

July 28, 2010

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on July 28, 2010. The meeting was called to order at 8:10 p.m. by Ms. Tengi, Chairperson, 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: Ms. Hart, Mr. Jones, Ms. Tengi, Mr. Manning, Ms. Chamberlain and Ms. Weidner. Mr. Redling was absent. Also present was Mr. Nestor, Board Attorney.

On a motion by Mr. Manning, seconded by Ms. Weidner, the minutes of the meeting of June 2, 2010 were approved as submitted. On roll call, Mr. Jones abstained. All other members present voted in favor.

On a motion by Ms. Tengi, seconded by Mr. Hart, the minutes of the meeting of June 23, 2010 were approved as submitted. On roll call, Mr. Jones abstained. All other members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the application of Holmgren's Black Belt Academy. Ms. Chamberlain moved, seconded by Ms. Tengi, to adopt the resolution as submitted. On roll call, Mr. Jones abstained. All other members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the application of Richard Rizzo. Mr. Manning moved, seconded by Ms. Tengi to adopt the resolution as submitted. On roll call, Mr. Jones and Ms. Weidner abstained. All other members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the application of Christopher Batenhorst. Ms. Chamberlain moved, seconded by Ms. Weidner, to adopt the resolution as submitted. On roll call, Mr. Jones and Ms. Tengi abstained. All other members present voted in favor.

#### Continuation of David Maniaci variance application

Mr. Nestor said this application will be carried to the August meeting at the request of the applicant's attorney.

#### Michael Carroll variance application, 3 Montrose Terrace, Block 406, Lot 11

Michael Carroll was sworn. Mr. Carroll said he plans to put up a 6 ft. fence. The fence will be between his property and his neighbor at 7 Montrose Terrace. He lives on the corner of Franklin Turnpike just past Crescent and there is no left turn on Crescent coming north on Franklin Tpk. There is a lot of traffic and people turn into his driveway and his neighbor's to ask directions or to get their bearings. He is concerned about the safety of his children who play in his yard and

he doesn't feel a 4 ft. fence will be adequate. His neighbor is present this evening and the fence will be between the two yards.

Mr. Manning asked how the fence will stop people from coming into his driveway. Mr. Carroll said it won't but it is the visibility that he is concerned about. His wife said a man came up to her to ask directions while she was sitting on their deck. A fence along the property line will keep people who turn into his driveway or his neighbor's driveway from looking into his yard. Mr. Carroll submitted photographs of his property.

Mr. Manning asked if the fence that is proposed in the front of his property is 15 ft. back from the property line. Mr. Carroll said that is correct. He said he is only looking for relief along the neighbor's property line and his neighbor is also present this evening in case there is an issue. Mr. Carroll said not everyone turns into his driveway. If they turn into his neighbor's driveway they are able to see his wife and children if they are in the back yard or on the deck. He is primarily concerned about the out of town or out of state traffic that turn in to make a call or look at a map.

Mr. Nestor marked the survey A-1 with today's date.

Mr. Jones said there is a pre-existing fence along the property line on the southern side of the property. Mr. Carroll said that is his neighbor's existing 4 ft. fence. Mr. Carroll said he is proposing a 6 ft. fence on the south side of his property to connect with that 4 ft. fence.

Ms. Tengi said she understands why the applicant wants a 6 ft. fence in the front because it would obscure any visual line of sight to his back yard for the preservation of privacy and the security of his wife and children. However, she does not understand what a 6 ft. fence against the neighbor's property is going to accomplish.

Mr. Carroll said many times the bigger trucks do not turn into his driveway because it is too tight. They pull into his neighbor's driveway where there is total visibility into his property because they are looking over a 4 ft. fence. In addition his property slopes so it makes it even more visible. He wants the 6 ft. fence for security reasons.

Ms. Tengi asked if Mr. Carroll has considered doing a berm and planting arborvitaes in lieu of the fence. Mr. Carroll said he would rather have a fence. He has a 16 month old baby and a 5 year old daughter and he believes a fence would be safer.

