

November 19, 2008

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on November 19, 2008. The meeting was called to order at 8 p.m. by Ms. Tengi, Chair. Ms. Tengi announced that the variance applications of Hubelbank and Impomeni will not be heard this evening because the application for Restaurant L will probably take the entire evening. The December 17th meeting will begin at 7 p.m. and the above applications will be heard first with Restaurant L being heard at 9 p.m.

Ms. Tengi announced that the requirements of the Open Public Meetings Act were met by the required postings and notice to publications.

On roll call Ms. Tengi, Ms. Hart, Mr. Jones, Mr. Manning, Ms. Chamberlain, Ms. Weidner and Mr. Nestor, Board Attorney were present. Mr. Redling was absent this evening.

AGENDA ITEMS

Minutes of October 22, 2008

Ms. Tengi asked the Board if they had any corrections to the minutes from the October 22, 2008 meeting. Mr. Jones made a motion to approve the minutes, as amended, and Mr. Manning seconded. All members present voted in favor.

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

Thomas Bruinooge, attorney for the applicant, stated that a revised site plan was submitted and he recalled Andrew Missey, the engineer for the project. The new plans have a revision date of 11/10/08 and were pre-marked as Exhibit A-7. Mr. Missey was reminded that he is still under oath and compared Exhibit to A-1 and A-2 that had been previously submitted by the applicant. He testified regarding the changes stating that they have incorporated co-ordination efforts with Z Plus Architects to align the building and addition which allows for an increase of 2 parking spaces along the northerly façade of the building. He stated that the geometry of what was originally proposed at the hearing in September has been altered resulting in these two spaces. Additional greenery can also be planted along the northerly façade and to the northeastern corner of the building as a result of a reduction of the walkway width and the elimination of unnecessary walkways.

Mr. Missey stated that along the northerly property lines and they propose parking to be set back by soft cutting and removing existing pavement by 2'. Parking bumpers are proposed to be installed in this area. The side yard to the south is now shown as 3'

minimum and along the side yard to the north it is shown as 56'. The structure is 1 ½ stories tall and even though the impervious coverage has been somewhat reduced, it still requires a variance. The greenery has been increased to 4,008 sq. ft. over the existing 3,073 sq. ft., or a 30% increase primarily along the northern façade of the building. All the various numbers have been incorporated into one consolidated chart on Exhibit A-7.

Mr. Bruinooge referred to Exhibit A-8 which is a plan done by Z Plus Architects showing the site reconfiguration that identifies two additional parking spaces. The revised site plan reflects 45 parking spaces. The total pervious coverage is 4,008 sq. ft. and the impervious coverage is 19,733 sq. ft. which is an improvement over the existing conditions. Mr. Missey identified Exhibit A-8 which is Project Restaurant L, Revised footprint with overlay of previous footprint, prepared by Z Plus Architects, 634 Franklin Turnpike, Allendale, N.J., dated 11/17/08.

Mr. Nestor questioned how Exhibit A-8 differs from the existing conditions depicted on Exhibit A-1 or Exhibit A-2. Mr. Missey said that Exhibit A-8 eliminates the walls that abut the addition and shows the expanded kitchen that leads to a hall leading to a short flight of stairs and a landing where there is a door that exits at grade level. Another set of stairs lead to the storage area underneath the addition. One can walk to the northerly wall in the existing dining room and visualize it being 3' further to the north and walk to the rear and enter into a new dining area at one level in the back patio area; or, from the exterior the far northwesterly corner of the storage shed could be visualized as being the back limit of the addition. Simply put, it appears that the line of previous footprint now is tapered in so that it is less encroaching towards the resident's property with somewhat less encroachment on the Waldwick side so there slightly more walking space up the stairs. The existing setback condition remains with the building being 3' off of the property line on the south side where there is a fence between the building and the gas station. There is an existing stockade fence on the northerly property line and trees and shrubbery are now shown on the plan. The trees located in the rear westerly corner will remain. Mr. Missey stated that the refuse area will be moved to the southern side of the property where they will be screened. This will also increase the parking. He confirmed that the addition is only one storey.

