

February 16, 2009

A Work Session of the Allendale Planning Board was held in the Municipal Building on February 16, 2009. The meeting was called to order at 8:10 P.M. by Mr. Sirico, Vice Chairman. 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. Fliegel, Chief Herndon, Mayor Barra, Mr. Bernstein, Mr. Sirico, Mr. Yevchak and Ms. Sheehan. Mr. Quinn, Mr. Gravina, and Mr. Tatosian were absent this evening.

WORK SESSION

Minutes of Special Meeting of December 29, 2008 and Work and Regular Session of January 15, 2009

Mr. Sirico said that there have been some changes to the minutes and they will be discussed at Thursday night's meeting.

Election of Officers and Appointment of Professionals

Mr. Sirico stated that he would postpone this item until later this evening.

Preliminary and final site plan approval – T. Lajterman/Universal Awards – 1 West Allendale Avenue – Block 1806, Lot 5

Applicant explained that he is proposing to divide the building with a fire proof wall in order to rent it out and put a door in the rear leading out to the parking lot. Looking at the building from the front he stated that the left side is the portion he proposes to rent. This area is 530 sq. ft. and applicant will occupy the remaining 560 sq. ft. of the building with his entrance through the rear. He is not proposing any changes to the exterior of the building other than the door in the rear.

Mr. Yakimik reviewed his letter of February 18th and stated that this is his first review of a site plan under the new zoning code. This application was referred to the Planning Board by the Zoning Official. He determined that this application was worthy of review by the Board under Section 147-70 of the code recently enacted by the Mayor and Council. Mr. Yakimik had discussed this with Mr. Dunn, the Board Attorney, because he did not think this application warranted a full check list analysis even though the code does not distinguish between different levels of site plan review. The section of the code he referred to states "review or site plan review" and he looked at it from the stand point of issues that would interest the Planning Board. He did not ask for detailed contours of the site, topography or things that did not affect the improvements proposed by the applicant. He suggested a refinement of the code which would deal with this type of

situation or a distinction between a minor and major site plan. Mr. Yakimik said that to burden this applicant with a full site plan review would be unwarranted.

Mr. Dunn pointed out that the revised code does not make a change in permit procedure in cases like this where there is no substantive change in the onsite construction specifically for increase in square footage. The amended code stated that cases would be referred to the Planning Board where the application could impact upon a prescribed list of site plan considerations for the Planning Board as to whether or not it can be addressed informally through appropriate modifications to the plan or would it require a formal site plan review. All of the items in the check list would be required in the case of a site plan review unless a waiver is sought. Mr. Dunn said that the Board must determine if it is important to have a public hearing to gain input on the impact of a site.

Mr. Yakimik said that he reviewed checklist items of importance to this application. He said that he does not have an affidavit of ownership which is a checklist item. He said he was not sure if property owners within 200 ft. are required to be notified of this case. Mr. Dunn said that the Planning Board must decide if this rises to the level of a full site plan. The Zoning Table should show the required data with the code and this only shows the proposed data. The review of the C-1 zone did not find any variances or pre-existing variances. Mr. Yakimik said that the property fronts on a County road and an application is required to be made to the Bergen County Planning Board. Section 147-10B of the Borough Code requires more information on the precise use of the tenant rental space and an amended plan will be required before the CO is issued at the time a specific tenant is proposed for the space. Mr. Yakimik said that for parking purposes he has assumed that the tenant will be retail. He asked for the dimensions of existing driveway openings, parking spaces, aisle widths, sidewalk widths, and barrier free access for the building.

Mr. Yakimik concluded that the only issue he sees with the application is whether or not there is adequate parking on the site. He views this as tenant dependant to some extent and he reiterated that when the actual tenant and use is proposed they will have to come back to the Construction Official, Zoning Official or the Planning Board for evaluation.

Mr. Yakimik said that he would like to see the type of existing outdoor illumination shown on the plan. He would have the Board determine whether they want to have jurisdiction over the signs or leave it to the Construction Code Official or Zoning Official.

