

July 15, 2010

A regular meeting of the Allendale Planning Board was held in the Municipal Building on July 15, 2010. The meeting was called to order at 8:15 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: Mr. Quinn, Mr. Barra, Mr. Bernstein, Ms. Sheehan, Mr. Sirico and Mr. Zambrotta. Mr. Fliegel, Mr. Herndon, Mr. Sasso, Mr. Yevchak and Mr. Walters were absent. Also present Was Mr. Dunn, Board Attorney.

On a motion by Mr. Sirico, seconded by Mr. Barra, the minutes of the June 17, 2010 meeting were approved as submitted.

Allendale Whitney, LLC – Chestnut St., Block 2101, Lots 1, 2, 3, 5, 6, 7, 8 – application for site plan modification with variances for fence height and sign size

Scott Koenig of Lapatka Associates was sworn.

Alan Glaser, attorney for applicant, said property consists of 20.735 acres in the ML-6 zone. Tonight he is requesting preliminary and final site plan approvals including certain variances. They would like to modify a previously approved landscape plan along with modifying the height of a previously approved fence from 4 ft. to 8 ft. along the railroad and are requesting an additional sign by the front entry. In conjunction with the work and the variances they will be requesting the placement of a second entrance advertising sign. Photos were submitted and marked Exhibit A1 (photos 1-7). Revised landscape layout was marked Exhibit A2.

Mr. Koenig said he is a licensed landscape architect in NJ since 1984 and has been practicing at Lapatka Associates as the Senior Project Manager and was responsible for the landscape plans that will be presented this evening. He testified before this Board on the original application in 2005. He was accepted as an expert in his field.

Mr. Koenig said A2 depicts an excerpt of landscape plan sheet 6 in the set of site plans that were part of the original approval. The original buffer contemplated clearing all of the existing vegetation to the property line and introducing a double staggered row of 82 evergreens. The bottom half of the board shows the revised landscape exhibit. It shows the fence line which has been revised and the proposed new evergreen trees and large shrub plantings as well as existing trees that are remaining. They are proposing to have the 46 existing trees remain intact and the intent is to supplement those trees with a mixture of evergreens and large shrubs to fill in some of the gaps. The revised plan now contemplates 43 evergreen trees and the introduction of 66 new large size deciduous shrubs to be planted under the existing trees in between the proposed evergreen plantings. The original fence was proposed to be 4 ft. height and what is proposed on the revised plan is an 8 ft. fence. The changed plan will provide enhanced buffer and privacy to the residences in buffering from the railroad as well as providing an enhanced physical barrier between the side and rear properties of the units from the railroad tracks.

Mr. Koenig said at the entranceway off Chestnut St. they are proposing a 3 ft. high fence. The 8 ft. fence will terminate at the corner of the property where the railroad right of way meets the Chestnut St. right of way. There be a minor adjustment made to the fence as it is depicted. There is a small section, approximately 12 ft. of fence, that encroaches over the proposed right of way that will be modified as recommended by the Borough Engineer. The location of the proposed sign is shown on the north side of the proposed driveway. On the south side of the driveway is an identical fence treatment that will run along the top of the retaining wall. Also shown is the location of the sign on the south side. Because they are proposing two signs an additional variance is requested.

Mr. Quinn asked if the size of the signs is also an issue. Mr. Yakimik said he believes the ordinance speaks in terms of square footage and not in number. It could be a variance for size as well as number. Mr. Glaser said based on his reading of the ordinance it is based upon total square footage of the area and not necessarily on how many signs; however, they request approval for both the square footage and the number of signs if required.

Mr. Yakimik said Mr. Snieckus has just clarified that the code speaks in terms of square footage so the number of signs is not an issue.

Mr. Sirico asked about the drop off by the retaining wall where the second sign is to be located. Mr. Koenig said at its highest point it is about 3 ft. so the sign will also help from a safety standpoint. Mr. Quinn said it was discussed that some of the shrubbery be located off the tree line so it can get through the root mass of the existing trees. He asked if that is still being proposed. Mr. Koenig said there will be minor adjustments made to the locations based on the vegetation around the trees and the conditions in the field.

