

January 28, 2009

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on January 28, 2009. The meeting was called to order at 8:05 p.m. by Ms. Tengi, Chairperson, 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: Jones, Redling, Hart, Chamberlain, Tengi and Weidner. Mr. Manning was absent. Also present was Mr. Nestor, Board Attorney.

On a motion by Mr. Jones, seconded by Mrs. Weidner, the minutes of the December 17, 2008 meeting were approved as submitted.

#### Election of Officers

Mrs. Chamberlain moved, seconded by Mr. Redling, to nominate the following slate of officers:

- Mrs. Tengi, Chair
- Mrs. Hart, Vice Chair
- Mr. Nestor, Board Attorney

On roll call, all Board members voted in favor.

A resolution of memorialization was submitted by the Board Attorney with regard to the Kim Hubelbank variance application. Mrs. Chamberlain moved, seconded by Mrs. Weidner to approve the resolution as submitted. On roll call Ms. Tengi, Mr. Redling, Mr. Jones, Ms. Weidner and Ms. Chamberlain voted in favor.

A resolution of memorialization was submitted by the Board Attorney with regard to the Allendale Housing, Inc. application. Mr. Jones moved, seconded by Ms. Chamberlain, to approve the resolution as submitted. On roll call Mr. Jones, Ms. Chamberlain, Mr. Redling, and Ms. Weidner voted in favor.

Ms. Tengi announced that the I Squared LLC (Restaurant L) application will be carried to the February 25<sup>th</sup> meeting.

#### Continuation of Mark Impomeni variance application, 45 New St.

Mr. Impomeni said he submitted plans last month to build a dormer addition to his attic making a small playroom. The Board questioned whether the plan conformed to the zoning ordinance as a 2 ½ story structure and the application was carried to this month. In the meantime, he and his wife decided to submit an alternate plan which he distributed to the Board. He said he hopes the Board will consider this plan in lieu of the proposal before the Board last month.

He said this addition will go over the existing one story porch on the right side of his Dutch Colonial home. An existing bedroom on his second floor will be absorbed into an interior hallway so the house will have four bedrooms when it is finished. The total size

of the new project is the same as the old one, 200 s.f., so all of the variances that he would need for the other project are the same. All of the square footage and floor area ratios are the same. The only thing that changes is that he needs a side yard setback variance for the right side of his house and not the left side. On that side of his house the side yard setback is 11.1 ft. so it is currently nonconforming. This addition is in lieu of the dormer.

Mr. Nestor asked if the neighbors have been noticed of this change in plans. Mr. Impomeni said he was told that he did not need to provide any additional notice because the variances are the same. He is not coming any closer to the neighbor than he already is but there is going to be a second story rather than one story. Mr. Nestor said he feels Mr. Impomeni should re-notice to be on the safe side and submit proper plans. If he proceeds and objectors come forward that have not been properly noticed, there could be major problems.

#### Allendale Glen Estates, LLC variance application – Nadler Court

Bruce Whitaker from the firm of McDonnell and Whitaker was present as attorney for applicant. This variance request has to do with placement of a fence on two of the properties in this 5 lot subdivision off of Franklin Turnpike. One home has been built and the other homes are ready to be built on Nadler Court, a culdesac off of Franklin Turnpike.

There is construction of homes on two lots and they wish to install a 6 ft. cedar fence 12 inches off the property line. A 6 ft. fence needs to be 15 ft. off the property line. Mr. Whitaker said there is a need to install this fence based on some good planning concepts.

Mr. Whitaker said the neighboring property has had a number of uses on it such as landscaping, storage of landscaping equipment, trucks. There has logging done there. By installing the fence, the attempt is to permit the new purchasers of these properties to have some privacy. Mr. Whitaker said the 4 ft. fence that would be permitted is not going to be effective for the purposes of privacy or aesthetics. He said there are cases that state that from the standpoint of granting a C variance, aesthetics and privacy can be a consideration. In this instance he believes what they are requesting falls within those parameters.

