

December 15, 2011

A regular meeting of the Allendale Planning Board was held in the Municipal Building on December 15, 2011. The meeting was called to order at 8:07 p.m. by Mr. Quinn, Chairman, 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, Mayor Barra, Mr. Fliegel, Mr. Walters, Mr. Sasso, Mr. Sirico, Ms. McSwiggan and Ms. Sheehan. Mr. Strauch was absent. Also present was Mr. Dunn, Board Attorney and Mr. Snieckus, Planning Consultant.

Mr. Sirico moved, seconded by Ms. McSwiggan to approve the minutes of the meetings of September 12, 2011 and October 20, 2011 as submitted. On roll call, all board members present voted in favor.

Continuation of Calvary Lutheran Church Major Subdivision application

Bruce Whitaker, attorney for applicant, said he has passed out a revised updated exhibit list. He said Exhibit A-38 is approval from the Bergen County Soil Conservation District dated December 15, 2011. Exhibit, A-39, is the revised letter from Conklin Associates addressing outstanding issues pertaining to the meeting on Monday evening. It is the November 29 letter dated through December 14, 2011 on two issues that needed to be addressed after the Monday meeting. The first issue pertains to the parking requirement and what applicant proposes to do. Mr. Latincsis has attached to the letter a diagram showing 5 parallel parking spaces. He said 20 are required. The notice that he provided to the Board requested any other variance relief that might be necessary during the course of these hearings. He said their primary approach would be to address a variance for the five spaces. In the alternative, if the Board determines that the 5 spaces are critical and would not grant the variance, then they would withdraw their request for variance relief. Mr. Whitaker said he has been given consent by church members for the removal of two pews which would then make the seating of the church compatible and code compliant. He does not believe that would be the proper approach but if the Board determines it is a critical element at that point they would comply.

Mr. Whitaker said the last issue that needs to be addressed is the issue pertaining to the Celery Farm. After the Monday meeting Mr. Latincsis was requested to do a further analysis as it pertains to the three homes by the Celery Farm.

Mr. Latincsis went through the information provided in his letter to the Board dated November 29, 2011 and updated December 14, 2011 with regard to the impact of the proposed project on the Celery Farm, specifically the 1.9 acres of disturbance within the project. He said when the flood waters rise due to the back water from the Elm St. culvert the water spills over the curb line. The water cannot pass through the Elm St. culvert which is smaller than the Franklin Tpk. culvert and has a greater flow to it and it backs up into the Celery Farm. In the mid point of the culvert approximately 100 ft. down from the inlet there is a foot bridge from the Celery Farm that is blocking that culvert approximately 50%. He strongly recommends that this blockage be remedied. Mr. Latincsis also discussed the three homes on Franklin Tpk. he was asked to investigate. He discussed the depths of water at these homes resulting from Hurricane Irene.

Photos were marked A-40 and display entitled Comparison Hydrograph of Existing and Proposed Conditions at Ivers Rd. inlet was marked A-41. He said basically it is a hydrograph plotting of runoff versus time under existing and proposed conditions and shows how the detention basin reduces rates of runoff. He said he has identified that the additional runoff produced by the project in the 100 year storm is 3,965 cu. ft. and that runoff leaves the site at a peak of approximately 5 minutes and then drains down in a period of 6 hours or .18 cu. ft. per second. Mr. Latincics said if we took the total 4,000 cu. ft. and simply dumped it across the surface area of the Celery Farm that would raise the water surface by .00085 ft.

Topographic and Physical Feature Survey from the Elm St. Culvert to the Celery Farm was marked A-42. Celery Farm aerial photos were marked A-43.

Mr. Latincics said this is a di minimus impact, however that water has to flow past these homes and what is the possible impact at the constriction by the 14 ft. wide channel that leads from the box culvert. He identified that would result in a rise of 0.013 ft. in the short section of the channel once it reaches the nose where the various channels enter the body of the Celery Farm. He said that is the di minimus impact on two of the homes. He said the development site is 3/10 of 1% of the drainage area to the Celery Farm.

