

April 16, 2009

A regular meeting of the Allendale Planning Board was held in the Municipal Building on April 16, 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 have been met by the required posting and notice to publications. Note: A Work Session was not held in April.

The following members answered roll call: Mr. Bernstein, Mr. Herndon, Mr. Quinn, Ms. Sheehan, Mr. Sirico and Mr. Zambrotta. Mayor Barra arrived at 8:15 p.m. and Mr. Fliegel arrived at 8:30 p.m. Mr. Gravina, Mr. Tatosian and Mr. Yevchak were absent. Also present was Mr. Dunn, Board Attorney.

Mr. Herndon moved, seconded by Mr. Sirico, to approve the minutes of the work session of March 16 and the regular session of March 19 as amended by Mr. Quinn. On roll call, all members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to Site Plan application of Allendale Associates, Block 702, Lots 15 and 16. Mr. Herndon moved, seconded by Mr. Bernstein, to adopt the resolution as amended on page 2, item 3 and page 6, item 8. (See copy attached and made a part hereof.) On roll call, Mr. Barra, Mr. Bernstein, Mr. Herndon, Mr. Quinn, Ms. Sheehan, Mr. Sirico and Mr. Zambrotta voted yes.

Discussion – A & P Shopping Center

Note: This item is for discussion only as there is no application and public notice was not provided. Final action will not be taken by the Board with respect to this matter.

Neil Kilstein was present as attorney for the shopping center. He said applicant has identified four items which he feels require modifications. They are all minor items from the approved site plan.

Mr. Quinn said the Chief Financial Officer has given him a list of deficiencies on escrows. The Azarian Group has a deficiency of \$5,852.70. Mr. Azarian said when these bills are received they are processed and paid immediately. He added that there was some confusion because when they receive these bills they do not get any kind of accounting showing payments that have been made or how they have been applied. They did request that information but have been paying these bills as they come in.

Mayor Barra said from his knowledge, Mr. Azarian is prompt in paying the escrow as it comes due and he is comfortable with proceeding with the presentation.

Mr. Dunn asked about the status of the Developer's Agreement. Mr. Azarian said it was signed and returned. Mr. Kilstein said the bond and associated documents will be forthcoming.

Mr. Kilstein said one of the modifications has to do with the walkway in front of the buildings. The site plan provides that the new sections be pavers. The section in front of the A & P which is the largest is concrete. Applicant would like to match rather than have two different surfaces which would not be aesthetically pleasing in addition to the cost factor. This would save money and make the project look more unified rather than broken into sections.

Mr. Kilstein said the second issue has to do with the paving of the northwest corner. The original plan calls for milling of the entire center. The northwest corner has been identified as being sound so it does not need milling. The surface when completed will be fine. Mr. Latincsi added that the pavement in the northwest corner is in the best condition of the entire plaza and the least traveled so there is no need to mill it. There are a few scattered pot holes and those will be cut properly, patched and top coated. Applicant is asking that this area not be milled as previously represented. Mr. Latincsi said there has been a long, painful and arduous dialog with Rockland Electric for offsite improvements. The Borough asked applicant to repair the entrance to their property which is offsite, but in the legal world it is not that easy as Mr. Kilstein will explain. However, it will be properly cut, a sub base put down and topped. Mr. Kilstein that Rockland Electric has permitted the applicant to go on the property to do this.

Mr. Kilstein said the third area is the retaining wall along West Orchard which is County property. He does not believe anything is necessary because it is in good condition. Mr. Latincsi said this is a 2-1/2 ft. high retaining wall and much of it is landscaped. It is in good condition and it is not in need of repair. The Borough asked that applicant investigate replacing it. Mr. Latincsi said he believes it is an aesthetic consideration by the Borough but certainly not a structural concern. The County maintains they do not know anything about the wall even though it is in their right of way. A portion of it falls within the Rockland Electric easement. He said these overlapping conditions have turned this into a Pandora's box. Applicant would like to power wash and re-stain it for aesthetic purposes. Mr. Kilstein said if this is not on their property how do they insure it or maintain it, and "if it is not broken, why fix it?" Mr. Quinn said he would not say it is in good condition, but it is in fair condition.