Mr. Manning said he has been on the board for 5 years and has seen many applications for 6 ft. fences and none have been approved. Ms. Hart said she believes there are some options because the applicant has lots of room for plantings along that property line. A 4 ft. fence with some plantings would provide privacy and as applicant pointed out he is on a hill so the 6 ft. fence would look even taller. Mr. Manning pointed out that a 3 ft. berm and a 4 ft. fence would total 7 ft. Mr. Manning also pointed out that although his neighbor is present to support him, he could move next week.

The meeting was opened to the public for comments.

Curtis E. Baer, 7 Montrose Terrace was sworn. He said he understands Mr. Carroll's concerns. It is a privacy issue. People turn around and sit on Montrose with their lights facing east and his entire back yard is opened up to that. He has young children and the cars and trucks are turning in all of the time. Mr. Baer said his children are older now, 18 and 20, so it is not as much of an issue for him now but he had the same concerns when his children were young. When he moved in he never realized that the Crescent Avenue intersection would create a problem. People pull right up into the driveway and it is very annoying. He said it is the safety as well as the privacy for Mr. Carroll that is the concern because the trucks turn around and they sit there. Mr. Baer said he is present to support him entirely.

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

Mr. Jones said that he sympathizes with applicant's request for a 6 ft. fence and the municipal land use laws are very specific with regard to granting a variance on this particular ordinance although a 6 ft. fence is permissible if it is pulled back 15 ft. from the property line. He said a 4 ft. fence along that northwest/northeast corner may be sufficient for his requirements. Although his request is really on that one issue, he did request a 6 ft. fence on the southern side of the property although the testimony did indicate that a 4 ft. fence would be sufficient on that portion. He is looking for the hardship in terms of what is required under the municipal land use law and is not hearing that from the testimony. If the applicant chooses to move the fence in he could put up a 6 ft. fence and he understands that security is a primary factor. Mr. Jones said a 4 ft. fence along the westerly border of the property with a berm or some additional hedging is also a possibility. Mr. Jones moved to deny the request for a 6 ft. fence based on the testimony. In addition there are some other options such as moving the fence in to meet the code requirements and he does not see a hardship. Motion seconded by Ms. Tengi. She believes the applicant has alternatives that may be beneficial such as a berm and plantings for screening that would be aesthetically pleasing in the future. On roll call all Board members present voted in favor.

#### Michael Schmidt variance application – 130 Powell Rd., Block 1906, Lots 6 & 7

Ms. Weidner recused herself from participation in this application because she is a neighbor within 200 ft.

Mr. Nestor said part of this application is for a floor area ratio variance which requires 5 affirmative votes. He said since there are six members present this evening the applicant may wish to carry the matter to the next meeting. Mr. Schmidt said he wished to proceed with the application this evening.

Michael Schmidt was sworn. He said he is hoping to add a fourth bedroom to his house. He just had another child and would prefer to have all of the bedrooms on the 2<sup>nd</sup> floor of the house. He said the house was purchased in 2007 and he did not realize there was a FAR issue when he acquired the property. The AA zone requires 26,000 square feet and this is a pre-existing hardship.

Photos were submitted and marked A-1 with today's date. The first photo shows the front of the house taken from Powell Rd. He said right now you do not realize there is an addition on the left side of the house because it is below the existing roof line. The front of the house is the existing house that was built in the late 1920's. He believes the addition was done early in the year 2000. One of the photos shows the garage in the back. The next two photos show the existing kitchen and what he is proposing he would like to do. He presently has a vaulted ceiling in the kitchen and he is proposing to take the kitchen ceiling down even to the 9 ft. ceiling which is consistent with the hallway and put the bedroom above the kitchen without going past the outside wall. He is staying within the existing footprint of the house. The addition will butt up against the prior addition and will come out directly even with that addition. He is not going above the height of the building which is staying the same at 26 ft. 2 inches.

