

February 25, 2009

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on February 25, 2009. The meeting was called to order at 7:30 P.M. by Ms. Teng, Chair.

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

On roll call Ms. Teng, Ms. Hart, Mr. Redling, Mr. Manning, Ms. Chamberlain, Ms. Weidner and Mr. Nestor, Board Attorney was present. Mr. Jones arrived at 8:30 p.m.

Ms. Teng recognized the dedication of Walter Anderson, a former Board Member, who recently passed away.

AGENDA ITEMS

Minutes of January 13, 2009 and January 28, 2009

Ms. Teng asked the Board if they had any corrections to the minutes of the January 13, 2009 meeting. Mr. Nestor pointed out that in Mr. Snieckus' testimony some of the numbers concerning lot requirement and seating arrangements of Restaurant L do not add up correctly. Mr. Bruinooge, attorney for the applicant, said that he has a transcript of the meeting and will help the Board make any corrections necessary. Ms. Teng made a motion to approve the minutes conditioned upon verification of these figures that are in question. Ms. Weidner seconded the motion and members voted in favor.

Ms. Teng asked the Board for comments concerning the January 28, 2009 minutes. There was a question regarding the property that Mr. Whitaker was referring to on page 2. Subject to this clarification, Mr. Redling made a motion to approve the minutes, as amended., Ms. Chamberlain seconded and all members voted in favor.

Resolution of memorialization – Allendale Glen Estates

Ms. Teng stated that this resolution is for the approval of the denial of the 6' fence. Ms. Chamberlain made a motion to approve the resolution, seconded by Ms. Teng. The following members voted in favor: Ms. Redling, Ms. Hart, Ms. Chamberlain and Ms. Teng.

Resolution of memorialization – James Russo

Mr. Redling made a motion to approve the resolution, seconded by Ms. Hart. The following members voted in favor: Mr. Redling, Ms. Hart, Ms. Chamberlain, Ms. Teng

and Ms. Weidner.

Resolution of memorialization – J. Castaneda

Ms. Chamberlain made a motion to approve the resolution, seconded by Ms. Weidner. The following members voted in favor: Ms. Hart, Mr. Redling, Ms. Chamberlain, Ms. Teng and Ms. Weidner.

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

Thomas Bruinooge, attorney for the applicant, stated he would prefer to resume the application when the full Board is in attendance. Board Members agreed to postpone this application to later in the evening.

Frank Grisez variance application – 500 Brookside Ave., Block 1303, Lot 11

Frank Grisez, owner of property at 500 Brookside Ave. and Christopher Greimel, applicant's architect and planner were sworn by Mr. Nestor. Mr. Greimel's stated that he is a licensed professional engineer, professional planner and architect with an address of 157 Park Ave, Allendale, N.J. The Board accepted Mr. Greimel's qualifications. Mr. Greimel testified that the applicant proposes to construct an addition to the east side of existing structure. The addition will follow the line of the existing side yard offset. The lot is substandard for the AAA zone at 100' wide where 120' is required at the front setback line. The lot area of the property is substandard at 25,000 sq. ft., where 40,000 is required, however, the total lot area is 46,550 sq. ft which exceeds the total requirement. The variances relate to the narrowness of the lot because in order to get 40,000 sq. ft. within 250' of the front yard, 160' width is needed and only 100' exists.

Mr. Greimel stated that the proposed addition will provide an enhanced use of the existing one car garage which would be expanded to protrude towards the front of the house and will meet the requirements for front yard setback. A family room, mudroom entry and a kitchen renovation are planned with a bedroom and a master suite on the second floor. A new deck and an above ground pool are also proposed to replace what now exists. The existing master bedroom and home office are on the westerly side of the house and placing the addition on the easterly side of the house will enable the majority of the addition to be built with as little impact as possible to the Grisez family. The applicant is also hoping to build the addition only requesting one side yard variance which is existing at 13' and proposed at 13'. The addition will be conforming as far as side yard setback for the easterly side, front yard setback, rear yard setback, impervious coverage, floor area ratio, gross building area, building height and pool setbacks.

Mr. Greimel reviewed the submitted drawings including zone requirements tables, foundation, first and second floor details, deck layout and the pool which is located 20' from the house. The plans also depict the exterior elevations of the house and include detail of a new roof over the front stoop. He noted that the east side of the house is at the

13' setback for the side yard and calculations concerning coverage and gross building area are included.

