

RESOLUTION

LAND USE BOARD
BOROUGH OF ALLENDALE
BERGEN COUNTY, NJ

DATE: 10.15.25

RESOLUTION: LUB 25-24

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
Bergen			✓			
Warzala		✓	✓			
Putrino	✓		✓			
Agugliaro						✓
Yaccarino						✓
Dalo			✓			
Sirico			✓			
Wilczynski						✓
Butler			✓			
Conte-Alt.#1						✓
-Alt. #2						

Carried ☐ Defeated ☐ Tabled ☐

LUB 25-24

LAND USE BOARD OF THE BOROUGH OF ALLENDALE
RESOLUTION of

Allendale Operator, LLC
85 Harreton Road – Block 601, Lot 7

WHEREAS, Allendale Operator, LLC (d/b/a Allendale Rehabilitation and Healthcare & Allendale Assisting Living, LLC d/b/a Allendale Senior Living (collectively “Applicant”), owner of the Property located at 85 Harreton Road, known as Block 601, Lot 7 on the Tax Map, in the Borough of Allendale, County of Bergen and State of New Jersey (“Property”), applied to the Land Use Board of the Borough of Allendale (“Board”), in the Board’s statutory capacity to sit as a Board of Adjustment, seeking use variance, bulk variance, together with preliminary and final site plan and design waiver relief from provisions of the Borough of Allendale Land Use Code (“Code”);

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WHEREAS, the Property is comprised of approximately 11.0-acres;

WHEREAS, the Property is located in the AAA (residential) zone;

WHEREAS, the Property is developed with an existing senior, assisted living and nursing home facility ("Facility"), with associated accessory improvements and uses, inclusive of off-street parking areas, site lighting, business signage, refuse areas, pursuant to prior approval of the Board.

WHEREAS, the Applicant sought to perform improvements and undertake an expansion to the existing Facility, via development of a one-story structure, approximately 8,541 SF in size, to be located near the southern end of the Property (in an area proximate to and abutting single-family residential dwelling lots, structures and uses) for the proposed expansion of skilled nursing services / long-term care beds (increase of twenty (20) beds proposed over existing conditions), on the Property;

WHEREAS, the Applicant filed the following materials in connection with the application:

- Application, Checklists and letter prepared by the Law Office of Michael S. Rubin, LLC dated February 8, 2024;
- Boundary and Topographic Survey (2-sheets), prepared by Control Point Associates, Inc., last revisions dated January 25, 2023;
- Site plans (18-sheets), prepared by Jefferis Engineering Associates, LLC, dated October 31, 2023, and as revised;

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- Architectural plans (2-sheets) prepared by Brommer Architects, dated February 14, 2023;
- Stormwater Runoff and Management Calculations, prepared by Jefferis Engineering Associates, LLC, dated October 2023;
- Traffic and Parking Analysis, prepared by McDonough & Rea Associates, Inc., dated January 16, 2024;

WHEREAS, the Applicant sought use variance relief (i) pursuant to N.J.S.A. 40:55D-70d2 and (ii) pursuant to N.J.S.A. 40:55D-70d4, from Borough Land Development Code Section 270-49 and 270-63, related to an expansion of the existing principal use (existing use and proposed expansion not principally permitted in the zone); and for proposed floor area ratio nonconformance (19% maximum permitted, 32.1% existing, 33.8% proposed), respectively;

WHEREAS, the Applicant sought bulk variance relief pursuant to N.J.S.A. 40:55D-70c, from Borough Land Development Code Sections 270-40, 270-43, 270-62, related to: total off-street parking count (231 stalls required under proposed conditions, 154 stalls proposed); parking stall dimensional standards (10'x20' stall size required, proposed conditions includes varied and deficient stall sizes ranging between 9'x17.75' 9'x18' and 9'x20'); lot coverage (27.5% maximum permitted, 51.2% existing, 52% proposed);

WHEREAS, the Applicant sought design waiver relief associated with the following existing nonconforming conditions, to remain: access drive width (20' existing at the N.J.S.H. 17

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access point, 24' required); driveway width (21.1'-24.5' varying existing, 25' required for property with 90-degree parking stalls); and for nonconforming site lighting.