Mr. Quinn said as discussed Monday the fence height is primarily for safety reasons because of the railroad tracks. This fence is basically the same as proposed previously but double the height. It will be made of pressure treated wood. All of the plantings will be on the development side of the fence. Mayor Barra asked if any consideration was given to putting any on the railroad side of the fence. Mr. Koenig said it was not because they do not have control of that property. Their intent is to put the fence adjacent to the property line to afford as much planting area as possible between the fence and the units themselves. He said the fence at the property line is pretty far removed from the tracks themselves and the railroad maintains the immediate road bed of their tracks. On the fringe of the right of way there is vegetation and over time there will be vegetation growing on its own on that east side of the fence.

The meeting was opened to the public for comments.

Karen DelBuono, 62 Chestnut St. said she looked at the site plan and noticed there was a berm very close to the proposed fence. She wondered if the 8 ft. fence was going on top of the berm. Mr. Koenig said there is no berm proposed there. Ms. DelBuono asked if anyone did a study on the negative impact of the noise on the surrounding area on the east side of the fence.. Mr. Koenig said the sound attenuation from the railroad was not a consideration for the reason for going to the 8 ft. fence. The feeling was that the 4 ft. fence was not a barrier for the residents from the railroad tracks. Aesthetically it is a visual buffer. The main concern was to have a

physical barrier to separate the residential use from the railroad tracks. Ms. DelBuono said she is concerned that this is going to set a precedent and anyone in a multifamily complex is going to ask for an 8 ft. fence so there will be 8 ft. fences all over Allendale. Mr. Quinn said there are zoning rules regarding 8 ft. fences and anyone seeking an 8 ft. fence would have to obtain a variance. He said they are granted only on a case by case basis. Ms. DelBuono said as a resident of Chestnut St. she is opposed to the 8 ft. fence. She has no objection to the additional sign.

Mr. Bernstein asked if she is not in favor from a visual point of view. Ms. DelBuono said she is concerned about the noise impact. She said the noise will bounce off the fence because it is so high. She would not have a problem with a 4 ft. fence. Mr. Bernstein asked if there is also a aesthetic visual concern. Ms. DelBuono said no, because it is wooded behind her property. Her primary concern is the noise.

Mr. Quinn asked the Borough Engineer if he has any comments on the reflection of sound. Mr. Yakimik said he would defer to an expert on that but with regard to the berm it was not on the previous plan or the current plan. The plantings would occur at roughly the existing grade.

Mr. Barra asked if there are spaces between the slats on the proposed fence. Mr. Koenig said it is overlapping boards.

Matthew Klemchalk, Erol Court, asked how the board on board fence will be constructed. His primary concern is the reflection of the sound under the railroad coaches as they pass through. Mr. Koenig said sheet 10 of 13 contains the detail for the fence. Mr. Klemchalk said if you took the front row of boards and placed them in the back it would be more open and less reflective. Another suggestion might be to put in a series of alternating v's to reduce the sound transmission and reflection by about 30% . He said Mr. Barra had suggested planting a few trees in front of the fence. He does not think the federal law would allow that. He feels that a 4 ft. fence would muffle a lot of the sound from the undercarriages of the trains. He also feels an 8 ft. fence is not going to do anything to alleviate the problems of the whistles. He feels a 4 ft. fence will be more aesthetically appealing. As a long time resident living along the railroad tracks he feels the fence should be an open type fence rather than a solid fence that will be highly reflective of the noise of the passenger coaches going by. He has not taken any decibel readings of the trains going by.

Mr. Bernstein asked what the 30% number was based upon. The question was asked whether or not Mr. Klemchalk is considered an expert witness as far as his testimony is concerned. Mr. Dunn said he is not testifying. In this context it is an examination of the witness. Mr. Klemchalk said his 30% was determined by geometry.

The meeting was closed to the public.

Mr. Glaser said due to the unique nature of this property especially with the proximity to the railroads that the requested variances are going to enhance the safety and wellness of the residents of Allendale and the enhanced buffering will be beneficial to the project as well as the Borough. There are safety concerns related to the height of the fence and the placement of both signs so everyone can see where they are going on the roadway. If there is any negative impact

it is minimal and the benefits of the requested variances and the enhanced landscape plan as well as the height of the fence and the size of the signs greatly outweigh any negative impact.

The meeting was again opened to the public.

