

July 18, 2011

A regular meeting of the Allendale Planning Board was held on July 18, 2011 in place of the regularly scheduled work session. The meeting was called to order at 8:10 p.m. by Mr. Quinn, Chairman, who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following members answered roll call: Mr. Quinn, Mayor Barra, Mr. Fliegel, Mr. Sasso, Ms. Sheehan, Mr. Sirico, Mr. Walters, Mr. Zambrotta, and Ms. McSwiggan. Mr. Strauch was absent.

On a motion by Mr. Zambrotta, seconded by Mr. Walters, the minutes of the June 16, 2011 meeting were approved as amended. On roll call, all Board members present voted in favor.

Continuation of Calvary Lutheran Church application

The attorney for applicant, Mr. Whitaker, thanked the Board for creating this meeting as a regular session rather than a work session for the continuation of this public hearing.

Mr. Whitaker said he would like to call his next witness, Richard Preiss, their planner, who will testify as to the variance aspect of this application.

Richard M. Preiss, Principal and Vice President of Phillips, Preiss, Grygiel LLC of Hoboken, NJ was sworn. He said he has a Bachelor's degree in town and regional planning and a Master of Urban Planning degree. He is a licensed professional planner in the State of New Jersey. He has been with the firm since 1981 and has been a principal since 1983. He has testified and been active in New Jersey planning and obtained his license in 1986. He has been qualified as an expert witness before Planning Boards and Zoning Boards of Adjustment and has served as planner for various municipalities including Saddle River, Montvale, Teaneck and Englewood. The Board accepted this witness as an expert in his field.

Mr. Preiss said he looked at the site plan and the architectural plans and also the application before the Planning Board. He reviewed the Allendale zoning ordinance and the most recent master plan re-examination as well as the prior master plan as it relates to religious uses and this use in particular. He also visited the site and surrounding uses. He examined the standards for churches in adjacent municipalities. He also looked at a number of other established churches in Allendale to determine what size of property they were located on and conferred with church representatives and their engineer to get an understanding of their congregation and how they conduct business on that particular property as well as the engineering aspects of the application. He has reviewed this with Mr. Latincics and has also reviewed a number of reports by the engineering firms and planner on this application. He conferred with Carl Glaser and representatives of the church pertaining to its operations and functions.

Mr. Preiss said the primary purpose of his testimony is to address the appropriateness of the three C variances that are required in this particular application. He said the church and the parsonage are located on the three properties which are identified as Block 910, Lots 2, 17.01 and 17.02 located at the intersection of W. Crescent Ave. and Ivers Rd. Lot 2 is developed for the house of

worship and parish building with offices, classroom for nursery school and parking area. The remainder of lot 2 is undeveloped. There is a pocket of isolated wetlands located on the north central portion of the property along its boundary with lot 3. Lot 2 is 3.8 acres in size, is irregular in shape and has an average lot width of 389 ft. The church also owns lot 17.01 which is developed with a parsonage and a single family home associated with the church. That property is 21,593 sq. ft., is rectangular in shape and has an average lot width of 123 ft. The remaining lot 17.02 is undeveloped, fronts on Ivers Rd. and also has a pocket of isolated wetlands located in the northwest portion of the lot. It is slightly over 20,000 sq. ft. in size and is rectangular in shape with an average width of 116 ft. The site is essentially bounded by single family residential uses which front on W. Crescent Ave., Ivers Rd., Franklin Tpk. and Nadler Court. The majority of these homes share their rear boundary with the subject property. Lot 3 and lot 16 share both the rear and side yard with the subject property. There is an unpaved driveway adjacent to the northern boundary of lot 2 which appears to be shared by single family residences on lots 3 and 4. Instead of having a flag lot there is an easement through lot 3 in order to get to lot 4. There is a new cul-de-sac development of Nadler Court which is a short cul-de-sac off Franklin Tpk. to the northeast of the site. He will be referring to this particular subdivision in his testimony because he thinks it is very similar to what is being proposed on this particular development and he believes it will result in homes of a similar character. To the southwest of the site is Savini Restaurant and its parking lot located at the intersection of W. Crescent Ave. and Hamilton Rd. Further south towards the right of way are several light industrial uses. There is also the Celery Farm natural area which is located east of Franklin Tpk.

Mr. Preiss said the pertinent bulk regulations as they apply to this application for residential uses are a minimum of 20,000 sq. ft. is required and a minimum lot size of 3 acres is required for public buildings including churches.

