

September 24 2008

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on September 24, 2008. The meeting was called to order at 8:05 p.m. by Ms. Teng, Chair. Ms. Teng announced that the requirements of the Open Public Meetings Act were met by the required postings and notice to publications.

On roll call Ms. Teng, Ms. Hart, Mr. Redling, Mr. Manning, Ms. Chamberlain, Ms. Weidner and Mr. Nestor, Board Attorney were present. Mr. Jones arrived at 8:25 p.m.

AGENDA ITEMS

Ms. Teng asked the Board if they had any corrections to the minutes from the August 27, 2008, meeting. Ms. Chamberlain made a motion to approve the minutes and Mr. Manning seconded. All members voted in favor except for Ms. Teng and Ms. Hart who were absent that evening.

Resolution of Memorialization – Robert Corley

It was noted in the minutes that Mr. Jones had remarked on the unique shape of this property and not Mr. Manning. This was corrected and Ms. Chamberlain made a motion to approve, as amended. Mr. Manning seconded the motion and on roll call the following members voted to approve: Mr. Redling, Ms. Chamberlain, Mr. Manning and Ms. Weidner.

Resolution of Memorialization – William Anton

Mr. Redling stated that he had seconded this motion on page 2. Ms. Chamberlain made a motion to approve the resolution, as amended. Ms. Weidner seconded the motion and the following members voted aye: Mr. Redling, Ms. Chamberlain, Mr. Manning and Ms. Weidner.

Use Variance and Site Plan – I Squared, LLC (Restaurant L), 9 Franklin Turnpike, Block 2003, Lot 1

Mr. Nestor, Board Attorney, stated that this application proposed to expand the use of Restaurant L. He explained that that this property is currently a pre-existing non-conforming use and the applicant must demonstrate the positive and negative criteria regarding the use variance which requires five affirmative votes. The other application concerning bulk variances are C variances and only require a majority vote. If the vote tonight on the use variance for expansion is denied, the Board may not get to the bulk variances. If the use variance is approved the Board will move onto the bulk variance.

Thomas H. Bruinooge, 201 Route 17 North, Suite 1006, Rutherford, N.J, introduced himself on behalf of the applicant, I Squared, owner of the property located at 9 Franklin Turnpike, Allendale, N.J. where Restaurant L operates. Mr. Bruinooge stated that several years ago a resolution was adopted by the Board stating that the use and the structure at this site is a pre-existing, non-conforming use. This application asks that the Board consider only the site plan issues which normally falls under the jurisdiction of the Planning Board. Mr. Bruinooge said that five witnesses will appear on behalf of the applicant and he provided details regarding some missing or incorrect items contained in the application.

At 8:25 p.m., Ms. Tengi announced that Mr. Jones had arrived at the meeting.

John Yakimik, the Borough Engineer, explained that he has prepared a report for the Board which addresses completeness items related to site plan review aspect of the application. The applicant is required to fulfill certain completeness requirements before moving forward with the site plan review. In his report, Mr. Yakimik recommends that the Board should consider having the Borough Planner present during use variance issues.

Ralph Iamuzzi, 3 Spruce Hollow, Upper Saddle River, N.J. was sworn by Mr. Nestor. Mr. Iamuzzi testified that he is the owner of I Squared and has owned the property since late March of 2006. Mr. Iamuzzi explained that he owns of 75% of the LLC and his partner, Janet Sudac, owns the remaining 25%. Both owners are involved in the management of the restaurant. Mr. Iamuzzi stated that Friends and Family, LLC owns and operates the restaurant and bar known as Restaurant L. They also hold a retail C liquor license issued by the Mayor and Council of Allendale.

Mr. Iamuzzi testified that in 2006 he estimated that the restaurant could seat approximately 100 people. Adjacent to the restaurant is an outdoor patio area which seats approximately 48 people. Alcoholic beverages are sold and consumed in this area. The main storage structure to the rear of the property is licensed for the storage of alcoholic beverages. Mr. Iamuzzi explained that this structures houses a variety of dry and cold storage, food stuffs and supplies and sealed alcohol. Employees go back and forth to this storage area across the patio area to retrieve supplies at all hours while the restaurant is open and in all kinds of weather.

