

February 19, 2009

A regular meeting of the Allendale Planning Board was held in the Municipal Building on February 19, 2009. The meeting was called to order at 8:10 p.m. by Chairman Quinn, who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following members answered roll call: Mr. Quinn, Mr. Herndon, Mr. Barra, Mr. Bernstein, Mr. Sirico and Mr. Yevchak. Mr. Fliegel arrived at 8:30 p.m. Mr. Gravina and Mr. Tatosian were absent. Also present was Mr. Dunn, Board Attorney.

Mr. Herndon moved, seconded by Mr. Sirico, to approve the minutes of the special meeting of December 29, 2008 and the regular session of January 15, 2009. On roll call, Mr. Barra abstained with regard to the January 15th minutes and Mr. Sirico abstained with regard to the December 29th minutes. All other Board members present voted in favor.

Mr. Quinn announced that the Election of Officers will be postponed until later in the meeting.

Preliminary and Final Site Plan Approval – T. Lajterman, 1 W. Allendale Ave., Block 1806, Lot 5

Mr. Lajterman and Mr. Kiiru, his architect, were sworn.

Mr. Lajterman said he would like to divide his store in half with a door in the back for the second entrance. The new tenant will get the existing entrance.

Mr. Quinn noted that the Tax Office has advised that the taxes on this property are paid through the first quarter of 2009.

At the work session, the Board had an opportunity to look at what was approved in 1990 for the existing business that is there today. They had many questions relative to the parking and questions on the survey. Mr. Herndon said when this was approved in 1990 the applicant had possession of both buildings but since then the building behind which is the cleaners has been sold. Applicant advises there are 13 parking spots. The spots in the lower corner are double or stacking spots and they could be for employees. Mr. Lajterman said he is not going to have a tenant who will be taking up a lot of the spaces. Secondly, the rental space is less than 600 square feet so his choices for a tenant are cut down.

Nicole Shapiro, PE, from Dewberry was present to testify in regard to the Borough Engineer's report dated February 18, 2009. She said that originally when they looked at the area they concluded that 7 parking spaces would fit on the site using the 10 x 20 spaces required by ordinance. Since then, Mr. Yakimik found the site plan approved in 1990 when the parking calculations that were considered were based on both lots 4 and 5, requiring 2 handicapped stalls and 27 parking spaces, but 22 spaces with 2 handicapped

stalls were provided based on variances granted at that time. They took that information and developed a new report as indicated in their letter of February 18th.

Ms. Shapiro said the approved site plan associated with the 1990 application that encompasses lots 4 and 5 was reviewed in the field by her office. The 1990 site plan was found to be in conformance with the current basic parking facility. Therefore, the applicant should submit copies of the 1990 site plan as part of his current application. The applicant has indicated that no utility, access or lease easement terms exist between lots 4 and 5.

Section 5 of the February 18 letter goes through the parking criteria that was set back in 1990 and the variances that were accepted at that time. A review of the current parking requirements under Section 270-43 of the Code and the Americans with Disabilities Act (ADA) indicates that the required parking demand for lots 4 and 5 will be 27 - 10 x 20 spaces with two adjacent 12 x 20 spaces designated as barrier free and van accessible. The current ADA regulations have been updated since 1990 so they allow for a space next to the handicapped parking space for van accessibility. By updating the site plan to include that space there would be a reduction in the parking on site. Mr. Yakimik suggests that the applicant submit another plan with the entire parking of lots 4 and 5 to show that they could provide that van accessible space.

Mr. Lajterman said he is not in agreement that he should provide such a plan because it would be too costly. The reason he is putting up this wall to divide the space is because of the financial hardship he is currently going through. He said he does not have a problem with putting in a handicapped parking space and both he and Ivy League Cleaners share the parking area.

Mr. Kiiru said Mr. Lajterman no longer is owner of lot 4. He asked if it is still necessary to look at the two lots.

Ms. Shapiro said the owner of lot 5 should enter into a formal driveway and parking lot usage agreement with the owner of lot 4. If the Board approves the continued use of the stacked parking stalls, they should be signed as "employee only" spaces. The parking lot spaces should be re-striped in accordance with the decision of the board and Federal regulations regarding barrier-free spaces. She added that there are currently no depressed curbs and ramps for handicapped accessibility to the building and the leaning no-left turn sign to the east of the driveway should be reset to be plumb and rigid.