Mr. Greimel was questioned regarding the foliage at the property line. He stated that pictures included with the application show foliage along the eastern property line and no trees over 6" in circumference will be removed. Mr. Greimel testified that he took these pictures on December 1, 2008. Mr. Manning noted that the proposed above ground pool is flush to the deck and he asked how this would affect the setback on the left side. Mr. Greimel stated that the pool would be 22' away from the setback line and he noted that the pool is required to be 10' from the structure and 20' from the sidelines. The pool will be 4' above grade which does not require a fence and the deck will incorporate itself around the pool with railings around the deck. The pool can only be accessed by way of the deck.

There was a question regarding the distance between the edge of the pool and the lake or stream. Mr. Greimel confirmed that this distance was 60' and he noted that the tax map was inaccurate.

Mr. Greimel reviewed stating that the hardship regarding this application concerns the narrowness of the lot and the existing location of the structure to the east of the lot.

Ms. Tengi opened the meeting to the public for questions of Mr. Greimel. No one from the public came forward at this time.

Ms. Hart commented that an already bad situation is being made worse and she asked if the applicant would consider reducing the length of the addition. Mr. Greimel said that the number of windows on the east side in question had been limited and he pointed out that the neighbor at 490 Brookside Avenue (Lot 12) had added a family room to their home which is similar to the applicant's proposal. Mr. Nestor marked that architectural drawing as A-1, 9 pages. The eight photos depicting the neighborhood were marked as A-2.

Mr. Nestor referred to the deck which is level to the pool and questioned the location of a fence. Mr. Greimel said that the fence would have lockable, self closing gates at the stairs that lead down from the deck. He said that a pool with direct access from the rear of the house is allowed as long as there is a 4' fence. It was noted that the ordinance refers to fencing around inground pools. Mr. Nestor stated that if this variance is granted there should be a condition that compliance with all conditions of the Uniform Construction Code and the swimming pool ordinance is necessary. Therefore the Construction Code Official will deem what is necessary in this case. Mr. Greimel pointed out that fences around pools are used to keep people away who do not reside on the property. Ms. Tengi stated that the homeowner should be as cautious as possible in order to prevent liability on their part. She said that the Council needs to specifically address this portion of the ordinance and the Board cannot impose their own safety issues on the applicant.

Mr. Manning asked if the applicant had considered stepping back any of the addition to decrease the magnitude of the requested variance. Mr. Greimel said that the family room was the only area that could be pushed back, however, this would encroach on the kitchen area that would impact the pool setback. When questioned, Mr. Greimel said he would agree to additional plantings on the east side.

Mr. Redling said that he is concerned about the fact that such a large addition is being placed 13' from the property line. He asked why the addition could not be placed in the area of the proposed deck. Mr. Greimel stated that the house would be quite deep and dark inside if that were the case. There would also be the issue of stream encroachment and possibly two side variances. Several other Board Members were concerned about the mass of the addition. The size of the proposed family room is 29' x 19' and the applicant's engineer was asked about reducing the size of this room. Mr. Redling noted that the eastern side of the house was being extended 12' in the front and 28' in the back. Mr. Greimel stated that the family room could be reduced and shortened by several feet resulting in a 15' side yard setback. After more discussion, the applicant agreed to cut the length of the family room by 4' to the north and shorten it by 2' to the west or 15' from the side yard line. The front will remain as proposed.

Ms. Chamberlain pointed out that the distance of the curb cuts are not 50' which would also require a variance. Mr. Greimel said that a curb cut approval is necessary from either the town or the county. Mr. Nestor indicated that a variance is necessary and there is 33' curb cut to curb cut, and there is 28' to the neighbor's curb cut. There is not enough room due to the narrowness of the lot and for safety reasons cars need to come forward onto Brookside Avenue to avoid backing out. This is safer than having a single driveway and meeting the 50' requirement. Mr. Nestor stated that the resolution would include a provision that the applicant would not object to meeting any county, state or federal agency having jurisdiction.

Mr. Manning made a motion to approve the variance subject to the changes discussed regarding the size of the family room and the pool being in compliance with code. There is a unique hardship regarding the narrowness of the lot and the location of the dwelling on the property which is a pre-existing non conformity. He indicated that the addition remains within the footprint of the house. A variance is also granted for the curb cut which is proposed at 32' due to safety concerns rather than the required 50'. Ms. Tengi seconded the motion. The following members voted aye: Ms. Hart, Mr. Manning, Ms. Tengi, Ms. Chamberlain, and Ms. Weidner.