Mr. Preiss said the applicant proposes to consolidate the three lots, 2, 17.01 and 17.02 and then re-subdivide them into five lots. The church building and the parsonage will be reconfigured to be located each on their own lot with the three new single family homes or three new lots to be provided which will be accessed via a new cul-de-sac. This cul-de-sac will be accessed from Ivers Rd. The existing church will be located on proposed lot 2.01. The existing parsonage will be on proposed lot 17.03 and the three single family homes which are to be built will be located on proposed lots 2.02, 2.03 and 2.04. In addition to the church building and the parking lot a storm sewer runoff water quality detention basin is proposed for the eastern portion of lot 2.01. As indicated by the engineer at prior meetings, this will substantially improve existing drainage conditions not only for the subject lot and the proposed three lots which are to be provided but essentially for all lots in the neighborhood which are subject to drainage conditions in the area.

Mr. Preiss said that no renovations are proposed for the existing church or expansion in any way. There are no additional changes proposed to the existing improvements on the site other than the construction of the detention basin and the relocation of the storage shed. The number of parking spaces for the church will not be increased or reduced as a result of the proposed subdivision and he believes there will be no impacts or changes with respect to the separation of the existing church building from its neighbors nor will there be a change in the intensity of the use of the church. He said three variances are required. One is for an undersized lot for religious use on proposed lot 2.01, an undersized front yard for a residential use proposed on lot 17.03 that

is actually for the existing parsonage residence and also an undersized building area within the yard setbacks for the single family residential use proposed on lot 2.02. These three variances are classified as C or bulk variances. Specifically, for lot 2.01 the minimum lot area for religious use is 3 acres. What is proposed is 2.1 acres. The second variance is the minimum front yard setback for the single family residential use that is the parsonage on lot 17.03. 35 ft. is required and 15.5 ft. is provided on the side of the lot that faces the cul-de-sac. For proposed lot 2.02 the minimum building area within the setbacks for the proposed single family residential use 50 x 50 ft. is required. For each of the C variances there are two bases on which the Board can grant the variances. The first is the C-1 or hardship variance where by reason of an exceptional or extraordinary situation affecting a piece of property the strict application of the zoning ordinance would provide peculiar and exceptional practical difficulties on the applicant. The second set of circumstances under which the Board may grant a variance is known as the C-2 where the applicant is required to show that the benefit of granting the variance will outweigh the detriments and where the purposes of the land use law are advanced. In addition, for C variances the negative criteria must be proved and that is that the grant of the variances will not cause a substantial detriment to the public good. With respect to the lot area variance where the church would now be on an undersized lot, he believes the justification can be based on the flexible C-2 criteria since the benefits of the grant would outweigh the detriments and the purposes of zoning would be advanced. He said the benefits would not be to the church but to the community and the neighbors.

Mr. Preiss said the church is experiencing some financial difficulties. The congregation has shrunk in recent years and is not expected to increase its membership or activities in the short term, intermediate term or the long term. From past experience both as representing churches and as a municipal planner reviewing these types of applications, they are not unique. There are certain established traditional churches around the State and Bergen County which are undergoing similar experiences while there are other churches of other denominations that are undergoing expansion and are increasing their congregations and the size of their facilities. Under this particular circumstance, the Calvary Lutheran Church in Allendale is faced with looking at a couple of different scenarios for the church and the property. The first is the scenario before the Board which is its desire to remain in the community and use its only valuable asset as a means to an end which is to subdivide the excess property it does not use and use it for uses which are permitted by the zoning, which are both compatible with the church and the existing neighbors, and to sell those particular properties.

He said the advantages to the community are that the church itself and its activities will not be brought any closer to the neighbors, the church will not experience an intensification of use, it will not result in a larger congregation, more services, increased traffic or larger facilities. It will remain as it is, a benign and compatible use within the neighborhood. The three homes which are to be provided on the 3 lots being created will actually serve as a buffer to the activities of the church from the neighborhood which may not mean a lot now, but in the future if the church is sold to another church or if it does end up being intensified and the activities increase, these activities will not be any closer to the surrounding neighborhood than they are now. He said these homes will act as a buffer between the existing single family homes and the church as it exists today.

Mr. Preiss said the fourth benefit is drainage. By virtue of the subdivision, the current problematic drainage of storm water will not only be corrected for the church property itself but the rate of flow off the site onto the neighboring properties will be substantially improved.

Mr. Preiss said the church does provide a venue for a number of non-church related community activities such as Girl Scouts. There are no plans to increase those; however, if the church left, those activities would have to find another home.

