

June 14, 2010

A work session of the Allendale Planning Board was held in the Municipal Building on June 14, 2010. The meeting was called to order at 8:15 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, Mr. Bernstein, Mr. Sasso, Ms. Sheehan, Mr. Sirico, Mr. Yevchak, Mr. Zambrotta and Mr. Walters. Mr. Barra, Mr. Fliegel and Mr. Herndon were absent. Also present was Mr. Dunn, Board Attorney.

Mr. Quinn said the consensus of the Board seems to be to include all of the elements of the master plan at a public hearing. Mr. Snieckus suggested grouping the Open Space and Sustainability Elements of the Master Plan into one night and the re-examination report at another night. He said it will depend on the amount of public response.

Mr. Snieckus said he will start with discussion of the open space and recreation plan. He said his latest reports are dated June 4, 2010. The first change is on page 18 of the document concerning the drawdown of wells and ground water from private sources. He said we want to discourage that from the standpoint of a policy statement and it is recommended that the Borough consider regulations that would severely limit the addition of future private wells to assure the continued viability of the current well heads. The next change is on page 21 under Section E. Floodplains. The sentence should read "Although most of the areas surrounding the borough's floodplain is undeveloped, efforts should be made to protect these areas from future development. Page 35 identifies the Arlton Ave. former farm site as a potential site for future development of affordable housing. He said there is a need for some level of play area in this area and the Borough could consider the potential to request a small tract for a tot lot to serve this area. On page 29 the old trolley line has been recognized as a potential future bikeway. This will be helpful as an aid in obtaining grant funding. On page 47 specific language about recommendations for existing recreation facilities has been removed; however, it is important to recognize the need. The comments and recommendations table has been removed from Table 6 and some changes were suggested with regard to the use of some of the facilities. Mr. Snieckus said on page 48 the statement has been added that alternatives need to be considered in order to allow greater rest times for the turf playing fields.

Mr. Snieckus said at the end of the document there are two aerial photos showing the Brookside Recreation Park and Crestwood Park identifying the fields. The Board pointed out corrections to be made with street names.

With regard to the Sustainability Plan Element dated June 4, 2010, Mr. Snieckus read the Vision Statement on page 3 which states that it establishes a guideline for Allendale to implement municipal wide programs promoting sustainable practices and initiatives to advance towards coexistence with the natural world and reducing our dependency on non-renewable resources.

Mr. Snieckus pointed out that on page 6 under "Targets for Transportation" it states that the Borough should consider incorporating vehicles into the municipal fleet with greater fuel

efficiency where possible. He left it as a general statement leaving it up to specific organizations to decide what to include.

On page 7 he encourages the use of LEED ratings in building construction and site design to achieve greater sustainability.

Mr. Snieckus said there was discussion previously about elimination of some street lights for energy savings and there was concern for safety so he has changed it to state that Allendale will study the feasibility and potential energy savings by improving the efficiency or retrofitting street lighting in some areas of town. On page 9, Targets for Health and Wellness, a statement is included to explore the establishment of a farmers market program.

Mr. Snieckus said this evening he submitted copies of a master plan re-examination study for the Central Business District which covers the C-1 and C-2 zones. Mr. Quinn said parking seems to be the major topic in improving the look and flow through the business district. Mr. Quinn said this subject will be covered further at Thursday's meeting.

With regard to further scheduling of master plan discussion, it was decided to hold off on holding any public hearings until September.

Discussion – Proposed Restricted Commercial District (Restaurant L)

Mr. Dunn said the issue before the Board is consideration of a new zone district for certain properties. This was originally referred to the Board by the Land Use Committee for consideration of a possible new zone district. The Attorney for the Board of Adjustment, Mr. Nestor, indicated that he does not feel there is a problem with the Planning Board's consideration of this. The Superior Court is being required to postpone the pending action which is essentially an appeal of a decision of the Board of Adjustment denying a use variance for this property because it is a non-conforming use.

Mr. Quinn said there was some discussion of the concept plan at the last public meeting. Mr. Snieckus had submitted a paper that was presented to the Land Use Committee but not everyone had an opportunity to read it. Mr. Dunn said there is no application before the Board and this is being viewed as a possible zoning change.

Mr. Snieckus said in his memorandum dated May 7th he has presented a series of recommendations for consideration in the proposed ordinance such as floor area ratio, minimum lot width and things of that nature. There was a series of approaches to this actual ordinance and one is looking at a conditional use ordinance that would permit a restaurant in the RC zone in order to address the pre-existing non-conforming conditions that exist for Restaurant L as well as Savini's Restaurant. It became difficult to establish a conditional use requirement that would try to reduce the amount of potential impacts to the RA zone in order to limit the amount of locations where a restaurant could be established. Instead of doing that, he felt it might be a better approach to actually come up with a new zone specifically for this one location because of its unique characteristics. For instance it is adjacent to the non-residential uses in Waldwick and the railroad tracks and with some allowance for expansion and improvements on the property, whether by buffer requirements, architectural requirements, parking standard improvements, etc.

the proposed ordinance could be considered a better approach. The issue of spot zoning is a major concern for everyone but he believes this is a uniquely situated location within the Borough. The proposed ordinance would further the public interests or needs through performance standards such as buffering, lighting controls, parking requirements, etc.