Mr. Whitaker said the concept of putting the fence in as required under the code would result in a hardship and difficulty. By bringing the fence in 15 ft. the rear yards would only be 35 ft. and the side yards would be 15 ft. From an air, light and space consideration as well as the practicality of using the back yard, the 50 ft. would be much better for the property owner. Furthermore, for many years the neighboring property owner has encroached on the property being developed now with their equipment, logs, etc. With a 6 ft. fence 15 ft. back on the property, maintenance becomes a problem for the property owner in the new home and also it allows the neighbor to once again to encroach on the property.

Mr. Whitaker said he believes the ordinance was created for properties that are very close to each other. He submitted copies of the ordinance to the Board members. The ordinance says fences within 15 ft. of a lot line may be erected to a height of not more than 4 ft. Beyond 15 ft. from a lot line fences can be erected to a height not exceeding 6 ft. and exceptions to these limits may be granted by the appropriate Board upon notice and finding of hardship. He said the applicant has the right to make an argument either under C-1 or C-2. Mr. Whitaker said in his statement of facts attached to the application he has made an argument each way based upon the conditions of the property not being an actual square, based upon where the house is located and putting the fence so deep in the lot does create a hardship as far as the rear yard of the property is concerned. Putting the fence on the lot line creates no detriment because it is still close to 100 ft. before there is another house on the other side of the fence. From the C-2 aspect, aesthetics and privacy are important considerations.

Robert Loughrey, Vice President of Operations with Allendale Glen Estates was sworn. He said he is the project manager for this particular development. He testified that after the property was acquired, there had to be some clearing of the land to build the road and create these lots. When he started walking the property line to see where their limits were he noticed in the back corner there was a lot of garbage, storage of old equipment and a lot of junk. He said it looked like it encroached on their property so he had a stake-out done to determine exactly where the property line is located. In doing so, he found about 15 ft. of that material was encroaching on their property. Mr. Loughrey said he talked to the homeowner who said his father had been collecting it for years and he was going to try to clean it up. Eventually Mr. Loughrey got his crews to do the clean up. They took about four containers of garbage and recyclables out of the site and the property owner was very grateful for the help. He said it appears that the property owner does a lot of woodcutting and is selling firewood. There are also piles of topsoil dumped there and there are trucks, backhoes and equipment that he stores there and brings in and out. There is also what appears to be a tent where he stores equipment, in addition to accessory or outbuildings on the property.

Photos marked A1 through A6 were taken by Mr. Loughrey at the end of October or beginning of November. Mr. Loughrey said these pictures were taken after the cleanup was done. The photos showed the material stored on the property as well as the outbuildings on the property. Mr. Loughrey said when showing the applicant's property to prospective buyers, the conditions on the neighboring property have been a major concern. He feels a 6 ft. fence would alleviate these concerns. The fence that is being proposed would be a 6 ft. cedar fence with the good side facing towards this operation and the inside would be planted and landscaped. If the fence were placed 15 ft. from the property lines it would make the property look smaller than it actually is and he would be concerned with further encroachment onto the property.

Mr. Nestor asked when Mr. Loughrey first noticed this activity. Mr. Loughrey said he first walked the property back in July and has noticed this activity continually up to the present date. He said he did speak to the Building Inspector and the Borough Engineer about this situation. However, he did not file a complaint. Mr. Whitaker said Mr.

Wittekind is well aware of this situation. He could invite Mr. Wittekind to testify if the Board wished. The activity is taking place on Lots 5 and 6. Mr. Nestor asked why a 4 ft. fence on the property line would not suffice. Mr. Loughrey said it would be ineffective to screen the property. Two additional feet would make a big difference and also help from the noise aspect.

Mr. Jones asked when this five lot subdivision was granted. Mr. Whitaker said it was probably approved by the Planning Board 2-3 years ago. Mr. Jones said obviously this condition on the neighboring property has been an ongoing problem. Mr. Loughrey said Allendale Glen Estates did not make that application. They purchased the subdivision.