Mr. Preiss said he knows the neighbors do have an interest because open space adjacent to the lots is being replaced with single family homes. He said looking into the future, some change to this area is inevitable and in comparison to alternative scenarios he feels this is the one that is likely to have the least detrimental impact to the neighbors and the community. From a land use point of view the proposed single family homes are permitted in the zone. The lot size and configuration almost fully comply with the required standards. He said single family homes on one-half acre lots in his opinion will not cause a detriment to the uses which are adjacent. Aesthetically and from a neighborhood character point of view he believes we can anticipate that the same type of homes that are on Nadler Court will be built. Nadler court is a recent development which is a short distance away and one of the lots actually backs up onto the church property. It has lots of one-half acre. He visited the subdivision and what can be anticipated on the three lots being created is probably going to be consistent with what was built there. He cannot see how the presence of homes of this type and size on these lots will have any detrimental impact on the surrounding single family uses. The amount of traffic will increase very minimally. The church traffic will not increase and the three homes within the culdesac will cause a slight traffic increase – about 30 trips in total or 10 trips for each single family home on a daily basis. He believes the benefits of allowing this subdivision to occur outweigh any detriments.

Looking at possible alternatives, he said if the church cannot afford to remain in its current location and is unable to sell the adjacent property, what is likely to occur is that the church will sell its property to a church which is rapidly expanding. He said this is what is happening today with religious uses. He has represented a number of churches and temples and has been involved as a municipal planner with scenarios of this type. He said that next week he will testify in Paramus for the Syrian church which bought an old convent property. It is retaining the convent for a residential building and adding a cathedral, school and social hall. The property is about 5 acres in size. He also cited a church which sold 2.5 acres of excess property after it obtained a change of zoning for townhouse units. He said it is not an unusual situation where churches have excess property and are faced with financial difficulties. He said this church might be sold to another church which might expand its facilities. The proximity of such facilities to the neighborhood and the level of traffic that would occur in comparison to the proposed subdivision would be substantially greater and the community would be powerless to prevent such a development from occurring. Mr. Preiss said this church does not intend to sell or market their property to any other church but in going forward with this particular variance application they have received a number of calls from other churches interested in buying the property for this purpose. He believes that the proposed subdivision with the undersized church lot represents a better zoning alternative than a fully conforming scenario. With regard to the negative criteria, he said the proposed lot will be 2.1 acres which is not significantly less than the 3 acre

requirement and the most important thing is that the church can be accommodated on less than 3 acres and much of its site is undeveloped and not utilized by the church. He said he looked at churches that exist in Allendale. The Highlands Presbyterian Church at 270 Franklin Turnpike is undersized at slightly ½ acre in size. It is in the A residential zone and adjacent to single family residences to the east. The church is not anticipating or experiencing growth. The existing church building and the parking adequately serve its population. It is an appropriate lot size for this particular use based on the characteristics of the congregation and the physical conditions of the site.

Mr. Preiss said as a municipal planner he is often charged with drafting standards for religious uses and to determine what the appropriate minimum size for religious use is in a zoning ordinance is very difficult because there is a great variety and variation in those regulations. He looked at municipalities adjacent to Allendale and they have a wide range of lot sizes for religious uses. Waldwick has 30,000 sq. ft. or .689 acres. Mahwah has 100,000 sq. ft. which is 2.3 acres. Wyckoff has 5 acres. Saddle River has 10 acres. Ramsey churches are a special exception and there are no specific lot size requirements. He said he also looked at the lot sizes of churches that exist in Allendale today. Calvary Lutheran is on 4.5 acres. Church of the Epiphany is 6.5 acres. Highlands Presbyterian Church is .551 acres. Church of the Guardian Angel is on 8 acres and Archer Methodist is 4 acres. He said there is a great variation with respect to the regulations that communities have with respect to lot size as well as a great variation in the actual size of properties devoted to churches. The choice of lot size is to some extent an arbitrary and very difficult figure to determine. He is not saying in this particular situation that the Allendale zoning ordinance choice of 3 acres is arbitrary and unreasonable, but in reality some churches can actually be accommodated on properties of one acre or less very comfortably while others would have a problem being squeezed onto 10 acres. When confronted with an application for a new church or an expansion of a church, he thinks the real task is for the community to determine what is the lot size that is reasonable for the actual church that is proposed.