Mr. Whitaker asked if this is the most conservative approach on which he has based his analysis based on the assumption that 100% will be going upstream. Mr. Latincics said it is. Mr. Whitaker asked what is his opinion of what the 0.013 would be. Mr. Latincics said it is barely 100th of a foot. He added that the photos marked A-40 were taken yesterday. Mr. Latincics said there is a series of photos of foot bridges in the Celery Farm and it is very clear there is a foot bridge that is missing its decking. Some of it is still there but portions of the bridge are lodged in the culvert and he was expecting major sediment problems in this culvert. He said the surface water would probably drop 2 ft. if that debris was dislodged. Mayor Barra asked if the foot bridge acts as a dam. Mr. Latincics said it does act as a dam and it limits the outflow. At the same time it would be an obstruction from the channel flowing upstream. The Board asked if it affects the three homes in a negative way. Mr. Latincics said it does and he would say that the culvert right now is only acting at 50% capacity.

Mr. Whitaker asked Mr. Latincics to describe the condition he found when he was in front of that bridge and then climbed over the bridge and what was the difference in the depth. Mr. Latincics said he went from calf depth to chest depth.

Mr. Whitaker asked about the proposed parking as indicated in his report marked Exhibit A-39. Mr. Latincics said the parking has been updated based on Monday night's meeting. As far as compliance with storm water management he said they comply with 99% of the requirements. The ordinance indicates they should comply with one of three and they meet two of 3 standards very conservatively and the third standard for the vast majority except for 5 minutes in the 100 year storm.

Mr. Quinn said as he understands it the whole analysis around the Celery Farm is that in the event that water suddenly goes upstream when it is meant to go downstream, it backs up. Also, a significant blockage has been discovered that the town could take care of that might help the

situation immensely. Mr. Yakimik said the County had tried to put the project to clean the culvert out to bid about two months ago and they ran into administrative problems. The bids were returned and it is being reviewed by the County Counsel and is going to be rebid.

Mr. Fliegel said even if the culvert under Franklin Tpk. was performing at 100% efficiency, is it correct that the Elm St. culvert is going to back up because it is smaller. Mr. Yakimik said that is correct and there are plans under way to replace it. He cautioned that under current NJ DEP rules they really cannot make that opening any bigger than it is right now. Also, downstream of Elm St. the grade of the brook between E. Allendale Avenue and Elm St. is also in the negative grade, and the problem continues throughout the Allendale Brook with regard to this back water problem.

Mr. Fliegel asked if we had the same problem further down when the Azarian project was being done. Under Orchard there is one size pipe and further down there is a foot bridge that closes so we can keep going further and further with these issues. Mr. Yakimik said the point is that the r Borough is taking proactive steps to correct these problems in a systematic manner but the County is ultimately responsible. The Borough has been working actively with the County to get this done.

Mayor Barra asked if Mr. Yakimik concurs with the applicant's calculations on the issue of how much this project will impact on additional rise of the water. Mr. Yakimik said yes but it is deminimus.

Mayor Barra asked Mr. Latincsics if he included the homes on Talman in his analysis. Mr. Yakimik said he did raise that question. He knew that the impact on the Celery Farm would be deminimus but he was a little more concerned about the other problems that occur in that watershed between the Celery Farm and the proposed development. Mr. Latincsics said the project reduces the runoff leaving the site and that is to the direct benefit of the Talman storm sewer system because we are reducing the rate of runoff to that system so there is more pipe capacity available for other uses. There is a slight lag in the watershed and that allows that additional capacity to be dedicated to areas around Talman. The detention basin on a watershed basis is very clearly reducing the peak rate of runoff and reducing that rate is to the benefit of the Talman storm sewer system. He showed photos of the corner of Talman and Myrtle shortly after Hurricane Irene subsided. He showed a home with two sump pumps working that pump water to catch basins in the street. He said once the storm sewer goes under Myrtle it goes from a 24 inch pipe to a 12 inch pipe and that 12 " pipe has about 1/3 the capacity and that is the smoking gun.

Mr. Yakimik asked what does he think is causing that "Lake Talman" that occurs in the photo. Mr. Latincsics said it is caused by a natural drainage pattern without a service outlet. He said there is a natural topographic depression and then there is a drainage area. Lots 10, 12 and a portion of 9 all drain down to the corner. The topography is lower than the curb line and the adjacent roadway so the water collects. Mayor Barra asked if he looked at this again since the request on Monday or is he just going back to old evidence and testimony. Mr. Latincsics said he went back to the entire history of this analysis. He did not look at it after Monday's meeting but he looked at it under the worse case scenario which was Hurricane Irene.

