doing a use variance or a D variance, the bulk requirements are part of the use variance. If you have a use that is not permitted in the zone, the bulk requirements in that zone don't really apply strictly. Therefore, you are looking at a combination of the bulk requirements in the zone as well as the bulk requirements in zones where the use is permitted. The main focus is on the use and the density request. Site plan issues are reserved for another time.

Mr. Estrella joined the meeting at 7:37pm.

Mr. Paparo stated they are here for a bifurcated use variance for a proposal of a multifamily building of 13 units in the B zone.

Witness:

Abigail Benjamin
12-14 Eastern Drive
Fair Lawn, NJ

Project Architect Abigail Benjamin of Elmer Properties sworn in by Attorney Brian Schwartz. Ms. Benjamin graduated from the University of Miami with a Bachelor's in Architecture. She is a registered architect in NJ as well as seven other states. Her license is in good standing. She has experience in designing the type of multi-family structure that is a before the Board.

Gary Lewis entered the meeting at 7:41pm.

Ms. Benjamin has not been before this Board previously but has been before Boards in the NJ/NY/PA area.

Ms. Benjamin accepted as a professional architect for this application.

Mr. Paparo agreed with Mr. Schwartz that Mr. Lewis would be eligible to vote at the end of the hearing because he did not miss anything substantial.

Ms. Benjamin shared her screen to present the plans to the Board and the public. 15 Jackson Avenue is a T shaped lot. They are proposing a 13 unit, 3 story multifamily building towards the rear of the lot. The front portion would provide on site parking. There is a trash enclosure and some parking on the first floor of the building. She is referring to sheet Z-100 of the plans submitted to the Board. Throughout the application process, the plans have been revised according to comments and feedback from the Borough and its consultant. The building was initially 4 stories. It is now 3 stories, 35 feet in height. They are providing 7 one bedroom units which are 595 square feet and 6 two bedroom units. They are mixed throughout all 3 floors. A unit on the first floor is ADA accessible. Two affordable units are also being provided. On the first floor there is parking, a one bedroom, 2 two bedrooms, and a shared tenant storage space. The second and third floors are similar in configuration but there are two additional one bedroom units on each floor. The building is intended to be fully sprinklered. They are providing a stand pipe connection at the front elevation along the parking area to the west of it. They are proposing a hardy plank exterior similar to surrounding buildings with a gable feature at the front and the rear similar to the homes in the neighborhood. There is stone veneer along the gabled roofs with an asphalt shingle roof, similar to the style of the neighborhood. The building will be fully sprinklered and comply with all ADA building codes. Parking areas are identified on sheet Z-100. It has not been fully engineered but the purpose of the conceptual plan is to show the Board how the property can be developed to accommodate the structure. Ms. Benjamin feels they have addressed most of the comments in the Board's consulting Planner's report dated January 18, 2022 with their revisions that concerned the height and appearance of the building. Two affordable units would be provided according to the Borough's code.

Mr. Testa asked if Ms. Benjamin laid out the parking. She responded that her colleague did but she reviewed it. Mr. Testa's main concern is the parking. There is a 24 foot drive aisle which is what the ordinance requires. Spaces 1-13 look like they are 18 foot stalls which is what the ordinance requires. Spaces 14-18, the parallel spot scaled off to 8 feet. There is no buffer room for anything there for curb or fencing. Typically, with 90 degree parking you need room for overhang for the front of the cars. Spaces 1-13, there is a fence along the property line. Spaces 14-18 appear to be 18 feet long. Typically for parallel parking stalls you would have an extra 6 feet so they would probably lose one of those spaces in making them 24 feet long. There is no cushion for any buffer with the layout of the parking to the adjacent properties.

Mr. Testa asked about the zoning chart and the 39 required spaces in the second column. Ms. Benjamin stated it was a typo and it was supposed to be 26. Mr. Testa stated on the top of the plan it states 21 are required. Ms. Benjamin stated based off the analysis of the number of units you need 1.5 spaces for a one bedroom and 1.75 for a 2 bedroom so the required number off the occupancy would be 21 but the required in the B zone is 26 based on 2 per unit.

Mr. Testa asked what the square footage of the first floor of the building was. Ms. Benjamin stated building coverage is 5,132. The 5 parking spaces is included in that square footage.

Mr. Grygiel asked if the affordable units were labeled in the plan. Ms. Benjamin stated they have just designated that two units will meet the affordable housing requirement. Mr. Grygiel stated for site plan, one of those units is supposed to be a three bedroom unit. He didn't see any three bedroom units on this plan. This would need to be adjusted or a waiver granted from that standard. That's the State Affordability Controls for unit mix.

Mr. Kenderdine asked for clarification on this.

Mr. Grygiel referred to his review memo on page 5, item 5. It refers to the Affordable Housing ordinance that the Borough had to adopt to comply with the Affordable Housing Regulations. 15% is set aside for affordable units in any development of this size. In addition, the NJ Uniform Housing Affordability Controls has a minimum that 20% have to be a 3 bedroom. Ms. Benjamin stated they can accommodate that in a revised plan.

With regard to the bulk table, Mr. Grygiel's review of the rear yard standard for the zone is 15 feet except for abutting a residential zone and it appears to the northeast there is a residential zone so it would be a 25 foot setback for that portion. Ms. Benjamin deferred that to the Planner.

Chairman Kenderdine asked if the existing house on the property is going to be torn down. Ms. Benjamin stated yes.

Mr. Lewis also wanted clarification that the house was coming down in order to accommodate the parking back to the main structure.

Mr. Battista asked where snow would be put. Ms. Benjamin stated it would probably have to be pushed to the southeastern corner but they will look at that in more detail when the site plan is developed.

Mr. Battista asked if the trash enclosure is also going to be used for recycling. Ms. Benjamin stated yes.