Mr. Yakimik said that a technical review found a discrepancy in the lot number and the official tax map shows this as Lot 5. It was noted that the parking area is shared by Lot 4 to the left and Lot 5 to the right. Applicant was asked to provide any lease easement or access agreement between themselves and adjacent Lot 4 regarding parking since it is obvious that the two lots share parking. Applicant's architect notes that 13 offsite parking spaces are required for the existing site. As a result of the subdivision of the building another six parking spaces have to be accounted for and these are presumably on Lot 4. The Board needs to see the location of these other parking spaces as well as the use of Lot 4 and what parking spaces are generated by Lot 4.

Applicant stated that he shares the parking lot with the dry cleaner and he didn't think he needed a written agreement with the owner. The parking lot for the dry cleaners is at the back of the lot but he has the right of way to drive on this property to get to the parking lot. The driveway was set up on the dry cleaner's property with the idea that they could both use the driveway. They have not been able to locate the paperwork to support this but it appears that it was allowed. Mr. Yakimik pointed out that the tax map shows an easement running along Lot 4.

Mr. Yakimik stated that there were several trip hazards at the site that need to be corrected. There is a hose leading from the basement discharging out into the parking lot and he recommended connecting this underground to the inlet so that it doesn't cause icing problems in the parking lot. There are no proposals regarding signs and Mr. Yakimik again said the Board must decide if it is their decision or the decision of the Construction Official.

Mr. Yakimik was asked about the structural implications of the demolition of the walls. Mr. Yakimik said that this is the purview of the Construction Code Official. Upon further questioning, the applicant said that each tenant space will have its own bathroom.

The applicant observed that there seems to be an abundance of requirements for this small application. He didn't think it was necessary to contact the property owners because they are not affecting them since nothing is being done to the exterior of the building. Mr. Dunn said that there are site plan considerations that relate to the property and the neighborhood. The Board must decide whether there is an impact on external considerations that the engineer has mentioned. Mr. Dunn said that the Board must make sure that they are dealing with the applications objectively with the implementation of the new code. This application must be reviewed in the area of site plan considerations to determine whether or not the application should be referred back to the Construction Code Official subject to items of minor impact, or whether the impact is important enough to require a full site plan review. If that is the case, the application will require a public hearing and notification of the property owners and this determination will be made by the Board on Thursday night. The Board could decide to let the Construction Official handle it with Board recommendations. If the Board determines that this application requires site plan approval they cannot act on Thursday night because of the issue of notification to the property owners.

Mayor Barra asked Mr. Yakimik to look at the parking areas and advise if there is adequate parking for the dry cleaner and advise whether the thirteen spots allocated to the property in question are also adequate. He said this seems to be a simple review and parking is the key to this application. He said that he doesn't want to put business people through an unnecessary process if not appropriate. Mr. Dunn was asked to review the ordinance again to ensure that a waiver of full site plan review is allowed under the revised ordinance. Mr. Bernstein said that Board Members need to understand what they should be looking at in order to apply the same criteria to all applicants. Mr. Dunn said that he will review the list of items or site plan considerations used by the Construction

Code Official to determine adverse impact. Mr. Bernstein recalled that when the ordinance was drafted and discussed the idea was to err on the side of caution with the understanding that the Board wanted to be apprised of the application and could send them back to the Construction Code Official at their discretion and now “discretion” needs to be clarified.

Ms. Sheehan asked whether the applicant had a tenant for the space and the applicant said he wanted to get the necessary approvals before looking for a tenant. Ms. Sheehan asked if this application would come back to the Board once the applicant finds a tenant. The ordinance reads that any change in traffic pattern would trigger another application, again, at the discretion of the Construction Official. Mr. Yakimik reiterated that his report notes a section of the code which states that an unspecified tenant is cause for another review. Mr. Dunn said he would hesitate to state that a permitted use would trigger a site plan review and the ordinance normally refers to an increase or decrease in square footage. Mr. Yakimik indicated that the resolution should state whether the space could be used for office or retail and this way the Construction Code Official would know whether or not to send this back to the Board. Mr. Dunn stated that the Certificate of Occupancy would trigger the same considerations.

Mr. Dunn will prepare a memo stating that this application should be directed to the Construction Code Official. Mr. Yakimik said he will prepare a more detailed parking analysis. The Board will then make their determination.