Mayor Barra cited Mrs. Sullivan's comments about the bubbling in front of her home and flooding in her back yard as well as on neighboring properties. She said there was a surging farther up Talman so the homes to the north of Talman are experiencing similar problems and they do not have a depression like the Sullivan home. Mr. Latincics said if it is the surcharging of the catch basin we look for a restriction farther down slope. Mayor Barra asked if he is indicating that this restriction is farther down that is contributing to the problem or may be the major cause of the problem and Mr. Latincics replied affirmatively.

Mayor Barra asked if this development is developed will the bubbling to the north of the Sullivan house be increased as a result. Mr. Latincics said no because they are reducing the rate of runoff in the 10 year storm by 4 cu. ft. per second. During the height of the rainstorm that storm sewer is taking the street runoff off the driveways and roof leaders. Mayor Barra said Mrs. Sullivan testified that the problems continue for hours after the storm. Mayor Barra asked if Mr. Yakimik concurs with Mr. Latincics comments that it would not contribute to flooding on Talman. Mr. Yakimik said yes, he would. He said he believes the comment about flooding continuing for hours meant that that lake stays there for hours and even days because there is no place for that water to go. There is no drain at the bottom of the lowest point of that bowl shape and a catch basin at the bottom will solve these problems. He said we have to take a look at where that water is going to go and we do not want to create other problems downstream because right now it is acting as a retention pond. He said he agrees with what Mr. Latincics is saying and if the Board looks at his summary comments in the letter he distributed this evening it says that he feels it is highly unlikely that this development will exacerbate conditions such as that because of the data that the applicant has provided.

Mr. Quinn opened the meeting to the public for comments.

Jim Wright said he was previously sworn. His home is in one of the photos and he is also Deputy Marsh Warden of the Celery Farm. He said if there is double the amount of volume coming off the property in this subdivision where does that water go that is not affecting people and flooding them if there is flooding all along there already. He said the bridge in question was not under the Franklin Tpk. culvert in August when he was there with the County and they have been waiting or years for the County to do something about this. When his driveway is wet, the Celery Farm trails are under water and if we double the amount of water coming off this development, he is concerned about everybody downstream. He asked where does the water go. Mr. Latincics said it goes to the Allendale Brook which is the natural drainage pattern.

Mr. Wright said he is not sure how this development is not hurting the Celery Farm and his property. As a result of Hurricane Irene all of the work done by the volunteers at the Celery Farm is ruined and the Celery Farm is one huge lake. Mr. Latincics said the Wright property drains to the Allendale Brook and that is why the Borough has a comprehensive storm water management ordinance to mitigate and make sure those impacts are reasonable.

Mr. Wright said it took 18 hours for the water to leave his backyard after Hurricane Irene. Mr. Latincics said this development site is 3/10ths of 1% of the watershed. The impact to him is not the .18 cfs from this project. It is the 851 cfs that is coming from upslope properties. Mr. Wright said his question is why is the water flowing backwards up the Allendale Brook if there is all of

this water going down the Allendale Brook. Mr. Latincsics said the Celery Farm acts as a large defacto detention basin and that is one of its significant values. That 851 cfs is reduced to 128 cfs through the culvert which is why it takes 18 hours to drain down. Mr. Wright said that does not explain why it is going backwards. Mr. Latincsics said it is a combination of physical features. There is a series of constrictions each of which would have an impact.

Mr. Wright thanked Mr. Latincsics for his work on this project and his patience.

There being no further comments, the meeting was closed to the public.

Mr. Zambrotta said there is a set amount of cfs that is going through that constriction downstream. That water is going to move through that constricted pipe at a certain volume. The water backs up in front of that constriction and starts moving upstream. He asked why would 50% of that water move upstream. Mr. Latincsics said the amount of water being forced through the culvert is a function of the water surface that is building up. He said one drives the other and we are closer to the Elm St. culvert than we are to the Franklin Tpk. culvert. Mr. Yakimik said as the water is rising the Elm St. culvert which we are assuming is the constriction and as the water rises the culvert will be breached and all of a sudden the water has a much wider expanse to spread out downstream. At that point the split of 50/50 might actually start better downstream than upstream because there is more surface area for the water to occupy downstream once the culvert is breached.

Mr. Zambrotta asked if once you have saturation doesn't the runoff increase. Mr. Yakimik said yes, but you have to look at the duration of storms. The runoff volumes are calculated for the worst case scenario for a given storm. When you design a detention basin you have to design it for a critical rainfall duration. Mr. Latincsics said you also have to look at the duration of the storm.