Mr. Preiss said the Borough's own master plan seems to have struggled with this issue. In its April 18, 2003 land use plan the document refers to "the increasing difficulty of accommodating these institutions in residential neighborhoods without reducing the quality of life of area residents." The 2011 master plan re-examination echoes that statement and says "they shall be permitted where they meet existing conditions." Both master plans endorse the 3 acre standard but they do not indicate or provide any substantiation for why the 3 acres is chosen. Mr. Preiss said he believes the proposed lot area is within a reasonable range. As per the intent of the master plan, it does meet the standard of accommodating the church in a reasonable manner without affecting the quality of life for area residents. The visual impacts will be minimal and the character of the neighborhood will be maintained. The proposed residents will be accessed by the new cul-de-sac rather than from private driveways off Ivers Rd. which effectively preserves the existing streetscape.

Mr. Preiss said he believes the applicant has demonstrated in the engineering testimony that there will be no detrimental environmental impact. With the improvements to the drainage there will actually be a benefit to the community. There will still be efficient buffering and separation of the church building from the surrounding uses.

With regard to the negative criteria, he believes the granting of the variance for the undersized church lot would not result in any substantial detriments either to the surrounding area or to the zone plan.

With regard to the front yard setback, that is the setback of the parsonage building and existing building to the proposed cul-de-sac which is 15.5 ft. Because the ordinance requires that to be regarded as a front yard setback, 35 ft. is required. He believes this variance can also be addressed on C2 or flexible C grounds since it is a better zoning alternative than a fully conforming setback. The benefits of this variance are interrelated to the same arguments made in connection with the arguments for the undersized lot. The granting of the variance allows the existing parsonage to remain on its own lot while still allowing three new lots to be created which prevents the church from having to sell to another larger more active congregation. The parsonage will still face Ivers Rd. and still have its driveway to Ivers Rd. versus the new cul-de-sac. This yard will continue to act as a side yard and will be only a front yard in a technical sense since the ordinance requires a front yard to be provided to any road on which the property faces. The variance allowing the parsonage to remain will maintain the streetscape and the community character. While the parsonage could be demolished in order to provide for a conforming residence the church would like to maintain it. He believes the benefit of granting the variance to allow it to remain in its current location and to allow for the subdivision of the three lots and to have access via the new cul-de-sac would outweigh any detriments of demolishing the home and changing the character of the neighborhood. In respect to this particular lot, all of the other yards are conforming between the existing and proposed residences. The only nonconformity is located between the parsonage and the road which serves this particular development itself and will not directly impact the surrounding uses. It is his opinion that if the variance is granted for the 15.5 ft. front yard, no substantial detriments to the public good or the zone plan will occur.

Mr. Preiss said the third C variance is the minimum 50 x 50 rectangle. He believes it can be addressed on the basis of C2 or flexible C grounds. It is interrelated to the benefits of granting the overall subdivision in that it allows 5 lots to be created, allowing the proposed scenario to go forward as opposed to others which although conforming are likely to have a greater detrimental impact on the public. In his opinion falling short of 7.4% of the 50 x 50 requirement is de minimus and at the same time all of the yard requirements will be met. It will not require that the home be any closer to the adjacent properties than is required by ordinance. Also it allows for drainage improvements on proposed lot 2.01 to the south for the benefit of the wider community. Like the two other C variances, in his opinion this variance allows for a better zoning alternative than a conforming 50 x 50 rectangle and the benefits of granting this variance outweigh the detriments. He does not believe it will result in any detriment to the public good or the zone plan.

Mr. Preiss said in conclusion the three variances, the undersized lot for religious use, the front yard setback and the buildable area within the front yard setbacks can be accommodated without a substantial detriment to the public good or zone plan. The church has existed in the community for many years and continues to operate without disruption to the neighborhood on less than 3 acres. The church will not overwhelm the neighborhood and will allow the institution to remain

in Allendale along with its myriad of benefits. The site could be used for a more intensive religious use. The congregation is not expected to grow and the existing and proposed residences will continue to be appropriately buffered from the religious use through conforming yards.

Mr. Whitaker asked if the variance relief being sought falls within the parameters of the flexible C-2 variances. Mr. Preiss replied affirmatively. Mr. Whitaker asked if Mr. Preiss has any objections to any of the comments made by Burgis Associates in their memo dated July 13. Mr. Preiss said there were a number of suggestions made with regard to landscaping, pedestrian circulation and environmental issues which he believes can be addressed by the engineer. From a planning point of view he does not have any objection to them.

Mr. Quinn asked if there are any questions from the Board for Mr. Preiss. Mr. Quinn said Mr. Preiss seems to be reading from a report. He asked if it is a report that could be made available to the Board. Mr. Preiss said they are just notes but he has no objection to providing a copy to the Board. Mr. Whitaker said they will formulate the notes and submit them to the Board on Thursday.