Joseph DelBuono, 62 Chestnut St. asked if the fence is directly on the property line and if there is no space between the railroad property line and the Whitney property line. Mr. Koenig said the intent is that the fence runs immediately west of the property line as close as physically can be constructed without encroaching on the railroad property. Mr. DelBuono asked if they would be able to move the fence off the exact property line towards the Whitney homes. Mr. Koenig said if they moved the fence to the west they would start conflicting with existing trees. Mr. DelBuono said his point is that if the fence is moved in they would then be able to put in ivy to cover the fence or they would be able to put in trees but because it will be on the actual property line it leaves no room for aesthetic improvement. He would like to know if the fence can be moved toward the Whitney side so there could be plantings that would not interfere with the railroad and ivy put on the 8 ft. fence. This would improve the appearance of the fence on both sides. Mr. Koenig said if the fence is moved to the west it would be in conflict with the trees that are retained in that area. He said they are saving 46 trees in that area. They are proposing to plant 43 evergreen trees and 66 shrubs. Mr. DelBuono said there will be over 140 trees on one side of the fence and none on the other side. He asked if it is possible to change the plan. Mr. Koenig said it is his opinion that the fence as proposed provides the appropriate location to obtain the maximum number of trees, to maximize the buffer plantings between the units and the railroad property. In answer to Mr. DelBuono's questions, Mr. Koenig said the trees will grow to 20 ft. Mr. DelBuono said, "Why do we need the fence?" Mr. Koenig said the fence is a continuous barrier between the residences and the railroad property. Mr. Quinn said to keep in mind that the 4 ft. fence has already been approved.

The meeting was closed to the public.

Mr. Barra said he does not like to see a long line of mass. He would think some shrubs or trees in front of the fence would help to some extent to break down the potential for sound reverberation. He asked if the possibility exists to set a section of the fence in by 4 or 5 ft. every 30 or 40 ft. and put some plantings in that section to break up the mass of the 8 ft. wall. He said he is not generally in favor of 8 ft. fences and he would be very clear if this is approved that it is being done for safety reasons and because it is on a railroad track. He is concerned about the railroad and the 150 families living in the development.

Scott Loventhal was sworn. He said he is the developer of the Whitney. He would defer to his expert as to whether they can stagger the fence. One of the biggest concerns is safety. He said if there were jogs in the fence where there could be plantings in several locations and it did not interfere with the existing tree line he would be willing to consider that. Mayor Barra asked Mr. Yakimik if he feels this is a workable suggestion. Mr. Yakimik said this suggestion is very feasible. A Board member asked if the plantings on the railroad side will be a maintenance issue if the fence is approved. Mr. Loventhal said the association would remain responsible for any maintenance required up to their property line. The railroad maintains their property line and they often maintain overgrowth and trees that encroach into their right of way. Mr. Yakimik

suggested having some locked gates in the fence for ease of maintenance. Mr. Loventhal said the fence would remain perpendicular with the right of way with several locations where they can jog the fence in approximately 2-3 ft. in order to plant shrubs. He said they will work with the Borough Engineer on the placement of the fence and then it will be shown on an as-built when it is complete. Mr. Yakimik said a note on the approved plan would suffice saying that it will be determined in the field. It will be based on what is feasible from an aesthetic standpoint and where the root masses and existing trees are in the field. Mayor Barra said he has every confidence that this can be worked out satisfactorily in the field between the applicant and the Borough Engineer.

Mr. Yakimik submitted copies of his report dated July 14, 2010. He said his comments are based on plans dated May 13, 2010. He understands there was a minor revision and plans revised July 9 were marked A2. Memo was attached from their landscape architect. There was concern that the plantings would survive because they were competing with existing plantings and root masses may be destroyed as a result of the new plantings. Mr. Yakimik said applicant's expert will be present to place the plantings correctly and his expert will be there at the same time to review the location of the plantings. The survival of those plants will be based on a maintenance bond that will be in place for two years. Applicant verified that a 3 ft. decorative fence will be placed along the front entrance. Mr. Yakimik said he would like to see a note on the plan about the type of lighting which is to be in accordance with the Borough code. The developer agreed to the items listed in Mr. Yakimik's letter.

The meeting was opened to the public.