Robert Sherry variance application – 351 W. Crescent Avenue., Block 904, Lot 15

Ms. Tengi announced that this application will be carried to the March 25th 2009 meeting.

Carl Shaw variance application – 54 Cherokee Ave., Block 503, Lot 9
Frank Palumbo variance application – 21 Kayeton Rd., Block 509, Lot 20

Ms. Tengi stated that these applications may not be heard until March 25th, 2009 but she said the applicants could remain present to see if there would be enough time to hear the applications.

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

Thomas Bruinooge, attorney for the applicant, stated that he would begin with cross examination of Edward Snieckus, the Borough Planner. Mr. Bruinooge focused on Mr. Snieckus' direct testimony in January and stated that the application seeks other variances in addition to the use variance. He referred to the variance for the south side of the property which is the dividing line between Allendale and Waldwick. The proposal would decrease the setback of the building from 3.6' to 3' which Mr. Snieckus testified would impact the ordinance and Master Plan. He stated that the Board should be looking at the impact of applying the ordinance to the proposed expansion. Mr. Snieckus said that a change in the setback is something that needs to be focused on along with the amount of encroachment that is occurring. Mr. Bruinooge asked Mr. Snieckus if the applicant should be looking at the property as if a restaurant was being placed there for the first time. Mr. Snieckus disagreed stating that there is a valid pre-existing, non conforming structure in use at the present time. The standard with respect to these types of uses is a comparison of the existing conditions to the proposed conditions with the exception that the current zoning and its limits and conditions also have to be considered.

Mr. Bruinooge referred to the front yard setback variance which Mr. Snieckus said is 35' according to A-13; and 23.8' is the setback from the property line to the front entrance area. Mr. Bruinooge stated that the northeast corner of the structure is 31' back from the front line. The latest plan called for a 4'6" bump out on the south east corner of the building which would bring the building 31' from the front property line. Mr. Snieckus agreed with Mr. Bruinooge who said the overall net square footage of the proposed expansion stays the same. The southeasterly 4'4" bump out falls outside of the 23.8' setback and Mr. Snieckus was asked if this encroachment would alter the characteristics of the neighborhood. Mr. Snieckus said that it would reduce the perceived setback and will impact the neighborhood due to the mass of the front of the building. Standing to the north of Restaurant L looking to the south towards Waldwick, Mr. Bruinooge asked if anyone could see the impact of the proposed setback line and he also asked how that could affect the character of the neighborhood. Mr. Snieckus said that it would have no impact on the Borough of Allendale.

Mr. Bruinooge spoke about the impervious coverage on the lot and said that 87.1% of the lot contains impervious coverage. Mr. Snieckus confirmed that the proposal would reduce impervious coverage from 87.1% to 83.6% and would not be a detriment to the neighborhood or the zoning plan of the Borough of Allendale.

With reference to parking, Mr. Bruinooge stated that the plan would provide 45 spaces, requiring a variance, as compared to the 42 existing spaces. Mr. Snieckus agreed that an increase of parking spaces is positive. Mr. Bruinooge said that the testimony is that the current number of seats inside the structure is 68 including 16 at the bar. Outdoor seating would be eliminated with 96 seats made available inside due to the expansion of the restaurant. Mr. Bruinooge asked Mr. Snieckus for a definition of intensification and Mr. Snieckus said this means to add to a pre-existing condition.

Mr. Bruinooge asked Mr. Snieckus what the Board should focus on. Mr. Snieckus said they should look at the intensification of activity on the property in particular the amount of seats added year round compared to the outdoor dining that currently exists. Mr. Snieckus agreed that there are 8 additional parking spaces available as a result of an agreement between the property owner and the gas station owner to the south. He said he is concerned with the use of these offsite parking spaces because it may be unreliable. Mr. Bruinooge stated that the ordinance provides for this parking as long as the properties are contiguous. Mr. Snieckus stated that this location does not allow this type of intensified use and there is no evidence that this has been approved by the adjacent municipality or whether this would be the case if the property ownership changed.

Mr. Bruinooge referred to parking and asked if the parking was improved because it was increased. Mr. Snieckus said that this was an intensification of use because it would substantially change the zone plan and character of the neighborhood due to increased activity on the existing property. The increase in year round seating results in increased year round activity on the property. He added that the parking spaces are at or near the property line and there is insufficient buffering to offset the impact of increased activity. Mr. Bruinooge said that intensification is measured from the point of view that the 42 spaces could be full with people making the same amount of noise going in and out. This condition exists now and Mr. Bruinooge asked if three additional parking spaces would be a substantial negative impact. Mr. Snieckus indicated this would not have a substantial impact.