Mr. Missey was questioned on the 17' long parking spaces and the lighting. Mr. Missey said that the existing lighting will remain and that larger vehicles should park at another location on the site. The 17' spaces would accommodate the bulk of the vehicles on the road today. Mr. Missey was asked how larger vehicles would maneuver in the area of the northerly parking stalls and the northerly side of the refuse area if all the parking spaces are filled. Mr. Missey said that on the nights when the restaurant is the most full a valet service is employed to park vehicles. The distance between the end of the northerly stalls and the refuse area is 24' to any enclosure and making the movements in that area would have to be done with a significant amount of care.

Mr. Missey was asked how the two additional spaces were created and he said that the spaces are along the northerly façade of the building itself. There are 24 stalls located along the northerly property line, 2 stalls at the very west end of the property and 5 stalls

between the back of the addition and the dumpster area. The difference on A-7 is that the 5 stalls are moved closer to the southerly property line and by adjusting the orientation of the building with the architects they have been able to configure the 9 stalls in the front to 11 stalls by eliminating unnecessary sidewalks and excess aisle width in the area of the first 100' entering the site. Restaurant patrons will walk on the pavement through the parking lot to enter the restaurant and there is no entrance to the building from the rear.

Mr. Manning asked Mr. Missey if there were any plans for any tables at the wait stations and Mr. Missey said that he did not anticipate any tables. Mr. Missey said that the owner would be better qualified to address that question.

Ms. 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 at this time.

Mr. Missey referred to the service portion of the restaurant operation stating that it maintains accessibility from any delivery vehicle which would move to the back of the site during delivery hours. It is a hard cart delivery system where the goods being delivered go in through the kitchen area or down the bilko doors to the basement area.

Mr. Missey stated that he is not aware of any changes to the number of 100 seats in the restaurant. He was asked about the distance of the concrete tire stops to the property line and he said it would be 2' and the typical overhang would be about 18". Mr. Missey explained that the dimension of the parking stall was reduced from 18' to 17' in an effort to obtain 2' from the property line to the curb stop which is still an appropriate size for a parking space. There are two parking spaces in the County right of way easement that are proposed to be granted to the County for eventual road widening. The County will want these spaces to be relatively inactive and these spaces will be designated as employee only stalls. Mr. Missey stated that Franklin Turnpike will be resurfaced in the near future and this demonstrates that the County is willing to accept the road as is for some time to come. In a new plan these parking spaces would probably be something they would want to avoid, however, if the employees are familiar with the limitations of moving into and out of these spaces it serves the same function as removing them from the public's use.

Paul Phillips, the applicant's planner, 434 6th Avenue, New York, N.Y. was sworn by Mr. Nestor. Mr. Phillips said that he holds a Masters Degree in Urban Planning from Hunter College and is a licensed Professional Planner in New Jersey. He is a principle in the firm of Phillips, Price, Shapiro Associates and has been practicing in New Jersey for 30 years. Mr. Phillips was accepted as an expert in the area of planning. Mr. Phillips stated he has visited the site and has studied the Master Plan and ordinances of the Borough. He has reviewed the plans and completed a survey of the adjacent land uses in Allendale and Waldwick as well as reviewing all of the accompanying reports submitted regarding this application. He is also familiar with the Municipal Land Use Law.

Mr. Phillips testified that the application involves changes or upgrades to the restaurant located on the border of Allendale and Waldwick. The property is located in the residential district and the restaurant is a pre-existing and legal non-conforming use, however, the proposed changes trigger a D-2 variance request or an expansion of a non-conforming use. There are setback and coverage deficiencies including parking stall size. There are no changes proposed that would exacerbate the existing deficiencies and the lot coverage is actually being reduced.