Mr. Yakimik's letter indicates that the Chief Financial Officer reports that the required performance guarantee or any associated maintenance guarantee under the 1990 approval is no longer posted with her office. The letter also indicates that Condition 14 of the Developer's Agreement requires that the applicant submit as-built plans of the site improvement to the Borough Engineer and that there is no known record of the receipt of the as-built plans by the Borough. A certified as-built plan in accordance with the Developer's Agreement should be prepared by the applicant and submitted for the Borough's records.

The February 18 letter further indicates that the following items should be installed by the applicant as depicted on the 1990 site plan: "Resident only" parking signs for 2 spaces at the rear of the building on lot 4; planting of 6 ft. high arborvitae along the rear and side property lines adjacent to residential lots; and the installation of a fenced 10' x 10' area at the southeast corner of lot 4 with concrete surface slab as trash and recycling receptacle area. A Board member pointed out that these are not the same circumstances or the same tract at this point. Mr. Dunn commented that is not to say that the requirements are not still valid, but the Developer's Agreement would have expired. These requirements may be of interest to the board in the approval of this application but they are not binding requirements nor site plan requirements set forth specifically on this applicant at this time. He added that the one overriding issue now and apparently then is basically the parking.

Ms. Shapiro said the required parking spaces for this lot is supposed to be 13 with one of them being handicap accessible. With the new ADA requirement for the additional van accessible space that might mean 12 spaces.

The Board asked if the waste receptacle area is required for a lot of this size. Ms. Shapiro said the dumpster for the trash is actually on the dry cleaner's property.

Ms. Shapiro said she noticed on the architectural plans that the access to the back of the building is stairs and that access would have to be brought up to ADA compliance. Mr. Kiiru said that unfortunately the way the building is oriented there is not that much space to put a handicap ramp. He suggested a wheel chair lift in lieu of the ramp but it might become tricky because of the area of the stackable parking.

Mr. Barra commented that the 1990 plan shows two lanes entering the property, one in and one out and the property line seems to be in the middle of the driveway. He would have thought there had been some kind of easement set forth in the deeds when the property was transferred. Mr. Lajterman said his oldest brother actually handled the sale of the property. The dry cleaners actually rented the property and decided to buy the building. A lot was done on the basis of a hand shake. Mr. Barra suggested that Mr. Lajterman refer to his deed and also check with the owner of lot 4. Mr. Lajterman said he has owned the property at 1 West Allendale Avenue since 2001. The property was sold to Ivy League Cleaners prior to that.

Mr. Bernstein said the Mayor's point is whether there was already an agreement in place letting the owner of lot 5 utilize lot 4, and the issue is what to do about the parking. Mr. Quinn asked if Mr. Lajterman is willing to enter into such an agreement. Mr. Lajterman said he does not have a problem with that. Mayor Barra suggested that if it is not in the deeds, this issue should be resolved before one of the owners decides to sell.

Mayor Barra asked if it is this Board's purview to advise or compel the applicant to enter into an agreement. It seems the Board's jurisdiction is to make sure there is adequate parking and that there is compliance with ADA requirements, etc. Mr. Dunn said third

party agreements are tricky, and about 30-35 years ago there was a case in Allendale where the Board required the applicant to secure from a downstream property owner an agreement to allow cleaning of the brook and the Court set that aside, so it might be difficult to sustain any such requirement.

Mr. Bernstein asked if lot 5 needs parking spaces from lot 4 in order to satisfy its requirements. He added that the Board can't answer the rest of the questions or figure out what the criteria is until that question is answered. Ms. Shapiro said Universal Awards does not rely on the cleaners to provide parking. She cannot recall the square footage of the cleaners and what was required back then, but the number of spaces was 29 total combined.

Mr. Kiiru said the applicant will agree to the signage "for employees only" on the stacked parking. He will look into the matter of the egress with a title search or he will enter into an agreement with the other property owner.

Ms. Shapiro said the retail parking requirement is one space for 100 sq. ft. Mr. Dunn said that would require 11-1/2 – 12 spaces for 1150 sq. ft. and they are providing 13 of which 3 are stacked and they will lose one space for the ADA space.

Mr. Barra said the Board's mandate is that the applicant to comply with ADA but how they do it is really up to the applicant. The applicant has to comply with the rest of the Borough's codes and the ADA requirements. He does not want the Board to start designing this project.

Mr. Herndon said in regard to the ingress and egress, because there is a change in this application from the first time it was approved, it would seem to be in the Board's best interests to insure that the circulation and the traffic flow is proper and make that a condition of approval.

