

BOROUGH OF BOGOTA

	Aye	Nay	Absent	Abstn.	No Vote
Reiper (Class I)			x		
Liriano (Class II)			x		
Murphy (Class III)	x				
Mancini	x				
Frias	x				
Foster	x				
Fede	x				
Napolitano	x				
Schnipp	x				
Hordern (Alt. 1)					x
Youla (Alt. 2)					x
Vote Total	7				

DATE: August 8, 2023

RESOLUTION: 2023-7

MOTION BY: *Youla*

SECOND BY: *Frias*

**RE: RESOLUTION REGARDING Application of 285 Orchard LLC
Block 65, Lot 12 (285 Orchard Terrace)
Site Plan and Variance Approvals**

**RESOLUTION 2023-7
PLANNING/ZONING BOARD OF BOROUGH OF BOGOTA**

WHEREAS, 285 Orchard LLC, (Orchard) as the applicant has applied to the Zoning Board configuration of the Planning/Zoning Board of the Borough of Bogota for Use Variance relief N.J.S.A. 40:55D-70(d), related bulk variance relief, and Preliminary and Final Site Plan Approval pursuant to, specifically seeking to construct a multi-family “town house style” Apartment Building within the southern half of the existing site.; and

WHEREAS, public hearings, upon the requisite statutory notice, were held by the Zoning Board of Adjustment configuration of the Planning and Zoning Board of the Borough of Bogota, on the application on October 22, 2022; January 10, 2023, February 14, 2023; May 9, 2023; June 13, 2023; at which time the Applicant, represented by counsel, John Verteri, Esq. appearing;

WHEREAS, during the course of all hearings the applicant presented testimony and/ or reports from witnesses, each of whom was accepted by the Board as an expert in his respective

field, including: Frank Troia and Robert Perry, AIA; Kyle Goodwin, PE; Yani Makhinson, PE and TJ Ricci, PP; and

WHEREAS, during the application the following Exhibits were introduced:

Exhibit A-1: Proof of Service

Exhibit A-2: Site Plan of Stonefield Engineering, dated February 18, 2022 and revised December 22, 2022, January 10, 2023 and March 17, 2023

Exhibit A-3: Architectural plans of Plan Architecture, dated February 21, 2021 and revised December 27, 2022, February 2, 2023, March 16, 2023

Exhibit A-4: Update Site plan, revised June 12, 2023

WHEREAS, the Board having reviewed the entire record and exhibits and heard and considered the comments, both written and oral, of all experts; and

WHEREAS, the public was given the opportunity to question each witness and make comments at the conclusion of the testimony; and

WHEREAS, based upon the testimony, stipulations of the applicant and evidence presented, including all exhibits presented and all of the plans, and the comments of the aforesaid municipal representative and the public; and

NOW THEREFORE BE IT RESOLVED the Zoning Board configuration of the Planning/Zoning Board of the Borough of Bogota has made findings of fact and conclusions of law:

1. The site is located within the Multi-Family Residential (R-3) Zoning District where multi-family dwellings are a permitted use.
2. The subject property is currently improved with a three-story garden apartment with a macadam parking lot and other site improvements which include concrete sidewalks, retaining walls, and contains multiple trees in the southern portion of the site.

3. The site is bound by West Fort Lee Road to the south, Orchard Avenue to the west and is surrounded by single family dwellings to the east and north.
4. The area surrounding the subject property is predominantly residential, with a mix of older one-family and two-family dwellings, garden apartments, and low-rise multi-family development.
5. The Applicant initially presented a plan to subdivide the property to install two 2 family high end Town Houses for private sale, the applicant responded to the board's concerns regarding the impact of such a plan and determined to revise the plans as originally filed and the subdivision request was withdrawn.
6. The Applicant proposes to construct a Four Unit multi-family "Town House" Style building within the southern half of the existing site. The existing multi-family building is proposed to remain.
7. The four townhouse dwellings face West Fort Lee Road.
8. Entry stairs for each unit are proposed facing West Fort Lee Road.
9. Garages for each of the units are now proposed in the interior of the property, with access proposed via a single shared driveway.
10. A new walkway and steps are proposed from Orchard Terrace up to a side entrance to the existing dwelling.
11. The existing grade will be lowered to construct the driveway servicing the townhouses and drainage improvements will be installed to mitigate the runoff from the dwellings and associated driveway.
12. The applicant is seeking multiple variances from the area, bulk, and yard requirements within the R-3 District including: a D-5 Variance, minimum lot area

(an existing non- conformity).; minimum side yard setback; (an existing non- conformity); minimum front yard setback; minimum rear yard setback; maximum fence height; maximum impervious coverage.