WHEREAS, the Applicant sought preliminary and final site plan approval, in conjunction with the use variance, bulk variance and design waiver relief;

WHEREAS, an Affidavit of Service and Publication was timely tendered to the Board, which, upon review and confirmation of proper notice, conferred jurisdiction over the Board to commence public hearings on the Application;

WHEREAS, the Applicant appeared before the Board on September 30, 2024, December 18, 2024, February 12, 2025, June 16, 2025 and September 17, 2025;

WHEREAS, the Applicant was represented by Michael S. Rubin, Esq., and presented the following witnesses in connection with the Applicant's prosecution:

- sworn and qualified expert witnesses - Teal Jefferis, PE, civil engineering, Ryan McDermott, RA, architecture, Scott Kennell, PE, traffic engineering, Paul Grygiel, PP, professional planner; and,
- sworn lay / operational witnesses - Alan Eserner, Thomas Kilcourse, Dina Napolitano and Brian Hootan;

WHEREAS, the Applicant presented the following exhibits during the course of the public hearings:

- Exhibit A-1 – Enlarged floor and elevation key plan;

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- Exhibit A-2 – Overall site (engineering) improvement plan, revised 8.13.24 (4-sheets);
- Exhibit A-3 – Email correspondence between the Applicant and Allendale Fire Chief, David A. Baez, dated 8.13.24;
- Exhibit A-4 – Six (6) sheet PPT entitled “Allendale Community”;

WHEREAS, the Board introduced the following exhibit during the course of the public hearings:

- Exhibit B-1 – One (1) sheet graph, entitled “Allendale Nursing Home & Assisted Living Stats 2008-2025” identifying the total number of emergency service calls from the Applicant’s Property, each year, between 2008 and 2025, to date;

WHEREAS, the public presented the following exhibits during the course of the public hearings:

- Exhibit O-1 – Thirteen (13) authenticated photos, prepared by adjoining property owner Kathy Latz, 256 Nottingham Road, evidencing inadequate screening between the Applicant’s Property and the abutter’s lower-intensity use, residential property;

WHEREAS, the Applicant presented Alan Eserner, employe with Marquis Health Services, who was sworn and testified in the capacity of site operations;

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WHEREAS, Mr. Eserner testified that he visited the site 1-2 times per month, was familiar with ongoing site operations and confirmed the Applicant's business need to enhance skilled nursing beds / services at the Property, as the operations related to same were at capacity;

WHEREAS, Mr. Eserner testified that, in his opinion, there were no site issues related to parking capacity, as during his visits to the Property he observed no parking shortfall during any of the three, daily employee shifts;

WHEREAS, the Applicant presented Ryan McDermott, RA who was sworn and qualified as an expert in the field of architecture, and confirmed as the scrivener of the architectural plans of record, filed in connection with the matter;

WHEREAS, Mr. McDermott testified as to the facility bed counts under existing and proposed conditions, confirming the increase proposed to the skilled nursing beds by a total of twenty (20) in the to-be-constructed, proposed additional principal structure;

WHEREAS, Mr. McDermott testified as to the proposed building lighting details, confirmed the building rendering was an accurate representation of the proposed, relative to structure materials and colors, and confirmed no generator was proposed to be installed;

WHEREAS, Mr. McDermott testified and acknowledged the ongoing Property issue related to inadequate radio signals, resulting in substandard radio connectivity by and between first responders when accessing the facility during emergency service calls, which were confirmed to be frequent;

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WHEREAS, the Applicant presented Teal Jefferis, PE who was sworn and qualified as an expert in the field of civil engineering, and was the scrivener of the site plans of record, filed in connection with the matter;

WHEREAS, Mr. Jefferis testified as to the existing Property layout and proposed areas of improvement, identified the relief sought, noted the elimination of parking spaces in the area of the proposed structure, provided details regarding the proposed site lighting (for which a design waiver would be necessary as a result of proposed noncompliance with Code minimum footcandle requirements), described stormwater management and signage details;

