

June 22, 2011

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on June 22, 2011. The meeting was called to order at 8:11 p.m. by Ms. Teng, 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. Teng, Ms. Hart, Mr. Jones, Mr. Manning and Ms. Weidner. Ms. Chamberlain and Mr. Redling were absent. Also present was Mr. Nestor, Board Attorney.

On a motion by Mr. Manning, seconded by Ms. Hart, the minutes of the meeting of May 25, 2011 were approved as submitted.

Continuation of Charles and Lori Massie variance application

Mr. Massie was previously sworn. Ms. Teng said the Board asked Mr. Massie to come back with more specific plans concerning the placement of the equipment shed and some minor configurations on the site plan.

Mr. Nestor said the plan prepared by Tudor Architects with the issue date of May 14, 2011 was marked A-1 with today's date. Three pages of photographs were submitted.

Mr. Massie said the photos were taken last week. He said the first page shows the two front yards on Franklin Turnpike with the Elmwood Avenue side shown on the bottom. Page 2 shows the rear and right side of the property and page 3 shows the rear yard and the pool area. Prior to the new pool being installed, for five years he had a 14 ft. above ground pool in the area where the trampoline is located.

Mr. Nestor said the issue before the Board is the fact that this is a corner lot so under the Borough ordinance it is deemed to have two front yards. The Construction Official denied the permit because a swimming pool cannot be located in the front yard setback. The other variance is because the front yard is deficient by a few feet. 35 ft. is required.

Mr. Massie said from his fence to where the pool is going to be located that 20 ft. represents where the inside fence is to the pool. On the outside of that fence there is 16 ft. to Elmwood Ave. for a total of 36 ft. Mr. Nestor said he is talking about the front of the house on Franklin Turnpike where it is only 30 ft. 3 in. so the house is deficient as it stands right now. Those are the two variances that are required. It is his recollection from the last hearing that applicant's contractor indicated that all of the equipment and other appendages required will comply with all of the ordinances in regard to specific locations for that equipment.

Ms. Teng opened the meeting to the public for comments.

Thomas Sullivan, 1 Midwood Avenue was sworn. He said his concern is the water runoff since none of that ground will be able to absorb any water and the water will come onto his property.

Mr. Nestor said if we are looking at the house from Franklin Turnpike the Sullivan house is located to the right. Mr. Sullivan said that is correct. Mr. Nestor asked if the pool is going to be put on the left side of his property and Mr. Sullivan said that is correct. Mr. Nestor asked if Mr. Sullivan is concerned about water running onto his property on the right. Mr. Sullivan said that is correct because of the natural slope of the land and the ground will no longer accept any water because of the pool.

Ms. Tengi asked Mr. Sullivan if he had a problem with the above ground pool that was there previously. Mr. Sullivan said he did and he does not want to see the situation get worse.

Mr. Nestor asked if the patio is coming down or is it staying. Mr. Massie said it is not coming down. As he said earlier, he had a pool there for five years. He had children running all over his yard after they splashed half the water out of the pool and he saw no sign of surface water. He said there is no way the water could get to the Sullivan property. He had a 3 ft. berm built along the fence. It is planted with flowers and bamboo that absorbs a lot of water. The problem he is having is that when the previous owner of his house built the fish pond they used a material that was almost like concrete. The whole side of the house is that type of material. When it rains because his property and the Sullivan property slope down from Franklin Turnpike, the water collects there and goes through the fence which he found out at the last meeting only and runs along his fence. It has nothing to do with any other part of that property. Mr. Massie said that as he had mentioned he will put a drain in there and let it drain back into the flower bed. He said he has not had a chance to do it yet but he has no problem correcting the situation.

Mr. Jones said it is his understanding that a pool of this size would require site plan review from the Borough Engineer and he may require a dry well because this pool is 34 ft. long. He commented that probably a soil removal permit is going to be required. It is his understanding that with anyone removing this amount of soil there would have to be a site plan review by the Borough Engineer.

Mr. Nestor said he is not sure this Board has the expertise to handle the question being raised, but if Mr. Jones is correct that the Borough Engineer who is charged with enforcing the subcode provisions of the pool - 270-32, would take that into consideration. Mr. Sullivan said he would ask that a site plan be required. Mr. Nestor said the Board does not have the authority to enforce or demand that requirement. What they are here for today is simply to decide whether the pool can be put in that side yard. If the Board approves it to be put there the mechanics of how that is done and the engineering required is beyond the authority of this Board but is the decision of the Construction Official.