Mr. Quinn asked if Mr. Yakimik has changed his view that the storm detention as proposed on this property is adequate and will actually reduce the current situation as it exists today. Mr. Yakimik said he has not changed his view and when the time comes he is going to make a statement on the record.

Ms. McSwiggan asked for an explanation on how this storm water management system is going to help the properties north of the site. Mr. Latincsics said at the north of the site there is a trapped wetland area that drains to a 10 inch pipe. That pipe is in poor condition and causes a back up in that area. They are upgrading that pipe from 10 inches to 15 inches of HDP which is a smoother pipe and more effective which is a direct benefit and will drain down more effectively. If they made that improvement and simply carried it through to Ivers Rd. that would be detrimental to downstream property owners so it is being piped into the detention basin and detained for a period of time and released. He said this is a direct benefit to lot 4; however, the area north of lot 4 is not controlled by this pipe. The Board asked if there will be adverse affects to the north and Mr. Latincsics said no.

Mr. Zambrotta asked how many square feet is the retention basin. Mr. Latincsics said it is approximately 6500 sq. ft. Mr. Walters said the Board has heard testimony about mosquitoes.

The area has had standing water for a period of time and we are moving that standing water to a 6500 sq. ft. retention pond. In addition the Celery Farm has many acres of water. He asked if this is going to make that condition worse. Mr. Latincics said mosquitoes prefer shallower water of 3-6 inches that we have today.

Ms. McSwiggan said she would like to have a better understanding about something that was brought up earlier which has to do with testimony that other churches had approached Calvary about purchase of that property. What she is not clear about is what the Board's ability would be to restrict what they do with the site in case this property is sold to another church. If another entity comes in and takes it over what do we do? Mr. Dunn asked if she is referring to another church just taking over the facility or buying the property and continuing with the subdivision application. Ms. McSwiggan said she is referring to acquiring the property and developing an activity center or carrying on different activities.

Mr. Dunn said in general churches enjoy substantive rights under Federal and State constitutions and so restrictions have to be carefully applied. In terms of authority as a Planning Board administering the Land Subdivision and Zoning Ordinances of the Borough, the Board is going to assume that all of the ordinances are appropriate for the churches as opposed to any other type of activity. In regard to the total amount of acreage that is one of the variances being sought, he said the Board cannot anticipate that there is going to be further activity but it needs to anticipate what is appropriate for a church in the context of the remaining size of their lot if the variance is granted. The Board is not without authority to place reasonable restrictions on the land.

Mr. Whitaker said the Board is looking at the use and the site plan aspect of this application. The Planning Board has jurisdiction on site plan but the religious land use law that was passed in 2000 states that any government is restricted and prohibited from imposing a land use regulation in a manner that imposes a burden on the exercise of religion on a person including a religious assembly or institution. He said the board has the right to have a site plan to say that the building is built properly and in the right location with sufficient parking, etc. However, if the board were to say it does not want a community center or a catering hall that is part and parcel of a religion, the Board does not have jurisdiction.

Mr. Whitaker asked Mr. Latincics if on the basis of the testimony he provided that the analysis he performed is pursuant to the storm water management in the Borough and that the Borough ordinance basically mirrors the requirements of N.J. Storm Water Management. Mr. Latincics replied affirmatively. Mr. Whitaker said Mr. Latincics has testified that the applicant has met two out of the three requirements and almost the third even though it is only necessary to meet one.

Mr. Yakimik said he submitted a summary report to the Board this evening documenting all of the material received from the applicant. He said he would like to summarize some of the outstanding issues. He said the site plan should show there is an additional variance requested by the applicant to install a 6 ft. high fence. Mr. Whitaker said that will be added to the site plan.

With regard to the new condition that five parking spaces are going to be lost as a result of the reconfiguration of parking spaces due to the introduction of sidewalks he believes this constitutes

a variance which the Board should consider. With regard to the Leyland Cyprus shrubs he would like to see the spacing shown on the plans. Item 6a. indicates applicant should show the construction of sidewalk within the public right of way fronting on lot 17.03. That will result in trees being removed and the plan should show that those trees will be replaced by shade trees where practical. Item 8 has to do with the spacing of shade trees. They should not exceed 50 ft. in accordance with the code. Also, as requested by the Director of Operations, shade trees should be placed 16.5 ft. from the proposed curb line rather than 13.5 ft. Item 9 has to do with parking on site. The planner indicated that 79 parking spaces are required by the Code for the church use and 73 spaces are provided on site now. Due to loss of 5 spaces for the sidewalk they will be 11 spaces short so a variance is required and the site plan should be revised accordingly. Item VI pertains to Storm Water Management and items a. through i. are minor comments from his previous report with regard to the constructed stormwater wetlands. He said these items are minor and can be revised during the final process if this application receives preliminary approval.