Mr. Barra said they could maintain the same ingress and egress as presently exists and let the two owners work that out between them.

Mr. Kiiru said basically the applicant is putting up a fire-rated wall to make two spaces. They will share the basement so there will be a shared stairwell. The Board asked if there is a requirement for a handicapped bathroom for this size property. Ms. Shapiro said she does not believe so.

Mr. Bernstein asked about the question of notice. Mr. Dunn said there needs to be a procedure in place for these applications. There was a procedure under the old use permit ordinance where public notice was required in some zones. Under the Municipal Land Use Act there is a procedure for notice to be given in the case of site plans. Basically, it is necessary to advertise notice of hearing at least 10 days beforehand and also send notice to property owners within 200 ft. The new procedure allows a referral to the Planning Board for review or for a determination of whether the full site plan is required or a referral back to the Construction Code Office with recommendations. It does not

provide for notice of public hearing. In this case the applicant paid the site plan fees and in fact posted an escrow so the applicant has invoked the Land Use Act in this case. That procedure allows for a major and minor site plan approval. This Borough does not have a minor site plan procedure. It has just the major site plan approval procedure which requires notice to the public for public hearing but that is not the case where there is less acreage and less square footage of development, and as in this case there is really no off tract improvements. While this would meet the requirements of a minor site plan he believes the Board can waive the requirements.

Mr. Barra asked if the applicant could tonight on the record say that he wishes to waive his application for a site plan and ask the Board to consider this as a Construction Code Official referral.

Mr. Dunn said he believes the Construction Code Official felt this application could impact parking and therefore he referred the applicant to the Planning Board Secretary and that is the reason these procedures need to be defined. He said it would be in the best interests of the applicant to withdraw the application and treat it as a referral to the Board for evaluation. If he withdraws it would have to be with the agreement that he submitted the fees with a reliance on these reports. He submitted an escrow and the engineer has asked for additional escrow because of his research and evaluation.

Mr. Lajterman said he would just like to build this partition. Mr. Dunn said the application can be amended to be simply presented to the Board based upon what he understands was the Construction Code Official's referral to the Board and the Board can refer it back to him with its recommendations. There is no additional square footage and no off tract improvements so it would be in the category of a minor site plan.

Mr. Fliegel moved to deem this application as not rising to the level of a major site plan approval and deem it to be a referral back to the Construction Code Official with recommendations as follows: That the applicant comply with the ADA requirements for this size structure; that 12 parking spaces are designated, one being a handicap space; that the first row of stacked parking be designated for employee only parking; that the no left turn sign be repositioned to be plumb and rigid; and that the parking be restriped and posting of additional escrow of \$750. Motion seconded by Mr. Herndon. On roll call, all Board members present voted in favor.

Authorization for Defense – 475 Franklin, LLC

Mr. Dunn said the Board has been served with a complaint filed in the Superior Court by 475 Franklin, LLC. The Board needs to defend its resolution and another party to the matter is Gwen McCarthy, because she is the designated Administrative Officer of the Borough. Under the Land Use Act there is a provision that if the Board failed to act within time allotted to it, the applicant can demand that the Administrative Officer of the Borough sign a certification of approval of the application because the Board did not act in time. Such a certification was sent to Mrs. McCarthy who properly rejected it, and he has brought the action against her as well. Mr. Dunn will defend both the Board and Mrs. McCarthy in this action.

Resolution of the Planning Board authorizing Mr. Dunn to undertake the defense of the Planning Board and the Borough Clerk in this action was introduced by Mr. Fliegel and seconded by Mr. Bernstein. On roll call, all Planning Board members present voted in favor. (Resolution attached and made part of these minutes.)

Procedure Review – Allendale Eats, 101 W. Allendale Ave., Block 1807, Lot 9.

This matter was referred to the Board for review and recommendation by the Construction Code Official under the new Certificate of Compliance procedure and was discussed at length at Monday's work session. The discussion revolved mainly around the fact that there is really no parking on site other than street parking and that is the same condition that applies to all of the businesses on Allendale Avenue. The Board concluded that there is nothing in the ordinance that specifically states a formula for number of tables. There were no specific recommendations for the applicant other than the fact that they should be aware that parking is tight and obviously there are a number of competing businesses that will be open during the same hours and competing for the same breakfast and lunch crowd. The Board concluded that this matter should be referred back to the Construction Code Official with the comment that it has been reviewed by the Board with no specific recommendations.