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

Mr. Jones asked applicant to describe the height of the equipment shed. He said he drove by applicant's property and said there appears to be a lot of foliage in that area. He asked if it will be removed. Mr. Massie said nothing is being removed. Mr. Jones said his concern is the plan which shows a 5 ft. distance to the rear property. Mr. Massie said that can be moved to 6 ft. Mr. Jones said the code calls for 4 ft. He asked if applicant would be willing to screen that area. Mr. Massie said on the back side of that property there is a 6 ft. high solid fence so you don't see

anything back there. It was going to be his plan to plant shrubbery in that area so the equipment would not be seen. Mr. Jones said reading the ordinance it appears the shed can be 8 ft. tall but it doesn't have a distance from the pool. Mr. Massie said his shed is more than 8 ft. tall and he is taking it down. Mr. Manning asked if applicant is going to build an enclosure around the filter. Mr. Massie replied that he will.

Mr. Manning asked if applicant plans to put any outdoor lighting around the pool. Mr. Massie said there is electricity there now so whatever is there he will use. He said he is not going to have any towers. The question was asked whether it will be graded down on all four sides. Mr. Massie said he assumes so. Ms. Weidner asked if the chain link is the only fence around the pool itself. Mr. Massie said it is not. There will be a fence from the back of the wooden deck across his property. He is putting an additional fence in there so that his grandchildren and other people can't get near it. The whole yard is fenced in right now. The Board reminded Mr. Massie that the pool itself needs to be fenced.

Ms. Weidner asked how high the shed is going to be. Mr. Massie said he does not know exactly the height but it is going to be low. He needed to show a location on the map.

Mr. Jones said he would like to make a motion to approve the applicant's request for the proposed pool on the property. He said there are unique physical features to this property, being a corner lot with an exceptional situation that would affect the development and placement of the pool on the property and the pre-existing condition of the location of the house on the property which is deficient by 4.5 ft. He believes a deviation from the zoning ordinance for a corner lot to permit the pool would enhance the intent of the ordinances and the municipal land use laws. He believes the applicant has shown that the impact of a pool in this location on this particular piece of property would not impede those ordinances. Mr. Nestor commented that the motion would include that the pool will be placed as set forth in Exhibit A-2 marked into evidence tonight and that there will be complete compliance with Section 270-32 of the ordinance regarding swimming pools. Ms. Hart seconded the motion with the inclusion that the deficient front yard is included.

On roll call, all Board members present voted in favor.

Continuation of Concrete Construction Corp. variance application

Donald Hoyt was present as attorney for applicant. Also present were Joseph Farrell, President of Concrete Construction and Charles Dandeneau, Vice President. There are two pre-existing nonconformities on the property. The lot is undersized at 19,000 sq. ft. whereas 20,000 is required and the width is deficient at 100 ft. vs. the required 115 ft. The applicant has submitted further documents as requested by the Board at the last meeting. A more legible plan has been submitted as well as some photographs.

Joseph Farrell and Charles Dandeneau were both sworn.

Ms. Tengi asked if there were any members of the public who wished to see the new plans. David Hyland, 26 Heights Rd. was shown the new documents. Mr. Nestor marked the new plan

dated April 13, 2011 as A-1 with today's date. Two pages of photos were marked A-2 with today's date.

Mr. Nestor said the applicant proposes to raze the house that exists on the property now and switch the driveway which is in the center of the property over to the right side, getting rid of the frame detached garage in the back and putting the garage in the back of the house on the right side. Mr. Nestor asked if the new house is going to be in the same place as the front of the old house. Applicant replied affirmatively.

Ms. Hart asked if the measurement should be made from the front step to the property line and Mr. Nestor said yes. Ms. Hart asked if there is just one step from the walkway to the porch and applicant replied affirmatively.

Applicant commented that they are actually improving things on the right side by 8 ft. They are moving the new structure further away from the neighbor on the right. Ms. Tengi commented that they are centering the house on the property.