Mayor Barra commented that Mr. Latincsi refers to this area as County property and County right of way, but there is a very distinct difference. Mr. Latincsi said those terms are often used interchangeably. Ultimately it is County property, but the public, as it implies, has a right of way on it. Mr. Barra asked on what basis is the determination made that it is County property. Mr. Latincsi said it is beyond the outer boundary of the deed line. He added that the bold line on the site plan is the outer boundary of the applicant's property. Clearly some of it is not even along the frontage of the applicant's property. It is along the frontage of the former trolley line right of way which is currently the Rockland Electric right of way. He added it is clearly an off site feature.

Mr. Bernstein asked if it is his understanding that it is County property. Mr. Latincsi said West Orchard St. is clearly County property. Mr. Bernstein asked if it is owned by the County in fee simple. Mr. Latincsi said he cannot comment on fee simple because

he does not know how the County acquired it. There is a County map that references it as County property.

Mr. Bernstein said the Board spent countless meetings discussing this. He asked what was the representation as to who owned it. Mr. Kilstein said he has a recollection that the discussion came at the end of the hearing and at that point it was known that the applicant did not own it because it had already been surveyed. Applicant was asked if he would make improvements. He said, "I guess we were ready to agree to anything at that point after all of those hearings, but now we found out all of the difficulties of agreeing to do it. It is not just money. It is maintenance, insurance, etc."

Mr. Herndon said the retaining wall is facing a major roadway. It is facing homes and it is something that we see all of the time. He said he believes it is highly unusual that there would be a piece of property abutting applicant's property that belongs to the County and there is no right of way.

Mr. Yakimik said he believes he reported to the Board that the wall does not reside on the property owner's property. It is within the right of way of West Orchard and also within the Rockland right of way for their electrical facilities. The County has basically come back and asked the developer to sign a waiver taking full responsibility of the wall. The County wants no responsibility for it and is requesting that the applicant take full responsibility for it in the future. He added that who constructed the wall is still a mystery to this day. Mr. Yakimik said he looks at the wall as analogous to a sidewalk. A sidewalk is within a county or public right of way and yet the property owner is still responsible for it to some extent if it fronts his property. He does not agree with the County's position. He believes they should take some responsibility because it does protect their right of way. They have taken the position that they want nothing to do with it and there is a mechanism in place for the County to accept the improvements as long as the applicant takes full responsibility. The insurance aspects are analogous to a sidewalk. There are other off site improvements here that the developer is being asked to do. There are entranceway improvements that are within the right of way of DeMercurio Drive and there are off site improvements elsewhere with regard to this application.

A Board member said he recalls there was a conversation regarding the wall and speculation that the County might say the wall has to be pushed back to the level of the property line and out of the right of way. There was also discussion that the applicant would go back to the County to figure this out as well as conversation about how high the wall would have to be if it was pushed back to the property line.

Mr. Yakimik said the County has essentially accepted that the existing wall and the proposed wall is going to be the same configuration and the County has accepted that as long as the Azarian Group takes responsibility for the wall.

Mr. Barra said he does not understand Mr. Yakimik's comment that the County has sought a waiver with respect to the wall. He asked if that includes the pre-existing wall

and if their approval was given under certain conditions. Mr. Yakimik said the County addressed the proposed wall.

Mr. Barra asked if applicant is asking for the same responsibility of maintenance if the wood wall is changed to a stone wall or is there an added responsibility. He asked if what has been presented to the County is what happens to the existing wall if it stays as it exists. In other words, the County has only been presented with what is in the application and what the Planning Board has approved and that is a stone wall in place of the existing wall in the same spot. Mr. Yakimik said that is correct.

Mr. Bernstein said it doesn't sound as if the Board has come to an agreement on the real merits of the issue and what will happen to the wall two years from now when it is definitely in a state of disrepair. He would like to come to a resolution now.