Mr. Iamuzzi stated that he is seeking this use variance in order to return the restaurant to the original number of seats in order to accommodate additional customers. During peak periods (Thursday, Friday and Saturday) as many as 150 single customers are turned away every week. Mr. Iamuzzi stated that there has been a restaurant located at this site for many years and it is conveniently located in Allendale, close to the Waldwick border. This is also close to commercial businesses which afford a lunchtime clientele. The customers at lunch time make it possible to sustain a successful operation in Bergen County. He added that they are a compliment to the other restaurants in Allendale and they are one of three restaurants serving alcoholic beverages in the Borough.

Mr. Iamuzzi explained that the purpose of the addition is to accommodate all of the customers who chose to dine here between 7 p.m. and 9 p.m. The fact that the seating has been reduced from its initial capacity has a huge impact on their ability to make a profit, therefore, additional seating capacity is needed.

Upon questioning from a Board Member, Mr. Iamuzzi stated that the restaurant originally seated 100 people. Mr. Iamuzzi explained that the building was gutted because they wanted it to have the appearance of a house due to its proximity to other homes in the area. As a result of the extensive remodeling, usable space inside was eliminated. Additional space was lost in order to make the building handicapped compliant. The bar area occupies the same footprint as it did in the prior building, however, the dining room is considerably smaller. The maximum occupancy inside the building is 126 including the bar and employees and this figure does not include the outside dining. Mr. Iamuzzi stated that the addition would add 58 seats to the 42 existing at this time.

Mr. Iamuzzi estimated existing parking to be 43 spaces and he was asked if the parking area would be doubled also. He said that the existing parking is not fully utilized used as people usually come in groups. The storage structures will be moved and supplies will be stored in a sub-basement which will allow parking to be expanded.

Mr. Redling read from the resolution of the previous application and stated that the Board made no findings regarding the number of seats. The minutes state that there were 88 customer seats including the bar and the restaurant area. He asked what was done to gain approval for the outside dining area because it was not included in the original resolution. Mr. Iamuzzi said he approached the Building Inspector with a drawing of the outside patio which was approved. The applicant was asked if any complaints have been received from the neighbors regarding the outdoor patio. Mr. Bruinooge stated that a matter alleging a violation dealing with the licensing of restaurants in the C-1 and C-2 zones is pending in the Allendale Municipal Court. This matter has been carried and not yet heard by the Court. The Zoning Official has indicated that a neighbor has informed the Building Department that they don't care for the noise emanating from the restaurant.

Mr. Iamuzzi stated that he is sensitive to the concerns of all of the neighbors and part of the application contemplates the issue of noise and deals with it in a thorough and responsible way. A Board Member stated that the Allendale Master Plan identified this property as pre-existing present zoning, however, the property is extremely unusual. Mr. Iamuzzi stated that this property abuts the main rail commuter line and they may have to give an easement to the County in order to widen Franklin Turnpike. Mr. Iamuzzi stated that as a bar and restaurant they are allowed to operate between the hours of 11 a.m. and 2 a.m. They do not stay open until 2 a.m. unless there is a party and they usually close by midnight. During the summer, they are usually closed by 10:30 p.m. They would continue with these hours if the application is approved and Mr. Iamuzzi stated that he would comply with any existing noise ordinances.

Upon questioning by Mr. Nestor, Mr. Iamuzzi again clarified that the dining room has 42 seats, 10 seats in the bar area, and 48 in the patio area. He explained that the liquor

license denotes areas where alcoholic beverages are licensed to be served. Mr. Bruinooge explained that a place to place application was filed with the Mayor and Council seeking approval on the patio area for the sale, consumption and distribution of alcoholic beverages and this application was approved and was renewed in June. This license also includes the storage structure.

Mr. Nestor questioned Mr. Iamuzzi's past business experience. Mr. Iamuzzi stated that he has been involved in his family business which is a public relations firm specializing in trade shows and expositions. He basically retired from this business when it was sold in 1997, however, a small portion of the business was kept. He and his brother became involved in real estate, which is how he discovered the property in question, and decided to try to build a restaurant business there. Mr. Nestor asked if anything has changed since the property was purchased. Mr. Iamuzzi stated that they have not been able to serve the client base that wants to have parties at his location. He reiterated that it is difficult to sustain a business that can't accommodate potential clients.