Mr. Quinn said there are two sides to the coin. The use on the Foreit property and the nursing home property went away. He believes the master plan is clear that there should not be any expansion of commercial uses in residential zones.

Mr. Walters asked what extra special powers does the Borough have that betters the community as a whole by establishing another zone. Mr. Snieckus said the Borough would not be so hemmed in by existing conditions. It would be possible to allow for greater buffers by requiring certain distances. It would be possible to avoid unsafe conditions such as people backing out in certain proximities to entrances and exit drives thereby providing greater safety and visibility. Mr. Snieckus said the town would still have the ability through the actual ordinance to instill greater control or greater standards such as buffer setbacks, limiting the building envelope, building height, parking requirements, etc.

Mr. Walters said effectively we are changing the rules which are absolutely 100% explicit. The property is on a highway sandwiched between a major artery. He said the master plan could not be more clear – you effectively try to change nonconforming uses into conforming uses. He said this nonconforming use has always been a restaurant. Could somebody come in and put something else there like another gas station or fast food restaurant. Mr. Snieckus said a use variance would be needed. Mr. Dunn said there is a legal rule against expansion or change of a nonconforming use. If there is a valid nonconforming use it can be continued indefinitely either because your use preceded the zoning ordinance or was granted a variance. In that case you have a valid right to continue the use but you have no right to expand it beyond the use activity that is going on. He said you can modernize but you can't change it to some other nonconforming use.

Mr. Walters asked if there is any control over the number of seats in the current nonconforming use. Mr. Snieckus said he believes there is an identification of the number of seats that they are permitted at that location.

Mr. Dunn said this use is a valid non-conforming use. A Board member asked if any other properties could make an argument and say they have the same site specifics and attributes. The only difference is they don't have a restaurant yet. Why can't they have the same zoning? Mr. Dunn said the zone is intended as a response to our master plan to reflect the condition on the site. If you are zoning just one property and the whole purpose is to benefit that owner that would be spot zoning. There is a subjective intent in this case that could swing the balance. He said the Board has to consider whether this zoning change is a benefit to the community. It has to solve a valid public purpose and be substantially consistent with the other zoning objectives of the whole master plan. In this particular area, the justification is that this is a transitional area between the commercial properties in Waldwick and the residential side in Allendale and the need to apply appropriate zoning criteria to this property.

A member said his fear of the transitional argument is that when you change a transition, then the boundary of the transition moves to the next property and where does it stop. Mr. Dunn said by and large the purpose of the zoning ordinance and the master plan is to forestall zoning creep.

Mr. Quinn said the residential property next door would need variances for rear yard setbacks. It is presently 50 ft. and would become 25 ft. which is substantial. We are creating a property that is substandard. Mr. Snieckus said currently the zoning requires the property to be residential. He does not know if it can be mandated to be residential in perpetuity. Currently both properties are in the residential zone but what is being proposed is to have a lot line to include the parking area and the restaurant in a separate commercial zone.

Mr. Dunn said there a risk that this could be called spot zoning unless there is a fairly significant, apparent and realistic evaluation of this to be a benefit to the public as opposed to a private benefit. A Board member asked if the burden of proof of showing those benefits falls on the Planning Board. Mr. Dunn said this is unique in that there is no application here. This is not a quasi-judicial type of proceeding. This is an administrative proceeding and the Board has to determine based on its knowledge of the area whether this is appropriate. The Board has to be fully satisfied that it is appropriate. This came to the Board from the Land Use Committee so the Board can respond with an informal consensus.

Mr. Dunn said the property owner should present his view of this matter. This is not a formal hearing and there is no sworn testimony. That would occur if the Board decided to make a change at the public hearing it must have on the master plan in which case any objections may be heard.

Thomas Bruinooge, attorney for the owners of the property was present. He said it is true that what exists at the site is a pre-existing structure which pre-dates zoning here in Allendale. Master plan reexaminations over quite a number of years have addressed nonconforming uses in the community – Savini's, the old nursing home, Restaurant L and even the Foreit property. The big difference between the nursing home and the Foreit property and what we are talking about is that this property owner has spent a significant amount of money in upgrading the structure to the point that the use is not going away. It is here and it has been here. He said he made an application on behalf of his client to the Zoning Board of Adjustment a number of years ago when his client decided to buy the site. The site was deemed a valid nonconforming use and all of the restrictions that go along with that are understood. The building was falling down. Significant rebuilding of the structure occurred under the observation and the constant involvement of the municipality through the Zoning Officer so the structure today is significantly different than what it was on the day of the closing. When the structure was improved to bring it into compliance with the Americans with Disabilities Act and other modern code requirements as well as some personal decisions made by the owners to try to improve and enhance the quality of the restaurant, seats inside were lost to handicap accessible bathrooms, larger and safer kitchen, etc., so there came a point in time when again the municipality allowed the construction of a patio between the rebuilt structure and the outdoor storage building that was rebuilt as well. The number of seats that were placed on the patio brought the number of seats in the restaurant back to the number of seats that were there when the property was acquired. The municipality actually took further action with regard to those seats and space in that the Mayor and Council

