

April 22, 2009

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on April 22, 2009. The meeting was called to order at 8:10 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, Ms Chamberlain, Mr. Manning, Ms. Weidner, and Paul McAdam, Board Attorney was present. Mr. Jones was absent this evening.

AGENDA ITEMS

Minutes of March 25, 2009

Mr. Hart asked that the minutes be amended on page 5, second to last paragraph to read that the “house is on a hill and that the third story window will make the house appear bigger than it is and that she asked that this dormer be removed” Ms. Teng made a motion to approve the minutes as amended. Ms. Hart seconded the motion and all members present voted in favor.

Resolution of memorialization – Carl Shaw

Ms. Teng complimented Mr. Nestor on his drafting of the resolution. Ms. Chamberlain made a motion to approve the resolution, seconded by Ms. Teng. The following members voted in favor: Ms. Teng, Ms. Hart, Ms. Chamberlain, Mr. Manning. Mr. Redling abstained.

Resolution of memorialization – R. Voorhis

Ms. Chamberlain stated that reduction in size of the addition, as noted in the minutes, needs to be added to the resolution. Ms. Chamberlain made a motion to approve the resolution, seconded by Ms. Teng. The following members voted in favor: Ms. Teng, Ms. Hart, Ms. Chamberlain, and Mr. Manning.

Resolution of memorialization – Frank Pappozzi

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

Resolution of memorialization –N. Weinberger

Ms. Tengi stated that this resolution would be moved to the end of the agenda in order for Board Members verify and review their notes as well as the plot plan to the drawings.

Resolution of memorialization – J.D'Arecca

Ms. Hart made a motion to approve the resolution, seconded by Ms. Chamberlain. The following members voted in favor: Ms. Hart, Ms. Tengi, Mr. Manning, Mr. Chamberlain. Mr. Redling and Ms. Weidner abstained from this vote.

Orchard Park Condominium Ass'n Use Variance Application – carried from March

Ms. Tengi announced that this application had last been heard at the February meeting. Louis Verding, attorney for the applicant, introduced himself, and stated that the only open question at the last meeting was whether or not the applicant was subject to COAH. After discussing this further with Board Attorney Nestor, Mr. Verding said that he agreed that there are COAH requirements and the Condominium Board accepts these conditions. If the application is approved the Tax Assessor will get the equalized assessed value of the unit and the applicant will comply with the COAH requirements regarding the amount of the Developer's Fees required. He believes would be 1½% of the assessed equalized value before the unit is rented. This will be a condition of the resolution if the application is approved.

Ms. Tengi reviewed the application stating that this is a vacant unit that had previously been used for meeting purposes. This use is no longer necessary and the applicant is proposing that the unit be rented and the Board was unclear regarding COAH regulations. Ms. Hart wondered if the applicant wanted to use this unit as a COAH unit. Mr. Verding said that the applicant could either pay the development fee or it could be used as low or moderate income rental unit with the rent being controlled by COAH regulations for 30 years. The Condominium Board considered all of the options and has decided to rent the unit.

Ms. Chamberlain said that renting the unit is not detrimental to the town and the unit has an assigned parking space and mail box. Ms. Hart made a motion to approve the application because it is in keeping with the Municipal Land Use Law and no variances are necessary. Mr. Manning seconded the motion and the following members voted aye: Ms. Tengi, Ms. Hart, Mr. Redling, Ms. Chamberlain, Mr. Manning and Ms. Weidner.

Robert Sherry variance application – carried from March

Bruce Whitaker, attorney, introduced himself on behalf of the applicant. Mr. Whitaker stated that Mr. and Mrs. Sherry are the owners of 351 West Crescent Avenue, Lot 15, Block 904 and this property is located in the A zone. They propose construction of an addition to the rear of the property which is currently non-conforming. There are five variances requested which are pre-existing condition and include: required lot size of

20,000 sq. ft, currently existing is 15,000; required lot width is 115'; currently existing is 100'; left side setback requirement is 17.19'; 14' currently exists and no construction will be done on the left side; right side setback requirement is 17.19'; 19' exists and 17' 2.5" is proposed, front yard setback requirement is 35' where 34' currently exists.

Mr. Whitaker stated that this construction is taking place on a non-conforming lot and that in itself prompts a variance request. Mr. Whitaker said that in this application after the addition is completed, there would be a floor area ratio of 19.1% where 22% is permitted which means that the floor area ratio is below the limitation. Regarding improved lot coverage, the applicant can go as high as 44% impervious coverage in this zone and when completed the coverage would be 26.8%. Mr. Whitaker indicated that this is a C-1 variance request and the proposal is based upon exceptional narrowness and shape of the property in which a lawful dwelling unit currently exists. Approval of the application would pose no detriment to the overall development plan or zoning elements of the Borough of Allendale. Mr. Whitaker cited the Lange case and the more recent case of Fleres vs. the Zoning Board of Adjustment of the Borough of Bradley Beach which would support this request for variance due to the uniqueness of the property not meeting Borough standards. In this case, none of the current non-conformities are being exacerbated other than the infringement by 2.38" in one area where the addition is being constructed.