Mr. Bruinooge asked Mr. Snieckus if one of the results of this expansion would be to reduce outdoor activity. Mr. Snieckus agreed and said outdoor activity by restaurant employees and outdoor dining on the patio would cease. Mr. Bruinooge stated that the residential neighborhood to the north on the east side of Franklin Turnpike will always be able to see the Delta Gas Station and whatever goes on at the site in question will not be visible and will have no impact on the residential neighborhood to the north. Mr. Snieckus said that there would be an impact to the two houses across the street in Allendale who would see the front addition and changes to the roofline as well as the rear extension of the building. Mr. Bruinooge questioned how this substantially changes the character of the neighborhood and Mr. Snieckus said because there is an addition to the building although it may not be substantial.

Mr. Bruinooge said that several witnesses testified that the proposed structure would result in a safer, more efficient and aesthetically pleasing structure on the site if the variance were granted. Mr. Snieckus said he did not recall testimony regarding safety for

employees walking through the parking lot during inclement weather. He did agree that it was safer and probably more efficient to move the storage downstairs. He agreed that a safer more efficient operation furthers the purpose of the Master Plan and enhances the general good of the public.

Mr. Bruinooge spoke about the confusion regarding the numbers cited in the minutes of January 13, 2009 and he said he would refer to a transcript that had been prepared using a CD of that meeting.. Mr. Nestor expressed his objection stating that he did not have access to that CD. Mr. Snieckus said that he had testified that the gross floor area of the principal building was 3,253 sq. ft., combined with the accessory building of 621 sq. ft. and the 829 sq. ft. for the patio area which is noted in the applicant's notations that would total 1,803 sq. ft. in principal building volume. Mr. Bruinooge said that that the architect testified, in reference to A-12, that the gross floor area measured from the outside base area of the walls is 1,803 sq. ft. Mr. Bruinooge said that the patio area should not be included in principal building volume according to the ordinance. He asked how Mr. Snieckus had calculated the 3,698 sq. ft. of volume of the principal building and Mr. Snieckus said he couldn't recall. Mr. Bruinooge said they need to focus on the gross floor area of the existing structure compared to the gross floor area of the proposed structure. Mr. Snieckus referred to a plan dated 8/28/08 revised 10/15/08 referring to first floor area of 1,813 sq. ft., second floor area of 819 sq. ft and proposed addition of 1,505 sq. ft. which total 4,137 sq. ft. The existing gross floor area is noted as 3,262 sq. ft. and proposed noted at 4,137 sq. ft. Mr. Nestor read from the ordinance 270-61 stating that the gross building area is defined as the gross building floor area of the building on the property. The gross building area shall include all enclosed floor areas on all floors for residences, accessory buildings or garages. The gross building area shall not include open porches, unfinished attics, basements, decks or patios. Mr. Snieckus concluded that the gross floor area would include the accessory structures and 3,253 sq. ft. is the entire gross floor area. Mr. Bruinooge indicated that the Board will have to rely on the testimony from the architect, the numbers on the plans and the definitions in the ordinance because Mr. Snieckus could not describe how he formulated his numbers.

Mr. Bruinooge referred to the testimony of the applicant's planner, Mr. Phillips, who described the appropriateness of the site for residential use. Mr. Snieckus recalled that Mr. Phillips did not think the site was suitable for residential use and he had disagreed stating that a modest home could be built on the property. Mr. Bruinooge pointed out that a residential lot on this site is conforming in the size required by the ordinance, however, the ordinance requirement for non-residential use is 5 acres. Mr. Snieckus said that the standard of comparison should be current zoning versus the proposed use and this is what the Board needs to consider as the substantial impact of the zone plan. He stated that the site could be considered for single family zoning at some point in the future.

Ms. Tengi opened the meeting to the public regarding testimony of this witness. No one from the public came forward.

Mr. Nestor said that the Restaurant L building itself is retaining the same building envelope and he asked if intensity would be increased by people who were not sitting.

Mr. Snieckus said that it depends what the room is used for and this is why ordinances for restaurants in many municipalities will include square footage calculations in addition to a calculation for the number of seats. The ordinance tries to anticipate this issue, however, Allendale's ordinance uses seating and number of employees. Mr. Nestor referred to Section 270-40 which was testified to by the plaintiff's expert which would go by gross floor space.

