

December 17, 2008

A regular meeting of the Board of Adjustment was held in the Municipal Building on December 17, 2008. The meeting was called to order at 7 p.m. by Shirley Chamberlain, Acting Chairperson. She announced that the requirements of the Open Public Meetings Act have been met by the required posting and notice to publications.

The following members answered roll call: Jones, Manning, Weidner and Chamberlain. Mrs. Chamberlain announced that Mrs. Tengi, Mrs. Hart and Mr. Redling are expected to arrive later in the meeting. Mr. Nestor, Board attorney, was also present.

Mr. Nestor said the first application to be heard will be Allendale Housing, Inc. He said there are a number of variances required, one of which is for density which requires five affirmative votes. He proposed that the Board hear the background testimony and hear the bulk variances first as they require only a majority vote. By the time the Board reaches the density variance, hopefully the fifth member will be present. If necessary testimony can be repeated.

Daniel McCarthy of Rogut McCarthy was present as attorney for applicant. He asked Mayor Barra to give background testimony as to the purpose of this application.

Mayor Barra was sworn. He said the Borough of Allendale purchased the Orchard Common site on the corner of Franklin Turnpike and W. Orchard St. consisting of 3 acres. The purpose of obtaining the property was two-fold – one was open space upon which a park could be built and construction has already commenced on 2.4 acres.

This site was originally approved by the Planning Board for 24 townhouses. It was a Mt. Laurel site in the Borough's round 2 plan with COAH. It had provided for 6 affordable housing units on the site. With the concurrence of Green Acres, because the Borough received grant money from them and from the County Open Space Trust, the Borough subdivided the property and had 2.4 acres for the park with the top portion of approximately .65 acres for affordable housing. At the time there was no clear plan, but it has since formulated to a special needs site with four 2-bedroom units and two 1-bedroom units for a total of ten beds. He said the whole thrust of what the Borough wants to do is to put something in that is small, unobtrusive and blends in.

All of the state agencies have endorsed it as a perfect site for special needs housing, and essentially, this site is the cornerstone of Allendale's plan that is going in to COAH. There is a public hearing on Friday for the plan to be approved by the Planning Board and the Council and the plan will be presented to COAH before December 31st which is the deadline. Because this is special needs housing, Allendale will be receiving 20 COAH credits which is huge. Allendale would have to build 100 townhouses to get comparable credits with COAH.

What the Mayor and Council decided to do with the advice of counsel was set up a non for profit which is what Allendale Housing, Inc. is, and it was basically modeled after the

Senior housing which is behind Brookside field. It has a Board of Trustees of five members which will include the Mayor and two Council members as well as two residents of Allendale. That Board has already been formed and they had their organizational meeting as well as several meetings since that time. Allendale Housing, Inc. will take title. The Borough has already been approved by HMFA, a State agency, for 2.2 million dollars, part of which will be toward acquisition and the rest will go toward construction. 100% of the construction will be paid for by these state agencies. The Allendale Housing, Inc. Board will hire a service coordinator who will deal with the residents of the site as well as a property manager to manage the property. Mayor Barra said their engineer and architect will fill the Board in on all of the other details.

Since there were no questions from the Board or the public, the meeting was closed to the public.

James Virgona with the firm of Virgona & Virgona, 115 River Rd., Edgewater, was sworn. He said he has a Bachelor of Architecture degree from Carnegie Mellon University and has been a licensed architect in the State of New Jersey for approximately 15 years. He has testified before a dozen or more Boards in Bergen County and is the Chairman of the Planning Board in Upper Saddle River. He was accepted as an expert in his field.

Mr. Virgona said the site is adjacent to Orchard Park. The site has some unique characteristics and those have an influence on the design of the project. The first is the shape of the property – it is narrower than it is deep. The property has a slope from east to west from Franklin Turnpike to the rear of 12 ft. The rear portion of the property is part of the New Jersey flood plain.

Documents referred to by Mr. Virgona were marked A-1 consisting of 5 pages. Also marked were renderings designated as A-2 and A-3.

Mr. Redling arrived at this point. Mr. Nestor briefly explained the proceedings thus far.

Mr. Virgona said the project has to be fully handicapped accessible. He said Exhibit A-1 shows what he has tried to achieve with this project. The building is used as a type of retaining wall with a courtyard in the middle. By doing this he was able to furnish a level for all handicapped users of the project. Anyone in a wheel chair can access any portion or any one of the units. The project consists of two buildings to create the courtyard. One building is four units with two bedrooms townhouse style. The smaller building facing the park to the south consists of two 1-bedroom units. The building bends along the flood plain line towards the rear of the property. The total unit count is six. The buildings are one story with pitched roofs.

Mr. Virgona said special needs housing falls under certain state guidelines and agencies. Those agencies prefer projects that have individual entrances to each unit, parking spaces that are fully accessible to those entrances and exterior and interior community spaces that the inhabitants can share. Each one of these units shares a common sponsor area.

That is required because each person in this project will have a sponsor or caregiver who will have to be at some point in that building to address the needs of the occupants at some time of the day. Each two units share a caregiver so two units share a room. The same holds true of units B and C to the west. In the southerly building, the individual 1-bedroom units are more autonomous high functioning individuals who do not need to have that same space. Instead, they have placed a community room for the entire project in that building. It is approximately 16 x 22 ft. and can accommodate a TV and an area where occupants of these units can congregate and function together. In front of that building is a patio. The total building height from the first floor to the ridge of the roof is approximately 19 ½ ft. The idea is to create a sense of community while retaining individuality.

Exhibit A-3 shows the view from the east with six renderings. The first is a view from the east looking over to the police station. The courtyard is arranged so that it opens towards the front of the project for security reasons so it can be monitored from Franklin Turnpike and the police station. This arrangement allows any one of the caregivers in any one of the units to be able to look into the courtyard and also see other front doors and entrances. There can be surveillance from within one unit for the whole project. The creation of the courtyard means that the buildings have to be separated and further apart and closer to the side lot lines. He said this is why side yard variances are being requested – to create this sense of community, to provide the ability to observe all of the front entries of each unit from within a unit of the project. He said the concept of the courtyard has been a model for this type of housing at the State level for about 8 years and his firm has already completed three or four of these projects. He said the State requires this type of building in their program. With a narrow sloping lot such as this one, it is necessary to ask for the side yard variance to achieve the space in the middle. The other views on A-3 are from standing on Franklin Turnpike looking at the buildings. The distance of the setback is almost 100 ft. so the buildings will have a very low impact on the neighborhood. In addition, there is a large amount of plantings as a buffer between the buildings and the park.