Robert Sherry was sworn by Mr. McAdam and he testified that the reason for the addition is to allow Mr. Sherry's mother-in-law, who has arthritic problems, to live with him. Mr. Sherry also has a son who is disabled and this would allow for his son to be cared for by his mother-in-law while he and his wife are at work.

Mr. Whitaker asked that the plans by David Hals be marked as Exhibit A-1. Mr. Sherry confirmed that the addition is to the right side of the property. The bump out or infringement is 2.38" and this would give additional room for his mother-in-law including an entrance and room to entertain friends. Mr. Sherry stated that the addition will match the rest of the house and the air conditioning unit will be located in the attic. The current air conditioning unit is on the right hand side of the dwelling and will remain outside of the setback requirement, however, it will have additional screening.

Mr. Whitaker stated that Mr. Sherry understands that he must comply with the State drainage requirements of the Borough of Allendale. All of the water coming off of this additional must be piped to a storage facility in the back of the yard to ensure zero runoff from this building.

A Board Member questioned the calculations on A-1 and Mr. Whitaker explained that the architect made an error on one number in the right hand corner of A-1. The number 17 should be changed to 19 which corresponds with Mr. Wittekind's side yard setback.

Ms. Tengi opened the meeting to the public for questions or comments concerning this application. Thomas H. Brunage came forward and stated that he represents, Tom Swallow, the property owner to the south and adjacent to the subject property. He said

that Mr. Sherry has been quite cooperative in addressing his client's concerns. Mr. Sherry has indicated that he is willing to address the screening of the existing condenser or air conditioning unit on the south side of the house. Mr. Sherry reiterated that the collection of the water that runs off from the existing structure as well as that of the addition will be piped and travel underground to a drywell at the rear of the Sherry property. Mr. Brunage said that Mr. Swallow now has no objection to this application and would support it.

Ms. Tengi stated that the hardship in this application is that this legally existing structure has several non-conformities. The applicant's proposal will not exacerbate the conditions except for the 2.83" infringement into a side yard setback for the addition itself.

Mr. McAdam stated that the two conditions that will apply here is that the air conditioning condensing unit will be screened at all times and the collection of rain water from the roof will be collected via an underground pipe and a dry well. Mr. Manning made a motion to approve the variance based on the foregoing. He said that the infringement is modest and there is a hardship based on pre-existing condition. The property will be enhanced with no detriment to the Municipal Land Use Law. The motion was seconded by Ms. Weidner and the following members voted aye: Ms. Hart, Ms. Tengi, Mr. Redling, Mr. Manning, Ms. Chamberlain and Ms. Weidner.

Ronald and Joyce Matera variance applicant – 49 Oak St., Block 1705, Lot 27

Bruce Whitaker introduced himself as attorney for Ronald and Joyce Matera owners of 49 Oak Street, Block 1705, Lot 27. Mr. Whitaker stated that the pre-existing non-conformities on this lot prompts a variance request. The lot width is non-conforming at 100' and the A zone requires 115'. The side yard setback is also substandard at 15' where 17.9' is required. This application will not exacerbate any existing conditions since the proposed addition will be to the right side of the building and there is no change to the side yard which is non-conforming. This is a C 1 hardship variance based upon the non-conforming aspects of the property. There are no floor area ratio concerns and the overall impervious lot coverage is 24.5% where the maximum permitted is 36.6%.

Mr. McAdam questioned the location of the front porch in relation to the property line. Mr. Whitaker stated that the applicant is proposing to extend the porch and the current area already infringes by a de minimus amount. He assumes that the architect measured the front setback from the building and not the porch. He stated that the depth of the porch currently is 4' and several inches and the right hand side of the porch will be deeper as it runs across due to the indentation of the building. Mr. Whitaker indicated that the applicant will seek a variance for the extension of the pre-existing porch to the right if deemed necessary by the Board. After some discussion, Mr. Whitaker said that 27.55' is the front yard setback to the bottom of the step and the applicant would stipulate that the steps are not being further extended.

Mr. Matera was sworn by Mr. McAdam. Mr. Matera testified that there is no family room existing in the house and the purpose of this application is to add more living space.

The addition proposed is to the rear of the home and to the right hand side when looking at the front of the home. Mr. Matera said that there is no infringement into the right hand setback of the property and the proposal is below the floor area ratio and impervious coverage requirements. If approved, the house will be entirely redone including new siding and a new roof. Mr. Matera stated that there will be no additions or modifications to the left hand side of the property. The extension of the porch will match the current setback to the top of the porch.