approved a place to place transfer of the plenary retail consumption license that the restaurant owns. The license was originally limited to the original structure itself and a few years ago the Council allowed for the sale and consumption of alcoholic beverages on the patio and the storage of them in the storage building. When the popularity of the outdoor dining came about and the owner obtained from the town an outdoor dining permit, noise became an issue. The police record is clear there were a significant number of complaints primarily from the next door neighbor about noise late at night. The thought was that the best way to get rid of the noise was to get it inside. That was the primary reason for going to the Board of Adjustment to bring the property back to the original number of seats indoors and eliminate the noise.

Mr. Bruinooge said in order to expand a nonconforming use it is necessary to get a D4 variance and they are not easy to obtain. The positive and negative criteria are very difficult to deal with. He has every confidence that the case he presented before the Board of Adjustment will result in what will be a positive result if he has to appeal before the Superior Court. However, that does not deal with the underlying issue. He spent a great deal of his career dealing with zoning and planning and development issues in the Meadowlands area. Over the years he has engaged himself with the Meadowlands Commission and has continued working through a reexamination of their master plan. The viability of the master plan of the Meadows is a significant part of what he views as a very important part of New Jersey where the land is very valuable asset and resource. He is very familiar with working with master plans and he understands the time and effort spent on this document. Going back to earlier reexamination reports the planners address these questions and say these pre-existing nonconforming uses have to be dealt with. The Borough's own planners have said to deal with this as a conditional use.

Mr. Bruinooge said he feels he did a good job of drafting an ordinance that will deal with this as a conditional use. He said he cannot guarantee that "creep" can be avoided. He feels what everyone is trying to avoid is Waldwick moving to Allendale. He is convinced that the gas station was a stable and the tavern was probably there. The boundary line came somewhere along the way and Allendale in 1927 said on its side of the line was residential and efforts should have been made over the 80 year period to get rid of the restaurant use. Unfortunately and within the last few years, we have insured it will be around for quite some time because we have allowed it to be improved to the point where it meets current modern code and it exists. He said good planning principles should be applied.

Mr. Bruinooge said Allendale has preserved its character in a number of ways. The physical character of the community has evolved over the years. He said it is possible to preserve and enhance it by bringing about appropriate change. He said right now the property can be used as it is currently being used. Currently the existing parking situation is unsafe. He said the property owner is prepared to spend significant funds to make the proposed improvement to the property. The Borough will end up with a true transition zone with a visual screen and barrier.

Mr. Bruinooge said transitioning from Waldwick to Allendale should be seen in the context of what is real. He said Restaurant L should look like it is in Allendale and that can be accomplished by changing the zone. He said he chose to bring this matter to the Land Use Committee last fall and that process evolved to where they are now. He said he would like to get the matter resolved.

Mr. Quinn asked about the total square footage of the addition. Mr. Bruinooge said the total square footage of the building would be 4800 sq. ft. including 800+ square ft. on the second floor. Mr. Quinn said looking at the diagram provided it seems that the addition is significantly larger than what Mr. Snieckus was talking about. Mr. Bruinooge said the idea is to get rid of the two outbuildings and the patio so everything goes inside. The storage will be in the basement. He said Ms. Scro has designed something that maintains the cottage-like appearance of the structure but does expand it. There will be a porch for use as a smoking area. The parking is substantially increased. The total number of seats both inside and outside is 90+ and it is going to 114. There will be no seating upstairs. It will be used as an office. He said there are about 30+ parking spaces there now with 60 proposed including the valet spaces.

Mr. Bruinooge asked if the Board members had received a copy of the proposed ordinance and they had not received it.

The Board brought up the subject of people gathering in the front and the resulting noise. The question was asked if there has been any thought about giving up the front entrance. Mr. Bruinooge said he agrees that congregating in the front is not a good thing.

Mr. Walters said he read the Bd. of Adjustment minutes and there was some discussion about the outside seating. He asked if there is a permit for outside seating that is in place. Mr. Bruinooge said he cannot say that he has seen a Certificate of Occupancy signed by the Construction Official that cites the number of seats but the permits were issued and everything was done with his involvement. The Council did approve the consumption of liquor out there. From a fire safety point of view the structure is permitted to accommodate 150 people as is. He said the structure exists and it is going to exist for a long time because it was allowed to happen.

Mr. Quinn suggested that everyone read the ordinance and come back for further discussion next month.

Certificate of Compliance and Proposed Check List

Mr. Quinn said he has seen a number of new entities coming into the shopping center and a new restaurant. He is concerned about whether the new process is working. Mr. Dunn said he has prepared a Letter of Transmittal from the Construction Official to the Board for referrals to the Planning Board.

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Barbara Knapp