Mr. Schmidt said the floor area ratio based on the calculations in the code book allows for 22%. When he purchased the house the FAR was 24.4%. The proposal of 320 sq. ft. that he is seeking to add which is the upstairs bedroom will bring the FAR ratio to roughly 25.7%. Therefore he is asking for a variance for an increase of 2.3% to his FAR in order to add the fourth bedroom upstairs. He said he is not breaking the current footprint of the house. He is not cantilevering over and he is not touching the existing setbacks. Mr. Schmidt said he does understand the significance and the importance of having a floor area ratio ordinance and in his opinion he is not changing the dimensions and layout of the property and the house.

Ms. Chamberlain asked if the trees that separate his house from the Weidner property are pines. Mr. Schmidt said they are and they are green all year. They are on the Weidner's property.

Mr. Chamberlain said she was on the Board many years ago before the town had floor area ratios and they did approve the existing addition of the family room. The FAR ordinance was passed many years after that addition.

Mr. Nestor marked the 4 page plans with a date of 3/23/10 and 3/24/10 as Exhibit A-2 with today's date.

Mr. Schmidt said he is trying to stay with the look of the house by using the same materials that were used for the existing house.

Ms. Tengi commented that the extension of the floor area ratio is minimal and she does understand that it was already over the FAR when Mr. Schmidt purchased the home.

Ms. Hart asked if the Board should look at the side yard setbacks. Mr. Nestor said it should be addressed because even though he is only adding 320 sq. ft. it still pushes the side yards out significantly. Ms. Hart said on the right side it is 16.11 and on the left side it is 27 and 29.4. Mr. Nestor commented that the enhanced side yard setback was put in the code in 2004.

The meeting was opened to the public.

Mark Weidner, 106 Powell Rd. was sworn. He said in looking at the plans he feels the house will look better in his estimation. It will not come closer to his house. He said he knows the

configuration inside the house can be problematic and this will solve a problem for the applicant whose family is growing. He feels that the change is minimal and the house will look better than it does currently. He approves of the proposal.

The meeting was closed to the public.

Mr. Nestor said the floor area ratio as well as enhanced side yard setback are violated and the applicant is seeking a D variance for the FAR and a C variance for the side yard setbacks. Under the D variance the applicant has to demonstrate special reasons which are called the positive reasons. Either they carry out the purpose of the zone plan or the refusal of the variance would cause undue hardship. Applicant also has to satisfy the negative criteria that his addition can be done without substantial detriment to the public good and will not impair the intent and purpose of the zone plan or the ordinance. With the C variance he has to demonstrate the hardship. That would only require a majority vote and not the super majority of the D variance.

Ms. Tengi said she has seen the inside of the house and it is a unique design. Mr. Schmidt wants to add a bedroom and she does not see any alternative based on the layout of this particular property.

Mr. Jones said as he understands it this property is just deficient by a very small amount in terms of the required 26,000 sq. ft. so the applicant is requesting an expansion in the FAR on a property that is not substantially deficient. Mr. Nestor said it is deficient in lot area. Mr. Jones said the lot area is deficient by about 900 sq. ft. Mr. Nestor said the width is deficient by about 20 ft. and that is pre-existing.

Ms. Chamberlain said going past this house you have no concept of what goes on behind it. It is totally hidden from the road. Anything that Mr. Schmidt does is not going to have any impact on the town or the zoning because it is so minimal.

Mr. Richard Rizzo, 1 Powell Rd. was sworn. He said he was in the house before Mr. Schmidt bought it and he agrees with him. The upstairs configuration is very poor and Mr. Schmidt keeps the house in very good condition. What the applicant is asking for is very minimal and he would be in favor of the granting of the variance.

The meeting was closed to the public.

Ms. Chamberlain moved to approve the application as presented. She said this is a pre-existing situation and she does not see any alternative opportunities for any kind of building on this property given the existing footprint. The addition is very minimal being only 320 sq. ft. It has no negative impact on the Borough or the ordinance. Mr. Manning said as far as he is concerned Mr. Schmidt has satisfied both the positive and negative criteria and seconded the motion.

