

June 27, 2012

A regular meeting of the Allendale Board of Adjustment was held in the Municipal building on June 27, 2012. 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. Manning, Mr. Redling, Ms. Weidner and Ms. Chamberlain. Mr. Jones was absent. Also present was Mr. Nestor, Board Attorney.

On a motion by Ms. Hart, seconded by Mr. Manning, the minutes of the meeting of May 23, 2012 were approved as submitted. All members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the Robert and Linda Squillante variance application. On roll call, Mr. Redling was opposed. All other Bd. members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the Michael and Regina Guarnaccia variance application. On roll call, all Board members present voted in favor.

Resolution of memorialization was submitted by the Board Attorney with regard to the Patrick Stanley/Complete Game LLC use variance application. On roll call, all Board members present voted in favor.

Continuation of Bottaro and D'Amore variance application

Vincent Bottaro and Daryl D'Amore were both sworn. John Yakimik, Borough Engineer, was also sworn. Mr. Yakimik submitted his report dated June 27 to the Board. Mr. Yakimik said he is the duly appointed Borough Engineer for the Borough of Allendale. He was asked to take a look at this application with respect to drainage concerns. He acquired the most recent set of plans that were delivered yesterday to the Borough Hall. He also performed a site visit this morning and reviewed the minutes from the previous meeting in May. He reviewed the architectural plans consisting of five sheets and a site plan that he presumes was prepared by Job and Job Surveyors. He did not review any other aspects of this application, only drainage.

Mr. Nestor marked Mr. Yakimik's report dated June 27 as Allendale Exhibit #1 with today's date.

Mr. Yakimik said applications of this type do not fall under the normal site plan review because they are private residences. However, there are two sections of the code that do apply to an application such as this. Section 196 entitled "Plot Plan Approval" is triggered when more than 500 sq. ft. of building area is being added to the site. Section 196 requires the applicant to submit engineering documents addressing drainage issues and other items for the office of the Borough Engineer and a report is prepared for the Construction Code Official with specific recommendations that are usually made for the issue of construction permits and/or certificates

of occupancy on final approval. The other section of the code that possibly applies to this application is section 225 of the Code entitled "Soil Movement". Mr. Yakimik said looking at the plans it is presumed that over 50 cubic yards of soil will probably be moved as a result of construction. Section 225D of the code gives specific criteria with regard to drainage. It requires the applicant to prove that they are maintaining or reducing the storm water discharge rate and volume from the property in question. Mr. Yakimik said the Allendale code gives a lot of flexibility to the applicant and the office of the Borough Engineer to come up with the right solution to control runoff from the site.

Mr. Yakimik pointed out that the engineering reviews usually occur after the Zoning Board or Planning Board render their decisions so it is unusual to have him present this evening but he is here because of the concerns of adjacent residents. He said looking at this site he has four concerns. The first is the amount of existing storm water runoff from Hillside Avenue onto the site. He said if you have been out there you can see the horrendous conditions that occur along the west side of Hillside Avenue at this house and at adjacent homes where the property is significantly lower than Hillside Avenue. It is anywhere from 9 inches to a foot and the water simply runs off of Hillside Ave. He said the County has put in some asphalt berms but there are no catch basins or inlets in the immediate vicinity on Hillside Ave. He believes the nearest is on Elbrook Drive and in the opposite direction the nearest is on Lori Lane. He said from the amount of water coming off Hillside Avenue the existing drainage conditions are not good.

Mr. Yakimik said his second concern with this application is the substantial increase in impervious area on the site as a result of the proposed improvements and that includes the addition to the house, the new garage and the driveway. His third concern is that from what he heard in the minutes from the previous meeting and as a known condition throughout parts of Allendale is the possible ineffectiveness of seepage pits to address compliance with sections 196 and 225 of the code. He said typically residents put in seepage pits when they have additions like this to control the storm water. However, because there are some areas of Allendale that have thick clay and poor soil those pits are not effective. He said they are practically useless and residents just throw their money away when they think they can put them in and have them work. His fourth point in reading the minutes of the last meeting is the litany of complaints of nuisance overland storm water flow to adjacent downhill properties.

