

A Regular Session of the Allendale Planning Board was held in the Municipal Building on October 16, 2008. The meeting was called to order by the Chairman, Mr. Quinn, at 8:05 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. Barra, Mr. Bernstein, Mr. Fliegel, Mr. Quinn, Mr. Sirico, Mr. Herndon, Mrs. Sheehan, and Mr. Thomas. Mr. Gravina and Mr. Yevchak were absent. Professionals in attendance: Mr. Dunn and Mr. Yakimik.

Corrections to the minutes of the Work Session 9/15 and regular meeting of September 18, and the Special Meeting on October 1, and were cited and corrections made. Adoption moved by Mr. Fliegel and seconded by Mr. Sirico and approved as amended.

Resolution of Memorialization – Cirquell, LLC, Block 2103, Lot 25.

Attorney Dunn read resolution which approved the action subject to conditions:

1. Driveway on the undeveloped lot must adhere to the engineer's recommendation of full height curb installation.
2. The existing driveway must stay the same and any alteration to the undeveloped lot must be brought before the Planning Board.

Resolution moved by Mr. Herndon and seconded by Mr. Fliegel. Roll Call: in the affirmative: Mr. Barra, Mr. Bernstein, Mr. Fliegel, Chairman Quinn, Mr. Herndon, Mrs. Sheehan and Mr. Thomas. Mr. Sirico had recused himself.

Minor Subdivision- Frank Paparozzi, c/o Jamb Builders (Quinn), 50 W. Maple Avenue, Block 1003, Lot 7. (Withdrawn by applicant)

Final subdivision – John Sebastian – block 408, Lots 4& 16

Attorney Dunn reported he had communicated with the applicant's attorney, Mr. Whitaker, that the application needed a corrected plat and that the application will be carried for one month and the applicant will submit a final plat for the November meeting. Motion to carry the application for one month by Mr. Fliegel and seconded by Mr. Herndon approved on a unanimous voice vote.

Site Plan – 475 Franklin LLC – Block 1809, Lot 14

Mr. Paul Kaufman, attorney for the applicant called his first witness.

The Board Attorney Mr. Dunn stated there were issues to be addressed first.

Mr. Dunn stated that the application was permitted to be withdrawn in July and subsequently restored if the application was identical. On July 3 a new plat was submitted to the board as identical. However, there is no new checklist, the completeness procedure has not been followed and no new fees have been paid.

George Cotz enters his appearance as the attorney for the members of the Concerned Citizens of Allendale and he reads a list of members into the record: Kim Arestad, Rich Graham, Susanne Lovisolo, Pat Finn, Susan Gulick, Diane Knispel, Carol Anton, Harold DeNier, Erika Fiedler, Mark Lawry, and Marilyn Tackaberry. Mr. Cotz reads his October 3 letter in which he states the board does not have jurisdiction in this matter because the applicant does not have standing and therefore the applicant is not properly before the Planning Board and therefore cannot proceed. The appropriate owner is Allison Village Condominiums and the applicant does not own the land in question. In 1983 the Planning Board created the condominium association and did not provide for the subdivision of the property. Number 475, the Fell House, is only one unit #21 and the owner of title is Allison Village Condominium and not the owner of the unit. There is no consent by the owners –the Allison Condominium Association. Mr. Cotz

stated a condo unit cannot be subdivided. The Planning Board in 1983, when the condos were created, intended to keep the property as one unified parcel. Number 475 is a large unit but not a way around the land use law.

Mr. Dunn agrees that a condo unit cannot be subdivided and that the issues raised by Mr. Cotz were very significant.

Mr. Kaufman responded that there is no need for a subdivision originally because condominiums are not under the province of the Planning Board but rather subject to the Master Deed. Each unit owner receives a separate tax bill and therefore is a separate tax unit. Unit #21 is a part of Allison Village but not owned by Allison Village. Unit #21 consists of 2.8 acres but does not include any common elements.

Mr. Dunn agrees that the Planning Board may not have jurisdiction. He asked if the Master Deed addressed any specific rights.

Mr. Kaufman: there are no specific rights.

Mr. Dunn: No specific authority exists that a unit owner is entitled to make application for development without the approval of the other unit owners. The applicant makes the condo separate from the association for Land Use purposes. Mr. Dunn notes that there is no appearance of the condo association and neither attorney has provided proofs to support their position on the Land Use.