Mr. Virgona said the project is inherently beneficial to the community. The Borough not only gets 6 affordable housing units but it will gain additional credits because of the type of housing units. He said the style of the units with the shingles and peaked roofs is similar to the church next to the police station.

Mr. Virgona asked if the Board has any questions regarding his testimony.

Mr. Jones said Mr. Virgona testified that 19 ½ ft. was the height of the building. He asked what is the height of the structure at the farthest westerly corner of the property closest to the brook. Mr. Virgona said it is 28'7" from the highest point to the lowest point. When he talked about the building height he was only talking about the building structure from the first floor. Mr. Jones that this Board goes from the lowest building foundation to the ridge. He asked if there are any plantings along the westerly end. Mr. Virgona said the engineer will testify as to the landscape plan.

The Board asked if there is any thought of putting any type of fencing around the structure. Mr. Virgona said there is actually a wall connecting the buildings. The property slopes towards the back. That wall acts as a barrier from any entry within the park to the units so there is no ability for the general public to walk into the project for security reasons. The wall on one side is a retaining wall but on the other side it is a railing so as not to fall over the edge, so the wall can have different heights depending on whether it is an open rail or a closed rail. The concern was that people could just walk into this project. He said this is consistent with projects they have done in Ringwood, Closter and River Vale.

The Board asked if the one entrance and exit is sufficient for emergency vehicles going in and out. Mr. Virgona said he is very confident it is all right and he has no concerns about it. He said the buildings are wood frame but they are all fire rated units and they are all sprinklered so they are two degrees higher for safety than they would normally have to be under the code.

Mrs. Chamberlain asked if the plans have been submitted to the fire official. The engineer confirmed that they have been submitted.

Mr. Nester said the testimony was that the units are townhouse style. He asked for an explanation. Mr. Virgona said they each have individual entrances to the outside and there is a demising or fire-rated wall separating the units.

The meeting was opened to the public for questions to this witness and there being none, the meeting was closed to the public.

David Hals was called as the next witness. He said he is a licensed engineer, land surveyor and planner in the State of New Jersey. He has a Bachelor of Science degree in civil engineering from NJIT. He has been a licensed engineer since 1984, licensed planner since 1986 and licensed land surveyor since 1988. He has appeared before over 100 municipalities in the State of New Jersey and has been an expert in all three licenses in all those municipalities. He has also been a Planning Board and Zoning Board Engineer for Upper Saddle River, HoHoKus, Tenafly and Ringwood. He has prepared numerous site plans and subdivisions within the State. Mr. Hals was accepted as an expert witness.

Mr. Hals submitted copy of his engineering report to the Board members. Survey was marked A-4. He said the site contains 0.634 acres or 27,622 s.f. The property is in the ML-4 multi-family zone district. It was a portion of the property that was part of the Orchard Commons Townhouse development that had received approval from the Planning Board located on the northeast corner of Franklin Turnpike and Orchard St. The property is almost directly across the street from the police station. North of this piece of property is the C-1 commercial zone district. There is a residential house that is located directly north of the site that is located in the commercial zone district.

Mr. Hals said recently the Borough has started doing work in the park and the plan shows the pathways that have already been constructed. He said the property slopes from Franklin Turnpike down to the back of the property. Franklin Turnpike has an elevation of approximately 282 and the rear of the property has an elevation of approximately 268. As Mr. Virgona testified earlier, there are restrictions on this piece of property. The Allendale Brook is shown on the left hand side of the site and there is a flood plain associated with that. The flood plain encompasses approximately 15% of the total lot area or approximately 6500 sq. ft.

The ML-4 zone permits townhouse developments of 8 units per acre. This plan is proposing 6 units per acre. Mr. Hals said the proposed landscaping is shown on this site plan to show that ultimately the park is going to be fully landscaped. Six special needs housing units are proposed in two buildings – one located on the southern portion of the property and one on the north portion. There will be an entrance driveway coming in from Franklin Turnpike. Ten parking spaces are being provided on site. Because of the type of housing being proposed, the residents of the development will not be driving and will not have cars. Five of the spaces will be a paved surface and the five in case there is a need for overflow will consist of grass pavers. There will be curb stops to delineate them with depressed curb along the curb line. The site itself has a fairly gentle slope from Franklin Turnpike into the parking area and barrier free access is provided to each of the units. There will be flat walkways and no handrails. It will be completely open between the units themselves and there will be the appearance of a very level courtyard between the units.

Storm water detention will be provided in two separate areas. First, they are providing an underground pipe between the units that is going to collect the storm water and store it. It will discharge into the southerly portion of the property and then run overland in a northerly fashion and eventually out into the Allendale Brook. This has been designed to meet the RSIS standards.

For the water quality standards they have done two things with this development. They have taken half the parking area and allow the water to flow over the end of the parking area and discharge on the southeasterly corner of the site. On the site plan it is labeled as a rain garden and that is located on the southern end of the three parking spaces. That rain garden is a one foot deep depression and allows the storm water to flow through there. From spring into fall that area will be flowering. In larger storm events that depression will overflow and run along the southerly building area and flow into the underground detention system. It will be controlled by a 4 inch diameter orifice in the control structure and will be released slowly out towards the back of the site. Red maple and oaks are being added behind the most westerly portion of the building. These trees will help absorb and cleanse the water as it flows across the back portion of the site. This supplemental landscaping will also serve to buffer the development from the commercial development alongside it. To buffer this proposed development from the commercial district, they are providing evergreen trees to supplement the deciduous trees that are currently in the back.

Mr. Hals said the RSIS requires 12 parking spaces for 6 units. Since only 10 are being provided, they have noticed for a variance. Since the residents will not be driving these parking spaces are not really needed. The ML-4 district requires a 30 ft. side yard. They are providing 10.1 both on the southerly building facing the park and also the northerly building facing the commercial zone district. Because of the need for the courtyard for this type of housing, it was necessary to move the buildings to the outside of this narrow piece of property. These are not standard townhouse units that one would generally envision. Generally a townhome has a front entrance and a doorway going out to the rear where there is a patio or recreation area for the individual unit owners. These townhouse units will have one entrance and no doorway to the back of the units so there is no need for that operation between the property line itself and the building for recreation purposes.

