

October 13, 2014

A regular meeting of the Allendale Planning Board was held in the Municipal Building on October 13, 2014. The meeting was called to order at 8:02PM 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 to roll call: Mr. Quinn, Mr. Barra, Mr. Sasso, Mr. Sirico, Ms. Sheehan, Mr. Zambrotta, Mr. Scherb, and Ms. Checki. Mr. Walters and Mr. O'Connell were absent.

The item on the agenda was a concept review for a minor subdivision located at 848 West Crescent Avenue, Block 1501, Lot 21. Mr. Leonard Mazzone was the owner of the property. Mr. Robert Maloof was the attorney representing the Planning Board in place of Mr. Dunn who was absent because of illness that evening. Mr. Maloof stated that because there was a concept review plan in front of the Board no formal action would be taken that evening and Mr. Quinn agreed. Mr. Quinn explained that Mr. Yakimik was absent as well but he had sent the Board members a report which would be discussed as the evening progressed. Mr. Quinn said the object of a concept review is for an applicant to ask about various ideas and the Board to give nonbinding feedback.

Mr. Bruce Whitaker introduced himself to the Board as he is representing Ryan and Kelly Schroeter from 856 West Crescent Avenue. At the last meeting Mr. Whitaker had asked the Board not to consider the application. He had visited the Borough Hall to check over the plans but the plans were not available at the time. The Board postponed the meeting to October. Mr. Whitaker placed an OPRA request and received the documents that he was looking for last time. He wanted to reiterate why the application should not be heard. He felt the application was not properly coming before the Board as the report from Mr. Yakimik does state that the Schroeters' property would be involved. Mr. and Mrs. Schroeter are not in favor of the application. Mr. Whitaker felt the Schroeters property and ownership rights were being affected unnecessarily and without their consent. In the Municipal Land Use Law under section 55d-10.1 a concept review is an informal review that can be brought to the Board by a developer. A developer is defined as one that has a contract or an option to purchase a property or the property owner. Mr. Mazzone doesn't have an option, a contract, or ownership of the Schroeters property.

Mr. Maloof said he was aware of what was discussed between Mr. Dunn and Mr. Whitaker at the last meeting. He continued that he also knew about the easement on the properties. Mr. Maloof stated that it was not necessary during a concept review under the statute to have all of the parties who are considered developers at an informal hearing. He noted that during a formal hearing the expectations would be different. Mr. Maloof referred to the case in Cox that was discussed at last month's meeting. The case was called Hartz Mountain Industries versus Ridgfield Park which went to the Superior Court Appellate Division. It is reported at 27 Municipal Law

Review, Number 2, page 169 of June 2004 and on Cox under section 27-2. Hartz applied for a development tract which was not owned by the applicant but the significant bulk of the site was owned by the applicant. They needed the lot for access to the street and felt they had a proprietary right and it had to be included in the application. The Appellate division said that it was not to be interpreted that way. The trial Judge concluded that the applicant was not a developer within the meaning of the statute since it did not own all of the land needed for development. The Appellate Division held that the word “any” as set forth in the statute is not interchangeable with the word “all”. The Court gave significance to the fact that the applicant was the owner of the majority of the land to be included in the development. Mr. Maloof felt that case allowed the Board to move forward in hearing the concept review. He reiterated that if the application goes to a formal review then anyone with rights or interests will be heard and dealt with at that time.

Mr. Whitaker said that he was familiar with the Ridgefield Park case which talked about easement and proprietary rights on one piece of property that another landowner owned. In this particular instance it is not only the easement which is on Mr. Mazzone’s property that is involved but the applicant here is proposing construction at the home that the Schroeters own. It is not even listed in the conceptual review. It can’t be done without construction on their property and at the last meeting Mr. Yakimik confirmed that part. This makes this matter different than the Ridgefield Park case.

Mr. Maloof suggested that Mr. Whitaker reserve his comments for the formal hearing. He declared that he thought it was appropriate to hear the presentation of the applicant as no formal action would be taken. When a formal hearing does occur and people are under oath Mr. Whitaker would have the right to have witnesses, cross examine, and argue the points that he made that evening. Mr. Maloof warned Mr. Whitaker that he was not allowed to cross examine the applicant and that any questions he had should be directed to the Board.