Mr. Sneickus of Burgis Associates said he is a professional planner for the Planning Board as well as the Borough of Allendale. He asked Mr. Preiss to expand on his testimony with regard to how the proposed subdivision would be a buffer from the church property to the adjacent residential properties. Mr. Preiss said on that property additional church activity either from this particular church or another church would be permitted such as a larger sanctuary, a school, offices or meeting rooms. The amount of traffic, parking and possible nighttime activity closer to the existing residences could increase, so in this situation where the church proposes to remain in the current facilities as they are currently configured with the exception of providing the drainage facility and having the single family homes located on the excess property insures that those single family homes will be located between the existing homes in the neighborhood and the church activity. In his opinion he would prefer to see a single family home on one-half acre as being a neighbor rather than an intensely used church. He pointed out that the master plan of the Borough alludes to the fact that trying to balance providing a reasonable amount of lot area to provide a church and not having an impact on residents in the area is one of its chief goals. He believes this particular proposal by having the single family homes located on the excess property does just that.

Mr. Snieckus asked if those benefits could be gained from a subdivision of somewhat less in number. Mr. Preiss said it would be possible however, he believes the subdivision with the parsonage lot and the three additional lots meet the minimum lot requirements and the minimum width requirement and all of the setback requirements. The two variances required are de minimus in nature and losing a lot under that scenario would be a shame for the church because they are looking to secure a financial future and remain in the community. He believes the variances can be justified and he feels the number of lots and configuration of the lots is appropriate.

Mr. Snieckus asked if an analysis of the parking has been done to determine whether or not the existing church activities are serviced appropriately by the number of parking spaces on site.

Mr. Preiss said there are no variances required for parking and no study was done but based on his conversations with church representatives he believes that the parking adequately served the congregation when it was much larger. The congregation is actually shrinking and there is probably an excess number of parking spaces but that is something that could be confirmed by Mr. Latincics or Mr. Glaser.

Mr. Snieckus said the church received several offers for the possible purchase of the property as it exists. He asked if theoretically there could be the opportunity that somebody could occupy this church if it was on a smaller lot area and that it has sufficient parking on site to meet the full needs of the church activities whether it is this particular congregation or a future one. Mr. Preiss said the reason why the subdivision is being undertaken is so this church can remain in place so that scenario is very unlikely. If someone were to purchase this church and the number of parking spaces was an issue that might be a reason for them not to purchase the church. The parking requirements have been satisfied for this particular church so there is no need for a variance. A church could buy the property and the parking would remain as is or they could intensify the use and create additional parking on the property.

Mr. Snieckus suggested that one of the things the Board might want to look at is an analysis of the potential parking demand. Mr. Preiss said he believes it is something worth looking at. They can have Mr. Glaser back to tell the Board whether they believe either presently or in the future they anticipate a shortage of parking.

Mr. Snieckus said he believes the parsonage lot has a 15.1 ft. side yard setback. He asked if they have looked at any other properties in the neighborhood to see if they have a similar front yard setback as what is being proposed. Mr. Preiss said he has not looked at any other properties in the surrounding area. What he indicated was that allowing that structure to remain would not change the streetscape and all of the new development will essentially be located behind the existing row of single family uses and the church on Ivers Rd. He said this is the only location where the cul de sac makes sense and to take down the home which would be the alternative simply to move it another 20 ft. over to provide a sufficient setback between that side of the house and the cul de sac does not seem to serve any function. That particular front yard faces the church property. It does not face any existing homes or any of the proposed homes within the development so he believes granting that variance will not have a detrimental impact either on the character of the community or aesthetically from the point of view of anybody driving by on Ivers Rd.

Mr. Snieckus asked what is the intent of the 50 x 50 ft. development envelope requirement. Mr. Preiss said he believes the intent is not to provide a very irregular lot and to allow for a home of a consistent size and quality for the neighborhood. In this situation the deficiency is de minimus and he does not think that small amount of deficiency has a detrimental impact and the way in which the lot is configured will allow for a home of equivalent character and value to be placed on that lot.

Mr. Snieckus said the master plan re-examination report of February 17, 2011 identified specific goals and objectives within the municipality that were considered important to the community

and should be considered in future development characteristics. He asked Mr. Preiss what is his opinion with regard to the impacts to environmental features in the subject application.