Mr. Hals said in his opinion he has met the requirements of what the zone is looking for and in his opinion the variances they are looking for can be granted. This piece of property is 0.63 acres in size. The ML-4 townhouse district requires a minimum lot area of 2 acres. The property that this application encompasses is part of the original piece of property that was 3.02 acres. The ML4 zone district is the property that had been previously approved for 24 units by the Planning Board. Because the Borough is now developing the other portion for a park, he believes the Board can easily grant the variance for the minimum lot size because overall there is no additional land to be had and overall the entire parcel is being developed in a fashion that was intended for the zone.

Mr. Hals said because we are condensing this 0.63 acres for the housing units, the density comes out to 9.46 units per acre and the density variance is the reason this application is before the Zoning Board rather than the Planning Board. He added that a density variance requires five votes. He continued that this is an inherently beneficial use. The special needs housing has a direct benefit to the entire community. If affordable units were to be built on this property, the Borough would be required to build 24 units of which 18 would be market rate and that would have a direct impact on the municipal school system and other issues in terms of the burden the Borough would have with regard to those additional 18 units. With the proposed development of 6 units the Borough will receive 20 COAH credits. Potentially the Borough would have to build 100 units to receive that number of credits. He said that overall this project is a major benefit to the community. In terms of density we are providing 6 units on the 0.63 acres, but the parcel itself is 3.02 acres which comes out to 1.98 units per acre so the density is far less overall looking at the entire tract.

The attorney asked why this particular site is particularly suited to this type of housing. Mr. Hals said the site is fairly flat and can be easily developed. It is a vacant piece of property and it has security. It is directly across from the police station and has direct access to a County road. It is immediately adjacent to the park and to the commercial district.

Mr. McCarthy asked Mr. Hals to address some items in the Borough Engineer's letter of December 17th.

Mr. Nestor asked, "Right now, as the buildings are laid out, is it possible to put a 20 ft. buffer along the property line?" Mr. Hals said if that were done, it would not be possible to build this housing on this site. It would severely restrict how the housing would be developed. It would not be possible to create a center court yard. You would end up with just one long building and that would be against the policies of the State.

Mr. McCarthy said Section III, Item No. 7 talks about the length of Building No. 1 as being 156 ft. whereas the Code requires not to exceed 150 ft. Mr. Hals said measuring from the far end of the building to the far point of the building it is only 139 ft. in length. Measuring the building in a curved fashion it is 156 ft. They measured it according to how you would visually see the building itself and he believes that meets the intent of the ordinance.

Mr. McCarthy said item No. 8 talks about parking spaces being 2 ft. from the property line. Mr. Hals said any of the hardscape parking spaces are 5 ft. from the property line itself to the paved area so they do have a green area in accordance with the ordinance. The one parking space that does not meet the requirements is actually the most northerly grass paver space where it is only 2 ft. from the property line. He said the likelihood of anyone parking in that space is slight. He believes they have met the intent of the ordinance because they do not have a paved surface next to the property line and they are actually going to have a lawn area there.

Mr. McCarthy said on page 4 of 7, the site layout section, basic engineering issues are discussed. He said many boards like to leave this in the hands of the professionals and have the resolution reflect that the applicant is to work out these issues with the Board engineer. Mr. Nestor asked the Borough Engineer his feeling on this. Mr. Yakimik said the remaining comments in his report he would characterize as being minor and they could be easily worked out with the applicant's engineer.

Mrs. Chamberlain said she would like to address the agenda for the next meeting prior to asking the Board if they have any questions for Mr. Hals. She said the two applications for Allendale Glen Estates on Nadler Court will be carried to the January 28th meeting at 8 p.m. at the request of the applicant's attorney. This evening the Board will hear the Hubelbank and Impomeni applications. There is an application from Mr. Russo, 233 Park Avenue on the agenda. She has reviewed the application and feels it is not complete. There should be a site map showing the distances to the neighboring houses from the proposed addition, and given the scope of the addition there should be more complete information on the architectural drawings. Mr. Nestor added that he has been informed that one of the neighboring property owners did not receive notice so that deficiency should be rectified before the January 28 meeting.

Mrs. Chamberlain opened the meeting to the Board members for questions from the engineer.

Mr. Jones said he believes Mr. Hals testified that if the subdivision building envelope was used for any type of multifamily unit housing, to fit inside the box it would have to be multi-story. Mr. Hals said that is correct. He added that ultimately the building sizes could be bigger but there would be a lot more difficulty with developing the site to do so.

Mrs. Chamberlain said in terms of the parking, at least in four of the units there would be a caretaker who would be staying with the person. Mayor Barra said caretakers would not be there 24/7. It would depend on the needs of the individual and that is done through the service provider. A lot of these people will be picked up by a minivan and taken for either training or a job, The care providers might only be there during the evenings or they might only come in certain times of the day. There has to be a place for that person to stay when he needs to be there. Each unit can only have one provider so the most providers that could possibly be there would be six. To lessen the impact, the providers' space is shared between units. The providers are not there at the same time and each unit will have individuals with different needs. It is a very staggered type of arrangement and rarely are they required to be there at one time.

Mrs. Chamberlain asked if the residents are both physically and mentally challenged. Mayor Barra said developmentally disabled incorporates both.

Mrs. Chamberlain said she believes the application should show a request for the variance for parking. Mr. Hals agreed and added they also request the buffer variance. Mr. McCarthy requested that the waivers as pointed out by the Borough Engineer on section 3, No. 6, 7 and 8 on Page 3 of 7 on the December 17 report be granted.

Mr. Nestor asked if there is any guarantee that the facilities will always remain for special needs housing. Mayor Barra said there will be a deed restriction.

Mr. Nestor said his concern is that 5 years from now there may not be enough special needs people to fill these projects and someone else could move in. Mayor Barra said this would violate the restrictions that are on the project. He added that right now there are 8000 people on the waiting list and the State of New Jersey built 24 beds last year in the entire state.

Mr. Yakimik said he believes there was a question from the Board with regard to emergency access to the site. He asked about garbage pickup or deliveries to the site.