Discussion – (Work Session) – Procedure Review – Allendale Eats, 101 W. Allendale Ave., Block 1807, Lot 9

Bruce Whitaker, stated that he is representing D&K Adventures, LLC, doing business as Allendale Eats. Allendale Eats has leased 101 West Allendale Avenue and have a demolition permit for the building in order to renovate the inside. No expansion of the footprint of the building is planned. They want to create a delicatessen and catering business along with a luncheonette with a maximum of 20 seats. They have applied for a zoning permit and Mr. Wittekind has indicated in his report that the tenant intends to have tables and chairs which would change the intensity of the use and therefore could impact parking. Mr. Whitaker said that he has reviewed the ordinance and anticipates problems. He indicated that some towns have included a “Waiver of Site Plan” in their ordinances which states that there if there is no real change, site plan review will be waived under certain circumstances. Mr. Dunn said that a lot of requirements have been eliminated in the new ordinance. Mr. Dunn pointed out that the basis of this referral by the Construction Code Official is that a Certificate of Occupancy or Continuing Certificate of Occupancy is required. There is no increase in square footage, however, a luncheonette facility may have some impact.

Mr. Whitaker said that the use is permitted and the change to the activity inside the premises is minor. There is a small counter space and twenty chairs with some tables. Mayor Barra stated that there are a number of establishments similar to this one downtown and there is not enough parking between 12 P.M and 1 P.M. in Allendale.

Having a place to sit in this potential luncheonette means that people will linger and exacerbate the parking issue. He has suggested that the New Jersey Transit parking lot be opened up during certain times of the day. The parking problems downtown means that people who have to drive around too long will find somewhere else to go.

Mr. Whitaker said that his clients are committed to this business and these 20 seats are not going to be the money making part of this business. Mr. Dunn said that this is a permitted use and the issue is parking. This site has no parking and there will be some impact on the parking requirement. Mr. Whitaker stated that the plan for 6 tables with 2 chairs per table and 8 counter seats was presented to Mr. Wittekind. There is no per seat parking requirement contained in the zoning ordinance and the Construction Code Official has referred this to the Board probably because he feels more parking is required. There is a question of whether or not a variance is needed since there is no existing parking.

Mr. Whitaker stated that the code reads that this is what has to be considered when there is “a change in use, change in ownership or change in occupancy where under the zoning ordinance a greater number of parking spaces would be required”. Mr. Whitaker pointed out that he could not go to the Board of Adjustment for relief because he is complying with what has always existed there and there are no criteria to use. This type of issue will continue to surface until the code is changed. The type of review that was used in the past called use permits came to the Board for review. The Board could make comments on things like parking and traffic, however, they rarely ever denied a use permit. This type of review and recommendation should take place in this case and should be sent back to the Construction Official before a Certificate of Compliance could be issued.

Mr. Whitaker noted that very few of the businesses on West Allendale Avenue comply with the parking requirements. The business is proposed to be opened from 6 A.M. to 6 P.M., seven days a week. Weekend hours will be shorter than weekday hours. There is an area in the rear of the building for deliveries.

Mayor Barra reiterated his parking concerns, however, he noted that the Board doesn't have the authority to deny this business from coming in because it is a permitted use. There are similar types of business on the main street facing the same problem. Mr. Dunn stated that this is a Certificate of Compliance review and there is a list of items that could be adversely impacted and the Board needs to determine whether there is any substantive change by virtue of this application that would bring it to the level of a site plan. Mr. Fliegel thought that the Board should ask questions but there doesn't seem to be much that can be done to remedy the problems that everyone has on West Allendale Avenue. He added that this appears to be the first Certificate of Compliance review and Mr. Dunn said he would be addressing this more thoroughly between now and Thursday night. He will also discuss this further with Mr. Whitaker who seems to be knowledgeable on the subject. This must be addressed by the specific list of criteria or through the Zoning Ordinance to the extent that this is a change in use that would require additional parking standards, however, this does not appear to be the case here.

Mr. Whitaker was asked about improvements to the premises. The applicants explained that they have gutted the entire inside and have redone all the girders in the basement. There was a partially finished construction project on the second floor which is being completed. The walls and ceiling are being redone and new counters, new floors, new windows and a new tin ceiling are proposed.

Mr. Dunn said that the Board will make a determination regarding site plan review on Thursday.