Joseph DelBuono said he is concerned about precedent and other properties in town. If safety is an issue have there been any problems with Allendale Brook Estates and do they have an 8 ft. fence. It was determined they do not. He asked if Orchard Park has an 8 ft. fence and it was determined they do not. Mr. DelBuono said therefore this is setting a precedent. He said if this is approved the other multiple housing areas that abut the railroad track could also ask for this and the Board would have a hard time denying their request. He cannot recall major safety issues in the other locations.

Mr. Quinn said he often walks past the old lumber yard property and there is at least a 3-4 ft. berm with a fence sitting on top so it probably rises to 7-8 ft.

Matthew Klemchalk, Eroid Court was sworn. He agrees with Mayor Barra with his idea of the fence jogging in and out. Someone made an observation that vegetation would grow in front of the fences and the railroads do not allow that. New Jersey Transit comes through every year like clockwork and they spray herbicides to kill all the vegetation on their right of way. He has lived in town for over 30 years and has seen approximately 60 children on Eroid Court and Chestnut St. grow up and there have not been any difficulties with the children and the danger of trains going by. The speed limit through Allendale is about 70 miles per hour. The former owner, Mr. Freeman, put up a fence for his horses that was 6 ft. tall and he was forced to remove the fence. He said his only concern is that he is opposed to a fence that would be highly reflective and if they have to put up a fence he would be in favor of an open fence that would not be higher than 4 ft. He said an 8 ft. fence is not going to shield any train from the residents of the condominiums.

The meeting was closed to the public.

Mr. Dunn asked for a motion from a member of the Board to grant or deny the site plan amendment and attendant variances. Mr. Loventhal said they are requesting permission to erect an 8 ft. fence along the railroad where they already have approval for a 4 ft. fence as well as additional square footage for the signs that have also been previously approved. He said strict enforcement of the ordinance regulations will result in undue difficulties because of the unique grading of the site as well as the railroad tracks adjacent to the proposed fence. Some other properties have berms with fences on top so while it may be a 4 ft. fence it results in a 7 ft. fence. Due to the fact that the property is located along the railway the proposed fence is a safety issue. The proposed signs are also a safety issue so cars along each side will be able to see where they are going. There is already an approved 4 ft. fence and there is no berm as some other properties have, so they are talking about additional safety. He does not believe there will be any detriment as a result of the requested variances and they are willing to work with the Borough Engineer with regard to the placement of the fence.

Mr. Dunn said the issue before the Board is two separate but connected issues. One is the amendment to the site plan. Ancillary to that is the application for a variance and the specific standards that apply. In this case it seems to be a C2 variance and for that to be granted either for the size of the sign or the size of the fence within the property line distance that he is seeking, it is necessary for applicant to meet the burden of proof that the benefits of the grant of the variance substantially outweigh any detriments that will arise by virtue of the variance being granted. The second aspect of the proofs that the applicant must show for any variance is that there is no detriment to the zone plan or the zoning ordinance.

Mr. Barra moved that the Planning Board approve the application to amend the site plan and ancillary variances as set forth in their exhibit A-2 with the condition that the 8 ft. fence be jogged in several locations with landscaping on the east side of the fence within those jogs and that this will be done in the field by agreement between the developer's construction manager and the Borough Engineer. Motion seconded by Ms. Sheehan.

Mr. Zambrotta said his initial concern has always been with the mass of the 8 ft. fence. He feels the solution proposed is a remedy although the 8 ft. fence may or may not be safer than a 4 ft. fence.

Mr. Quinn said he is concerned about safety and he feels a 4 ft. fence is easily scalable by a child and an 8 ft. fence is more of a barrier as it is an active railroad track.

Mr. Barra said he also is concerned about the 8 ft. fence and that is why he suggested the jogs. He said this development is going to be considered as a private enclosed community and if he lived there with young children, he would be inclined to allow children to go around the development much more freely than if he lived on a typical street. He is concerned about all of the easy accesses to the railroad within this community and that is why he views the safety issue as a major issue in this particular development.

A Board member said he would be more in favor of a 6 ft. fence. Mr. Barra said how it is buffered is more important than the height.

Mr. Bernstein asked if a 6 ft. fence was considered by the applicant. Mr. Loventhal said they considered a 6 ft. fence and felt if they were going to present this application and go through this effort to deviate from the approved plan that they should create the safest environment and most appropriate buffer for this project from a 150 ft. active railroad line. They do not believe a 6 ft. fence will give them what they are looking for and the 8 ft. fence gives them more certainty.