Mr. Lewis asked how many cars they anticipate per unit based on the bedrooms. Ms. Benjamin referred to the zoning table which states 1.5 spaces are needed for 1 bedrooms and 1.75 spaces are needed for 2 bedrooms. 21 spaces would be required. Mr. Lewis asked if they are eliminating the part of the structure for parking. Ms. Benjamin stated 5 spaces fit under the building and they are providing 23 spaces total. The intent is to provide on site parking but the exact configuration will have to be sorted out at a later date. Mr. Lewis stated street parking is maxed out already.

Mr. Battista asked if they are required to have off street parking. Ms. Benjamin stated 26 spaces are required in the B zone. Based on their calculations within the zoning and the building code, they are required to provide a minimum of 21 spaces to accommodate the mix of units and the occupancy.

Mr. Battista asked if they would be assigned spaces with guest parking. Ms. Benjamin stated they haven't gotten into that yet but it would be up to the owner.

Mr. Paparo stated they would have no objection to assigning spaces. The owner acknowledges the need to manage the parking properly.

Mr. Battista asked if it was possible that they would have to lose a space or two if they aren't meeting the size requirements. Mr. Paparo stated once this is engineered, the parallel spaces may have to be adjusted to make the appropriate size. It would be fully designed and engineered during the site plan. If there was a variance required, it would be before the Board during the site plan and the Board could either approve or reject it.

Mr. Schwartz asked what the height of the building is now. Ms. Benjamin stated it is now 35 feet.

Public questions:

John Kline

23 Jackson Avenue
North Plainfield

Mr. Kline is not happy that this would be a 3 story wall next to his yard. He asked how the fire department would get down the driveway if there is a fire. Ms. Benjamin stated there will be a fire hydrant on site, the building would be fully sprinklered, and there is a stand pipe at the front entrance. She deferred the actual navigation within the site to the Planner.

Mr. Kline is also concerned with the height of the building saying his entire yard would be shaded. The neighborhood is unhappy because not everyone got a certified letter. They don't need a 33% increase in population on a street that is already so crowded that you can't get out of your driveway.

Witness:

Michael J. Pessolano
140 Elmwood Avenue
Bogota, NJ

Michael Pessolano sworn in by attorney Brian Schwartz.

He is a licensed Professional Planner in the State of NJ, member of the Institute of Certified Planners. Mr. Pessolano has testified before this Board a few times in the last year.

Mr. Pessolano accepted as an expert.

Mr. Pessolano studied the application from a planning perspective and reviewed the conceptual plans prepared by Ms. Benjamin. He is familiar with the site and surrounding land uses. He evaluated the neighborhood on foot and prepared an exhibit.

Mr. Pessolano shared his screen to show his 7 page planning exhibit. It consists of maps and images. He is the principal and founder of MJP Land Use Planning, LLC. The exhibit will be labeled A1.

Sheet one shows the zoning layout relative to the application itself. It shows the T shaped parcel which is fully in the B business zone. To the east is the R3 residential zone.

Sheet two is an aerial map showing the outline of the property. The site is in the business zone. It is situated on a deep block with the subject property being 236 feet deep. The shape of the property is atypical. The total lot area is 19,357 square feet or .44 acres. This lot hugs the rear of a commercially developed, mixed use development on Somerset Street. The site is very well served by bus transit.

Sheet three shows a closer aerial view of the property with the residential uses indicated on Jackson and Fairview Avenues. A mixture of commercial and residential uses line Somerset Street. The significance of the placement of this parcel is key to his evaluation. It could be used for either business purposes or for their proposed use. This property is right for development of some type. The zoning standards for development within the T shaped boundary call for a building up to 35 feet in height. The northwestern boundary butts up against the commercial laundromat. There is a 4 family building next to the laundromat going to the south. The next 2 lots are occupied by a mixed use building, housing a dentist office and a few apartments. The next building is a child care center, formerly a rescue squad building. The next two properties are a complex of mixed use and retail businesses at the corner of Jackson

Avenue and Somerset Street. All of these building have parking right up to the property line of the subject property. The rectangular part of the property in the back represents roughly 12,000 square feet of flat, buildable land area. The child care use has an outdoor play space tucking into the corner of the subject property with parking and circulation also going up to the property line. The mixed use building has ancillary parking which backs up to the subject property. The post office is adjacent to the subject property with its circulation area going up to the property line. The property to the east of the subject property is a single family dwelling. There is an accessory building in the corner pretty much on the property line. He's not sure if there is a dwelling on the upper floor. There is a mixture of 1 and 2 unit buildings and a 3 unit building directly across from the subject property at 14 Jackson Avenue.

Sheet 4 is a ground photo of the subject property, a 2 family, 2 ½ story dwelling with a driveway that goes back towards the rear of the property. The property line is along the line of the shrubs and the change in pavement.

Mr. Kenderdine asked Mr. Pessolano what the height of the existing building is. Mr. Pessolano did not take a measurement but he believes it would be closer to 30 feet.

Dr. Allen asked if the whole driveway would be taken away. Mr. Pessolano stated circulation and access to the post office and child care center has ample room for 2 way traffic.

Mr. Kenderdine stated the driveway is fenced off in the rear and access would have to be through the post office to the child care center.

Sheet 5 shows a ground view of the rear of the dentist's office and the 4 family looking towards the rear of the subject property. To the right of the photo is the child care center and the play space going up to the shrubbery. Beyond the shrubbery is the existing 2 family dwelling at 15 Jackson and the accessory structure belonging to the parcel to the east of 15 Jackson. The photo also shows the area where the proposed building would be built. There would be a fair amount of green space on all sides of the proposed building.

Sheet 6 shows the 3 family dwelling directly across the street at 14 Jackson Avenue.