Mr. Phillips stated that the key point to remember for a D-2 variance is that the applicant doesn't have to demonstrate that the use variance could have been or should have been properly granted in the first place. The applicant does have to satisfy the positive and negative criteria and the Courts have suggested that the negative criteria be viewed more liberally in connection with expansions of pre-existing, non-conforming uses because they are less likely to involve substantial impairment of the zone plan than applications for a brand new non-conforming use. The Courts have also indicated that expansions of non-conforming uses may be justified where there are visual, aesthetic or other benefits that would enhance public welfare or public interest.

Mr. Phillips indicated that there are special reasons to support this application. He said that it could be assumed that this restaurant will continue to operate at this location with or without this approval because it has been recently renovated; the use is compatible with the adjoining uses to the south and this is not an appropriate area for single family residential housing. The proposed improvements will permit the existing use to function more efficiently on the site and also better relate to the surrounding properties particularly the adjacent residential use to the north. The enclosure of the operation within a single structure will provide a more efficient and safer operation of the restaurant and provides an aesthetic benefit. It will also reduce the amount of onsite outdoor activity which will be beneficial to the neighbors to the north. Mr. Phillips said that the expansion of the structure is in the outdoor patio and shed areas and the orientation of the new outdoor area will help to ensure that any future outdoor activities are not visible from Franklin Turnpike or the adjacent neighbor to the north. The site plan increases the parking supply by two spaces and provides additional green space. The visual appearance of the site will be enhanced by the elimination of the out buildings which will be enclosed. The dumpster area is being relocated to the southerly property line and enclosed. He concluded that these improvements will result in a visual upgrade of the property and will be beneficial to the adjacent neighborhood and zone.

Mr. Phillips said that this property would not be suitable for single family residential use and this is why the property has remained a restaurant for quite some time even though it is zoned residential. This use will continue to serve as the northerly limit of an established commercial district existing on either side of Franklin Turnpike.

Mr. Phillips referred to two Exhibits which were marked as A-9 and A-10. Exhibit A-9 is an existing land use map basically showing areas to the north and south of the subject property. This property is the only property utilized commercially in the Allendale portion of Franklin Turnpike, however, all of the properties to the south are used for

commercial, office or light industrial. Mr. Phillips referred to Exhibit A-10 which depicts the A zone in Allendale, the municipal boundary and he pointed out that everything to the north is within the limits of the A district. The zoning pattern to the south in Waldwick is a non-residential pattern with everything to the west of Franklin Turnpike in Waldwick classified as industrial. Mr. Phillips added that the property abuts an active gas station which is less than ideal for single family residences and the shape of the property is compromised due to its triangular shape.

Mr. Phillips stated that the best use here is commercial and the proposal does not cause substantial detriment to the public good. The application advances the purposes of the Land Use Statute to guide development in a manner that promotes public health, safety and welfare; provides sufficient space and appropriate locations in order to provide for a variety of uses including commercial uses to meet the needs of the citizens of the municipality; and, the change is designed to promote a desirable visual environment.

Regarding negative criteria, Mr. Phillips pointed out that none of the adjoining lands on either side of Franklin Turnpike are zoned for commercial use and this property, given its use and history, would have been placed in a business zone. Allendale has placed this property in a residential zone because there are no other commercial zones attached to it. He reiterated that the residential zoning makes no sense for this parcel. Given the unique circumstances that affect this property and its history Mr. Phillips does not believe that the granting of the D-2 variance in this instance would undermine the zone plan for Allendale.

Mr. Phillips referred to the April 2005 Master Plan which acknowledges that the property is in a single family residential district and states that this use should remain non-conforming with the eventual goal of eliminating the use. However, the use may be regulated as a conditional use in order to ensure that the future activity on this property remains sensitive to the needs of the residential neighborhood. Mr. Phillips stated that this is what the applicant is seeking to achieve with this proposal. The Waldwick portion of Franklin Turnpike is designated as a zone for highway commercial and Allendale, as per the Master Plan, does not endorse the extension of a retail strip pattern into Allendale's portion of Franklin Turnpike.

