

February 25, 2015

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on February 25, 2015. The meeting was called to order at 8:13PM by Ms. Tenghi who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following Board members answered to roll call: Mr. Jones, Mr. Redling, Ms. Hart, Ms. Chamberlain, Ms. Tenghi, Mr. Manning, and Ms. Weidner.

On a motion from Ms. Chamberlain, seconded by Mr. Manning, the minutes from January 28, 2015 were approved.

On a motion from Mr. Redling, seconded by Ms. Tenghi, the Resolution of Memorialization for the Barnet variance application was approved.

The item on the agenda was an application to modify certain terms of the Resolution dated November 17, 2010 for 176 Forest Road, Block 1204, Lot 3.01. David and Nancy Maniaci are the current owners. Mr. James Jaworski from Wells, Jaworski, and Liebman located at 12 Route 17 North in Paramus was their attorney. Mr. Jaworski said they were in front of the Board to modify a certain condition of the above mentioned Resolution. He reminded the Board that it was a Resolution to allow the confirmation of the third floor room to be used as living purposes. Some time had passed between the Resolution and the rerecording of the deed which was actually done recently. The building permits were issued within the six month parameters. But the process could not be completed within the six month time frame as it took more like two years. The Certificate of Occupancy was issued on February 23, 2012. Mr. Jaworski stated that the Maniaci family had complied with the Resolution of 2010 but needed a confirmation from the Board that although everything was not done in a timely manner it was done properly.

Mr. Nestor told the Board that the Maniaci family is selling the property and needs to make sure that the buyers are confident that what they are buying does not have a problem. Mr. Nestor added that according to the Resolution certain things had to be done within a certain time frame and were not. So their attorney is properly bringing this before the Board to modify the Resolution which he is allowed to do under the statute. The reasons why may be important to the Board but the bottom line is that they are now accomplished and the buyer and the seller are looking to the Board to say that everything is satisfactory and then they can move forward with the sale.

Ms. Tenghi said one of her concerns was that the deed was not rerecorded and would put the buyers on notice about the restrictions on this property. She reminded the Board that the applicant had not initially gotten the required permits for the renovations. The Allendale Tax Assessor had gone to the property and had discovered the renovation and brought the issue to our Board. Now they are selling the house and the buyers' attorney was alerted of the issue and the

Maniaci family need to bring the problem back here because there was not full compliance of the Resolution.

Mr. Redling asked why they weren't debating the issue of the third floor as the applicants had certain conditions they had to adhere to and didn't. The original Resolution in 1988 said there should be no third floor and they built it anyway. Mr. Redling felt the applicants did not live up to their part of the bargain. Ms. Tengi responded that the one issue with the Certificate of Occupancy was not the applicant's fault. Mr. Nestor declared that the third floor was already discussed and decided in the past and the applicant got the Certificate of Occupancy and brought the third floor up to the required safety codes. The permits were applied for but not issued within the time frame. The only real issue before the Board is about that time deficiency. Mr. Manning said there was a six month limit and it took three years. Mr. Jaworski said that the Certificate of Occupancy was issued in 2012. Mr. Manning said that was still two years afterwards and Mr. Jaworski said that maybe the six month construction time was not ample time to do the construction. He suggested that be time you get plans assembled, permits issued, inspections done, and a CO issued that six months was not a reasonable time frame. Sometimes things are done outside your control. Mr. Manning asked if there was a problem with the deed and the Construction Office and Mr. Jaworski said no it was a condition that was not met by the applicant originally, but the condition has now been met. Mr. Jaworski said the third floor has been decided and should not be discussed by the Board. The only issue before the Board was the time lapse in rerecording the deed.

Mr. Jones commented to Mr. Nestor that applicants have come to the Board in the past with a time lapse and have been required to start the application process over again even if nothing has changed with the plans. Mr. Jones continued with the fact that some applicants have come before the Board with a rationale as to why it has taken so long but he hasn't heard an explanation from this applicant. Mr. Nestor replied that the applications that have been brought back to the Board in the past and started from the beginning again have violated the Code Section 40-19 which states that if you do not do something within a year it is deemed moot. Mr. Nestor said that this situation is different because they applied for the permits but the permits were not issued within the time restriction that the Board requested. Mr. Nestor said they put a limitation in the Resolution and maybe the applicant should have come back and said that it could not be done within that time frame. Mr. Nestor told the Board that the third floor could not be discussed as it had already been decided. Mr. Nestor remarked that the purpose of tonight was all about whether the delay affects the Ordinance or the Resolution from 2010. Mr. Jones asked if there were deficiencies within the construction and Mr. Nestor said it was done without permits so no one knows. In 2010 they weren't sure whether to do make the homeowners use the 2003 or 2010 Code. But the Maniaci family has brought the home up to Code and the Certificate of Occupancy has been issued. Mr. Jones asked if things had to be changed to be brought up to Code but Mr. Nestor said the Certificate of Occupancy was issued in 2012. Mr. Jones asked

