

June 23, 2010

A regular meeting of the Allendale Board of Adjustment was held in the municipal building on June 23, 2010. The meeting was called to order at 8:08 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, Ms. Chamberlain, Ms. Weidner, Mr. Redling and Mr. Manning. Mr. Jones was absent. Also present was Mr. Nestor, Board Attorney.

Ms. Teng thanked all the Board members who attended the ribbon cutting ceremony at Orchard Commons today.

Ms. Hart requested that the minutes of the meeting of May 26, 2010 be amended on page 2, last paragraph, to indicate that the side yard setbacks are 8.5 ft and 15.25 ft. Ms. Hart moved, seconded by Ms. Weidner, to adopt the minutes as amended. Motion unanimously approved.

Resolution of memorialization was submitted by the Board Attorney with regard to the Kevin Martin variance application. Ms. Hart moved, seconded by Ms. Weidner, to adopt the resolution as submitted. On roll call, Ms. Teng and Mr. Redling abstained. All other members present voted in favor.

Mr. Nestor announced that the resolution of memorialization for Holmgren's Black Belt Academy will be available for the July 28 meeting. The minutes of the June 2 special meeting at which the matter was heard will also be available. He will contact applicant's attorney in the interim to make sure the resolution is agreeable to everyone.

Continuation of Richard Rizzo variance application.

Ms. Teng announced that Ms. Weidner has recused herself from participation in this application because she lives within 200 ft. of this resident.

Richard Rizzo and Chris Greimel, his architect and engineer were sworn. Mr. Greimel said he has submitted a revised plan dated May 12, 2010 which deletes the proposed second garage bay which leaves the side yards as they are existing. The great room addition has been kept to the rear. This change eliminates the floor area ratio variance and they remain with a side yard variance to the left and to the right and a front yard variance, all with the same setbacks that are existing.

Mr. Nestor marked the 8 page plan that was submitted with a date of 5/12/10 as A-1 with today's date.

Mr. Greimel said based on the revised gross building area there is a side yard requirement of 24.3 ft. on both left and right. On the existing left it is 22.7 which leaves a 1.6 ft. encroachment. On the right 21.6 is existing which leaves a 2.7 encroachment in the required side yard. The front yard setback existing is 36 ft. and it will remain at 36 ft. They are just widening the steps

slightly. As he indicated in April it appears that the other homes on the same side have similar setbacks with their front stoops but he cannot confirm that because there is no curbing on the street and there is no way to get a measurement unless he had everyone's survey.

Ms. Tengi pointed out the addition now is entirely in the back and upwards. She asked what is behind the neighbor in back. Mr. Greimel said looking at the aerial location map on page 1 there is a house on the culdesac on Heather Court. There is some foliage in the back and a rock wall. It is about 80 ft. from the addition to the corner of the rear of that building.

Mr. Nestor said there are 24 photographs taken by Mr. Rizzo that were submitted previously and marked A-9. Mr. Greimel said the photos show large trees on both properties.

The Board asked how far the driveway is from the property line. Mr. Greimel said it is approximately 11.6 ft. The existing driveway is about 21 ft. A parking area next to the garage is being provided and the applicant will be adding shrubbery to block that area from the neighbor. The neighbor's detached garage is the nearest thing to the property line on that side. Mr. Greimel said there is one large tree that will have to be taken down and a permit will be secured in order to do that.

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

Mr. Nestor said it appears that applicant is about 29 sq. ft. from the floor area ratio limit. Mr. Greimel said the allowed is 3495 and it will be 3466. The height is going from 19 ft. high to 31 ft. high for the second story. Mr. Nestor asked how many trees will be taken down. Mr. Greimel said one will be removed for the driveway area to be added to the right of the garage and there are two other trees that are within approximately 10 ft. of the new foundation for the great room. Generally when you start digging that close with large trees the root system is undermined and it is probably better to take them down now rather than later. They are shown as one 30 inch tree and one 50 inch tree behind the great room and one 40 inch tree to the right of the existing garage area. The applicant plans on planting more trees. Mr. Greimel said the great room in the back will be one story with a cathedral ceiling. He said other than the great room they will be going over the existing footprint.

Mr. Greimel said the hardship has to do primarily with the width of the lot which is 100 ft.. In the zone it is supposed to be 130 ft. wide and 26,000 sq. ft. within 200 ft. He said obviously we could knock down the house and build an entirely conforming structure but we are trying to save some of the existing structure. He said they will probably be able to use the exterior walls of the entire first floor and will be revising interior walls and the foundation will be retained.

