

April 17, 2008

A regular meeting of the Allendale Planning Board was held in the Municipal Building on April 17, 2008. The meeting was called to order at 8:00 p.m. by Mr. Quinn, Chairman, who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following members answered roll call: Barra, Bernstein, Fliegel, Herndon, Yevchak, Sheehan and Quinn. Mr. Tatosian, Mr. Gravina and Mr. Thomas were absent. Also present were John Yakimik and Philip Dunn, acting in Timothy Dunn's absence.

Mr. Barra moved, seconded by Mr. Yevchak, to approve the minutes of the work session of March 17 and regular meeting of March 20, 2008. On roll call, Mr. Herndon abstained. All other members voted in favor.

Use Permit

GE Healthcare  
Block 702, Lot 14  
40 Boroline Rd.

Application was carried to the May meeting at the request of applicant.

Use Permit

Borst Landscape & Design  
303 W. Crescent Avenue

Mr. Dunn said the newspaper notice appears to be in order. Original application was denied at the March meeting.

Mark Borst was sworn. He said he has adjusted his request for parking and storage at 303 W. Crescent Ave. to include storage in the 3,000 s.f. warehouse and also to have vehicle parking for seven vehicles located on lot 11 which is in the D industrial zone district on that property. The last time he was before the Board there were issues with the parking on the residential part of the lot. He has revised the plan so that all of the parking will be in the industrial zone. The revised plan also reduces the parking from 10 vehicles down to 7 and those vehicles will be located on lot 11 in the industrial zone. The parking spaces are between the two masonry buildings and along the railroad tracks on the north side of the buildings. The vehicles are those that will be used out of season and will be used more for the storage of items that are not being used on a daily basis. Those vehicles will be used only once or twice per week.

Mr. Philip Dunn read a memo from Tim Dunn indicating that his review indicates that the Borst plan for parking only upon D zone property of lands of Foreit at Block 904, Lot 11 would be permitted without variance notwithstanding that the tract and the other commercial use of the property extends onto residential zone lots 10, 12, 13 and 31. The proposed parking activity is a "discreet" use which is separate from any other non-

conforming use on the residential lots and does not exacerbate that activity. Accordingly, he feels the Board has jurisdiction to grant a use permit with the condition that the parking activity be strictly constrained to the D zone property (lot 11).

Mr. Dunn summarized that since the revised plan is taking place in the D zone rather than the residential area, it is not an expansion of the nonconforming use that exists in the residential zone.

Mr. Yakimik said Item 1 in his letter of April 17<sup>th</sup> indicates that the Board Attorney is to determine if the application is subject to Section 270-18C(2) of the Code. This section does not allow vehicles with a registered gross weight of 8,000 pounds or more to be parked outside of a garage on property in any residential zone. The ordinance may be applicable since the entire site contains both industrial and residential zones. He said he visited the site this morning with this new proposal to put 5 spaces between the two masonry buildings and 2 spaces on the north side along the railroad right of way. Several of the proposed spaces appear to block a garage and pedestrian doorways associated with the masonry building. He feels it would be prudent for the local fire official to check to make sure that the proposed locations do not block any emergency access to that building.

Item 3 of his letter indicates that he would like to see the dimensions of the proposed spaces shown on the plan. He has scaled the spaces between the two masonry buildings to be 9 x 24. The code requires parking spaces to be 10 ft. wide; however, he believes that 9 ft. is an acceptable space for the application being proposed because this is simply a storage of trucks and vehicles. Therefore, he would endorse the 9 ft. wide space as proposed.

Item 4 indicates that the plan shows 8 existing vehicle spaces in one row located on lot 13. However, on his field visit he found there are two rows of 6 spaces and another 3 additional marked spaces along the masonry building for a total of 15 spaces. He said there are also some additional unmarked spaces throughout the residential site being occupied by upwards of 15 vehicles or so. He concluded that there is ample parking for the uses that are currently at the site and what is being proposed. Mr. Borst added a parking analysis based on the use of the site. The use of the site is basically storage so for a building of 8000 s.f. the code says one space is required for 400 s.f. or 20 spaces. There seems to be an adequate number of spaces to support the activity at the site as well as the storage of 7 additional vehicles in the industrial zone.

Item 5 deals with the surface treatment of the parking area. The code requires off street parking areas within the industrial districts to be paved with a 4 inch thick surface of concrete or asphalt. In lieu of this, Mr. Yakimik said his office would recommend a 6 inch layer of gravel as an acceptable surface for the areas proposed. Right now the areas are covered with dirt.