Mr. Preiss said the key environmental constraint on the property is the wetlands. He believes an LOI has been provided so the transition area averaging does take into account the DEP requirements for protecting that wetland. The second part is that there is an existing major drainage problem relating to this property. After heavy rains there is standing water on the property and there is an impact of that water on neighboring properties. He said this subdivision will provide the community with the church at its own cost providing for storm water drainage on that property that will not only take care of the storm water problem on its property but also adjacent properties. From an environmental standpoint he believes the impact will be positive. In terms of the character of the neighborhood he believes that the retention of the church and the parsonage is retaining the level of activity in the streetscape and character of the community. The three new homes meet the lot size and all of the yard requirements with the one exception for the front yard on the new cul de sac and the de minimus variance for the 50 x 50 rectangle. In all other respects it is in keeping with the scale and character of the homes in the surrounding area. He therefore believes that the impact on the surrounding uses will not be negative. He concluded that compared to the other scenarios that have been discussed, this is the best and even if the variances were not required, he believes the fact that these homes will exist on the excess property will assure the neighborhood that there will be a buffer between themselves and the existing and any future church activities and facilities on the remaining lot.

Mr. Walters asked if based upon the FAR and his experience with the church, are the ratios per sq. foot per person to maximum capacity. Mr. Preiss said in this case this church seems to function very well on one half acre. He said it is very difficult to ascertain what the appropriate FAR in building coverage should be. In this case the church use is within a single family residential neighborhood. He said the key is to increase the setbacks of the yard because you have a more intensive use adjacent to single family uses. In this particular situation the church is going to remain as is and the excess property is going to be used for single family uses and people who purchase those properties are going to be doing so in full knowledge of the existence of the church. He feels that will protect not only the existing residents from the potential detrimental impact of church activity but also the new residents will be aware of what they are buying into. In this case you have the benefit of an existing church which has operated for many years and it is his understanding the only problem related to it has been the drainage problem. He does not believe there has been any problem with regard to noise or with respect to over parking. He feels it is an appropriately sized church for this particular property given the nature of the congregation and the activities that are conducted. The church was significantly more heavily utilized in past years and the existing facilities accommodated those activities very well. He has no reason to believe there would be any detrimental impact on the surrounding uses if the church for some reason expanded its congregation somewhat.

Mr. Walters said he believes he heard that the capacity of the church is now 66% of what it used to be and relating to 15,000 sq. ft. a new church could come in with double or triple the amount of people. Mr. Preiss said he has seen some extraordinary situations. One church had to conduct 6 services to accommodate the congregation. A number of scenarios are possible. There are churches where the membership is significant and they want to accommodate all of their present

and future activities. There are churches that are looking to expand their facilities and their operations. One of those churches would be the most likely purchaser of this property.

Mayor Barra said Mr. Preiss indicated that he feels the reduced size of the lot is appropriate for the church's programs and what does he base this on. Mr. Preiss said he bases it on the experience and information he was given by the church and the fact that it has been in existence and operated in its current facilities for many years and that the congregation was much larger at one time and has reduced in number. The only detriment he is aware of is the drainage issue which is going to be addressed. There have been no complaints with regard to overparking or noise. He believes the church can operate with its current facilities. It does not need to expand the building or the parking. He said the open space on its property is just excess open space that they do not need, so selling off that excess property and remaining on what is left with the appropriate setbacks and the drainage basin added ends up to be 2.18 acres. Mr. Preiss said he feels that is an appropriate size for this particular congregation. He added, "It is very hard to come up with one size that fits all."

Mayor Barra asked if he was told what programs this church has in order to come up with this determination. Mr. Preiss said not specifically. Mayor Barra asked if he read the testimony of the gentleman who testified on behalf of the church. Mr. Preiss said he did not read his testimony but he spent some time with him going over what types of activities were conducted on the property – both church activities and other activities.

Mr. Preiss said the conclusion he reached was that if the church with a larger congregation and the level of activities that it conducted on the property 10 or 20 years ago when it was significantly greater than it is now, if the property was reduced to 2.18 acres in size and the buildings remain the same and the congregation remains the same or even increases somewhat, that the church could continue to operate on the 2.18 acres without having a detrimental impact on the surrounding uses. He does not think it is necessary to go into detail as to what the level of activities are because obviously there are no problems now and there were none in the past.

Mayor Barra asked if he would say that using that same criteria just about any church in Allendale can make the same argument that they would not need the three acres in order to operate. Mr. Preiss said he can't speak for the other churches. All he is looking at is this particular situation and as he has indicated before he has come across this situation before as well as other situations where there have been applications to intensify and that it is not unique. Mayor Barra asked if it would set a precedent if the Board approved this application. Mr. Preiss said it would not because each variance situation is unique. Legally it does not create a precedent and this is not a "one size fits all" situation. He is not criticizing the selection of 3 acres for church properties but the Borough has a church on one-half acre. In Allendale as well as other communities he has been involved with there is a range. He said you have the benefit of the church having operated in the same location with the existing facilities for many years and on that basis as well as the fact that the level of activities has diminished, if the property is subdivided and the church is left with its existing facilities that would not create a situation where it would not be able to accommodate those activities and there would be room for expansion.