Mr. Barra said he is concerned about Mr. Kilstein's comment that the meeting was late and they were going to agree to anything at that point. The applicant has gone to the County for approval based upon what was presented to them and now he is back before the Board with a different plan.

Mr. Kilstein said when the applicant originally applied to the Board the economy was very different from what it is today. He did not have tenants who are in default. There were different mortgage companies and this is a different environment. He said applicant wants to build this and he knows the town wants it built. He said, "We want to join hands together given the circumstances with which we are dealing.----We need your help and we are asking for it. We don't think this is a material difference and it will help us a great deal in putting this together."

Mr. Barra asked what is the savings on each of these items in terms of dollars.

Mr. Latincics said the rock wall is in the \$15,000 range but with other costs such as legals with the County and Rockland Electric, the total might be about \$20,000. He said this is clearly a county wall and it is their responsibility to maintain. In regard to the concrete walkway, Angelo Onello from Conklin Associates said the concrete walkway will cost one-third the price of the pavers. The pavers would cost at least a minimum of \$15.00 per sq. ft. whereas it would cost \$4 per sq. ft. to pour concrete. He doesn't have the actual square footage but he will get that number.

Mr. Herndon said there is an area in the upper west corner that has been a natural trough. During heavy rain there is a river that runs from that area out onto DeMercurio Drive. He is concerned about the condition of the parking lot at that point and if the water is running below the surface and then coming up to the surface. Mr. Latincics said the water is sheeting off very fast in an uncontrolled manner. It doesn't have a chance to seep down.

Mr. Kilstein said the last item has to do with lighting of the center. The applicant discovered that the cost was unbelievably high. He believes the Borough had the same

experience when it got prices on the proposed lighting for the new park. He was told the same type of lighting was proposed on the new park and it is just not affordable.

Mr. Latincsics said what was originally proposed was the Allendale fixture which is a 6-sided hexagonal Colonial type fixture. They have learned that there is a significant cost difference between a 6-sided glass fixture and the 4-sided within the same architectural style family of fixtures. They are asking to be allowed to substitute the square lantern series for the hexagonal lantern series. This allows them to reduce the actual number of lanterns by raising the pole heights.

Mr. Herndon asked if the construction material is the same type. Mr. Latincsics said everything else is the same. The Allendale fixture has a fluted pole. Applicant is asking to substitute by eliminating the grooves. The lighting will be the same on the property. On the northeast, which is essentially out of sight, they are asking to substitute a more standard fixture. These would be out of the public eye. There was discussion of light spillage along the property line so shields would have to be installed which are specifically designed to minimize light spillage. On the northeast corner they would substitute 12 of these heads. Mr. Onello has worked closely with the manufacturer and by raising the height of the poles to 22'8" (originally 19 ft. was proposed) they are able to eliminate a few of the actual fixtures. The original design envisioned 51 fixtures and 51 lanterns throughout the site. They are asking to be allowed to substitute 12 of the traditional box fixtures in the out of the way, out of site location and by raising the pole height slightly, some of the 4 lantern poles became 3 lantern poles, eliminating 5 lanterns thereby leading to cost savings and a more efficient design. He does not believe there is a significant visual impact.

Mr. Kilstein asked about the existing lights to remain on DeMercurio Drive. Mr. Latincsics said when they were installed, the applicant contributed towards the cost. Those lights will remain and the applicant is taking over the electrical charges. In summary, Mr. Latincsics said they went from 51 lanterns to 46 lighting fixtures throughout the site with the same number of poles. They continue to meet the Borough standard for lighting.

The Board asked what is the cost savings on the lights. Mr. Onello said by switching to the 4 sided it is about \$20-25,000 in the parking area and in the other area it is about \$15,000. By switching to the concrete the savings is about \$72,000. The milling would save about \$22,000.

