

CALL TO ORDER:

The meeting was called to order at 7:30 p.m. at Borough Hall by Chairwoman Christina Hembree with the reading of the Open Public Meetings Act.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Sanjeev Dhawan	Present
Emilia Fendian	Present
Robert Hayes	Present
Michael Kaufman, Alternate 2	Present
Robin Malley	Present
Gary Newman	Absent
John Spirig	Present
Hasmig Yetemian	Present
Christina Hembree, Chairwoman	Present

S. Robert Princiotta, Esq.	Present
Evan Jacobs, Engineer	Not requested
Brian Intindola, Traffic Consultant	Present
Richard Preiss, Planner	Present
Meg Smith, Secretary	Present

NEW APPLICATION

Dr. Mahmood Karimi
50 Kinderkamack Road

Block: 2902 Lot: 32

Appeal for Certificate of Non-Conformity for medical use; or Use variance to permit medical use in a residential zone.

Mr. Sinisi, Esq., attorney for the applicant stated that Dr. Karimi has practiced medicine at 50 Kinderkamack Road since 1981. Mr. Sinisi stated that prior to Dr. Karimi, Dr. Fortuna practiced medicine at this property since, at least, 1966. Mr. Sinisi stated that Dr. Karimi is requesting a Certificate of Non-Conformity to confirm previously existing non-conforming use. Mr. Sinisi explained that the footprint of this structure will remain the same and that there are no changes proposed.

Proof of notice and publication for this application have been provided and verified.

Mr. Spirig questioned why the applicant was appearing before the board when the medical use has existed for many years.

Mr. Princiotta explained that the structure and the property existed before Zoning regulations. Once the Zoning was changed / approved, existing non-conforming properties have one (1) year to apply for a Certificate of Non-Conformity. This property did not apply for a certificate.

Mr. Princiotta stated that the applicant applied for a Certificate of Non-Conformity to be recognized as a

medical use on September 29, 2018 from Mr. Nick Saluzzi, Construction and Zoning Official. This request was denied by Mr. Saluzzi because the applicant does not comply with the current zoning ordinance which requires residency with a home office.

Mr. Princiotto explained that this property does not comply with the current zoning ordinance and that they need a certificate or variance relief.

Mr. Sinisi called Ms. DePaolera to testify for the applicant. After being sworn in, Ms. DePaolera stated that she has been a medical assistant since 1972 and is currently employed by Dr. Karimi at 50 Kinderkamack Road. Prior to working for Dr. Karimi, Ms. DePaolera worked for Dr. Fortuna since 1974 at this same address.

Ms. DePaolera testified that when she worked for Dr. Fortuna he was the only doctor working at the premises and that there were 2 girls working with him, one during the day and one at night. Ms. DePaolera stated that she worked Monday, Wednesday and Friday evenings from 6-9pm but the medical office was open Monday thru Friday from 9am to 5pm. There were no weekend hours for Dr. Fortuna. Ms. DePaolera began working for Dr. Karimi in 1981 after her maternity leave. Ms. DePaolera stated that Dr. Karimi had double the patients and a larger staff of Dr. Fortuna. Dr. Karimi was the only doctor but had 3 girls working for him. Office hours were Monday 9-12:30, Tuesday 3-6, Wednesday 9-12:30, every other Thursday 4-6, Friday 9-12:30 and every other Saturday 9-12:30.

Ms. DePaolera stated that Dr. Fortuna also owned the property to the north of 50 Kinderkamack Road but this property was not purchased by Dr. Karimi.

Ms. DePaolera stated that there were no changes to the footprint of the structure except for a vestibule which was added. Only minor interior alterations have been done. She also stated that Dr. Karimi and his family have lived at this residence for as long as she can remember.

Ms. Hembree asked who was living at the property now and Ms. DePaolera stated that Dr. Karimi's sister lives at the residence and has for a while. Ms. DePaolera stated that Dr. Karimi does not live there now.

Ms. Yetemian questioned whether or not the type of medical practice is the same and Ms. DePaolera stated that it is the same.

Mr. Spirig questioned if this application is before the board because Dr. Karimi does not live there any longer.

Mr. Sinisi believes that is what Mr. Saluzzi was thinking when he denied the request for a Certificate of Non-Conformity. Mr. Sinisi stated that he believes that since this practice pre-dates current zoning, the applicant does not need to comply with the newer zoning regulations.