Mr. Manning said he has a question with regard to the new driveway. On the right side of the house is it going to be 3 ft. from the property line? Applicant said it is. It is just the back portion so it is possible to back out of the garage.

Mr. Nestor said his question is where the distance between the driveway and the right property line narrows from 7 to 3 ft. is it right up against the neighbor's dwelling unit or is it between that unit and the detached garage. He said the point of his question is that he wants to make sure that where it goes to 3 ft. the neighbor's house is not on the other side of the arborvitae. Applicant said it is the driveway that goes straight to his garage.

The meeting was opened to the public for comments.

David Hyland, 26 Heights Rd. was sworn. He said his property is adjacent to the right and the questions that were just asked were about his property.

Mr. Hyland said the Board asked a question about his dwelling and Mr. Farrell is correct. His home extends further back. It is 10 ft. from the back corner of his home to the corner of the detached garage. He has a side entrance there and he uses that because the driveway is there. They use that particular exit from the house almost exclusively and that exit would directly face whatever building is erected on the property. A couple of months ago he planted a row of arborvitae because he got tired of looking at what was there.

Mr. Hyland said he has a question about the location of the property line. He has a survey and he would be happy to share it with the Board. He does not feel the property line on applicant's plans is accurately depicted. He believes that some of the trees that are shown to be on Mr. Farrell's property are in fact on his property and he is very much concerned about that. He believes the maple tree on the drawings is on his property so he would dispute any attempt to remove it.

Mr. Farrell said he believes that before any excavation is started there will be a survey done and it will indicate exactly where the property lines are so if Mr. Hyland sees a stake on his property he will be able to dispute it.

Mr. Hyland said he has his own survey. He is also concerned about some of the other trees. With regard to any decision on certain trees, both parties would have to agree with regard to removal. Mr. Hyland said there is a very large oak in the back of the property and that tree is clearly on his property. This tree is behind the corner of his garage and is not on the corner of applicant's property. Although nothing is said about removing it, he wants it clear that the tree is on his property.

Ms. Tengi said if there was a boundary dispute or discrepancy, it would not be possible to convey clear title to the property. A title search would resolve any discrepancy in the deed descriptions between the two properties.

Mr. Hyland said he is just pointing out discrepancies that he sees here. He said Mr. Nestor asked about the 3 ft. apron right in front of the garage. The last drawing submitted last month said that was 2 ft. and now it is 3 ft. He added that the measurement from the corner of the current dwelling has changed from what they submitted the first time. Before it was 14.6 ft. and now it is 15.3 ft. He does not know why the numbers are changing. Mr. Nestor asked if that doesn't benefit Mr. Hyland. Mr. Hyland said, "Not if he has moved the property line over to gain the additional distance." Mr. Hyland said he is just pointing out that he is questioning how this was marked off and where this property line came from.

Mr. Farrell said the property line was marked out by a certified surveying company, Falcon Surveying. He added they have no intention of taking down the 42 inch oak tree. Mr. Hyland said his point is that the house may be sold to someone else and they may want to take it down. He just wants it to be clear that the tree is not on that property.

Mr. Nestor asked if applicant has a copy of the survey with the raised seal. He sees a professional engineer's seal but he does not see a seal from the surveyor. Mr. Farrell said he does have a copy. Mr. Nestor asked him to let Mr. Hyland take a look at it.

Mr. Jones said he has the original documents from the applicant. It said it was 2 ft. and now it is 3 ft. If these trees and the added features on this map are sketched in, they are not to the millimeter. In his experience sitting on this Board the structures and the property lines are always accurate but the drawings of the trees and other features are not. Mr. Hyland said the accuracy of the trees is important when they are to be removed.

Ms. Tengi said the Board was not satisfied with the drawings that were submitted last time and asked the applicant to come in with revisions that were more accurate. Mr. Hyland said he has a survey and it has a raised seal. He took measurements from the buildings and the buildings have not moved. The survey is from 1980 when he bought the house. He has not added on to the building or the house. He took a tape measure and measured to the trees. Ms. Tengi said she believes laser equipment is used for measurements and they may be more accurate. She suggested going back to the rationale for planting the existing 10 trees. Mr. Hyland indicated he

planted them to mask the current deplorable condition of the house. Now there is going to be new construction and those trees may not even be necessary. Based on that assumption Ms. Tengi asked what concerns he has for this new construction.