Mr. Iamuzzi stated that there are heaters on the patio which makes it useable in the spring and fall unless the weather is particularly harsh. Ms. Hart asked if all of the available seating, at over 100 including the patio, exceeds what is allowable at this location. Mr. Iamuzzi said that the number of seats that physically exist are less than what she mentioned. He stated that the patio seats cannot be relied upon due to uncertain weather conditions. Ms. Hart suggested making the restaurant more like a pub which would lead to a quicker turnover, therefore, a greater number of patrons could be served.

Ms. Tengi stated that the meeting would now be open to the public for any questions relating to the testimony of Mr. Iamuzzi only. A resident of Waibel Drive, was sworn by Mr. Nestor. He asked where the applicant resides and Mr. Iamuzzi stated he lives in Upper Saddle River.

Lynn Moran, 25 Franklin Turnpike, was sworn by Mr. Nestor. She asked if the prior owners had used the patio space for eating and drinking. Mr. Iamuzzi said that this what they were told prior to the purchase. Ms. Moran asked if the prior application had requested a banquet facility and Mr. Iamuzzi indicated that they are not proposing a banquet facility at this time.

There were no other questions from members of the public, therefore, the public portion of the meeting, pertaining to this witness, was closed by Ms. Tengi.

Mr. Jones asked the applicant to provide details on the application to change the place to place liquor license application. Mr. Bruinooge said he would provide the application for the place to place transfer. He explained that liquor licenses are issued by both the State and the municipality and the number of licenses a town can issue is based on population. The area licensed from the prior owner to the present owner did not appear to include the patio area which was subsequently approved for use by the Building Department. It appeared that this area was now being formally used which fell outside of the confines of the existing license. This required the application for a place to place transfer which was

granted by the Mayor and Council in 2007. The application renewal was filed in 2008 and incorporates the two structures and the patio as licensed areas under the broad C license. Mr. Redling asked for the dates when the applicant filed for these licenses.

Mr. Nestor was asked about the procedure involved in permitting outdoor dining. Mr. Nestor said that Mr. Wittekind, the Building Inspector, would have to grant initial permission and he was not sure why it didn't come to the Zoning Board at that time since this is a pre-existing, non-conforming use. Ms. Weidner recommended looking into this. Mr. Jones said his concern is that the Board is now looking at an expansion that is ongoing, however, it came into use after the initial 2006 approval for continuation of a pre-existing, non-conforming use.

Andrew H. Missey, 12 Route 17 North, Paramus, N.J. was sworn by Mr. Nestor. Mr. Missey stated that he is employed by Lapatka Associates as an engineer and gave details on his education and licenses. He attended the University of New Mexico and Rutgers University and he is a licensed engineer in New Jersey with 21 years of experience. He has had previous experience in Allendale and he has testified before Boards throughout the State of New Jersey regarding zoning and site plan matters. The Board accepted Mr. Missey as an expert witness.

Mr. Missey testified that he prepared a drawing depicting existing conditions at the site which was marked as Exhibit A-1: Conceptual Site Plan I Squared, LLC (Restaurant L), Block 2003, Lot 1, Allendale, Bergen County, New Jersey. This is a one sheet drawing dated August 4, 2008, revised through August 28, 2008. It depicts how the site would differ at the site if the application is successful. Mr. Missey turned Exhibit A-1 over to show a colorized version of the site plan which was marked Exhibit A-2.

Mr. Missey stated he is familiar with the neighborhood and observed how the restaurant site is laid out. He described the lot as being triangular with 153' of frontage along Franklin Turnpike with a depth to the west of 295'. The third side is the municipal boundary with Allendale to the north and Waldwick to the south. The property is comprised of 23,741 sq. ft. Mr. Missey explained that looking directly at the front of the site you would see the entrance to the restaurant to the left and three parking spaces to the south. The entrance drive is orientated along the northerly property line with 24 parking spaces. There is also a distribution of parking spaces along the southerly side of the drive aisle consisting of 15 spaces. Towards the rear of the property, a refuse area is visible as well as part of the storage shed. There is also a temporary trailer behind the shed toward the Borough line. Mr. Missey noted the area marked "pavers" which identifies the outdoor patio.