Mr. Preiss confirmed how the residence and office were separated and that there has been no expansion of the office into the residential space since Dr. Fortuna owned and occupied. Ms. DePaolera confirmed for Mr. Preiss that no changes have been made to the exterior of the property and that Dr. Fortuna had lived at the property. Ms. DePaolera stated that Dr. Karimi also lived there with his family.

Mr. Princiotto confirmed that when Dr. Fortuna owned the office, that there were 3 treatment rooms, and currently there are 2 treatment rooms. The other treatment room is being used for storage. Other rooms in the office include a room to take vitals, an office, a lab area and a reception / waiting area. There

are 2 bathrooms used for the office. Ms. DePaolera stated that she believed that the office hours for Dr. Fortuna were Monday thru Friday from 9 to 3. There were no weekend hours.

Mr. Princiotto confirmed that there was a basement and that it is being used for storage of records and office supplies. Use of the basement was the same for both doctors.

Ms. Malley questioned if there was a kitchen area in the office and Ms. DePaolera stated that there was not.

Mr. Princiotto asked Ms. DePaolera about access to the residence from the office and Ms. DePaolera stated that entrance would be thru a locked door. Mr. Princiotto confirmed that Dr. Fortuna lived at this property with his family.

Mr. Preiss stated that a portion of the structure has a second floor. Ms. DePaolera stated that this was part of the residence and not the office area.

There were no members of the public present at the meeting to question this testimony.

Ms. Franco was introduced by Mr. Sinisi and was sworn in. Ms. Franco testified that she has been a medical assistant since 1982. She worked for Dr. Fortuna as a receptionist at first in 1981 and then as a medical assistant for Dr. Fortuna and later Dr. Karimi. Ms. Franco is still employed by Dr. Karimi at 50 Kinderkamack Road.

Ms. Franco stated that Dr. Fortuna's office specialized in weight control and Dr. Karimi has more of a family practice. She stated that there has been no change to the exterior of the office and that the interior has only been changed to provide a reception area and storage. Ms. Franco confirmed two (2) bathrooms in the medical office, one (1) for the patients and one (1) for the staff.

Ms. Franco detailed office hours for Dr. Fortuna as Monday to Friday from 9am to 12pm or 1pm and then 6pm to 9pm. She stated that 3 or 4 girls worked in the office for Dr. Fortuna. Ms. Franco confirmed the hours previously detailed by Ms. DePaolera for Dr. Karimi and stated that 3 girls work for him in the office.

There were no members of the public present at the meeting to question this testimony.

Mr. Princiotto reviewed and confirmed office staff and office hours.

Dr. Mahmood Karimi, owner and applicant, was introduced and sworn in. Dr. Karimi stated that his office address is 50 Kinderkamack Road but he has a second residence at 9 Glenwood Drive in Saddle River. He stated that he has practiced family medicine, including pediatrics and internal medicine for more than 45 years.

Dr. Karimi stated that he purchased the property in April 1981 from Dr. Fortuna who had practiced medicine at this property for at least 16 years prior. Dr. Karimi worked with Dr. Fortuna, was introduced to his patients and took over the practice. Dr. Karimi stated that Dr. Fortuna was the only doctor at the time working at this office and he had a staff of 3 or 4 assistants. Dr. Fortuna's had two appointment sessions per day.

Mr. Sinisi asked Dr. Karimi about exterior renovations made by Dr. Fortuna. Dr. Karimi stated that he was

told that Dr. Fortuna added the garage and the in-ground pool. Dr. Karimi verified that Dr. Fortuna lived at the property with his family and also owned the property to the north.

Mr. Sinisi questioned Dr. Karimi about a property south of his property at the intersection currently being operated as a restaurant, Blue Moon. Previously this restaurant was operated as The Library.

Mr. Sinisi questioned Dr. Karimi about any renovations at the property since he purchased. Dr. Karimi stated that he was allowed to add a vestibule, approximately 6 foot by 6 foot, with a permit. Interior renovations included updating the reception area and waiting room and changing space to accommodate filing system.

Mr. Sinisi questioned Dr. Karimi regarding applications to the Board to expand. Dr. Karimi stated that in 1983 he applied to the Board for an addition to the rear of the property for 3 examining rooms. Later, Dr. Karimi considered a new medical building. Both applications were withdrawn.