Mr. Yakimik said section 223.22 of the Code requires an abutting property owner to replace a public sidewalk if the sidewalk is deemed in need of replacement by the Construction Code Official. He said that ordinarily without any drainage issues and based on what he saw of the existing public sidewalk, he would recommend that the sidewalk be replaced. There are tripping hazards and it is not in compliance with the Code.

Mr. Yakimik said given that there are drainage issues here, he would require the applicant's engineer to see if the sidewalk can be bermed or raised high enough to prevent the water from flowing from Hillside Ave. onto the site. He cannot tell without subsequent engineering drawings but if this application was to get approved berming of the sidewalks would be one of his recommendations. By berming of the sidewalk it possibly will cause an adverse effect to adjacent properties because if you dam up that one section and the other two sections remain low, the water will just go around them and go onto the other adjacent properties. As such, he

would recommend or pursue with the County that the adjacent properties have an asphalt berm installed or an asphalt curb when they are scheduled to repave Hillside Ave. later this year.

Mr. Yakimik said another point he would like to make is that returning overland stormwater flow to groundwater and the aquifer through seepage pits in areas is a good stormwater management policy. In most cases the Borough strives to get the surface water into the ground but there are sections of the Borough that have poor drainage soils where seepage pits would be ineffective. He said the Borough Code requires an applicant to perform a percolation test or a soil log prior to its determination as to whether seepage pits are appropriate at the site. He said if this application were to be approved by the Board, he would recommend that percolation tests and soil logs be taken at the site to determine if the site is feasible for seepage pits before construction permits are issued by the Construction Official. If that is the case he recommends seeking alternate means for controlling the storm water. Mr. Yakimik said the last point he would like to make is that the applicant should consider reducing the impervious footprint of the proposed improvements. He added that a proposal by the applicant to construct the proposed driveway of pervious material rather than asphalt or concrete would help matters considerably with this application. He suggested that the applicant consider constructing the proposed driveway with a pervious material such as fine pea gravel rather than asphalt or concrete as that would help quite a bit toward controlling runoff from the site. He concluded that this list is not all inclusive and not all of these are necessarily required.

Mr. Yakimik said the approximate cost for his review of this will be about \$600; however he does not see any mechanism in the Code for the applicant to pay for this so it will probably be a cost for the Borough to assume.

Ms. Tengi said at this point she would like to open the meeting for questions to Mr. Yakimik by the Board members.

Ms. Tengi commented that Mr. Yakimik is present because of the neighbors' concerns with water runoff and as the borough is now aware of the water issue, other than the County doing some curbing or asphalt berms, what other solutions could there be to this situation.

Mr. Yakimik said he thought he gave as many recommendations as he possibly could so is there something she has in mind. Ms. Tengi said with regard to the project we are doing on Franklin Tpk. she knows there are some residents by the County Club that have water runoff from Franklin Tpk. She believes the County came in and redid the sidewalks and curbs there to help contain the water flow. Mr. Yakimik said that project was in the Borough of Ramsey and it was paid for by the Borough of Ramsey. When the Borough heard about that project it reached out to Ramsey to try to extend it to help the Borough residents who were having a similar problem on Lakeview Drive and the residents on Franklin Tpk. but unfortunately this was not approved. He said he cannot speak for the Mayor and Council at this time as to whether they would pay for such an improvement but that is an option to consider.

Ms. Hart asked if when Mr. Yakimik was out in the field could he tell if that part of Hillside was curbed would the water reach the catch basin on Elbrook. Mr. Yakimik said it would reach the catch basin on Elbrook for certain storms such as Irene or a cloud burst but he cannot guarantee

it is all going to stay within the street. A particular concern are driveways. Ms. Hart asked if the water would go straight down or cut across the corner or go into a neighbor's yard. Mr. Yakimik said it would probably cut across and go into the neighbor's yard and that is why alternate measures are needed.

Ms. Hart asked if a berm is needed along the property line as well to keep the water towards the driveway. Mr. Yakimik replied, "Ideally, yes." Ms. Hart asked if that would be part of his review. Mr. Yakimik said the code indicates that adjoining homeowners are responsible for sidewalks and curbs. If he makes any recommendations deviating from that he must go to his Committee on the Mayor and Council to have them determine if this is a special case or not. If this is something to control drainage which it is, then there is the ability to have a more positive consideration from the Mayor and Council. He cannot sit here today and say that the Mayor and Council is going to fund an improvement to take care of this problem.