Mr. Jones asked why a natural buffer would not be suitable. Mr. Loughrey said there are 30-40 ft. tall pine trees along the property line that would have to be taken down in order to get enough light to permit plants to grow.

Mr. Whitaker said the landscaping itself would not stop the noise or the look of the activity.

Mrs. Chamberlain said even with a 6 ft. fence you will still be able to see and hear what is going on there because of how extensive this operation is. She suggested that perhaps a 4 ft. fence with 6 ft. arborvitae would be more appropriate. She questioned whether action has been taken by the town if a complaint has been filed since it appears that the action on the neighboring property is not legal on a residential property.

Mr. Loughrey said prospective buyers are not interested in purchasing the property when they discover they can't have a 6 ft. fence.

Mr. Whitaker said the request for the 6 ft. fence was made for the entire property to be consistent, but the issue and concern is in the v-shaped part by 5 and 6. Mrs. Hart said she feels driving down West Crescent in the winter a 6 ft. fence would really stand out.

The meeting was opened to the public for comments.

Margaret Onesios, 133 W. Crescent Avenue, said she has lived there for 20 years. They have complained many times to Mr. Wittekind and nothing has been done. It has been a constant problem and when she complains the neighbor retaliates. She has a big problem with the town for not stepping in. They have lived with this and it has gotten worse and not better. She feels before putting up any fences this is a problem that has to be solved with this man. Supposedly this activity was grandfathered because his father was in the business, but his father is no longer there. She said the fence would definitely affect her property. It would be in their corner and would break up everything. They grow arborvitae under trees and it grows fairly well.

There being no further comments, the meeting was closed to the public.

Mrs. Tenghi said she will contact Mr. Wittekind tomorrow.

Mark Palus, Kinnelon, N.J. was sworn. He said he is a licensed professional engineer and planner in New Jersey. He has appeared before in excess of 50 different boards in the State including this board. He prepared three sets of plans submitted to the Board marked Exhibits A2, A3 and A4.

Mr. Palus said Nadler Court was created as part of a major subdivision granted by the Planning Board and it created lots 9.01, 9.02 and 9.03. A subsequent minor subdivision created lots 10.01 and 10.02. Mr. Loughrey's company is currently developing these five lots. The area of the fence is at the western edge of the property. Also shown are the adjacent properties to the west on West Crescent Avenue. He has also provided the approximate distances from the rear of those homes to the common property line. The point he wants to make from this exhibit is that the fence is not going to be directly on top of the neighboring homes as they are all a substantial distance away. Mr. Palus said if the fence were placed 15 ft. from the property lines the rear yard setbacks would go from 50 ft. down to 35 ft., losing approximately one-third of the back yard of the property. If the side yards are moved in by 15 ft. there would be a fence halfway between the house and the side property line. He concluded that the placement of the fence by the applicant is based almost entirely on his desire to provide a good visual environment for the property. He said the two properties in question have a very unusual frontage along Nadler Court and although conforming to the town's zoning ordinance it results in a unique layout. Lots 5 and 6 are lower in location than the properties that will have the fences installed on them. As one stands on the lots in question and looks towards lots 5 and 6, the ground does drop away so any fence installed on the property line will look lower at a higher elevation. He added that a 4 ft. fence would be effective in delineating boundaries of a property and would contain family pets, but it would have minimal impact in blocking a view and certainly the fence at the property line gives an additional percentage of use of the property so it is a significant benefit. He said there are significant distances to the adjacent structures on West Crescent Ave. Moving the fence an additional 15 ft. in from W. Crescent Avenue will make an insignificant visual difference to people driving down W. Crescent Ave.

Mr. Whitaker asked if there will be any visual benefit to lots 5 and 6 if the fence is moved in 15 ft. Mr. Palus said it is reasonable to believe the homeowners of those lots would begin to encroach on the property causing zoning and enforcement issues and there would be no significant visual benefit.

Mr. Jones said the fence going behind lot 9.03 cuts across three properties, 6, 8 and 7. What is the rationale for the 6 ft. fence since there is no activity on those properties. Mr. Whitaker said his client is willing to amend the application to basically do the V shape portion of the fence so it only borders lots 5 and 6. There would be no fence on the remainder of the property line.