Mr. Azarian said their original budget before they received town approval was about \$1,500,000. The final budget came in at over \$2,700,000. This was because of all of the site changes that were required by the Planning Board approval process. Mr. Fliegel pointed out that part of the application is to expand the retail space. Mr. Azarian said they don't have any tenants for that space. Mr. Fliegel asked how much it will cost to build that space. Mr. Azarian said it is about \$120 per square ft. Mr. Kilstein said the applicant never anticipated the extent of the site improvements that eventually emanated

into the final site plan. From their cost estimates, that is primarily the reason for the tremendous increase in the total cost of the project.

Mr. Latincsics said when they first came to the Board they came in with a basic landscape plan. They received a very strong message to come in with something a lot more meaningful. Originally they started with the repaving of the parking lot and fixing it up and that evolved into landscaped islands, replacing all of the curbing, landscaping, lighting, etc., but ultimately in terms of public safety, there is no difference. Mr. Kilstein said that undoubtedly the economy has affected the applicant greatly, and if it were not for that, he does not think he would be here.

Mr. Barra asked if the Borough Engineer had any comments that might help the board.

Mr. Yakimik said the first proposal was to replace the pavers with concrete along the perimeter of the building with the exception of where the concrete exists now in front of the A & P. He sees no consequences engineering-wise, only aesthetically, and it is basically a matter of taste. He looked at the paving in the northwest corner area this morning. He does not know that he agrees that the pavement is good or fair. There are extensive alligator cracks throughout, but it is better than the rest of the pavement at the site. His concern with just putting down an overlay is with drainage. Although we are only talking about 2-1/2 – 3 inches, we are going to lose some curb reveal along the curb that exists along the north side. That curb is probably around 5 inches now so it would come down to 3 inches in height. That probably would be enough to hold the drainage. Other than that he believes the water will flow the same way it always has. There are going to be catch basins at that throat to catch the water. He believes that catch basins have been added so from a drainage aspect he does not see it as any worse. He feels the cracks will reflect through this in the future because applicant is not milling, but other than that he does not see any problems with safety or flooding or any of those consequences with that proposal.

Mr. Yakimik said the next proposal was the lighting. He said that is more a matter of aesthetics and is up to the Board. He believes a design can be put together giving the same amount of illumination as the original plan that will assure that there is no glare that leaves the site, but it will have to be looked at more carefully. The additional height of the fixtures will have to be looked at to see if the lumens remain on the site.

Mr. Bernstein said there are some things that are not aesthetic. Mr. Yakimik agreed but said those things can be worked out. He would not acquiesce to the height just yet. He said the Board has to look at some of the photometrics to see what the impacts are and if there is any detriment to the neighbors because of the lighting.

Mr. Bernstein asked if the Board could approve subject to the applicant complying with the Borough Engineer's recommendations. Mr. Yakimik said this is an informal hearing and if the Board is acceptable, the applicant can make a more formal submission with the calculations and technical aspects. He would then comment at the time the formal

application is made to the Board. Mr. Latincics said applicant will submit a plan for the lighting.

Mr. Herndon asked what will the fixtures look like from DeMercurio Drive if they are raised 4 ft. Mr. Latincics said there are only 13 poles that will be raised 4 ft. Mr. Fliegel asked how high is the building façade. Mr. Latincics said it is about 25 ft. Mr. Yakimik said it ranges from 19 to 29-1/2 ft.

Mr. Bernstein said these items are for discussion so conceptually the Board is not going to approve anything. It is just giving its indication as to whether or not it might be amenable to such a change at which point the applicant will come back with a formal application.

Mr. Dunn said right now it is just a work session or sketch plat type of review of these items. The extent to which applicant has to come back before the Board for an amendment based upon its guidance is dependant on whether it is a substantive change to the site plan. He is concerned specifically about the wall and the County improvement if there is to be a change. The lighting itself with the reduction in fixtures and the change in height if substantive would involve a formal change and notice to the public. Mr. Bernstein asked if the end result today would be the Board's indication as to whether or not it would be open to these changes. Mr. Dunn said there would be no commitment from the Board, only guidance, and there is nothing binding upon the Board. Mr. Kilstein said that is his understanding as well. Applicant is here to talk and hopes the Board would provide some guidance before he makes a formal application. Mr. Azarian said he is not looking to cut corners everywhere. He said, "We chose these specific items because we felt they would not jeopardize the quality of the project, but it would allow us to save some money and move forward."