Mr. Phillips spoke about the public good and said this refers to the impact on the surrounding properties as well as the impact on the community. This application is consistent with the larger neighborhood to the south and will continue to be part of the established commercial district. The property immediately adjacent to the north and whether or not there is adequate parking are the two critical issues here. The question is whether the impact of this application is substantial in nature relative to the current use and the answer would be no although there are a number of trade offs. There is no increase in the seating. The building expansion is proposed in the area which accommodates the outdoor patio and the two storage facilities and structures are not being brought substantially closer to the residential property line. A substantial amount of outdoor seats are being eliminated along with stand alone storage sheds which is a positive impact on the neighbor. The enclosure of the patio area and relocation of the

storage area serves to screen the commercial gas station to the south from the residence to the north. Parking on the site is generally in the same area relative to the neighbor, however, it is being moved several feet further into the property line. The dumpster relocation and enclosure is beneficial for the resident to the north. The new patio area will be covered and will not have table seating. It will face the rear yard rather than the side yard all of which will mitigate any impacts of activity and noise. Mr. Phillips stated that this application will have some impact but he doesn't feel that the impact is substantial and for this reason the negative criteria can be satisfied.

Regarding the 45 parking spaces, Mr. Phillips agreed with the applicant's traffic expert in that, under one of the two parking standards, parking would comply based on seating or square footage. He has experience in drafting parking standards in many different districts and has researched various parking ordinances in Bergen County. He found that the typical standard for sit down restaurants is one space for 2 ½ seats or one space for every 3 seats, therefore, there should be adequate parking. He reiterated that there is a valet parking service on Friday and Saturday nights which gives the opportunity for additional parking on the site and the property owner has an arrangement with the gas station to the south to park 8 cars. Mr. Phillips noted that the restaurant does not comply with the parking ordinance requires 10' x 20' parking spaces and they will not comply in the future. The need for 10' of width is understandable in a high turn over area such as a convenience store or a supermarket where there are shopping carts. For a restaurant, Mr. Phillips felt that 9' is more than adequate and 9' x 18' or 9' x 19' spaces should be adequate for SUVs. He said that the light stanchion would be self regulating and people will park smaller cars in those spaces.

Mr. Phillips was asked for his opinion on the Institute of Traffic Engineer's (ITE) recommendation on parking spaces. Mr. Phillips said that this is a guide and he would rather go with what he is familiar with based on his experience and the adequacy of parking in other towns.

A Board Member asked why this property is specifically identified in the Master Plan. Mr. Phillips said that everything on either side of Franklin Turnpike in Allendale is residential and it would be problematic to zone a single piece of property. The Master Plan clearly states that it is unlikely that the use will go away even though it mentions the property as having a conditional use and this may be an instance where the non-conforming use is being sanctioned. Mr. Phillips was asked if it is detrimental to the public good and safety if there is inadequate parking which forces people to park across the street. Mr. Phillips said that this is an established use which seasonally has the same amount of seating which is now being proposed year round. The applicant is doing everything it can to deal with Friday and Saturday night patrons by using valet parking which will continue. The owner has arranged with the gas station to gain 8 spaces, however, there may be times when this isn't sufficient and it is impossible to plan for every situation. He feels confident that the applicant's proposal can satisfy the public good under the negative criteria. Mr. Phillips was asked how this plan promotes the general welfare and not just the welfare of Restaurant L. Mr. Phillips said that the improvements he is referring to are relative to what is there now as compared to what is

being proposed. Putting activity indoors and reorienting the building will have less of an impact on the residential neighbor to the north and this is what promotes public welfare between a commercial land use and residential land use. Although the waiting area has been increased, it has been designed to turn away from the residential neighborhood and it is covered. Mr. Phillips said he is not aware of any complaints from the adjacent residents.

Mr. Phillips was asked if special events, such as christenings, that the owner referred to during a previous meeting, would increase the need for parking. Mr. Phillips said that whether it is regular dining night or a special occasion the restaurant has 100 seats. Ms. Hart questioned Mr. Phillips on the question of valet parking at the gas station. He said that there is an agreement between property owners and the fact that the property is in another town isn't an issue. He said it is better to have all parking on site and he believes that the 45 spaces should be adequate for the majority of the time. Mr. Phillips was asked about how adequate the parking would be during periods of heavy snow and he reiterated that parking is adequate.