Mr. Whitaker responded that he had no intention of cross examining Mr. Mazzone but he felt it was ridiculous for his clients to have to spend time and money fighting for their proprietary rights. Mr. Whitaker said there were a series of deficiencies when it came to the application and he wanted to put that on the record. He said the documents that the Board had in front of them did not meet the requirements for an informal review. He said the Board requires that an application be signed, filed, and fees are to be posted before an application is reviewed. According to what Mr. Whitaker received due to the OPRA request these items were not done properly for this application. He said that he had a copy of the Zoning Review application, an application for development, and a checklist. Mr. Maloof said that the application was signed. Mr. Whitaker said under his OPRA request the application did not have a signature. Mr. Whitaker asked if it was dated and Mr. Maloof gave the date of September 23, 2014. Mr. Whitaker wanted to know why no fees were posted before September 23rd and those that were posted were not posted at the correct amounts. There is an engineering review that was dated September 16, 2014 but the application wasn’t filed until September 23rd. Mr. Whitaker said

there is a fifty dollar check where the application says that there should be one hundred and an escrow fee of \$100 for engineering and he wasn't sure if that was all that was required. Mr. Maloof said all of this was highly technical. Mr. Whitaker said he didn't think it was highly technical as the engineer shouldn't review an application before it is submitted and logged in downstairs. The date of September 23rd was when every part of the application was brought in and that came from the Secretary. Mr. Whitaker said that Lot 22 which is the Schroeters property is not referenced in the zoning review application but it is part of the development. It is not listed under ownership or consent. The application for development does not list their name or address and anyone who has proprietary interest in the property should be listed. Otherwise the application is not providing the correct information. Mr. Whitaker argued that the Schroeters were purposely not placed on the application and this meeting could have happened without them ever knowing. There is no reference to the easement established in 1949 that involves both properties. Paragraph A in section 3 which reads does the applicant have any interest in other properties that join the premises and Mr. Mazzone answered no. Mr. Whitaker questioned how there could be no interest in the property next door that has to be developed and that is why this application should not be allowed to go forward. In Appendix B this applicant suggests that a driveway should be built on the Schroeters' property through Dana Avenue into Waldwick. There has been no consent to do that by the Schroeters. The checklist also only deals with one lot. Mr. Whitaker wanted to know how an engineering review could be done before an application is posted and filed with the Board. Mr. Maloof said Mr. Whitaker's objections were noted and that the Board is aware of the fact that there is an easement between the properties.

Mr. Leonard Mazzone was able to make his presentation to the Board. He submitted a revised application to the Board a couple of weeks ago. There was an original application and a supplemental application. The date of the original application was ten or fourteen days prior to the last meeting. The new application was ten to fourteen days prior to this meeting. He did not sign his copy and did not have the date. He had a date of September 2nd for the checklist. He deposited \$150 for each application. He gave \$50 for the one application and \$100 for the other application fee. Mr. Whitaker said he was only provided with one application on the topic and was not provided with those amounts for his OPRA requests. He also requested copies of the documents of September 2nd under the OPRA request. Mr. Mazzone said that he was going to be discussing the second set of plans which were dated September 23rd and that he was not presenting any information on the September 16th plans as he withdrew those plans.

Mr. Mazzone said that back in 1949 the land that was 111 acres was subdivided. The Block is 1501 and the Lots included are Lots 19, 20, 21, proposed 21A, and 22. The subdivision and the access to Dana Drive will occur on his property. Mr. Mazzone's property would be divided into two lots - Lot 21 and Lot 21A. The Schroeters are on Lot 22 and West Crescent Avenue is by Lot 19. Mr. Sasso asked if Lot 20 was involved in this in any way but Mr. Mazzone said they would not be involved due to the fact that they had a separate driveway to West Crescent Avenue. Mr. Maloof asked who owned Lot 19 and Mr. Mazzone said they live in Colorado but

