

A Regular Session of the Allendale Planning Board was held in the Municipal Building on September 18, 2008. The meeting was called to order by the Chairman, Mr. Quinn, at 8:15 p.m. The requirements of the Open Public Meetings Act were met by the required postings and notice to publications.

The following members answered roll call: Mr. Quinn, Mayor Barra, Mr. Bernstein, Mr. Fliegel, Mrs. Sheehan, Mr. Sirico and Mr. Yevchak. Mr. Gravina, Mr. Herndon, Mr. Tatosian and Mr. Thomas were absent. Professionals in attendance: Mr. Dunn and Mr. Yakimik.

Minutes for July 1,14,17,29 and August 18 and 21, as corrected, were approved on a motion by Mr. Sirico and seconded by Mr. Yevchak.

Postponed until later in the meeting Minor Subdivision – **Cirquell, LLC**, Block 2103, Lot 25 – 253 Franklin Turnpike Attorney to arrive late.

Minor Subdivision – **Frank Paparozzi, c/o Jamb Builders**, 50 W. Maple Avenue, Block 1003, Lot 7 (for completeness review). William Quinn, owner, and Frank and Gary Paparozzi appearing. Gary Paparozzi , President of G&M Surveyors and a licensed planner testified there are two lots of 1.6 acres that do not require a variance. There are no architectural plans because no building is involved.

Chairman Quinn reminded the applicant that the board had requested a Building Footprint at the 9/15/08 work session and asked if it was done: Gary Paparozzi said that it was not done. Chairman Quinn said he wanted to see what could be put on the property. Mr. Yakimik, Borough Engineer distributed his Completeness Review. Mr. Dunn asked if a variance was required. Mr. Yakimik referred him to Section IV-1 Variances & Waivers where he certified no variances are required but he did require calculations to be provided. G. Paparozzi agreed to provide the calculations. The Engineer said section IV should have a waiver. Mr. Quinn said 270-18 requires a variance and an amended plat.

Engineer said items A-E on pg 2 of 5 pages that the checklist was filled out.

Item 1a-1i still requires simple answers

The only witness was G. Paparozzi but the Engineer advised the board to consider inviting the Borough Planner to hear the applicant's testimony. He asked the steepness of the slopes and Mr. Quinn said this is an important factor on this property. The Engineer volunteered that the borough's baseball bleachers might be encroaching on the applicant's property on the northeast corner. In addition, the Engineer said the sprinklers and soccer boundaries are close to the applicant's property on the west side. Further he recommended waivers for items #43 and #44. He has to determine if the application is complete. Chairman Quinn asked the applicant if he was prepared to comply. G. Paparozzi said he was but that the clerk of the board had refused to give the applicant a list of the names of property owner within two hundred feet. The Chair replied that since there is no variance requested there would not be a required list. He said that a garage and driveway and a driveway and street would require a variance. G. Paparozzi stated they will not submit an application if a variance is required. The Engineer said the most important changes will be to show the land contours. Chairman Quinn asked the applicant if they could comply with the corrections at least two weeks before the next meeting.

Mr. Fliegel said the garage and driveway will need changes and wants to see revised plans and considers the application incomplete. G. Paparozzi restated they will not submit the application if a variance is required. The Engineer stated if the applicant can prove a 2679 square foot building lot or higher than the backyard setback increases.

Mr. Bernstein asked Attorney Dunn if there was any peril in approving the subdivision subject to compliance with the conditions set forth and the attorney advised there was no peril in doing so.

Motion by Mr. Yevchak and seconded by Mr. Bernstein that the application is deemed complete subject to and predicated upon that there are no variances. Roll Call: Unanimous vote.

Mr. Bruce Whittaker, Attorney for **Cirquell, LLC** a Minor Subdivision –, Block 2103, Lot 25 – 253 Franklin Turnpike.

Mr. Sirico recused himself because he has had business with the applicant's attorney.