Mr. Phillips was asked how long he has been the Planner for Waldwick and he said he has been the Planner for approximately 15 years before Restaurant L came into existence.

Ms. Tengi stated that the meeting would now be open to the public for any questions relating to the testimony of Mr. Phillips only. No one from the public came forward at this time.

Ms. Hart said that Mr. Phillips testified that this property is not properly suited for a residence but according to the zoning map it is included in the residential district. Mr. Phillips said that it may not be possible to put a conforming house on this property.

Edward Sneickus, the Borough Planner, referred to the ITE standards regarding parking spaces and asked if this is more of an intensification of use because the duration of the use of 100 seats is being increased. Mr. Phillips said that this is correct. Mr. Sneickus said the ITE standards create a worse case scenario standard of overflow standards. Mr. Bruinooge said that parking as proposed by the applicant complies with the ordinance and the ITE manual is for informational purposes only. Mr. Phillips stated that the ITE is only a guide and this applicant should not be held to a worst case standard based on the data contained in these standards. The Board should consider typical and reasonable standards for a restaurant use.

Mr. Bruinooge introduced Donald J. Helmstetter, 336 Boulevard, Hasbrouck Heights, N.J., who was sworn and stated that he is the principal of Nathan Helmstetter Associates, LLC., real estate appraisers and consultants. Mr. Helmstetter said he is a graduate of Montclair State University and he has taken various courses sponsored by the American Institute of Real Estate Appraisers. He has periodically re-qualified since 1980 with continuing education courses in connection with his M.A.I. designation. He has been qualified as an expert in real estate before various boards including this one. The Board accepted Mr. Helmstetter as an expert in real estate appraisal.

Mr. Helmstetter testified that he is familiar with the subject property. He reviewed the application for the proposed addition and examined the surrounding neighborhoods in Allendale and Waldwick. Based upon a review of the tax assessments in Allendale and recent sales the general value range is \$500,000 to \$1 million with one exception being a newer house at 73 Franklin Turnpike which recently sold for \$1½ million. Mr. Helmstetter said that there will not be any adverse impact on the value of any adjacent properties to the north and the proposal makes the situation better because the property is more adequately screened from the gas station on the Waldwick side and provides screening of the dumpster making this a more aesthetically pleasing view from the adjacent property. He concluded that there will be no adverse impact on any of the other property values.

Mr. Helmstetter was asked about the increase in traffic and he said he didn't think there would be increased traffic since the amount of seats seasonally are the same. Ms. Hart said that there would be an increase in traffic year round and Mr. Helmstetter pointed out that there will be less noise because windows are closed during the colder parts of the year and people are not outdoors during the evening hours, therefore, any increased traffic will not be noticeable.

Ms. Tengi stated that the meeting would now be open to the public for any questions relating to the testimony of Mr. Helmstetter only.

Lynn Moran, 25 Franklin Turnpike said it is noisy at 1 a.m. when people are exiting the bar. Mr. Helmstetter said that the situation will be the same with the addition because the number of seats will remain the same.

No one else from the public came forward.

Janet Sudac, 378 Cambridge Drive, Ramsey was sworn by Mr. Nestor. She testified that she is a member of the LLC known as Friends and Family which operates Restaurant L at 9 Franklin Turnpike, Allendale. She stated that she has spoken with the adjacent property owner in Waldwick, Tommy Lynch, regarding parking. A legal agreement has been drawn up between Mr. Lynch and Friends and Family that gives Friends and Family the right to use 8 parking spaces on his property after 5 p.m. This agreement will have to be honored by future owners of the property. Mr. Bruinooge referred to Exhibit marked A-11 and Ms. Sudac identified it as the legal agreement drawn up between Mr. Lynch, Mr. Iamuzzi and herself.