Ms. Hart asked if because they are over 500 sq. ft. do you look at their property and decide that they have to keep all of their water on their property. Mr. Yakimik said yes, but he cannot create a problem somewhere else. He cannot make a blind recommendation that is going to hurt somebody else. If he makes a recommendation he has to try to make it so that all benefit from it and nobody is going to be hurt as a result. He said it is a matter of finding the path of least resistance with all of these actions and trying to work with the applicant to create something that is not going to harm others.

Mr. Nestor asked what other alternative methods are possible if the soil tests indicate that seepage pits are useless. Mr. Yakimik replied the reduction of the impervious area and the installation of a sidewalk berm. Mr. Nestor asked if in this situation if the Board were to approve the application as submitted or as adjusted, would he speak with the engineer for the applicant to resolve this water issue. Mr. Yakimik said that is correct and sometimes that process takes months to make sure that the Borough's concerns, the adjacent homeowners' concerns and the applicant's concerns are met.

Mr. Manning said with regard to the seepage pits we don't know until the soil testing is done how this construction is going to impact this already bad condition. If the soil testing is done and they cannot build the seepage pits what are the options? Mr. Yakimik said there is a long slot of natural property in the back of this property that is basically untouched and if he was the engineer for the applicant he would look at that.

Mr. Manning said he visited the property and it pitches down. His concern is that if they can't put in seepage pits then there is no fail safe and we are relying on what is existing. Mr. Yakimik said that if we exhaust all alternatives, his office and the construction Code Official really cannot halt development. There is nothing in the code that says development shall be halted because they cannot take care of drainage concerns and perhaps the Code needs to be revised to have that. He believes that the most important issue is to control that water coming off of Hillside Ave.

Mr. Bottaro said the sidewalk is low. It is about 10 inches below the front yard. The other option that is feasible is to raise the garage and to raise the driveway to a level platform and at that point it will be level with the front yard so the soil that is being excavated for the foundation

can be replaced and re-terraced in such a way that the driveway now will be at a level plain and the garage itself will be lifted. He said this will also raise the soil across the foundation in the back of the house. Right now there is a 5 ft. drop and this way water from Hillside will not be going into the property or toward the back. If there is a torrential rainstorm there is a natural gully which is on his neighbor's property which looks like at times there is water in there. During a couple of major storms during the past 2 ½ years he has not seen anything going down there. Other people have said they have seen water going down there but his neighbor says he has not. The neighbor behind him, the Calabrese's home also has a storm drain in the driveway so this issue must have been going on for many years or they would not have a storm drain in their driveway. He said there are several drains that have been put in through the years way before they bought their home. Mr. Bottaro said there are other options that can be done such as changing the slope.

Mr. Yakimik said the underlying premise is that they cannot increase the amount of water coming over the site. The Code is specific on that issue and the measures that were described seem feasible. The applicant is going to be excavating dirt as a result of the building foundations so that as a result that excess material can effectively berm the site without trapping the water. He said one thing he noticed that was not in the report is that in the northeast corner of the site there is a very small local depression about 12 x 12 inches. He suspects that a possible old drain might have been there because it is on the property line. If this condition has been occurring for decades it is quite possible there could have been a drain there that has been buried and he would suggest looking into that possibility. It might have been put there by the town or an individual.

Ms. Hart asked if Mr. Yakimik is concerned that the property is being raised. Mr. Yakimik said he is cognizant of that and there is a concern of the next door neighbor looking at a wall that was not there before but unfortunately there is nothing in the Code that prevents that. In his review under section 196 of the Code he looks for those things to make sure that the builder or the homeowner is not raising the building to a point where it is aesthetically unpleasing to the adjacent property owner. Mr. Nestor said that it cannot be higher than 2 ½ stories or 35 ft. from the point of lowest grade. He added that there is no height shown on the most recent plans.

Ms. Tengi opened the meeting to the public for any questions for the Borough Engineer.