Sheet 7 shows the front view of the block front on the end of the block to the west of the subject property. The driveway to the laundromat goes around to the rear of the building. The residential portion of the mixed use is at the end of the block associated with the sweet shop and the pizzeria. A 1 story building goes to the corner of Jackson and Somerset Street. This shows the scale and configuration of development. The proposed building would not be visible at all unless you looked between structures from the Somerset Street perspective.

Gary Lewis noted the Post Office has limited parking in the street. He suggested there should be temporary parking in that area for the Post Office so people can drop off mail. Tenants should not be able to utilize the street parking in front of the Post Office. Mr. Pessolano stated that the site plan should ensure all parking for the site be contained on the site. Mr. Lewis asked if the Borough could put signs on Jackson Avenue for temporary parking in front of the Post Office. Mr. Pessolano stated this application would have no bearing on what the Borough would do with that street parking.

The lot is 19,000 square feet in the business zone. It has a 2 ½ story 2 family dwelling on it. Mr. Pessolano believes this is not on track with the vision of the Master Plan of more investment and more

utilization. The site itself is underutilized. The lot frontage is on a side street, Jackson Avenue. Commercial businesses depend on pass by traffic which this property does not have. To have the land well utilized, he believes the substitute structure and the substitute use of a modest apartment building makes good sense here because it will fulfill that vision for greater use intensity and utilization within the business district. It will have the added benefit of providing a quieter, softer use going up against the R3 zone properties to the east and north. The permitted uses with loading facilities, etc. might not be the best fit for this setting. The center of the block is wide and deep. It is an area largely populated by accessory structures for dwellings that line Fairview Avenue and Jackson Avenue. The proposed building with landscaping would be a nice transitional use between the full-scale business zone activities and the quieter residential rear yards. The double benefit by not risking a business failure by putting a business on this plan plus the greater opportunities for a nicer transitional use blend well on this site. A three story, 35 foot height apartment building with 13 units and a mix of one and two bedroom units is proposed with ancillary parking. There will also be landscaping, lighting, and solid waste facilities. This property has adequate room to accommodate all the facilities that would go along with an apartment building of this scale. It is a generous piece of land and the proposal is not seeking to cover it from corner to corner.

Because this is not an inherently beneficial use, it's not given special consideration that way. It's subject to the four elements of the Medici Analysis for a use that's not permitted in the zone. This is a bifurcated application so some of the usual details that get considered in the context of a B1 variance will be off to the side and for a later time should the Board approve this and move into site plan review. Uses permitted in the zone are: stores and shops for retail business, banks and financial institutions, central telephone exchanges, offices, restaurants and taverns, funeral homes, vocational schools or instruction studios, public buildings and uses, and parking garages. Most of these need visibility to customers to be viable and the location is not ideal for attracting those types of uses and expecting them to be viable long-term. Most of these need employees and customers. This application would provide a symbiotic relationship with its surroundings. Businesses need customers and employees. Residents represent prospective customers and prospective employees. The bonus of this proposal is that so much of that is achieved within walking distance. There are also bus stops nearby. There are ample opportunities for people to live, work, play, and shop on foot. This is huge in a community where the business zone suffers from a lack of parking. The community benefits from encouraging housing that will help support the long-term viability of the business base.

There are four parts to the Medici Analysis. One is, are there special reasons? Two is, is the site particularly suitable for the proposed use? Those are the 2 positive criteria elements. There are also negative criteria. Three is, does the proposal represent a substantial detriment to the surrounding neighborhood? Four is, would the proposal, if implemented, constitute a substantial impairment to the intent and purpose of the zone plan and zoning ordinance?

There are many special reasons that granting this use variance will advance the purposes of zoning. Purpose A is to promote the general welfare. This proposal, with its new, decent, safe, sanitary, fire protected modern housing, including two new affordable units towards the Borough's unmet need of 143 units would promote the general welfare. He calls this a proposal in smart growth format. Smart growth is where you have the walkability factor and connectivity to transit and a community that is generally accessible on foot and the uses support each other because of that configuration and compactness of its development. The smart growth concept also advances purposes E and G of the

Municipal Land Use law. Purpose E is toward the provision of appropriate densities and appropriate locations. Purpose G is to provide for a variety of uses to meet the needs of the State's citizens in appropriate locations. He believes this is a highly appropriate location for this type of land use. Purpose B of the Land Use law is also advanced to provide adequate light and air, generous opportunity for spacing of the proposed structure, not just from its lot lines but from any principal buildings anywhere nearby, more spacing than most principal buildings have throughout the rest of the community. Purpose D speaks to fulfilling the concept advanced in the State plan for development and re-development. This type of housing takes advantage of existing infrastructure and resources so public investment and new infrastructure and so forth does not have to take place to accommodate growth within the State. Purpose H is also advanced to promote the lessening of traffic and congestion. Occupants can walk to day to day activities. Purpose I is also advanced, which is to promote a desirable visual environment. This is more for the site plan but he has no doubt that an attractive building with attractive landscaping framing it will be the end result. Purpose M is to utilize creative development techniques toward the efficient use of land. The overlapping benefits of residential adjacent to commercial, adjacent to transit opportunities and walkable format is an efficient use of land.

As to particular suitability, he believes this site is particularly suitable by virtue of its context and its condition. The site is remote from view of customers in the commercial corridor and therefore less viable or suitable for commercial use due to that location. The location does allow for a discreet building placement with housing that will have a symbiotic relationship to its surroundings and supporting merchant based transit shopping and employment opportunities all within walking distance. The site is not constrained by environmental features. It is a good lot that is ready for development. Building on the development site is encouraged by zoning. They are not proposing a principal structure or parking where it does not belong. The principal building will not be imposing on other principal structures. It is in the center of the block, most proximate to the rear yard open space areas and accessory garages on surrounding lands. The development design makes for good utilization of a very irregularly shaped lot. The zone plan anticipates investment to take place on business B zone property and this will do just that. By putting the principal structure on the larger part of the lot in the back, it avoids placing parking directly adjacent to the R3 residential zone. The dwelling to the east is also in the business zone.

