

October 1, 2008

A special meeting of the Allendale Planning Board was held in the Municipal Building on October 1, 2008. The meeting was called to order at 7:30 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: Fliegel, Gravina, Herndon, Barra, Quinn, Bernstein, Sirico, Sheehan and Thomas. Mr. Yevchak and Mr. Tatosian were absent. Also present was Mr. Dunn, Board Attorney.

Mr. Quinn announced that the first item on the agenda is the vote on recommendations pertaining to Ordinances 08-20 and 08-21. He asked if everyone had received revised editions or amended ordinances. Mr. Quinn said there was a revised version put out on September 15 by Mr. Dunn with some changes and he made a couple of slight adjustments. Mr. Dunn said there were a total of three adjustments and he didn't print them out because there wasn't any discussion of them before the Board.

Mr. Quinn said at the last meeting, the Council sent the two ordinances to the Board for its recommendations. There was discussion back and forth with a subsequent follow-up meeting. Two members of the Board, Mr. Fliegel and himself met with Mr. Barra and Mr. Bernstein and came up with some suggested changes. He believes the Council discussed some of those and now the Board is back for the final version of what the Planning Board's recommendation to the Mayor and Council will be. What the Board members have in front of them is some of those changes absent a couple of typos that he corrected and one sentence that he added to one of the ordinances that Mr. Dunn can read to the members. The purpose of this addition is to insure that the Planning Board sees applications that would be similar to the applications they saw under the Use Permit rules.

Mr. Bernstein said it is his understanding that at the meeting with the four members there was discussion of adopting in its entirety without changes to Mr. Dunn's recommendations. Mr. Quinn said he will have Mr. Dunn read the change which is about circulating copies of the application to all relevant departments including the Planning Board. Mr. Barra said he thought the decision was that it would be a procedure and practice rather than a change in the ordinance.

Mr. Quinn said by taking out all of the procedures and practices there is nothing in the ordinance to tie it back to the Planning Board so that it sees all relevant applications in order to make its own determination and not be reliant on the Construction Code Official's view. Mr. Fliegel said he thought a copy was going to go to the Police Dept. as a safety issue. Mr. Barra said he thought the Board agreed that it should pass this out to as many people as possible because the more people that know what is going on the better off we are. He thought the Board agreed that that kind of sentence or comment was not appropriate for an ordinance but rather that we should have a procedure in place whereby everybody would get a copies of these applications so they know what is going

on. It should go to the Chief of Police and other departments such as the CFO, Director of Operations and including the Planning Board.

Mr. Quinn said a procedure does not have the weight of an ordinance.

Mr. Dunn said Mr. Quinn's suggestion was that the procedure to be added into the section of the ordinance was that a copy of every application for a certificate of compliance shall be provided to the Planning Board and any other Borough Department that has an interest in said application.

Mr. Dunn said he put in the stronger language because some of the Board members had some concern that it was not appropriate to have total reliance upon the Construction Code Official. There were a couple of other changes that were really just clarification of the language.

Mr. Bernstein said he is confused because he was at a meeting with four Board members who went over the recommendations which they all thought reinforced, supported or tweaked in a positive way the proposed ordinance. He asked if the Board is being asked to vote tonight on something that is different from what was discussed two weeks ago. He feels that what is being proposed is different from what his understanding was.

Mr. Barra said the Planning Board can make whatever recommendation they want and the Council can either accept or reject all or part or change or tweak. He agrees with Mr. Bernstein. He thought the small focus group would deal with everything in order to come to the Board in its entirety with a recommendation on language that can be discussed by the members and now he is concerned that we are adding something.

Mr. Quinn said the Board did have a lengthy discussion on it. Mr. Barra said his recollection is that this was something that belongs more in a procedure than in an ordinance. Mr. Barra said, "Suppose for arguments sake it goes to the Planning Board. Let's assume the Planning Board looks at it and says we think this is something that should go to the Planning Board. What happens?" Mr. Quinn said the Planning Board would make a request that it come before it.

Mr. Barra said the Board should vote on this and let the Council make its decision on what it thinks is appropriate and the ordinance will be voted on accordingly.

Mr. Bernstein said he has no problem with discussing this, but he thought there was a meeting of the minds of the four members at that meeting that this language was not going to be inserted into the ordinance.

Mr. Fliegel said he believes the Board's concerns about not getting a copy of the application is a very important issue. It sounds as if the Board is having a discussion now as to whether to put the language into the ordinance or to just trust the Council when they make the procedures as to how this is going to be followed and that everyone is going to get a copy. It is currently in the code for our Building Inspector to see all use permits but

he wasn't seeing the use permits. He thinks it is imperative that the Board recommend to the Council to pass it and follow through and say these didn't come to us. The members should come to the Council meetings and complain as representatives of the Planning Board that these things are not coming to them.

Mr. Barra said when he walked out of the meeting he believed the recommendation was the way Mr. Dunn drafted it and that is where he has a problem. There is now language that the Board has not seen. Mr. Thomas asked if his purposes would be satisfied if the sentence were reduced to just the Planning Board and let the remainder of the departments be covered by whatever the procedure the Mayor and Council works out.