Chairman Quinn asked what the options were for the board.

Mr. Dunn responded that the board may lack jurisdiction but that it had preserved its right to act. He had asked one year ago for case law from the attorneys involved.

Mr. Cotz responded that he could not find case law and that this was a novel issue.

Mayor Barra asked if this lot was a separate tax lot and received a separate tax bill. Mr. Kaufman responded that Unit # 21 was treated separately.

The mayor asked Mr. Dunn to check with the Tax Assessor to resolve the question.

Mr. Fliegel asked Mr. Dunn to review the Master Deed.

On the issues of escrow and the engineering and traffic expert fees incurred by the borough to advance consideration of this application Mr. Kaufman agreed to post the necessary money.

Mr. Dunn then stated the application was not identical and in essence it is a new application. Mr. Kaufman disagreed.

Motion by Mr. Fliegel and seconded by Mayor Barra to proceed with the hearing subject to a determination of the standing of the applicant and the posting of escrow funds. Mr. Bernstein noted time was running out since July 3, 2008 and there was a 120 day limit. Mr. Kaufman offered a continuance and agreed to post an additional \$5,000 which will be held subject to a determination by the Construction Board of Appeals and that there would be a special meeting in November at 7 PM which will give him time to present all his witnesses. The Board agreed to a special meeting November 11 at 7PM for the hearing on this application.

Mayor Barra: There is no reference in this application for a Council on Affordable Housing (COAH) growth share.

Mr. Kaufman assured the board that his witnesses were ready and will address the COAH issue on November 11.

Mr. Bernstein reiterated that briefs on standing were to be in hand by October 23 with responses by October 31 and the issue of standing is to be resolved before the Planning Board on November 6.

**Ordinance # 08-19 Amending Chapter 270 of the Code entitled
“Zoning” pertaining to swimming pools.**

Mr. Quinn related that the Mayor and Council had sent back changes to fifteen feet in the “B” zone.

Mrs. Sheehan asked where in the Master Plan the issue of pools was addressed. Mr. Fliegel cited Goals and Objectives 1.b and 2.6.

Mr. Quinn did not accept the change because he does not see how the propose change overcomes the problems, particularly, the fifteen foot change in the 'B' zone. Mrs. Sheehan said that the impervious coverage still requires the engineer to approve. Mr. Fliegel moved to accept the recommendation seconded by Mayor Barra. Motion approved 5-3 on Roll Call Vote: In favor: Mr. Barra, Mr. Bernstein, Mr. Fliegel, Mr. Herndon, Mrs. Sheehan and Opposed: Mr. Quinn, Mr. Sirico, and Mr. Thomas.

Ordinance No. 8-20 amending and supplementing Chapter 270 of the Code pertaining to Permit and Use Permit procedures.

Mr. Thomas said that Major Subdivisions should be back in and urged that the Mayor and Council reinstate them. Mr. Quinn finds that 4.b and 3.b inconsistent with the Master Plan.

Motion to approve by Mr. Fliegel and seconded by Mayor Barra that the record reflect the acceptance of the ordinance as amended by the Mayor and Council in its entirety. The motion failed on a four to four tie vote. The Roll Call: In the affirmative: Mayor Barra, Mr. Bernstein, Mrs. Sheehan, Mr. Fliegel and opposed: Mr. Quinn, Mr. Sirico, Mr. Herndon and Mr. Thomas.

Historic Preservation Ordinance draft presented by Kim Arestad, 186 Malinson and Michael Tat, 115 W. Allendale Avenue suggested the proposed ordinance be listed as an addendum to the November 11 meeting agenda. Mr. Quinn suggested that the town planner Ed Snieckus needed to have an advance review and the meeting should also be scheduled when he may attend. The Mayor suggested that the planner's input be scheduled at November meeting and the work session of November 17 be set aside for COAH review. He then proposed a special joint meeting of the Mayor and Council, and the Planning Board which would be open to the public on COAH.

Motion to adjourn by Mayor Barra and seconded by Mr. Fliegel and approved by voice vote. Meeting adjourned at 11:12 PM

Respectfully submitted,

•

Doug Landau