Dr. Karimi stated that he had no intention of changing the existing structure. He is facing retirement and has been trying to sell his practice to another physician. Dr. Karimi stated that no one is interested in purchasing because of the residency requirement.

Mr. Sinisi stated that Dr. Karimi no longer lives at the residency but stays there occasionally. Dr. Karimi stated that originally his wife wanted a different residence for herself and the four (4) children. The front yard is a parking lot and they had limited space to play outside. Dr. Karimi regularly had relatives visiting from abroad. Dr. Karimi's wife looked for another house and Dr. and Mrs. Karimi purchased a home in Saddle River. Mrs. Karimi and the children moved to the Saddle River home. Following the purchase of the home in Saddle River, Dr. Karimi stated that he spent most nights in Woodcliff Lake. Currently, Dr. Karimi stays in Woodcliff Lake only occasionally and his sister and his niece or nephew reside at 50 Kinderkamack Road.

Mr. Preiss questioned Mr. Sinisi to see if the applicant is requesting a Certificate of Non-Conformity or a non-residency.

Mr. Sinisi stated that they are asking for a non-resident medical use.

Mr. Preiss stated that he believes that they need to seek a variance not a certificate. Mr. Preiss stated that if the Board issues a certificate then it needs to include the residence, otherwise the applicant needs a variance.

Mr. Sinisi stated that the applicant is requesting a certificate but has also requested a variance. Mr. Sinisi stated that testimony from the applicant's planner regarding zoning will help explain their position.

Mr. Hayes asked if Dr. Karimi's nieces and nephews ever practice at the office at 50 Kinderkamack Road.

Dr. Karimi stated that they did not work at his office.

Ms. Malley asked Dr. Karimi if the house was furnished – partially or fully.

Dr. Karimi stated that the house is fully furnished. Dr. Karimi stated that the house had a kitchen, dining room, family room, and bedrooms.

Ms. Hembree questioned Dr. Karimi regarding his comment of his children sleeping in the basement. Dr. Karimi stated that his children had slept in the basement.

Ms. Malley stated that the house had been listed for sale for about a year.

Dr. Karimi said the house has been on the market for a long time but no one has been interested in purchasing it as a residence. Dr. Karimi stated that he would like to sell it with his practice but other doctors are not interested in purchasing if they have to live there.

Ms. Malley confirmed with Dr. Karimi that this house is fully furnished. Dr. Karimi stated that it was fully furnished. Ms. Malley questioned Dr. Karimi regarding photos in the MLS which showed the rooms in the house with no furniture and no clothing in the closets. Photos were marked as B-1 and had been printed on 3/11/19.

Dr. Karimi stated that the house is furnished.

Mr. Preiss questioned Dr. Karimi and asked if Dr. Fortuna lived in the house until he sold it to Dr. Karimi. Dr. Karimi confirmed that Dr. Fortuna lived in the house until he purchased it.

Mr. Preiss confirmed that Dr. Fortuna had also owned the house to the north but Dr. Karimi did not purchase this other home.

Mr. Preiss asked Dr. Karimi how long he lived at 50 Kinderkamack with his family. Dr. Karimi stated that he lived there with his family until July 1982 or 1983. Mr. Preiss asked who lived in the house when his family left. Dr. Karimi stated that his mother and father, his oldest brother and his family and his oldest sister with her two kids.

Mr. Preiss asked if there was a time when only Dr. Karimi lived there. Dr. Karimi stated that there had been a time for approximately five (5) or six (6) months that only he lived there.

Mr. Princiotto asked Dr. Karimi who signed the deed to purchase in 1981. Dr. Karimi stated that the purchase was done in two (2) parts and he and his wife signed both parts.

Mr. Princiotto asked Dr. Karimi when the house was built but Dr. Karimi did not know. The MLS stated that the house was built in the 1960's.

Mr. Princiotto asked if the house in Saddle River was purchased by Dr. Karimi and his wife. Dr. Karimi stated that the Saddle River home was owned by himself and his wife.

Mr. Princiotto questioned the address on Dr. Karimi's identification and asked if he did that to be listed as a resident in Woodcliff Lake. Dr. Karimi stated that he had kept this address because a letter had been sent from the town questioning his address / residency.

Mr. Princiotto asked Dr. Karimi how many parking spaces existed when he purchased the property. Dr. Karimi stated that he was guessing that it was 22-24 parking spaces. Mr. Princiotto stated that his 1983 application stated that there were 12 parking spaces.