Mrs. Onesios said the fence will still impact her property which is Block 910, Lots 3 and 4.

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

Mrs. Chamberlain said the Board has heard testimony as to the hardship of complying with the part of the ordinance that says to build a 6 ft. fence you have to come in 15 ft. off the property line. She pointed out the building site is not shown on the plot plan so it is hard to know how the back yards and side yards are going to be configured. She asked what is the hardship of building a 4 ft. fence with 6 ft. arborvitae. She has arborvitae along her property line. It grows fast, it is very dense and you can't see through it. She believes it will be more attractive and more effective in screening the activity on lots 5 and 6.

Mr. Whitaker said he did not see the purpose of moving the fence back 15 ft. from the property line and keeping a 15 ft. strip next to lots 5 and 6. He can see the 15 ft. strip if it is a pure residential use to residential use but moving the fence back 15 ft. does nothing positive other than enhance the activity on the other site. He believes taking that 15 ft. away is hurting a property owner that wants to enjoy his back yard and to have the kind of fence that prospective buyers have indicated they would prefer to see rather than a soil movement operation.

Mr. Jones asked Mr. Palus to sketch the location of the building envelopes on Blocks 9.03 and 10.02. He said if lots 3 and 4 were ever subdivided and a house was put on the back portion, he believes the 6 ft. fence could impact that structure. He added that the granting of a 6 ft. fence on the property line would be a lasting thing. He said that what is going on in lots 5 and 6 is inappropriate and the Board should make an effort to follow up on this. Based on the photographs submitted he would not want to live next door to that activity. Mr. Whitaker pointed out that this activity may be protected.

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

Mrs. Tengi reiterated that she will contact the zoning official and request an inquiry as to the activities on the neighboring property on West Crescent Ave.

Mr. Whitaker said he is seeking a variance for the location of the 6 ft. fence which is permitted in Allendale. With regard to the benefits and detriments, in this case he feels the scales tip in favor of the applicant to allow a 50 ft. rear yard and 30 ft. side yards and to allow the fence to be on the property line versus allowing the additional 15 ft. to be some sort of buffer for lots 5 and 6. He believes the fence on the property line is more appropriate for two reasons – privacy as well as aesthetics.

Mrs. Chamberlain said she believes everyone is in great sympathy with the applicant, but she does not feel that the hardship criteria has been met. She feels that the applicants objective to screen the lots from the problem on lots 5 and 6 could be achieved within the ordinance and that would be by using a 4 ft. fence in combination with very dense plantings. The Board has not heard testimony that this would not work and she believes

it would be more in keeping with the intent of the ordinance. She also believes that any deviation would not substantially outweigh any detriments. She moved to deny the application. Motion seconded by Mr. Redling.

On roll call, Mr. Jones and Mrs. Tengi voted no. Mr. Redling, Mrs. Hart, Mrs. Chamberlain and Mrs. Weidner voted in favor. The application was denied.

James Russo variance application, 233 Park Ave., Block 1702, Lots 6 & 7

Chris Botta from the firm of Botta & Associates in Ramsey was present as attorney for applicant. He said this application was noticed for the December meeting and was carried to this meeting.

Mr. Nestor said he understands that one of the neighbors has complained that he was not properly noticed. Mr. Botta said that has been taken care of and the certified receipt was submitted to the Board Secretary.

John D'Anton appeared as attorney for one of the objectors. He said Mr. Rosenfeld had appeared at the last meeting and said he had not been properly noticed, but it has been taken care of.

Mr. Botta said applicant is seeking a C-1 variance in light of the unique nature of the property. He submitted location survey of the property and copy of tax map showing distances from neighboring properties, new plans revised January 16, 2009 and photographs.