Mr. Yakimik said item 17 pertains to calculations concerning a proposed trash rack that was discussed Monday evening. Should the Board vote favorably on the application for preliminary approval he would like to reserve the right to comment on that during the final approval process and applicant should be required to revise the design based on comments during the final site plan review process.

Mr. Yakimik said he has provided a summary commentary statement with regard to Storm Water Management. It states that the applicant has demonstrated that they have complied with Section 147-29 and Section 231 of the Code regarding stormwater control. He said the best known methods used to demonstrate compliance with the code were employed by the applicant based on empirical data and formulae. He added that there are no absolutes to guarantee results, however, the applicant has designed the stormwater management system with additional safety factors and added basin capacity which will most likely provide improvement to the immediate upstream property and more extensively to the downstream properties of the proposed development.

Mr. Yakimik said the watershed is not without its existing problems as discussed by the public on Monday evening. The problems consist of undersized pipes and trenches, under maintained stormwater detention basins, encroachments and unregulated additional impervious areas by homeowners and they currently cause a myriad of flooding problems throughout the watershed. He said his office is aware and understands the general causes of each of the problems that were identified by the public. He said the applicant has taken reasonable steps in their design and analysis to demonstrate that adverse affects to these problems are not likely. Some will most likely improve and the remainder will be unaffected.

Mr. Yakimik said he had previously proposed that the site plan incorporate a phased clearing of the site if it is approved. The first phase would be the Couch Court right of way, the limited trees on the Ivers Rd. right of way that would be removed and the detention/water quality basin. All trees would be marked and reviewed by his office and the developer would only be able to remove those trees within that footprint at that time. Under Section 196 of the code each individual lot goes through another review by his office for final grading, final home configuration and final tree removal determination. Each individual lot will be released after

fine tuning the grading to try to save as many trees as possible as the development progresses. He believes the site plan should reflect that and it should be put in the developer's agreement if approved by the Board.

Mr. Yakimik said he can't recall if there was a discussion about the lighting at the church lot itself but the site lighting at the lot is substandard and he can't recall if the Board felt it was proper to bring the lighting up to code. Mr. Whitaker commented that for a good 50 years it has not disturbed anyone so the applicant was going to hold it the way it is right now. Mr. Quinn said he assumes bringing it up to residential standards would make it even brighter. Mr. Yakimik said it would be brighter but if the Board wants to leave it the way it is he would be agreeable. There were no objections from the Board.

Mr. Yakimik said the applicant should revise the site plan to reflect landscaping and buffer recommendations by the Borough Planner.

Mr. Yakimik read a list of conditions to be applied by the Board if approval is granted as listed in Item XII of his letter to the Board dated December 15, 2011.

Mr. Yakimik said he has read the memorandum from Burgis Associates dated December 15, 2011 and he recommends that these conditions be met as well.

Mr. Whitaker said the only one that he does not concur with is the limitation on basements. Mr. Yakimik said he is not sure that it is proper to put that restriction on a home although it would be problematic to have a basement in that location. Mr. Dunn said he does not know why it would not be appropriate. Mr. Whitaker said in his view there is a construction code requirement and review and there will be a plot plan review. It is not jurisdictionally within a subdivision which is defined in the Land Use Law as a division of land into building lots. It is not a condition of the subdivision. Mr. Yakimik said in his opinion it would be part of site plan review and he could comment that the detention basin should be adequate to take that additional runoff from ground water. He also notes that the ground water effects from the detention basin will no longer be there because of the impermeable liner. The mounding concern goes away and conceivably, with the liner in place the ground water effects for this basement would be less than what was thought previously, but it is still in a wet location. He does expect the ground water to still be relatively high. Mr. Quinn asked if that is something that can be adjusted during construction. Mr. Yakimik said when builders do dig and find shallow ground water they generally come to him and want to raise the level of the house and he has to agonize whether that is something that is sufficient enough to go back to the Board for their review. He does agree it is something of concern and there are situations in town where some people like to build full high basements and the deeper you go the more ground water you encounter.