Ms. Tengi opened the meeting to the public for questions or comments concerning this application. Ted Clark, 45 Oak Street, stated that he is the neighbor to the north. Mr. Clark said that Mr. and Mrs. Matera are wonderful neighbors and he supports the application adding that it will contribute to the aesthetics of the neighborhood. Mr. Clark distributed photos to Board Members of the Matera property taken from the rear of Mr. Clark's property. Mr. McAdam swore in Mr. Clark who said that the Matera home is in a state of disrepair due to a building project that began some years ago that had never been completed. He has been looking at missing gutters, siding, left over building materials, and several cars strewn over the property for the past nine years. Therefore, Mr. Clark asked that an evergreen hedge be planted starting in line with the garage corner going towards the back of the property. He suggested that the hedge be installed prior to the commencement of the building and that it be 6' high and 30' long or more.

Mr. Matera said that he proposes to install landscaping after the building project is completed. Mr. Whitaker stated that the applicant will not commit to a hedge on the side of the property where there is no work being done. There is no basis to impose a condition which has nothing to do with the applicant's request. Mr. Whitaker added that the applicant had a great deal of problems with a contractor who failed to complete work. Mr. Matera said that the house has been in disrepair since 2000 and he has worked with the Building Department on this. Mr. Whitaker indicated that the applicant is willing to install some evergreens along the property line along by the driveway at the edge of the garage to the end of the driveway.

There were no further comments from the public and Ms. Tengi closed the public portion of the meeting.

Mr. Manning made a motion to approve the variance application contingent upon the recommendations made regarding the evergreen barrier. A hardship does exist and, per the Municipal Land Use Law, these improvements outweigh any detriments. Mr. Whitaker suggested arbor vitae be planted from a feasible location, on Mr. Matera's property at the rear of the driveway, running back to beyond the sweep of the driveway at the rear of the garage. Board Members insisted on a year round green screening and Mr. Whitaker said that the applicant would comply. Mr. Whitaker suggested that there be a condition that plantings would be complete prior to the issuance of a Certificate of Occupancy or be bonded if weather does not permit the planting. Board Members agreed and noted that the front yard setback has been changed from 27.55' to the existing first step, plus or minus, and as it exists now. Ms. Hart seconded the motion and the

following members voted aye: Ms. Hart, Ms. Teng, Mr. Redling, Mr. Manning, Ms. Chamberlain and Ms. Weidner.

Peter Aubrey Smith variance application – 88 MacIntyre Lane, Block 1407.01, Lot 19

Mary Scro, stated that she is the architect on this project. Ms. Teng said that she is using the same architect as the applicant for some work she is doing, however, she does not feel this would pose a conflict. Mr. McAdam advised that he does not see a problem or appearance of impropriety in this situation and Board Members, as well as the applicant, were in agreement.

Ms. Scro was sworn by Mr. McAdam. Ms. Scro testified that the applicant proposes an addition to an existing residence and is before the Board because the property is non-compliant in side yard setback. The lot is pie shaped and the existing side yard setback of 24.2 and 25.7 will not be changed. Everything that is being constructed complies with the setbacks for the zone. Ms. Scro stated that a family room and kitchen exists and the applicant proposes an expansion of the kitchen and the addition of a deck to the rear. The adjacent property to the rear is about 210', to the right side is 74'6" and to the left is 52'10". The rear setback is proposed to be 19' closer than what exists at this time. Ms. Scro reiterated that the hardship is that the one side setback is non compliant which is a pre-existing non conformity. Neither of the side setbacks is being changed. The rear setback will change, however, it will remain conforming having 110' where 50' is required.

Ms. Teng opened the meeting to the public for questions or comments concerning this application. No one came forward and Ms. Teng closed the public portion of the meeting.

Ms. Chamberlain made a motion to approve the application stating that this is a de minimus first floor addition of 250 sq. ft. with no encroachment on the side yards. Ms. Hart seconded the motion and the following members voted aye: Ms. Hart, Mr. Teng, Mr. Redling, Mr. Manning, Mr. Chamberlain and Ms. Weidner.

Resolution of memorialization – N. Weinberger

After some discussion, the Board agreed to remove the word "corner" on page three, fifth line down. Ms. Hart made a motion to approve the resolution, as amended, seconded by Ms. Chamberlain. The following members voted aye: Ms. Hart, Ms. Teng, Ms. Chamberlain and Mr. Manning.

The meeting was adjourned at 9:40 P.M., on a motion by Ms. Chamberlain and a second by Mr. Manning.

Respectfully submitted,
Melinda Dorl