Mr. Dunn said on Monday the Board determined that it does not have a different standard for parking between the restaurant use or any other retail use so there is no legal differentiation for the parking requirement.

The applicant indicated that they do have a parking lot behind the building for all of the tenants in the building plus room for deliveries to them and to the liquor store. The delivery trucks would not be blocking the main road or the side road that goes in and out to the commuter parking lot.

Mr. Quinn noted for the record that taxes have been paid through the first quarter on this property.

Mr. Fliegel moved to refer this matter back to the Construction Code Official without further site plan review for processing in accordance with the code. Motion seconded by Mr. Sirico. On roll call, Mr. Quinn abstained since he was not present at the discussion on Monday. All other Planning Board members present voted in favor.

Mr. Quinn said it is evident that there is need for clarification on the status of certificate of occupancy referrals to the Planning Board since revision of the use permit ordinance.

Mr. Fliegel said this was discussed to a great extent on Monday. It was decided that he would attend the next meeting of the Land Use Committee on March 10 at 8:15 a.m. for discussion of this subject with the Committee. Mr. Bernstein said the Council, the Planning Board and the Land Use Committee all want to make sure that everyone is aware of the procedure and that the Construction Code Official and the Planning Board

are working together in a synchronized fashion. Mr. Fliegel is going to attend the meeting to determine if enactment of another ordinance is necessary.

Mr. Dunn said he will draft some thoughts for discussion at that meeting.

Update on A & P Center Renovation/Construction Plan

Mayor Barra said they plan to start work on this project shortly. There is going to be a pre-construction meeting but it cannot be set up because they do not have their contractor yet. He recently met with Mr. Azarian and he seemed to be very satisfied that our engineer and his engineer are moving in tandem to get this project done quickly. Mr. Azarian wanted to change some of the plans; however, the Mayor told him that the Planning Board put a lot of time and effort into this project so this will have to be a group decision. Mr. Azarian wants to save some money by not milling and paving the entire parking lot. The Mayor advised him that this is an engineering issue and the Board will look to Mr. Yakimik's recommendation. The original plan had pavers throughout the walkway area. They want to leave the pavers on the walkways from DeMercurio Drive to the stores. In front of the stores they want to do concrete instead of pavers because the A & P sidewalk is concrete. Lighting was discussed and apparently there is an issue with the lighting and a separate meter. Another big item is that he wants to change the lights since there are over 30 of them and they are very expensive. His proposal is to do the first row of lights in the same type that the Borough has closest to DeMercurio but to change the others to a similar type but less expensive fixture. Mr. Azarian said he is looking at a savings of a quarter of a million dollars. His original estimate for the project was 1.5 million. The new estimate is 2.5 million. Mr. Azarian feels if he can cut the costs down by \$250,000 it will help him a great deal and he is hoping to start construction on or about the 16th of March with a deadline of November 1.

Mr. Fliegel said the Planning Board has spent a lot of time on this project and especially the lighting and even though these are hard economic times, the project has to be done correctly. He feels the lighting has to come back to the Board if there is any change. Mayor Barra said he believes the sidewalk issue should also come back to the Board.

Status of Housing Element of Master Plan

Mr. Dunn said this was discussed on Monday and there are some things that need to be changed. He said there is no question that the Borough enacted its housing element as part of the master plan in December. Right now the Borough is waiting to hear information with regard to public hearings. Mayor Barra said Garden Homes, developer of the Whitney, has objected to the Borough's COAH plan. Garden Homes wrote a letter indicating they want to change the type of pipe and they want to change the landscaping. Tomorrow morning they are meeting with Borough representatives at 11 a.m. The bottom line with the housing element is the date for objecting expires March 1.

Election of Officers

Mr. Herndon moved, seconded by Mr. Yevchak, to continue with the same slate of officers as follows:

Mr. Quinn – Chairman

Mr. Sirico – Vice Chairman
Mrs. Sheehan – Secretary
On roll call, all members present voted in favor.

Mr. Barra moved, seconded by Mr. Yevchak, to appoint the following professionals:
Timothy Dunn, II as Planning Board Attorney
John Yakimik of Dewberry as Planning Board Engineer
Edward Snieckus of Burgis Associates as Planner
On roll call, all members present voted in favor.

On a motion by Mr. Sirico, seconded by Mr. Yevchak, the meeting adjourned at 10:20 p.m.

Respectfully submitted,

Barbara Knapp
Recording Secretary