As to the negative criteria, there are 2 prongs that need to be evaluated. One, is there the prospect of substantial detriment to the public good from this proposal? Public good typically means impact on adjoining properties. He believes the impact will largely be visual. They intend to provide for adequate facilities on site so the impacts from this use don't spill over into the street or adjoining properties. With regard to the visual impact, he doesn't believe it is a detrimental one due to the distances to occupied buildings from where the development would take place. New buildings and new construction give an overall upgrading feel to an area. Landscaping can provide a nice buffer around three sides of the building. The front side of the building will be occupied by access driveways and the trash enclosure. The site will be able to accommodate all needed facilities for 13 apartments, including solid waste, storage and disposal, fire protection, on site parking, landscaping and screening, and reasonable yard space around the principal building. The proposed principal building offers a nice buffer and a transitional use between the back end of the business zone that fronts on Somerset Street to the residential rear yards to the east without undue impacts to light and air. This is preferable to the same land being utilized for frequent and noisy loading and unloading of goods and maneuvering of trucks

with audible back up beepers that would be associated with a commercial use, instead a nice enclosed use within a quiet residential building makes for a nice transitional use. It reduces the potential impacts of any land use from the existing fabric of the rear yard areas between Fairview and Jackson Avenue. He sees no real detriment, let alone that would be at the level of substantial.

Would there be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance? He looked at the Master Plan of 2014 and the 2020 Housing Element and Fair Share Plan prepared by Mr. Grygiel. There remains an unmet need for affordable housing. Part of the methodology for attaining the 143 affordable units is to have inclusionary housing make up a good portion of that unmet need. Inclusionary housing is housing specifically allocated for affordable units. In the North Plainfield ordinance, 15 percent of the units in a rental project of 6 units or more or 20% of ownership units in a project of 6 homes or more would be set aside for affordable housing and count toward the 143 unit objective. While the zone plan does call for business use of this property, there is also significant merit for residential use. The affordable housing objectives are long and lasting and movement toward that goal will matter as time goes on. This supports the overall objectives of the Master Plan. There are a mixture of residential and commercial uses right on Somerset Street. This is not a radical change to add more residential here. The modest infusion of potential customers and employees will help all the merchants be more viable. This will directly support economic development and downtown revitalization objectives of the zone plan rather than undermine it. The Master Plan acknowledges that business support from outside the community is limited by insufficient, reliable available parking. This proposal provides improvement to the customer base within walking distance while meeting its own parking needs on site.

Speaking to the enhanced quality of proof for D1 use variances, if this is such a great idea, why hasn't the governing body amended the zone to allow this to happen? Recent change conditions in the 2020 Housing Element and Fair Share Plan is fairly new. The Board has more information and detail in front of them to make an informed decision relative to all the things that matter. He believes the proposed use is fully consistent with the context, the mix of commercial and residential uses. It will make the entire zone more viable in fulfillment of the downtown revitalization objectives of the 2014 Master Plan. He finds there is more consistency than inconsistency with the purposes and intent of the zone plan and zoning ordinance with this proposal.

The positives greatly outweigh the negatives. Land utilization intensity is on par with substantial investment articulated in the Master Plan vision for commercial uses. It's just in the form of a residential building instead of a commercial building. Enhancement of potential customer employee base within walking distance. The extra customers and employees would not be taking up valuable parking spaces. This project is fully supportive of existing public investment in transit in the neighborhood. Housing where services can support it are encouraged in the State plan. Affordable housing toward the 143 unit unmet need. The use is less impactful to residential rear yards than some potential permitted retail development might be. Adequate special arrangements and a good supply of parking. All of these aspects underscore in his opinion particular suitability of this particular site for 13 new apartments. Balancing that against the negative, he believes the principal impact from this proposal is visual and there will be ample opportunity to tailor a good fit in that regard in the site plan phase. He believes the positives clearly outweigh the negatives and all four elements of proof of the Medici Analysis are attained and approval is warranted.

9:03pm break

Reconvened at 9:11pm.

Mr. Schwartz asked Mr. Pessolano if the apartment use was permitted in the adjacent zone. It is not. Mr. Schwartz asked Mr. Pessolano was comparing the requirements to the B1 zone. Mr. Pessolano stated he was making no comparison to that zone. There is a garden apartment zone on the northern part of the Borough. Mr. Schwartz noted it is a garden apartment zone, a townhouse zone in the B5, B6 zone but the B1 zone is what the engineer did the zoning analysis on. That's a zone where there's a 40,000 square foot lot size requirement. Mr. Pessolano stated they had an internal discussion and they decided to dispense with any comparison to the B1 zone. He doesn't think it is appropriate to cherry pick provisions between zones to advance an application because they don't apply. This application stands on its own merits relative to its substance and how it meets the criteria. He doesn't see the value in exploring what other zones might permit in this particular application. Mr. Schwartz appreciates that explanation but he takes that as there is no zone where apartments of this type are permitted other than the B1 zone. Mr. Pessolano stated the B1 zone calls for apartments and mixed-use structures, 4 or 5 story structures on a 40,000 square foot lot. Mr. Pessolano does not feel that this application should be compared to the requirements in the B1 zone. Mr. Schwartz stated the municipal governing body has not allowed apartments on lots of this size anywhere in the Borough. Mr. Pessolano believes that will change on the heels of the findings of the Housing Element and Fair Share Plan of 2020. That calls on the Borough to use a redevelopment tool or redevelop on an individual site basis. To find sites in a fully developed community to produce developments that will have the 15-20% set asides to get to the 143 unit goal which is front and center for the Borough focus on, how that will touch down will be more evident in the next reexamination of the Master Plan. He would expect either a scattered site redevelopment plan approach or redevelopment districts might run an overlace beyond what are already offered will be needed to further the number in a more timely manner.