WHEREAS, the Applicant presented Thomas Kilcourse, operations director with Marquis Health Services, who was sworn and testified in the capacity of site operations;

WHEREAS, Mr. Kilcourse testified that he visited the site approximately one time per month and responded to the varied concerns of the Board and public regarding ongoing refuse collection methodology, which is regularly occurring at off-hour (early morning) times, to the detriment of the other properties in the zone and area, assuring the Board an immediate resolution to the ongoing trash collection nuisance;

WHEREAS, the Applicant presented Scott Kennel, PE who was sworn and qualified as an expert in the field of traffic engineering;

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WHEREAS, Mr. Kennel summarized his office's 1.16.24 traffic study, confirming the proposal would result in an approximate 10% increase in the number of skilled nursing beds, notwithstanding the overall bed count reducing for lower-demand resident categories;

WHEREAS, the Applicant presented Paul Grygiel, PP who was sworn and qualified as an expert in the field of professional planning;

WHEREAS, Mr. Grygiel testified as to the variance relief and the support for the expansion of the existing use under the Burbridge v. Mine Hill Township case standard, citing the existing use as inherently beneficial;

WHEREAS, upon the conclusion of Mr. Grygiel's testimony, the Applicant was presented with Exhibit B-1 and was requested to opine as to the anomalous and significant spike in first-response emergency calls to Borough resources, since the time the Applicant took ownership of the Property (in year 2021), with annual call numbers ranging between 156 and 174 calls, during calendar years 2022, 2023 and 2024;

WHEREAS, the Applicant presented Brian Hootan, Vice-President of plant operations for the Applicant, who was sworn and testified in response to Board inquiries as to the emergency gate access area and considerations to reduce the frequency of vehicular trips / deliveries to the Property at this residential, terminus street location;

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WHEREAS, Mr. Hootan confirmed that the proposed increase in beds at the facility were to serve higher-risk patients, requiring the highest level of care and could also be long-term patients;

WHEREAS, Mr. Hootan was unable to confirm with any degree of reasonable certainty, how many of the entirety of beds at the facility, both existing and proposed, might be long-term resident beds;

WHEREAS, the Applicant presented Dina Napolitano, owner-representative for the Applicant, who was sworn and testified as to very recent meetings between Applicant representatives and Borough officials, endeavoring to limit the number of emergency calls to the Property, an undertaking which was suggested to be a collective effort, involving the need for / resources of the Borough to address the Applicant's private matter;

WHEREAS, Ms. Napolitano testified that the Applicant has undertaken efforts (as of summer 2025) to update the Property address, so that there would be less vehicle traffic to the Property from Harreton Road, an issue raised as a concern by the Board as of the first public hearing on the application;

WHEREAS, Michael Dillon, Borough of Allendale Chief of Police, was sworn and testified as to the impact the Applicant's 911 calls has had on Borough first-response resources, noting the frequency of calls has been concerning to the Borough Police Department, even with ambulance calls now (as of summer 2025) being diverted to an outside, non-volunteer agency;

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WHEREAS, Chief Dillon testified that there has been persistent communication and coordination difficulty with the Applicant upon arriving at the facility in response to emergency calls, with no formalized, permanent solution offered (with the Applicant primarily relying upon the “WhatsApp” app-service to communicate with first responders);

WHEREAS, Chief Dillon testified that with the proposed increase to the skilled nursing beds, there was a reasonable concern that emergency call frequency would increase;

WHEREAS, Chief Dillon testified that the limited number of patrol officers on duty, particularly during overnight hours, has had, and could continue to result in, situations where most (or all) on-duty officers are diverted to the Applicant Facility in response to a call, neglecting policing services to the balance of the Borough for the duration of the Applicant Facility response;

WHEREAS, the Borough of Allendale Land Use Board hereby makes the following findings of fact and conclusions:

1. The Applicant is the owner of the Property, acquiring the Facility in 2021.
2. The Application was duly noticed, conferring statutory jurisdiction over the Board to commence proceedings.
3. The Property is approximately 11.0-acres in size, with an address of 85 Harreton Road, known as Block 601, Lot 7, on the Tax Map of the Borough of Allendale.
4. The Property has a primary point of access along New Jersey State Highway Route 17;
5. The Property is located in the AAA (residential) zone.