Mr. Hals said in terms of the Fire Department, they were satisfied with the application because the buildings are being sprinklered. The Fire Department would fight a fire from Franklin Turnpike and will pull in the hoses or any other equipment. There will be sprinkler system connections on the outside of the buildings so the system can be recharged. An ambulance would just pull into the parking area and pull out. Any deliveries would be few and far between. Mr. Yakimik said garbage collection will be done by Allendale's carting company. A small vehicle will come on site to pick up the

garbage. There will be no dumpsters on the site. Electric and telephone service and TV communications will be underground by State law.

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

Mr. Yakimik said with regard to his report dated December 17, he considers the majority of the items can be resolved by his office and the engineer's office. In regard to his comments under "site lighting" his suggestion was that the light fixtures to be used on the site be the same style and type as the downtown lights in Allendale. In Item 9 of his report it was his suggestion that the Borough may wish to hear testimony or feedback from its planner. He asked if this application must comply with the normal path of site plan review applications within the Borough which require a developer's agreement and the posting of performance bonds or are there some special provisions by the State that do not warrant those.

Mr. McCarthy asked that since this is a municipally sponsored project, he requested that those requirements not be set forth in the resolution.

Mr. Nestor said any resolution of approval will be conditioned on approvals from the agencies listed in Item XI of the Borough Engineer's letter.

The meeting was opened to the public for questions. There being none, the meeting was closed to the public.

Mr. Nestor asked if the Board thinks the Planner has to be involved in this application. Mr. Jones said all of the COAH calculations for Allendale have been as a result of the town working with the planner to develop that plan. He added that very few times does the board see an application that is a win/win for the community and the new people that will be living in Allendale. The school districts benefit because the impact is so small. This type of program is new and he feels that other towns will follow suit. He does not feel it is necessary to have a planner.

Mr. Nestor said before a vote is taken he would like to make sure the conditions of approval are agreed to. He said the conditions as indicated in Mr. Yakimik's letter should be included, as well as the deed restriction for only special needs housing. Mr. Nestor said a density waiver is needed which requires a 5 vote majority. The Board has heard testimony about the beneficial nature of this application and he has not heard any testimony about any negative effects. The Board also has to decide on the variance with regard to minimum area required, the side yard variances and the parking spaces as required. In addition, a variance is needed from Section 270-128D with regard to side yard setback and waivers regarding the length of the town house and the landscape buffer and finally, approval of the preliminary and final site plan.

Mrs. Chamberlain moved that the application of Allendale Housing, Inc. for variance requesting relief from the density requirements of the ML-4 section of the Code be

granted . The relief requested will provide an inherently beneficial use to the Borough and there is no negative criteria that has been presented. Mrs. Chamberlain also moved to grant the bulk variances and waivers as outlined by Counsel and that the Preliminary and Final Site plan approval be granted with the conditions and deed restrictions set forth.

Mr. Jones seconded the motion and added that the relief can be granted without substantial detriment to the public good and will not impair the intent and purpose of the zone plan and zoning ordinance.

Mr. Nestor said the reason for granting the bulk variances is based upon the testimony about the uniqueness of the property, its narrowness and slope as well as the benefit to the Borough.

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

Mrs. Hart and Mrs. Tengi arrived at 9:10 p.m.

Applicant: Kim Hubelbank, 59 Grey Avenue, Block 914, Lot 7

Mrs. Chamberlain said this property is in A zone. The Board has reviewed the site plans and architectural drawings. Variances are required for minimum lot area, front yard setback, rear yard setback and the house is a pre-existing nonconforming structure.

Mrs. Hubelbank was sworn. Two photos were submitted and marked A-1 and A-2. Architects plans were marked A-3.

Mrs. Hubelbank said she wants to add a bedroom over the garage, a bedroom behind it, a family room underneath the second bedroom behind the garage and a porch in front of the house. She also wants to move the front door next to the garage. The current square footage is 2257. With the addition it will be 3155. The house is a split level. The entrance is from the middle level from the front door. What is shown as the dining room on the plan is currently the living room. Half a level down at the lower level is a den and that will not change. From the front door through a corridor is the new family room in the back. Currently there is a brick patio in the back of the house that will be replaced by the family room. The garage is not changed. The ceiling in both the new dining room and the kitchen are vaulted so there is nothing over those two rooms. Currently there are three small bedrooms on the second floor and they will be made into two bedrooms. The master bedroom is new over the family room and bedroom 3 is new over the garage.

Mrs. Chamberlain commented that the only new encroachment is the front porch. Mrs. Hubelbank said it is an overhang with a small open porch area with columns. Mrs. Chamberlain said by putting on the porch the front yard setback is reduced to 26.96.

Mrs. Chamberlain noted that the proposed height will be 26.4 which is within the height requirement. There is really one new encroachment. The non-conforming conditions are the area, rear yard and the front yard nonconformity is being increased by several feet.

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

Ms. Tengi said she drove down the street to observe the house. It is a dead end culdesac and the addition will be in keeping with the rest of the neighbors.

Mrs. Chamberlain pointed out that the culdesac cuts into what normally would have been the 35 ft. setback and this house is set back further than the other homes. Mrs. Tengi pointed out that there is a Rockland Electric easement on the right side of the house so there is no direct impact to a neighbor.

Mr. Jones said this is a very unique piece of property and although it is pre-existing at 42.6 ft., a rear yard variance is needed.

Mr. Redling moved to approve the variance as presented to the Board. He also visited the home and feels the proposed modest addition will be an enhancement to the neighborhood. Mr. Jones commented that the exceptional shape of this property is unique and the Rockland Electric easement directly adjacent to the property also acts as an additional buffer for any increased size on that side of the property. Motion was seconded by Mrs. Tengi.

On roll call, Mr. Tengi, Mrs. Hart, Mr. Jones, Mr. Redling, Mr. Manning, Mrs. Weidner and Mrs. Chamberlain voted yes.

Mark Impomeni variance application, 45 New St., Block 2204, Lot 10

Mrs. Chamberlain said this property is located in the A zone and was built before we had a zoning ordinance. There are several variances that are required: lot area, minimum lot width, front yard setback, side yard setback and the maximum FAR is also exceeded.