Item 6 indicates that the proposed parking spaces will be delineated by striping; however, if a gravel surface is to be employed, striping does not work. Some simple physical delineation of spaces should be shown such as simple markers along the retaining wall.

Item 7 deals with overhead lighting. The code talks about adequate lighting for parking areas. The site visit found a light at the southeast corner of the masonry building. Mr. Yakimik said he does not know if it is operational. He would leave it up to the Board or the Police Chief to determine if there is sufficient lighting at the site for security purposes. Mr. Borst said if the Board wants the lighting to be in working order he has no objection, but he doesn't know if the neighbors would appreciate it. Mr. Yakimik said any sort of lighting would be shielded from the neighbors. He suggested that a soft light between the two masonry buildings to discourage vandalism might be appropriate.

In regard to Item 2, Mr. Borst said the vehicles parked along the rear railroad track will still leave about an 8 ft. opening to get to that garage door. In addition, there is no one working in that building. Mr. Yakimik said he would defer to the expertise of the Fire Official since he cannot confirm if the distance is adequate from a firematic standpoint.

The Board asked Mr. Borst how much parking is available on his property. Mr. Borst said he believes there are 75 parking spaces. He stated that his most active trucks or trailers will be parked at his current location. His employees also park at that location.

The meeting was opened to the public for comments.

Steven Talarico, 7 Delta Court, said he would like to address what he as a neighbor has had to endure at this particular site. He submitted photos to show what is occurring on the site. He also had a copy of the site plan that was approved by the Superior Court and the Planning Board resolution. He pointed out that the photos show that Foreit parks his construction equipment on the residential lot. He said he also has pictures of dozens of companies without use permits that just move onto the site and operate their businesses on the residential site including wood chipping, operating chain saws, cranes, wood splitters, and repairing vehicles. All of the documents he has seen indicate they should not be operating in the residential zone. Also, on lot 13 there are trucks that go into the buffer zone that was required by the Planning Board. They have been selling trucks and construction equipment on lot 13 which they were not supposed to do. He said there are businesses operating on the site today without obtaining a use permit.

Mr. Talarico said if one looks at the corner of the commercial property that abuts 7 Delta Court that was supposed to be left empty and was part of the 75 ft. buffer zone, they have just moved more trucks into that area last week and there is a large chemical tank in that area close to his property. Mr. Talarico said the 1986 resolution states that no trailers are supposed to be parked there and they are parked everywhere. People operate wood chippers on Sundays and they repair vehicles 7 days per week. There are dumpsters right up to the property line.

Mr. Quinn pointed out that this sounds like an enforcement issue. He asked if complaints have been filed with the police. Mr. Talarico said the last time he went to the Construction Code Official to look through the records, he was told they considered everything that he has ever submitted over the years as maintenance and not zoning issues and therefore they had nothing in the files anymore since they said they clear out those records after a year.

Mr. Yakimik said he had no comments from an engineering standpoint. He does not see any effect on the application before the Board. He added that someone has cleaned up the site very recently and the area that shows construction equipment on the photo basically had a lot of junk stored there but they were not vehicles.

A Board member noted that it is his understanding that this used to be a car dealership and it was a non-conforming permitted use. Mr. Herndon concurred that when he was a child it was a car dealership.

Mr. Talarico said the Planning Board resolution states that no construction equipment and no construction activity should occur on the residential lot. Mr. Dunn said this application is for the use of the industrial zone lot, lot 11. As he understands it, Mr. Talarico's comments are directed basically to the use made of the adjacent residential area which is not part of this application.

Mr. Bernstein commented that Mr. Talarico's concern seems to be that Mr. Borst is displacing spaces that Mr. Foreit should be parking on in the first place. Mr. Talarico's issue is more with Foreit than with Mr. Borst and his application. If Mr. Borst is coming before the Board and doing everything properly, it is not his responsibility to go out and get all of those other people to comply. Mr. Talarico said it is the Planning Board's responsibility to make sure this entire property is operated properly. Mr. Quinn said that it is an enforcement action over which the Board has no control. The Board is essentially looking at Lot 11 tonight. If there are issues with Mr. Foreit, he suggested they be taken up with him or through the town enforcement process.