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6. The Property is developed with an existing senior, assisted living and nursing home facility, with associated accessory improvements and uses, inclusive of off-street parking areas, site lighting, business signage, refuse areas.
7. Existing conditions on the Property render it nonconforming to the zone principal use standards (existing use and proposed expansion is not principally or conditionally permitted in the zone); and, the existing use exceeds allowable floor area ratio maximum permitted standards.
8. Existing conditions on the Property render it nonconforming to the zone bulk and design standards related: to access drive width (20' existing at the N.J.S.H. 17 access point, 24' required); driveway width (21.1'-24.5' varying existing, 25' required for property with 90-degree parking stalls); principal structure top height exceeds that which is permitted by Code (35' permitted, 36.8' existing); and site lighting.
9. The Property is immediately bounded on the north, west and southern boundary lines by lower-intensity, single-family residential lots, structures and uses.
10. Existing Facility operations are resulting in persistent and regular nuisance to the residential abutters, with sworn testimony citing to: employees loud loitering around Property the perimeter adjacent to resident backyards; neighbor observation of employee recreational drug use; and, restoring the residential properties to address and

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collect littered items/refuse, occurring on the Applicant Property and traversing onto the abutting residential properties.

11. The Applicant, since acquiring the Property, has established a consistent record of being the source of significantly heightened 911 / emergency service calls from the Facility.
12. The heightened 911 / emergency service calls from the Facility have created undue burden on the Borough and Borough related first response services, with the average number of calls between years 2022-2024, being double (2x) the number of calls for each prior year (predating the Applicant's ownership and control), with records dating back to year 2008 being considered.
13. It was evidenced that emergency response calls were, at times, made for the convenience of the Facility / Facility staff, and was to the unmitigated detriment of Borough resources (i.e. Facility calls placed to 911 for non-emergency matters).
14. The Applicant did not provide an autonomous or formalized solution to satisfy the Board that the Applicant would successfully, or in a consistent manner moving forward, reduce the number of emergency service calls from the Property and proffered a position that was reliant upon Borough / community resources to assist with the correction of Applicant created, perpetuated and ongoing site issues.
15. The increase in skilled nursing beds at the Property would be an intensification to the site use and would, through Applicant operator testimony, likely cause a heightened demand

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for increased staff, support, and potential for increased first-response calls and demand to the Property.

16. Applicant Facility operation/management personnel was confirmed to have changed numerous times during the course of the public hearing process, with new managers unaware of prior assurances made to the Borough regarding site corrective efforts, by each predecessor, resulting in failed implementation of varied ongoing Property nuisances which the Applicant was on notice of and assured correction of throughout the duration of the public hearings .
17. The Applicant failed to produce comprehensive, internal emergency medical service call logs / statistics to the Board, to compare and determine whether there was a reliable downward trend of demand for services, with the exception of data produced (for the limited date range of May 2025 through August 2025), where 65 emergency calls were confirmed to have been placed during said four-month period.
18. The Applicant did not present conclusive and complete stormwater management measures (either through testimony, plan presentation or report data) as of the conclusion of the public hearing, raising a reasonable concern as to impact of proposed site converge increases upon the immediately abutting residential properties.