Mr. Impomeni was sworn. He and his wife would like to construct a dormer space in their existing attic facing the back yard. It would be accessed through a staircase which has to be built in a closet in one of their bedrooms. The purpose would be to provide a game space for their children. This would allow them to open up what they are presently using as a playroom on their first floor for entertaining purposes and also for other functions as the need may arise. He said the height of the building will not change.

Mr. Jones said he believes a third floor of any size is not permitted. Mr. Nestor said the ordinance specifies no higher than 35 ft. or 2 ½ stories.

Mr. Impomeni said the room itself would be in the existing attic. It is his understanding from the guidance he received from the Building Department that the half story would

depend on the square footage size of what he was putting in the attic and if he kept it within one-third of the square footage of the second floor that it would fall within the half story requirement.

Ms. Chamberlain commented that the Building Dept. enforces the zoning ordinance but cannot always offer interpretation of the zoning ordinance.

Ms. Chamberlain asked if it would be possible to use the basement area for more living space. Mr. Impomeni said his basement is about 6 ft. in height so they would not be able to use it unless they dug it out. They also considered a couple of other options such as putting a two story addition at the back of the house or building over the existing one story portion of the house, but both of those would be significantly more costly and destructive to the neighborhood. He said the thing that attracts him to this plan is that it is the minimum amount of building required to achieve his family's needs. It improves the function of the first floor and does not upset the look of the house from the street or impact the neighbors as much as any of the other plans.

Mrs. Weidner asked about the ceiling height on the third level. Mr. Impomeni said it is 7.5 at the highest point. There is a 6.6 knee wall which is past the ridge line of the roof. The front portion will remain as storage area.

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

Ms. Hart asked the applicant how much over he is on the FAR. Mr. Impomeni said the house is 28% so it is already nonconforming and with the proposal it would be 31%. The square footage of the house is around 1550 sq. ft. and with the garage it is 1750.

Ms. Chamberlain said the Board is concerned because of the fact that there should be no third floor.

Mr. Jones commented that the ordinance specifies 2 ½ stories and this has been used and applied to any third floor addition that has come before this Board. It is his understanding that there cannot be a third floor of living space. It impacts the fire code because there is only one egress out from that room. He believes that is why three stories are prohibited.

Mr. Nestor said if the Board approved this, a condition of approval would be that they could not increase the size and they could not have any plumbing, gas or stove that would make it a living area.

Mr. Jones pointed that heat is all that is required for a living area. If the area is heated the area could be turned into a bedroom and then there is an egress issue if there is a fire. It is his understanding if it is not listed in 270:55 it is a prohibited use. Mr. Nestor said 270:57 talks about height and area. The question is whether this is 2 ½ stories.

Mr. Impomeni said he plans to provide a window ladder to be able to get out of that space if necessary.

Mr. Nestor said if the Board approved this application it could be contingent on the Fire Official's approval.

Mr. Redling said he tends to agree with Mr. Jones. He does not recall any instances where the Board has approved three floors of living space and he would hate to see a precedent set tonight. He would prefer to carry the matter until next month to give the Board more time to research.

With the applicant's consent, the Board agreed to carry this matter to the January 28 meeting.

Excerpts from Bd. of Adjustment meeting of December 17th – Re: I Squared, LLC

Mrs. Tengri arrived at 9:10 p.m.

Mr. Bruinooge said a slightly revised site plan was sent to the engineer earlier this week. Mrs. Tengri said it was not within the 10 day period. Mr. Bruinooge said the net effect of the site plan revision is essentially no net change to the square footage. There is a reduction of 4 sq. feet in the patio area and a change in the interior of the seating arrangement which would reduce the seating to 96 seats. As argued in the brief which he supplied to the Board, the parking requirement is fully compliant as it is now, but the parking situation improves by one or two spaces as a consequence of the change in seating numbers. The planner did respond with a rather detailed 6 page letter which he addressed to the Board, and while he has one or two minor differences with some of the statements of fact contained in his conclusions, he is fully prepared to deal with it. He said the point is that the revised site plan works very much to the benefit of the community and to the benefit of the application in terms of the impact, but it does not do anything in terms of changing the square footage.

Mrs. Tengri said she will let the witnesses testify at this point but she has not had an opportunity to look at the revised plans.

Mr. Nestor said none of the revised plans have found their way to the Board members. He is the only one who received it via fax yesterday. As he indicated to Counsel on the phone, if the Board goes forward and feels comfortable with looking at the poster boards that are going to be produced, and if the Board has to continue, he would like to be assured there will be no more revisions.

Mr. Bruinooge said he has no difficulty with consenting to a continuation and he is prepared to not only provide the Board with the slightly revised site plan and the building plan which shows the change in the seating arrangement, and as well have testimony from both the architect and the engineer so the record is complete as to what the changes encompass and what the impacts are. He said the applicant will be prepared as well to

continue the matter to the January 28 meeting. He said he knows of no provision under the Municipal Land Use Law that would require or even suggest that an applicant should consent to limiting what he brings before this Board. The colloquy that has evolved over the many months that they have been before the Board in his opinion has been somewhat positive in that it has resulted in some issues and questions being raised by Board members that have resulted in changes that the professionals have taken to heart. With that thought in mind, he is not prepared to say that no further changes are coming; however, the applicant wants to bring the matter to conclusion as much as the Board or he does. The expense of coming before the Board with a host of witnesses is not insignificant and that in itself would compel the applicant to want to wind it up, but he does not want to voluntarily limit their ability to bring an enhancement or better proposal to the Board when it is not only in the client's best interests but in the community's best interests as well.

Mr. Bruinooge said the Borough's planner has provided a 6-page analysis of the plans that were submitted to him. Mrs. Chamberlain commented that the Board members received the analysis but haven't seen the revisions.

Mr. Nestor requested that the applicant proceed with the presentation.

Mrs. Scro, applicant's architect said she prepared the new plans marked Exhibit A-12. She said A-12 is the first floor plan of the restaurant showing both the existing and proposed conditions.

Mr. Bruinooge asked her to describe the differences from the previous plan. Mrs. Scro said in the front bar area she has squared off the front corner of the building, adding 67 square ft. to the bar area and they have taken out 4 seats. In the rear of the building they have taken out the 67 sq. ft. from the new dining room. The previous width of the interior of the room was 27 ft. 5-1/2 in. The new width of the room is 24 ft. 7 in. for a new decrease of 2 ft. 10 in.