Mr. Whitaker explained that the intent is to create two new lots: a homestead that keeps the existing home and garage and a new development. The variance requests include pre-existing conditions: height of the garage, height of the existing home, side yard setbacks for a minimal area near an open porch, and the creation of a new lot area less than twenty thousand square feet that requires variances for front yard setback and nonconforming lot width configured to preserve the existing homestead lot.

Mr. Dunn asks for the certification of advertisement from the newspaper publications.

Chairman Quinn asked if this needed a publication certification from the newspapers and was advised it does.

Applicant's first witness is sworn: Tibor Latincics, of Conklin & Associates Professional Address: 29 Church Street, Ramsey, N.J. Planner Licenses #3736 and Civil Engineer License # 3244. Mr. Whitaker asked the board to stipulate to his credentials and there was agreement.

Mr. Latincics identifies his exhibits A1-6 and outlines five concept options before focusing on option number six. Option Six keeps the existing home and its detached garage and the required set back on the original homestead. These conditions decrease the new lot width which requires a variance. However, it keeps the new lot size above the required twenty thousand square feet and consistent with the 175 foot setback from the easement but reduces the lot width to 99.29 square feet requiring a variance. The proposal has the preliminary approval of the Bergen County Planning Board subject to a cash contribution towards road improvements at the intersection of Orchard Street and Franklin Turnpike.

Mr. Latincics summarizes Option Six the required variances for proposed Lot 25.02:

- Total area lot is 24,000 square feet but area within 175 of the easement is 17,374 square feet
- Average lot width is 99.28 square feet
- Separation with side yard setback to the wraparound porch is 22.3 feet
- Roof height of the existing house is 39.8 feet with a height limit of 35 feet.
- Roof height of existing detached garage 23.12 where 21 feet is permitted.

Upon examination by Mr. Whitaker, Mr. Latincics testified that the new subdivision does not exacerbate the preexisting roof height conditions. Further, Exhibit A-1, notes the body of the home is 27 feet and exceeds the setback.

The variance request runs for a distance of twelve feet after the wraparound porch.

Under C-1 of the Municipal Land Use Act sizing of the lot 25.01 adequately accommodates the character of the existing home and garage and the lot is actually twice the required coverage. The new lot proposed is not out of character (A-2) with the neighborhood. The preservation of the classic home serves the intent of the community. Meets the goals of preserving air, light and space and the requirement of bulk setbacks. The twelve foot setback does not inhibit these goals and the balance of the property exceeds the 15 foot setback requirements.

Mr. Whittaker stipulates to the Borough Engineer's report and Mr. Latincics said the applicant can comply. The report recommended new sidewalk construction & applicant agrees even though a county road and the BCPB agrees. There is a county drain line on Lot 24 to the immediate south and he feels any problem can be worked out among the engineers.

Mr. Yakimik, Borough Engineer: references his 9/15 report:

The applicant agrees to comply with majority of the requirements except the drainage issue. For the record, the Borough Code Section 233 states that it is the property owner's responsibility to maintain sidewalks.

For the record, Engineer asks Mr. Latincsis if there are three variances for proposed conditions: setback, width and lot area of new proposed lot and two existing variances for height. Mr. Latincsis responds yes.

Regarding drainage: there is a drainage pipe along south side of property to the site in question. The easement is not identified as a municipal or county drainage line. Engineer wants adequate 18 foot easement to facilitate replacement or repair access. Engineer reports that the Borough is experiencing flooding conditions on Franklin Turnpike. Mr. Yakimik it is prudent to establish easements now.

Mr. Whitaker: applicant agrees to provide easement.

Engineer makes reference to item VI Miscellaneous. The applicant's earlier statement of facts needs to be modified & resubmitted. Mr. Whitaker agrees.

Engineer: Applicant had indicated he was going to have a Planner testify therefore, the Board may want the Borough's Planner to testify.

Mr. Bernstein: is the garage staying? If it does is there a six foot from the property line required. Engineer Yakimik the only variance is height the six feet is the minimum under the Code.

Engineer asked for calculations which are critical for the side yard setbacks.

Mr. Quinn: would you elaborate on what a smaller size house on the new lot means?