13. Frank Troia, the applicant's architect was sworn in and explained 4 townhouse style dwelling units would be built on the property. Each unit would have separate front and rear entrances. The buildings are joined to maximize space on the lot, and eliminate curb cuts. They have front steps leading up to the property from the sidewalk. There will be landscaping along the front and existing trees will be maintained. The exterior elements are upscale and would blend in with the existing residences in the area.
14. Sheet BA001 showed a layout of the basements and the first floor with an elevated landing above the sidewalk. BA-2 showed a detailed view of the basements. The end units have bump outs to break up the roof. The laundry areas are in the basement with no bathroom or egress window. It cannot be used as a bedroom.
15. The first floor is an open floor plan with your living area, kitchen, eat in area and rear balcony over the driveway. There is also a small room off the kitchen that does not meet any dimensions and cannot be used as a bedroom. A pantry is also on the first level.
16. Sheet BA201 showed the layout of the second floor. There are 3 bedrooms with a common hallway. The primary suite has a bathroom, walk in closet. The hallways have walk in closets with plenty of storage space.

17. Sheet BA500 showed the property elevations. The front doors and staircase along the side of the building. The staircase will be a part of the masonry of the building. Sprinklers will be installed in all the homes and all fire codes for each unit are met.
18. The units will have a balcony (4 x 17 feet). The applicant stipulated that it will ensure via its leases and rules and regulations that there will be no grills permitted and hanging laundry is prohibited on the balcony. Only small outdoor furniture is permitted.
19. After completion there would be a total of 12 units on the site.
20. Kyle Goodwin, the applicant's engineer confirmed the parking provided in the new units having 2 car garages, and 2 cars in the driveway.
21. It was noted that the slate patio behind the existing building will remain intact.
22. The project will only result in the loss of one on street space on Orchard Terrace.
23. Mr. Goodwin testified that there will be an addition of 7 shade trees on the property. There would be new sidewalks and the existing Borough tree roots will be protected. One tree on Orchard Terrace will however be removed.
24. The applicant has agreed to plant two trees for every tree taken down in any part of town selected by the Borough. A variety of trees will be planted on the property and the borough tree expert will be involved so all tree roots are preserved when new sidewalks are installed.
25. Shade trees added to the site would be a minimum of 2 ½" caliper. The applicant stipulated it will contact the Borough tree expert to accommodate the tree roots in advance of work on the sidewalks.

26. There will be five wells installed on site to address any drainage issue and the designs for same are subject to the approval of the Board Engineer.
27. Mr. Goodwin advised the pavers used for driveway would be impervious to ameliorate the impervious coverage variance.
28. There will be drain holes in the retaining wall to provide drainage.
29. The height of the existing building is 32 feet as listed other on the zoning data table.
30. All materials for the retaining walls will be concrete as per Mr. Costa's recommendation.
31. All utilities are located on West Fort Lee Road and each unit is metered separately.
32. The application complies with the ordinance requirement for distance between buildings (50 feet).
33. The new wall between the buildings is 8 feet. A fence will be located on top of the wall exceeding 6' above ground level, which will require a variance for the fence on top of the wall.
34. Residents at the property will be required to put out their trash and recyclables to curb according to the borough trash calendar
35. The applicant stipulated it will submit structural plans for approval by the Board Engineer for site wall and steps, prior to construction.
36. TJ Ricci, testified as the applicant's planner, and advised they would be building four multi-family homes on the lot. He advised a D-5 variance is needed.
37. The application presents a parking plan that is compliant and there are no known parking issues with the tenants of the existing building.

38. The board finds that the applicant took the comments of the Board and delivered acceptable plans. The applicant has complied with all recommendations of the Board.
39. The Board finds the application will improve the area and is consistent with the neighborhood.
40. The new units will provide a new look to the area. There is minimal effect on existing parking.
41. The lot will easily accommodate the density and the new buildings are consistent with the area and the height of the old building will not overpower the area and fits into the character of the neighborhood and is compatible.
42. The Board finds the application meets the requirements for special reasons required for a D-5 use variance as the site is uniquely situated for this use. The variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” The principles of the positive criteria have been met in that this is a unique use which generates limited traffic which promotes the general welfare, and the use is suitable in size and configuration for the site.
43. The application meets the positive criteria in that it is uniquely suitable for the site as it will enhance the appearance of the area. This was corroborated by the Board planner. The Board finds that Master Plan called for establishing additional housing and this application will serve to clean up the site, which currently contains an empty lot and will replace it with a finished aesthetically pleasing buildings with appropriate landscaping.
44. The application meets the goals of the Zoning Code and Master Plan and promotes

the general welfare.