Mr. Bruinooge asked if there are any other changes to the area that would otherwise be used for restaurant purposes. Mrs. Scro said when they reduced the width of the new dining room, they also reduced the width of the outdoor patio by 3 sq. ft. The total number of seats being proposed is now 96.

Mr. Bruinooge asked, "The area to the left of the entranceway as a consequence of the seating change and the expansion of the bar area is to be used for what purpose?" Mrs. Scro said it will be used for a seating area in inclement weather. He asked about the rear area that was originally to be used as a waiting area. Mrs. Scro said it will be used as a smoking patio and outdoor garden for the chef. Mr. Bruinooge commented that the net change in the square footage is that there is 67 sq. ft. added to the building in the front but 67 sq. ft. is removed in the back.

Mr. Nestor commented that the front of the building will be moving closer to Franklin Turnpike. He asked if the back smoking area will have a roof. Mrs. Scro said it will.

Mrs. Tengi asked how many tables are there at the outside dining area now. Mrs. Scro said she believes there are 32.

Mr. Manning asked if the back smoking area was initially meant to be a waiting area and now it will be a smoking area, so in essence the waiting room will be in the front of the building. He asked if there is any intention of putting tables in the smoking garden. Mrs. Scro said no, and there is no exit there. The smoking area will also be a little narrower. Mrs. Scro said the dining area previously was 27 ft. 5-1/2 in. and was reduced in width by 2 ft. 10 in. The dining square footage has reduced drastically compared to the nominal reduction in the patio.

Mr. Bruinooge said A-12 as well as the earlier submission shows an area more or less in the middle of the structure which is entitled wait station. He asked what is the purpose of that area. Mrs. Scro said it for waitresses. There will be coffee service, plates, dishes, etc. It is meant to be a staff area.

Mr. Nester asked if there is anything preventing people from waiting in the patio area. Mrs. Scro said there is not.

In answer to questioning, Mrs. Scro said the proposed gross floor area for the overall proposal is 4,137 s.f. The stair case in the central area is to access the mechanical items in the existing basement. The existing basement will not be connected to the new basement. The square footage of the proposed basement area is 1,593 s.f. Mr. Bruinooge pointed out that there is a discrepancy in the calculations as done by Mr. Snieckus of the square footage of the basement.

In answer to questioning by Mr. Nester, Mrs. Scro said the total square footage of the first floor, the shed, the trailer and the second floor is 3,253 sq. ft. The first and second floor of the existing building is 2,632 sq. ft.

Mr. Bruinooge called Andrew Missey, Engineer for the project, to testify. He said he made the changes to the site plan as testified to by Mrs. Scro. The site plan with revision date of December 12, 2008 was distributed to the Board and marked A-13. He said the plan incorporates the building footprint adjustments performed by Mrs. Scro. The bar area has increased in size by 67 sq. ft. The dining area has slimmed down by 67 sq.ft. and the patio area to the rear has decreased by 3 sq. ft. and the seating will be 96 seats. He said in terms of the proposed zoning compliance, the numbers have changed only slightly. The first change is the maximum building coverage. It is now proposed to be 3763 sq. ft. In November it was 3766 sq. ft. so that is a 3 sq. ft. reduction at the rear patio area. The maximum impervious coverage is now proposed to be 19,749 sq. ft. In November that coverage was proposed to be 19,733 sq. ft. so that has increased by 16 sq. ft.

Mr. Missey continued that when the site was conveyed to the owner it was on the order of 21,000 sq. ft. When the property was surveyed most recently it was 20,668 sq. ft. The

gross floor area has not changed. It was 4137 sq. ft. when the application was before the Board in November and it remains 4137 sq. ft.

Mr. Bruinooge asked about the impact by the punch out of the bar area to the front yard setback. Mr. Missey said it is 23.8 ft. to the right of way or property line. The other change in bulk conformance is the side yard to the north. By slimming down the rear portion of the addition they have gained a foot as it relates to the distance to the northerly property line. In November when they were here it was 56 ft. to the northerly property line and now that distance will be 57 ft. He said the side yard to the Waldwick border remains 3 ft. under the proposed conditions. They proposed to have 45 parking spaces on the site. The stalls are 9 x 17 at a minimum as depicted on the conceptual plan at this time.

Mr. Bruinooge pointed out that Mr. Missey's office prepared a survey that was submitted to this Board in 2005 as part of an application for certification of a pre-existing non-conforming use.

Mr. Bruinooge commented that a previous resolution of this Board indicated that the number of spaces on the site was 44 spaces. The size of the spaces were generally 9 ft. in width and the depth was striped to be about 16 ft. when the site was surveyed. This particular proposal actually enhances the size of the parking spaces. Mr. Missey added that a 2 ft. overhang was also included for the bulk of the spaces.

Mr. Bruinooge asked Mr. Missey to tell the Board how he calculated the parking spaces. Mr. Missey said the spaces were calculated for the site on two bases. First by gross floor area. They divided the gross floor area by 100 allocating one parking space per 100 sq. ft. of floor area and that indicated they would be required to have 42 spaces. They also calculated the parking requirement on the basis of seats, and since the seat count is now 96, one parking space for every three seats would require 32 spaces and the employee count on the evening shift is about 8 employees so they have to allocate one space for each employee for a total of 40 spaces.

Mr. Bruinooge said that one of the operators of the restaurant testified that the total number of employees at the restaurant was 18 and some of those individuals are part time and some are full time. The minutes reflect that the maximum shift on Saturday is 10. He asked if that would change Mr. Missey's calculation. Mr. Missey said he would add two more parking spaces based on ten employees. Mr. Bruinooge commented in that case the total number of parking spaces required is 42 whether calculating by number of seats or square footage.

Mr. Bruinooge said while there was a reduction in green space, is there still available to the applicant the opportunity to install green space along the east side of the proposed bump out at the front of the building. Mr. Missey said there is still the ability to have a planter in that location.

Mr. Nestor said he believes there was some testimony about the previous application of I-Squared before this Board. Mr. Bruinooge said it related to the 2005 application to have the site certified as a pre-existing non-conforming use. The resolution adopted by this Board sets forth, based on testimony of Mr. Thomas and other individuals, that the use pre-existed the 1929 adoption of the zoning ordinance by the Borough. There was testimony as well as submission to the Board of a survey which indicated the number of parking spaces on site and the Board's resolution specifically references the pre-existing condition of 44 spaces. The resolution does recite that there was no finding by the Board as to the number of pre-existing seats although there was testimony that there were 88 seats at that point in time.