Mr. Sirico said he understands the economic part of this, but he is disappointed that the project is not started yet. He uses the area often and there are aspects of it that are an eyesore. He pointed out that it is almost a year since approval was given.

Mr. Azarian said he did not receive all of the approvals until early this year. The Board asked if the expansion could be eliminated and perhaps done later. Mr. Kilstein said the whole justification for financing this project is because of the expansion.

Mr. Quinn said the milling sounds like it is something that might be acceptable. Mr. Yakimik said it is certainly acceptable. It is not a great thing to do but it is the applicant's parking lot. If that is what he intends on doing, he has no problems with it because it doesn't create any hardship or flooding or anything to worsen the current situation. The normal process is to mill the old pavement out and to put new pavement down. To put an overlay over existing pavement that is cracked, he would expect its life to be shorter than pavement that you would mill and do properly. He does not know what the magnitude is. It might be 10-15 years as opposed to 20 and it seems to be the most reasonable section of the lot to do this type of procedure.

In regard to the lighting, Mr. Quinn said applicant was talking about three different fixtures and he is a little concerned about the height, although 4 ft. is not a tremendous change. He expects further discussion on that. It is his opinion that the wall needs to be done. Mr. Herndon said he concurs except that he would be agreeable to the change in the head design but not the change in height. He and Mr. Quinn agreed they did not have a problem with the fluted poles.

Mr. Sirico said he sees no issue with the concrete. He accepts Mr. Yakimik's opinion relative to the milling. He believes the wall is a Pandora's box relative to the County and the railway, but it is something that will add to the aesthetics and the overall functionality. On the last issue he is going to disagree with the Chairman and Mr. Herndon. He would like to see the existing design for the lighting to remain. He might be able to live with the square cobra heads especially toward the back, but in front he would like it to remain as originally approved. He shares the concern of the resident who was concerned about the spillage.

Mr. Barra said he agrees generally with the comments. We are talking about \$130-140,000 in reductions. He believes it will be better with concrete in front of the stores and that is the single largest savings for the applicant. He agrees with the comments in regard to milling but it will be the applicant's problem down the road. He doesn't think there will be an impact on a section of the parking lot that is not all that used. As far as the wall is concerned, he has serious reservations. He is concerned that if it is left the way it is and goes back to the County they will ultimately say it belongs to the Borough anyway. He is also concerned that the wall is going to come down in the not too distant future. Concerning the lights, he is not crazy about having all of these different looking lights on the site. DeMercurio will have one type, in the front will be another type and in the back will be a third type. He does have a problem with the height but he agrees with Mr. Sirico that the lights in the back in the northern section are not that big a deal. He said the Board spent an enormous amount of time on the lighting. He does have some problems with extending the height and he feels it will not be attractive with different lights and different heights. He does not know if it is worth it for a savings of \$20-25,000.

Mr. Bernstein said he agrees with the general consensus of the Board and he agrees with the Mayor's points about the lights. He is also concerned about the wall. He believes the other two items are minimal in nature. He is not suggesting that he would emphatically vote no, but those are his initial impressions.

Mr. Fliegel said he agrees on the concrete and the paving. Those are issues that can be changed or modified. He agrees with the wall because there are issues there that are going to come back in a year or two and we should deal with it at this point.

Mr. Kilstein thanked the Board for its comments.

Discussion – Status of 475 Franklin LLC

Mr. Dunn said there is no need for a closed session regarding 475 Franklin LLC because there has been no change in the status.

On a motion by Mr. Bernstein, seconded by Mr. Herndon, the meeting adjourned at 10 p.m.

Respectfully submitted,

Barbara Knapp