Diagram entitled "Building location plan" showing proposed attached two car garage was marked A-2 dated June 23, 2010. Mr. Greimel said this plan shows a 2 car garage 24 ft. wide by 22 ft. deep in the northeast corner of the property. It has to be 10 ft. away from the rear lot line and 6 ft. away from the east side yard. The great room would be reduced by almost 6 ft. cutting off some of the laundry and bathroom area. They would end up with a side porch entry into the mud room and that would be 31.1 ft. away from the side yard so there would be no side yard

variance on the east but the same side yard variance on the west. The gross building area would be 3468 vs. 3466 but they would have to take down a lot more trees. They would have about 2,000 s.f. of driveway and he would rather not have all that impervious coverage. The applicant prefers the one car garage with direct access into the house. Ms. Tengi commented that applicant's proposal is more aesthetically pleasing.

Mr. Manning moved to approve the variance as it has been revised and presented to the Board. He does not find the plans as presented in conflict with the master plan and the intent of the zoning ordinance. He believes it will enhance the neighborhood. The applicant has shown a hardship due to the pre-existing narrowness of the lot. Motion seconded by Mr. Redling.

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

David Maniaci variance application – 176 Forest Rd., Block 1204, Lot 3.01

Joseph Perconti was present as attorney for applicant. He will provide testimony from Mr. Evans, architect, indicating that there have been no improvements with regard to bulk area. He said at issue is a resolution adopted by the Board on July 27, 1988 that was unrecorded and not attached to any deed specifications but came to light during a tax appeal. There was provision in that resolution that prohibited the third floor attic area from being used for residential purposes. Mr. Perconti said the applicants had no knowledge of that. He obtained an old MLS listing which also indicated that there was a suite over the 3-car garage. There is case law indicating that those conditions that run with the land as variances would probably be best recorded in a deed and that is the issue before the Board this evening.

Matthew G. Evans, architect/planner was sworn. Mr. Evans said he has a master's degree in architecture and is presently licensed in the State of New Jersey as a professional planner and registered architect. He prepared the plan dated May 13, 2010 which is before the Board this evening. (Marked A-1) He stated he has testified before Planning and Zoning Boards throughout the State of New Jersey and was accepted as an expert witness in the field of architecture.

Mr. Evans said the attic improvements have been documented on the floor plan which shows a master bedroom suite, storage, a main master bedroom, walk-in closet and master bathroom. All of these are internal pre-existing improvements. Mr. Evans said these were all pre-existing when he examined the attic. He is aware of and has seen the various bulk variances associated with the property. He said when he documented the attic these were all pre-existing conditions and he has no knowledge of Mr. Maniaci expanding the use since he had purchased it.

Mr. Nestor asked for what specific purpose is the architect being presented. Mr. Perconti said he believes it is essential that the attic area be defined. Mr. Maniaci will testify as to the condition of that area when he purchased it which will indicate that he had no knowledge of the resolution. The resolution indicates that the height restrictions were not managed. It was 38 ft. as opposed to 35 ft. and there were conditions imposed such as plantings and other items which applicant is willing to honor. He wanted the architect to describe the area as it exists now so there is no misinterpretation of what exists.

Ms. Tengi said she appreciates the fact that the listing showed a 3 story building with a master bedroom suite on the third floor but this Board cannot take into account a listing agreement when the Borough ordinances are open to public record and include a prohibition against a third story building.

A Board member said when he looked at the plans he thought he was looking at something that was going to be built and not something that already existed. He would like to know a time frame of when the master bedroom was built and when the resolution of 1988 was found.

David Maniaci, 176 Forest Rd. was sworn. Mr. Maniaci said he purchased the property approximately 7 years ago. The purchase price was \$1.5 million and he used the services of a realtor. Mr. Nestor said the Board will hear the testimony but this is hearsay evidence. Mr. Maniaci said he has lived in town for about 15 years. He was looking for a larger home because he has 4 children. When he looked at the property the third floor was virtually finished. The owner and the realtor represented that he could finish the third floor and make it a master suite. No one was living up there but it was carpeted, sheet rocked and all the plumbing was roughed in. When he moved in he finished it. He did not obtain a permit when he did the work.