David Quackenbush, 68 Elbrook Drive was sworn. He said he has lived at the same property for 50 years. Due to the elevation of the soil to the north of his property the water coming from Hillside Ave. rushes down and collects in his back yard and it got to the point that one-third of his property was destroyed by water. He called the Mayor who came to his property with an engineer and both sank in the back yard over their ankles. The Mayor said that according to the Code they can't do anything with the subterranean water and suggested that we seek a private contractor and get his opinion. They contacted a contractor who solved the problem for him with the cooperation of his neighbor, Mrs. Crowley. They performed an excavation in his back yard and they must have gone down 15-20 ft. and underneath all of the clay he could see there was another stream of water coming from the north and he counted five natural springs. The contractor came in with his crew and the first work done was on his property. He said they had to take out tons of clay and boulders until they got to the point where it could sustain topsoil.

Brenda Calabrese, 36 Elbrook Drive was sworn. She said her question to the engineer is should the seepage pits be appropriate, where does the water that filters into the seepage pit come from and where does it go.

Mr. Yakimik said with a typical seepage pit the water could come from several sources. It could come from on the site or from overland water off of the site and it could come from roof leaders. In answer to the question where does the water go after that he said generally it goes down gradient which is basically the way that the grade of the land is. Will the water sink first and then go in that direction, will it go on the diagonal, will it go straight? He said only God knows which way it goes. He said we have the technology to determine that question, but it is very cost prohibitive. He said obviously if you are downhill the water will come to you, but the question is will the water go under the structures so it won't cause any damage or will it enter the foundation walls of the house and cause additional damage. He said that we do not know but common sense dictates that the closer the seepage pit is to a structure, the closer it is to a house down gradient, the greater chances are that seepage from that pit will cause damage to that structure. He added that the farther away it is then it is more unlikely it will cause any damage. Given the long nature of this property and if the seepage pits are installed if favorable soils are found, they will be placed roughly around 200 ft. from the property line but he cannot tell her whether or not it will affect her adversely. He added that the general desire of this municipality and municipalities throughout the country is to take surface storm water and get it back into the ground to recharge the aquifer so our wells are operating and so that we have clean ground water underneath. It also reduces flooding to get that water back into the ground.

Mr. Manning asked Mrs. Calabrese if she has clay on her property similar to Mr. Quackenbush. Mrs. Calabrese said there is the surface water that they have been addressing long before this application. In a heavy storm they get a lot of surface water. They have to keep it out of the house and the garage. Her husband has been doing basically by hand what Col. Quackenbush has been doing professionally for the past 6 months and it involves back breaking labor. The second problem is the ground water and her concern is with the seepage pit. With the additional construction will the seepage pit have to be farther back?

Ms. Calabrese said the second problem is the ground water. The way the situation is now their driveway is 20 ft. below Hillside Ave. The water table must be fairly high and with the additional construction the seepage pit has to be farther back and any water collected from these impervious surfaces goes into the pit and leaches out into the property that is already super saturated. He does not see where else that water would possibly go but under his house and in addition into the Crowley property and down into the Quackenbush property.

Mr. Yakimik said listening to the testimony and knowing the conditions here, the prospect of seepage pits seems unrealistic. Just hearing the concerns from the residents he feels it is less likely he will recommend seepage pits to take care of this problem. Therefore the most practical and controllable solutions revolve around controlling the water coming off Hillside and reducing the proposed amount of impervious area if possible.

Ms. Hart said this is a long piece of property. Could there be a variety of berms to slow the water down and give it time to seep in? Mr. Yakimik said that is feasible but who knows how

long the water would be sitting there after the rain storm. He is not sure it would be practical for this situation. Ms. Calabrese said the idea of a berm running down the side of the driveway that separates 461 and the corner lot she can see where that would protect the corner property but her concern is that would just channel even more going straight down the back yard to her driveway.