On roll call, Mr. Barra, Mr. Bernstein, Mr. Quinn, Mr. Sirico, Ms. Sheehan, and Mr. Zambrotta voted yes.

#### Discussion – Proposed Restricted Commercial District (Restaurant L)

Mr. Dunn said there is no actual application before the Board. This is a discussion and informal review of a request by the Land Use Committee to determine whether or not the Board wants to reconsider in the contest of the master plan a conditional use approach with regard to the nonconforming use of Restaurant L and a potential change to our zoning ordinance to create a new zoning district called the RC zone district.

Copies of the draft ordinance have been received by the Board.

Mr. Yakimik said he was involved with a different draft of that ordinance back in early January and there were technical or engineering items that were carried over into the new draft. He cautioned the Board that if they do look at his comments that those were for a previous version and cannot be applied directly to the current draft. At that time they were asked by the Land Use Committee to look at the ordinance. The private sponsor of that ordinance posted an escrow account to cover the cost of the comments of the Borough Engineer and Planner. Mr. Dunn said currently the discussion involves isolating the Restaurant L property as a separate zone district.

Mr. Dunn said the discussion before the Board this evening is whether or not there is a benefit to the community at large by virtue of the creation of a district out of this small tract in conjunction with the current master plan review.

Mr. Snieckus said the actual restaurant that is being reviewed is the Restaurant L property and a small portion of an adjacent lot to cover the deficiency in parking. He said one of the things that was not discussed is the parking ratio for restaurants and whether or not it should be a wholesale change for all restaurants within the Borough. The current ordinance is very general and tries to take into account other types of facilities and not specifically just restaurants.

Mr. Dunn said the question before the Board is whether or not the Borough is interested in treating this property as a separate zone district. If the Board feels it is appropriate it could be noted in the record and referred to the Land Use Committee for their guidance. If any changes are recommended they can be referred to the Planner for incorporation in the master plan.

Mr. Barra said when the owners of the property approached the Land Use Committee and said they would like to have this zone change to be commensurate with what the restaurant is today

and what they would like to make it, the Land Use Committee asked the Planner to look at the proposal and provide his recommendations. Since the master plan is now being reviewed by the Board, the Committee felt it would be appropriate to have the Planning Board review this as part of the master plan. He feels the Planning Board can do one of two things – either consider this as a planning issue and deal with it in conjunction with the master plan or simply say it does not want to deal with it. .

Mr. Quinn felt the Borough is protected today with the restaurant as a non-conforming use since it can't become larger than the existing footprint. Another Board member said he feels the restaurant is a good thing for the town and the protections are in place. He doesn't see a huge benefit to this new proposal.

Mayor Barra asked if the Board wants to leave things as they are or do we want to take a fresh look at it.

Mr. Snieckus asked if the Board feels the status quo is the appropriate way or to look at possibly recommending a rezoning of the property and adjacent lands with the caveat that there needs to be specific performance criteria such as buffering, setbacks, etc.

Mr. Barra said he would like the Board to look at this as part of its review of the master plan. He said the Chairman of the Land Use Committee has set up a meeting with the residents who live in the area of Restaurant L for discussion of this matter. He said he feels this Board should speak out on all relevant topics that relate to the master plan. Mr. Quinn said the Board has been in the process of developing the master plan for many months. Mr. Quinn suggested this be tabled until at least the next meeting, have the meeting with the residents and then continue the discussion.

#### Discussion – Master Plan Review

Mr. Snieckus said the master plan review has been broken up into several components – the master plan reexamination, the open space element and recreation plan and the sustainability element. He recommends that the Board pursue the open space and sustainability element before finalizing the master plan itself. He recommends scheduling a public meeting for review of the open space element and to combine that with the sustainability element in one night. If necessary another meeting can be held for the adoption of the sustainability element. This can be done independently of the overall master plan. He said the master plan should be adopted by the end of the year.

Mr. Snieckus said he was going to ask the Board's permission in order to assist the grant process to allow him to send the draft component of the recreation element with a cover letter that would show support for the proposed bikeway. He said there is an ongoing effort to obtain the grant. Mr. Quinn said he does not see an issue as long as it is made clear that it is a draft.

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