Mr. Botta said the property is the first house on Park Ave. after it intersects with Mallinson. It is a uniquely shaped lot. It is 320 ft. deep and wraps around the front of Park Ave. It is actually two lots, Block 6 and 7 in block 1702. The home which is an old structure is jammed into the corner of lot 6. The property has an irregular shape and is a pre-existing non-conforming site. The side yard setback on the right side is 1.7 ft. and 15 ft. is required in the A zone. The front yard setback is 30 ft. at present and 35 ft. is required. Applicant is proposing a 25.4 ft. front yard setback. The two variances being requested are the pre-existing side yard setback and the front yard setback that will be increased by approximately 5 ft. The floor area ratio does not come into play on this application. Applicant is seeking a C-1 variance in light of the unique nature and characteristics of this property. The design that is proposed tonight is the best alternative that the architect and applicant have considered and he is confident that the proposal as presented does not cause any detriment to the existing zone and the surrounding neighborhood. Many other homes in the area have been upgraded.

Mr. James Russo was sworn. He said his home currently has one bathroom upstairs and they have three bedrooms on the top floor. One of the bedrooms fits a crib and a changing table. They are unable to fit a single bed and a dresser in the room. The room is build over the staircase so the closet is a half closet because of the slope from the stairs built into that closet. The kitchen is outdated. Aside from new siding that was put on the

house before he moved in, there is no other work that has been done. The garage in the back is falling down and part of the plan is to take that out. It doesn't fit any normal sized cars. He is trying to do something that will fit into the neighborhood. He said the house sits sideways on the lot and the left corner of the house encroaches the front driveway. In addition the house is on a blind curve. There have been no parking signs placed in front of his house because it is a dangerous situation. He intends to remove the existing garage/shed on the property as part of the renovation. He said there are several other homes in his neighborhood that have had renovations.

Photos of the property were marked A-1.

Mrs. Hart asked what is the change from the plan that was submitted last month. Mr. Botta said it is mostly the driveway but he will defer to the architect who will testify about the change in the plan. Also there is more detail on the plan with regard to landscaping, trees and open space in the layout of the property.

Mr. Russo said on the first floor there will be a foyer, a closet, half bath, an open kitchen and a family room. Upstairs there will be four bedrooms including the room where the crib is now that will be used for homework or study.

The meeting was opened to the public.

Mr. D'Anton, said he is the attorney representing Mr. and Mrs. Rosenfeld, the adjoining property owners of lot 4 which fronts on New Street. In answer to questioning from Mr. D'Anton, Mr. Russo said one of the things that bothers him is his driveway because of the curve of Park Ave. and he feels that his proposed improvement will help that condition. Mr. D'Anton pointed out that along the rear of his property there is a dry stream or creek that works its way down a side yard and out to New Street and it fills with water when it rains. Mr. Russo pointed this out on survey marked A-2.

Mr. D'Anton said the new plan submitted by Mr. Russo indicates that the existing first floor is 628 s.f. and he is adding 984 s.f. to the first floor for a total of 1600 s.f. The existing second floor is 532 s.f. and 654 is being added for a total of 1186 s.f. for a total area of about 2800 s.f. Mr. Russo agreed that this seems correct.

Mr. D'Anton asked if applicant submitted any plans that deal with drainage or ground water runoff that this building will create on this lot or any of the neighbors lot. Mr. Botta objected because this is not a requirement of any variance application.

Mr. Russo said any time there has been water in that dry river bed it was from a neighbor's sump pump that piped out the back of his house and it was reported to the town.

Mr. Russo was asked if there is an easement on Mr. Rosenfeld's property that runs to the benefit of his property and Mr. Russo replied that there is. Mr. Russo said the survey

marked A-3 shows the dry ditch and it also shows that the ditch in part enters lot 4. He said the easement requires that the ditch be kept as open space.

Mr. Botta asked if Mr. Russo's new proposal creates more structures in the side yard that abuts the Rosenfeld property, in particular, the new deck. Mr. Russo said yes, but the addition doesn't get any closer to them from the side yard setback. Mr. Botta said what is being proposed is an additional deck behind the sun porch on the side abutting the Rosenfeld property. Mr. Russo said if the Rosenfelds were looking out their back window they would not see the deck. They would have to look up and into his yard to see the deck. Right now they would look at his garage that is going to be removed.