Mr. Schwartz asked if Mr. Pessolano was aware of any activity with the governing body, the Borough's Planner, or the Borough's Planning Board in connection with a re-zoning in order to create more apartment use similar to what's proposed here. Mr. Pessolano believes there is an old factory that is slated for production of affordable units in conjunction with a redevelopment to the east of Watchung Avenue. It is at the fringe of the B1 zone. It's called out specifically in the Housing Element and Fair Share Plan as one of the sites that will add to the Borough's inventory of affordable housing.

Mr. Schwartz pointed out the flag like shape of the lot. Mr. Pessolano stated it's rare to see this type shaped lot in front of a Board.

There is 12,000 square feet in the rectangular are of the lot and the front of the property will be exclusively for parking. The backyard would be about 15 feet to the north, 15 feet to the east. Mr. Schwartz pointed out there really would not be a lot of room for passive recreation. Mr. Pessolano states there would be enough space. Mr. Schwartz asked if Mr. Pessolano would agree that it is not characteristic of a suburban area for 13 units to provide a backyard that is 15 feet deep. Mr. Pessolano has seen more narrow yard spaces for more units. Mr. Pessolano disagrees with Mr. Schwartz that this is more typically seen in an urban area rather than a suburban area. Mr. Pessolano believes the site offers room for the building, parking and facilities, and green space where it will be most appreciated along the fringes of the R3 zone.

Mr. Schwartz asked if the client is not arguing that the property cannot be developed under a permitted use in this zone. Mr. Pessolano stated they are not arguing that hardship position at all. In the B zone, there is no side yard requirement even for a 35 foot high building. By having the parking in the front area and having the greenery and the principal structure in the less crowded area makes sense to him from a design perspective.

Mr. Testa asked if the density being proposed equates to 29 units per acre and if it's appropriate in this area. Mr. Pessolano stated yes he does because the site can accommodate that and the density itself is a benefit to helping support the viability of the merchant base nearby and the other facilities that benefit from utilization by residents. Mr. Testa asked if Mr. Pessolano was aware of other areas of the Borough that allow apartments, what the allowable densities are there. Mr. Pessolano believes in the garden apartment zone to the north, the density is 16 units per acre. He does not think there is a density measure in the B1 zone where mixed-use buildings are allowed.

Mr. Grygiel stated the existing use of the property has a dwelling on the front and there appears to be a second use on the property to the rear. Mr. Pessolano stated there was business equipment, vehicles, and storage of construction materials and tools in that area but it has since been removed.

Mr. Grygiel asked if the existing dwelling as well as the dwelling on the adjacent property is a permitted use in the zone currently. Mr. Pessolano does not believe it is because there are no residential uses permitted in the B zone. The dwelling can remain, they have vested rights as pre-existing non-conforming uses. He did not do research as to when they were established relative to when the zoning prohibited them but he believes they are non-conforming uses.

Mr. Grygiel asked if the Board were to grant the use variance for this property, you would have the remaining lot still in the business zone, the adjacent property to the right as you're looking at it, from a planning point of view does Mr. Pessolano have an opinion as to what the impact would be on that property's use or future viability if this were to have a use variance for multi-family. Mr. Pessolano believes it will be relieved of a possibility of a building right on the property line.

Mr. Grygiel asked if Mr. Pessolano if he did any comparison as to how the proposed use would compare to permitted uses in terms of visual impact or traffic or other impacts such as lights. He did a comparison of a most likely use in the business zone which deals with goods being sold to the public. There would be deliveries with vehicles that could be quite noisy early and late hours of the day. Total enclosure of 13 units and their orientation in the rear of the property provides ultimate protection for peace and quiet. Restaurants and taverns are permitted there and outdoor dining would not be very welcome.

Chairman Kenderdine asked for clarification on one unit having to be ADA compliant and 2 units having to be low income housing and how that gets calculated. Mr. Grygiel stated in regard to the affordable housing, the ordinance was amended a few years ago to say if you have more than 6 units on a property that's granted a use variance or re-zoning, 15% of rental units would need to be designated as low and moderate income units. As for ADA, the architect would have to address standards for adaptability of units on the lowest floor. This would be dealt with at the site plan stage.

Chairman Kenderdine referred to the Somerset Street strip with mixed-use buildings. He asked Mr. Pessolano if he looked at this building as a mixed use with offices on the first floor to continue some

kind of business use. He asked Mr. Pessolano if this had been considered for this site. Mr. Pessolano could not answer for the applicant, he was retained to address whether the application met the criteria for the D1 variance for this proposed use. The proposed use and parking is ideal for this property in this setting. With a mixed use scenario, it is a bit of an unknown what me coming and going and how to control it. Residential tenants with assigned spaces leads to the most control of access and parking.

Mr. Lewis asked for clarification of how many units will be rented. Mr. Pessolano stated 13 units. Mr. Paparo clarified that there will be 23 parking spaces, 5 being under the building.

Dr. Allen commented on the lack of parking on Jackson Avenue and Somerset Street. He stated you can't really have a business in that location because there is no where to park unless you turn the front into a parking lot like it is being proposed here. He also mentioned it is crowded for businesses. He looks at that as a potential residential area rather than a business area. He was more concerned with access and the applicant has dealt with that and he does not see a real downside to changing the use from this.

Mr. Battista asked if a warehouse would be allowed in that area. Mr. Pessolano stated it's not a permitted principal use. Storage could probably be worked in as a retail use but a warehouse as a standalone use is not permitted. Mr. Battista asked about an auto parts warehouse or store that has a retail provision in it. Mr. Pessolano stated that would be a question for Mr. Testa because you are talking about a wholesale use, retail use with auto parts. Mr. Battista stated he thinks this would be better for them than what could be there. The possibility of what could go in there could be much more detrimental than what is being proposed. Mr. Pessolano stated the thing that could be most impactful to the adjacent neighborhood is a restaurant or tavern. It may draw a much high parking demand and could be quite a problem.