Mayor Barra commented that the Borough has a major problem right now with a house that literally has an underground stream underneath and there have been many problems and issues to deal with. He said he does not want to have a situation where we leave it up to a builder or a homeowner to decide what they want to build. He asked if there is some way to have a provision that if ground water is encountered a basement should not be considered. He said he does not know the answer to this but he does know that water creates problems. Mr. Dunn said he

believes the Board could put in such a condition if we have a basis from the testimony. Mr. Yakimik said there is a shallow ground water elevation at that site. In a very wet year it runs about 2 ft. below the existing surface. Mr. Dunn asked if there is a significant chance that the installation of a basement at this particular location will aggravate or adversely impact the drainage design and plans presented to us. Mr. Whitaker said we don't have enough basis to put a prohibition in the resolution. He feels that is something that has to be reviewed on a lot by lot basis which Construction Code Officials reserve the right to do. Mayor Barra said he would feel comfortable if we are highlighting it for the Construction Official's review. Mr. Whitaker pointed out that the concern is focused on lot 2.02.

Mr. Snieckus said his opinion is that the water that is potentially going to be pumped out of the basement area is potentially going to overtax the storm water system or create a situation where someone says he was not aware of the problem. He feels the feasibility of the basement for lot 2.02 should be noted in some way as a condition of approval. With regard to the storm water basin, he has seen it work in certain situations and he does not think it is going to hurt in the long run.

Mr. Whitaker gave his summation. He said the Calvary Lutheran Church has been a very good citizen and inherently beneficial in the community for over 50 years and it is recognized from the testimony that the church wants to stay. It provides a service to this community and the sizing of the property that it using right now is sufficient for their needs. The churches in the community range in size from ½ acre to 10 acres. It is not one size fits all. This is not the type of church that is coming to town for the first time to say they are not quite sure how big they will be. He said this church can easily be accommodated on what they have been using and the balance of the property can serve as residential property. It is property that is zoned to be residential so there is no use variance here but rather the applicant is looking to construct these homes and to keep the parsonage on these other lots. In addition, the bulk requirements for these properties exist and are conforming. He said the variances are not being sought here because they have got insufficient lot area. There is a section in the Borough master plan that says that institutional uses which includes churches are something that can be of such an intensity that it can thwart the ability to work compatibly with resident uses. In this case what these residential lots do is provide the buffer necessary for the church that exists right now. There has been testimony about drainage and how beneficial it is for the overall site. Mr. Yakimik has testified that applicant meets the standards under the code as well as storm water management provisions.

With regard to the parking situation, Mr. Whitaker said there will be a deficiency of 5 parking spaces because applicant has agreed to the installation of the sidewalk and he suggests that the variance can be granted for those 5 spaces. There is an existing non-conforming situation right now because they are also missing 6 other spaces. However, the church has existed for many years with the parking they have right now. Mr. Whitaker said the fence request for the variance is for 6 ft. vs. 4 ft. and applicant has agreed to that suggestion by the Planner. Lot 2.02 does not have the 50 x 50 buildable area that is required. It is 7.4% less. He said if you look at the purpose behind creating a 50 x 50 area as alluded to in the Planner's report, it is a scene that we have in the neighborhood and the homes are compatible. The homes that can be built there will be compatible with other existing homes in the area and variance relief is appropriate. One of the homes acts as a buffer against the church property itself and all of the setback requirements

on all of the homes are met. One of the setback requirements is for the existing parsonage as it comes into the new culdesac that is proposed and the side yard deficiency faces the church and not another residence. There was testimony from applicant's planner and the Borough planner that if this parsonage were to be removed some day that a conforming house could be built on that lot with sufficient frontages on both roadways. Mr. Whitaker said applicant has stipulated that based on the comments made by the planner that additional landscaping on the front yard for that deficiency is appropriate and applicant will comply.