Mr. Botta asked if the Rosenfelds ever offered to buy the easement. Mr. Russo said the realtors did when they moved in on several occasions but the offer was turned down. Mr. Botta asked if there has ever been any building within the easement. Mr. Russo said the Rosenfelds built a shed that was on the easement and they did not get a permit for it. When he went to the Building Dept. they told him it was too late to do anything because the shed was constructed. He said the shed is still sitting there and there is a children's play gym that is also in the area that he has no objection to.

Mrs. Chamberlain asked if the easement precludes any structures. Mr. Russo said yes. Mr. Botta said he has a copy of the easement if the Board wants to examine it. Easement was marked A-4.

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

John Gilchrist, licensed architect and professional engineer was sworn. He said he has been qualified before Boards in the State of New Jersey including Allendale. Plans submitted dated January 16, 2009 were marked A-5.

Mr. Nestor said this plan shows a tight turn into the driveway as opposed to how it was set forth in the prior plan. Mr. Gilchrist said there are some very large trees on the property and one of the Board members had asked Mr. Russo to show the trees on the plan. He went on the property and measured the location of the trees – a 36" oak and also a 32" oak. He tried to relocate the driveway to save those trees. The southernmost driveway is almost exactly where the driveway is today. The driveway to the north is located to hook around a small 6" spruce. Instead of having the garage doors face the street they would face the side yard so the Russo's would be able to come into the northerly driveway and pull directly into the garage.

Mr. Gilchrist said the lot is long and narrow. It is 24,000 s.f. which meets the ordinance requirements of 20,000 s.f., but it has to be within 175 ft. of the street line so it is substandard in that regard. Also, the average width is 92 ft. which is below the required 115 ft. The lot tapers from the street where it is about 135 ft. to the east where it tapers down to 75 ft. The existing building is a 2-story Colonial very modest in size, 22 x 24 ft. in foot print with a small sunroom on the south side of the first floor. The first floor is

628 s.f. and the second floor is 532 s.f. The sunroom is 1.7 ft. from the southerly property line which is an existing non-conformity. The front corner of the dwelling is 30'4" which is less than the required 35 ft. front yard setback.

Mr. Gilchrist said the proposed first floor addition consists of a new 2-car garage to the north of the existing building, a new great room out to the east of the existing building and between the existing building and the garage, a foyer, a powder room and closets between the garage and where the kitchen will be. The foyer is located to make use of existing stairs. Upstairs over the 2-car garage is a master suite which includes a master bathroom and walk-in closet. Also on the second floor over the foyer there is a small bedroom. There is nothing over the great room on the second floor. Basically the first floor remains the same with the exception that the kitchen will be expanded. He said it is true that they are basically doubling the size of the house but they are trying to maintain the character of the house and the neighborhood. The same materials will be used outside with a similar roof line and new windows. Mr. Gilchrist concluded that applicant is asking for a variance due to the nonconforming nature of the building and this is what he feels is the best plan for the house. He said the appearance of the building will be more balanced for the size of the property and he thinks it will be a "great looking" building. There will be no trees over 2 inches that will be affected in the back by the great room addition or the deck. The trees that are in the front will remain. On the survey there is a shed that is not there any more but the garage will be demolished. The driveway goes from the street all of the way back to the garage. The area in the back is wooded and buffered from the surrounding properties.

Photographs were marked Exhibit A-6.

Mr. Jones said it appears that based on the measurements, everything that is new could be pushed over just enough to clear the existing dining room so that it could be used with an entry to the great room which would bring the new addition into conformity on the south side. He asked, "Why wouldn't you try to bring that wall in just enough to minimize that variance?"

Mr. Nestor said he wants to make sure the applicant is not in need of any other variance with regard to the driveway. He said the code requires that the distance between the curb cuts be at least 50 ft. Mr. Gilchrist said there is 50 ft. and the width of the curb cuts does not exceed 20 ft. The driveway is 12 ft. wide.