Mr. Quinn asked if Mr. Talarico had any issues specific to lot 11. Mr. Talarico said just to the rear of the building on the north end is a spot where they dump macadam that has to be recycled. They dump it on the property that Mr. Borst is going to use. Plus, at least ten more companies dump masonry material next to the macadam which is considered hazardous. His other concern is the diesel exhaust from all of the additional vehicles. He said there are giant gravel piles on lot 11.

Mr. Herndon said Mr. Foreit is in the asphalt driveway business. He sees them bringing asphalt in and dumping small piles back there. There is a recycler that comes in and heats the material and recycles it and takes it away. He has seen the operation there numerous times.

The Board asked if the applicant is aware and concerned about these operations. Mr. Borst said he is not. The piles of material will not be in the way. There is an asphalt pile

in the front and a gravel pile in the back on the east side of the building close to lot 12. They will not be in the way of his operations.

The Board suggested that Mr. Talarico call DEP if he is concerned about hazardous materials on the property. Mr. Talarico said he e-mailed a complaint to the zoning officer and code official but he did not receive an answer.

Mayor Barra said he agrees with the Chairman that the issue before the Planning Board is the application of Mr. Borst to park vehicles on lot 11 which is in the D industrial zone. He was pleased that Mr. Borst amended his application to take the vehicles off the residential lots knowing all of the problems the residents have been concerned about over the years. The Mayor suggested that Mr. Talarico come in next week and bring with him whatever evidence he has and sit down with him and the Code Official. He assured him that if there are any violations of the Code that presently exist, enforcement efforts will be taken immediately. The meeting was scheduled for Wednesday, April 23<sup>rd</sup> at 2:30 p.m.

Richard Ackerman, 4 Delta Court, said he has lived there for 29 years and has noticed in the past several weeks that the noise level has increased tremendously. He said it is not just Foreit, but it is the landscaping business that is there now.

Mr. Borst said they do have their snow plows and salters in the warehouse. They are not being used. They have been over there two days at the most putting that equipment in and it was probably 3-4 weeks ago. Mr. Ackerman said he has not heard the sounds of equipment like he has recently. He did not look to see who was running the equipment.

Mr. Borst was asked when he plans to access these parking spaces. Mr. Borst said his hours of operation are 7:15 to 5 p.m., 5 days per week, Monday through Friday. It could happen between those hours. He is not using this space as a place of business to be accessed every day. The likelihood of it being 7:15 in the morning is very small. He hasn't thought about what time he would get these vehicles when he needs them, but he assured the neighbors it will not be on Saturday or Sunday. He said the neighbors will not hear him after 5 or 6 at the latest. He has talked to Mr. Talarico and assured him that he will be as courteous as possible. He said, "I am not going to abuse the site or do any abusive noise pollution in that area."

One of the board members noted that Mr. Yakimik has indicated that he noticed that the property was cleaned up significantly over the past month. He asked if it is possible that Mr. Ackerman's comments about the excessive noise over the past month is the result of that area being cleaned up. Mr. Yakimik said that is very possible.

Mr. Borst commented that there has been a tractor trailer that has been removed and crushed and put into a dumpster. Mr. Talarico mentioned dumpsters on the site. He did not physically help Mr. Foreit, but these dumpsters were used to crush these old trailers and storage containers and get them off the site.

Resolution No. 1 – Introduced by Mr. Sirico, seconded by Mr. Yevchak

WHEREAS, Mark Borst of Borst Landscape and Design has submitted an application to the Planning Board of the Borough of Allendale for approval of a use permit pursuant to the zoning ordinance of the Borough of Allendale for the use of premises located in the D zone, and

WHEREAS, said application is for the use of premises located at Lot 11, Block 904, 303 West Crescent Avenue in the Borough of Allendale for the purpose of storage and parking, and

WHEREAS, public hearing has been duly scheduled and notice thereof rendered pursuant to the Statutes of the State of New Jersey and the ordinances of the Borough of Allendale, NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Allendale that the aforesaid application is hereby approved subject to the following conditions:

1. The issuance of any and all necessary construction and sign permits by the Construction Code Official.
2. The approval of the Fire Prevention Official.
3. The approval of the Health Code Official and the approval of any agencies or governmental bodies having jurisdiction over this application.
4. Subject to conditions included in Mr. Yakimik's letter to the Planning Board dated April 17, 2008.

On roll call, Mr. Bernstein, Mr. Fliegel, Mr. Herndon, Mr. Yevchak, Mr. Sirico, Mr. Quinn and Mr. Barra voted yes.