Mr. Hyland said he applauds Mr. Farrell for improving this property. He is glad to see a new house there and he is sure it is going to improve the value of his property as well. He welcomes him to build his house. Most of the homes on the street follow a uniform pattern. He said all he is asking is what is he going to see when he looks out and that is the size of the wall that is facing him and couldn't something be done about the garage. It is a detached garage and the driveway is on the other side. Most of the homes in the area have driveways that are side by side.

Mr. Hyland said applicant is actually improving the side yard setbacks by centering the house, but if you look at the house it is not really centered with the jogs in the house, so most of it is falling on the half of the property towards him. In addition to that the driveway runs alongside the property. He said a solution would be to get an additional variance and move the house over a little bit so it moves away from him. He also suggested putting a jog in the house and offset the garage. He said, "Give me 5 ft. to give me some visual relief on that side of the house." He suggested changing the orientation of the garage or do anything that would make it visually less of an impact on his property. He said there are additional issues with the trees and the property line but he is not opposed to building a house there.

Mr. Manning said the side yard setbacks are within the code so if the house is moved over to the left there will be another variance. Mr. Nestor said if the garage is offset with the doors in the back then Mr. Hyland will be looking at a solid wall down that side where at least now he will be looking at the garage doors which he would think would be more pleasing than a solid wall.

Mr. Hyland said that brings up another issue and that is whether it is a 2 ft. or 3 ft. apron in front of the garage. When they back out they are going to be backing out right into his property. He asked what happens when there is snow. Are they going to plow the snow onto his property. He said at least if you offset the garage you give an additional 5 ft. so that the apron for the garage is not as close to his house. He said if the garage doors are in the rear then all he has is the driveway coming within 7 ft. of his property which is fine. Mr. Nestor asked applicants if they have any problems with that suggestion. Mr. Farrell said they feel that they are improving Mr. Hyland's side of their property as much as they can. If they move the dwelling over to the left as suggested then they are going to be encroaching on the other neighbor who has a much smaller setback.

Mr. Hyland commented that the new house will be much larger than what he is looking at right now.

Ms. Hart suggested that something to break up the side of the house would be helpful such as a chimney.

Mr. Nestor asked if this modular house will be taller or less tall than the house that is there now. Applicant stated it should be less tall. They are proposing a 2 story house and the existing is 2-1/2 story. He added that the garage doors will be decorative carriage style doors.

Ms. Tengi said she is in favor of the application with a request for assistance. She understands the neighbor's concern about seeing a lot of bulk along the side of his house and the driveways abut each other. Visually he is going to see a long row of house and the house is much larger than the one that currently exists on the property. She asked for applicant's suggestions for aesthetic improvements. Applicant suggested they could change the siding on the garage doors to give the allusion that there is a break between the house and the garage. Ms. Hart suggested stepping it in 6 inches but asked if that is a concern because it is a prefab. Applicant said it is a standard size for a garage and it is not actually part of the house. The house and the garage are separate prefabs. Ms. Weidner suggested creating an overhang to break up the long wall.

Mr. Manning said there is a 26 inch oak tree in the back and the arborvitae and about 10 or 15 ft. between the two. He asked if it would be possible to put another planting between them. Ms. Tengi said she likes the idea of texture distinction. Mr. Nestor asked if there is going to be a change in the siding itself. Applicant said yes and he will do something decorative around the garage doors. The rest of the house will be cedar shake siding.

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

Mr. Jones said the applicant has a pre-existing nonconforming lot area, deficient by 1000 sq. ft. and a pre-existing nonconforming lot width by 15 ft. Those are the only two variances being requested. He is taking down the house that is there and he is building a house that is in conformity with all of the building codes in terms of structure. He is removing the garage that is located at the back of the property and improving the situation.

Ms. Tengi said she believes the aesthetic proposal of the decorative stone around the garage doors will be helpful.

The meeting was opened to the public for comments.

Mr. Hyland said he appreciates the Boards efforts to take his concerns seriously and he thanked the applicant for anything he can do to allay his concerns. He said he knows demolitions will be messy and he knows he has to put up with that but he hopes they will do their utmost to preserve the landscaping he has provided because he has spent a lot of money recently to landscape the property. Ms. Tengi said she hopes the owners of the property will be cognizant of the neighbors and their property when they do the demolition.