again why this process took so long and Mr. Jaworski said Mr. Wiss who is the Allendale Attorney did state in a letter to the Board that none of the delays were on behalf of Mr. Maniaci.

Ms. Tengi asked if the Tax Assessor could speak about the back taxes being paid. Ms. Angela Mattiace from 500 West Crescent Avenue in Allendale was sworn in to testify. She is the Tax Assessor in Allendale and confirmed that Mr. Maniaci paid \$22,506.26 on November 30, 2010.

Ms. Hart asked what the next step was that evening and Mr. Nestor responded that the applicant was asking to modify a prior Resolution basically to say that it had been satisfied even though the time restrictions were not met. Should the Board agree to modify the Resolution he drafted a new Resolution for tonight's meeting on the subject due to the urgency of the upcoming closing of the house.

Ms. Tengi opened the meeting to the public, but no one approached, so she closed the meeting to the public and brought the meeting back to the Board. Mr. Nestor marked the letter from the law firm of Wells, Jaworski, and Liebman dated January 21, 2015 as A-1 February 25, 2015 and this covered the correspondence, rerecording of the deed, and prior Resolutions. Mr. Nestor asked if Mr. Jaworski had a copy of the rerecorded deed but he did not. However, Ms. Mattiace did have a copy of the new deed in her office. Mr. Jaworski said that if the 1988 Resolution had been recorded they would not be in this situation today but there was no condition in the Resolution that required it to be recorded. Mr. Nestor marked the correspondence dated February 20, 2015 from the Byers and Byers law firm who represents the potential buyer of the Maniaci property as A-2 February 25, 2015; correspondence from the new Borough attorney Raymond Wiss issued on Feb. 23, 2012 indicating the delay of issuing the Certificate of Occupancy was not due to the fault of the Maniaci family as A-3 February 25, 2015. Mr. Nestor marked the copy of the new Certificate of Occupancy as A-4 February 25, 2015.

Ms. Chamberlain was very pleased that the taxes were paid and the Certificate of Occupancy was issued and there is a rerecorded deed. However she said the whole thing didn't feel right to her. Nothing is to be gained by postponing the Resolution so the sale can go forward because the points have been achieved.

Ms. Tengi said applicant's attorney provided the notification of the homeowners being notified of the meeting within the 200 foot radius. Mr. Jones stated that the applicant wanted a modification to one of the stipulations in the original Resolution to modify the six month time frame to rerecord the deed and for the Certificate of Occupancy to be issued. He continued that the six month stipulation should be changed to February 23, 2012 when it was issued. He did feel that there should be better communication in the future between the Board and the Construction Office in regards to timelines and construction problems.

On a motion from Mr. Jones, seconded by Ms. Chamberlin, the modified stipulation to the Resolution from 2010 was approved.

Mr. Nestor passed out the copy of the Resolution to Board members who read over it. A copy is on file at the Borough Hall. Ms. Tengi said that she understood the Board's concern but she wanted to make it clear that they were not there to rehash the application from 2010. It is just about issuing a modification on the time frames allotted. Ms. Tengi felt that some of the restrictions were ignored by the applicant. Mr. Redling said he was comfortable with what the Board had to do but was bothered by the letter from the attorney from the town who said it was their fault. He wanted to know why was the town was delayed in their responsibilities. Mr. Manning agreed and felt there were a lot of holes in this process. Mr. Nestor said it is not the applicants' fault and that is the key issue. It may be something that the Board investigates as to why this happens in town. Ms. Tengi said it was not the applicants' fault for the Certificate of Occupancy but was his fault for rerecording of the deed. Mr. Nestor said they will have the new buyer attach the Resolution to the deed so there will be no doubt in the future. On a motion from Mr. Redling, seconded by Ms. Tengi, the Resolution was approved.

On a motion from Ms. Tengi, seconded by Ms. Hart, the meeting was adjourned at 8:45PM.

Respectfully submitted,

Diane Knispel