No questions from the public for Mr. Pessolano.

Mr. Testa asked Mr. Paparo if the applicant owns the property. Mr. Paparo states he does own the property.

Mr. Testa's concern is the parking and the narrowness of the lot in the front of the site. Based on the conceptual layout of the parking, the parking is up against each property line on both sides. If the application is approved, they will have to tweak the size of the driveway back and ask for design waivers for the size of the driveway otherwise the parking spaces will be up against the property line and it's too tight.

Chairman Kenderdine asked Mr. Schwartz if they approve the D use variance allowing a residential multi-family on the site, do they have to approve the overall application if they don't appreciate the design concept. Mr. Schwartz stated if the variances are granted for the density and the use, it becomes a site plan with some bulk variances. There is a much lower threshold of proof that the applicant has to provide for those kinds of relief as opposed to the use variance. The Board's discretion to act on the application is much greater at this point.

Mr. Grygiel prepared an initial memo dated November 2nd which was updated to January 18, 2022 outlining his review of the application. The applicant is seeking the D1 use variance. He listed the criteria. Mr. Pessolano outlined the positive and negative criteria that need to be addressed. He concurs factually with what Mr. Pessolano stated as to what the applicant needs to prove. As a Board

they need to consider whether they agree regarding the suitability of the site and whether the purposes of zoning are advanced. Just because the site is potentially suitable, you also need to be convinced that the negative criteria addressed has no substantial detriment to the public good. It is a business zone and you could have uses that are as impactful if not more so. You have to be convinced that there be no substantial detriment to the Master Plan and zoning ordinance. This is a unique portion of the B zone because it is fronting on Jackson and not on the main drag of the commercial areas. There are two properties facing on the side street in the business zone. The Board has the ability to change the use of this property but one property will still be in the business zone. There is potential impact from leaving that. As to affordable housing compliance, there was mention of the Borough's 2020 Housing Element and Fair Share Plan that addresses the affordable housing obligation. It recognizes that Mr. Pessolano correctly said that there's a need that needs to be met and any development of this type needs to provide units. The other project Mr. Pessolano talked about, the old mill, there was a zoning amendment already prepared that's in place to address that and provide for multi-family housing on that site. It has not been built or approved yet. There is also the Villa Maria site where affordable housing will be provided. It's through individual redevelopments that affordable units will be created throughout the Borough. The Board needs to decide whether it agrees with the planning testimony as to the suitability of the site and the potential impacts.

Mr. Schwartz stated he asked Mr. Pessolano about equating the requirements in the B1 zone where apartments aren't permitted with this particular application. He said that's not appropriate because every property is unique and this is a different kind of application. Mr. Schwartz asked Mr. Grygiel if this was a valid way to look at an application like this. Mr. Grygiel understands his point, however, if you have a zone that allows for the same kind of use, he thinks it's at least instructive to compare the standards. He thinks it is relevant to look at those standards. There was another zone created, the AHO Affordable Housing overlay on the old mill which allows for multi-family, slightly more intense but it's a different type of location. That comparison would not be as valid since it's further away from the site up against the border of Plainfield.

Mr. Schwartz stated there was an intention on those properties along the brook that they could be rehabilitated and there could be an assemblage of lots. That's why there was a 40,000 square foot requirement because there was an opportunity to assemble lots and therefore come up with a property that could have open space and when you look at that zone, you see they talk about having separate buildings, passive recreation, interior roadways, etc. It's a very different kind of use and layout than what we are talking about here. Mr. Grygiel concurs. The B1 zone is more for the commercial corridors where it's more built up so it's a more valid comparison.

Mr. Lewis asked what the definition of affordable housing is. Mr. Grygiel stated in laymen's terms, it's a rent or sale price that doesn't overly burden the occupant of the housing. More technically speaking it's based on a percentage of median regional household income so it's not supposed to exceed roughly 30% of the income of a household. It's for individuals with lower or moderate income. The formula at the site level is only a percentage, the number of units set aside. In this case it's 15% or 2 units. The income formula is based on state standards and it's the housing region, which includes multiple counties. You take the regional income of three adjoining counties. It's codified in the ordinance and the state standards that the Borough has to comply with.

Public comments:

John Kline
23 Jackson Avenue
North Plainfield

He has owned his property for 35 years. It is 2 doors down but abuts the building proposed. Not everyone in the neighborhood got a letter saying this was proposed. The street is already full and there are too many people there already. There is no parking whatsoever, his driveway is constantly blocked. Any two room apartment is going to mean 4 cars in this neighborhood. The house next door had 8-10 cars and it was 2 apartments. He is also concerned about nighttime lighting. There are a number of outdoor spotlights out there already and there will be a lot of lighting on this building. The building will shade the entire back side of his yard. The proposed building is going to be taller than any building near it with the exception of the school. The proposed building is ugly. With the layout of the parking lot, headlights will be shining in his next door neighbor's house. Illegal housing and trash are already a big problem on the street. The whole project is way too big and way too tall for the neighborhood. His idea is to make it into a parking lot so Somerset Street is usable.

Shinasse
31 Jackson Avenue
North Plainfield

She is a neighbor of John Kline and she agrees with him.