The meeting was opened to the public from comments.

Mr. D'Anton asked what is the height of the existing dwelling currently. Mr. Gilchrist said it is 28 ft. Mr. D'Anton said right now as he understands it there is no structure from the end of the existing dwelling until you get to the garage. Mr. Gilchrist said it is a one story addition and to the peak of the roof it is 19 ft. Mr. D'Anton said attached to the addition will be the deck that will be 8 ft. off the ground.

Mrs. Hart pointed out that the front yard is usually measured from the front of the front yard setback to the bottom step of the front stairs. Mr. Gilchrist said that would be about 22 ft. Mrs. Hart said the overall height to the lowest elevation would be about 32 ft.

Mr. Nestor asked if the applicant would be willing as a condition of approval to move the deck over to the north. Mr. Botta said applicant would be willing to bring the deck in by 2 ft. and do a 45 degree cut on the edge of the deck to bring it in further.

Mr. Jones said the applicant has enough property to put the deck into conformity. Mr. Nestor said Counsel has indicated that applicant will bring the deck into conformity so it will come inside the 16.9 ft. side yard setback.

Mark Rosenfeld, 38 New Street was sworn. He said he is the owner of Lot 4 on New St. and his rear line abuts the Russo property. There is an easement on the rear of his property that is approximately 17 ft. long. He said the shed which he had a permit for and the swing set are not in that easement area.

Mr. Rosenfeld said he objects to the Russo's application because the Russo property is higher than his property. He believes there is a 4-5 ft. difference in the property, so adding to the 8 ft. that makes it 12-13 ft. that the deck will tower over his back yard and that will hurt his privacy. Since the square footage of the Russo property will be doubled that means there is going to be more roof space and water runoff. He currently has a low spot in the back yard that puddles when it rains so all of the water runoff from the new construction is going to come into the low spot on his property. He said the dry ditch on A-3 fills with water when it rains and runs across his property to New St.

Mr. Rosenfeld said the other objection he has is that there is a 15 ft. setback and the addition is going to be roughly half way into that so it is coming closer to his property. If the addition did not invade the side yard he would have less problems with this proposal. He feels that the addition will be very large and imposing on his property. It is not what was there when he bought his property and not what he expected would be there.

Mrs. Tenghi said looking at the plans, the proposed addition is not parallel to the Rosenfeld's back yard. She asked what Mr. Rosenfeld sees now when he looks out of his back yard. He said he sees the Russo's entire house and garage. Mrs. Tenghi said Mr. Russo is removing the garage.

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

Mr. Botta asked if the property line is wooded. Mr. Rosenfeld said it is sparsely wooded and there is some vegetation but it does not block his view of the Russo property.

Mr. Botta said the applicants property as it exists now and where the structure is located is a hardship. Applicant has made adjustments for the deck and for the side yard setback which he believes will further decrease the non-conformity. The front yard setback is

similar to many other houses in the area. He believes this variance can be granted without substantial detriment to the zone and without substantial detriment to the public good. It will not substantially impair the intent and purpose of the zone and the zone plan. It will make it safer for cars to ingress and egress the property. The intrusion into the front yard and the great room intrusion into the side yard is not exacerbated by the proposed addition. There is substantial woods, trees and buffer between the property that will remain. He asked that the Board grant the application with the condition that the applicant has agreed to with regard to the deck.

Mr. D'Anton said he understands that Mr. Russo wants more room for his family, but he has not demonstrated to the Board that he can create this addition without exacerbating the existing variances on the property. There has been no testimony that the addition could not be moved out of the side yard. The existing building and the sun deck are nonconforming and they are not being improved. The front yard is non-conforming and that is not being improved. Applicant wants to double the size of this house and they are asking to do it not in accordance with the zoning ordinance but in accordance with their own personal tastes. He said there has been no testimony to support a C-1 variance. There has been no expert to tell the Board what the surrounding development pattern is or to say that the master plan would be in favor of this or what the effect would be on the zoning ordinance. There have not been sufficient facts to show that this plan could not be done some other way and the Board does not have sufficient facts to grant this application.