he didn't know their name and the owner leases the property. Mr. Whitaker said the name was Celia Bockhoff and the address is 852 West Crescent Avenue. Mr. Mazzone said that the street was created for a reason and it has been okay for many years up until recently where people's expectations are different than they were back in the 1940's. He is trying to find a solution to issues to deal with this property over the next 100 years. The problem is not going to go away unless it is solved now. One way to solve the problem is to provide space to put a road there. He feels changes may come to the homes on the street in the future and that now is the time to deal with things effectively. The Schroeters have placed two additions on their home but nothing has been done about the road. The house is nonconforming so the problems with the street have not been solved. The homes are isolated and there is no neighborhood area. Mr. Mazzone's children used to spend time playing with the kids in Waldwick. Most of the homes that are adjacent to him in Waldwick are on less than an acre or half of an acre of property and they don't have a sense of community. His first application was to create that sense of community where everyone would be the same. His approach now would be to provide fifty feet of frontage that sometime in the future when the town wants to make the street into an actual road they will have that space. Mr. Mazzone said he could still fit two homes on those properties that conform to the adjacent properties.

Mr. Barra asked if he had gotten permission from the owners of Lots 19 and 20 because the proposed plans start at Crescent Avenue. Mr. Mazzone said that Lot 20 has a driveway right into Crescent Avenue and the owners are not part of the plan. Mr. Barra said if you are building a street you would have to have the Borough right-of-way beyond their lot lines or adjacent to their lot lines and is there sufficient room for the street. The right-of-way goes up to their property line and if you do build a street there it would not comply with Borough Ordinances. Mr. Barra asked wouldn't you need an agreement from Lot 20 to give the same fifty feet that you are suggesting. Mr. Mazzone said he didn't know for sure but he thought there would be fifty feet from the property line to Lot 20 and to the north edge of the right-of-way you would have fifty feet. It might mean that Lot 19 shouldn't exist. Mr. Sasso stated that if the Borough acquires the rights to that street they would have to purchase it and negotiate with at least two if not three property owners. Mr. Mazzone said perhaps and asked why Lawrence Lane was still in existence. Mr. Mazzone said he is trying to find a solution to the problem. Perhaps Lot 19 becomes condemned in the future. Mr. Barra said that when typically a developer takes over a property the developer is responsible for building the street. He gave the example of Calvary Lutheran Church and the three lot subdivision that is being developed soon. Mr. Barra said the Town is not putting in the street and not paying for the cost of the street. Those parts are up to the developer. Mr. Mazzone said he is just proposing that he allow space for a street so in the future if the Municipality had an opportunity to do something that they could put a better road in place. He also suggested that the new home could access Dana Drive and the right-of-way could go behind it. Mr. Barra asked if this would be an Allendale home that pays Allendale taxes and Mr. Mazzone said yes but they may have to pay something to Waldwick for access on to their road. Mr. Barra asked if he had spoken to Waldwick about the legalities of that proposal and Mr.

Mazzone said he had not. Mr. Barra said reading the plans were confusing and he was appreciative that Mr. Mazzone was explaining the plans to the Board. He did say that the plans raise a lot of questions including fire protection. Mr. Mazzone said he spoke to the fire chief who told him that servicing the homes on the road they would have to hook-up to a hydrant on West Crescent Avenue and walk up with the hose. There are also hydrants on Dana Drive.

Ms. Checki asked what the zoning was for this particular area and was told that the homes are in the Triple A Zone. Mr. Sasso said that the zone requires 40,000 square feet or nine tenths of an acre. Mr. Mazzone said his proposal is more to a Double A Zone and consistent with the zoning in Waldwick. Mr. Sasso said he didn't care about what was going on in Waldwick as this Zone is Triple A in Allendale. Mr. Sasso and Mr. Mazzone discussed how Lot 19 might be pre-existing nonconforming. Mr. Sasso said Mr. Mazzone was preparing to change the use on Lot 21 which would not be conforming with the current Zoning. He added that this would be a big hurdle for Mr. Mazzone and wanted to be upfront about it. Mr. Quinn remarked that there would be a number of proposed variances needed with a formal application. Mr. Zambrotta acknowledged that some neighborhoods in the future might want to change but the Planning Board would have to have a consistent process in place for neighborhoods to make those changes. Mr. Mazzone said the community is evolving and will continue to evolve. Mr. Mazzone said that he just wants to make a more cohesive neighborhood. He feels that opportunities were missed by the Boards in the past to make Lawrence Lane more accessible. Mr. Barra said that if mistakes were made in the past it does not mean that the Boards continue to make those same mistakes. They try not to repeat what has not worked in the past. Mr. Barra explained that there is a building moratorium in Allendale because of lack of water and overbuilding. Even though things evolve we are stretching our resources. Mr. Barra said that he saw problems with building a road because there is not enough room for a cul-de-sac. He also felt that a road would never be put in there. The requirements are difficult to comply with when putting in a road.