Mr. Princiotto asked Dr. Karimi where a family dinner would be held. Dr. Karimi stated that it would be

held wherever the children were but usually Saddle River.

Mr. Princiotta asked how many square feet of the structure was for the medical practice. Dr. Karimi estimated that approximately 1200 square feet was used by the medical practice.

Mr. Princiotta asked Dr. Karimi to mark the photos provided and indicate which rooms were part of the medical practice and asked the total square footage of the whole house. Mr. Princiotta believes that it was noted in one of the documents that it was approximately 3,300 square feet. Dr. Karimi was not sure of the total square footage.

Mr. Kaufman questioned the selling price of the property and Ms. Malley stated that the house is for sale for \$649,900.

Mr. Dhawan questioned the details for selling the property without including the medical practice. Dr. Karimi explained that he could introduce his current patients to a new qualified physician and transfer the medical records if the patient wanted to continue with this new doctor. Otherwise records could be transferred to another professional of the patient's choice.

The Board requested and took a break for a few minutes.

When returning from the break, Mr. Sinisi called Ms. Bogart, applicant's planner. Ms. Bogart was sworn in and accepted as an expert by the Board. Ms. Bogart stated that she has reviewed necessary Woodcliff Lake zoning ordinances and maps, as well as the Master Plan for the R-15 Zone.

Ms. Bogart described the property at 50 Kinderkamack Road as a split-level home which has had a medical practice for more than 50 years. Ms. Bogart stated that this property is in the R-15 zone with a large paved parking lot in the front and a restaurant across the street to the south. Ms. Bogart stated that this property is a permitted conditional use in the R-15 zone.

Ms. Bogart stated that this medical use existed prior to zoning ordinances in 1973. Ms. Bogart read the MLUL definition of pre-existing non-conforming use and stated that this property fits the definition. Ms. Bogart stated that as a pre-existing non-conforming use this property is allowed to exist but not expand. A d-variance would need to be approved for an expansion of a pre-existing non-conforming use.

Ms. Bogart stated that the first borough zoning ordinance for Woodcliff Lake was in 1973. Somewhere between 1981 and 1983 the borough ordinance was amended to include medical use as a conditional use requiring residency and the medical use limitation of 25% of total property size. Ms. Bogart stated that since this property has operated as a medical use since at least 1966, that it pre-dates the 1973 ordinance and the 1981 to 1983 revision and is therefore a pre-existing non-conforming use.

Ms. Bogart stated that the Master Plan focused on other areas and properties but does not mention the medical use at this location. She stated that since this property is not mentioned in the Master Plan that she believes it is a non-issue.

Mr. Sinisi questioned Ms. Bogart and she stated that the last Master Plan in Woodcliff Lake was in 2008. Mr. Sinisi asked Ms. Bogart if the Master Plan singled out issues to be addressed. Ms. Bogart stated that one of the purposes of the Master Plan is to identify issues and make recommendations or changes.

Mr. Sinisi asked Ms. Bogart to identify the positive and negative criteria regarding the need for a use variance to continue a medical use at this property if the Board does not recognize the pre-existing non-conforming use. Ms. Bogart stated that a d-variance would be needed to grant a medical use if the board did not recognize it as a pre-existing non-conforming use.

Ms. Bogart stated that a d-variance could be granted under “g” of the MLUL which requires sufficient space and appropriate site for a use which meets the needs of NJ citizens.

Mr. Sinisi questioned Ms. Bogart about the suitability of this site for medical use. Ms. Bogart stated that this property is suited due to the large front parking lot and the floor plan designed for medical use. Ms. Bogart stated that it is a benefit to have a local medical practice.

Mr. Spirig questioned whether the structure was built for residence or medical. Ms. Bogart stated that she believes it was built in 1964 and built for residence with a medical use.

Mr. Spirig questioned Ms. Bogart regarding the issuance of a Certificate of Non-Conformity and what that would mean for its use. Ms. Bogart stated that this is a pre-existing non-conforming use and would not have any restrictions.

Mr. Spirig stated that this structure was not built as a medical building and that it was built as a residence and that if they want to change the use to 100% medical then he believes that they need a use variance. Mr. Spirig stated that he understands that this is a busy intersection but except for Blue Moon this area has only residential properties.

Ms. Hembree stated that the revised ordinance was written to address home / office with limitations not just for medical use but any professional office use.