Mr. Quinn said his concern is that the Planning Board has been taken out of the process, right or wrong, and the former ordinance had all of the processes. The fact that the Construction Code Official was in fact supposed to get the use permit applications but did not he believes is a town administrative issue. That has now been taken out of the ordinance and it may be put in a procedural document. He said he has tried to cover the opportunity for the Planning Board to at least see the application and that is all he was looking for. If that causes a problem he suggested that the Board could have two resolutions, one with it in and one without.

Mayor Barra moved to approve Ordinance 08-20 as amended by the Planning Board Attorney as discussed at the meeting which highlights the changes that were reflected in what was in the early edition.

Mr. Bernstein said for clarification, that edition does not have the additional language that was added afterwards. It is the draft that was passed out by Mr. Dunn a month ago in response to the request to propose that language. Mr. Bernstein seconded Mr. Barra's motion.

Mr. Quinn said he believes the sentence he added later is meaningful and he would like to see it in the ordinance.

Mr. Barra said if his motion is not approved we can have a second motion and a vote on that.

The following was the vote on Mr. Barra's motion: Mr. Barra, Mr. Gravina, Mr. Bernstein and Mr. Fliegel voted yes. Mr. Quinn, Mr. Sirico, Mr. Herndon, Mrs. Sheehan and Mr. Thomas voted no.

A motion was made to change the last motion by adding in the two sentences about codifying the referral to the Planning Board of all certificates of compliance applications.

Mr. Dunn said he would like to explain how this evolved. At the last meeting there was discussion about the concerns that people had and that is the reason for the three sentences we are talking about on the two versions he passed out for discussion only. It is not a recommendation. The one sentence that Mr. Quinn is referring to was sent by

him as a parallel of his own presentation by email. Mr. Dunn recommended that he read them to the Board.

Mr. Fliegel said he would like to make a motion based on adding Mr. Quinn's one sentence. He does not understand why it has to be anything more than a sentence that says the Construction Code Official shall refer all Certificates of Compliance to the Planning Board or send a copy to the Board.

Mr. Dunn read the sentence as follows: "A copy of every application for a Certificate of Compliance shall be provided to the Planning Board and any other Borough Department head with an interest in said application."

Mr. Fliegel said that is the exact wording the Board should recommend that the Borough Council adopt and so moved. Motion seconded by Mr. Thomas.

Mr. Dunn said the three sentences are as follows: "Applications for Certificates of Compliance shall be referred to the Planning Board for determination of the effect of the proposed change in use or occupancy as set forth herein and no action shall be taken by the Construction Code Official on said application until the Planning Board has rendered an advisory opinion pertaining to the need for Planning Board site plan review or until the expiration of 10 days, whichever shall occur first. In the event that the Planning Board determines that site plan review is required, the matter shall be referred to the Planning Board for further proceedings in accordance with Code Chapter 147, Section I. The Construction Code Official shall issue a monthly report of all Certificates of Compliance issued by said official by the 10th day of the month succeeding the month of issue."

Mr. Dunn said the essence of these sentences would be actually giving the Planning Board a "drop dead" provision. It says I am going to send you an application for a Certificate of Compliance and the Planning Board has 10 days to decide whether or not it meets the criteria about having an impact upon drainage, landscaping or traffic, etc., and if you do, you notify them to come to the Planning Board."

Mr. Barra said this is worse than what we have now. He would vote no to Mr. Quinn's suggestion as a matter of principle procedurally because he does not think it belongs in an ordinance, but this language makes this policy worse than what we have now. Are we going to have all of these sent to the Planning Board for an advisory opinion and then a response within 10 days. He asked for a vote on Mr. Fliegel's motion.

Mr. Barra, Mr. Bernstein, and Mrs. Sheehan voted no. Mr. Gravina, Mr. Fliegel, Mr. Quinn, Mr. Sirico, Mr. Herndon and Mr. Thomas voted yes.

Mr. Quinn said the motion passed would be the Planning Board's recommendation to the Mayor and Council.

A motion was made regarding Ordinance 08-21 to recommend to the council the same recommendations proposed at the last meeting. Mr. Bernstein asked if that was to incorporate Mr. Dunn's comments. The answer was yes. Motion seconded by Mr. Bernstein. On roll call, all members voted yes.

Appointment of professionals

Mr. Barra moved to hire David Hals as engineer/planner and Judd Rocciola as Traffic Expert, solely with respect to the application before the Planning Board dealing with 475 Franklin, LLC. Motion seconded by Mr. Bernstein.

Mr. Dunn said it is within the Board's authority to hire professionals and in this case by virtue of the conflict of interest with the regular Planning Board engineer and the applicant. The Board has decided that the traffic engineer is necessary at this point. He is concerned because the Planning Board meeting is on the 16th of this month where there is a public hearing to be continued on this application. This kind of hiring under the complex law that deals with these things requires the posting of disclosures. The Mayor had asked Mr. Hals if he could commence this work as soon as possible. Mr. Dunn indicated that technically, under the law, it can't happen until 10 days after the posting of the notice of disclosure. He believes the only thing to do at this point is to complete the hiring and have him get to work as quickly as possible under these circumstances.

Mayor Barra asked if he can start tomorrow if the Board approves. Mr. Dunn said he is going to tell him he is not technically hired for 10 days and that is the way the resolution reads.

All members voted in favor of the motion to hire the experts.

On a motion by Mr. Fliegel, seconded by Mr. Sirico, the meeting adjourned.

Respectfully submitted,

Barbara Knapp