The Board asked how Mr. Maniaci learned about the resolution. Mr. Maniaci said he filed for a tax appeal in April 2009. Ms. Mattiace, the tax assessor looked through the house and told him he could not live up there. She told him about the resolution and said he would have to go to the Zoning Board and ask for permission to use the space as a bedroom.

Mr. Nestor asked when Mr. Maniaci finished the room as shown on the plan before the Board. Mr. Maniaci said the work was done in 2003. Mr. Maniaci said the Tax Assessor went to the Building Inspector who advised him he was in violation. Mr. Perconti said the resolution wasn't recorded so the applicant wasn't aware of the prohibition. Ms. Tengi commented that the Borough ordinance prohibits a third floor.

Mr. Perconti said there is sufficient case law which he will be happy to brief and he will bring additional witnesses.

Mr. Maniaci said the work is complete and what he is asking for is permission to occupy that space. He said the plumbing was there but it was capped. The closets were built. The shower stall was not completed.

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

Mr. Nestor said he thought he was coming here tonight to hear an application as to what was going to be built and not what has already built. Looking at the previous resolution it is quite clear no one should be living up there. The applicant is coming here to now say he has been living there by mistake for 7 years and since it is already built and established, he is attempting to convince the Board that it was done by mistake and not as a way to skirt the zoning ordinances of the Borough and therefore it should be permitted as a variance against our

ordinances prohibiting a third floor in a structure, and specifically in this case to allow him to bypass the 1988 resolution that says the third floor is only to be used for storage space and not for living space.

Mr. Perconti said he would like to brief the case law and he would like the ability to bring back predecessors in that title. He would like the opportunity to carry the application and reach out to some of these prior people involved. Affidavits of title were signed and representations were made at that closing.

Mr. Redling said he believes the main reason for the stipulation regarding third floor living is a safety issue and it impacts the fire code. He wondered if the Board should work in conjunction with the Fire Code Official in considering this.

Mr. Nestor said in 1988 this was already approved, not for living space but for storage. Mr. Redling said if there is a fire up there and someone is injured or dies, the onus is on the Board. Mr. Perconti said he would invite any of those professionals, fire, police or anybody to take a look at this because it is a very big concern.

Mr. Nestor suggested that the Board allow Counsel to submit the brief to him and he will instruct the Board accordingly. He will then advise Counsel whether there will be a hearing next month or whether the Board has heard enough based on the brief to make a decision.

Mr. Nestor asked if Mr. Maniaci has the as-built plans from 7 years ago. Mr. Maniaci said they were never given to him. Mr. Perconti said those plans were not available to him through the Building Dept. Mr. Nestor commented that the plans would not be available if the Building Dept. did not know that the third floor was completed.

Ms. Chamberlain said she was on this Board in 1988. The Building Inspector inspected this house after it was built and discovered that it exceeded the height limit. The applicant came to the Board for variances for something that had already happened and the town admitted that they made the mistake. The variances were granted on the condition that there would be no living on the third floor. It was a very contentious application because the neighbors were incensed.

Ms. Hart said she would like to see photographs.

#### Christopher Batenhorst variance application – 13 E. Elbrook Dr., Block 103, Lot 14

Ms. Tengi recused herself from participation in this application because she was Counsel for applicants when they purchased the property.

Christopher and Elizabeth Batenhorst and Mary Scro, architect for applicants were sworn by the Mr. Nestor.

Ms. Scro said the lot is a conforming lot just over 40,000 sq. ft. It is unique in that it is a corner lot so it has two front yard setbacks, however, the house is centered in the center of the lot similar to the interior lots. There was no consideration of the two front yard setbacks when they

placed the original house. The front yard on East Elbrook does have a conforming setback. On Cedar Drive there is 42 ft. 6 in. setback to the steps. There is a staircase going up to a side door into the kitchen so that is an existing nonconformity. The proposed addition is 889 sq. ft. and 617 sq. ft. of that is interior space and 272 sq. ft. is the screened porch. The proposed FAR is 7.7% where 19% is allowed so it is obvious this is in keeping with the zoning ordinance for square footage of this residence in this neighborhood.

The new space will include a master closet, laundry room, powder room, expanded foyer and front porch. Off the rear of the house they are expanding their existing family room and adding a side porch which connects the dining room and the family room. The screened porch does encroach on the existing front yard setback on Cedar Drive but only to the point of the existing encroachment. The location of the screened porch creates a more direct access from the kitchen to the back yard for grilling purposes without having to go through the living room. It also allows natural light into the living room and provides views from the living room into the back yard because they have young children. It also provides more privacy in the back yard because it is a corner lot. The bedrooms are located on the interior lot side. If the house was flipped and they were doing the same addition the only variance they would need would be for the pre-existing non-conforming front step.