Mr. Missey stated that there is a Delta Service Station and automotive repair business immediately to the south of the property. Behind that is a multi-tenant commercial building housing the Odyssey Gym, a dance studio and a number of other businesses with parking spaces around the perimeter. To the west of the site is the rail line. A single family residence and shed is located about 42' from the property line to the north. Mr. Missey pointed out that approximately two thirds of the site is comprised of pavement or

parking area. The main building is approximately 1,813 sq. ft ; the storage shed is 461 sq. ft.; and, the trailer is 160 sq. ft. This means that 2,434 sq. ft. of building is located under a roof. The exterior covered patio area is 829 sq. ft. resulting in a total of 3,263 sq. ft. of area devoted to the restaurant use. Mr. Missey said that he prepared a survey and found the lot area to be 23,741 sq. ft. which results in an area of 13.47% of the property devoted to restaurant use.

Mr. Missey noted the mature trees which make the property unique. The trees to the west and north appear to be healthy and thriving and the trees along the northerly property line appear to have existed there for quite a while. There is a significant pitch of the property backwards from east to west which would indicate that the property drains to the railroad right of way and not onto adjacent properties.

Mr. Missey stated that the lot area requirement for a commercial use at this site is 5 acres and the property in question does not comply. Minimum front yard requirement is 35' with 23.8' existing from the property line to the vestibule entrance into the restaurant. The existing side yard setback to Waldwick is 3.6' where the building makes the jog to the north. The rear yard setback requirement is 50' and existing is approximately 75'. The permitted impervious coverage is 35.7% in this area. The existing impervious coverage is 88.2% since two thirds of the site is comprised of pavement and is well in excess of allowable coverage. The Floor Area Ratio is a percentage of the lot area permitted to be encumbered by a structure and, in this case, the allowable is 22.3%. The existing floor area ratio is shown at 10% on the plan, however, Mr. Missey failed to include the second floor space in his calculations resulting in 13.7% which is within the allowable area. The building height is less than 35'. Mr. Missey referred to the existing parking and testified that there are currently 43 spaces on site where 45 spaces are required which would result in the application for bulk variances.

Mr. Missey stated that an addition is proposed for the right side of the building as well as a brick sidewalk from the parking area to the front door. The refuse area will be relocated and the parking will be reconfigured in an east west direction in order to create new green areas where pavement presently exists. The building addition has an overall footprint of 1,953 sq. ft. including the patio at the northwesterly portion which is shown on Exhibit A-1 by a series of dashed lines. The proposed covered patio sits behind the actual building addition itself. Mr. Missey noted that the shed and the trailer will be removed because these functions will now be housed in the addition. Exhibit A-2 shows that the footprint of the new patio which is located where the storage structure is today. The proposed structure will not extend beyond the northwesterly corner of the present storage shed.

Mr. Missey stated the existing building area is 1,813 sq. ft. The interior addition area will be 1,505 sq. ft., along with 448 sq. ft. of patio area resulting in a total of 3,766 sq. ft. of building coverage devoted to restaurant use or 15.86% of the overall lot area. The existing area devoted to restaurant use is 13.74% and the addition proposes 15.86% or a 2.12% increase in building area. The refuse area will be relocated in an isolated area towards the rear of the site. There are planted and landscaped areas shown in the vicinity

of the storage shed which will make the site more appealing when viewed from Franklin Turnpike and the adjoining neighbors. Mature growth will remain in its present condition.

Mr. Missey advised that overall impervious coverage on the site presently is 87.1% and under proposed conditions the impervious coverage would be 85.8%. He explained that there is 20,668 sq. ft. of impervious surface and the proposal is for 20,363 sq. ft. which is shown on Exhibit A-2. The reduction of 305 sq. ft. means that the improvements and upgrades to the facility and parking area, combined with two green areas, will not increase the impervious surface on the site. Mr. Missey stated that very little is being changed and the applicant is proposing a building that is being extended to the west in the same location where activity is occurring at the moment. The dumpster location will be less visible from the street and there is additional green space to make the site more attractive. There should be no detriment to the neighbors and the proposal will internalize all the restaurant operations with the exception of accessing the refuse area. The side which faces the service station will also be screened by a permanent structure to the north.