Minor Subdivision

Mariconti & Phillips-Gossweiler  
679 Franklin Turnpike  
Block 910, Lot 10

Mr. Fliegel recused himself from participation in this application since he knows the applicants personally.

Jay R. Atkins was present as attorney for applicant. He said applicant is seeking approval for minor subdivision. All of the changes requested by the Borough Engineer have been made. He said that obviously Giancarlo Court will be required to be built before this property can be built. He understands that Giancarlo Court has been bonded and the map has been recorded. If this subdivision is approved, applicant is under contract to sell these properties to the developer of the Giancarlo site. He said he has no problem as a condition of approval that the imminent construction of the street must occur.

Mr. Atkins said he has received a copy of the Borough Engineer's letter dated April 17<sup>th</sup>. This is a minor subdivision and does not require public notice. From his perspective, this application meets every standard of the Borough. There are no variances. Mr. Yakimik in his letter indicates that lot 10.01 is a corner lot. Mr. Yakimik makes the point that if we front the house towards Giancarlo Court, the rear lot might not be conforming, but the

ordinance says the owner can determine what is the front and what is the rear. Their position is that the front would be on Franklin Turnpike.

Bruce Rigg was sworn. He said he is a licensed engineer in the State of New Jersey and is the engineer for the Giancarlo subdivision. He prepared the minor subdivision application before this Board. Plan revised March 24<sup>th</sup> was marked as an exhibit. He said he revised the plans to be in conformance with Mr. Yakimik's comments. He said there are no variances involved and the lots meet all of the requirements of the Borough's zoning codes as he understands them. There is an existing home on the site that will be demolished.

Mr. Yakimik said Mr. Rigg provided him with the revised plan which he received on April 14<sup>th</sup>. He had issued a letter indicating there was insufficient engineering escrow for the application. That amount was posted by the applicant on Monday. On Tuesday he started his efforts to review the revised plan. His report dated April 17<sup>th</sup> indicates that Mr. Rigg has complied with most of his comments. Some of the remaining comments are minor; however he went over them and resolved most of the issues with Mr. Atkins and Mr. Rigg. There was discussion regarding Item 3 involving the .03 ft. closure error for the entire tract. Mr. Rigg felt the .03 error was acceptable; however, Mr. Yakimik's surveyor felt the courses and distances should be checked to provide a smaller error. Mr. Yakimik said this is a matter that should be discussed between the two surveyors and he is not suggesting that it be a condition of approval. He did ask for a copy of the road widening easement that has been accepted by the County and Mr. Atkins agreed to provide it.

Mr. Yakimik read Item 2 in his letter under "Zoning" in regard to the front of the property. He said the subdivision plat indicates that the front of proposed lot 10.01 is along Franklin Turnpike with the resulting rear yard setback opposite the front. However, the plat depicts a dwelling fronting on Giancarlo Court. If Giancarlo Court is the designated front yard, then the opposite rear yard will create a building envelope which does not have the 50 ft. depth in accordance with the Code thereby requiring a variance.

Mr. Atkins read from section 270-22 of the Code indicating that it treats corner lots differently than other lots. He read, "For the purpose of this chapter, when a lot is bounded by more than one street, the yard depth and setback from each street shall be determined by the front yard requirements for that street so that the front yard requirements of the zone are met for all streets upon which the property abuts. The owner of the lot shall determine which shall be considered the front of the lot subject to the approval of the Building Inspector." Mr. Atkins said the Code gives the owner the right to designate the front of the property. Mr. Dunn agreed with Mr. Atkins' interpretation. Mr. Atkins continued that when the owner designates the front, then the Building Inspector does his calculations to make sure he meets all of the dimensional requirements.

Mr. Barra said the Code should be changed so we don't run into this situation again. He said when a builder constructs a house facing one way with a front yard and driveway and designates the side of the house as the front, that is not in the spirit of what was intended in the code. If that is the case we should change the code on corner lots.

Mr. Yakimik continued that the applicant has provided a report on wetland areas that states there are no areas within the property that would be classified as freshwater wetlands or transition area. On a cursory review of the site he would concur; however his in-house wetlands specialist has not performed a formal absence/presence determination and the report by the applicant is not binding unless approved by DEP.

Mr. Yakimik commented that the applicant put a note on the plan indicating the driveway shall be located a minimum distance of 20 ft. from the curb return as required by the Bergen Co. Dept. of Planning and Economic Development. He has asked that the applicant provide any County review comments.