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19. The Property's (Harreton Road) physical address erroneously indicates an access point to the Property through a terminus residential neighborhood and street (that is inaccessible, save for an emergency gate).
20. There has been a persistent and uncorrected pattern of passenger and/or delivery vehicles regularly attempting to gain access to the Property via Harreton Road.
21. Various, online, cellular app and publicly utilized map and directional resources consistently provide erroneous directions to the Property, through the inaccessible residential, Harreton Road, as confirmed during the September 17, 2025 public hearing, even following prior hearing testimony from the Applicant operational representative that same was corrected, via updated physical address.
22. The impermissible and errant actions of regular site access to the Property through the emergency gate location, along the residential, terminus Harreton Road, was not addressed by the Applicant as of the time of the disposition of the case and remained an avoidable impact to the AAA zone, and immediately abutting lower-intensity residential properties.
23. Vehicle drive aisles, circulation and parking around the proposed structure remained a concern of the Board, relative to safe and navigable access of said area on the Property, as well as potential off-site impacts (acoustic, building and vehicle light-splash, increased runoff) to the immediately abutting residential lot owners to the south due to proposed

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expansive and heightened activity in the subject area of the Property, as a result of the location of the proposed secondary structure.

24. The refuse collection nuisance, identified during the course of the public hearing was confirmed to have not been successfully addressed by the Applicant as of the time of the disposition of the case, despite assurances being made by the Applicant operator witness as early as September 30, 2024 that same would be promptly remedied. This brought into reasonable question the veracity of Applicant operational witness testimony and the reasonable inference that the Applicant would revert to (or continue) poor management practices to the detriment of the surrounding properties and zone, particularly when and if operating under intensified site use, as proposed.
25. Several members of the public appeared during each of the public hearings on the Application, cross-examining Applicant witnesses and providing sworn testimony and comment in objection to the Application. Members of the public were identified on the record as proximately abutting the Property, owning and occupying single-family residential lots. Issues, concerns and challenges raised included: persistent and regularly occurring erroneous site navigating by visitors to the Property, attempting to gain access and entry along the residential, Harreton Road, inclusive of those by commercial and delivery vehicles; poorly established screening buffers between the Property and residential abutters; refuse and trash relocation onto residential properties, occasioned

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by littering occurring on the Property perimeter by Property staff; light spill overage onto residential lots; impermissible outdoor storage items along the perimeter of the Property, creating unsightly nuisance conditions; off-hour refuse collection, creating a neighborhood nuisance; concerns with the location of the proposed refuse enclosure; and concerns with the use intensity, structure footprint and coverage increases proposed.

26. The Board may grant a use variance for expansion of a nonconforming use under N.J.S.A. 40:55D-70(d)(2) only if it finds both positive and negative criteria are satisfied. O'Brien v. Borough of Point Pleasant Zoning Bd. of Adjustment, 2010 N.J. Super. Unpub. LEXIS 1910. The positive criteria require that "special reasons" exist for the variance, while the negative criteria mandate that the variance "can be granted without substantial detriment to public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance." O'Brien v. Borough of Point Pleasant Zoning Bd. of Adjustment, 2010 N.J. Super. Unpub. LEXIS 1910. N.J.S.A. 40:55D-70d requires an enhanced quality of proof, as well as clear and specific findings by the Board, that the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance. Committee for Rickel Alternative v. Linden, 111 N.J. 192. The applicant for a use variance must establish the negative criteria with an enhanced quality of proof. Collins v. Presbyterian Church of Toms River, 2018 N.J. Super. Unpub. LEXIS 105.

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27. The Applicant did not satisfy the burden of proof relative to the relief sought pursuant to N.J.S.A. 40:55D-70d2, failing to establish the negative criteria, including those related to the impacts of the proposal to the adjacent neighborhood and surrounding area, related to increased traffic, on-site parking demand, Borough first responder service demand, stormwater runoff intensification, operational nuisances, buffering and impacts to light, air and open space, could be satisfactorily addressed, such that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and the purpose of the zone plan and zoning ordinance. The record demonstrated that the Applicant has failed to satisfy the negative criteria under N.J.S.A. 40:55D-70d(2), with the existing Facility operations resulting in persistent and regular nuisance to residential abutters.
28. The proposed increase in skilled nursing beds would constitute an intensification of the site use and would, through applicant operator testimony, likely cause a heightened demand for increased staff, support, and potential for increased first-response calls and demand to the property. This intensification directly contradicts the requirement that a variance be granted without substantial detriment to the public good.
29. The Applicant failed to establish that the proposed deviation involving development of a secondary principal structure proximately adjacent to abutting residential lot lines and

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uses would not cause substantial detriment to the public good, to the intent and purpose of the zoning ordinance or plan for the area.