Mr. Bruinooge said that Mr. Phillips had testified based on the letter marked M-3 which is the letter from Mr. Snieckus dated 10/20/08, and he asked that Mr. Phillips be allowed to address some of the items noted in M-4 (report of 12/17/08) and M-5 (report of 1/12/09). Mr. Nestor agreed. Mr. Phillips testified that Mr. Snieckus had compared the proposal with the underlying bulk requirements in the zoning which is a residential zone. He disagreed stating that this is not the approach to take when considering a D-2 variance which is the extension of a non-conforming use as opposed to a D-1 classic use variance where that approach would be appropriate. The test for a D-2 variance does not require the applicant to go back and compare the proposal as if it were a proposal on a virgin tract of land. Acknowledgement must be made that there is a pre-existing, non conforming use on the property which has legal status and the standards are different. The applicant doesn't have to demonstrate that the use variance had to be granted in the first place. It must also be made clear that the negative criteria be viewed more liberally than under a classic D-1 variance. The Board must consider the relative impacts between what exists there and what is allowed to exist legally against what is proposed by the applicant. On the negative criteria, the standard is for the Board to consider whether any impacts are substantial. He noted that every application has some impact and that is not the test. Mr. Philips stated that in his opinion the impact here is not substantial.

Mr. Phillips stated that in his testimony, Mr. Snieckus ventured outside the scope of the original M-3 report. Mr. Snieckus testified regarding the likelihood of this property being used for residential use and Mr. Philips said that anyone looking at this site objectively would conclude that it is not a suitable site for residential use based on the reasons he cited at an earlier meeting. The site has been used commercially for over 70 years and in that time it has had the opportunity to change to residential use which it has not. Being on a county road next to an active commercial district to the south and the difficulty in citing a structure with a usable back yard makes it virtually impossible to change existing use patterns.

Mr. Bruinooge said that Mr. Snieckus had commented that Mr. Phillips did not refer to special reasons in his testimony. Mr. Phillips said that he had clearly articulated what the special reasons were to support the application in prior testimony. Mr. Phillips reiterated that the impacts of this application do not qualify as being substantial and he noted that there would be more indoor seating which is an intensification of the use, however, it must be viewed relative to the fact that there will no longer be any outdoor seating, dining or activity which is a clear benefit to the residence to the north. Mr. Phillips was asked to respond to Mr. Snieckus' comment that mitigation needed to take place on the site. Mr. Phillips stated that the proposal has to be viewed with what exists today. The

parking which is close to the parking line exists today; the applicant meets the parking requirements and he is unsure what type of mitigation would make sense in this case.

Ms. Hart stated that Restaurant L obtained a CO in 2006 and later expanded to include a successful outdoor dining area without benefit of a hearing. Now the Board is being asked to approve a variance to enclose the outdoor dining area in order to improve the facility. It would seem that an approval would indicate that this outdoor dining area had been approved at some point which Ms. Hart did not recall. Mr. Phillips commented that he thought that the patio would be part of the legal rights of the user.

Mr. Bruinooge asked that all of the marked exhibits be moved into evidence. He said that other than a summation his case was concluded.

Ms. Tengi asked if anyone from the public wished to make any brief comments or statements. Cara Weiss, 15 Waibel Drive, said the outdoor patio appeared suddenly and there has been noise and traffic at night which will escalate as the number of customers increases. Quality of life in the neighborhood will be affected. She added that people used to park on Waibel Drive, however, this stopped when the valets were introduced.

Lynne Moran, 25 Franklin Turnpike, stated that she has lived next door to the restaurant for 15 years and it only became an issue with the outdoor dining. People are leaving the parking lot at 2 A.M. and this is a quality of life issue. Upon questioning, Ms. Moran said she had definitely noticed an increase in traffic since the beginning of the outdoor dining. No one else from the public came forward.

Mr. Bruinooge asked that the statement of summation be incorporated into the record because it sets for the applicant's position with respect to the testimony that has been presented as well as the legal arguments in support of the application. Mr. Nestor said that he would permit this because the application has gone on for such a great length of time. Mr. Bruinooge said that the decision regarding a D variance isn't easy but the case law (Kramer) is the standard. For over 70 years, Allendale has continued to zone the lot for residential purposes but this pre-existing, non-conforming use has existed and a substantial investment has been made by the applicant in the structure. The Construction Code Official has determined that 115 people can occupy the building, the patio plans had been presented to the Construction Code Official and the patio exists. The fact that the site has been used for so many years as a restaurant speaks to the suitability of the site for a restaurant. Expanding the use somewhat will bring more people into the restaurant but the neighborhood character will not change and there will be no substantial change to the zone plan. Mr. Bruinooge thanked the Board for their attention and effort in this matter.