Ms. Bogart stated that this ordinance was created after the use was in existence.

Mr. Hayes reviewed the timing of this use vs. the timing of the zoning ordinances. Mr. Hayes noted that in 1981-1983 with the revised ordinance for home / office that this property became a permitted use and was no longer a non-conforming use. He questioned whether or not a property loses its pre-existing non-conforming status once it conforms at some later point.

Ms. Bogart stated that this property did not give up its non-conforming status just because Dr. Karimi complied with some of the regulations.

Mr. Preiss clarified that if at the time of adoption of the ordinance it met all of the conditions then it becomes conforming. But if at the time of adoption some of the conditions are not met, then it would remain pre-existing non-conforming. Mr. Preiss stated that he does not believe that this property became a conforming use at the time of adoption of the ordinance.

Mr. Princiotta concurred stating that they did not meet the criteria for only one employee from outside the household and the 25% limitation of total square footage.

Mr. Princiotta stated that the purpose of the Master Plan is to protect the character of the neighborhood. He stated that this property is in a residential zone and this property operated as a residence with a medical use in both 1973 when the zoning ordinance was adopted and in 1981-1983 when the revisions

for home / office were enacted. Mr. Princiotto stated that the applicant had a one year period to apply for a Certificate of Non-Conformity once the ordinance was adopted but that they did not apply. Mr. Princiotto stated that the Board would need to know the number of employees and the square footage for the medical use in 1973 in order to know if the medical use was expanded. Mr. Princiotto confirmed from Ms. Bogart that there were 3 treatment rooms, 2 employees at a time and similar parking. Ms. Bogart stated that the applicant could provide details with square footage and number of parking spaces.

Mr. Princiotto stated that if there was an expansion of the use after the borough adopted the ordinance in the 1980's then it could invalidate the pre-existing non-conforming use. Ms. Bogart stated that she believed the applicant would need a D-2 variance if there was an expansion of the use.

Mr. Preiss questioned Ms. Bogart regarding her testimony about the Master Plan and if it was relevant in determining whether or not this is a legal pre-existing non-conforming use. Ms. Bogart stated that the testimony regarding the Master Plan was not for that purpose.

Mr. Preiss stated that the issue is identifying the zoning at the time and whether this use, which pre-existed the zoning, has continued to exist in the same way until the present time. Ms. Bogart agreed with Mr. Preiss.

Mr. Preiss asked Ms. Bogart to characterize the use at this property. Ms. Bogart stated that she grew up in the area and this was regarded as a medical use. Mr. Preiss confirmed with Ms. Bogart that both Dr. Fortuna and Dr. Karimi used the structure as a residence and a medical office and that it was not just for medical use.

Mr. Preiss stated that in 1973 when the zoning ordinance was adopted, this property was in the R-15 zone with a portion of the structure used for residential and a portion used for office and it was a pre-existing non-conforming use. Mr. Preiss stated that a significant change like removing the residency would need a D variance. Ms. Bogart did not agree and stated that the residency could be removed and the office could expand with a D variance.

Mr. Preiss questioned Ms. Bogart regarding statements that this property hasn't changed since 1973 and asked what documents that she reviewed. Ms. Bogart stated that she has viewed aerial photographs from 1996 and has personal knowledge of the property for several decades. Ms. Bogart stated that she did not have surveys of the property around 1973.

Mr. Preiss questioned Ms. Bogart and asked if they found aerials or surveys from 1973 and there was an expansion of the parking lot if that would change her opinion that this use is a legal pre-existing non-conforming use. Ms. Bogart stated that it would not change her opinion.

Mr. Preiss questioned Ms. Bogart about why the expansion of the parking area would not constitute an intensification of a non-conforming use. Ms. Bogart stated that at some point she believes that the parking changed slightly to allow for correct sizing of the parking spaces but that it did not create additional parking spaces. Ms. Bogart stated that in her opinion this adjustment would not expand the non-conforming use.

Mr. Preiss needs time to review aerial photos prior to 1996 and Mr. Princiotto requested square footage information on the property.

Mr. Princiotta noted that there were no members of the public present for this application.

This application was announced to be carried to the April 23, 2019 Zoning Board meeting.

Mr. Sinisi granted the Board an extension of the time to consider this application.

The meeting was adjourned on a motion from Ms. Malley, seconded by Mr. Hayes, and carried by all.

Respectfully submitted,

Meg Smith