Mr. Nestor said he has the resolution in front of him and it says nothing about the parking spots and in fact it says the Board makes no finding as to the number of seats contained in the restaurant or the number of parking spaces utilized on the site. Mr. Bruinooge said he stands corrected as the resolution speaks for itself.

Mrs. Tengi opened the meeting to the public.

Mr. Snieckus asked if the 829 sq. ft. of the patio area is included in the building coverage. Mr. Missey said it is. Mr. Snieckus said there was a question as to the number of employees at any one time and the answer was 10. He believes there was a follow-up question as to how many employees may be added to the facility and he understood that an additional 2-3 employees could be added to that shift. Mr. Missey said he did not remember that they were added to the shift.

Stiles Thomas, 30 Louise Court said he did testify at the 2005 meeting concerning his remembrance of the activities on this property back to 1929. He understands that the square footage of the building is about 4100 sq. ft. now. Mr. Missey said about 4137 sq. ft. includes the attic but not the patio. Mr. Thomas said that would increase another 800 sq. ft. and this is a non-conforming use so we are looking at an increase of what percentage. Mr. Missey said about 27%. Mr. Thomas said this would be a large increase and he does not know that this is fair to the neighborhood. Mrs. Tengi said she recalls at the 2005 hearing Mr. Thomas say the restaurant started out as a hot dog place. Mrs. Tengi asked if he recalls whether there was ever outside dining. Mr. Stiles said he has no recollection of outside dining.

Linda Morgan, 8 Franklin Turnpike, said she grew up at 25 Franklin Turnpike and there was never outside dining. When Mr. Raffael owned the property it was just a small restaurant called Turnpike Tavern, and then it became the Turnpike Pub. There was no outside dining. Mr. Tengi asked how long Mrs. Morgan has been in her present house or the house across the street. Mrs. Morgan said about 40 plus years.

Mr. Bruinooge asked if in her opinion eliminating outside dining and putting the dining inside would be an improvement. Mrs. Morgan said she would say it would be an improvement as long as it was enclosed. She added that she never knew there was previously an extension to the restaurant. Mr. Bruinooge asked if she is aware that the

kitchen staff has to go outside to get supplies and food out of cold storage and they are constantly going back and forth between the main building and the storage building. Mrs. Morgan commented, "How sanitary is that?" Mr. Bruinooge said it is sanitary enough because it passed the health inspections.

Mr. Bruinooge asked if Mrs. Morgan would prefer to have less activity outside. She replied affirmatively. She added that Franklin Turnpike is a very busy road and the restaurant is a very active location. Mr. Bruinooge asked about the activity in Waldwick. Mrs. Morgan said there is an office building that is next to her residence and there is not very much activity once the building closes. The gas station and the restaurant are both very busy. Mr. Bruinooge commented that behind the gas station is a structure occupied by a health club and there is an office building back there. Mrs. Morgan said that is very busy until it closes. She added that growing up in that location and looking at the Turnpike Tavern it was never a pleasant sight and there were things that she wishes she had not seen going on outside. Mr. Bruinooge asked if the situation is improved now. Mrs. Morgan said each restaurant is different and there can be noise. One time there was music at midnight. Mr. Bruinooge asked if the current situation is an improvement aesthetically. Mrs. Morgan said there were three different establishments. When Bob and Diane had the establishment it was very well run. It was not a problem establishment.

A Board member commented that Mrs. Morgan has lived there for many years and has seen the development of the property and how it has changed in certain ways. There has been talk about the restaurant if the variance is granted taking some of the sheds and storage facilities and incorporating them into one unit. He asked if based on her history in the neighborhood, was the storage trailer and the shed always there. Mrs. Morgan said the shed has always been there; however she never knew about the trailer until she came to a Board meeting two months ago.

Mr. Nestor said he neglected to swear in Mr. Thomas previously. Mr. Thomas was sworn and said his previous testimony was true.

Lynn Moran was sworn by Mr. Nestor. She said when she moved in 15 years ago, the restaurant was called the Turnpike Tavern. There was construction on the property a couple of years after she moved in. It had been a pub and became more of a restaurant. She said when the applicant came before the Board 3 years ago, he knew it had to remain the same size and now he is coming back for an expansion that will impact the parking. She asked how it is possible there will be the same number of seats when it will be so much bigger than it was.

Mr. Missey said applicant is before the Board now to put the activity of the restaurant into one unified structure so it does not require someone working for the restaurant to go outside to retrieve food or paper goods and a diner does not have to go outside to smoke. Also, the outside dining area is now being incorporated inside the building. Mrs. Moran said that seasonal area was not on the original plans. Mr. Missey said he was not involved in 2005. His involvement has been since July or August of this year.

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

Mr. Bruinooge said he has no further witnesses at this point.

Mrs. Hart commented that when there was discussion about parking spaces earlier, there was discussion indicating that the parking spaces were measured as 16 ft. as opposed to 17 ft. Mr. Missey said he was not out with the field crew at that time. Mr. Bruinooge said a Lapatka office survey was submitted at that time. The survey shows 47 parking spaces even though the testimony that night indicated there were 44 spaces. He added that the resolution says there was no finding but the testimony indicated 88 seats and 44 parking spaces.

Mrs. Hart asked if the front area that is going to be pushed towards the street is within the 35 ft. setback. Mr. Missey said that is correct. She asked about the depth of the parking spaces. Mr. Missey said they are about 18 ft. in depth. Mrs. Hart said some of the green area will be lost in that area. Mr. Missey said what is lost will be gained on the north side of the addition.

Mr. Wayne Haussler, P.E., was sworn by Mr. Nestor. Mr. Haussler said he is an engineer specializing in traffic and transportation employed by Dewberry. He has been an engineer since 1971 and holds a professional engineering license in the State of New Jersey. He also holds the professional traffic operations engineer certification. He testified before this Board several years ago and currently works with several Boards including Burlington Township and Morristown. He has been qualified as a traffic engineer specialist before these Boards.

Mr. Haussler said he has reviewed various documents regarding this proposal and has issued a report dated December 16, 2008.