Mayor Barra asked if the number of people in the church is relevant. Mr. Preiss said it depends. Mayor Barra asked how many members in the Calvary Lutheran Church as well as Highlands Presbyterian Church. Mr. Preiss said he doesn't know. Mayor Barra asked what is the basis for his statement that the church is in financial difficulties. Mr. Preiss said that is his understanding based on his conversation with Mr. Glaser who is a representative of the church. That is their motivation for going for the subdivision. Mayor Barra said when the church testified they said that the finances were not relevant to this application. He added that there is no evidence before the Board as to financial difficulties. How can the statement be made with no evidence to justify it. Mr. Preiss said he is relying on Mr. Glaser to say that and even if the church was not facing financial difficulties they can still come in and make application for the subdivision because it has excess property. He is just indicating that the Board should be aware that there are churches out there that do buy properties because they are rapidly expanding and that alternative scenario would result in much greater detrimental impacts than this situation. He said he is not using that as a threat but he is saying that based upon his experience as a planner.

Mayor Barra asked if the church would be seeking any of the three variances if there were one new lot instead of the three. Mr. Preiss said they would still have the variance for the front yard setback for the parsonage if the parsonage were to remain.

Mr. Zambrotta commented that they have heard many times that there was always the possibility of another church buying the property and that it was not a threat. Mr. Preiss said the church has to look at the realty of today's marketplace. That land is valuable and either the church is going to use it or sell it for single family use or another use is also another scenario. Mr. Zambrotta said his concern is that this is a bit speculative. Mr. Preiss said planners have to anticipate and look into the future and see the possible scenarios. He said it is part of his job as a planner to advise the community of what is likely to happen to a particular property. He is telling the Board that to think that that property is going to remain with the current church and its facilities from now until eternity is not reality.

Mr. Zambrotta said he heard that there was improved drainage but one of the detriments was the increased amount of impervious coverage, but there is an advantage with the improved drainage and that more than offsets the increase in impervious coverage. He asked if there are other benefits. Mr. Preiss said the other benefit is that the church itself and its activities will not be brought any closer to the neighbors.

Mr. Zambrotta asked if the residents in the new homes would actually be closer to church activities than what is envisioned in the master plan. Mr. Preiss said those particular residents meet the setbacks of single family homes from the adjacent uses so they are not any closer than the ordinance allows. Mr. Zambrotta asked if his testimony is that the existing residents would feel less impacted from church activities because there is buffer by these new homes and the new owners would know what they are buying into. Mr. Preiss said yes. Mr. Zambrotta asked if there is any other net benefit or detriment. Mr. Preiss said there is a potential for the church itself or whoever buys the church not only to bring those facilities and activities closer to the existing residents but also to intensify the use. If they build a larger social hall and sanctuary, if they added a school it would be located on that excess property and it would create more activity. It would increase the traffic and be more visible to the neighborhood. The purpose in the master

plan is to insure that when these institutional uses which are not necessarily compatible with single family uses are placed in those particular locations that they can be reasonably accommodated without negatively impacting the area residents. In this particular situation by maintaining the church activities and the size of the church as it is and having the new single family homes placed between the church and the existing residents does not create any negative impacts that would be associated with a more intensive non-residential use next to those single family homes. He said the church will not be able to expand and he does not think the one-half acre single family next to one-half acre single family is a negative impact on the land use plan. The church does provide the venue for a lot of non church related community activities. If the church left then those particular activities would have to find a new home.

Mr. Yakimik said he thought he heard Mr. Preiss say something to the effect that the Borough would be powerless against an expansion of the church. He asked if he could expand upon that opinion.

Mr. Preiss said the community would have review of the site plan application and any of the yard requirements or other requirements that were transgressed would require variances. The basic point is that the use is permitted and the fact is that churches have a particularly high status with regard to their treatment in the community. They are deemed to be inherently beneficial uses and they are protected constitutionally by the U.S. Constitution as well as the Constitution of New Jersey. There is significant case law regarding their elevated status. There is also federal statute known as RLUPA which is Religious Land Use Institution Protection Act wherein there are very serious consequences for a community if it treats a church differently than any other institutional uses. In this particular situation if this property was sold to a church and they decided to expand its facilities for things that the Board thought that they should not accommodate – such as offices, meeting rooms, bookstores, soup kitchens, playing fields, day care, all of those as long as they are related to the religious function have to be permitted by the community. He said that obviously the Board has a level of review but if another church bought this property and wanted to expand and meet the coverage requirements, this Board would have to grant the site plan.