Mrs. Hart commented that the driveway is safer because it is no longer necessary for people to back out.

Mr. Jones said he finds that there is an exceptional shape to this property and the biggest hardship is the location of the pre-existing non-conforming structure being just under 2 ft. from the side yard. This does impact the neighbors; however, he believes the applicant has tried to make something conform and benefit the neighborhood. He did attempt to move everything and still make it work within the pre-existing nonconformity. He finds that a deviation from the zoning ordinance requirements would promote the intent of the Municipal Land Use laws and the zone plan and ordinances of Allendale, and he moved to approve the application with the stipulation that the applicant does move the deck as he previously testified. Additionally, applicant will need to address the seepage pit and water runoff on the property. He believes this will provide a benefit to the applicant and the surrounding properties. Motion seconded by Mr. Redling.

On roll call, Mr. Jones, Mr. Redling, Mrs. Hart, Mrs. Chamberlain, Mrs. Weidner and Mrs. Tengi voted in favor.

Joselito and Michelle Castaneda variance application, 87 Homewood Ave., Block 2007, Lot 3.

Mr. and Mrs. Castaneda were sworn. Mr. Castaneda said he wants to install a 6 ft. fence around a pool that was installed about a year ago. There is currently a 4 ft. fence on their

property. He said he has an 11 year old child who is disabled. She loves the water but whenever she is at a public pool she stops talking, playing, swimming, etc. and that is why they installed the pool. He said currently they do not have enough privacy. They originally applied for a 4 ft. fence to replace the existing fence but since the neighbors installed a pool, they noticed that they do not have enough privacy because of the way it is elevated. The neighbors also have two big dogs that their daughter is afraid of and they want to make their yard a safe haven for her. Mrs. Castaneda commented that because of the way the yard slopes the fence will be lower because of the elevation.

Mr. Redling commented that this is not a pool enclosure but a 6 ft. fence on the property line.

Mrs. Tengi asked if other alternatives have been considered such as plantings or berms. Mr. Castaneda said they had considered arborvitae but it would cost over \$8,000 in addition to the \$7,000 cost for the fence. Mrs. Tengi said the homes are close together and she is concerned about how it is going to look.

Mr. Nestor said the ordinance calls for a 4 ft. fence on the property line or 6 ft. if it is 15 ft. from the property line. Financial problems and physical problems do not constitute a legal hardship. The hardship has to have something to do with the property itself. Mr. Nestor said if the 6 ft. fence is that desirable to the applicant, he might want to consider having it around the pool area rather than the entire property if he can be constructed within 15 ft. of the property line.

Mr. Jones suggested planting forsythia or bamboo because both are very dense. Some grow much faster than arborvitae and would provide a type of screening that would have less impact on the neighbors.

Mr. Nestor said the pool ordinance indicates that the pool area shall be completely enclosed with a chain link or similar type fence with self-closing gates. Mr. Castaneda said he is going to put a safety fence around the pool area. Mr. Jones said a 4 ft. solid fence may give the Castaneda's what they want.

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

Mrs. Tengi said although she is sympathetic to the reasons for the fence, she does not believe the applicant has provided the burden of proof under the C variance to justify the variation of the current zoning ordinance. She does not see any hardship as it pertains to this particular property. There are other options that the applicants can explore to solve their problems. She moved to deny the variance application. Motion seconded by Mrs. Hart.

On roll call, Mr. Jones, Mr. Redling, Mrs. Hart, Mrs. Chamberlain, Mrs. Weidner and Mrs. Tengi voted in favor.

Mrs. Tenghi announced that the Grisez and the Palumbo applications will be carried to the February meeting. The Orchard Park Condominium Association application had previously been carried to February at the request of applicant's attorney.

On a motion by Mrs. Hart, seconded by Mrs. Tenghi, the meeting adjourned at 11:27 p.m.

Respectfully submitted,

Barbara Knapp