Mr. Jones said this is a very unique situation with the FAR in that there is no impact to the neighboring properties and there is no increase in anything that can be viewed.

On roll call, Ms. Weidner abstained. All other Board members present voted in favor.

O'Connor & Nabbie variance application – 16 Sheri Drive, Block 101, Lot 30

Chris O'Connor and Mary Scro, his architect were sworn.

Ms. Scro said applicant is requesting a variance for an existing side yard setback. He is proposing a second floor addition. It is a split level home so they are going to be building a second story over the living/dining/family room which is the one story portion of the house and a small bump out on the other corner where it already is two stories.

Ms. Scro said the survey shows that this is a very irregular shaped lot. It is just over 62,000 sq. ft. but it has a long leg. Also the lot is narrow at the front of the property. The side yard that is 30 ft. is at the front property line. Toward the back of the house it is at 38 ft. where it does meet the required side yard setback of 36.8 ft. at that point. They are trying to build on the existing footprint and use the existing foundations. The addition on the second story will be a master suite. The rest of the house will be renovated so they can reconfigure some oddly configured spaces. They will also rework all of the exterior of the house and make it more in keeping with the adjacent neighbors.

Photographs were submitted by Mr. O'Connor. Ms. Scro said there is an existing pool in the rear of the property.

Ms. Chamberlain asked about the height of the new addition. Ms. Scro said from the lowest point to the highest peak it is 34 ft.

Mr. Jones said looking at the rear elevation it appears there are three chimneys. Ms. Scro said one chimney is going to be removed. There is a large existing fireplace that is going to be removed. A single flue chimney at the rear elevation is proposed.

Mr. Jones called attention to what appears to be a third floor elevation on SK 5. He sees two windows in the middle and a third floor window section. Ms. Scro said the two little windows are drawn at the wrong height. The two square ones are in the closets. The two double windows would be in the bathroom. There is no third floor.

Ms. Tengi said if this is approved and the application is granted, the Board could make a stipulation that the attic would never be used as a third floor. Ms. Scro said she does not believe there would be enough room to retrofit it so there could be a third floor. There will be either drop down stairs or an access panel to the attic in the hallway outside of the three bedrooms.

Mr. Nestor said the applicant is present because there is a pre-existing nonconformity and that is the lot width which is 10 ft. short. Ms. Scro added that there is a pre-existing nonconformity with the side yard setback on the right side. Mr. Nestor said the property line skews off to the right so how much of that side is actually violating that side yard setback. Ms. Scro said it is approximately where the fence is which is approximately 18 ft. back or where the house starts to be at 36.8. Mr. Nestor commented that only half of that side of the house is in violation. Ms. Scro said the house is at a setback that is in keeping with the rest of the neighborhood. If the

house was originally set further back it would be fine because it would be in the wider portion of the lot, but it is more aesthetically pleasing for the homes to be at a similar setback. It is approximately 55 sq. ft. of the footprint that is in that setback.

The meeting was opened to the public for comments.

Ken Colangelo, 4 Sheri Drive was sworn. He said that basically he is in favor of what they are trying to do. Ten years ago he had a similar situation because of the front setbacks and the Board was gracious enough to grant him a variance. He lives on the right side and he has no problem whatsoever with that they are doing. They are only going to make his property worth more money. He has been a real estate broker for 28 years and he is very excited to see this happen.

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

Mr. Nestor marked Ms. Scro's plan Exhibit A-1 with today's date.

Mr. Jones said he would like to move that pursuant to the Land Use law 40:55D-70, subsection C, in terms of a unique and exceptional shape of property, he believes the applicant has demonstrated that this deviation from the land use law and the ordinance is de minimus and he moved to approve the variance as proposed. Motion seconded by Ms. Tengi. On roll call, all Board members voted in favor.

On a motion by Ms. Tengi, seconded by Ms. Hart, the meeting adjourned at 9:35 p.m.

Respectfully submitted,

Barbara Knapp