Crystal Paisley
87 Jackson Avenue
North Plainfield

She is a resident of North Plainfield for 11 years. Her children have gone to the schools, including Growing Tree, which is backed up to the potential building as well as Somerset School which is across the street. She agrees with Mr. Kline. The street is extremely overcrowded now. There is always a problem with traffic during school pickup and drop off. Children have gotten hit at that intersection. Adding a 13 unit apartment will just add to more traffic and more cars and is the worst idea possible. The trash will be located at the corner of the property and backed up to Growing Tree's play area. Pests and rodents are going to be a problem. Overcrowding is already a problem in North Plainfield. She is also a landlord and she owns a multi-family home. There is a property on Westervelt and Jackson that is 8 units and that property is appropriate for the number of units. The lot size is big enough to accommodate parking. To put an apartment building of this size in that space in an already overcrowded area does not make sense. She believes it will affect the integrity of the neighborhood now where a majority of that area is 2 family, duplexes, single families, and at the most 3 family. She is very concerned and she doesn't think it will fit with the usage now. She doesn't feel adding 2 affordable units and 11 regular unit will do anything for North Plainfield. She is a real estate agent so she is very aware of the market rents for 1 and 2 bedroom apartments. The biggest concern of hers is Somerset School being across the street and the traffic and Growing Tree being behind this property.

Loretta Alirengues
112 Delacy Avenue
North Plainfield

She agrees with what was said. She thinks it is too compact for that space. She is concerned with loss of privacy for the surrounding buildings. The parking doesn't seem sufficient. There could be a lot of deliveries coming in. It would create more noise with cars coming in and out between residents, deliveries, and visitors. She agrees it is an ugly building and she would be horrified if she lived there.

Kurt Alexander
31 Jackson Avenue
North Plainfield

He lives 4 buildings down from where the proposed building. He agrees with what has been said by the neighbors. Parking is already an issue. His driveway has been blocked several times. He thinks this is a bad idea. He thinks something of a smaller size would be appropriate.

The public portion of the meeting is closed.

Mr. Paparo thanked the Board and the Board's consultants. He appreciates the time and consideration given to this application. They received some positive feedback over the course of the application that they incorporated into the design that was presented. They appreciate the comments from the public and understand that change is scary. The applicant does not dismiss that and takes the comments from the neighborhood to heart. They appreciate that the public took time to come out and show interest in the application and the community. This proposal is a concept for a multi-family use. Focusing on what Mr. Pessolano discussed, this is zoned business but for various reasons he identified, it's not an appropriate site for business. It has no visibility, it's separated from the business corridor and having a business use at this location would aggravate the neighborhood more so than a residential use. Mr. Pessolano noted this is a perfect opportunity for a transitional use. Moving from the more intense commercial on Somerset to the less intense residential uses on Jackson. This proposal will serve as a transition from those commercial uses to residential. The unique configuration of the site doesn't lend itself to business development. If it did, there would be a business there. There is another property that's zoned business that has no business on it. He thinks that speaks to the viability of having businesses fronting Jackson Avenue. He believes the residents would be equally concerned if there was an application for a tavern or a restaurant. The Board needs to take into consideration the lesser intense use that the applicant is proposing. Mr. Paparo respectfully disagrees with Mr. Schwartz and concurs with Chairman Kenderdine that if the use variance were to be granted, the Board would have absolute discretion and jurisdiction over the site plan. If there was a parking variance, a lighting deviation, any type of waiver, the Board could approve or deny at that point in time. The Board retains a high level of discretion. The concept plan is not what would be built there if this use variance was granted. What would be built there is what the Board would ultimately approve or not approve at a site plan phase. A multi-family use for 13 units with some type of parking is before you. That configuration could change. He would like the Board to be comfortable in knowing they still have total control over this application if the use variance is approved. Any variance relief could be approved or denied by this Board. For the reasons Mr. Pessolano and Ms. Benjamin cited, this use does not lend itself to a business use. It is more appropriate for a transitional residential use that is controllable by the applicant. Parking can be dedicated to tenants. There is a certain level of control in a residential setting that an owner can provide as opposed to a mixed use, retail, or other commercial use. With a multifamily you don't have concerns with employees, deliveries, or hours of operation. A multifamily is more consistent. It would have to be fully engineered to the satisfaction of the Board and its consultants. There was discussion

about borrowing regulations from other zones. If they were to borrow regulations from other zones, the building conforms. This proposal for a multifamily is a concept as to what is a better use for the site. A business use would not be appropriate for the property or for the neighbors. The multifamily use is providing affordable housing units per the code and a low intensity as compared to the permitted use. For those reasons and on the limited scope of the use variance with the understanding that the Board would see a fully engineered and designed architectural plan, all of those details would be in the Board's control during the site plan phase. If variances were needed, the Board can approve or deny those variances. Focusing solely on the use, is a residential use more appropriate than the business zoning of this property. Mr. Paparo respectfully requests the Board focuses on the reasoning Mr. Pessolano laid out based on the surrounding land uses, the configuration of this lot, and the impacts the permitted uses would likely have on the neighbors. Mr. Paparo respectfully requests that the Board approve the application for the use variance with the clear understanding that the applicant would be returning to this Board for a fully designed site plan and any necessary variances at that time.

Mr. Estrella made a motion to approve the bifurcated application for 15 Jackson Avenue. Seconded by Dr. Allen.

Mr. Schwartz stated any approval will be subject to site plan approval. Most of the typical conditions would relate to the site and it would be most appropriate to do it under site plan approval. Typically, they would also condition it on site plan approval being applied for within one year so the variance doesn't become stale.