Mr. Missey was asked if the trailer, which is a moveable object, was included in the impervious coverage calculations. He said that it was included and added that it sits on a concrete area which is calculated as impervious coverage at the moment. Mr. Missey stated that the square footage of the outdoor patio is 829 sq. ft. and the proposed covered patio is 448 sq. ft. This proposed patio is now 15' closer to the adjacent residential property to the north, however, it will be given a different look. A Board Member noted that there are 9' x 16' parking spaces along the northerly and southerly property line and he commented that he could not recall a time when site plan approval was granted for such small parking spaces. Mr. Missey explained that there is also a berm area located in a portion of some of the parking spaces that will be retained in order to preserve the trees that are so important to the site.

Mr. Yakimik responded to questions from Board Members and stated that his report tonight was focused on completeness. He has not reviewed the application on its technical merits and he will do this at the next meeting. He has asked for a drainage report from the applicant and will reserve comment on those issues until that time.

Parking was discussed and it was noted that seating is increasing substantially in the restaurant with no additional parking spaces. Mr. Missey said that much of the site is already devoted to the restaurant and it must be remembered that the number of people on the premises will not increase greatly because they will now be seated inside. Mr. Nestor pointed out that the calculations for parking spaces was done prior to the time the patio seating came into effect. He reiterated that the Zoning Board had determined that the property is a pre-existing, non-conforming use, however, he is not sure how it got to its present state. Mr. Bruinooge stated that the applicant is seeking an expansion of a pre-existing, non-conforming structure and he doesn't think that how the structure is categorized today is all that important. Mr. Nestor stated that in order to determine the expansion of the non conforming use and the non conforming structure, the Board has to

weigh the positive and negative criteria. The variance concerns are intertwined in this decision and these questions would impact on the special reasons and positive and negative criteria.

Mr. Nestor felt that input is needed from the Borough Engineer, however, Mr. Bruinooge stated that sufficient information is contained in the concept site plan to deal with the variance issue because without the use variance the other variances become mute. Testimony from the other expert witnesses will address the positive and negative criteria and will provide the Board with the foundation necessary to consider the variance. Mr. Bruinooge indicated that he is carefully establishing a record and he noted that the applicant has rights described in the resolution adopted several years ago.

Mr. Tengi stated that the meeting would now be open to the public for any questions relating to the testimony of Mr. Missey only. No one from the public came forward and Ms. Tengi closed the public portion of the meeting.

Mr. Yakimik stated that he has serious questions on the parking formula and he asked the applicant to provide further information specifically detailed calculations on existing and proposed conditions. He has also asked for calculations on the gross building area both existing and proposed as defined in the Borough code. Mr. Bruinooge stated that the engineer will provide that information in a timely fashion before the next meeting. Mr. Yakimik stated that because they are dealing with the use variance first he is trying to discern what issues the Board needs to understand in order to render a decision on the use variance. Parking seems to be a particular concern and he can refer to industry standards if the Borough code seems to be a little vague. Mr. Missey stated that the applicant anticipates seeking a variance from the parking stall size requirement of 10' x 20' and there may be other parking variances necessary.

Mr. Yakimik was asked if a traffic study was warranted since Franklin Turnpike is a major thoroughfare. Mr. Yakimik stated that site is limited by its size which limits the number of parking spaces which doesn't necessitate a traffic expert unless the applicant thinks it does. He is concerned about whether or not the lack of parking will cause people to park offsite and he will address this at the next meeting. Mr. Bruinooge commented that he didn't think there was a need for a traffic expert.

Ms. Hart stated that the applicant will have to address the parking issues and drainage calculations for the next meeting. Mr. Yakimik commented that parking will affect the use but drainage can be remedied in several ways if there is a concern. Mr. Yakimik was asked if there are similar situations existing in Allendale he said that the Allendale Shopping Center and the Savini site are similar. He added that all the businesses in the downtown area are at the 90% to 100% impervious area.

Mr. Nestor stated that going forward they are dealing with the use variance because if it is denied they will not consider any others. He stressed that parking variances will impact the Board's decision regarding positive and negative criteria, however, drainage

and construction materials are not significant. Mr. Bruinooge said he would prepare further parking calculations only at this time.

Ms. Tengi stated that this application will be carried to October 22, 2008, and made a motion to adjourn the meeting at 11:05 p.m. Motion was seconded and all voted in favor on voice vote.

Respectfully submitted,

Melinda Dorl