Discussion – The Whitney – Block 2101, Lots 1, 2, 3, 5, 6, 7, & 8 – Chestnut Street – Possible revisions to site plan along N.J. Transit

Mr. Yakimik stated that The Whitney has proposed several changes to the approved site. The Board had originally approved the removal of trees and the construction of a retaining wall with a 4' high board on board fence along a stretch of property owned by New Jersey Transit. The installation of a mixture of dense layer of conifer trees 13' to 16' high was also proposed to be planted along the entire stretch. The applicant is now proposing that the thin line of deciduous trees remain as a buffer, the elimination of the retaining wall and do some re-grading. As a result of the re-grading the contours will minimally change and there would be a buffer with some cypress. Mr. Yakimik advised the applicant that the Board needs to see a landscaping plan to show the proposed buffer. He added that the board on board fence remains and it appears that the applicant wants to cut costs.

Mr. Dunn was asked if this falls under Planning Board or Council jurisdiction because it is a change to the Developer's Agreement. Mr. Dunn stated that a change to the Developer's Agreement is under the purview of the Borough but this seems to be a change in the plat which would involve coming back to the Board for amended site plan approval. Any modification of the plan will require a change to the Developer's Agreement regarding bonding, etc. Mr. Dunn stated that Mr. Yakimik will make the determination of whether or not this is a site plan modification. He added that it is not uncommon where there is a change of ownership that the new owner finds things they want revised. Mr. Yakimik said he would contact the applicant and advise that the Board feels that these revisions make it necessary to return to the Board for consideration.

Mr. Yakimik said that the original proposal was to install the sanitary sewer line as iron pipe and they have requested that this be changed to PVC pipe. The PVC pipe they have described is not accepted but the schedule SDR 35 pipe is the industry standard. The cost savings for the developer would be 50% to 60% if PVC pipe were used. Using the originally proposed pipe is probably overkill, however, it was part of the original approved proposal.

Mayor Barra said that there are several important issues at play here. The applicant has filed an objection to the COAH plan and the street needs to be installed at a cost of over \$2 million. The Borough must now file an objection to COAH regarding the applicant's

objection. They do not want to come before the Planning Board again regarding densities for affordable housing and Mayor Barra stressed consistency on all sides.

Mr. Yakimik stated that the Developer's Agreement and the timetable for constructing all onsite improvements expires in April 2009. Mr. Dunn said that the applicant will have to come before the Mayor and Council for an extension. Mayor Barra noted that part of the Developer's Agreement is the COAH Regional Contribution Agreement (RCA). He asked if this would have to be re-negotiated and Mr. Dunn said he has discussed this issue with Dave Bole because, not only is the Developer's Agreement involved in this case, it was the subject of the mediation agreement with COAH on this particular site that dealt specifically with the requirement that there would be an RCA that would address the number of units here. This was a give and take which resulted in an agreement that cannot be tossed aside by the rule making capacity of the same state agency that initially approved this process.

Mayor Barra said that if the Borough and the developer can't come to an agreement regarding the RCA would the entire Developer's Agreement be void or just that particular section. Mr. Dunn said that it would go to mediation before COAH to resolve this one issue contained in the Developer's Agreement.

Mr. Yakimik read from the Developer's Agreement stating that it "provides that the developer may request an extension of the term for completion of improvements for periods not exceeding a total extension of an additional 24 months and such extensions shall not be unreasonably withheld by the Borough." This covers all bonded improvements within the site. Mr. Dunn said that a discussion is required given the extension and the significant value requirements the applicant is faced with. The Board agreed that the developer wants to save money especially in this economic environment.

After further discussion, Board Members agreed that these are significant changes and the applicant needs to come before the Planning Board. Mr. Yakimik said that all the developer has to do is install the road. None of the buildings have to be built, however, they have submitted a plot plan for Building 20 which they are anxious to build to use as a model. He has discussed this with Mr. Wittekind who agrees that no approvals will be given to a building until the infrastructure leading up to this building is in place.