45. The negative criteria have been met in that there is no detriment to the public good and there is no impairment to the use of the zone plan. The Board finds the applicant has attempted to minimize the parking impact on the neighborhood and has addressed any board concerns. In addition, the site is oversized and large enough to accommodate the new buildings.
46. The Board finds that the proposed application poses no detriment to the zone. The Board finds that the positive effect outweighs any negative effect to the neighborhood. The design is commensurate with the area. The applicant has presented proof that the purpose of the Municipal Land Use Law will be advanced by a deviation from the zoning ordinance requirements.
47. The applicant has demonstrated both the positive and negative criteria necessary for a use variance. The applicant has demonstrated that a benefit that will be provided by a deviation from the Municipal Land Use Law, would outweigh any detriment to the Municipal Land Use Law.

WHEREAS, the Planning /Zoning Board of the Borough of Bogota has determined the applicant has presented evidence that establish the positive criteria for granting of use variance relief under NJSA 40:55D-70 (D) 5 as well as NJSA 40:55D-70 (c) 1 and 2 as well as Preliminary and Final Site Plan Approval;

NOW THEREFORE BE IT RESOLVED THAT THE PLANNING/ZONING BOARD OF THE BOROUGH OF BOGOTA, hereby grants applicant's application as presented. This approval is subject to the following conditions:

1. This approval is specifically granted based upon the testimony of the applicant, the exhibits, and the application submitted to the Planning/Zoning Board of the Borough

of Bogota, all of which have been relied upon by the Board.

2. The applicant shall comply with all stipulations made on the record to the board.
3. The relief granted to the Applicant is specifically made subject to any conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the approval shall be unenforceable. It is the intent of the Board that the application not be approved if any condition is invalid and that the conditions are not severable from any relief granted herein.
4. Any violation of these conditions would result in a rescission of the approval, and result in the revocation of any certificate of occupancy for the subject site.
5. The applicant shall pay all professional fees incurred by the Board as a result of this application. In the event any professional escrow of the applicant has been exhausted, said escrow shall be replenished prior to the issuance of any certificates of occupancy.
6. Applicant shall enter into a developer's agreement with the Borough of Bogota regarding all public improvements and shall post-performance bonds to ensure all public improvements will be completed, will be posted by the applicant as a condition of approval.
7. All Plans including the final site plan plat of the applicant shall be subject to the final review and approval of the Board Engineer, Borough Planner to ensure compliance with all stipulations of applicant made on the record as well as applicable standards and codes.
8. The applicant will provide the Board Engineer with structural calculations before construction, and will provide confirmation that the current sanitary sewer, water service and other utilities are adequate for the site. This shall include a telescopic

inspection of the building sewer lateral before and after construction, and video of the inspection of the lateral shall be provided to the board engineer.

9. Applicant shall comply with the general comments and requirements set forth in the review letters of the board engineer and board planner.
10. The applicant shall plant 2 trees for every tree taken down in any part of town the Borough selects. A variety of trees will be planted on the property and the borough tree expert will be involved so all tree roots are preserved when new sidewalks are installed.
11. Shade trees added to the site would be a minimum of 2 ½" caliper. The applicant must contact the Borough tree expert to accommodate the tree roots in advance of work on the sidewalks.
12. The applicant will ensure via its leases and rules and regulations that there will be no grills permitted and hanging laundry is prohibited on the balcony. Only small outdoor furniture is permitted on balconies.
13. All construction shall comply with all controlling construction, environmental, engineering and fire safety codes. The applicant shall obtain all necessary state, county and municipal approvals and building permits. Applicant shall comply with all resolutions issued by the Governing Body regarding the subject site.
14. The applicant shall obtain all necessary municipal and county approvals and building permits required for the site including: Soil Moving Permit; Bergen County Soil Conservation District; Treatment Work Approval; Bergen County Planning Board.

15. Applicant shall enter into a Developer's Agreement with the Borough to address maintenance of trees and off-site improvements, said agreement shall be prepared by the Board Attorney, and is subject to review of Borough Attorney.

PLANNING/ZONING BOARD OF THE BOROUGH OF BOGOTA

Patricia Morrone
Patricia Morrone, Secretary

Corrado Mancini
Corrado Mancini, Chairman

I hereby certify the foregoing to be a true copy of a resolution adopted by the Planning Zoning Board of the Borough of Bogota at a meeting held on August 8th, 2023.

ATTEST: Patricia Morrone
Patricia Morrone, Clerk of the Board