Ms. Tengi commended Mr. Bruinooge and his witnesses for the job they had done. She recognized Mr. Snieckus for his expertise regarding this case.

Mr. Nestor stated that the minutes and resolutions of 2006 have been moved into evidence. This case concerns the expansion of a pre-existing, non-conforming use. The

restaurant is in a residential zone of Allendale. The application has been bifurcated to allow for preliminary and final site plan approval at a later date. There are two issues for consideration including the expansion of a non-conforming use which is a D variance. Application is also being made for lot area and front yard deficiency of a non-conforming use, side yard deficiency, maximum impervious coverage, minimum parking space size and minimum number of parking spaces. The Board does not have to consider the bulk variances if the use variance is denied and parking can be considered as it relates to safety and traffic. The minutes state that the restaurant holds 88 people including the bar area with 47 parking spaces. Hours of operation are 11 A.M. to 2 A.M., seven days a week and the expansion regarding outdoor dining is illegal. A number of neighbors have testified that there was not patio dining in the past and there is no evidence that the outdoor seating discussed is proper. The Zoning Board did not address or approve outdoor dining here and the Zoning Board is the only entity allowed to make such an approval.

Mr. Nestor said that expansion of a non-conforming use requires five affirmative votes from Board Members. Expansions of non-conforming uses are not favored and the Board must consider whether the expansion is minor, whether the beautification of the site plays a role in decreasing non-conformity, impervious coverage, setback, reduction of the intensity of the use and furthers the goals of the zoning plan. Ultimately the question is whether or not the applicant has met the burden of proof and has satisfied the criteria for the expansion of a legally, pre-existing, non-conforming use. Mr. Nestor stated that Board Members should consider that the parking area is being intensified along with the visual impact of the building and several neighbors have testified regarding the impact on their quality of life.

Mr. Bruinooge said that if the patio, even though it exists, is going to be considered as an expansion of a non conforming use without Zoning Board approval would indicate that the Board must go back to existing conditions on the site minus the patio. The 2006 resolution says that the pre existing use and the two structures (building and outdoor storage building) are the conditions that exist. The standard is the question of the relative impact when looking at the negative criteria. The pre-existing, non-conforming use conveys certain legal rights and the pre-existing, non-conforming use now must be compared to the non-conforming use going forward because the patio was not approved by the Zoning Board as an expansion of a non-conforming use. Mr. Nestor responded that this statement would render most of what has been done useless if they are going to go back and start again.

Mr. Jones stated that the applicant must prove that this site is well suited for the expanded use and that it would justify a deviation from Borough ordinances and the Land Use Law as well as promoting the intent of the Master Plan. It must also improve public good and welfare. The applicant and experts have stated that the site is well suited because there are commercial properties to the south and a minimal impact as a result of the expanded use. Outbuildings would be eliminated and the outdoor dining area would be enclosed to lessen noise along with landscaping and additional parking spaces with no impact to the Master Plan and zoning ordinances.

Mr. Jones said that this Board should eliminate non-conforming uses where possible and minimize impacts of expansion. The Master Plan identifies this property and addresses expansion of uses here as well as further development on Franklin Turnpike. The proposed project would constitute a larger use and this increased intensity of use would create a negative impact on the surrounding neighborhoods and would impact the public welfare. The impact would be greater than believed by the applicant's experts. The applicant has never come before the Board for approval of the outside patio use yet the applicant refers to this as a pre-existing use or what is currently being used on the site.

Mr. Jones concluded that the applicant has not met the burden of proof required in seeking an expansion of use and that the experts have contradicted testimony throughout these hearings. There have been no efforts to improve the buffer areas and he questioned the testimony regarding traffic. Parking is a concern and there is no evidence of an agreement between the owner of the gas station and the restaurant. Mr. Jones moved to deny the application and added that the outdoor dining area was possibly an illegal expansion and he requested further research by the Zoning Official.

Ms. Hart seconded the motion stating that the patio or outdoor seating conditions would continue throughout the year and this is what is important in this application. The following members voted in favor of the motion: Mr. Jones, Mr. Redling, Ms Hart, Ms. Chamberlain, Mr. Manning, Ms. Weidner and Ms. Tengi.