Mr. Mazzone said he did not feel that it was a mistake but missed opportunities to correct the situation a number of times in the past. He felt it would be better to make Lawrence Lane as part of the Waldwick community. It would still be an Allendale address but the access would be through Waldwick and Dana Drive. It would also enhance Lot 22 and it would take care of the current nonconforming issue by having everyone access an improved roadway. The size of the lots would be consistent with the neighborhood. Mr. Barra said Waldwick has lot sizes that are very small in comparison to Allendale lots. Mr. Sasso said it sounded as though Mr. Mazzone wanted to secede to Waldwick. Mr. Mazzone replied that it was just a solution to improve Lawrence Lane in the future. One way would be to have access on Dana Drive but retain all the attributes of Allendale. Mr. Maloof asked how wide the easement is on the properties and Mr. Mazzone answered twelve feet. Mr. Mazzone said he was going to put up a fence to define the boundaries a bit better because people have a habit of being on his property. He had a surveyor come out and found that the right-of-way is not in accordance with the meets and bounds

description in the deed. It is actually six feet to the south of where it should be. There are questions as to where the property line should be and the road is not in the right place. Mr. Sasso asked if the survey and the deed were incongruent with each other and Mr. Mazzone said that the existing road and the deed are incongruent as they don't match. Mr. Sasso asked if he thought about remedying that situation first as once the road part is figured out he could put up a fence which might solve some of the problems. Mr. Mazzone said there are some other problems he is having with the neighbors and the right-of-way and Mr. Sasso suggested contacting the Code Official for property maintenance or the police. Mr. Mazzone stated that the Schroeters never asked him when they moved in how the road is maintained. Mr. Maloof wanted the Board to focus on the purpose of the meeting which was the concept review before them. Mr. Sasso said it seemed like it was a dispute between two neighbors and the Planning Board did not want to get in the middle of the arguments and Mr. Maloof and Mr. Quinn agreed. Mr. Mazzone said that once he thought this was a better solution he stopped working with the surveyor. Ms. Checki said to clarify what he said he wanted to subdivide his 40,000 square foot lot in the Triple A Zone into two lots. The right-of-way stays in place and the owners on Lot 22 would still have access to their property and Mr. Mazzone agreed. She said unlike the first set of plans where they are eliminating the access to Lot 22 and Mr. Mazzone said it was merely for discussion. Mr. Quinn added that getting another town involved when it comes to Dana Drive will be challenging. Mr. Quinn stated that if all the neighbors were in agreement this would be a different issue for the Board. But that is not the case so far. Mr. Mazzone said it was true and unfortunate. Mr. Mazzone said that he could take down his house and put up two new homes, or keep his house and add another one, or just keep it as a single home. Mr. Mazzone said he has a right to rebuild a home somewhere on the lot. Mr. Maloof said that he may need variances.

Mr. Barra told Mr. Mazzone not to underestimate the response from Waldwick about putting a driveway on their street without paying them anything for it. Mr. Barra said as Mayor he would not allow a similar situation to happen in Allendale. That is why he asked Mr. Mazzone if he had spoken to Waldwick. Mr. Mazzone said that it is a moot point as the Schroeters would not agree to the plans. Mr. Whitaker agreed and said that the Schroeters property is 1.67 acres. Mr. Mazzone said they don't have the setbacks that are required. Mr. Maloof said it was immaterial to the Board and to stick with the concept review aspect. Mr. Mazzone said he would like to subdivide his property and move the easement to the north of the property line. Mr. Barra asked Mr. Maloof if the Board had the right to move an easement that impacts on another property and Mr. Maloof said they certainly do not have that right. Mr. Maloof suggested that Mr. Mazzone get an attorney. Mr. Mazzone had an attorney named Mr. Alteri who suggested a lawsuit but that was more than Mr. Mazzone wanted. Mr. Maloof asked if he consulted anyone else and Mr. Mazzone said he did not. Mr. Maloof suggested that he get counsel as the application is a complex matter. Mr. Maloof said he could make a formal application and based on the evidence the Board will make a determination. Mr. Quinn asked if Mr. Mazzone had received a copy of Mr. Yakimik's comments and the answer was yes. Mr. Maloof asked what the problem is now and Mr. Mazzone replied that it is the Schroeters maintaining the property and the right-of-way.