Mr. Haussler said he was asked to review the site with respect to traffic issues. There are three points that he looked at. First, is there sufficient on-site parking for all of the anticipated patrons. Do any of them have to park off site or on street. Second, is the size of the spaces reasonable for this type of facility and last, are the spaces laid out on the site plan actually usable spaces. Regarding the first item, is there reasonable on-site parking, he went to the ITE manual. He found there were two land uses – quality restaurant and high turnover family restaurant. He felt the quality restaurant to be more applicable for this space. Given that the current indoor seating is 68 seats and his report indicates 100 seats for the proposed which is now determined to be 96 this evening, he will have revise his report slightly. He looked at the overall average spaces for the facility based on the seating. He looked at the week day average and then looked at the 85th percentile number of spaces. The reason for the average and the 85th percentile is generally held as the normal maximum for the required number of spaces. The average number of spaces given the current 68 seats is 34 required under the existing conditions only. The 44 spaces is for the restaurant as it currently exists. Under the proposed

condition and revising his numbers slightly for the 96 seats rather than 100, he came up with a week day average of 48 spaces required and 85 percentile spaces came up to 62.

Mr. Haussler said he looked at how many spaces are anticipated for the site which is now 45 spaces with 8 spaces on adjoining property since the ordinance says they can use adjoining properties for parking. He added that he is not considering legal issues such as agreements for such parking which they have indicated they have. He continued that the 45 on site and the 8 adjoining comes to 53 spaces which by his calculation means that they have enough for the anticipated average but they do not have enough for the 85th percentile. His letter states that would be 10 but because of the reduction to 96 seats it is now actually 9 spaces.

The second item he looked at is the size of the space itself. The testimony given was that the spaces would be 9 ft. wide. With the more frequent use of space, it would be necessary to have a wider space because vehicles are now getting wider. He said he drives a small SUV and has problems getting into some spaces. He looked at the 9 ft. space and feels it is a little tight and 9-1/2 would probably be acceptable. The 10 ft. required by ordinance is usually more than is actually required.

His third consideration was would all the spaces be usable. He looked at the site and considered previous testimony. There are some spaces at the front of the restaurant where one would have to back out onto Franklin Turnpike which is a busy road, so it is questionable how usable those spaces are. He believes there was testimony that those spaces were going to be for employees only. There are also some spaces right at the entrance that he believes a larger vehicle might obstruct sight for any vehicles coming out of the restaurant. Since Franklin Turnpike is a County road it might be within County jurisdiction whether or not those spaces are permitted. Also, there is one space that does have some obstruction in it which reduces the space. There was testimony that a small car would tend to use that space because it is narrow. That is probably true if a small car happens to be there when that space is open, but if that is the only space open in the parking lot and someone pulls in with a larger vehicle, the inclination would be to park in that space. Concerning the 8 spaces on the adjoining property, he has no real information on them and his concern in using spaces off the property itself would be how do you tell your patrons they can use that property. Looking at an aerial view, there are more than 8 spaces there. He said, "How do you restrict it to 8 or how do you tell your patrons that those spaces can be used?" He questions whether those spaces are viable but that is something for the Board to decide.

Mr. Haussler said he recognizes that applicant talked about valet parking during peak hours. Testimony indicated that it is on Fridays and weekends when valet parking would be used. The parking lot is long and narrow which means that valet parking would be problematic for the people doing the valet parking. On days when valet parking is not being used, it appears that the maximum number of anticipated patrons will overflow the parking area.

Mr. Nestor asked if there are any questions from the Board.

A Board member asked about the ratios indicated in the ITE manual based on the number of seats. Mr. Haussler said he looked at using gross floor area and questioned whether the patio smoking area or waiting areas are part of the gross floor area or not. He said that sort of thing is very variable and site specific but having the number of seats appears to be a more certain number. Also, the number of seats often indicates the number of help that is necessary in order to take care of those number of seats. He said it seemed that the number of seats gives a more certain number than trying to come up with a gross floor area.

Mr. Jones said it is his understanding that 9 ft. parking stalls would be too small, 9-1/2 might be all right and 10 ft. is too big. Mr. Missey said in his experience the 10 ft. space is usually reserved for something such as a food supermarket where the patrons have carriages or something of that nature. The restaurant really doesn't need something like that but 9 ft., especially with SUV's is tight. 9' would be okay for valet parking because you have one person who is driving the cars who is used to those spaces. It is his feeling that 9-1/2 ft. is overall the size of the space that has been accepted for this type of facility. The fact that the parking area is long and narrow becomes somewhat problematic for the valet because he has to maneuver cars around to get to cars that are parked. The problem with valet parking is that you would have to be certain it is always going to be used because 6 months down the road it may be decided not to use valet. With this restaurant, most of the tables accommodate four people. With large groups coming in, the answer to the question of how many vehicles represent those four people could be varied. The data in the ITE tends to average these things out. He said the other problem with valet parking is that some people do not like valet parking and to avoid it they will park in the street, so it is necessary to have sufficient on-site parking.

Mr. Haussler continued that testimony was given that there are 45 spaces on site and 8 spaces off site for a total of 53 spaces. With 96 seats using the 85th percentile a total of 62 spaces would be required. He did not subtract the spaces that the County might not allow. If that occurs the usable spaces could drop by as much as 5 or 2 or the County might say there is no problem.

Mrs. Chamberlain asked how the N.J. Residential Site Improvement Standards compare to the ITE manual. Mr. Haussler said he believes the RSIS calls for one space for three seats plus employees. It works out more or less to what the ITE came up with as an average or about 43 spaces. He said he did look at the RSIS Standards but that is residential and this is commercial. He said given the data available to him as a traffic engineer, he asked how much parking does a facility like this require and can this site as it is laid out supply that much parking. He is not suggesting that the ordinance is right or wrong. It was generated through a different means and mechanism. He added that the ITE generally requires more spaces than ordinance requirements.

Mrs. Hart asked if he calculated how many spaces might be lost if everything was adjusted to 9-1/2 or 10 ft. Mr. Haussler said he did not. The goal and intent of his review was can we put all of the parking on site.

Mr. Bruinooge agreed to carrying this application to a special meeting. Mr. Nestor said one will be scheduled for the next available date.

On a motion by Mr. Manning, seconded by Mrs. Tengi, the meeting adjourned.

Respectfully submitted,

Barbara Knapp