Mr. Schwartz wanted to remind the Board as Mr. Grygiel has said in his report, a use variance is different from other variances that the Board would normally hear. The Medici case is about what the applicant must prove. In the Medici case, the NJ Supreme Court said the applicant must prove the Board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. For D variances or use variances, the property has to be particularly suitable for the proposed use. The Supreme Court went on to say that it is appropriate that an enhanced quality of proof and clear and specific findings by the Board are necessary to grant a use variance, especially in connection with negative criteria. The positive criteria talks about whether there are special reasons to grant a use variance and the special reasons are often grounded in the purposes of Municipal Land Use law. It also has to do with whether the property is particularly suited for the proposed use. The negative criteria talks about what the ordinance allows, what the Master Plan permits and envisions and if the proposed use will affect the public. The statute talks about whether there will be substantial detriment to the public good and whether there will be substantial detriment to the zone plan and zoning ordinance if the variance is approved. There is an enhanced burden of proof on the applicant in order to prove the negative criteria. If a Board denies a use variance application, it's virtually unassailable on appeal. If a Board approved a use variance, the courts have a little bit more discretion because a use variance is the hardest variance to obtain because it is contrary to what the zoning ordinance says. Without commenting about the testimony, Mr. Grygiel gave some insight to the way he sees the application, how it would be compared to other uses that are permitted in other zones. Mr. Pessolano did not feel that was an appropriate way to look at it but these are the requirements you should think about with a use variance. Now is when the Board has its greatest discretion. The applicant has to get 5 votes out of 7. There is an enhanced burden of proof on the applicant.

The Board can approve the use variance and the density variance and clean up the application at the time of the site plan when they have specific engineering. Parking can be addressed as well as building configuration but they will no longer have the discretion they have with the use variance. The Board can just deny the application. The Board can approve the application with certain conditions such as drastically reducing the intensity of use, the density, etc. That is tough to do on this application because the applicant comes to the Board with what they think is appropriate, this is what they want to do and it's really hard to start micromanaging the application. He thinks it is more of a yes or no type of application because if you have concerns about the intensity of use you can make comments about that and the applicant can come back with a new application. He thinks it is important for Board members to talk about their opinions on the application. It helps the applicant to know why you are making that decision, it helps the public, and it tells how you feel about the application.

Mr. Battista wanted clarification on if the Board says no, could the applicant come back with a revised application but if the Board says yes with conditions that is the more difficult option. Mr. Schwartz used an example where the Board may agree with the use but not the intensity of the use. If the Board were to deny the application, the applicant can come back with a substantially different application. It's like court where you can't relitigate the same case but you can relitigate a different case even if involves the same subject matter if it's a different issue. Mr. Battista says he can see the use but he feels it is too much for that neighborhood after hearing from the people in that area and knowing the area himself. He believes something can go in there that would make everyone happier.

Mr. Estrella asked Mr. Schwartz what caused this to be brought before the Board of Adjustment. Mr. Schwartz stated the use is not permitted in the zone. Mr. Kenderdine stated it's a B zone and they wanted a residential multi-family unit. Mr. Schwartz stated no residential is permitted in the B zone. Mr. Estrella stated it was confusing because there are residential homes there. Mr. Schwartz stated that is part of the planning argument that there are residences and it's adjacent to a residential zone. Around the corner is a 4 family residence. They don't know the legality of that but they know the existing use is a 4 family. That's part of their Planner's argument.

Mr. Kenderdine also mentioned density. Mr. Schwartz stated that can't be ignored. It would be a different application for an apartment building with 3 units. The 13 units impact on the intensity of use, the density or units per acre, and also the amount of parking required. Mr. Grygiel agreed.

Mr. Kenderdine also said other potential uses for that property must be considered. It's an odd shaped property and there are very few businesses that would opt to utilize that property. That's why he suggested professional offices on the first floor. With a new building it might be relatively useful. If a restaurant were to be put back there he doesn't think the surrounding residential areas would make good use of that. It is a waste of space back there. The owner is trying to put a much better looking building on the property. One of the questions we have to ask is if 13 apartments are needed in North Plainfield.

Mr. Estrella stated it's an odd shaped property and what's being proposed would make the most sense but his primary concern is the neighborhood. It appears it will have a negative impact on the neighborhood initially. But you also have to be careful because they can put something in there that people may not like.

Dr. Allen stated when he heard Mr. Kline talk about one house having 10 cars and having to park on the street where there is minimal parking he didn't believe it was part of this application. Dr. Allen agrees with Chairman Kenderdine when he asked what business could really go in there. He said it is difficult to determine what is really a benefit to the community. North Plainfield does not have parking. The idea of turning this property into a parking lot is not really valid. He believes the B1 zoning could have been residential since it's a buffer zone between the business area and the residential area. He thinks a residential variance is reasonable. Putting a business on that property would make the traffic worse when it's already terrible. He doesn't see a big deal about changing the use for this.

Mr. Battista stated he is going to vote no but he thinks the applicant will come back with something that conforms. They heard from the neighborhood. The applicant has every right to develop. He thinks the applicant should come back with something that will conform and enhances the neighborhood instead of detracting from it.

A positive vote is to vote in favor of the use variance and density variance. To vote no is opposed. Mr. Carley is the only one who cannot vote. We have six Board members and Alternate 1 Michelle Brown.

Dr. Allen – yes

Ms. Castro – no

Mr. Estrella – no

Mr. Battista – no

Mr. Lewis – no

Ms. Brown – no

Chairman Kenderdine – no

The motion has not passed.

Mr. Schwartz will have a resolution ready for next month.

Mr. Paparo pointed out a procedural item that Mr. Estrella made the motion to approve and then voted no. Mr. Schwartz stated he tells the Board to make a motion to put the application on the floor. They always ask for a motion in the positive. That's the way he has always done it because he does not want confusion about what people are voting yes and no for.

Mr. Paparo understood. The vote was 6-1 so it would not have made a difference. He didn't want the record to reflect something that was inappropriate.

Mr. Schwartz doesn't think there is a problem with that but he understands what Mr. Paparo is saying.

Chairman Kenderdine stated Mr. Estrella's opinion could have been changed during discussion as well.

Mr. Paparo appreciates the Board's time and consideration.

Next meeting scheduled for February 3, 2022. Chairman Kenderdine does not believe there is an application for that date. There is an application scheduled for February 16, 2022.

Motion to adjourn made by Mr. Battista. Seconded by Ms. Castro.

All in favor. None opposed.

Meeting adjourned 10:42pm.