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

Mr. Jones asked if applicant would be willing to put in some sort of trees or plantings that would break up that wall. Applicant said they will be planting sufficient foliage in that area, whether it be conifer trees or arborvitae, to break up that wall.

Mr. Manning moved to approve the variance for lot width and lot area, both pre-existing conditions which are not in conflict with the intent of the zoning code or the master plan. Ms. Tengi seconded the motion with the condition of applicant's proposal for the exterior differential

cosmetic materials around the garage doors (stone) to break up the effect of a large long structure for the neighbor. All of the codes must be adhered to with regard to demolition, etc. On roll call, all Board members present voted in favor.

Nebil Kazancioglu variance application, 262 Brookside Ave., Block 1604, Lot 4

Mr. and Mrs. Kazancioglu were sworn. Mr. Nestor said there was a problem with the application and that is with regard to the notice provisions. There was a person on the official list that he received from the Borough who is stricken from the list that was presented. The address is 34 Carteret Rd. Ms. Kazancioglu said she went there twice and the second time she got a signature. She does not know why it was crossed off. She hand delivered the notices. Mr. Nestor asked if everyone on the official list was served. Ms. Kazancioglu said everyone on the list was served.

Mr. Kazancioglu said at the time he received his denial letter he was told it would take about a week to get the list of property owners. He took a risk and had a real estate agent print a list for him in order to get on the agenda for this meeting. He hand delivered the notice to those on the list. In the meantime he received the official list from the Borough in 3 days. Ms. Kazancioglu said she went back and delivered the notice to those on the list a second time. Mr. Nestor asked if it is their testimony that all of the people on the list were served on June 9, 10 or 11. Mr. and Mrs. Kazancioglu replied affirmatively.

Mr. Nestor said generally service is made by certified mail and receipts are submitted to the Board and there is no question. He said if anyone comes in and says they did not receive proper notice, anything that is done by the Board tonight is null and void. Mr. Kazancioglu said he understands and wishes to proceed.

Ms. Kazancioglu said they want to add a garage. When they purchased the house there was no garage. The garage will improve the whole street because all their equipment will not be stored outside. Mr. Manning said it appears that the house is one foot from the garage. Mr. Nestor said the garage must be 10 ft. from any principal building. Mr. Kazancioglu said 10 ft. will only allow him to have a one car garage. The height of the garage is going to be about 21 ft. The dimension of the garage will be 25 x 36 which will accommodate 2 cars and storage in the back. Mr. Manning asked if he has a driveway on the opposite side of the house. Mr. Kazancioglu said he has two driveways but one is actually more of "landing strip". Mr. Nestor said two driveways are not permitted.

Ms. Hart asked why not push the garage further back. Mr. Kazancioglu said that would require more concrete area which he hates. By making it closer it will be easier for them to get in and out. Ms. Hart said it will be right in front of their deck.

Ms. Tengi said she is concerned because she believes there are safety issues with toxic fumes and combustible items in the garage so close to the house. She is also concerned with the size.

Ms. Kazancioglu said the house has no storage. They do not have a full basement and it gets water and it is moldy. It is just crawl space and there is no attic space. They wanted the extra area to accommodate such things as the lawn mower, snow blower, and seasonal items.

Ms. Tengi said the Board has to find a hardship to justify the distance between the structure and the garage and the hardship has to relate to the land.

Mr. Nestor pointed out that there is another reason for 10 ft. between the two buildings – to enable access for a fire truck and equipment. He added, “I don’t even know if you could get a fireman in there let alone a truck.” He said this is a consideration applicant should think about because if the plans are kept as they are he would not think this Board would give their approval. He would suggest that even though it may cost a little more by way of paving to move the garage back, you would have a much better chance of getting approval.

Mr. Manning suggested instead of having the garage 36 ft. long to take off at least 8 ft. He said although applicant is concerned about storage, the proposed height is going to be 20 ft. and he could easily have storage space above that. He said you are within a foot of the kitchen and with a motor running there could be carbon dioxide safety issues.