He has called the police in the past. Mr. Quinn said the solution according to Mr. Mazzone would be to subdivide the property and change the right-of-way so changes can be made in the future. Mr. Quinn added that Mr. Yakimik had many comments that were not positive about the matter. Mr. Quinn said the application involves a different town and neighborhood and although Mr. Mazzone is trying to create a neighborhood Mr. Quinn was not understanding why it was needed. Mr. Zambrotta summarized the situation by saying that there is a challenge of access to the area and he is proposing to solve that with these changes. There are two parts of the proposal which are the movement of the easement and the subdivision. Mr. Zambrotta questioned how the subdivision is related to the access problem. Mr. Mazzone responded to make it more compliant with the other homes in the neighborhood. Mr. Zambrotta said there are two separate suggestions which are the access issue and the other is for more community amongst the neighbors. Mr. Mazzone said he still felt that Dana Drive access would be the best solution. The other way would be to give fifty feet for a future road. Mr. Quinn asked what the radius would be of the cul-de-sac as he didn't think there would be enough room. Mr. Sirico said that on Google maps Lawrence Lane appears to end at Mr. Mazzone's property line.

Ms. Checki didn't think Waldwick would want these new lots on their municipal streets. She declared that it is noble to want to create a neighborhood but the people who purchased the homes on this street may not want a neighborhood as they may like their seclusion instead. Mr. Quinn said that the purpose was to give Mr. Mazzone the sense of what the Board is thinking as to what types of hurdles he will have to overcome in order to push this type of application through. It is his right to do it but the Board members are raising some concerns about the concept review.

Mr. Mazzone said it has to start or end some place. Mr. Quinn said they were just offering some views. Mr. Zambrotta remarked that there were different hurdles to each of the ideas that Mr. Mazzone had presented. He also told Mr. Mazzone that getting an attorney to help go through the process of the future application may be helpful. Mr. Sirico asked him to take the Board through from Crescent to Lot 19. Lot 19 today is paved to the garage. It continues on to his property line in gravel and then to the Schroeters driveway which is partially paved. Mr. Sirico asked where does the pavement go on Lot 22 and Mr. Whitaker said it starts at the property line. There was some discussion about the location of the easement and utilities. Mr. Mazzone did tell the Board that the Chief was able to drive up Lawrence Lane in a fire truck and turn around in the Schroeters parking area. Mr. Maloof asked how long he has owned the property and Mr. Mazzone said since 1979-1980.

Mr. Mazzone said he is here to find a solution and is interested in what the Board has to say. Mr. Quinn reminded him that there will be hurdles to overcome including needing variances for undersized lots, access rights, building another road that leads into a different town, and other things as the application proceeds forward. Mr. Maloof stated that this becomes a major subdivision and fixing a road and putting in a cul-de-sac brings up the costs that he would have to pay. It would involve many neighbors depending on what he suggested in the future

application. Mr. Mazzone was asked about the history of the area and he said that there is nothing available to explain why Lawrence Lane is the way it is today. Mr. Barra said that Lawrence Lane is not unique in Allendale as there are other homes that have easements, a few small lanes throughout Town, and some owners who share driveways. Why they were set-up that way he doesn't know but there must have been a reason in the past. Mr. Barra is not sure why Mr. Mazzone wants to make a Triple A Zone conform with smaller lots in another town as that doesn't make sense to him. He reiterated that there will be many hurdles to overcome and suggested speaking to Waldwick about his ideas before proceeding with the application. Mr. Barra remarked that he agreed with the others on the fact that Mr. Mazzone should hire counsel. Mr. Maloof commented that an attorney would be able to go over the positive and negative criteria and the hardships that will be discussed at a formal hearing. Mr. Whitaker wanted the Board to know that his client still objected to all of the ideas given tonight by Mr. Mazzone.

On a motion from Mr. Sirico, seconded by Ms. Checki, the meeting was adjourned at 9:40PM.

Respectfully submitted,

Diane Knispel