Mr. Yakimik said Item 6 suggests that individual trees greater than 6" in diameter shall be shown on the plat with those to be removed so indicated so the Board can determine if the Code has been reasonably complied with. His comments indicate that the proposed 2 ft. high landscape berm along Franklin Turnpike will require the destruction of many mature pine trees and he questions its installation. Should the applicant prefer screening from Franklin Turnpike for lot 10.01, a solid fence would preserve more trees. The applicant's engineer has responded that trees have not been added to the plan and that their removal will be addressed during the plot plan review process at a later date.

Mr. Rigg said when they get down to the final design of the house, his client will finalize the tree locations. He believes he would like to have a berm there to screen the property from Franklin Turnpike. That berm may actually be s-shaped to preserve some of the trees that exist. He does not believe there is any intent to take down the trees.

Mr. Atkins said he will accept it as a condition that the berm will be subject to engineering review and if there is an issue they will come back before the board.

Mr. Yakimik asked why there is a berm proposed for this property and not the Giancarlo property. Mr. Rigg said he believes it is because there was no contract purchaser at the time the Giancarlo subdivision was before the Board. The owner may actually propose a berm for the Giancarlo property when he comes in for a building permit. Mr. Yakimik said he is concerned that if a berm is on an approved plan, he might get an argument from the applicant if he suggests to remove it at a later date. Mr. Atkins said applicant will accept it as a condition that the berm will be subject to engineering review and if there is an issue, they will come back before the Board. The Board agreed with this solution.

Mr. Yakimik read the list of conditions to be applied by the Board in item IX of his letter of April 17<sup>th</sup>. They were acceptable to Mr. Atkins.

Mayor Barra said he would like to have it specified that the applicant or his purchaser agrees to pay COAH fees pursuant to the Allendale ordinances. Mr. Atkins said he had a conversation with Dave Bole as well as the planner he uses in his land use practice about this. COAH regulations are not adopted yet. There are some major arguments that many municipalities have with COAH. For example, in this particular application unlike Giancarlo, there is only going to be one additional lot created. There is one lot on the site now with a residence. The proposed COAH regulations would treat this as two new lots and he is aware that many communities are up in arms about this and the regulations may not be adopted in the form that has been proposed.

Mr. Barra said he does not want to presume what the ultimate result is going to be. He only wants to make sure that the Borough is covered and that the applicant and the ultimate purchaser are aware that COAH fees will be due and owing.

After further discussion, Mr. Barra suggested to Mr. Atkins that if his client and the purchasers are prepared to agree to the same \$20,000 as Giancarlo, they have his assurance he will bring it before the Mayor and Council for approval. He said they will have no further COAH fees, no matter what COAH promulgates. The Borough is accepting the \$20,000 per house, in this case two houses, in lieu of all COAH fees whether they are called developers fees or growth share fees. Mr. Atkins said that is acceptable to his client.

The Chairman opened the meeting to the public for comments and there being none, the meeting was closed to the public.

Mr. Sirico moved, seconded by Mr. Herndon, to authorize the Board Attorney to prepare a resolution of memorialization of the Board's decision to approve this application subject to all of the conditions discussed tonight and included in Mr. Yakimik's letter of April 17<sup>th</sup>. On roll call, Mr. Herndon, Mr. Yevchak, Mr. Quinn, Mr. Barra, Mr. Bernstein and Mr. Sirico voted yes.

Minor Subdivision

Kari A. Sheehan  
511 Brookside Ave. & 6 Butternut Rd.  
Block 1304, Lots 24 & 38

Mr. Yakimik recommended that the application be deemed complete and scheduled for consideration by the Board at the May meeting. On roll call, all Board members present voted in favor.

Site Plan

Allendale Shopping Plaza  
c/o The Azarian Group  
Block 1807, Lots 1 and 2

Mr. Yakimik said this application has not been deemed complete as yet. He is working with the applicant through a subcommittee to determine what the appropriate design of the parking lot improvement should be. Mr. Herndon said there was a meeting today

with the engineer and traffic planner that he felt was very productive. It is his understanding that they will be at the May 12<sup>th</sup> Planning Board meeting.

On a motion by Mr. Yevchak, seconded by Mr. Herndon, the meeting adjourned at 11 p.m.

Respectfully submitted,

Barbara Knapp