Mr. Bruinooge was asked if this is a deed restriction for the Delta gas station since it says that it must be honored by subsequent users. Mr. Bruinooge said that this is a binding agreement and he couldn't comment on whether or not it should be filed with the County Clerk. The property owner has recognized that he is obligated to encumber the property. Mr. Bruinooge asked about the policy of the valet service and Ms. Sudac stated that the valets do not take any cars offsite and they have not used Mr. Lynch's property as of yet.

Mr. Nestor asked Ms. Sudac if Mr. Lynch is getting anything in return for the use of his property. She said that Mr. Lynch is not getting anything.

Ms. Sudac was asked about her ownership percentage in Restaurant L. She stated that she owns 20% of the business and she has been involved in the business since the onset. There are 18 employees at the restaurant year round, half of which are part time. They may hire two or three more employees if the variance is granted. The employees park at the gas station, however, many live in Waldwick and bike or walk to the restaurant. Ms. Sudac was asked if Mr. Lynch asked that cars be parked in a specific area of his property and she said he asked that cars park along the fence line or behind the existing building. The gas station is open until 10 p.m. and it is not necessary to go past the pumps to reach the designated parking areas. Ms. Sudac referred to Exhibit A-9 and showed members where parking was permitted. It was noted that there is open access between Mr. Lynch's building and the applicant's fence. Ms. Sudac testified that on a Saturday night there are ten employees at the restaurant.

Mr. Nestor was asked if the adjacent municipality would have to approve this agreement if these parking spaces were utilized. He said he would have to look into this but he wouldn't think approval by the municipality or notification of residents or businesses within 200 ft. was required.

Ms. Sudac stated that the valets have told her that they can stack up to 100 cars on the lot, however, she has never seen a plan depicting how that would be accomplished.

Ms. Tengi stated that the meeting would now be open to the public for any questions relating to the testimony of Ms. Sudac only. No one from the public came forward at this time.

John Yakimik, Borough Engineer for the Borough of Allendale, was sworn by Mr. Nestor. Mr. Yakimik described his educational background and said that he has been a practicing professional engineer for 20 years. He stated that the application has been bifurcated and the issue at the moment is the use variance. The most important engineering aspect of the use variance is the traffic associated with the site. He has reviewed documents regarding traffic submitted by the applicant and he has attended all of the meetings.

Mr. Bruinooge objected to Mr. Yakimik referring to traffic because he hasn't been qualified in that area. Mr. Yakimik said he has some knowledge in this area but he is not an expert, therefore, he forwarded the traffic report to Wayne Haussler a traffic expert in his firm. Mr. Haussler reviewed the documents and will testify this evening. Mr. Yakimik said that he did not review this application for site plan because there are no site plan issues.

Wayne Haussler, traffic engineer, was sworn by Mr. Nestor. He has a Masters Degree in Electrical Engineering and Traffic and Transportation from NJIT and holds the Professional Operations Traffic Engineer's Certification. Mr. Haussler testified that he

has reviewed three plans as well as the revised plans, the traffic report and evaluated the site. He submitted a letter signed by Mr. Yakimik along with a report which he compiled dated November 17th.

Mr. Haussler reviewed the parking ordinance and did not feel that this restaurant would fall into the category of a place of public gathering. Mr. Bruinooge objected to the fact that Mr. Haussler said he feels that this ordinance wouldn't apply here and shouldn't be drawing legal conclusions. He should be giving professional opinions based on their expertise as well as the facts. Mr. Bruinooge stated that there needs to be a ruling or interpretation of this ordinance by the Board. Mr. Nester said that he received a document from Mr. Bruinooge this afternoon regarding this issue which he is not prepared to address. He recommended that testimony be suspended until this issue is addressed. Mr. Bruinooge said that he would distribute copies of the document he submitted to Mr. Nestor today to Board Members and he agreed that since it is almost 11 p.m. it would be a good idea to end the testimony for tonight.

Ms. Tengi reminded the applicant that this application will be heard at 9 p.m. on December 17th. Mr. Bruinooge stated that the applicant has agreed to a 60 day extension of the 120 day period.

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

Melinda Dorl