Jerry Calabrese, 36 Elbrook Drive was sworn. He said his concern is water running over the sidewalk. There are several berms along Hillside Ave. but those berms have been destroyed so he is not sure how effective an asphalt berm is going to be in that area. Mr. Yakimik said that is a very good point and he would say that an asphalt berm is a temporary measure. Depending on how well they are constructed they only last a couple of snow storms because the plows just knock them out, so concrete curbs along Hillside Ave. are preferred but the County is not going to install concrete curbs and as he indicated, the code says that curbs and sidewalks are the responsibility of homeowners. Mr. Yakimik said we do not want to make the recommendations so onerous on the homeowner so he believes a prudent thing for him to do is to go back to the Mayor and Council and the Streets Committee to see if they would be willing to entertain the construction of some public improvements to control the water on Hillside Ave. Mr. Yakimik said he has seen asphalt curbs last 10 years and he has seen some that last 4-6 months. It depends on how well they are constructed.

Mr. Calabrese said his second concern is that with any kind of development you will be taking down trees.

Mr. Manning said he is sure there is a storm drain on Hillside Ave. Mr. Yakimik said there is not. Mr. Calabrese said that is the problem. Mr. Calabrese said there are storm drains at the bottom of Elbrook. Ms. Hart asked how challenging is it to add a storm drain. Mr. Yakimik said he promises the Board to bring this up with the Mayor and Council but he can't give any assurance that those improvements would take place.

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

Ms. Tengi said she is going to ask Counsel for his recommendations on the plans. She does not see a height dimension on any of the plans and she is under the impression that our ordinance prohibits a second kitchen.

Mr. Nestor said the plans submitted to this Board have two dwellings. One is the family dwelling and a dwelling above the garage. In addition to being in violation of 270-52 it also violates 270-15 which does not allow dwellings in the rear of lots. Applicants would have to ask for those two variances in addition to all of the other bulk problems.

Mr. Manning said there is also another problem. The garage is 3 ft. off the property line as he sees it on the plans. Mr. Nestor said that is part of the other bulk problems which seem to be minor compared to the fact that he is in violation of the other two. A statement was made before that there is going to be no kitchen. Mr. Bottaro said this is going to be for his father-in-law. It is not for a rental piece of property.

Ms. Tengi said the Board recommended that the plans be revised since it feels this was a very large addition for this particular property. The Board did not say to put a second story on the garage but just asked for the applicants to reconsider their plans and that there was a concern that it was a very large addition. The Board did not say to put a second story on the garage. Ms. D'Amore pointed out that there is no kitchen up there.

Mr. Nestor said a dwelling unit is described in the Code as a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation and the only way they get by that is their statement now that there would be no cooking. Ms. D'Amore said her father does not cook. He has never cooked in the 45 years she has known him.

Mr. Nestor said what the Board is looking at is not the present situation but looking down the road that anybody coming in would have a second unit. He suggested that applicants come back with a revised set of drawings. Ms. Tengi requested that they put height dimensions on the plans.

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

Mr. Nestor advised the applicants of the items the Board will be looking for and suggested that the revised plans be submitted 10 days prior to the next meeting.

Jonathan and Lauren Buckner variance application – 3 Wilton Drive, Block 509, Lot 13
Colin Quinn was present as attorney for applicant.

Mr. Quinn said this is a 19,000 sq. ft. lot in a 26,000 sq. ft. zone so it is a pre-existing non-conforming undersized lot. The existing building height is 38 ft. and 35 ft. is required which is also a pre-existing non-conforming condition. The existing house is approximately 100 years old and he believes it pre-dated the ordinance. Mr. Quinn said a 50 ft. rear yard setback is required and the existing building line on this property is within 18 ft. of the rear property line or at 32 ft.

Mr. Quinn said the proposed work to be done is simple and straightforward. There is an existing garage and an existing family room over the garage. On top of the existing family room the applicant wishes to construct a master bedroom suite. The master bedroom suite will be recessed from the actual rear building wall. It will be 34 ft. from the rear lot line. There is no new construction that is recessed from the original building line that impedes on the rear yard setback.

Mary Scro, applicant's architect, was sworn and was accepted as an expert witness since she has appeared before the Board on many occasions.

Ms. Scro said the existing house is about 100 years old. The original front door faces Crescent Avenue. The lot is actually wider than it is deep. There is a 40 ft. front yard and a 50 ft. rear yard for a total of 90 ft. They have a depth of 114 ft. so it does not leave much room for a building.