Mr. Latincsis: with a maximum size of a house complying with a side yard of fifteen feet side yard it would produce a house seventy feet wide by scale. As a practical matter a two story house will be ten feet narrower. A practical matter if one kept current driveway configuration

with garages at the rear it would be narrower and fit the character of the homes there now and keep existing county curb cuts.

Mr. Fliegel: Is the thirty five foot setback from the curb?

Mr. Latincsics: yes.

Mr. Yakimik: Point of clarification. The Borough code is not necessarily 35 feet so you have to look at existing home setback to determine a greater than thirty five for setback.

Mr. Quinn: I like the concept of keeping the existing house.

Hearing opened to public for questions on the testimony: none.

No other witnesses.

No General Comments from the Board.

General Comments from the public: Mr. Eric Perienti, 251 Franklin Turnpike: asks Board to deny the variance because zoning laws in place to prevent this kind of development where a house will be shoe-horned. Clearly out of character and disruptive and much closer than all the rest of the houses.

Applicant's summation by Mr. Whittaker: Under NJ 40:55D-70c the location of the Lot lines merit variance relief. The benefits include the preservation of this classic home consistent with the borough's master plan. The detriment is simply a smaller lot not inconsistent with the neighborhood street scape.

Mayor Barra: Would the applicant agree to a deed restriction to preserve the home that would prohibit the owner from never tearing the classic home down?

Mr. Whittaker: No

Mr. Bernstein: a deed restriction for ten years?

Mr. Whittaker: No, but the applicant has no objections while applicant is the owner including rehabilitating for his own use but there can be

nothing that would thwart the owner from selling the property. However, the applicant agrees to a restriction while the owner is living there.

Mr. Quinn: I have a letter for testimony.

Mr. Dunn: letter testimony not acceptable because there is no opportunity for cross examination.

A motion by Mr. Barra to approve the application with the stipulation that the house may not be removed while in the possession of the present owners. Second by Mr. Bernstein.

Roll Call: Affirmative Barra, Bernstein, Fliegel, Sheehan, Yevchak, Quinn (Mr. Sirico recused)

10:10 PM Paul Kaufman, Esq. appears for the applicant on the Site Plan – **475 Franklin LLC** – Block 1809, Lot 14.a proposal for 11 Town Homes on 2.87 acre requiring a Use and Density variance under the Townhouse district provisions.

Mr. Kaufman stated he needs to replace his planner Joseph Burgis, because Mr. Burgis's firm has been retained by the Borough of Allendale for other work creating a conflict of interest.

Board Attorney Dunn related that the applicant's attorney notified the board on July 3, 2008 that he did not expect to finish and that he was extending his time for this applicant before the board until the October 16 public hearing and that he does not expect to finish his witnesses tonight. Dunn stated that the engineer especially hired because of a conflict causing the borough's engineer, Mr. Yakimik, to recluse himself had withdrawn because he had not been paid from the applicant's escrow. Mr. Wostbrock outstanding invoices, some over a year old, had not been paid because the escrow had not been replenished. The Borough ordinance requires the escrow be maintained at five thousand dollars. The applicants are appealing the invoices charged to the applicant. Mr. Dunn revealed his invoice was being appealed and he wanted to have his conflict disclosed.

The applicants' attorney took exception to the characterization of the appeal as anything but routine and the exercise of a right of the applicant. He saw

no inability for the borough to review the application and does not consider the status of the board's attorney to be compromised under these circumstances and sees no conflict, no impropriety.

Mr. Dunn said that when the applicant withdrew on July 18, 2007 the application was deemed complete. The Borough's position has been that should the applicant proceed with a public hearing it is only under the condition that the application had to be identical. The essence must be identical to meet site plan requirements. On June 20, 2008 the latest map indicates the relocation of three (3) structures leading to substantial impact and a change in a serious essential step. Mr. Kaufman responded that they had withdrawn without prejudice to enable concerned citizens to buy the property. There had never been an approach by the citizens of Allendale and no offers for purchase. The applicant was essentially refileing the same application and the buildings were moved because of wetlands. The application contains the same exact information with no quantitative changes guaranteeing completeness. Mr. Kaufman said the application contained the same information and the same documents.