Ms. Scro said her client wished to keep with the ranch style versus going with the second story which they felt would be too large for the neighborhood. Also, there is a slight incline to the property so they felt the ranch style was more in keeping with the neighborhood and they did not want to overbuild the lot. The proposed screened porch has been designed to enhance the curb appeal of the house. She feels the proposed addition is in keeping with the intent of the zoning ordinance and is a vast improvement to what existed prior to their purchase. It was overgrown and there was a lot of shrubbery covering the existing house. She feels the benefits of this addition far outweigh the detriments.

Plans dated May 20, 2010 consisting of 5 sheets were marked A-1.

Mr. Nestor said because there are two front yards applicant needs 50 ft. in the front and 50 ft. on the side that faces Cedar. The application was short by about 7-1/2 ft. and that is the only thing that brings the application before the Board other than it was a pre-existing non-conformity already because of the steps by the garage on the driveway side. They are bringing out the screened in porch to meet that same infringement so they are not further enhancing the side yard infringement. Ms. Scro said it is only a portion of the screened porch because it is octagon shaped which they felt would be more appealing.

Ms. Hart asked if they are planning on putting some additional shrubbery along Cedar Drive. Applicant stated they are putting in some evergreens for privacy.

The meeting was opened to the public for comments.

Tom McDermott, 50 Cedar Drive was sworn. He said he is pleased to see this beautiful proposal to improve this home and he feels it is good for the neighborhood. He is concerned about the

screening around the extra porch. He feels it would be a good idea to require a 6-7 ft. evergreen screen between the screened porch and the street.

Mr. Batenhorst said they don't want to put in a wall of evergreens. He said it doesn't fit into the neighborhood but they will do their part in putting in beautiful landscaping. They would have to cut down trees to put in a screen of evergreens. They have 4 trees along that road they would have to cut down to have those evergreens survive, but they will commit to putting in nice landscaping.

Mr. Nestor asked if there is a wooded area between his and the neighbor's property. Mrs. Batenhorst said she had talked with their landscaper about putting in a few evergreens mixed with other trees and stagger them so it looks natural.

Clifford Lish, 35 Cedar Drive, was sworn. He said he can see most of the front of the house and the complete driveway side and he has a full view of the back yard. He has lived there for 3 years and the house has been an eyesore up until the time the Batenhorsts bought the house. He was pleased to see someone purchase the house and make improvements. He probably has the most direct view of that strip of land and after looking at what they have proposed he believes it offers a significant improvement to the neighborhood. He is looking forward to the completion of this project.

Melissa Jacobsen, 49 Cedar Drive, said she would like to revisit the landscaping of that area. That particular side does leave the back yard quite open and now that a lot of the trees have been taken down, it is much more open and the back yard is quite prominent when one is driving by. They are a young family with young children with "stuff" out there all the time and it is much more visible from the street. She does not want to see a 10 ft. arborvitae solid wall but she would like to see some sort of landscape plan. She would like to see more specific requirements for the landscaping and would like to see the backyard a little bit more screened. Ms. Batenhorst said their intention is to do that when their construction is complete.

Mr. Lish said the family has already done a significant amount of work within the guidelines of the town and he wouldn't want to see their plan delayed because of a requirement for a landscaping plan. He feels confident they will do a good job with the landscaping.

Ms. Jacobsen said she has lived in town her whole life and she wants to see the town improve. Mr. Nestor said there is no requirement that a landscaping plan be submitted for an application such as this. The Board cannot require that to be done but an approval could be conditioned on some type of landscaping.

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

Ms. Chamberlain said she believes the plans presented are very tasteful and modest and will definitely be an improvement to the house and the neighborhood. The pre-existing problem is the corner lot and that has been taken into consideration in the plans. She moved to approve the application. Ms. Hart commented that that the location of the house on the property and the way the house is laid out is part of the hardship. Motion seconded by Ms. Weidner.

On roll call, Ms. Hart, Ms. Chamberlain, Ms. Weidner, Mr. Manning and Mr. Redling voted in favor.

On a motion by Ms. Chamberlain, seconded by Ms. Hart, the meeting adjourned at 9:40 p.m.

Respectfully submitted,

Barbara Knapp