Mr. Nestor asked if this is a corner lot. Ms. Scro said it is one house in. It used to be a corner lot but it was subdivided. She does not know when. The original placement of the house was prior to the current zoning regulations.

Ms. Scro said there are two smaller bedrooms that they are going to open up to create a larger bedroom. Presently there are four bedrooms on the second floor. They are going to end up with three rooms and an open office space to gain access to the new master suite above the existing family room and garage.

Mr. Nestor marked the plans as Exhibit A-1 with today's date.

Ms. Scro said SK-2 is the front elevation. The details of the existing house are going to be carried through on the new construction. SK-3 shows the side yard elevation showing the garages, the proposed and the existing building height. She noted that the windows on the second floor in the rear yard are shorter and smaller and not imposing on the neighbors in the back.

Mr. Quinn asked if this project will cause any further water runoff to the neighbors in the area. Ms. Scro said they are not increasing any impervious coverage. Ms. Tengi added that the applicant is here because they have pre-existing nonconformities. They have proposed an approximately 500 sq. ft. addition of a master bedroom over the pre-existing footprint of the building with no further encroachments to the ordinance.

Photos of the existing property were circulated to the Board.

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

Ms. Scro described the photos to the board. She said the new roof pitches will match the existing roof pitches and the photos depict the property as it exists today. Photos were marked A2, 3 and 4.

Ms. Scro said she believes the addition will be a benefit to the community. It provides the applicants with a nice master suite and it makes this older home a little more updated and more in keeping with some of the newer homes that are in this area of town. The square footage of the house will still be will under the allowable FAR. There is an existing fireplace but they do have to extend it. They did measure the 32 ft. to the base of that. The new construction is 34 ft.

Mr. Nestor marked the survey as Exhibit A-5.

Mr. Quinn asked if this application meets the requirements of a C-1 variance under the N.J. Land Use Statute. Mrs. Scro said yes. He asked if the application satisfies the criteria with respect to the narrowness or shallowness. Mrs. Scro said it does. She said the shallowness of the depth of the back from front to back is such that the buildable square footage is a very odd long rectangular shape which limits the applicant's ability to fully utilize the property. There is also a 15 ft. drainage easement that runs diagonally across the front left corner of the property

Mr. Manning asked if it is a family room over the garage. Mrs. Scro said it is. She said the existing family room is vaulted so they are going to take that roof off and make it flat.

Mr. Quinn asked if the grade change affects the applicant's ability to use the property or build on another area of the property. Ms. Scro said it makes it harder to build because of the location of the garage. Mr. Quinn asked how the existing building envelope affects or creates a hardship for the applicant. Ms. Scro said the existing building was placed prior to the current zoning regulations so it was placed outside of that building envelope.

Mr. Nestor asked why there is a difference between the two roof lines. Ms. Scro said it is for aesthetic reasons just to break it up. She said there is a third floor to the house and it is all open space.

Mr. Quinn asked how this application satisfies the negative criteria of the Land Use Statute. Mrs. Scro said the new addition is not going to cause any light or shadowing on the adjacent properties. It will enhance the neighborhood because the improvement makes the house more in keeping with the adjacent properties in terms of amenities. She does not believe there is any substantial impairment to the zoning plan or zoning ordinance because of this application. They are not imposing any further on the existing impervious coverage.

Ms. Hart moved to approve the application. She said the proposal will be an enhancement to the property and will blend in with the neighborhood and will not be detrimental to the Borough ordinances. Ms. Tengi seconded the motion. She added that the hardship is the configuration of the house on the property and it is a pre-existing nonconformity. This is a 100 plus year old home and that alone as it relates to the lot dimensions is a hardship for the applicant. In addition because of the easement on the property the applicant is prohibited from building to the left and toward the front of the house and there is no increase of any current non-conformity. The applicant has made sure that their minimal addition is in compliance and conformity with the current zoning standards. On roll call, all Board members voted in favor of the application.

On a motion by Ms. Tengi, seconded by Ms. Weidner, the meeting adjourned at 9:54 p.m.

Respectfully submitted,

Barbara Knapp