Mr. Whitaker said there are two particular aspects to variance relief under State law. In the C-1 section of the Statute there are three different aspects. C-1 is the hardship aspect and C-2 is referred to as a modified soft variance. A C-2 variance gives more flexibility to a Board in granting variance relief, being an exception or deviation from the ordinance. The C-2 criteria basically states that on any specific piece of property the purposes of the Municipal land use law can be advanced by that variance and the benefits of the variance will substantially outweigh any detriments. In this particular instance he only needs one particular reason to show a benefit to meet that criteria but he believes there are a number such as the size of the church itself and being able to modify and contain the church use in a residential zone is a good planning benefit. The drainage improvements to the property and to the whole area also serve as a benefit. He said the law says that the benefit has to go beyond the property itself and the testimony from the Borough Engineer indicated that the overall drainage retention facility that is being proposed will improve what is there now for some and improve the overall drainage scheme. He said the lots are conforming and the development plan will meet the criteria within the neighborhood itself and it is a plan that works in this particular site. He requested that applicant be granted preliminary subdivision approval with the variance relief requested. He said there is a request for a design waiver from a section of the storm water ordinance as it pertains to the type of drainage facility they are proposing and all they need to show is that there is a reasonable need for the waiver. He said the ordinance recognizes there may be a need for a waiver and the Board has heard extensive testimony from Mr. Latincsis with concurrence from Mr. Yakimik that the type of drainage facility proposed is appropriate on this particular property.

Mr. Quinn clarified that the waiver is on the impermeable liner as opposed to percolation.

Mr. Dunn advised the Board that this is a subdivision application for single family homes on the church property in a residential zone. The property is about 5 acres in size and the application is to subdivide the existing 5 acre church lot into 3 single family lots and the remaining church lot will not be conforming to the lot area requirement of the zoning ordinance and there will be ancillary variances which are within the jurisdiction of the Planning Board. Since this is a major subdivision it is permissible for an applicant to come before the Board for preliminary approval. If approved he has the right to put in improvements before coming in for final subdivision approval. The Borough has ordinances that set forth site plan and subdivision design standards. The goal is to see to it that the application and the plat is compliant with those standards and if compliant the Board can grant the subdivision. Mr. Dunn said he is concerned because there has been a great deal of discussion with regard to concerns that arise from this development because of its unique impact upon the location and the drainage system which is adjacent to the Celery Farm and the Allendale Brook. Mr. Dunn said the applicant has the burden of establishing the criteria for grant of the variances. Under the C-1 variance there is the hardship that would go

with the land such as a property that is exceptionally narrow or isolated. With the C-2 variance the burden is on the applicant to establish that the benefits to be obtained by the grant of the variances substantially outweigh any detriment. Applicant has the burden of establishing through the evidence that the variances for the parking, the lot area for the church, the height of the fence, the variance for lot 2.02 for its 50 x 50 buildable area and the setback on the parsonage and the drainage impact on a large area. If we have a situation with a case of drainage where there is an addition to waters downstream, the law is that you have a right as a land owner to reasonable use the drainage system in which you are located. It is not simply adding to a drainage system that can affect a person's right to develop. The applicant must demonstrate that the plan meets the storm water management plan and ordinances. The issue becomes not that the applicant is adding waters to the drainage system but whether or not because of this use it would be harmful and that public improvements would need to be installed. He said the Board should be aware that it is probably clear that there are issues that the Borough as a whole must address. He said the Board has to consider the drainage, the environmental and traffic considerations and subdivision design standards.

Mr. Dunn advised the Board of the qualifications necessary to be eligible to vote.

Mr. Zambrotta moved to approve the application as presented including amendments and adjustments as discussed and presented this evening and that the Board Attorney prepare the required resolution of memorialization. Motion seconded by Mayor Barra. Mr. Dunn said he interprets that to be the conditions set forth in Mr. Yakimik's letter of December 15, 2011 and Mr. Snieckus's letter of December 15, 2011. In addition, a condition that it is subject to the compliance of the applicant with all of the ordinances of the Borough of Allendale.

Mayor Barra said he has anguished over this application because of the flooding issues within the Borough and how difficult it has been on the residents. He said this has been going on for the last several years and it has reached a crescendo this past year. He said he has the greatest respect for both Mr. Yakimik and Mr. Latincics but we have seen more and more flooding and more and more homes being flooded. When he became Mayor 5 years ago streets were our No. 1 priority and now the No. 1 priority is flooding and drainage. He said our engineers cannot guarantee results and our weather patterns have changed dramatically so every time we have more impervious surface it creates enormous issues. He said he has gone back and forth in his mind and he became convinced that the applicant has taken reasonable steps to design and demonstrate that adverse affects to these properties are not likely – some will most likely be improved and some will be unaffected. He hopes that is the case. For those people who have experienced flooding the Borough will do its best to alleviate that problem. In his opinion shoehorning three houses into this property, particularly lot 2.02 is really putting more in than should be there. If we did not have three lots, we could save 50 trees and we would not need a street, but a shared driveway. He said he is very good friends with Pastor Bassett, his wife and family and he has known them for many years. He knows many people from Calvary Lutheran church and he wants them to stay in the Borough and he knows that dollars are an issue. He said there is no question in his mind that if this had been done differently they would have netted out the same dollars with two homes and a shared driveway than with doing this with roads that are going to cost \$100,000, cutting down trees, engineering, planning and legal fees that have gone on for the past year. The lot he is talking about is probably the least valuable by far of the three