Ms. Weidner said in her opinion the plans are not acceptable in order to make any decisions. Mr. Jones said there is nothing in the testimony to sway him to deviate from the safety code. Mr. Kazancioglu said he could make the garage 24 ft. wide and 30 ft. deep but it still would require Board approval. Mr. Manning said it would also help to push the garage back.

The meeting was opened to the public for comments and there being none, the meeting was closed to the public.

Mr. Nestor said section 270:37B of the ordinance indicates that if he is going to put the garage that is conforming as proposed to a conforming structure located on a nonconforming lot, the zoning official may issue a building permit without referral to the zoning board, but this is not an addition to a conforming building on a non-conforming lot. It is an accessory building, so there is some question whether applicant can do what he wants even if it is conforming. It may come to the Board anyway. His suggestion is that applicant think about the size and location of his proposal and it will aid the Board members if he brings some photos so they can see what they are dealing with and know what the impact will be. In looking at the designs submitted it appears to be a gigantic building.

Ms. Tengi said there is not enough information supplied to this Board to make a proper determination. There is no way we will grant a variance for safety reasons.

Mr. Manning said this is a big garage. Applicant might want to consider making it smaller. He suggested that he come back with better plans.

Ms. Tengi said the application will be carried to next month.

Artur Nowak variance application – 20 Fairhaven Drive, Block 104, Lot 15

Mr. Nowak and Gary Indyk, his architect, were sworn. Mr. Indyk was accepted as an expert witness.

Mr. Indyk distributed photographs to the Board. He said the application is to add an exterior basement access along the left side of the house. The purpose of the stairs is to provide access to the basement so the children can get in and out of the playroom that Mr. Nowak intends to build. The distance these stairs are from the property line is 31.14 ft. and that is more than the 20 ft. minimum required by the zoning standards. The reason they are here for the variance is because the size of the house requires an additional setback distance because of the floor area of the building. The requirement for the house was 36.93 ft. and the house does conform to those dimensions.

Mr. Indyk said the purpose of the setback ordinance when it was created in 1999 was to add additional space between buildings visually above ground as the houses got bigger. He said when we are dealing with something that is not creating a visual impact from the neighbor or the street, the ordinance really has no meaning to apply to something that is essentially below grade, so he does not see that as being in conflict with the intent of the zoning standards.

Mr. Indyk said the distance from the house to the neighboring property is 65 or 70 ft. and the photos show that the neighboring house is some distance away. Also, along the side of this house there are two areaways that surround basement windows. Essentially the difference between what is there now and what is proposed is that one of these areaways will become slightly larger and contain a stairway that goes down to the basement. Visually it would have no distinguishable difference between what is there now and what is proposed. The owner is agreeable to put some additional shrubbery along the stairway railing to conceal that part that is above grade.

Mr. Nestor marked the 2 page architectural drawing Exhibit A-1 with today's date. 4 page photo showing the home was marked A-2. Mr. Nestor asked if the air conditioning units shown in the photos are currently in violation of the side yard setback. Mr. Indyk said the air conditioning units themselves do not need to conform to the size yard setback, only the building itself.

Ms. Hart asked what is the height of the house. Mr. Indyk said it is under 35 ft.

Mr. Jones asked if this would constitute a third floor. Mr. Nestor said he does not think it does. It is just beautified doors coming out of the basement. He said the basement is in existence now and there is no exterior exit from the basement. Mr. Indyk said that is correct.

Ms. Tengi said she believes this ingress/egress from the basement is beneficial for safety purposes alone.

The meeting was opened to the public for comments and there being none, the meeting was closed to the public.

Ms. Tengi moved to approve the applicant's request. She said it is very minor in nature. She believes it is a safety issue to allow a better ingress and egress from the basement access. No one from the public objected and the applicant has proposed to conceal the stairs to the basement with some vegetation. She said the house is beautiful and she has no doubt that the applicant

will follow through with concealing access and this does not impinge on the master plan or zoning ordinance in any way.

Mr. Manning seconded the motion. He said he also perceives it to be an enhancement to the safety issue. It is good to have a second exit in the basement and the hardship is the existing setbacks.

On roll call, Mr. Jones voted no. All other Board members present voted in favor.

On a motion by Ms. Tengi, seconded by Mr. Manning, the meeting adjourned at 10:10 p.m.

Respectfully submitted,

Barbara Knapp