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

Mary Scro of Z+ Architects, 634 Franklin Turnpike, Allendale, was sworn by Mr. Nestor. Ms. Scro testified that the applicant has revised the application. A second floor addition is proposed above an existing family room and 293 sq. ft. has been removed from the original plan. The footprint of the building is not being expanded. There are existing side yard and front yard setbacks that are non-conforming and the addition is located on the side of the dwelling where the setback is greater at 11.7'. The opposite side yard is 4.3'. The front yard setback is 23'5" which remains unchanged. The lot is substandard for the zone at 6,250 sq. ft. where 20,000 sq. ft. is required. The lot width is 50 sq. ft. and the required width is 115 sq. ft. The existing floor area ratio is 28% and the proposed will be 33%, with 25% being allowed. Total square footage including the garage is 2,036 sq. ft. The adjacent lot to the left is 75 sq. ft. x 125 sq. ft. and the proposed house is in keeping with the neighborhood. The lot to the right is an odd shape and substantially larger and sits quite far back on the lot. The proposed addition would face this lot.

Ms. Scro had submitted her drawings dated 2/12/09 including SK-1, SK-2, SK-3 and SK-4 which were marked as A-1.. Three photos were also submitted and marked as A-2.

Ms. Scro stated that the difference in the existing and proposed floor area ratio is 293 sq. ft. She said that the applicants will still have one of the smallest homes in the neighborhood. Ms. Nestor stated that Mr. Wittekind notes in his letter that all of the conditions are pre-existing.

Ms. Tengi asked if anyone from the public had any comments or questions. No one came forward and the public portion of the meeting was closed.

Mr. Manning said that the existing conditions here are a hardship and he indicated that the impact on the neighborhood would be quite de minimis. He thought that the addition would look as though it had always been there and the applicant had met the burden of proof. The impact to the neighborhood would be minimal and a variation to the zoning ordinances and the Master Plan would be furthered by the granting of this application. Hardships would include the lot size, lot area, lot width, and the pre-existing location of the structure on the property. Ms. Chamberlain seconded the motion and the following members voted aye: Mr. Jones, Ms. Hart, Mr. Redling, Mr. Manning, Ms. Chamberlain, Ms. Weidner and Ms. Tengi.

Orchard Park Condominium Assn. – Use variance application – Block 1710, Lot 1.01
(Carried from January)

Mike Lindsay, 139 Orchard Park, Allendale, was sworn by Mr. Nestor and said that he is President of the Board of Directors. Louis Verde introduced himself on behalf of Orchard Park Condominium Association and stated that there are 59 units at this location. The site plan was approved in 1991 and the plan called for 60 units to be built with 59 deemed dwelling units and the other designated for administrative use. The condominium association inherited this development from the original developer and unit 214 is unusable based on the existing ordinance. They are seeking a use variance based on the letter from Mr. Dunn who is the Planning Board attorney. This application had been before the Planning Board who referred the application to the Zoning Board for a use variance because the density would be exceeded by one unit. The special reason is the undue hardship created by the economic inutility of unit 214.

Mr. Verde stated that the unit cannot be used for a superintendent because it cannot be used as a dwelling. It cannot be used as an office because office use is not permitted in this zone. It cannot be rented to an outside office or business use since that is not allowed in the zone. It cannot be used as a community room due to the size (1,000 sq. ft.) and it is next to and below a residential unit. It had been used for Board Meetings every other month but that has been discontinued and the meetings are held offsite.

Mr. Verde said that the unit is fully completed with a kitchen, two bathrooms and two bedrooms. The association has no use for the unit and he noted that there is extra parking at Orchard Park with one assigned spot for this unit and additional spaces available. The unit is hooked up to all the utilities and sprinkled, it will not add to impervious surface on the property or create drainage issues. The dumpster that services the area where the unit is located is under utilized. Mr. Verde stated that this application meets the negative criteria because of the insignificant impact of an increase in density.

Mr. Lindsay testified that he has lived in Orchard Park Condo since December 2000 and has been on the Board for eight years. He stated that unit 214 has only been used for Board meetings which are held once every other month. He confirmed that Board

Meetings are no longer held in this unit. The unit is 1,000 sq. ft. in size and is not separated at all from the other units. This unit has assigned parking and 117 parking spaces are available for the complex consisting of 35 garages, with remaining outdoor parking. The dumpsters are adequate for the 59 units and there are no traffic issues. Mr. Lindsay stated that the Board would like to rent this unit out with proceeds going to the condominium association and he didn't feel that renting this unit would be detrimental to any of the residents or surrounding neighbors.