Status of CO referrals to Planning Board since revision of Use Permit Ordinance

The Board has been discussing this tonight in connection with earlier applications. Mr. Fliegel said that Peachy Keen Kids, a children's furniture store, has moved into the space that was formally Kathy's Hang Ups. There was a question of how deliveries will be staged and how this will impact traffic. This application did not come to the Planning Board because it was a use permit, however, it would have been before the Board prior to the new ordinance. Mr. Fliegel said that in the past the Board would have questioned the applicant specifically about unloading shipments and if there was sufficient room to unload. The parking lot for this group of stores which includes the nail salon always seems to be full and Mayor Barra noted that this raises the parking issue again. Mr.

Fliegel stated that in the use permit review process they never had the authority to deny anyone a permit, but they could ask questions and get the applicant on the record. Mr. Dunn noted that this is a work in progress and Mr. Fliegel said that in reviewing the new ordinance he understood that everything would still come to the Planning Board and only things such as changes of ownership would not come to the Board. There was a concern that too much power was being given to the Construction Code Official and this could be a specific example because this wasn't a simple change of ownership.

Mr. Dunn asked if Mr. Fliegel wants the Planning Board to be part of the review process or does he want the Board to simply be made aware of these applications. Mr. Fliegel said there is nothing in the ordinance that says the Planning Board will get copies of anything other than what is referred to the Board. The ordinance also states that everything that changes will be referred to the Board such as signage and in this case the sign changed. The Board must ensure that the Construction Code Official is applying the ordinance correctly and John Wittekind seems to be confused regarding the Certificate of Compliance. Mayor Barra indicated that there may need to be a period of time where this ordinance needs to work its way through. Mr. Fliegel agreed and suggested that Mr. Wittekind attend work session meetings to understand what the Board is grappling with. Mayor Barra stated that Mr. Wittekind should review this with the Land Use Committee and he said he also wanted to know how many Use Permit Ordinance requests have come up since the new ordinance took effect.

Mayor Barra asked how reviewing the applications is going to give Board Members all the information. Mr. Sirico said he recognizes that there is some confusion here, however, the pressing issue is whether or not the ordinance is being properly enforced. The Mayor reiterated that there must be a meeting between Mr. Wittekind and the Land Use Committee and he recommended that several members of the Planning Board also attend.

Update on A&P Center renovation/construction plan

Mr. Yakimik stated that the developer is anxious to begin construction on the site. All the provisions required by the Planning Board have been incorporated and Mr. Yakimik has now signed off on the plans. He instructed the developer to send him the Mylar which he will sign this week. He is reviewing the Performance Bond Estimate and has several questions for the developer's engineer. He expects this to be finalized this week and the amount for site improvement is in the area of \$850,000 to \$900,000 . When the bond is posted by the developer, the Planning Board can sign the plat and construction can begin. The developer has been asked to schedule a pre-construction meeting with himself, the Mayor and the Police Department, however, he has not heard back from him. The anticipated start date is March 1st, however, Mr. Yakimik feels that a more realistic start date would be around the middle of the month.

Mr. Fliegel asked if the questions surrounding the retaining wall have been resolved. Mr. Yakimik said that this is a bonded item which has not been resolved. The issue is permission from Rockland Electric to replace the wall because part of the wall is on their

property. Mr. Yakimik stated that he has told the developer that he can start construction elsewhere on the site but this issue has to be resolved before final certification is issued that all improvements have been made. Mayor Barra said that the developer has gone out to bid and Mr. Yakimik said that he had received full architectural plans last week.

Status of Housing Element and Master Plan

Mayor Barra stated that the COAH plan has not gone through the review process or the objection period which ends on March 1st. Mr. Sneikus, the Borough Planner, has presented the historic element to the Council and this will go forward.

Mayor Barra reported that a Phase One has been done on Foreit and he expects a report tomorrow containing recommendations.. He said that if they exercise an option they must make sure there are no problems in light of the fact that the site had housed a car dealership in the past. Certifications for tank removal are in order.

Mr. Dunn asked if they want to do an offsite again this year. He suggested that they review which parts of the Master Plan need to be completed, the time table and how they are going to progress towards that because they need to set aside funding for the Planner. Mayor Barra said they had some money left over from last year and that combined with this year's allocation it should be enough to cover the cost of the Planner's work on the Master Plan.

On a motion by Mr. Herndon, seconded by Mr. Fliegel, the meeting adjourned at 11:15 p.m.

Respectfully submitted,

Melinda Dorl