Mr. Dunn said number one the map is different and buildings have been relocated. Mr. Kaufman countered that the map is complete. Mr. Dunn said number two without an engineer's review there is no completeness. Mr. Kaufman countered that the obligation to pay the engineer is the Planning Board's obligation. Mr. Dunn responded that without a way to post funds during the applicants appeal there can be no engineer's review. Mr. Kaufman responded that is because of depletion of the escrow account by the municipality. Mayor Barra asked the applicant if they would agree to post the outstanding \$5400 pending the council consideration of the application's appeal. Mr. Kaufman said he would recommend it to his client. Mr. Fliegel asked if the application was complete if there was a question on the check list.

Mr. Fliegel: Can the application proceed if it is not completed? Mr. Dunn said that his concern was that the time runs out on October 2. The attorneys argued over the time allowed for the application. The application agreed to extend the time until October 16. Mr. Quinn said if we do not have an

engineer or planner how do we proceed? Mr. Dunn said when it comes to time limits we need to correct the record: the Borough did not ask for a postponement. In July the applicant failed to notice correctly and in August the applicant gave notice to the resident within 200 feet and then re-advertised. Mayor Barra: we need witnesses: a planner, traffic consultant, hydrologist, and an engineer before we take action. Mr. Kaufman inquired if the Borough had adopted a Fair and Open Process? Mayor Barra and Mr. Dunn both responded that they did not know. Mayor Barra said the governing body would meet the next week.

Mayor moves the appointment of a special board subcommittee consisting of the Mayor, and Planning Board Members Fliegel and Sheehan authorized to proceed to hire an engineer, planner, hydrologist, and a traffic consultant and to meet with the Borough's Land Use Committee and to make a request to augment escrow fees for that purpose. Motion seconded by Mr. Sirico and passed by unanimous voice vote.

Mr. Kaufman asked that the hearing be carried until October 16, 2008 and it was agreed. The Chair announced to the audience there will not be further notice and the announced an October 13 Work Session.

Relative to the proposed **Ordinance No. 08-20** – Amending and supplementing Chapter 270 of the Code pertaining to **Permit and Use Permit** procedure and a review and recommendations of Ordinance No. 08-21 – An Ordinance to amend and supplement Chapter 147 of the Code entitled Land Subdivision and Site Plan Review the Mayor and Mr. Bernstein and Mr. Fliegel and Mr. Quinn will serve as a special subcommittee to meet with the Land Use Committee on September 29 prior to the Mayor and Council meeting on October 6.

Review and recommendation – **Ordinance No. 08-19** – Amending Chapter 270 of the Code entitled “Zoning” pertaining to **swimming pools** Mayor Barra moved the endorsement of the ordinance, seconded by Mr. Yevchak. Motion defeated No – Barra, Yevchak, Quinn, Fliegel Yes- 2: Sheehan, Sirico, Abstentions -1, Bernstein. Planning Board refuses make a recommendation.

Additional discussions as to the reasons: Mr. Quinn said the ordinance was in conflict with the Master Plan on p1.1 Section 1Bb and p.2.6 last paragraph “pools” accessories must be in scale to the property and avoid creating nuisances.

Mr. Fliegel: the proposed ordinance is in conflict with the intent of the Master Plan p.1.2 # 5 Goals and Objectives minimize environmental from development as it relates to wetlands discharge from ‘B’ zone.

Motion by Mr. Fliegel and Seconded by Mr. Sirico that the Board not endorse and recommend the **Swimming Pool Ordinance No. 08-19** Roll call: 4 Yes-Fliegel, Sirico, Sheehan, Quinn and 2 No: Barra, Yevchak , 1 Abstention: Bernstein

Motion to adjourn by Mr. Fliegel and seconded by Mr. Bernstein.  
Unanimous

Meeting adjourned 11:51 PM

Respectfully submitted,

Doug Landau