Ms. Chamberlain asked if there were any other uses for this unit and Mr. Lindsay said there was not. Mr. Lindsay said that all of the owners have been notified of this prospective use and there have been no objections.

Mr. Nestor stated that the development was set up in this fashion because of the COAH requirement when the development was approved. Mr. Lindsay said that the rent collected would go into the operating expenses of the condominium association. Ms. Chamberlain asked if COAH would have to be notified regarding this change, if the application were approved and Mr. Nestor said there would be an impact on Allendale's COAH requirements. When the development was approved \$20,000 was the COAH payment for each of the units. He said that if approved there would have to be a condition that the applicant would be agreeable to be governed by the Affordable Housing fee ordinance. Mr. Verde said that he realizes that this would have to be addressed and the Master Deed would have to be amended.

Ms. Tengi suggested that this information be conveyed to the Association Board for their agreement or recommendation. Mr. Nestor said that rental cannot take place until there is some form of documentation from COAH confirming that this can go forward and it was suggested that Mary Beth Lonigan, the COAH representative, be contacted. It was also recommended that the Mayor and Council be advised.

Mr. Nestor suggested that this application be carried in order to give the condominium board the opportunity to agree to contact COAH via a representative of the Borough. The applicant could then come back to the Board with evidence that this has been approved by COAH. The application could be approved by the Zoning Board and a resolution would be drafted.

V. Palumbo variance application – 17 Kayeton Rd., Block 509, Lot 21

Mr. Nestor noted that the architect states this property is located in the "A" zone, however, it is actually located in a "AA" zone. Therefore, there was some confusion over the deficiency of the side yard set back line. It could be viewed as 2'1", 4' or 5 ½' and Mr. Nestor asked whether the exact measurement was worth debating. He noted that this is the only variance being requested.

Vincent and Genna Palumbo, 17 Kayeton Road, Allendale were sworn by Mr. Nestor. Genna Palumbo stated that they are requesting approval to construct an addition to their single family home. The lot consists of 20,125 sq. ft. which is conforming. Lot width is

115 ft. where 130 is required. The left side setback is proposed at 34' where 24.68' is required and the right side setback is 20' where 24.68' is required. Ms. Palumbo stated that they want to increase living space in the home, however, she didn't feel they were asking for an overly large addition. Mr. Manning stated that the lot size is substandard for the zone as it is now. The size of the house is tied to the increased enhanced side yard or as the house gets bigger more space is required between the applicant dwelling and the neighboring dwelling. Mr. Nestor noted that the dwelling is 55' from the structure to the right; 56' from the structure to the left; 209' from the structure behind to the left and even more than that from the structure behind to the right.

Ms. Tengi opened the meeting for public comment. Frank Paporozzi, 21 Kayeton Road, was sworn by Mr. Nestor and said he is to the left of the applicant and supports the application. There were no further comments and the meeting was closed to the public.

Photos were distributed to Board Members. The series of drawings were labeled as A-1 consisting of five pages, and the photos were labeled as A-2.

Mr. Manning stated that the applicant is looking for 4' of relief on the right side of the house. The hardship is the fact that the house was not situated in the center of the lot and there is excess property on the left. The addition would follow the lines of the existing home. Upon questioning, Ms. Palumbo stated that the neighbor on the right side has no objection to the application.

Ms. Tengi made a motion to approve the application because the applicant has several pre-existing non-conformities. The addition will be placed directly behind the applicant's house having little visual impact from the front of the house. The neighbor to the right of the dwelling, looking at the property, has a garage and there shouldn't be much encroachment to the living space for this neighbor. Applicant is not increasing the current side yard non-conformity except for the fact that there is additional square footage to be factored in for that side yard setback. As a result the applicant's have provided hardship and the application should be approved. Mr. Jones stated that this is a de minimis deviation and the benefits outweigh any detriments of the change in the side yard. Mr. Redling seconded the motion and the following members voted aye: Mr. Jones, Ms. Hart, Mr. Redling, Mr. Manning, Ms. Chamberlain, Ms. Weidner and Ms. Tengi.

R. Voorhis variance application – 49 Woodland Ave., Block 301, Lot 7

Ms. Tengi announced that this application would be carried to the next meeting.

The meeting was adjourned at 12:10 P.M.

Respectfully submitted,
Melinda Dorl