lots. This could have been done in a much better way and it could have been considerate of the community. The Borough has had huge problems with flooding and everything we can do to slow that down and make it better helps all of us as a community. He is deeply disappointed in that aspect and he has been sitting here for 10 months and he feels it wasn't right to do it that way but he believes the applicant has established by the law that this is something that meets the criteria and that is why he seconded the motion. He hopes that this comes out as the engineers predicted and that it does not exacerbate an existing problem and cause more problems for homeowners. He added that from his perspective he believes the whole issue has been storm water management. He said he is going with the expert's advice that peak reduction is going to happen and there will be a bigger flow at a smaller rate. Mayor Barra voted yes.

Mr. Quinn said his comments are in line with the legal requirements of what this Board is meant to do. That is one of the reasons why he became involved with the Board because he sat in the audience and complained about a substantial development that went in near his home. Essentially, we have talked about the drainage. We started out with a much smaller drainage plan and he feels the applicant has done a very good job of working to enhance it and he believes it has been adjusted to the extent possible. He believes in terms of the drainage the applicant has met the burden. In terms of the overall number of variance requests he is not happy at this time although the fence variance is one that has been granted because it is a safety issue and 6 ft. is better. With regard to the size of the church lot being less than 3 acres, we have a precedent in town with a church that sits on 1/2 acre and has essentially no parking on the site. He likes the idea that the existing church can operate within its existing space. The parsonage issue is created by having the road. The Planner has testified that the buffering with landscaping will help alleviate the problem with the setback. In terms of what the law requires, he believes the benefits of granting the variance outweigh the detriments so he votes yes.

With regard to the variances Mr. Fliegel said he believes the fence issue is beneficial. The Board asked for 6 ft. and applicant agreed. The undersized building lot limits the size of the house so perhaps that helps with the drainage issue. With regard to the front yard setback, he looks at it from the standpoint of the neighbor. If a home is encroaching on a property line it is a detriment to the direct neighbor. In this case the direct neighbor is the street and also the potential basin. With regard to the minimum lot size for the church, he has not heard testimony that they have not been good neighbors and they have been generous with their space to the community. He believes that all these factors are a benefit to the community. The church seems to want to stay in the community because he does not think they would want to go through this whole process and spend these dollars if they did not intend to stay for a long time. He believes the really big issue is the drainage and that we have probably reached saturation in town on drainage. Drainage is a town wide problem and he believes we need town wide solutions. He believes the applicant has gone out of their way to try to help the situation. For those reasons he believes the benefits outweigh the detriments and he votes yes.

Mr. Walters said he would like to commend the church and their professionals for their patience and perseverance. He too is concerned about the water issues and he votes in favor because he believes that the work the Borough is going to do and the work the applicant is going to do is going to improve the situation. He voted yes.

Mr. Sirico thanked the public for their comments. He said he is an engineer and he knows what goes into these decisions. He believes Mr. Latincsics has done an applaudable amount of work. He said he went around town during Irene and he looked at Ivers Rd. and was mortified. He is hoping what is planned is going to alleviate the situation for everyone. He agrees with Mayor Barra. He thinks if this was looked at a little differently we would have been able to get through this in 2 months instead of the time it has taken. He believes the church has done a lot for the community and he is going to vote for approval.

Ms. Sheehan said she agrees that the applicant has done a terrific job in trying to solve the water problems and she hopes it helps. She voted yes.

Mr. Zambrotta thanks everyone involved for their patience. He voted yes.

Mr. Sasso said he feels confident that the experts are right. He voted yes.

Ms. McSwiggan said she echoes all of the comments made by her fellow Board members. She thinks the applicant has met all of the standards and is in compliance and does not see a basis to deny the application. Hopefully, the storm water management system will improve the water issue for the surrounding properties. She would like to support the church for being a good neighbor in this town and would like to thank the public for their patience. She voted yes.

On a motion by Mr. Sirico, seconded by Mr. Zambrotta, the meeting adjourned at 11:30 pm.

Respectfully submitted,

Barbara Knapp