Mr. Yakimik said he believes he heard during testimony that Mr. Preiss felt there is an excess number of parking spaces on the lot and the congregation has decreased the last couple of years. Mr. Preiss said it is his understanding based on conversation with Mr. Glaser that the congregation has shrunk and the level of activities has gone down and as a consequence fewer spaces are utilized. Mr. Yakimik asked if the applicant has looked into reducing the number of parking spaces and reconfiguring the application to remove the other variances that are associated with the application. Mr. Preiss said they have not done that and he does not see why they would do so. It is an existing paved area and whether it is utilized or not, who can tell what may happen in the future. It may turn out that the congregation expands and they would have to repave the area. The church has sufficient parking to meet its current needs. It has subdivided the property in a manner which retains the existing parking and provides the additional drainage basin to correct a situation. He feels there would be no reason to remove parking spaces and reconfigure the lot. Mr. Whitaker commented that the church did a number of different analyses before making this application. They made a determination that it was appropriate to leave what is there and not reduce or take away any of it.

Mr. Sasso said it would be helpful to know at what point of congregation increase would the parking become an issue. Mr. Whitaker said he will provide that information to the Board.

Mr. Quinn opened the meeting to the public for questions with regard to the testimony presented.

John Pastore, 77 Ivers Rd. said if the application is declined, the church may or may not sell, but if they do find they need to sell are they only able to sell to another church or could they sell to other uses that would be conforming to the zone. Mr. Preiss said the church indicated to him that they have every intention of staying. They have not marketed the property and they have not responded to any effort on the part of other churches to buy the property. However there may come a time when the church is sold and it is possible the church would sell to somebody who does not have the intention of expanding the church and utilizing the existing buildings. He does not think it makes economic sense for somebody to come in and knock down the church and build single family homes; however, there may be a situation in which an applicant believes that a use is appropriate for the property that is not permitted by the zone and seek a variance before the Board of Adjustment. He said the First Presbyterian Church in Englewood sold the property to Marriot for a Brighton Gardens assisted living facility. The Board of Adjustment denied the application on the basis of size and density. It was reduced and the Board approved it at a smaller size and what ultimately resulted was that Brighton Gardens was no longer interested in building the assisted living facility and it ended up being townhouses at 8 units per acre on property that was zoned for single family use. He said there are a number of scenarios which include both permitted uses and uses which are not permitted which may end up on this property.

Mr. Sasso asked if it is also possible that it could be sold to a church that would find the current facilities large enough and not need to expand. Mr. Preiss said one of the attractions of this property is the capacity to expand. It is possible somebody could say the church is the right size and they do not need to use the excess property. However, with any institutional or any business use where there is excess property that could be utilized that has an inherent underlying value and at some point in the future that owner is going to want to take advantage of that value. He said it is a planner's job in these situations to think through what the likelihood is and to try to protect the community. He said in this particular situation, as a planner looking at this particular scenario, he feels this provides Allendale and the surrounding residents with the most preferable outcome in terms of utilizing that excess property. That is why he believes granting the variance in this particular situation provides a benefit to the community.

Mr. Sasso said he has a question about the special privileges that churches have in terms of utilizing their sites. Does that have any bearing on storm water management. For example, if the board was concerned about the detention basin and how the storm water management would be mitigated, is the church not bound by those same ordinances? Mr. Preiss said the church is bound by the same ordinances. They still have to meet the requirements of the DEP and the local regulations with regard to storm water management and with respect to sound standards.

Mr. Sasso asked how much of the 2.2 acres of that property really is not usable because it is a storm water detention facility that is fenced off. Mr. Whitaker said that would be a question for Mr. Latincsics.

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

Mr. Zambrotta said he had a question about the financial condition of the church because there was testimony that the church had experienced some measure of financial difficulty. He recalls that Mr. Glaser said they were not experiencing financial difficulty and in fact they were putting money aside to maintain the drainage site.

Mr. Whitaker said he will try to have the transcript and parking analysis available by Thursday.

Mr. Quinn said the matter will be carried to Thursday's meeting.

Mr. Dunn said he would like to report to the Board that the I-Squared litigation is no longer active. The plaintiff has taken a voluntary dismissal of the action against all parties. He has received a copy of the stipulation of dismissal.

On a motion by Mr. Walters, seconded by Mr. Zambrotta, the meeting adjourned at 10.05 p.m.

Respectfully submitted,

Barbara Knapp