30. Given the Applicant's demonstrated pattern of operational deficiencies, the proposed intensification of use in a residential zone, and the failure to establish that the expansion would not substantially impair the intent and purpose of the zone plan, the denial of the application is legally supported and appropriate.
31. Since acquiring the property, the applicant has established a consistent record of being the source of significantly heightened 911/emergency service calls from the facility. Emergency response calls were made for the convenience of the facility/facility staff to the unmitigated detriment of Borough resources, with facility calls placed to 911 for non-emergency matters.
32. The Applicant did not satisfy the burden of proof relative to the relief sought pursuant to N.J.S.A. 40:55D-70d4, failing to establish that the proposed deviation from the Code FAR requirements, involving development of a secondary principal structure proximately adjacent to abutting residential lot lines and uses would not cause substantial detriment to the public good, to the intent and purpose of the zoning ordinance or plan for the area. As noted, the Property, and subject areas proposed to be improved, are immediately adjacent to and bounded on the north, west and southern boundary lines by lower-intensity, single-family residential lots, structures and uses.

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33. The Applicant did not satisfy the burden of proof relative to the relief sought pursuant to N.J.S.A. 40:55D-70c, failing to establish a justification for the grant of increased site coverage and further reduction to parking stall count (and corresponding deficient stall size) on a Property that is being proposed for use intensification and higher-demand occasioned by the increase of specified types of residents, demanding increased and potentially heightened emergent care.
34. The Applicant failed to demonstrate that granting the requested parking variance would not cause substantial detriment to the public good, when considered alongside the proposed intensification of use through increased skilled nursing beds. The Board's findings establish that the increase in skilled nursing beds would constitute an intensification of site use that would likely cause heightened demand for increased staff and support. This intensification directly contradicts the logic of reducing parking requirements. The proposed parking reduction fails to advance these statutory purposes and instead undermines them by creating inadequate parking for an intensified use.
35. The goals, purposes and objectives of the Borough Master Plan and 2017 Master Plan Reexamination Report, relative to residential zoning districts, were not established to be aligned with nor advanced by the proposed expansion and intensification of the Applicant's facility within the AAA residential zone.

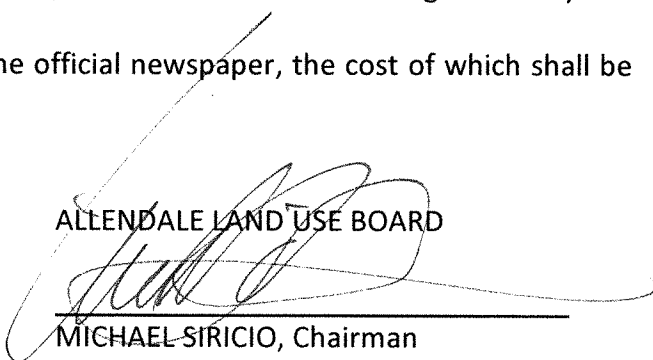
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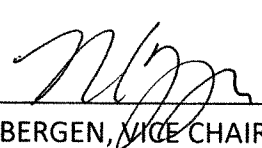
NOW THEREFORE BE IT RESOLVED, based upon the factual and legal evidence, testimony and contentions set forth herein, that the Allendale Land Use Board hereby denies the Applicant's request for relief from the Borough of Allendale Code.

BE IT FURTHER RESOLVED that the Land Use Board Secretary shall mail a copy of this Resolution within ten days from the date of adoption thereof to the Applicant or to their attorney, if any, without charge; and to all other persons who request the same and pay the required fee, therefore. The Secretary shall also file a copy of this Resolution in the offices of the Borough Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Borough Attorney and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the Applicant.


ALLENDALE LAND USE BOARD

MICHAEL SIRICIO, Chairman

Attest:



MELISSA BERGEN, VICE CHAIRWOMAN

Adopted: 10.15.25